



Terms and Conditions of Use of Digitised Theses from Trinity College Library Dublin

Copyright statement

All material supplied by Trinity College Library is protected by copyright (under the Copyright and Related Rights Act, 2000 as amended) and other relevant Intellectual Property Rights. By accessing and using a Digitised Thesis from Trinity College Library you acknowledge that all Intellectual Property Rights in any Works supplied are the sole and exclusive property of the copyright and/or other IPR holder. Specific copyright holders may not be explicitly identified. Use of materials from other sources within a thesis should not be construed as a claim over them.

A non-exclusive, non-transferable licence is hereby granted to those using or reproducing, in whole or in part, the material for valid purposes, providing the copyright owners are acknowledged using the normal conventions. Where specific permission to use material is required, this is identified and such permission must be sought from the copyright holder or agency cited.

Liability statement

By using a Digitised Thesis, I accept that Trinity College Dublin bears no legal responsibility for the accuracy, legality or comprehensiveness of materials contained within the thesis, and that Trinity College Dublin accepts no liability for indirect, consequential, or incidental, damages or losses arising from use of the thesis for whatever reason. Information located in a thesis may be subject to specific use constraints, details of which may not be explicitly described. It is the responsibility of potential and actual users to be aware of such constraints and to abide by them. By making use of material from a digitised thesis, you accept these copyright and disclaimer provisions. Where it is brought to the attention of Trinity College Library that there may be a breach of copyright or other restraint, it is the policy to withdraw or take down access to a thesis while the issue is being resolved.

Access Agreement

By using a Digitised Thesis from Trinity College Library you are bound by the following Terms & Conditions. Please read them carefully.

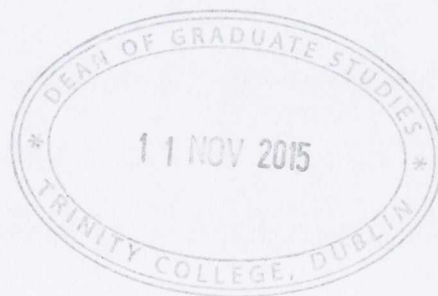
I have read and I understand the following statement: All material supplied via a Digitised Thesis from Trinity College Library is protected by copyright and other intellectual property rights, and duplication or sale of all or part of any of a thesis is not permitted, except that material may be duplicated by you for your research use or for educational purposes in electronic or print form providing the copyright owners are acknowledged using the normal conventions. You must obtain permission for any other use. Electronic or print copies may not be offered, whether for sale or otherwise to anyone. This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

TRINITY LIBRARY
27 JUL 2016
DUBLIN

VOLUME II

The Legal Protections of Language in the European Union

Aislinn Lucheroni



Ph.D. Law

Chapter 5 Language Rules in the European Union

In dissecting the role of language in the European Union, it is clear that the linguistic nationalism identified in part I still plays a part in many of the member states of the European Union. As the birthplace of the nation state, Europe has a particular understanding of the state/language/nation relationship. Perhaps because Europe has very little linguistic diversity in comparison with the rest of the world,¹ and very strong state structures and institutions, it forms an ideal arena to study the problems of law and multilingualism. For European states, shared language was the true demonstration of the existence of a unified nation.² The perception of this relationship, where the core of the nation is expressed in its language, and reflected in the structures of the State, is then carried into the new political structure that is the European Union. This fact is important in attempting to explain the multilingual nature of the EU. The linguistic regime of the EU is widely criticised, equally for its over-generosity and for its restrictiveness.

Legal protections of language in the European Union hinge on the status of a language as an 'official language' within the EU legal system. This chapter investigates the amorphous category of 'official language' in the European Union.

¹ Kortmann and van der Auwera (eds), *The Languages and Linguistics of Europe a Comprehensive Guide*. Vol II (Walter de Gruyter 2011).

² These ideas are outlined in chapter 2.

This part of the thesis analyses the foundation of the EU's intergovernmental linguistic regime and the problems this engenders. Article 55 of the Treaty on European Union states that all language versions of the Treaty shall be considered as authentic. This is then applied by Article 358 of the Treaty on the Functioning of the European Union (TFEU). Article 342 TFEU states that the European Union's language rules are to be decided unanimously by the Council of the European Union. This places the rules regarding the internal language operation of the institutions of the EU at the highest political level. This chapter will analyse the phenomenon of plurality of EU official languages, its genesis and its prospects. The language regime engaged in by the European Union is indicative of the clash of powers which had gone before, and the will to transcend this by placing the languages of the 6 initial Member States on an equal footing. The burdensome language regime the EU has decided upon is symptomatic of the problems of the European Union in general. The maintenance of one language per state³ is considered central to the delicate political equilibrium of the EU, although its utility appears to be mainly symbolic, as much of the day-to-day business of the EU is carried out through English.⁴ Nonetheless, Member States cling on to the perceived autonomy and equality that the regime of 24 official

³ Some states have more than one language recognised such as Irish and English for Ireland or French Dutch and German for Belgium. The EU protects the ability for Member States to use at least their primary national language(s).

⁴ This will be analysed in the latter part of this chapter.

languages brings. Upon closer inspection, it becomes clear that the language regime of the EU reveals much about the status of language today and its political importance for European states.

This chapter begins with a deconstruction of the ambiguous concept of official languages, building upon the investigation of the origins of the designations of an official national language in chapter 2. It examines the rules in place in the European Union and investigates the ambiguity present in the terms 'working language' and 'official language', and how this ambiguity has been exploited in the implementation of the EU's language rules. The chapter then goes on to examine the operation of the rules pertaining to languages in the agencies and institutions of the European Union. The second half of the chapter provides a more in-depth analysis of the practical problems of such an ambitious multilingual system. A brief comparative examination of the operation of multilingual international institutions leads to an analysis of the changing role for European languages in International Organisations, with a particular focus on the development of English and its political implications within the EU.

I Official languages: an ambiguous concept

As outlined by the initial chapters, State involvement in linguistic matters cannot be neutral. In beginning to approach questions of language in the political and legal sphere, it is fundamental to

understand this. These tensions are reflected in the messy and complicated rules governing the linguistic regime of the European Union. The concept, therefore, of 'official language' is key to understanding language rights in the context of the European Union. The public use of language is significant and can be examined from many different perspectives. The sociolinguistic discipline of Critical Discourse Analysis, (CDA) in particular, is concerned with how institutions *use* language.⁵ This thesis does not examine the use of language and the stylistic or ideological aspects of the documents, statements and declarations of the European Union, but focuses on the *rules* implemented by its institutions regarding language.

The notion of official languages is not unequivocally defined. The ambiguities of this notion are explored in this chapter. Official language is defined in the context of the European Union, before examining how the ambiguity has been exploited in the rules created regarding the internal language regime of the EU.

According to Kaplan and Baldauf, the concept of 'official languages' occurs in linguistically heterogeneous polities.⁶ They claim that in the European Union and in the United Nations the designation of official languages arises as 'a political response to the reality that

⁵ M. Hellinger and A. Pauwels (eds) *Handbook of Applied Linguistics* (vol. 9) (Mouton de Gruyter 2007).

⁶ R. Kaplan and R. Baldauf (ed.) *Language Planning: from Practice to Theory* (Multilingual Matters 1997).

no one official language will be acceptable.’⁷ Designating an official language, even in a polity with limited linguistic diversity, is a strong action on the part of the State. Choosing which languages have the official seal of approval in a heterolinguistic polity is of huge political significance. The problems inherent in the inevitability of the State’s use of language for communication explored in chapter 3, are equally valid for state-like entities such as the European Union.

Although there is no commonly accepted definition of the notion of ‘official status’ for a language, most European nation states have a designated official language. This is not necessarily the language spoken by everyone in that nation.⁸ The terms ‘official language’ and ‘national language’ are often used interchangeably.⁹ Stephen May identifies that national languages ‘are so called because they have been legitimised by the state and institutionalised within civil society, usually to the exclusion of other languages.’¹⁰ In most EU member states there is a designated ‘national language’, that is to say that one language has official status, often as a historical response to the nation-creating role of language evoked in chapter 2. Barbour clarifies that national languages are ‘languages, whether they are

⁷ Kaplan and Baldauf *Language Planning from Practice to Theory* (Multilingual Matters 1997) . 16

⁸ Dimitris Kokoroskos et al. ‘European Language Monitor (interim report) in Gerhard Stickel and Michael Carrier (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

⁹ Dimitris Kokoroskos et al. ‘European Language Monitor (interim report) in Gerhard Stickel and Michael Carrier (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

¹⁰ Stephen May *Language and Minority Rights Ethnicity Nationalism and the Politics of Language* (2001 Longman)

official languages or not, that have a clear role in national identity.¹¹

A language may be a 'national language' in the sense that it is the language that represents an ideological nation (often a minority) without being the official language of a State.

Linguistic minorities were actively oppressed under certain regimes throughout the history of Europe.¹² The explicit official approval within Member States, often at constitutional level, of certain languages over others, is a relic from this past, whose legacy is keenly felt in the European Union's own language rules. Each member state conceptualises language, in particular national language, differently.¹³ Within the European Union, each member state has its own linguistic setting, and official recognition of a language as the official national language is the result of political negotiations. In Italy for example, although the official national language is Italian, French and German have territorial recognition in certain parts, which is recognised in the Italian constitution.¹⁴ In Spain, certain major dialects have constitutional recognition. The designation of an official language(s) is a relic of nationalism, and of its association of territorial integrity with linguistic homogeneity. In

¹¹ Stephen Barbour 'National Language and Official Language' in Ammon Dittmar Mattheier and Trudgill (eds.) *Sociolinguistics: An International Handbook of the Science of Language and Society* (2nd ed. 2006 de Gruyter)

¹² Matthias Hüning Ulrike Vogl and Olivier Moliner (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012).

¹³ PH Nelde 'Maintaining Multilingualism in Europe: Propositions for a European Language Policy' in Pauwels Winter and Lo Bianco (eds.) *Maintaining Minority Languages in Transnational Contexts* (Palgrave 2007).

¹⁴ Giovanni Poggeschi *Language rights and duties in the evolution of public law* (Nomos 2013).

many contexts across the world, particularly in post-colonial situations, the language 'spoken' by State institutions is not representative of the language(s) the citizens of that state employ at home.¹⁵ An official language may be broadly described as 'a language used for legal and public administration purposes within a specified area of any given country.'¹⁶ This formulation also comprises languages or dialects which have formal recognition in addition to the national language of that state, which are sometimes used for local administrative purposes without necessarily having national or constitutionally official status.¹⁷

The European Language Monitor report defines official language as 'a language that can be used officially in the nation's court(s), parliament(s) and public administration(s).'¹⁸ The European Language Monitor is a study comparing language data across the Member States of the European Union carried out by EFNIL, the European Federation of National Institutions for Language.¹⁹ They also define an official language as 'a language used for legal and public

¹⁵Matthias Hüning U.Vogl and O.Moline (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012).

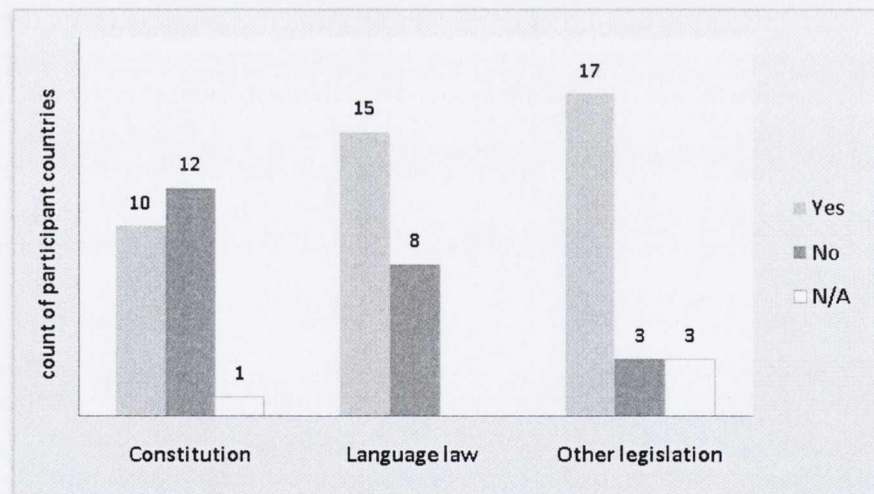
¹⁶ Dimitris Kokoroskos et al. 'European Language Monitor (interim report) in Gerhard Stickel and Michael Carrier (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

¹⁷Kirsten Henrard 'Participation' 'representation' and 'autonomy' in the Lund Recommendations and its reflections in the supervision of the FNCM and several human rights conventions' (2005) 12 (2-3 *International Journal of Minority and Group Rights*) 133-168.

¹⁸ Sabine Kirchmeier-Andersen, Cecilia Robustelli and others (eds.) *European Language Monitor* in Gerhard Stickel and Michael Carrier (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

¹⁹ EFNIL was born in 2003 in Stockholm and is a representative body for national language institutions of the MS of the EU

administration purposes within a specified area of any given country.²⁰ Only 12 constitutions of the 23²¹ participating Member States in the European Language Monitor survey included provisions for language in their constitution, although most do regulate use of their official language in the public administration, usually via legislation. This is often a contributory factor to the ambiguity identified in determining official language in EU Member States, and often language is regulated not via the constitution but otherwise. The chart below, drawn from the reports of the European Language Monitor, demonstrates the method of official language regulation or recognition employed across 23 Member States of the European Union:



²⁰ Dimitris Kokoroskos et al. 'European Language Monitor (interim report) in Stickel Gerhard / Carrier Michael (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012) available online at: <http://www.efnil.org/projects/elm>

²¹ This preceded the accession of Croatia to the EU.

Fig 1. Provisions for the official language(s) in the constitution, in language laws and other legislation (summary graph).²²

Theodor Schilling has identified three main characteristics which distinguish official languages. The first distinguishing feature is that official language status is usually conferred on the language the citizens use in communication with the state and vice versa. Furthermore, an official language is one which may be used in parliament and lastly, it is the language in which the official version of legal texts is published.²³ However, official language status can often comprise much more than this, from constitutional recognition, to the requirement to pass an examination in the official language in order to gain citizenship. The three basic criteria cited, however, are a commonplace feature of the privileges for a main official language. The implications of official status for language, whether giving a degree of recognition to minority languages, or declaring one national language, varies in different national contexts. It is clear that an officially sanctioned language provides many benefits to its speakers. The power imbalances created by excluding non-official languages protect a status quo which is in linear progression from the 19th century ideal of the nation-state. Bourdieu claims that an 'official language' is

²² Explanatory note: N/A stands for No Answer and Not Applicable

²³ Theodor Schilling 'Language Rights in the European Union' (2009) 9 (10) German Law Journal 1219-1242.

‘[b]ound up with the State, both in its genesis and in its social uses. It is in the process of state formation that the conditions are created for the constitution of a unified linguistic market, dominated by the official language.’²⁴

The political significance of designating an official language is not to be underestimated. De Witte and Mancini describe the ‘operation of the politics of language’ as being ‘expressed in statutes and administrative acts regulating the use of language.’²⁵ Although the use of language in private is generally not regulated by these statutes and administrative acts, in the Member States of the European Union, the ‘officialisation’ of certain languages is a clear act of language politics. Although generally there is a main language which has official status, we have seen how the terminology used to refer to the official language varies in different national contexts. The diversity of approaches across the member states means that it is impossible to speak of a ‘European approach’ to language planning.²⁶

Official language designation is important from a symbolic point of view, but the creation of an official language also provides many advantages to its speakers. The advantages conferred may exclude speakers of other languages, both from a communicative

²⁴ Bourdieu P. *Language And Symbolic Power* (edited and introduced by J.B. Thompson) (Polity Press 1991) 45.

²⁵ De Witte and Mancini ‘Language Rights as Cultural Rights - a European Perspective’ in F. Francioni and M. Scheinin (eds) *Cultural Human Rights* (Brill 2008).

²⁶ PH Nelde ‘Maintaining Multilingualism in Europe: Propositions for a European Language Policy’ in Pauwels Winter and Lo Bianco (eds.) *Maintaining Minority Languages in Transnational Contexts* (Palgrave 2007).

point of view, and symbolically by explicit exclusion of certain language communities. The recognition of a language as official favours that language community, and also creates a requirement for administrators, bureaucrats and translators in that language.²⁷ On a linguistic level, this also means that official languages must have standardised orthography, and a standardised corpus. The standardisation process has been criticised as harmful to the normal linguistic development of endangered languages in particular.²⁸ Campaigning for official status is seen as counterproductive in language revitalisation, with many linguists espousing a holistic approach which focuses on education.²⁹ The fact that an official language requires bureaucratic involvement is heavily criticised. Nonetheless, official recognition remains an important avenue of legitimisation of a language, and often leads to an increase in resources dedicated to that language. Thus, many language campaigners see officialisation as their main objective.

The official recognition of languages, and the consequent language rights that this recognition bestows, is an integral part of the way language issues are approached politically in Europe.³⁰

²⁷ Magali Gravier 'The 2004 Staff Enlargement Policy of the European Commission: the case for Representative Bureaucracy.' (2008) 46 (5) *Journal of Common Market Studies* 1025-1047.

²⁸ Jan Blommaert 'Language Policy and National Identity.' in Thomas Ricento (ed.) *Introduction to Language Policy: Theory and Method* (Blackwell 2006)

²⁹ Nettle and Romaine *Vanishing Voices: The Extinction Of The World's Languages* (Oxford University Press 2000)

³⁰ Colin Williams *Minority Language Promotion Protection and Regulation: The Mask of Piety* (Palgrave 2013)

Wright explains that 'one of the first acts of each new state has been the language planning necessary to promote one variety as the national language. It is, of course, self-evident that the choices are indicative of power relationships.'³¹ This is no less true for the European Union. The language regime it engaged in, as a part of the whole European project, was indicative of the clash of powers which had gone before and the will to transcend these by placing the languages of the 6 initial Member States on an equal footing.

In most Member States of the EU, the official language is also the working language of the state. The formal concept of a 'working language' originated in the League of Nations, the predecessor to the United Nations.³² International organisations to date have chosen certain languages as their 'working languages', to ease their administrative burden, and to prioritise efficiency in their work.³³ For reasons of efficiency the number of working languages used by international organisations is limited: working language regimes are assessed in detail later in this chapter. The European Union places no limit upon its working languages, and affords equal recognition to the language(s) of each of its Member States. The EU is unusual among multilateral organisations in that it does not have a regime of working

³¹ Sue Wright, *Language policy and language planning: from nationalism to globalisation* (Palgrave Macmillan 2003).

³² Jacqueline Mowbray 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8 (1) *New Zealand Journal of Public and International Law* 91-115.

³³ Mala Tabory *Multilingualism in International Law and Institutions* (Brill 1980)

languages. The terms 'official' and 'working' languages are not coterminous.³⁴ This chapter has investigated official language from a theoretical perspective, demonstrating the lack of coherence at a European level. An examination of the evolution of the norms in place for a language to gain its 'official' status in the structures of the European Union reveals the centrality of this concept to the delicate multilingual equilibrium in the EU.

II Language Rules of the European Union

The European Union (EU) has 24 official languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish. It is unrivalled in its multilingualism. No other international organisation has ever attempted working through so many languages. The infographic below, devised by the European Institutions to promote this fact, shows the accrual of EU official languages over time.³⁵

³⁴Colin Robertson '2013 How the European Union functions in 23 languages' SYNAPS 28 (2013) (Presentation on 30 September 2011 at the Department of Professional and Intercultural Communication of the Norwegian School of Economics and Business Administration) available online at: https://www.nhh.no/Files/Filer/institutter/fsk/Synaps/28-2013/Robertson_28_2013.pdf

³⁵ Copyright European Union (2014) This infographic appeared on social media promoting language careers in the EU. It was devised by DGT- the Directorate General for Translation of the European Commission to promote a recruitment call for translators. It is cited as Copyright EU 2014 after consultation with the administrators of the who advised this would be the best way to proceed.

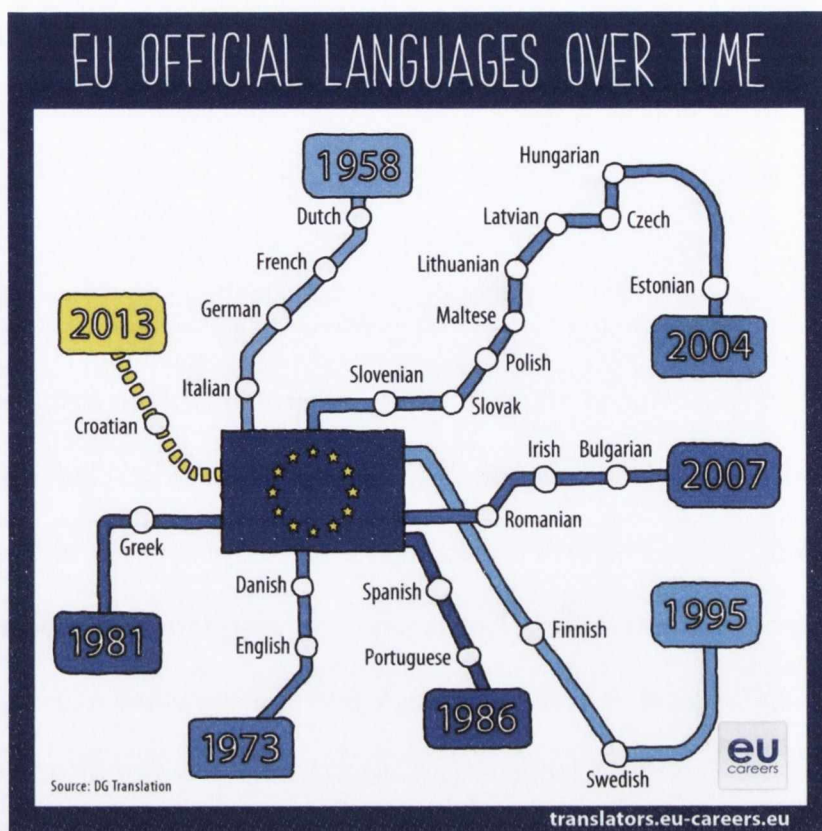


Fig. 2. official languages in the EU over time

Although multilingualism has been a common feature of governance structures in Europe throughout its history,³⁶ never before has it been institutionalised in this way. The very first regulation adopted by the then-European Economic Community established the framework for the use of languages, a framework which, though modified by each subsequent addition of a Member State to the EU, is still in force today. The language rules of the European Union are a distinctive part of its *sui generis* nature. The heterogeneous identity of each of the member states is preserved and recognised through

³⁶ Matthias Hüning Ulrike Vogl and Olivier Moliner (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012) see also chapter 2 of this thesis for further discussion.

these language rules. The language rules of the European Union are a distinctive part of its sui generis nature. The heterogeneous identity of each of the Member States is preserved and recognised through these language rules.

What was then Article 217 of the Treaty establishing the European Economic Community³⁷ (also referred to as The Treaty of Rome) laid the foundations for the language regime of the European Union. Under this article, making the official languages of the Member States the official languages of the newly formed European Economic Community was a strategic goal to place all the founding States on an equal footing.³⁸ Article 217 of the Treaty of Rome stipulated that the Council would have to unanimously decide on issues involving the linguistic regime of the EU, which demonstrates the political weight of these decisions, even at a time when an integrated European Union such as exists now was arguably unforeseeable. In 1958, the first collective decision made and recorded in the new European Economic Community³⁹ was Council Regulation 1/58, adopted on 15 April 1958. Its subject matter was the linguistic regime of this new European political organisation. This set out the rules for the official languages, and working languages as a

³⁷ Now Article 342 TFEU

³⁸ T.C. Hartley *The Foundations Of European Union Law: An Introduction To The Constitutional And Administrative Law Of The European Union* (Oxford University Press 2010).

³⁹ W. Kaiser B. Leucht and M. Rasmussen (eds) *The History of the European Union: Origins of a Trans- and Supranational Polity 1950-72* (Routledge 2008).

concept is conspicuous by its absence. Article 6 of Regulation 1/1958 stated, however, that 'The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases,'⁴⁰ leaving space for institutional regimes of working languages open. The Regulation also sets out that 'regulations and other documents of general application shall be drafted in the official languages'⁴¹ and that the Official Journal must also be published in the official languages,⁴² thus establishing a functional multilingualism which persists today.

More than 50 years later, the symbolism of the EU's language regime remains crucial. Article 342 TFEU⁴³ determining that language rules are to be decided unanimously by the Council of the European Union states:

The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.

⁴⁰ Regulation 1 determining the languages to be used by the European Economic Community (OJ 017) 06/10/1958

⁴¹ Art 4, Council Regulation (EC) 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community.

⁴² Art 5, Council Regulation (EC) 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community.

⁴³ Previously article 217 of the Treaty of Rome and article 290 of the EC Treaty.

The unique nature of Regulation 1/1958 means that the seemingly minor procedural matter of linguistic rules is governed intergovernmentally, and is regulated solely by unanimous decision making in the Council. This implies that each Member State of the EU can veto any changes proposed to the languages regime. Therefore, the Council could change the rules without any legal difficulty were the political will present. The primacy of the Member States is reinforced. The political significance of language choice and language sanctioning in the European Union has not diminished since the very earliest days of its foundation. This is demonstrated by the fact that the designated national language of each new state to accede has since then generally been added to the category of Official EU languages. This is due to the fundamental importance of these rules in maintaining political equilibrium. The Regulation is amended every time a new language is added, most recently with the accession of Croatia in July 2013.

The ambitious aim of linguistic equality quickly took hold. Although today linguistic equality forms the cornerstone of the EU's language regime, it has been claimed that when the European Coal and Steel Community was formed in 1951, the principle of linguistic equality was not fully accepted.⁴⁴ In 1951 Germany and Italy were in a weak position politically and thus could not demand a policy of

⁴⁴ T.C. Hartley *The Foundations Of European Union Law: An Introduction To The Constitutional And Administrative Law Of The European Union* (Oxford University Press 2010), 64.

plurilingualism, while French appeared the natural choice for a working language, as it was well-established as the language of diplomacy and international relations.⁴⁵ However, as political cooperation became more expedient and economies were developing during the seven years following the initial formation of the European Coal and Steel Community, language began to play a political role in the innovative European regional cooperation that was taking place. It appears that language issues were used to place all countries of the European Economic Community which was being formed on an equal footing politically and symbolically.⁴⁶ At the time of its establishment, the multilingualism of this new European organisation involved only 4 languages across its 6 members. Dutch, French, German and Italian were specified as the first official and working languages of the EEC. As noted by Elias, the drafters of the Treaty of Rome

[w]ere acutely aware of the need to preserve some semblance of linguistic parity, and therefore political parity, when they conferred equal status on all national languages of the EU Member states ... as working languages.⁴⁷

⁴⁵ Phillipson Robert *English-only Europe?: Challenging Language Policy* (Routledge 2003)

⁴⁶ T.C. Hartley *The Foundations Of European Union Law: An Introduction To The Constitutional And Administrative Law Of The European Union* (Oxford University Press 2010); S.B. Elias 'Regional Minorities Immigrants and Migrants: The Reframing of Minority Language Rights in Europe' *Berkeley Journal of International Law* 28/1 (2010) 261-312.

⁴⁷ S. B. Elias 'Regional minorities immigrants and migrants : The Reframing of Minority Language Rights in Europe' (2010) 28 *Berkeley Journal of International Law* 261, 269.

The official discourse from the EU institutions does not assess the political dimension of the language regime the European Economic Community was forming for itself, proposing instead that '[t]he multilingualism embraced from the start was thus a pragmatic solution rather than a political statement.'⁴⁸ However, it is clear that pragmatism has not been the central concern in constructing a multilingual political structure of this nature. The European Union's rules for language and the rules around setting up a language regime for other bodies within the EU will now be analysed in detail.

(i) The European Union: Official and working languages

The formal language rules of the European Union reveal a lot about its internal workings and the power struggles between nation-states which take place at the supranational level. Spolsky argues that the EU's bureaucratic resolution of its language problems is the resolution of 'the conflict between pragmatic and symbolic considerations.'⁴⁹ Member States are keen to maintain the appearance of full operational multilingualism, however, this chapter will demonstrate that this is not reflective of the reality within the European Union institutions, and in other agencies and bodies. The symbolic considerations are paramount, thus language rules of the EU's institutions are cryptic. There is a severe conflict of interests

⁴⁸ European Commission *Translation at the European Commission – a history*. (Office for Official Publications of the European Communities 2010)

⁴⁹ Bernard Spolsky *Language Policy* (Oxford University Press 2004).

inherent in the designation of institutional working languages for the EU.⁵⁰ A clear designation of working languages would both maximise efficiency and reflect the reality of what happens in the EU institutions at the moment, as evidenced by their hiring policies.⁵¹ It would be more helpful both for citizens and for administrative purposes if a regime of official languages and working languages were set in place. This chapter aims to demonstrate that this is unlikely to happen.

In theory, within the European Union, all 24 of the official languages may legally be used in working practices, and in communications by and with the EU. As Mowbray calls attention to the fact that '[i]n practice, however, a number of restrictions on this inclusive language policy have emerged, particularly as the number of official languages has grown from four to 23.'⁵² As the first part of this chapter explored, there is no clear iteration of the concept of 'official language', and what this concept entails. By the same token, the term 'working language' can cover a multitude. Mowbray typifies the difference thus:

⁵⁰ Ammon Ulrich 'Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests' (2006) 16(3) *International Journal of Applied Linguistics* 319-338

⁵¹ Krzyżanowski Michał and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülbauer and E. Vetter (Eds.). *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010) 115-135.

⁵² Jacqueline Mowbray 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8 (1) *New Zealand Journal of Public and International Law* 91-115.

‘This distinction between official and working languages was a traditional feature of the language policies of many international organisations. Although these terms have slightly different meanings within each organisation, the essence of the distinction is that all documents and speeches should be translated into each of the working languages, whereas only important documents and speeches need to be translated into each of the official languages.’⁵³

However, this analysis falls short when examining the linguistic regime of the European Union. The question of working languages for the European Union is politically fraught. The political stakes involved are high, both in terms of ‘soft’ influence for the Member State and for internal questions of language politics. The category of ‘official languages of the European Union’ includes the language of each Member State, however there are a variety of different versions of working language regimes in place across the bodies, agencies and institutions of the European Union. Here, the asymmetrical and ad hoc nature of the language regimes in place within each of the institutions becomes evident. The Council of the European Union governs the linguistic rules which means these are regulated at the highest intergovernmental political level in the EU. The right of initiative belongs, unusually, to the Council and not the Commission

⁵³ Jacqueline Mowbray ‘Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism’ (2010) 8 (1) *New Zealand Journal of Public and International Law* 91-115, 93.

in the sphere of language rules. An examination of these rules demonstrates a clear reluctance to use the term 'working language', and in doing so, it explicitly allows for all of the official languages of the EU to be potentially used. We will briefly examine the language regimes in place in the EU institutions in the next section.

Official languages, multilingualism and General Principles

This exposition demonstrates that during the construction of the EU the symbolic value of language was treated as paramount. Therefore, the division between the terms official language and working language is also of political significance. Member States are keen to retain as much influence as possible and thus to retain the appearance of all languages as central to the European Project. The court, however has emphasised that the language rules of the European Union do not have any fundamental nature within the EU's legal system. The Court of First Instance, subsequently upheld by the CJEU, stated

Regulation No 1 is merely an act of secondary law, whose legal base is Article 217⁵⁴ of the Treaty. To claim, as the applicant does, that Regulation No 1 sets out a specific Community law principle of equality between languages, which may not be derogated from even by a subsequent regulation of the Council, is tantamount to disregarding its character as

⁵⁴ now Article 342 TFEU

secondary law. Secondly, the Member States did not lay down rules governing languages in the Treaty for the institutions and bodies of the Community; rather, Article 217 of the Treaty enables the Council, acting unanimously, to define and amend the rules governing the languages of the institutions and to establish different language rules. That article does not provide that once the Council has established such rules they cannot subsequently be altered. It follows that the rules governing languages laid down by Regulation No 1 cannot be deemed to amount to a principle of Community law.⁵⁵

The rules contained in the regulation, therefore

[c]annot be regarded as evidencing a general principle of Community Law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.⁵⁶

General principles come from constitutional traditions common to the member states.⁵⁷ Any realistic iteration of EU substantive language rights fits most easily into a conception of good administration, where administrative procedural guidelines dictate comprehensibility and ease of communication, as well as a degree of

⁵⁵ Case T-120/99 *Kik v. OHIM* (2001) E.C.R. II-2235 para. 58 (Court of First Instance)

⁵⁶ Case T-120/99 *Kik v. OHIM* (2001) E.C.R. II-2235 para 82

⁵⁷ Hofmann and Mihaescu 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (9) 73 (2013) *European Constitutional Law Review* 101, 84.

recognition for communities.⁵⁸ This will be argued in the forthcoming chapters. The *Kik* case comprises a significant pronouncement by the Court of the language regime of the European Union.⁵⁹ Urrutia and Lasagabaster argue that language rights could form a general principle of EU law.⁶⁰ In light of the pronouncements of the Court, it seems clear that any language rights provided within the legal system of the European Union are very limited in nature. Although, as this thesis will explore, the overall official line is one of equal multilingualism, the European Union's internal practises on this matter are changing.⁶¹ Embracing multilingualism is an important value within the legal framework of the EU but it is clearly not a part of the general principles of EU law. The next section looks at the language rules of the institutions of the European Union in detail.

III Institutional Language Rules of the European Union

We can clearly see that the internal working language regime, in cases where the political representatives are not directly elected politicians, is much more restrictive than the permitted full multilingualism. Theo Van Els claims that 'ample use is made of the possibility that seems to be contained in the dual and equivocal

⁵⁸ European Charter for Regional or Minority Languages (1992), Council of Europe Treaty Series No 148.

⁵⁹ N. Nic Shuibhine 'Commentaire de l'arrêt *Kik v OHIM* (C-361/01)' (2004) 41 *Common Market Law Review* 1093

⁶⁰ Iñigo Urrutia and Iñaki Lasagabaster 'Language Rights as a General Principle of Community Law' (2007) 8 *German Law Journal* 479

⁶¹ Carolyn Ban *Management and Culture in an Enlarged European Commission: From Diversity to Unity?* (Palgrave 2013)

formulation 'Official and Working Languages'.⁶² This chapter explores the ambiguities contained therein. Patten calls the apparently equal treatment of all European official languages 'equality of recognition', arguing that it is so central to the EU's external communications with its citizens to promote and recognise official Member State languages, that the extremely high costs, both monetary and otherwise, of translating all official documents into all official languages are non-negotiable.⁶³ Koskinen states 'it is clear that then, as now, the question of languages was crucial to the political legitimization of the European project.'⁶⁴ Therefore, it is clear that in the European Union the question of working languages is not merely one of functionality, but goes to the heart of the nature of the European project. Abram De Swaan, not noted as a commentator for a commitment to linguistic diversity even goes so far as to state that:

The EU's multilingualism is a visible and audible manifestation of the Union's respect for the equality and autonomy of the Member states.⁶⁵

Thus, Member States are keen not to tamper with this manifestation, even if it is only outward, as to do so would be to admit a concession

⁶² T. Van Els (2006) 'The European Union its Institutions and its Languages: Some Language Political Observations' in R. Baldauf. and R. Kaplan (eds .) *Language Planning and Policy in Europe*. (Vol. 2) (Multilingual Matters 2006) 209.

⁶³ Patten Alan 'Theoretical Foundations of European Language Debates ' in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

⁶⁴ Koskinen K. (2013) 'Social media and the institutional illusions of EU communication' *International Journal of Applied Linguistics* 23 80–92.

⁶⁵ Abram de Swaan *Words of the World: The Global Language System* (Wiley 2002), 173.

of equality, autonomy, or both to the supranational powers of the European Union.

The EU institutions are listed in Article 13 TEU which sets out the institutional framework. They are as follows: the European Parliament, European Council, European Commission, the Court of Justice of the European Union, European Central Bank and the Court of Auditors. Article 6 of Regulation 1/1958 specifies that 'The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.' We will also look at the working languages of other EU bodies and agencies which are not 'institutions' and thus are not subject to the same rules. They are not listed in the Treaties and are more ad hoc in character. This means that Agencies can operate under their own linguistic rules. Although there is no explicit regime of working languages, it is clear that certain languages are used as languages of internal communication.⁶⁶ This is referred to obliquely by the website of DG Interpretation, the Commission's interpretation service:

Different institutions have widely different needs. As a rule of thumb, elected representatives (i.e., ministers in formal meetings, plenary meetings of the Committee of the Regions

⁶⁶ Michał Krzyżanowski and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülbauer and E. Vetter (Eds.), *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010).

or of the Economic and Social Committee) get full, symmetric language coverage, while officials and experts get a whole range of different arrangements, depending on their real needs and the resources available.⁶⁷

This demonstrates the wide variety of regimes in place with regard to working languages. Given the political sensitivity of language issues there is a dearth of written agreements on institutional practice with regard to working and procedural languages. The agreements are 'oral, informal or non-public.'⁶⁸ The engines of power in the structures of the European Union are obvious in the regimes of working languages selected, but also in the languages which are effectively used within the institutions, which forms the basis of analysis for the latter part of this chapter.

This section will outline the language rules in place, focusing on particular institutions, namely the Commission, the Parliament, and the Court of Justice of the European Union, which correspond broadly with the executive, legislative and judicial powers of the European Union. The European Central Bank is also included and was chosen because of its unusual language regime, which has caused

⁶⁷ 'About Us' SCIC website, European Commission: http://ec.europa.eu/dgs/scic/about-dg-interpretation/index_en.htm <last accessed 3 April 2014>.

⁶⁸J Kruse and U Ammon 'Language Competence and Language choice within EU institutions and their effects on national legislative authorities' Anne-Claude Berthoud François Grin Georges Lüdi (eds.) *Exploring the Dynamics of Multilingualism: The DYLAN project* (John Benjamins 2013), 158.

problems. Our consideration of the language regimes of EU Agencies will cement this further.⁶⁹

These institutions were chosen because of their divergent language rules. While the Court and Parliament endeavour to operate multilingually, the European Central Bank operates only in English, and Agencies vary in their language regimes. This thesis does not focus on the administrative functions of the different EU institutions with relation to language *policy*. It will briefly expose the *rules* in each of the institutions regarding their language regimes, in order to further demonstrate the lack of coherence in matters of official and working languages, and the distinctions between them.

(i) The European Commission

The European Commission is the civil service of the European Union. Comprising a multinational public administration, drawn from all the Member States of the EU, it employs about 25,000 civil servants.⁷⁰ Although there are staff members from all over the EU, not all their languages are commonly used within the Commission. The European Commission's internal language regime refers to three 'procedural' languages: English, French and German,⁷¹ rather than using the term

⁶⁹ It is important to note that the discussion in this thesis is based on official accounts. It is taking the rules, as they exist and where they are written down, at face value. Usually, and particularly within the case of the language regime of the European Union, there is considerable divergence between the official account of how institutions work, and how they function in practice.

⁷⁰ A. Stevens and H. Stevens (eds) *Brussels Bureaucrats? The Administration of the European Union* (Palgrave 2001)

⁷¹ European Commission 'Frequently asked questions on languages in Europe' MEMO/13/825 (26/09/2013)

working languages, but these are de facto the working languages of the Commission. Terminological indeterminacy is not limited to the distinction between official and working languages. Article 17 of the Commission's Rules of Procedure introduces a new category, referring to 'authentic languages', conflating these with the European Union's official languages, stating:

For the purposes of these Rules of Procedure, 'authentic language or languages' means the official languages of the European Union, without prejudice to the application of Council Regulation (EC) No 920/2005⁷², in the case of instruments of general application, and the language or languages of those to whom they are addressed, in other cases.⁷³

This choice of terminology is probably a reference to the fundamental principle of multilingual legal authenticity of EU law, which will be dissected in the next chapter. There are three main procedural languages designated, however the reality of the language regime in the Commission, particularly since the 2004 enlargement is approaching unilingualism, with widespread prioritisation of English as a working language.⁷⁴ English, French and German are not the

⁷² This regulation allows for derogations for newly added languages and will be discussed in the next chapter.

⁷³ (COM) Commission Decision of 24 February 2010 amending its Rules of Procedure L 55/60 Article 18

⁷⁴ Krzyzanowski M. and Wodak R. 'Dynamics of multilingualism in post-Enlargement EU institutions: perceptions conceptions and practices' in Berthoud A-C. Grin F. and Lüdi G. (eds.) *Exploring the dynamics of multilingualism: the DYLAN project*. (2013 John Benjamins) p. 205-231

working languages of the Commission, but they do enjoy special status which is explicitly recognised. The European Commission, for example, recognises this on their website, stating that:

In order to reduce the cost to the European taxpayer, the European Commission is increasingly endeavouring to operate in the three core languages of the European Union; English, French, and German, while developing responsive language policies to serve the remaining 21 official language groups.⁷⁵

Again, reference to the term 'working languages' is avoided, with the vague 'core languages' being used instead. While calling for a clearer iteration of the rules regarding working and official languages of the European Union,⁷⁶ the office of the Ombudsman has approved the language scheme of the European Commission, specifically endorsing the reasons of practicality that the Commission has used to justify its adoption of such a regime:

In its reply, the Commission set out in great detail the reasons which, in its view, militated in favour of limiting the number of languages to be used. The Ombudsman agreed that at least some of those arguments could constitute valid

⁷⁵ http://ec.europa.eu/languages/policy/language-policy/official_languages_en.htm

⁷⁶ Case C-566/10 P *Italy v Commission* (Judgment of the Court (Grand Chamber) of 27 November 2012- not yet published)

reasons for its practice. However, he also took the view that, since Article 2 of Regulation 1/58 was clearly a provision of general application, any exceptions for entire sectors would have to be decided on by the Community legislator.⁷⁷

Following the judgement of the Court of Justice of the European Union in *Italy v Commission*,⁷⁸ the institutions of the European Union are obliged to state the reasons for limiting the choice of the second language in their recruitment competitions to a limited number of official EU languages. This decision is cited at length on the European Personnel Selection Office (EPSO) website:

In the light of the judgment given by the Court of Justice of the European Union (Grand Chamber) in Case C-566/10 P, *Italy v Commission*, the EU institutions wish to state the reasons for limiting the choice of the second language in this competition to a small number of official EU languages. Candidates are therefore informed that the second language options in this competition have been defined in line with the interests of the service, which require new recruits to be immediately operational and capable of communicating

⁷⁷ Decision of the European Ombudsman on (PB)GG 3114/2005/MHZ 2580/2006/TN

⁷⁸See Case C-566/10 P *Italy v Commission* (Judgment of the Court (Grand Chamber) of 27 November 2012- not yet published)

effectively in their daily work. Otherwise the efficient functioning of the institutions could be severely impaired.⁷⁹

This case confirms that English, French and German are the *de facto* EU working languages, not only in the Commission but across the EU and is evidence of the weighing up of symbolic and practical considerations. The Court justified the designation of these languages as working languages stating:

It has long been the practice to use mainly English, French and German for internal communication in the EU institutions, and these are also the languages most often needed when communicating with the outside world and handling cases. Moreover, English, French and German are the most common second languages in the European Union and the most commonly studied as a second language. This confirms what is currently expected of candidates for European Union posts in terms of their level of education and professional skills, namely that they should be proficient in at least one of these languages. Consequently, in balancing the interests and needs of the service and the abilities of candidates, and given the particular field of this competition, it is legitimate to organise tests in the three languages in order to ensure that all

⁷⁹ EPSO website; recruitment call template, for example: CALL FOR EXPRESSIONS OF INTEREST FOR CONTRACT STAFFIN GENERALIST PROFILES:FUNCTION GROUP II: COM/1/2013/GFII/FUNCTION GROUP III COM/2/2013/GFIII/ FUNCTION GROUP IV: COM/3/2013/GFIV.

candidates are able to work in at least one of them, whatever their first official language.⁸⁰

The Court appears to extend the use of English French and German beyond the language regime of the Commission only. This case, however, does not clarify the working language regime of the EU. Although English, French and German are the languages used by the Commission according to the rules of procedure, which set this out clearly, the extensive justifications provided by the Court show how delicately language issues are treated by the Institutions.

(ii) The European Parliament

This section will examine the institutional language regime of the European Parliament. The European Parliament allows for full operational multilingualism. As the website of the DG Interpretation⁸¹ states: 'Giving everyone at the table a voice in their own language is a fundamental requirement of the democratic legitimacy of the European Union.'⁸² Each of the 751 MEPs can express themselves in any of the 24 official languages. As the Parliament is made up of directly elected representatives, it is

⁸⁰ Case C-566/10 P *Italy v Commission* (Judgment of the Court (Grand Chamber) of 27 November 2012- not yet published) at Cited in all recruitment calls by the European Personnel Selection Office (EPSO) see for example: '*Notice of open competitions — Danish-language (DA) German-language (DE) English-language (EN) Irish-language (GA) and Dutch-language (NL) Lawyer-linguists (AD 7)*' 2013/C 321 A/01 (Official Journal of the European Union)

⁸¹ Often also referred to by its French acronym SCIC- Service Commun Interprétation-Conférences

⁸² 'About Us' SCIC website, European Commission: http://ec.europa.eu/dgs/scic/about-dg-interpretation/index_en.htm <last accessed 3 April 2014>.

imperative that the EU's own democratically elected institution engage with the citizenry, and facilitate interactions, despite language barriers. Rule 158 of the European Parliament's 2014 Rules of Procedure regulates language use.⁸³ Rule 158 enshrines the use of all 'Official Languages of the European Union', and guarantees the provision of interpretation where necessary. Simultaneous interpretation is available when Parliament is in session, and all MEPs are fully free to speak their own languages.⁸⁴ This rule is clearly important for the operation of a supranational parliament with directly elected public representatives, many of whom do not have fluency beyond their national language. The attempt to create a multilingual European political community in the EU necessitates that all languages can be represented in its parliament. However, articles 3 and 4 of Rule 158 restrict its full operation:

3. Interpretation shall be provided in committee and delegation meetings from and into the official languages used and requested by the members and substitutes of that committee or delegation.

4. At committee and delegation meetings away from the usual places of work interpretation shall be provided from

⁸³ Rules of Procedure of the European Parliament PE_REGL(2014)07-01

⁸⁴ Rule 158 (2) of the Rules of Procedure: 'All Members shall have the right to speak in Parliament in the official language of their choice. Speeches delivered in one of the official languages shall be simultaneously interpreted into the other official languages and into any other language the Bureau may consider necessary.' See comment in Michele Gazzola 'Managing Multilingualism in The European Union: Language Policy Evaluation For The European Parliament' (2006) 5 *Language Policy* 393-417.

and into the languages of those members who have confirmed that they will attend the meeting. These arrangements may exceptionally be made more flexible where the members of the committee or delegation so agree. In the event of disagreement, the Bureau shall decide.⁸⁵

These rules mean that effectively, full multilingualism is operative by default only in the full plenary sessions of the European Parliament.

Athanassiou comments:

Given that committee hearings is where most of the preparatory work leading to the adoption of Community legislation takes place, it is possible to treat the provisions of paragraph 4 of Rule 138 [renumbered in the new rules] as an important qualification to the European Parliament's policy of multilingualism with regard to its working languages.⁸⁶

Internal language use in the European Parliament is also veering towards homogeneity, dependent on the nationality of the MEP.⁸⁷

Internally, English and French are de facto the working languages,

⁸⁵ Rules of Procedure of the European Parliament PE_REGL(2014)07-01

⁸⁶ P. Athanassiou 'The application of multilingualism in the European context' ECB Legal Working Paper (2) (European Central Bank 2006). Jean-Bernard Adrey *Discourse and Struggle in Minority Language Policy Formation: Corsican Language Policy in the EU Context of Governance* (Palgrave 2009)

⁸⁷ Sue Wright 'English in the European Parliament: MEPs and their language repertoires' (2007) 21 *Sociolinguistica* 151-165; Michał Krzyżanowski and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülmbauer and E. Vetter (Eds.). *Mehrsprachigkeit in europäischer Perspektive* (Peter Lang 2010) 115-135.

and many MEPs choose to express themselves in English when they take the floor.⁸⁸ The President of the European Parliament appears to have a large impact also on the language profile of the Parliament in general.⁸⁹ Fluency in English, in particular, is seen as increasingly essential to operating both within the Parliament and within the extensive network of lobby groups and political offices.⁹⁰ These developments have passed largely uncommented upon outside academic circles, perhaps due to the impression of full multilingual operation given.

The operation of a multilingual parliament is particularly relevant to the role of language in deliberative democracy, and the creation of a European *demos*.⁹¹ This will be further examined in chapter 7's typology of language rights as procedural rights in the EU. The next section will outline further some of the difficulties encountered in operating multilingually. Agencies and other bodies of the European Union have more freedom to determine their own

⁸⁸ Michał Krzyżanowski and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülbauer and E. Vetter (Eds.), *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010).

⁸⁹ Michał Krzyżanowski and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülbauer and E. Vetter (Eds.), *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010).

⁹⁰ Ruth Wodak 'The interplay of language ideologies and contextual cues in multilingual interactions: Language choice and code-switching in European Union institutions' (2012) 41 (2) *Language in Society* 157-186

⁹¹ D. Archibugi 'The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives' (2005) 53(3) *Political Studies* 537-555.

language rules, but this is not without problems. These will be explored later in this chapter.

(iii) The Court of Justice of the European Union

The internal linguistic regime of the Court of Justice of the European Union is unusual, within the context of the post-enlargement EU, in that business there is mainly conducted through French.⁹² The language rules of the CJEU are distinct and separate. Article 7 of Regulation 1/1958 stipulates that: 'The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure.' They are governed by the Statute of the Court of Justice of the European Union, Article 342 TFEU states:

The rules governing the languages of the institutions of the Union shall, *without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union*,⁹³ be determined by the Council, acting unanimously by means of regulations.⁹⁴

However, the new (2010) Statute of the Court of Justice⁹⁵ states that: '[t]he rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously.' It then adds, '[u]ntil

⁹² The effects of enlargement on the language regime will be further explored later in the thesis.

⁹³ Emphasis added

⁹⁴ Article 342 Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47.

⁹⁵ Protocol (No 3) on the Statute of the Court of Justice, OJ 2010 C 83/210

those rules have been adopted, the [relevant] provisions of the rules of procedure of the [ECJ] ... Shall continue to apply.' This provides an impetus for the distinct language rules of the CJEU to be formally put in place by the body ruling the language regime of the EU, the Council, which operates at the highest political level, and requires the assent of all Member States, rather than the rules of this institution simply being regulated by an internal institutional arrangement. Perhaps because of its atypical regime of working languages, this development does not appear to be forthcoming.

In its external language regime, that is to say in its engagement with citizens, the Court embraces multilingualism fully.⁹⁶ The fact that the main internal operations of the judicial system of the European Union are through French does not generally affect citizens in their interaction with the court. Articles 36 to 42 of the Rules of Procedure of the Court of Justice of the European Union regulate the languages that may be used in the Court. Article 36 provides that the language of a case may be any of the official EU languages. The applicant chooses the language, except where a Member State is the defendant, which dictates that the language of the proceedings will be the language of that Member State and if the state has several languages, the applicant may choose between

⁹⁶ K Mc Auliffe 'Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ' in L. Solan and P. Tiersma (eds) *The Oxford Handbook of Language and Law* (Oxford University Press 2012)

them.⁹⁷ For the purpose of interaction with citizens, whether that is their interaction directly with the court or in matters of importance, the principle of multilingual operation is followed. The functioning of the court operates via principles of multilingualism, for example, Art. 104 (1) of the Rules of Procedure means that requests for Preliminary Rulings are translated into the official languages of the EU.⁹⁸

Although the language regime of the court is French, it could also be said that from a legal point of view the Court operates multilingually. As the court deals with the legal systems of each of the Member States, and with a multilingual and multijural EU legal system, it is de facto operating across linguistic barriers.⁹⁹ Robertson points out that:

The situation is unlike that of the legislative environment where it is possible to restrict source languages for drafting to a few. Instead any language may be a source and all the possible combinations between languages come into play for the purposes of translation.¹⁰⁰

⁹⁷ Article 37 of the Rules of Procedure; Protocol No. 3 on the Statute Of The Court Of Justice. art. 64 2010 O.J. (C83) 210:

⁹⁸ An excellent diagram depicting this procedure can be found in Hermann-Josef Blanke and Stelio Mangiameli *The Treaty on European Union (TEU): A Commentary* (Springer 2013) at 1492.

⁹⁹ Sacco (ed), *L'interprétation des textes juridiques rédigés dans plus d'une langue* (L'Harmattan Italia 2002); CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonization* (Kluwer Law 2012).

¹⁰⁰ Colin Robertson 'Presentation on 30 September 2011 at the Department of Professional and Intercultural Communication of the Norwegian School of Economics and Business Administration' Synaps 28 (2013).

This multilingual functioning poses a challenge, but its impact is limited through the retention of what is effectively a working language regime. From the citizen accessibility point of view, the court functions multilingually, but the coherent monolingual internal language regime also works to ensure coherence and heightened functionality, providing 'a degree of linguistic unity within the overall EU diversity.'¹⁰¹

(iv) The European Central Bank

Benefitting from autonomy as an institution of the European Union, and despite its location in Germany, the European Central Bank has adopted English as its working language.¹⁰² This has raised issues with both internal and external communication, or, in Ammon's terms 'institutional and non-institutional language policies.'¹⁰³ The languages used on the websites of the Central Bank, and the Bank's engagement in communication with citizens, have come under attack. The Ombudsman's decision on complaint 281/99/VK against the ECB, decided that the ECB as a Community body is subject to the provisions of Community law concerning the use of languages.¹⁰⁴

¹⁰¹ Colin Robertson 'Presentation on 30 September 2011 at the Department of Professional and Intercultural Communication of the Norwegian School of Economics and Business Administration' Synaps 28 (2013).

¹⁰² P. Athanassiou 'The application of multilingualism in the European context' ECB Legal Working Paper (2) (European Central Bank 2006).

¹⁰³ Ulrich Ammon 'Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests' (2006) 16(3) *International Journal of Applied Linguistics* 319–338.

¹⁰⁴ Decision of the European Ombudsman on complaint 1008/2006/(BB)MHZ.

Nonetheless, this does not preclude it from having its own language regime for internal purposes.

In the case of *X v ECB*¹⁰⁵ this internal working language regime was challenged. The European Central Bank stipulates that English is its sole working language. The applicant in this case argued that this rendered the exercise of his rights of defence more difficult, precluding him from defending himself in an administrative disciplinary procedure. The Court recognised the autonomy of agencies to determine their own language regimes, confirming the rule set out in Regulation 1/1958. Rather than focusing on the case itself, which is a relatively minor staff proceeding, it is illustrative to focus on the confusion between working and official languages. The language rules of the European Union, which relate to official languages, are invoked by the Court in arenas which clearly are under the remit of working languages. The lack of specificity in the designation of language regimes led to a case which there should have been no question of taking, were the linguistic rules clear, reaching the General Court. The Court accepted that the internal working language of the European Central Bank was English, and that this could be applied exclusively for all internal working of the European Central Bank, including disciplinary proceedings.

¹⁰⁵ Case T-333/99 *X v European Central Bank* [2001] ECR 11-302.

Agencies and bodies of the EU can legitimately adopt restrictive language regimes where it would be impractical to preserve absolute multilingual equality. Their rules of procedure must state their language policy but they may determine it themselves. The institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases. Adrey asserts that they are nonetheless 'glottopolitically subordinated to the Council's authority.'¹⁰⁶

(v) Agencies

There are explicit rules in place that allow for the language regimes of these EU bodies to diverge from the central principle of multilingualism. Agencies are autonomous bodies which form a part of the EU executive.¹⁰⁷ Agencies were initially put in place to implement and execute more technical aspects of EU policies. However, more competencies are being delegated to them and their role is increasing.¹⁰⁸ Agencies comprise a wide spectrum of organisations, which carry out executive or regulatory functions.¹⁰⁹ The first Community Agencies, the European Centre for the Development of Vocational Training (CEDEFOP) and the European

¹⁰⁶ J.B. Adrey, *Discourse and struggle in minority language policy formation: Corsican language policy in the EU context of governance* (Palgrave Macmillan 2009), 50.

¹⁰⁷ D. Curtin and M. Egeberg (eds.) *Towards a new executive order in Europe?* (Routledge 2009).

¹⁰⁸ M. Everson C. Monda and E. Vos (eds.) *European agencies in between institutions and Member States* (Kluwer Law International 2014)

¹⁰⁹ E Chiti 'Decentralisation and Integration into Community Administrations: A new perspective on European Agencies' (2004) *European Law Journal* (10) 402-438.

Foundation for the Improvement of Living and Working Conditions (EUROFOUND) were created in the 1970s. Since then the number of agencies has progressively developed, as EU-level regulation expanded into new policy areas, which were highly technical and specific knowledge in nature. Agencies tend to be established where particular expertise is required. However, the geographical location of Agencies is often granted as a political sop: for this reason they are well spread throughout the European Union, with at least one in each Member State.¹¹⁰ Agencies are fully free to determine their own language regimes and are not obliged to follow the principles of linguistic parity that Regulation 1/1958 enshrines. Surprisingly, perhaps, this tends not to lead to monolingualism but rather selective multilingualism.¹¹¹

The autonomous language rules of Agencies are subject to administrative review. As we have seen from the various Ombudsman complaints cited, language issues often arise with regard to employment opportunities. This can provoke Member States to object to linguistic requirements on the basis that their nationals are unfairly disadvantaged by language regimes of agencies. One such example is the *Eurojust*¹¹² case, where Spain complained against the linguistic knowledge requirements stipulated

¹¹⁰ M. Everson, C. Monda and E. Vos (Eds.) *European agencies in between institutions and Member States* (Kluwer Law International 2014)

¹¹¹ P Timmermans and S Andoura 'Governance of the EU: The Reform Debate on European Agencies Reignited' CEPS Working Paper (19) (2008)

¹¹² Case C 160/03 *Spain v Eurojust* [2005] ECR I-2077.

in the recruitment of temporary staff for Eurojust, the agency for Judicial Cooperation across the European Union. Applications were to be filled out in the language of the applicant and in English, along with other documents which were also to be sent in English. Spain argued against this practice and the ECJ declared this action to be inadmissible, under article 230 EC so we do not have a statement from the Court on the linguistic aspects of this case.¹¹³ Overall, it is very clear that the language rules in place in the agencies are not in any way under the remit of Regulation 1/1958. Both the Ombudsman and the European Court of Justice, while demonstrating reluctance to intervene in the working/official language debate, are clear that agencies may choose to operate monolingually.

One of the clearest enunciations of the linguistic policies of the European Union by the CJEU was laid out in a case challenging the language rules of one of the Agencies, the Office for Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM). It is the official trademarks and designs registration agency of the European Union. This agency applies English, French, German, Italian, and Spanish as its internal working languages and requires that one of these be chosen as the language to be used in correspondence with the Agency.¹¹⁴ Art.115(3) of Regulation 40/94

¹¹³ The AG opinion is discussed later in the thesis. Opinion of Advocate General Maduro in Case C-160/03 (Spain v Eurojust) [2005] ECR I-2077

¹¹⁴ Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark [1994] OJ L11/01

stipulated that applications to OHIM for a Community Trademark could be filled in in any Official Language, however, an applicant had to indicate a language of the five working languages of OHIM in which to correspond with the agency.

The Kik series of cases challenged the languages recognised by the OHIM. Christina Kik was a Dutch woman who objected to what she saw as arbitrary choice of languages for application, which she believed to be discrimination. Ms. Kik refused to choose a second language, writing instead 'Dutch' on the form, and consequently her application was rejected as in order to apply for a patent it was necessary to use one of the specified working languages. This back and forth occurred at least twice, in the same pattern. Ms. Kik claimed discrimination on grounds of nationality, and based her argument on the equal authenticity of the various official language versions of the treaties. The Court decided that the OHIM was not an 'institution' as defined in the Treaty and therefore not subject to the 'official languages' regime, being designed for 'Economic Agents' rather than citizens. Hiphold sees the discussion of these issues in the case as unsatisfactory, leaving open the distinction between institution and agency.¹¹⁵ The most important point, however, regarding the multilingual operation of the EU that the Court made

¹¹⁵ Peter Hiphold 'Union Citizenship and Language Rights' in Xavier Arzo (ed), *Respecting Linguistic Diversity in the European Union* (John Benjamins 2008).

in the case of *Kik v OHIM*¹¹⁶ is that the principle of multilingualism does not require the European Union to use all the official languages in every situation.

The role of language is a huge sticking point in the development of a unified European Patent, and in the evolution of the European Patent Office.¹¹⁷ In a study of the differential impact of these language regimes Gazzola estimates that:

The costs of access to patenting procedures borne by English-, French- or German speaking applicants are at least 30 % lower than those borne by European applicants whose first language is not one of the current official languages of the EPO.¹¹⁸

The existing rules place burdensome requirements on those applying for recognition. However, the Member States of the EU are unwilling to agree on a monolingual European Patent. In 2011 enhanced cooperation procedures were put in place to try to progress with this matter.¹¹⁹

¹¹⁶ Cast T-120/99 *Christina Kik V Office for Harmonisation in The Internal Market* [2001] ECR II- 2235 upheld on appeal Case C-361/01 P *Christina Kik V Office for Harmonisation in The Internal Market* [2003] ECR I- 8283.

¹¹⁷ The EPO is distinct from OHIM and is intergovernmental in nature. See further, Michele Gazzola and Alessia Volpe 'Linguistic justice in IP policies: Evaluating the language regime of the European Patent Office' (2014) (38) *European Journal of Law and Economics* 47-70.

¹¹⁸ Michele Gazzola and Alessia Volpe 'Linguistic justice in IP policies: Evaluating the language regime of the European Patent Office' *European Journal of Law and Economics* 38 (2014) 47-70.

¹¹⁹ Ansgar Ohly and Justine Pila (eds) *The Europeanization of Intellectual Property Law: Towards a European Legal Methodology* (Oxford University Press 2013).

Interpretations of Regulation 1/1958 on multilingualism in practice

Regulation 1/1958 allows institutions a substantial amount of flexibility regarding their language regimes. The European Ombudsman has reinforced the fact that language regimes are discretionary on numerous occasions,¹²⁰ clarifying that

[r]egulation 1/58 confers on the institutions and bodies the possibility to determine, in accordance with their operational needs, the modalities of their internal language policies and to opt explicitly to use one (or more) language(s) as their 'working language(s).¹²¹

Linguistic diversity, although strongly protected in principle, is subject to practical limitations. Athanassiou distils from the Opinion of AG Poiares Maduro in *Eurojust*¹²² that 'restrictions on linguistic diversity will be justified, if based on objective and proportional considerations that (i) do not give rise to unjustified differences of treatment, (ii) reflect the changing needs of the Community

¹²⁰ Decision of the European Ombudsman closing his enquiry into complaint 3035/2008/(MHZ)RT against the European Personnel Selection Office [2009]
Decision of the European Ombudsman on (BB)MH 259/2005 [2005]
Decision of the European Ombudsman on (PB)GG 3114/2005/MHZ 2580/2006/TN
Decision of the European Ombudsman on complaint 2580/2006/TN against the Council of the European Union [2007]

Decision of the European Ombudsman on complaint 3191/2006/(SAB)MHZ [2007]
Decision of the European Ombudsman on complaint 871/2006/(BB)MHZ [2007]

¹²¹ Decision of the European Ombudsman on complaint 1008/2006/(BB)MHZ against the European Central Bank

¹²² Opinion of Advocate General Maduro in Case C-160/03 *Spain v Eurojust* [2005] ECR I-2077

institution or body in question and (iii) are not triggered by technical difficulties that can easily be overcome.¹²³

The European Ombudsman is a highly successful extra-judicial mechanism for procedural rights to be guaranteed in relations with European Union Institutions.¹²⁴ Many of the complaints brought to the European Ombudsman have regarded the rules on language competence, against the hiring body for EU staff, the European Personnel Selection Office (EPSO). The office of the Ombudsman has provided an impetus for clear iterations of language rules, encouraging legislative action in this arena:

In its reply, the Commission set out in great detail the reasons which, in its view, militated in favour of limiting the number of languages to be used. The Ombudsman agreed that at least some of those arguments could constitute valid reasons for its practice. However, he also took the view that, since Article 2 of Regulation 1/58 was clearly a provision of general application, any exceptions for entire sectors would have to be decided on by the Community legislator.¹²⁵

This can be seen in the complaint regarding the use of a limited number of languages in the websites of the rotating Council

¹²³ P. Athanassiou 'The application of multilingualism in the European context' ECB Legal Working Paper (2) (European Central Bank 2006).

¹²⁴ For more on techniques of ombudsmanry and their origins see: Buck Kirkham and Thompson (eds) *The Ombudsman Enterprise and Administrative Justice* (Ashgate 2011)

¹²⁵ Decision of the European Ombudsman on Case 0259/2005/(PB)GG.

Presidencies. A complaint was brought to the Ombudsman¹²⁶ by a German language promotion association (Verein Deutsche Sprache e.V.) who although he rejected the complaint, directing the complainant to address the Presidencies in question, compiled a special report on this issue.¹²⁷ This led to renewed calls for adherence to multilingualism by the European Parliament,¹²⁸ which were roundly ignored by the Council. The European Parliament stated it was 'astonished to note, in this regard, that the Council does not consider itself empowered to address this question, even though it is one which affects all Member States and the Council could make recommendations to all future presidencies'.¹²⁹ The Council declared that the conduct of Presidencies was not under its remit, and therefore they were not competent to remedy the complaint.

However, despite these developments there has been no move towards devising an explicit regime which would separate the 'working languages' from the 24 official languages. An analysis of these divergent institutional language regimes has clearly demonstrated the lack of unity regarding the question of working languages for the institutions. Each of them has implemented a

¹²⁶ Decision of the European Ombudsman on complaint 1487/2005/GG.

¹²⁷ Special Report by the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG.

¹²⁸ European Parliament resolution of 20 November 2008 on the Special Report by the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG.

¹²⁹ European Parliament resolution of 20 November 2008 on the Special Report by the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG.

different regime, in part owing to their different functionalities. While this institutional difference is to be recommended in terms of flexibility, it further shows how piecemeal the language rules in place in the European Union are. This is due to the place of language in European historical development of the nation-state, discussed in Part I. The basics of the difference between a working and official language regime have not been implemented in the European Union, which leads to problems both on a political and legal level. The official languages are not all used equally, although theoretically they all have equal status. Gazzola reminds us:

the choice of working languages is just a matter of practice and no language can a priori be excluded from being chosen (nor could it be legally, as the Regulation makes no difference between official and working languages).¹³⁰

From a purely representative point of view it is clear that Member States view the validation and recognition of their language as a key aspect of their membership of the European Union, and are keen not to upset that balance, even if it is only a veneer. Analysing the rules in place reveals a marked reluctance to implement clear 'working language' regimes on behalf of both member states and Institutions.

¹³⁰ Michele Gazzola 'Managing Multilingualism in the European Union: Language Policy Evaluation For The European Parliament' (2006) 5 *Language Policy* 393–417, 396.

The next section will compare the system of the European Union with that of the United Nations.

IV The Multilingual Systems of International Organisations

The twentieth century witnessed an explosion in the formation of multilateral institutions. International Relations changed enormously with the end of the World Wars, and the advent of the Cold War. Cooperation was heralded as the new approach to world governance.¹³¹ One obvious difficulty with institutions which govern many countries is the logistical question of language choice.

The multilingual operation of other organisations provides an interesting point of comparison with the multilingual regime of the European Union. The Council of Europe's working languages are limited to French and English.¹³²

The African Union adopts an approach which is inclusive, stating in article 11 of the Protocol to the AU Constitutive Act that 'The official languages of the Union and all its institutions shall be Arabic, English, French, Portuguese, Spanish, Kiswahili and *any other African language.*' The Executive Council of the African Union determines 'the process and practical modalities for the use of official languages as working languages.'¹³³ This theoretical inclusivity, however, is not borne out in the working language regime selected.

¹³¹ Bardo Fassbender and Anne Peters (eds) *The Oxford Handbook of the History of International Law*, (Oxford University Press 2012).

¹³² Art. 12 of the Statute of the Council of Europe UNTS vol. 87 p. 103 ETS No. 1.

¹³³ Article 11 of the Protocol to the AU Constitutive Act.

The AU's working languages are set out in its Constitutive Act, Article 25 of which states that 'The working languages of the Union and all its institutions shall be, *if possible, African languages, Arabic, English, French and Portuguese*'.¹³⁴

It was at the UN that the concept of a working language originated. The concept of working languages for the EU, however, is one that constantly courts controversy. As with the decisions on designation of official language(s) within a state, the designation of working languages for multilateral institutions of international cooperation necessarily prioritises speakers of the chosen language(s) over other speakers. Although this is often justified in terms of efficiency, it is important to recognise that a restriction of the languages used within multilateral institutions may exclude certain groups from effective participation in processes of global governance.¹³⁵ In fact, as Mowbray points out this exclusion is explicit: '[at] both a practical and a symbolic level, the language policies of the UN and EU function to exclude particular groups from participation in the international system.'¹³⁶ In the European Union, this full embracing of multilingualism is both effectively a means of ensuring a certain level of employment per Member State, and a

¹³⁴ African Union Handbook 2014 (African Union Commission and New Zealand Ministry of Foreign Affairs and Trade/Manat Aorere 2014).

¹³⁵ Jacqueline Mowbray 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8 (1) *New Zealand Journal of Public and International Law* 91-115

¹³⁶ Jacqueline Mowbray *Linguistic Justice: International Law and Language Policy* (Oxford University Press 2012).

political tool.¹³⁷ The next section will examine the language regime of the United Nations.

(i) Language Rules of the United Nations

Section VII of the UN General Assembly's Rules of Procedure contains Language Policies. The United Nations has adopted a system of limited multilingualism.¹³⁸ Its regime of official and working languages demonstrates the power play that language regimes entail. The national languages of the 5 permanent members of the Security Council are 4 out of the 6 working language of the UN. The working languages of the United Nations are Arabic, Chinese, English, French, Russian and Spanish. Arabic was added in 1973, when geopolitical forces demonstrated its relative importance on a diplomatic scale.¹³⁹ The UN works with a limited number of language versions and has imposed limits on its language regime.

Speeches may be made in a language other than a working language of the Assembly, but interpretation into one of the six working languages must be provided (the UN Secretariat then provides relay interpretation from this language into the other five).¹⁴⁰ Furthermore, '[d]ocuments of the General Assembly, its committees and its subcommittees shall, if the Assembly so decides,

¹³⁷ Magali Gravier 'The 2004 Staff Enlargement Policy of the European Commission: the case for Representative Bureaucracy.' (2008) 46 (5) *Journal of Common Market Studies* 1025-1047.

¹³⁸ Mala Tabory *Multilingualism in International Law and Institutions* (Brill 1980).

¹³⁹ Mairead Nic Cráith *Europe and the Politics of Language- Citizens Migrants and Outsiders* (Palgrave 2006).

¹⁴⁰ section VIII of the General Assembly's Rules of Procedure. Rule 53.

be published in any language other than the languages of the Assembly or of the committee concerned.¹⁴¹ The other UN bodies, including the Secretariat can set their own language rules. However, the six central working languages are the working languages of the Security Council also.

Although the limited working language regime of the United Nations is often held out as an example to the European Union, it has also been accused of inequitable division. The General Assembly requested¹⁴² that the UN Secretary-General investigate the implementation of its numerous resolutions on multilingualism.¹⁴³ A report was issued which aimed to increase the multilingual nature of

¹⁴¹ section VIII of the General Assembly's Rules of Procedure. Rule 57.

¹⁴² UN General Assembly Resolution on Multilingualism, 15 February 2002, A/RES/56/262.

¹⁴³ Examples of UN GA's bemoaning of lack of multilingualism in institutions: UN General Assembly Resolutions UN General Assembly Resolution on Multilingualism, 2 November 1995, A/RES/50/11.

UN General Assembly Resolution on Multilingualism, 6 December 1999, A/RES/54/64.

UN General Assembly Resolution 2241(XXI) B, 20 December 1966.

UN General Assembly Resolution 42/207 C, 11 December 1987.

Report of the Secretary-General on Multilingualism, 5 September 2003, A/58/363.

UN General Assembly Resolution on Multilingualism, 22 June 2005, A/RES/59/309.

UN General Assembly Resolution, 16 May 2007, A/RES/61/266.

Statement of the UN Secretary-General (29 May 2008) SG/A/1138.

UN General Assembly Resolution, 5 December 2008, A/RES/63/100, part B.

UN General Assembly Resolution, 24 December 2008, A/RES/63/248.

UN General Assembly Resolution, 8 May 2009, A/RES/63/280.

UN General Assembly Resolution on Multilingualism, 25 November 1997, A/RES/52/23.

UN General Assembly Resolution on Multilingualism, 15 February 2002, A/RES/56/262.

UN General Assembly Resolution on Multilingualism, 15 February 2002, A/RES/56/262.

UN General Assembly Resolution on Multilingualism, 9 September 2009, A/RES/63/306.

UN General Assembly Resolution on Multilingualism, 22 December 2005, A/RES/61/244.

UN operations.¹⁴⁴ The UN has declared that it aims to achieve full parity of use of its six working languages, The Secretary-General appointed a Coordinator for Multilingualism in 2008.¹⁴⁵ The General Assembly passed a resolution aiming to eliminate the disparity between the use of English and the five other official languages.¹⁴⁶ The spread of English across the world since the end of the Second World War has heralded unprecedented changes in communication worldwide.¹⁴⁷ Naturally, these are reflected in Europe, where English has become the language of international business and travel.¹⁴⁸ While the language of each new state to accede to the European Union in 2004 was simply added to the preexisting canon of EU official languages, this is the result of a political compromise. The next section will explain the political background to the language rules in place in the European Union.

V Language Politics in the European Union

This chapter has shown that in the initial establishment of the European Union, the inclusive language rules were fundamental in balancing power, and they are no less so in an expanding Union of 28

¹⁴⁴ Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System (10 June 2003) A/58/93.

Report of the UN Secretary-General on Multilingualism (5 September 2003) A/58/363

¹⁴⁵ [Statement of the UN Secretary-General (29 May 2008) SG/A/1138.

¹⁴⁶ UNGA resolution 63/306 of 9 September 2009 on multilingualism

¹⁴⁷ Peter Ives. 'Cosmopolitanism and global English: language politics in globalisation debates' (2010) 58 (3) *Political Studies* 516-535.

¹⁴⁸ Phillipson Robert *English-only Europe?: Challenging Language Policy* (Routledge 2003)

Member States. However, despite the reluctance to designate a working language regime, one is emerging. English is becoming dominant. Effectively, English has become the major working language within multilateral International Organisations, whether they are political entities or multinational corporations.¹⁴⁹ These developments call into question the attitudes and legislative provisions for language analysed in this thesis. This change towards English has particular resonance within the European Union because it is seen as a move away from the founding axis of the European Union, Franco-German unity.¹⁵⁰ English has an unusual position within the European Union. Languages which enjoyed high numbers of second or third language speakers now witness their relative irrelevance as compared to English. Gainsburgh and Weber term this 'language disenfranchisement.'¹⁵¹ We will now assess how this disenfranchisement plays out at a political level, and its implications for the language rules of the European Union. Certain languages are privileged, and this status quo appears to be immutable.

The dichotomy between the outward promotion of a multilingual Europe and the institutional language use is widely remarked upon. Patten terms the working language regime in place

¹⁴⁹ Peter Ives. 'Cosmopolitanism and global English: language politics in globalisation debates' (2010) 58 (3) *Political Studies* 516-535.

¹⁵⁰ W. Kaiser B. Leucht and M. Rasmussen (eds) *The History of the European Union: Origins of a Trans- and Supranational Polity 1950-72* (Routledge 2008).

¹⁵¹ Shlomo Weber and Victor Gainsburgh 'Language disenfranchisement in the EU' 43 (2) 2005 *Journal of Common Market Studies* 273-286.

one of 'language maintenance', and highlights that this is used to prevent the dominance of English and the retention of power and influence for other languages.¹⁵² Gravier and Lundquist claim the biggest obstacle to a more effective multilingualism within the EU is 'the cultural self-centeredness of its own Member States.'¹⁵³ This cultural protectiis the main barrier to a more effective regime of official and/or working languages. The denial of any problem with having potentially 24 working languages and an adherence to a multilingual regime is beginning to cause problems. States are keen to defend their national language and heritage, and are afraid of renouncing the perceived egalitarianism that distinguishes the EU's current language regime. However the language regime of the institutions is not egalitarian, as certain languages play a central role.

(i) Privileged languages: English, French, and German in the EU

The polemic surrounding the working languages of the European Union has already been outlined, and the lack of clarity demonstrated in the preceding sections. The fundamental organising principle of the linguistic regime of the European Union remains, however, one of strict adherence to linguistic parity. This is the official agreement and it would appear that any divergence from this must

¹⁵² Patten Alan 'Theoretical Foundations of European Language Debates ' in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

¹⁵³ Gravier and Lunquist 'Getting ready for a new tower of Babel' in in L. Kjaer and S. Adamo (eds) *Linguistic Diversity and European Democracy* (Ashgate Publishing 2011).93

be minimised in the discourse of the institutions. The de facto language regime of the European Institutions is referred to by Wodak as 'hegemonic multilingualism'¹⁵⁴, in the sense that the languages of traditional European powers are favoured explicitly, under the guise of favouring multilingualism.

The rules in place at the moment are a distinctive feature of the European Union's delicate political balancing act. Where the rules are clear, only three languages are widely accepted as EU working languages; English, German and French. Ammon explains that Germany, under Chancellor Helmut Kohl campaigned to add German as the third language of the European Commission.¹⁵⁵ On closer inspection of procedural rules, a more specific designated working language is sometimes allocated to certain procedures. However, the languages involved do not vary. For instance, English, French and German are the designated 'working languages' of the Permanent Representatives Committee, the so-called 'COREPER', for example. In matters of Common Security and Foreign Policy only English and

¹⁵⁴ Krzyżanowski Michał and Ruth Wodak 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer C. Hülbauer and E. Vetter (Eds.). *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010). R Wodak 'The interplay of language ideologies and contextual cues in multilingual interactions: Language choice and code-switching in European Union institutions' (2012) 41 (2) *Language in Society* 157-186

¹⁵⁵ Ulrich Ammon 'Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests' (2006) 16(3) *International Journal of Applied Linguistics* 319-338.

French are working languages.¹⁵⁶ This is the result of concerted diplomatic efforts by these countries to preserve their advantage. These three languages are not equally used. The practical reality of working in multiple languages renders it unlikely that their use would be evenly divided. Even in the initial process of European integration, where there were only 4 official languages, the distribution between these was uneven, Lenaerts finds.¹⁵⁷ The favouring of certain languages can create conflict between the EU and Member States who take umbrage at the hegemonic multilingualism in place.¹⁵⁸

The political dimension of the language question is demonstrated by the fact that France and Germany agreed to cooperate to mutually reinforce each other's language against the encroaching influence of English. Ammon reports that in 2000 they 'signed an agreement of linguistic cooperation... which states that both countries support each other whenever the working status or function of their languages is unduly disregarded,'¹⁵⁹ and we can further look to the example of a 2001 letter from German and French Ministers Joschka Fischer and Hubert Védrine warning against

¹⁵⁶ <http://www.diplomatie.gouv.fr/en/french-foreign-policy-1/european-union/france-and-the-european-union/article/the-french-language-in-european>

¹⁵⁷ G. Lenaerts 'A failure to comply with the EU language policy: A study of the council archives.' (2001) 20(3) *Multilingua* 221–244.

¹⁵⁸ Longstanding Member States who have relatively powerful national languages tend to be the generators of this conflict- see Case C-160/03 *Spain v Eurojust* [2005] ECR I

¹⁵⁹ Ulrich Ammon 'Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests' (2006) 16(3) *International Journal of Applied Linguistics* 331

'unilingualism' in the European Institutional framework.¹⁶⁰ English, French and German are the most commonly designated working languages of the EU. These are the most common foreign languages in the European Union, according to the CJEU, therefore they have stated that the institutions may require knowledge of these in their recruitment, if only to facilitate internal communication.¹⁶¹ The European Ombudsman has confirmed this, finding that European institutions may require knowledge of that English, French and German and are permitted to communicate only through these three languages in their recruitment strategies.¹⁶²

German is the official language in Germany, Austria and Luxembourg, and there are German-speaking communities officially recognised within Belgium and Italy. The choice of English, French and German is presented as a practical imperative by both the Court and the Ombudsman. However, the real battle for multilingual operation

¹⁶⁰ Phillipson Robert *English-only Europe?: Challenging Language Policy* (Routledge 2003)121

¹⁶¹ Case C-566/10 P *Italy v Commission* (Judgment of the Court (Grand Chamber) of 27 November 2012- not yet published)

¹⁶² Decision of the European Ombudsman closing his enquiry into complaint 3035/2008/(MHZ)RT against the European Personnel Selection Office [2009]
Decision of the European Ombudsman closing his inquiry into complaint 2533/2009/VIK against the European Personnel Selection Office [2011]
Decision of the European Ombudsman on (BB)MH 259/2005 [2005]
Decision of the European Ombudsman on (PB)GG 3114/2005/MHZ 2580/2006/TN
Decision of the European Ombudsman on complaint 2580/2006/TN against the Council of the European Union [2007]
Decision of the European Ombudsman on complaint 3191/2006/(SAB)MHZ [2007]
Decision of the European Ombudsman on complaint 871/2006/(BB)MHZ[2007]
European Ombudsman following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG (2008/2072(INI)), P6_TA(2008)0555
European Ombudsman, Statement of public service principles for the EU civil service [2012]

takes place between English and French. Although Germany is keen to emphasise the position of German as the most widely spoken mother tongue in the European Union, and as an important language in the internal workings of the European Union, in reality, it is a clear third in the trio of privileged languages.¹⁶³

The next section will look at the tensions between English and French in detail, before identifying a potential future problem for the European Union's language regime.

(ii) Working Language Tensions in the European Union: English and French

There is vehement opposition to the 'Englishisation'¹⁶⁴ of Europe, which is seen as imperialistic and part of an 'Anglo-Saxon' capitalist view of European Union as a market-based knowledge economy.¹⁶⁵ Indeed the spread of English in Europe has been described as 'integral to globalisation...reflecting broader processes of Americanisation.'¹⁶⁶ For centuries, French was the language of diplomacy and of international relations.¹⁶⁷ The expansion of the French language was

¹⁶³ 'In German please' *Süddeutsche Zeitung* (29.3.2014)

¹⁶⁴ Phillipson Robert 'Figuring out the Englishisation of Europe' in Constant Leung and Jennifer Jenkins eds. *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006).

¹⁶⁵ See for example the letters written from the AFFOI (Assemblée Des Fonctionnaires Francophones Dans Les Organisations Internationales) [Association of Francophone Civil Servants in International Organisations] to the presidents of the major groups in the European Parliament and to the incumbent President of the EP: available online at <http://www.affoimonde.org/>

¹⁶⁶ Phillipson Robert 'Figuring out the Englishisation of Europe' in Constant Leung and Jennifer Jenkins (eds.) *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006) 68

¹⁶⁷ Robin Adamson *The Defence of French: A Language in Crisis?* (Multilingual Matters 2007)

incorporated into the construction of unified and centralised France in the Napoleonic period, building on the use of French in French courts mandated by François I's edict of Villers-Cotterêts in 1539.¹⁶⁸ Benefitting from the spread of power and influence which began with the courts of the 1600s, and continued until the loss of the Franco-Prussian war, French became the language of International Law.¹⁶⁹ The continued reign of French as the language of international relations appeared safe in the formative period of the European Communities.¹⁷⁰ The French were a strong European power, and were central to the foundation of the European Coal and Steel Community, precursor to the European Union. The first ECSC treaty was monolingual and the French version was regarded as authentic.¹⁷¹ It was unthinkable at the signing of the Treaty of Rome in 1958 that French would not be used in a European regional institution. French retained its sphere of influence within the European Union until the 1990s, with the enlargements towards Scandinavian countries which appeared to prefer working through English.¹⁷²

¹⁶⁸ J Myhill *Language Religion and National Identity in Europe and the Middle East : a Historical Study* (John Benjamins 2006)

¹⁶⁹ Mala Tabory *Multilingualism in International Law and Institutions* (Brill 1980)

¹⁷⁰ C. Quell 'Language choice in multilingual institutions: A case study at the European Commission with particular reference to the role of English French and German as working languages' (1997) *Multilingua* 16(1) 57–76.

¹⁷¹ Colin Robertson 'Presentation on 30 September 2011 at the Department of Professional and Intercultural Communication of the Norwegian School of Economics and Business Administration' *Synaps* 28 (2013) available online at: https://www.nhh.no/Files/Filer/institutter/fsk/Synaps/28-2013/Robertson_28_2013.pdf

¹⁷² Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

On a global scale, during the 20th century, French became sidelined as American influence increased. Within the structures of the European Union, however, French remained the dominant language. In 1979, as a response to this threat, and the change in the language regime, a prominent French diplomat François Seydoux established a *Comité pour la langue de l'Europe*. This committee's objectives have been described as 'somewhat conflicting'.¹⁷³ While claiming to promote the linguistic diversity of Europe it also suggested French as the language of operation of the European Communities. This organisation has subsequently been subsumed into the French language-promoting *Association Défense de la Langue Française*, which has a Brussels branch, focusing mainly on the EU institutional language regime. This establishment was the first step in a long and ongoing campaign by the French authorities, and by Francophones in non-official capacities, to keep the French language at the heart of the institutional language regime in Europe.¹⁷⁴ The French have been outspoken in their criticism of the tendency to move towards English. The central importance of the French language to the European project is a common trope.¹⁷⁵

¹⁷³ David Fernández Vítóres 'France has almost entirely failed in its strategy to prevent English taking over as the lingua franca of the EU' LSE Blogs <http://blogs.lse.ac.uk/europpblog/2013/05/14/french-lingua-franca-eu-france-failed-english-david-fernandez-vitores/> (last accessed 30 May 2014)

¹⁷⁴ Dennis Ager *Identity Insecurity and Image. France and Language*. (Multilingual Matters 1999) Délégation générale à la langue française et aux langues de France *Les politiques des langues en Europe* (Ministère des Affaires étrangères et européennes- French Ministry of Foreign Affairs 2007).

¹⁷⁵ Georges Lüdi 'Parlez-vous européen?' in Greta Komur-Thillooy and Agnès Celle (Eds.) *Le Discours Du Nationalisme En Europe* (éditions l'improviste 2010.) Abèles

France, in conjunction with the Belgian and Luxembourgish governments implemented a strategic plan for the retention and promotion of French in the EU (*Plan pluriannuel d'action pour le français dans l'Union européenne*) in 2002, in preparation for the enlargement of 2004.¹⁷⁶ This plan mainly provides French language training for senior civil servants in member states and in the EU.

Despite the attempts at promotion of French as an international language, the evolution of English in the relations between Member States has been on a steady incline.¹⁷⁷ English was included as one of the official languages upon the accession of the United Kingdom in 1973. English has dominated the linguistic landscape in particular since the 2004 accession of 10 Central and Eastern European Member States.¹⁷⁸ Krizsán and Erkkilä confirm that 'the fifth enlargement round of the EU accelerated the trend of a loss of ground for French in the EU administration.'¹⁷⁹ With this expansion, French became a definite secondary language within the

Marc et Irène Bellier 'La Commission Européenne-du compromis culturel à la culture politique du compromis.' 1996 (3) *Revue Française de Science Politique*.

¹⁷⁶ Organisation internationale de la Francophonie 'Évaluation externe duprogramme Français dans l'Union européenne' Rapport de synthèse (Organisation internationale de la Francophonie 2011)

¹⁷⁷ Ulrich Ammon 'The European Union (EU: formerly: European Community) - Status change of English during the last fifty years.' in Fishman Conrad and Rubal-Lopez. (eds.) *Post-Imperial English. Status Change in Former British and American Colonies 1940-1990*. (1996 Mouton de Gruyter).

¹⁷⁸ Krzyzanowski M. and Wodak R. 'Dynamics of multilingualism in post-Enlargement EU institutions: perceptions conceptions and practices' in Berthoud A-C. Grin F. and Lüdi G. (eds.) *Exploring the dynamics of multilingualism: the DYLAN project*. (2013 John Benjamins) p. 205-231

¹⁷⁹ Attila Krizsan and Tero Erkkilä 'Multilingualism among Brussels-based civil servants and lobbyists: perceptions and practices' (2014) 13 *Language Policy* 201-219 at 214

EU institutions, a change which was particularly marked within the European Commission.¹⁸⁰ The enlargement of the European Union had a significant ‘destabilizing effect’¹⁸¹ on language use within the EU institutions. In practical terms, English appears to be the ‘default’ language for communication within the institutions.¹⁸² Nonetheless, the French policy towards use of French remains intransigent. The government of France is strongly committed to a Europe where the French language can maintain its cultural capital.¹⁸³ The French government vehemently supports the sustained use of French in all possible meetings and informal situations by its representatives in Brussels.¹⁸⁴ Within the European Institutions, although it is still in use and maintains a relatively strong presence, particularly in certain parts of the Commission.¹⁸⁵ French is slowly being ‘sidelined’, apart

¹⁸⁰ C. Ban ‘Sorry I don’t speak French: the impact of enlargement on language use in the European Commission’ in Gueldry (ed.) *Professions and Languages: Studies in Conflict and Cooperation* (the Edwin Mellen Press 2009)

¹⁸¹ Carolyn Ban *Management and Culture in an Enlarged European Commission: From Diversity to Unity?* (Palgrave 2013) 208

¹⁸² Gazzola M. and Grin F. (2013) Is ELF more effective and fair than translation? An evaluation of the EU's multilingual regime. *International Journal of Applied Linguistics* 23: 93–107

¹⁸³ Resolution of the French Parliament on this matter : Résolution de l'Assemblée nationale sur la diversité linguistique dans l'Union européenne TA n° 229 JORF n° 5 du 7 janvier 2004 p. 605

<http://www.assemblee-nationale.fr/12/ta/ta0229.asp>

¹⁸⁴ General Delegation on the French Language and the Languages of France at the Ministry of Culture and Communication *Report to Parliament on the use of the French language* (2012) available at: <http://www.diplomatie.gouv.fr/en/french-foreign-policy-1/european-union/france-and-the-european-union/article/the-french-language-in-european>

¹⁸⁵ Attila Krizsan and Tero Erkkilä ‘Multilingualism among Brussels-based civil servants and lobbyists: perceptions and practices’ (2014) 13 *Language Policy* 201–219

from in the CJEU where French remains the language through which the business of the court is primarily conducted.¹⁸⁶

As suggested previously, the spread of English is by no means limited to the European Union as a phenomenon.¹⁸⁷ The term 'Globish' has also been coined, to denote a similar process which has emerged the world over.¹⁸⁸ Global English comprises the English spoken in former colonies of the British Empire, and the English used as a common language for interaction across the world.¹⁸⁹ Supporters of this theory argue that just as Australian English is a valid variety of English, so too should English as a Second Language be seen as just another version of the English Language.¹⁹⁰ The prevalence of English and its evolution as it spreads has led to the emergence within sociolinguistics of the concept of 'English as Lingua Franca',¹⁹¹ or international English.¹⁹² A modified version of English, sometimes known as 'English as a Lingua Franca' (ELF) is proposed as a solution

¹⁸⁶ P. Christiansen 'Language policy in the European Union. European/English/Elite/Equal/Esperanto Union?' (2006) *Language Problems and Language Planning* 30(1) 21- 44.

¹⁸⁷ David Crystal *English as a Global Language* (Cambridge University Press, 2nd edn 2012)

¹⁸⁸ Robert Mc Crum *Globish: How the English Language Became the World's Language*

¹⁸⁹ Salikoko S. Mufwene 'Globalization Global English and World English(es): Myths and Facts' in Coupland (ed.) *Handbook of Language and Globalisation* (Blackwell 2010)

¹⁹⁰ Barbara Seidlhofer *Understanding English as a Lingua Franca* (Oxford University Press 2011)

¹⁹¹ Barbara Seidlhofer 'Closing a conceptual gap: the case for a description of English as a lingua franca' (2001) *International Journal of Applied Linguistics* (11) 2 133-158 and Barbara Seidlhofer 'Common ground and different realities: world Englishes and English as a lingua franca' (2009) *World Englishes* (28) 2 236-245.

¹⁹² Silvia Ferreri 'Communicating in an international context' in Pozzo and Jacometti (eds) *Multilingualism and the Harmonisation of European Law* (Kluwer Law International 2006)

to the problem of adoption of a working language in the European Institutions.

English as a Lingua Franca is often proposed as a practical option, and as a recognition of what already goes on in the European Institutions and the surrounding lobbies and other work environments.¹⁹³ English is increasingly used as the language of legislative drafting.¹⁹⁴ The adoption of English as a common language is suggested as a solution for the European Union to move from strict multilingualism without adopting a politically significant language regime.¹⁹⁵ Euro-English would be a reflection of the English spoken every day as language of mutual communication between English as a Second Language speakers.¹⁹⁶ Proponents of the acknowledgement of other forms of English believe that this recognition of looser structures of English would remove the tyranny of the 'native speaker standard'¹⁹⁷. Robertson points out that this process of change and deviation from native speaker syntax and vocabulary choice is analogous to that which occurred when French was used, and is part

¹⁹³Juliane House 'Unity in Diversity: English as a lingua franca for Europe' in Constant Leung and Jennifer Jenkins eds. *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006)

¹⁹⁴ Jaakko Husa 'English as a Legal Lingua Franca in the EU Multilingual Context' in Baaij (ed.) *The Role of Legal Translation in Legal Harmonization* (Wolters Kluwer 2012).

¹⁹⁵ Philippe Van Parijs *Linguistic Justice for Europe and for the World* (Oxford University Press 2011)

¹⁹⁶ Sandra Mollin 'Euro-English: Assessing Variety Status' in Peter Halter (ed) *Language in Performance* (2006 Günter Narr Verlag.)

¹⁹⁷ C. Hülmbauer and B.Seidlhofer 'English as a lingua franca in European multilingualism *DYLAN Working Paper 6* (2011)

of the natural process of language evolution through use.¹⁹⁸ A specific EU-jargon has been noticed, which often includes elements of French and other languages, and differs significantly from Anglophone English.¹⁹⁹ The EU Court of Auditors has even identified European Union usages of English.²⁰⁰

This proposal of a 'neutralised' version of English removes the Anglophone bias from the use of English and instead aims to view it as a functional language of common communication.²⁰¹ The spread of English means that English tends to be the 'natural' working language that EU employees reach for, and it is moving towards being perceived as standard procedure.²⁰²

However, the political significance of an official move to English would be enormous. This suggestion remains popular among the mainstream Anglophone media.²⁰³ Some commentators recommend a monolingual regime with English as the sole language

¹⁹⁸ Colin Robertson 'EU Legal English: Common Law Civil Law or a new genre?' (2012) *European Review Of Private Law* 5 1215-1240.

¹⁹⁹ A. Stevens and H. Stevens (eds) *Brussels Bureaucrats? The Administration of the European Union* (Palgrave 2001)

²⁰⁰ EU Court of Auditors Secretariat General Translation Directorate 'Misused English words and Expressions in EU publications' September 2013

²⁰¹ R. Phillipson 'Lingua franca or Lingua Frankensteinia? English in European Integration and Globalisation' (2008) 27 (2) *World Englishes* 250-267

²⁰² Attila Krizsan and Tero Erkkila 'Multilingualism among Brussels-based civil servants and lobbyists: perceptions and practices' (2014) 13 *Language Policy* 201-219 G. Garzone and C. Ilie (eds) *The Role of English in Institutional and Organizational Settings: An Intercultural Perspective* (2007: Peter Lang)

²⁰³ Philip Oltermann 'Something in common: should English be the official language of the EU?'

The Guardian Wednesday 24 April 2013 and the Economist's blog Johnson: Just speak English? Sep 17th 2013 <http://www.economist.com/blogs/prospero/2013/09/language-diversity> (last accessed 15 July 2014)

for reasons of pragmatism and economic rationality.²⁰⁴ However, this suggestion is often very poorly received by speakers of other languages, and certainly there is no political consensus for this.²⁰⁵ Within the European Union milieu many see English as an ‘intruder’ which represents a non-European culture and heritage.²⁰⁶ While it has been observed that English is the primary language for international communication, there is still a large distance between the number of speakers and the population of European Union citizens. Furthermore, the reach of English tends to be overstated. German is the most widely spoken mother tongue in the European Union with about 90 million native speakers. French, English and Italian are each the mother tongue of around 60 million EU citizens. However, English is the first foreign language of about one third of EU citizens, well ahead of the others as the most widely used language of the European Union. German and French are each spoken as a first

²⁰⁴ For example A.Cogo and J. Jenkins ‘English as a lingua franca in Europe. A mismatch between policy and practice’ (2010) 2 (2) *European Journal of Language Policy* 271–294; Philippe Van Parijs *Linguistic Justice for Europe and for the World* (Oxford University Press 2011)

²⁰⁵ P. Christiansen ‘Language policy in the European Union. European/ English/ Elite/ Equal/ Esperanto Union?’ (2006) 30(1) *Language Problems and Language Planning* 21–44 Jonathan Pool ‘Optimal Language Regimes for the European Union’ (1996) 12(1) *International Journal of the Sociology of Language* 159–179 see further C. Hülbauer and B.Seidlhofer ‘English as a lingua franca in European multilingualism *DYLAN Working Paper 6* (2011)

²⁰⁶ Phillipson Robert ‘Figuring out the Englishisation of Europe’ in Constant Leung and Jennifer Jenkins (eds.) *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006); Chris Longman ‘English as Lingua Franca: A Challenge to the Doctrine of Multilingualism’ in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives*. (Hart 2007).

foreign language by about 10% of the EU population.²⁰⁷ If English were to reign supreme in the structure of the European Union, this would have a severe effect on the democratic legitimacy of the European Union. Grin and Gazzola point out that

only 14% of EU citizens (that is, native speakers) would have full access to EU documents and debates at the European Parliament without having had to go through a major foreign language learning effort, and half of the EU population would have no access at all to EU debates or documents. Even if we assume that citizens with a 'very good' command of English can be likened to native speakers, and that they can read EU documents and follow debates in English with no more learning effort than native speakers, then the effectiveness indicator would be in the region of 21% (14% + 7%) of EU citizens.²⁰⁸

The map below demonstrates similar data, based on the same Eurobarometer survey.²⁰⁹ Special Eurobarometer reports are based on in-depth thematic studies of particular subject areas. The Eurobarometer 386 assessed attitudes towards languages in the EU.

²⁰⁷ Statistics from COM (2004) Directorate-General for Press and Communication 'Many tongues one family Languages in the European Union' <http://ec.europa.eu/publications/booklets/move/45/en.pdf>

²⁰⁸ Gazzola M. and F. Grin 'Is ELF more effective and fair than translation? An evaluation of the EU's multilingual regime' (2013) 23 *International Journal of Applied Linguistics* 93–107

²⁰⁹ Special Eurobarometer 386 *Europeans And Their Languages* map (overlay) Tindo - fotolia.com (blank map) taken from <http://jakubmarian.com/map-of-the-percentage-of-people-speaking-english-in-the-eu-by-country/>

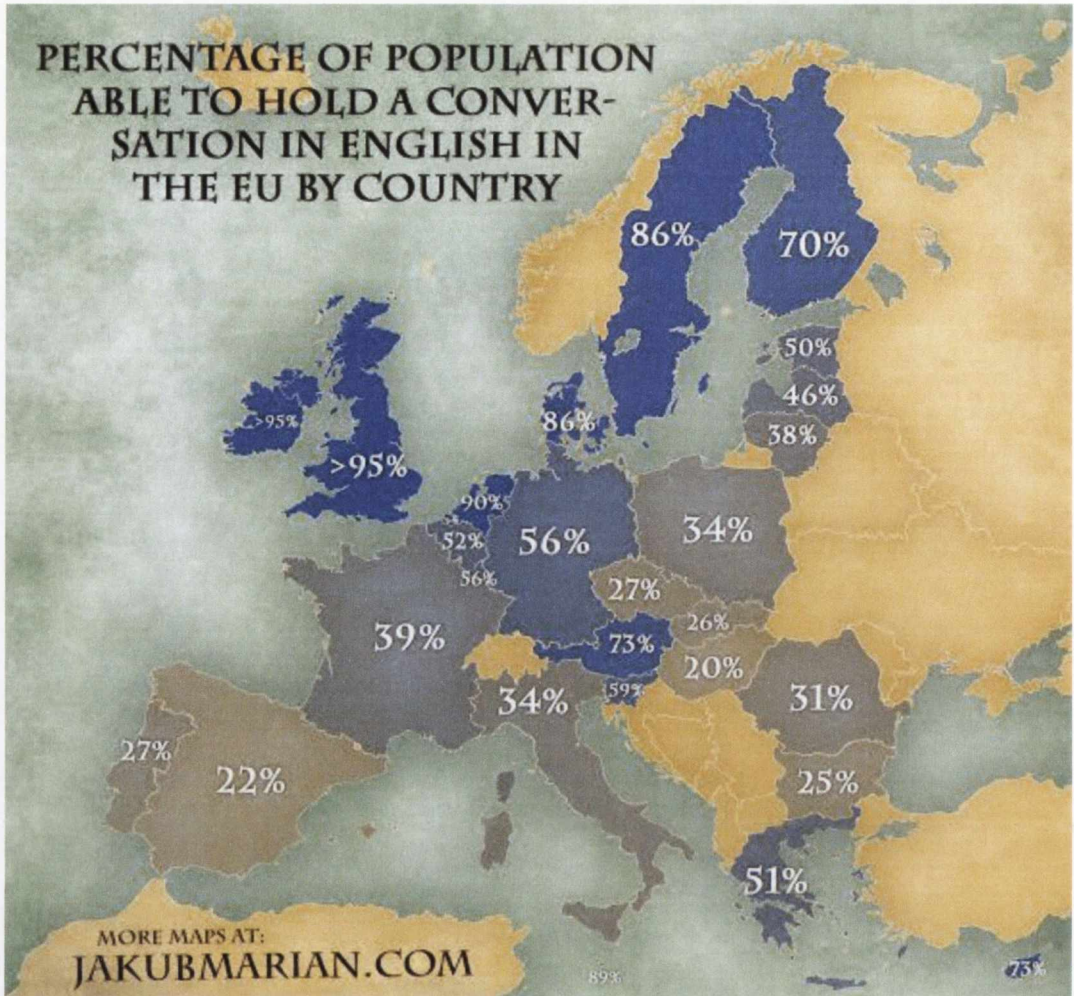


Fig 3. Europeans and their languages

According to Eurobarometer, 83% of Europeans value knowing other languages yet 44% cannot hold a conversation in another language.²¹⁰

The same survey identified that citizens also recognise, however, the problems with the EU's current language regime, stating 'Europeans are more evenly divided on whether EU

²¹⁰ Guus Extra and Kutlay Yağmur (eds) *Language Rich Europe: Trends in Policies and Practices for Multilingualism in Europe* (Cambridge University Press; British Council 2012)

institutions should adopt a single language to communicate with European citizens, although the balance of opinion is in favour of this approach.²¹¹ 53% of the survey's respondents agree that EU institutions should adopt a single language to communicate with European citizens, and 22% opted to 'strongly agree' with this view. The balance of opinion on this issue, however, was similar to that identified a similar survey in 2005²¹², suggesting that certain citizens are willing to prioritise pragmatism, however almost half believe the position of national languages to be an important aspect of the European Union system.²¹³

Other lingua francas have been suggested, usually Latin or Esperanto.²¹⁴ These are seen as communal languages and as a European alternative to English.²¹⁵ However, outside of academia all of these solutions tend not to be seen as a realistic option. The multilingualism of the European Union is seen as one of its distinctive features, and is often used as an anti-Anglophone political card. However, given the prevalence of English as a language of

²¹¹ European Commission *EUROBAROMETER summary: Special Eurobarometer 255 Europeans and their Languages* (European Union 2006).

²¹² European Commission *EUROBAROMETER summary: Special Eurobarometer 255 Europeans and their Languages* (European Union 2006).

²¹³ European Commission *EUROBAROMETER summary: Special Eurobarometer 386 Europeans and their Languages* (European Union 2012).

²¹⁴ R. Phillipson *English-only Europe? Challenging language policy* (Routledge 2003).
P. Christiansen 'Language policy in the European Union. European/English/Elite/Equal/Esperanto Union?' (2006) *Language Problems and Language Planning* 30(1) 21- 44.

²¹⁵ P. Christiansen 'Language policy in the European Union. European/English/Elite/Equal/Esperanto Union?' (2006) *Language Problems and Language Planning* 30(1) 21- 44.

international cooperation, and as the language most widely used within the European Institutions, the EU's adherence to principles of multilingualism is being called into question. In 2013 the German president, Joachim Gauck, caused a ripple when he suggested in a speech that English should become the EU's official language.²¹⁶ He moderated his statement, saying: 'It is true to say that young people are growing up with English as the lingua franca. However, I feel that we should not simply let things take their course when it comes to linguistic integration.'²¹⁷ Although this endorsement of English was framed in the mildest terms, this was poorly received in certain quarters.²¹⁸ The adoption of English is furthermore controversial because it is seen as heralding modernity in the form of globalised capitalism, in particular by Francophones.²¹⁹ The dominance of English, however, seems inescapable. The problem of the dominance of English is also prevalent for the United Nations, its 'Joint Inspection Unit' noting, for example, in its 2003 report that '[q]uite often, irrespective of whether there are other working languages defined

²¹⁶ <http://www.theguardian.com/world/2013/feb/22/german-president-pleads-britain-stay-eu?uni=Article:in%20body%20link> see also <http://www.spiegel.de/international/germany/german-president-gauck-calls-for-more-european-integration-in-speech-a-885047.html>

²¹⁷ Full speech available at: <http://www.wilna.diplo.de/contentblob/3824234/Daten/3057529/DDGauckEuro paRede2222013GB.pdf>

²¹⁸ For example on the online political affairs site YouGov <https://recherche.yougov.fr/news/2013/07/26/les-europeens-et-ladoption-de-langlais-comme-secon/> and commentary by French journalist Jean Quatremer in his well-respected blog 'les Coulisses de l'Europe' for the online version of the French newspaper Liberation on 10 March 2013: <http://bruxelles.blogs.liberation.fr/coulisses/2010/03/lunion-dont-lesp%C3%A9ranto-est-langlais.html> (last accessed 15 May 2014)

²¹⁹ R. Phillipson *English-only Europe? Challenging language policy* (Routledge 2003)

for the secretariats, English is overwhelmingly the language required to access information online'.²²⁰ A comprehensive report carried out in 2013 by the AFFOI (*Assemblée des Fonctionnaires Francophones dans les Organisations Internationales*)²²¹ corroborates these findings across all international organisations.²²²

This increased use of English, which is currently broadly against the European Union's philosophy of multilingualism and linguistic diversity, may be confronted against a stark new reality. It may not simply be against an ethos of linguistic diversity, but soon perhaps could be in direct contradiction with the philosophical roots of the European Union's language regime, as laid out in the opening chapters. At the time of writing, the exit of the United Kingdom from the European Union is being presented as a concrete possibility.²²³ The current Conservative Government (Oct 2014) led by David Cameron has pledged to hold an EU membership referendum.²²⁴ If the UK were to leave the European Union, this could seriously affect the language regime, potentially changing the language rules. The United Kingdom has had a complicated relationship with the

²²⁰ Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System (10 June 2003) A/58/93

²²¹ Translation: *Association of Francophone Civil Servants in International Organisations*

²²² AFFOI «Rapport Synthétique Des Analyses Des Pratiques Linguistiques Appliquées Aux Sites Internet Des Organisations Internationales » http://www.affoimonde.org/documents/rapport_sites_2013.pdf

²²³ Copsey N. and Houghton T. 'Farewell Britannia? 'Issue Capture' and the Politics of David Cameron's 2013 EU Referendum Pledge' (2014) *Journal of Common Market Studies* (52) 74- 89.

²²⁴ Miller V. 'Leaving the EU' (2013) 24(3/4) *Current Politics & Economics Of Europe* 215-362.

European Union since joining in 1973.²²⁵ The potential 'BRExit' (as it is referred to in the media) will be examined in the context of implications for the EU's language regime.²²⁶

English has secondary status in two small member states, Ireland and Malta.²²⁷ As examined, both of these fought hard to have their national languages included on equal footing in the language regime of the European Union. The political negotiations which led to this involved emphasising the essential nature of their own national languages. In a case where the UK no longer formed part of the EU, the major language of communication within the institutions would no longer be the symbolic national language of a Member

²²⁵ Andrew Geddes *Britain and the European Union* (Palgrave 2013) Jack Lane 'The Prospect of BREXIT.' (2013) *Irish Political Review* 27(1) 1.

²²⁶ David Marquand 'First Brexit then break-up.' *New Statesman* 27/9/2013 Vol. 142 Issue 5177 Editorial 'Brexit Ramp' *The Times* (United Kingdom) 25/8/2014 p26
Ambrose Evans-Pritchard 'Why the European Court of Justice is leading the UK towards a 'Brexit'' *Daily Telegraph* (London) 01/05/2014

²²⁷ Constitution of Malta Article 5 states: '1. The national language of Malta is the Maltese language 2. The Maltese and the English languages and such other languages as may be prescribed by Parliament by a law passed by not less than two-thirds of all the members of the House of Representatives shall be the official languages of Malta and the Administration may for all official purposes use any of such languages: Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language.3. The language of the courts shall be the Maltese language:Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.4. The House of Representatives may in regulating its own procedure determine the language or languages that shall be used in parliamentary proceedings and records' Article 75 of the Maltese Constitution states 'Save as otherwise provided by Parliament every law shall be enacted in both the Maltese and English languages and if there is any conflict between the Maltese and the English texts of any law the Maltese text shall prevail.' Article 8 of the Irish Constitution *Bunreacht na hEireann* contains a similar provision: '1. The Irish language as the national language is the first official language. 2.The English language is recognised as a second official language. 3.Provision may however be made by law for the exclusive use of either of the said languages for any one or more official purposes either throughout the State or in any part thereof' and in Article 25 (6) In case of conflict between the texts of a law enrolled under this section in both the official languages the text in the national language shall prevail.

State, but an entirely functional official language within two small states, their legacy of a colonial past. This could cause problems for the continuation of the current European Union language regime. We have seen from this chapter that the political justification for the current regime is based on the principle of national languages. If the UK did eventually exit the European Union, the English language would have no formal place within the European Union's linguistic canon. This could greatly impact on the language regime of the EU. The current vague distinction between official and working languages could soon become a lot more glaring.

VI Conclusions

This chapter explored how the dynamic of power and language can be viewed with regard to the European Union, treating what language has meant and still means during the process of construction of the European Union. The main problem in a regime of equally important official languages is reaching an equitable solution regarding their actual official use(s).²²⁸

Creech characterises the problem of designation of working languages as a choice between 'exclusive practicality and cumbersome pluralism.'²²⁹ Currently, however, the EU could not be said to be catering either to practicality or to pluralism. The language

²²⁸ J. Pool 'The Official Language Problem' (1991) 85 (2) *American Political Science Review* 495-514

²²⁹ Creech R. *Law and Language in the European Union* (Europa Law Publishers 2005).

rules of the agencies and institutions of the European Union demonstrate the difficulty of guaranteeing operative multilingualism. Effectively the court underlined via the Kik case, that full operational multilingualism was an aspirational value to which EU bodies and agencies could not be held accountable. This position has been echoed by the European Ombudsman. The partial multilingualism currently adopted is clearly in line with the National Language ideologies explored in chapter 2.²³⁰ These ideologies wield such power that very term 'working languages' is avoided. Although the language regime of the EU is deemed to comprise all its 24 official languages, in support of Wodak's theory of 'hegemonic multilingualism' we see that it is the case that that English, German and French are highly prioritised.

This chapter revealed the nexus between language and power within the language rules and policies of the European Union and analysed the political reasons behind the rhetorical emphasis on the value of multilingualism in the EU. The problem of language is as old as the process of European integration itself, as evidenced by the fact that the first secondary legislation of EC in 1958 was to regulate the use of language within the new institutions created.²³¹ The EU's language regime remains intergovernmental and is regulated solely

²³⁰ Matthias Hüning Ulrike Vogl and Olivier Moliner (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012)

²³¹ Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community see discussion in previous chapters.

by unanimous decision making in the Council. Article 342 TFEU²³² declares that the language law of the EU is governed by unanimity.

It allows the Member States of the European Union to claim legitimacy for their language, and allows the institutions to function behind a veneer of parity in their multilingualism. This is not reflective of the practice of multilingualism in reality, which is at best 'hegemonic multilingualism', as stipulated in the rules of procedure, where they exist. The worst case scenario would be to resort to functioning entirely through English while adhering blindly to the claim that all official languages are also theoretically considered working languages, in order to maintain apparent parity. The adoption of a common language for the EU is against the foundational principles of the Union.²³³ The Council's central decision-making power on issues involving the linguistic regime of the EU demonstrates the crucial political importance of linguistic issues. These language rules are the result of careful political compromises. That this political compromise is practically untenable, particularly in a perspective of expansion and enlargement is an issue so politically sensitive that even the CJEU and the Ombudsman of the EU refuse to get involved, leaving the Council to decide. As any change to the language regime would have to be agreed

²³² Previously article 217 of the Treaty of Rome and article 290 of the Treaty of Nice.

²³³ B. de Witte 'Language Law of the European Union: Protecting or Eroding Linguistic Diversity?' in Rachel Crauford-Smith *Culture and the European Union* (Oxford University Press 2004).

unanimously, this is unlikely to transpire. The next chapter will examine another fundamental principle of EU law, the equal authenticity of all 24 language versions of legislation.

Chapter 6: Equality of Authenticity - a Core Principle in the EU's Legal System

The ideal of linguistic parity is now one of the most distinctive features of the European Union as a political body. The previous chapter demonstrated the equal status of all the official languages of the Member States of the European Union. The present chapter analyses a core principle of EU law which arises from this ideal, the equality of authenticity of all language versions of legal instruments.²³⁴ This principle originates in Article 55 TFEU which states:

This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic. Article 358 of the Treaty on the Functioning of the European Union (TFEU) applies this principle.

Giving effect to these Treaty articles, article 4 of Regulation 1/1958 stipulates that 'regulations and other documents of general application shall be drafted in the official languages'. This means that

²³⁴ Not all European Union texts are equally authentic in all languages. The wording of the foundational Treaties is equally valid in all 24 of the languages of the European Union; and, according to this, then all subsequent delegated legislation in each language version also enjoys this equal authenticity..

all the main legal provisions of the European Union are drafted in all the official languages. This chapter examines the difficulties in the operation of this core principle at EU level and the legal implications this entails. It looks to the drafting of EU law, and posits that this unique process is a significant legal protection of language at European Union level. Although not necessarily presented as such, this thesis argues that the multilingual character of EU law is one of the core defining features of EU law. It claims that this is an important protection of language which is enshrined by the Treaties, and examines how this plays out in the practices of the European Union's institutions. The association between language, nation and state is a particularly European phenomenon and this thesis asserts that this explains the distinctive language protections in the legal system of the European Union. The most innovative among these is the multilingual authenticity of EU law, across 24 languages. This chapter contemplates this in conjunction with the prospect of the increase in language versions posed by enlargements of the European Union.

This chapter posits that the fundamental principle of authenticity, secured via extensive drafting and translation practices is also an important and underexamined aspect of language rights in the EU. The provision of translation can be an important vehicle for

language rights.²³⁵ Within the legal system of the EU, translation is strictly protected and promoted.

I Language and EU Expansion

Language is at the centre of the distinctive nationalist heritage of each of the member States of the European Union, and this is reflected in the unique language regime of the EU. The changes brought about by the expansion of the EU's linguistic regime with enlargement set, or perhaps continued, an important precedent. As described in the previous chapter, the addition of a Member State to the European Union meant the addition of a language to the catalogue of official languages delimited by Regulation 1/58. The previous chapter has illustrated its political importance. As the EU expanded in terms of countries, it expanded in terms of languages too. 2004 marked the large scale expansion of the European Union to the east, and the addition of ten new Member States and therefore nine additional languages to the European Union. Romania and Bulgaria joined, as part of the same enlargement process, in 2007 and, since then, Croatia has also joined in 2013, bringing the total number of EU official languages to 24.

²³⁵ Gabriel González Núñez, 'Translating to Communicate with Linguistic Minorities: State Obligations under International Law' (2013) 20 (3) *International Journal on Minority & Group Rights* 405. Reine Meylaerts, 'Translational justice in a multilingual world. An Overview of Translational Regimes' (2011) *Meta:le journal des traducteurs* 56(4), 743-757.

Writing in 1999, Sue Wright comments that 'No other international body recognises and works with so many languages'²³⁶, and since then, the number of languages dealt with has almost doubled. This is a fundamental but underexplored aspect of EU enlargement, and accession to the EU. The 2004 enlargement meant institutional overhaul. It has been characterised a 'mega-enlargement'.²³⁷

The process of language recognition is a quid-pro-quo for the renunciation of sovereignty in joining the European Union.²³⁸ Each of the states which joined in 2004 added a language to the EU's language regime, with the exception of Cyprus where, although both Greek and Turkish enjoy official language status,²³⁹ Turkish was not added, due to the ongoing conflict on Cypriot soil. Luxembourgish is the only Member State official language which is not also an official language of the EU level. Lëtzebuergesch, became one of the official languages of Luxembourg only in 1984.²⁴⁰ It had been considered a dialect, and did not have official status when Luxembourg joined the EU. A secondary outcome of the regime of multilingualism in the

²³⁶ Sue Wright and Dennis Smith (eds.) *Whose Europe? the turn towards democracy*. (Blackwell 1999) 162.

²³⁷ Karen Mc Auliffe, 'Language and the Institutional Dynamics of the Court of Justice of the European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence', in M Gueldry (ed), *How Globalizing Professions Deal With National Languages: Studies in Cultural Conflict and Cooperation* (The Edwin Mellen Press, 2010) 239-263.

²³⁸ David Laitin, 'The Cultural Identities of a European State' (1997) 25(3) *Politics and Society* 277.

²³⁹ Article 3, Constitution of Cyprus 1960 (Σύνταγμα της Κυπριακής Δημοκρατίας).

²⁴⁰ Luxembourg, Loi sur les régimes des langues (Languages Regulation Act) 1984, Article 1.

European Union is that it is both a means of effectively guaranteeing a certain level of employment per member state, and a political tool for influence.²⁴¹ The employment of language professionals is a significant side effect of the European Union's multilingual regime. The European Union is the world's largest employer of language professionals.²⁴² The equality of the language versions is of political importance within the Member States also. Despite the increasing inconvenience of operating with 24 equally valid languages, there has been no large-scale reappraisal of the language regime of the European Union, perhaps, in part, due to this fringe benefit.

Equal authenticity means that each language version has the same formal status. Article 55 TFEU declares that each version in each language of EU Law is 'equally authentic' for all the 'Treaty Languages'.²⁴³ As we have seen, the linguistic organisation of the European Union does not clearly distinguish between official languages and working languages. This implemented a third category of language formally sanctioned by the EU, that of 'Treaty Languages'. This recognition designated fundamental authenticity and value, but was not quite the same as official language status. This hybrid type of language status, now defunct, was introduced as part

²⁴¹ Magali Gravier, 'The 2004 Staff Enlargement Policy of the European Commission: The Case for Representative Bureaucracy' (2008) 46(5) *Journal of Common Market Studies* 1025.

²⁴² Directorate General for Interpretation, *Interpreting and Translating for Europe* (European Commission 2013).

²⁴³ Treaty on the Functioning of the European Union [2012] OJ C326/01, art 55.

of one of the first expansions of the EU. The concept of 'Treaty Language' will be assessed before returning to the question of expansion of the linguistic regime.

(i) 'Treaty language' status

From 1973 until 2005, an inferior language status to EU 'official language' existed. The Irish language had hybrid status as a 'Treaty language'. As part of the Irish accession negotiations to the then European Communities, an Agreement was made in 1971 between Ireland and the European Community, Irish was to be considered an official Community language, with an implicit understanding, however, that only primary legislation was to be drawn up in that language.²⁴⁴ This introduced a status of 'Treaty Language'. Treaty language status means that the Irish versions of all EU treaties were regarded as authentic, and that Irish could be used in making certain contacts with the institutions of the European Community.²⁴⁵ This originally resulted in a hybrid officiality for Irish. The Irish language was the only language to have the status of 'treaty language' while not fully being an official language of the European Union. Ó Riain claims that '[d]uring accession negotiations Ireland had sought a status of 'official but not working' language for Irish, but this was not agreed, as a number of member states feared that such a decision

²⁴⁴ D Mac Giolla Chríost, 'A question of national identity or minority rights? The changing status of the Irish language in Ireland since 1922' (2012) 18(3) *Nations and Nationalism* 398.

²⁴⁵ Mairead Nic Cráith, *Europe and the Politics of Language: Citizens, Migrants and Outsiders* (Palgrave 2006) 41.

could have implications for the status of their own languages.'²⁴⁶ Thus, a hybrid status was created specifically for the situation of the Irish language.

Before the EU enlargement of 2004, which provided the impetus for a change in status for Irish, the Irish language had only partial status in the European Union. Ó Riain asserts that the addition of Irish at the moment of their original accession to the EEC in 1973, 'would have been in line with the handling of the official language of all other member states, both before and since.'²⁴⁷ The status of 'Treaty Language' appeared to confer an additional or fundamental level of authenticity, however, while still granting a lesser status than official language. The 2004 enlargement 'was widely perceived in Ireland as an opportunity to review the 1972 decision regarding Irish.'²⁴⁸ The Irish language eventually attained official language status in 2005 and Irish became a fully recognised language, of the European Union from 1st January 2007, when Bulgarian, Romanian and Irish were added to the languages of the European Union. The terminological confusion of the language regime of the EU has increased with the passing of time. We briefly examined, in the previous chapter, the mention of 'authentic languages' in the rules of

²⁴⁶ Seán Ó Riain, 'Irish and Translation: the EU Context' (2010) 35(2) *Études irlandaises* 65.

²⁴⁷ Seán Ó Riain, 'Irish and Translation: the EU Context' (2010) 35(2) *Études irlandaises* 65.

²⁴⁸ Seán Ó Riain, 'Irish and Translation: the EU Context' (2010) 35(2) *Études irlandaises* 65.

procedure of the European Commission which are another complicating factor.²⁴⁹ Language policy of the European Union truly is 'the elephant in the room.'²⁵⁰

(ii) More official languages?

As more states joined the EU, they sought to do so as equals, therefore adding to the number of 'official languages' which now stands at 24, since the accession of Croatia in 2013. The conditions and processes for language enlargement of the EU, and the effect of enlargement on the language regime of existing Member States will be explored. In 2004, at the time of the enlargement, the option of changing the language regime of the EU may have been a possibility. The obligation, following the practice that had developed, to add to the official languages of the EU the languages of the ten new Member States was one that can generously be describes as unwieldy. Instead, the opposite happened and the EU gained another category of official languages, and the European language regime was further complicated.

This 2004 enlargement moment led to a repoliticisation of the question of EU languages.²⁵¹ On 13 June 2005, Important Conclusions were passed in the European Council with regard to the use of

²⁴⁹ Commission Decision 2010/138/EU amending its Rules of Procedure [2010] OJ L 55/60, Art. 18

²⁵⁰ Sue Wright, 'The elephant in the room: Language issues in the European Union' (2009) 1(2) *Journal of European Language Policy* 93.

²⁵¹ Michal Krzyzanowski and Ruth Wodak, 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy' (2011) 10(2) *Language Policy* 115.

additional languages within the EU.²⁵² These stipulated Member States may conclude administrative arrangements for the use of languages other than those official languages referred to in Regulation 1/1958. This emerged in response to the politicisation of issues of national language at a European level.

The Conclusions state that additional languages, other than the languages referred to in Council Regulation No 1/1958, 'whose status is recognised by the Constitution of a Member State on all or part of its territory or the use of which as a national language is authorised by law,'²⁵³ may be allowed as a means of communication between the member state and the European Parliament and Council (and other authorities) in certain cases. Use of these languages is determined by voluntary independent administrative agreements between the Member State and the institutions or other bodies of the EU. These are an extension of the basic language rights of correspondence which are part of official language status in the EU. Schilling reasons:

as not even the use of all official languages is a general principle of Community law, it is not possible to discern in Community law any basis for a general principle giving an

²⁵² Press release for the 2667th session (13 June 2005) of the European Council, General Affairs and External Relations.

²⁵³ Council Conclusions of 13 June 2005 [2005] OJ C 148/01.

additional role to this second tier of additional official languages of the Member States.²⁵⁴

Although they may not have an institutional role, they are nonetheless important concessions to minority languages on the part of the EU. These conclusions were arrived at because of strong lobbying by Spain, backed by Ireland who wanted to achieve full official language status for Irish. These provisions have been applied to the case of the UK for Welsh, Irish in Northern Ireland and Scots Gaelic. Spain, due to national political pressures, went some way towards 'officialising' its constitutional languages.²⁵⁵ Basque, Catalan and Galician are recognised by Article 3 (2) of the Spanish Constitution. However, the Conclusions are very broad. Milian-i-Massana believes the arrangements provided by the agreements to be no great concession to the principle of recognition of Catalan, stating that 'the rule introduced by the administrative arrangements, while commendable from the point of view of legal certainty makes the version in the language of the sender little more than an ornament.'²⁵⁶

²⁵⁴ Theodor Schilling, 'Language Rights in the European Union' (2008) 9(10) German Law Journal 1219, 1234.

²⁵⁵ Alejandro del Valle Gálvez and Michel Remi Njiki 'The Use of Spanish Regional Official Languages in the Court of Justice of the European Communities' (2009) 2(51) Series VII, *Bulletin of the Transylvania University of Braşov* 180.

²⁵⁶ Antoni Milian-i-Massana, 'Languages that are official in part of the territory of the Member States: Secondclass languages or institutional recognition in EU law?' in Xabie Arzoz (ed), *Respecting Linguistic Diversity in the European Union* (John Benjamins 2008).

These voluntary administrative agreements are non-binding in nature, and depend very much on the will of the Member State.²⁵⁷ The agreements furthermore have no effect on the EU's internal regulations, or the language regimes set out in Council Regulation 1/58. They agreements are not published in the Official Journal and no dates or deadlines pertain to them, they are essentially an informal recognition that certain Member States may want to broaden their language portfolio. Correspondence, therefore although formally allowed to occur in languages other than the official language, is not direct. Communications to the EU institutions in languages other than the official languages must take place via a body which must send on the original (in the source language) and its translation to the European institution to which it is addressed. Translations made under this provision do not have legal value, and translation bodies must be provided by the Member States. Administrative agreements have, however, been set up by both the Spanish Government and the UK government.

Despite the developments detailed above, which appear significant at a declaratory level, their proper implementation would require substantial member state backing. Until then their potential remains unmined. Provision for these schemes rests squarely with the Member States. They are in use for the Spanish constitutionally

²⁵⁷ Confirmed in answer to Questions to the President of the EU Jerzy Buzek following Rule 29(2) by MEP Oriol Junqueras i Vies.

recognised languages²⁵⁸, and in 2008 the UK used this provision to provide for Scots and Welsh at EU-level. This change in the language regime of the European Union occurred at a political moment which may not be repeated. The balance of power in Spain at the time depended on Catalan interests and there was strong lobbying in Ireland to achieve fully official status for the Irish language when they held the Presidency of the European Council in 2004.²⁵⁹ This relative softening of the rules governing the language regime of the EU created a space for the development of a new language politics of the European Union, which in the subsequent decade has not been developed.

At a symbolic level perhaps, the change wrought by the Council Conclusions could have had significance, however, the lack of political activity in this ambit has led to it being somewhat a 'damp squib'. All costs must be incurred by the Member State proposing them, which firmly leaves the control of the language regime of the EU in the hands of the Member States.²⁶⁰ Although accession was

²⁵⁸ Spain has concluded administrative arrangements with the Council [2006] OJ C40/02, the Committee of the Regions (A1-2556), the Commission [2006] OJ C73/06, the Economic and Social Committee (CESE 580/2006), and the Ombudsman.

²⁵⁹ P. Athanassiou, 'The application of multilingualism in the European context' (European Central Bank Legal Working Paper 2006); Jean-Bernard Adrey, *Discourse and Struggle in Minority Language Policy Formation: Corsican Language Policy in the EU Context of Governance* (Palgrave 2009).

²⁶⁰ Antoni Milian-i-Massana, 'Languages that are official in part of the territory of the Member States: Secondclass languages or institutional recognition in EU law?' in Xabier Arzo (ed), *Respecting Linguistic Diversity in the European Union* (John Benjamins 2008).; Jean-Bernard Adrey, *Discourse and Struggle in Minority Language Policy Formation: Corsican Language Policy in the EU Context of Governance* (Palgrave 2009).

used to officialise languages which had previously had minority status, the lack of clarity in the designation of official and working languages has been fully embraced by the Member States of the EU to avoid the extension of this privilege to other language communities.²⁶¹ It remains, however, that only Member State national languages are official languages of the European Union. This status is paramount, and authenticity, the fundamental stamp of approval of the European language regime is only granted to those national languages. The question of linguistic expansion will be treated first of all from a practical point of view, before examining its legal implications in the next section.

II Practical aspects of Increasing Multilingualism

The multilingual regime of the European Union is unique. Equally unusually, the language regime of the European Union is under constant impending change. The languages used by the European Union increased with the addition of each Member State. The pragmatic steps taken to accommodate an increasing number of official languages within the European Union will be examined in this chapter.

The process of enlargement caused many linguistic difficulties.²⁶² First of all, due to the delicate balance in place in

²⁶¹ Jean-Bernard Adrey, *Discourse and Struggle in Minority Language Policy Formation: Corsican Language Policy in the EU Context of Governance* (Palgrave 2009).

²⁶² Karen Mc Auliffe, 'Enlargement at the European Court of Justice: Law, Language and Translation' (2008) 14(6) *European Law Journal* 806.

guaranteeing official languages, the languages of the new Members had to be on the same footing. This was standard enlargement procedure, but never before had there been accession on such a massive scale. This large expansion necessitated some major internal changes in the operation of the EU's Language Services.²⁶³ The granting of official language status requires extensive preliminary coordination work, both on behalf of the candidate country and on behalf of the European Union institutions. 'Status planning', as referred to in chapter 3, or the attribution of official status to a language can affect the speakers of a language, and the corpus of a language itself.²⁶⁴ As part of the accession process, Translation Coordination Units are set up in each of the candidate countries, in cooperation with the European Commission's DG Translation. They describe the coordination process that takes place:

In the run-up to joining, DG Translation helps the new country integrate by:

- providing technical assistance, training, professional advice and support for the TCU
- setting up a local office in the country and liaising with it

²⁶³ Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010).

²⁶⁴ T. Ricento (ed.) *An introduction to language policy: Theory and methods* (Blackwell 2005).

- exploring and developing the freelance market in the country
- encouraging and advising universities on the content of training courses for translators, thus helping ensure their graduates meet [their] present and future needs, and
- liaising with local translators' associations and organisations.²⁶⁵

This takes place via the EU-TAIE (Technical Assistance and Information Exchange) instrument managed by the Directorate-General Enlargement.²⁶⁶ This translation coordination involves the establishment of agreed terminological references and begins the process of translation of all of the *acquis* of the EU. All of the EU treaties and legislative texts in place, known as the EU *acquis* need to be translated by the Candidate Countries. These are then revised and published in a Special Edition of the Official Journal.²⁶⁷

Accession to the European Union can have significant effects on a linguistic corpus in the form of 'terminology transfer'.²⁶⁸ For example, the Icelandic application to join the EU 'has already given

²⁶⁵ European Commission Directorate General for Translation, 'Frequently asked questions about DG Translation' <http://ec.europa.eu/dgs/translation/faq/index_en.htm> (last accessed 7 November 2014.)

²⁶⁶ Emma Wagner, *Translating for the European Union* (Routledge 2014).

²⁶⁷ Colin Robertson, 'EU Law and Semiotics' (2010) 23 (2) *International Journal for the Semiotics of Law* 145.

²⁶⁸ Frances Olsen, Alexander Lorz and Dieter Stien (eds), *Translation Issues in Language and Law* (Palgrave 2009).

the Icelandic language huge gains in the form of expertise in translation, hitherto untranslated concepts and words are being transferred almost on an assembly line.²⁶⁹ This effect has been widely noted. Somssich, in a study carried out by the DGT states

An undoubtedly positive effect of European multilingualism is that, in many Member States, it has increased the state's awareness regarding language issues in general and led to more conscious national language policies focusing on the standardisation of technical terminology, boosting terminology activities, preparing comprehensive style-guides, handling the influence of globalisation and providing linguistic assistance for drafting at EU institutions.²⁷⁰

The necessity for the translation or creation of new vocabulary, and for terminological cooperation between the EU institutions and the member states is exacerbated in the case of former minority languages as, due to their historical socio-cultural situations, not having been associated with state power, many simply do not possess the lexicon necessary for translation of technical EU texts.²⁷¹

²⁶⁹ Gauti Kristmannsson, 'Iceland's Challenges in a Multilingual Europe' in Martin Forstner, Nikolay Garbovsky, Hannelore Lee-Jahnke (eds), *CIUTI-Forum 2013 Facing the World's New Challenges: The Role of Translation and Interpreting in Providing Integrated Efficient and Sustainable Solutions* (Peter Lang 2013).

²⁷⁰ Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010).

²⁷¹ Sean Ó Conaill, 'An Ghaeilge mar theanga oifigiúil seachas teanga mhionlaigh' in Elaine Fahey and Catherine O'Connor (eds), *Súil ar an Dlí* (Lonsdale Law Publishing 2009).

This was the case for Ireland and Malta, therefore, this European process of officialising came with a derogation for a renewable period of five years.²⁷² The linguistic expansion pursuant to the political expansion of the European Union in 2004 marked the inclusion of two national languages which were not necessarily the main languages in use in the Member States in question.

Following the enlargements, which left Malta and Ireland in the position of having to provide language professionals for their newly European languages, which otherwise held a somewhat symbolic position of national language, a derogation was implemented. Article 2 of Regulation 920/2005 of 13 June 2005, which amended Regulation 1/1958 contained a derogation for the new official languages.²⁷³ This limits the obligation to draft all acts in Irish/Maltese, except for Regulations adopted jointly by the European Parliament and the Council.²⁷⁴ The necessity for this derogation was predicted, and is partly attributable as the reason for the development of the 'treaty language' status for Irish. Ó Riain

²⁷² Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations [2005] OJ L56/3.

²⁷³ *ibid.*

²⁷⁴ Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations [2005] OJ L56/3., art 2: 'The derogation does not apply to regulations adopted jointly by the European Parliament and the Council.'

explains that 'The official reason giving by Ireland's negotiators in 1972 was that its use as a full EU working language would give rise to 'certain practical difficulties.'²⁷⁵ Due to the difficulties with finding appropriately trained language professionals the Irish derogation was extended for another five years²⁷⁶, lasting until 31 December 2016. Maltese benefitted from a similar derogation, as there was deemed to be an insufficient supply of trained language professionals, however the Maltese derogation was lifted in 2007, after three years.²⁷⁷ These developments demonstrate the fundamental necessity of Member State support for the successful transition to EU official language status for additional languages.

These changes, however, were made with limited increases to the budget for overall translation. Although the number of languages has more than doubled in the last decade, from 11 prior to 2004, to 24 in 2014, the budget has only increased by around 20%.²⁷⁸ There was a severe rationalisation in the translation services provided. Only texts of importance are translated.²⁷⁹ In the drafting

²⁷⁵ Seán Ó Riain, 'Irish and Translation: the EU Context' (2010) 35(2) *Études irlandaises* 65.

²⁷⁶ Council Regulation (EU) No 1257/2010 of 20 December 2010 extending the temporary derogation measures from Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005 [2010] OJ L343/5.

²⁷⁷ Council Regulation (EC) No 930/2004 of 1 May 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union [2004] OJ L169/1, art 1. See also Mairead Nic Cráith, *Europe and the Politics of Language: Citizens, Migrants and Outsiders* (Palgrave 2006) 44.

²⁷⁸ Emma Wagner, *Translating for the European Union* (Routledge 2014).

²⁷⁹ Legislative texts are translated into 24 official languages and are not legally valid until the official translation is published. However, not all texts are

process, there is an increased reliance on one language version for coordination (usually the English version.)²⁸⁰

(i) Accession and translation

As part of the accession process, before accession, a special form of treaty, a Treaty of Accession is signed between the Member States and Candidate Countries who are due to accede to the European Union. The Act of Accession contains formal amendments to existing EU treaties and secondary legislation and transitional provisions regarding the new Member State. According to Article 58 of the 2003 Act of Accession states:

The texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present eleven languages.'

The *acquis communautaire*, the main body of EU law is translated into the language of the new Member State, and gains authenticity.

The *Skoma Lux* case established that the enforceability of those acts

translated in the system of the EU, even when they are of legal significance and addressed at the public. For example, case law is not translated despite its arguably crucial role in providing EU-wide precedents.

²⁸⁰ Agnieszka Doczekalska, 'Drafting or Translation: Production of Multilingual Legal Texts' in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan 2009).

of Community law against third parties was not effective until its publication of the relevant language version in the Official Journal of the European Union.²⁸¹

The texts of pre-accession acts by EU institutions must be translated into the official languages of the new Member States.²⁸² These language versions are then to be regarded as authentic. This process therefore implies the retrospective addition of potential meanings to a body of law comprising all language versions. Although the addition of a new language version can therefore add to the depth of meaning of a term, given that it is equally valid across all language versions, this has not created difficulties. Although it is contentious that in a fully multilingual legal system it would be possible to simply tack on additional language versions, while still maintaining parity of authenticity, this was not viewed as challenging or changing the nature of EU law by the EU institutions.²⁸³ The centrality of the principle of multilingual authenticity is such that the increase in meaning brought about by additional language versions is merely viewed as a positive development of the legal system of the EU. The view of AG Jacobs is that this is unproblematic:

²⁸¹ Case C-161/06 *Skoma-Lux Sro v Celní ředitelství Olomouc* [2007] ECR I-I0841, para 51.

²⁸² Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010).

²⁸³ Schilling T, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 *German Law Journal* 1460.

Each accession increases the number of texts that were not originally authentic in all the current languages. It would, however, be contrary to the accession treaties to suggest that only those language versions existing at the time the legislation was adopted are authentic.²⁸⁴

This is analogous, for example, to the situation after the handover of Hong Kong, where Chinese versions of laws already in place were authenticated, although the laws had already been in effect, sometimes for many years.²⁸⁵ The new language versions of the countries to accede become part of the *Acquis Communautaire*, the whole body of EU law. Given that the addition of new languages is a standard part of the procedure for enlargement in the European Union, it can be supposed that part of the *sui generis* nature of multilingual EU law includes its expandability to include new language versions and all the cultural and legal connotations that they comprise. Again, the particularity is in the scale of the operation. The Hong Kong analogy can operate in principle, however, it must be borne in mind that the meanings implicit increase exponentially when dealing with 24 language versions. This is problematic in view of the requirements of legal certainty implicit in any just law

²⁸⁴ European Commission Legal Service, 'How to interpret legislation which is equally authentic in twenty languages: Lecture by Advocate General Francis Jacobs, Brussels, 20 October 2003' (Summary Report, 26 November 2003). In the report it is stressed that this speech reflected his *personal* views.

²⁸⁵ Deborah Cao, 'Judicial Interpretation of Bilingual/Multilingual Laws: A European and Hong Kong Comparison' in Joanna Jemielniak and Przemyslaw Miklaszewicz (eds), *Interpretation of Law in the Global World: from Particularism to a Universal Approach* (Springer 2010).

regime.²⁸⁶ When interpreting the treaties, all language versions must be considered, and are of equal validity. This expansion has given rise to operational difficulties, which create the question of limits to the linguistic enlargement of the EU.

This thesis has demonstrated the centrality of official language status to the legal system of the European Union. This was assessed in light of the enlargement of the European Union, beginning with the 2004 enlargement where its language regime of eleven languages became one of twenty. Subsequent changes to the EU's language regime were examined, which stands at 24 official languages in 2014, with (currently) five other languages enjoying a secondary status. Further enlargement of the European Union will only lead to further complication of the provisions concerning minorities and language communities. With the language regime of the European Union looks set to only increase in complication. Iceland, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia, and Turkey all have official 'candidate country' status. With the possible exception of Iceland, the linguistic situation in each of these potential member states is incredibly complex and delicate.²⁸⁷

²⁸⁶ Paunio, E. and Lindroos-Hovinheimo, S. 'Taking Language Seriously: An Analysis of Linguistic Reasoning and its Implications in EU Law' (2010) 16(4) *European Law Journal* 395.

²⁸⁷ R. Greenberg *Language and Identity in the Balkans: Serbo-Croatian and Its Disintegration* (Oxford University Press 2004), Geoffrey Lewis *The Turkish Language Reform: a Catastrophic Success* (Oxford University Press 2010) .

The principle of equal authenticity goes to the core of the unique language regime implemented by the European Union. The status, which existed for over 30 years, of ‘treaty language’ and the subsequent promotion of Irish to full official language status demonstrates the centrality of the Member States’ political balance to the granting of status to languages. Each new state to accede is effectively guaranteed status for languages it endorses, and without this endorsement, there will be no EU recognition. The principle of equal authenticity is a core aspect of the EU’s *sui generis* legal system. A multilingual legal system which enshrines equal authenticity for all language versions is not simple to manage. This chapter explores some of the difficulties inherent in Article 55’s provision.

III Multiple Languages, One Legal System

The fundamental and mandatory multilinguality of European Union legislation creates many practical difficulties.²⁸⁸ EU law is ‘drafted and effective’²⁸⁹ in all official languages. This particularity makes the European Union a unique example among multilateral multilingual organisations. This section will first examine this particularity and how it affects the legal system of the EU in a broad analysis, and then analyse the role of translation in creating this unique system.

²⁸⁸ Colin Robertson, ‘Multilingual Legislation in the European Union: EU and National Legislative-Language Styles and Terminology’ (2011) 9(1) *Research in Language* 51.

²⁸⁹ Deborah Cao, *Translating Law* (Multilingual Matters 2007).

The principle of equal authenticity is a necessary feature of multilingual legal systems.²⁹⁰ This principle of equal authenticity is laid down in the Swiss Constitution,²⁹¹ the Hong Kong official language ordinance of 1987 and the Canadian Charter of Rights and Freedoms, for example.²⁹² It ensures parity between language versions and allows for true multilingualism, where authenticity is shared, rather than a system with one principal language which constitutes the definitive 'source text' with official translated versions also endorsed. However, although as a phenomenon it is not unique to the European Union, other jurisdictions do not work with such a large volume of languages.²⁹³ The wording of the foundational Treaties is equally valid in all 24 of the languages of the European Union; and, according to this, then all subsequent delegated legislation in each language version also enjoys this equal authenticity. EU legislation cannot enter into force in any Member State, until it has been translated into all official languages and published in the Official Journal.²⁹⁴ Therefore, the multilinguality of all the legislation is a defining feature of the EU's legislation. This singularity of the European Union's multilingual system has been

²⁹⁰ Christopher B Kuner, 'The Interpretation of Multilingual Treaties: Comparison of Texts Versus the Presumption of Similar Meaning' (1991) 40 *International and Comparative Law Quarterly* 953, 954.

²⁹¹ Federal Constitution of the Swiss Confederation of 18 April 1999, art 70(1).

²⁹² Section 18, Canadian Charter of Rights and Freedoms, Constitutional Act 1982.

²⁹³ Joanna Jemielniak and Przemyslaw Miklaszewicz (eds), *Interpretation of Law in the Global World: From Particularism to a Universal Approach* (Springer 2010).

²⁹⁴ Case C-146/11 *AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus and Põllumajandusministeerium* (unreported, Judgement of 12 July 2012); Case 0161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I 10841.

classified as 'strong' multilingualism.²⁹⁵ Its main implication is that there is not one authoritative text, with numerous other translations, but that the 'text' itself is composed of each language version and all the meanings implicit in this.

The distinction of the European Union's legal system is that it is not only multilingual, the EU's legal system is also characterised as 'multijural'.²⁹⁶ It is not only an agglomeration of legal systems, but is also new in the version of equally authentic multilingualism it provides. Many problems arise as a result of multilingualism. Plurilingual legal systems are sometimes drawn from different legal traditions, and thus the difficulty is not just reconciling differing language versions but can also go to the nature of the legal issues involved. As Pozzo explains, for the European Union this can mean that:

'The lack of definition of legal concepts inside the directives leave space for interpreting them according to the national legal tradition of the various national systems in which they are introduced....legal concepts are the result of the stratification of different meanings which have been developed by the various traditions over the course of time

²⁹⁵ Theodor Schilling, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 German Law Journal 1460.

²⁹⁶ Theodor Schilling, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 German Law Journal 1460, 1477.

and they may vary quite consistently from legal system to legal system.’²⁹⁷

The unified legal system of the European Union is further problematic in that it is comprised of concepts coming from a range of different legal families. The roots of the legal systems of the EU member states can be classified largely as ‘Civil Law’ systems, which are mainly codified and broadly derived from Roman Law roots, and are prevalent in continental Europe, ‘Nordic law’, present in Scandinavia and Finland²⁹⁸, and the ‘Common Law’ which, although present in only 2 of the member states²⁹⁹, is very distinct as an approach.³⁰⁰

Multilingual law is very complex and multi-layered³⁰¹ As Janson points out ‘languages map reality in very diverse ways through their different sets of concepts.’³⁰² Legal terminology is described as ‘system-specific,’³⁰³ it labels and defines the features of a

²⁹⁷ Barbara Pozzo, ‘Multilingualism as a value in the European Union’ in Gianmaria Ajani, Ginevra Peruginelli, Giovanni Sartor and Daniela Tiscornia (eds), *The Multilanguage Complexity of European Law: Methodologies in Comparison* (European Press Academic Publishing 2007) 134.

²⁹⁸ Jan M Smits, ‘Nordic Law in a European Context: Some Comparative Observations’ in Jaakko Husa, Kimmo Nuotio and Heikki Pihlajamäki (eds), *Nordic Law - Between Tradition and Dynamism* (Intersentia 2007).

²⁹⁹ That is, Ireland, and parts of the United Kingdom. Scots Law is a distinct civil law system.

³⁰⁰ Colin Roberston, ‘EU Legal English: Common Law, Civil Law or a New Genre?’ (2012) 20 *European Review of Private Law* 1215.

³⁰¹ Colin Robertson, ‘Multilingual Law: A Framework for Understanding’ in Felix Mayer (ed), *Language for Special Purposes: Perspectives for the new Millenium*, vol 2 (Gunter Narr 1999) 697-703.

³⁰² Tore Janson, *Speak: a short history of languages* (Oxford University Press 2002) 76.

³⁰³ Gerard-Réné De Groot, ‘The Influence of Problems of Legal Translation on Comparative Law Research’ in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonisation* (Kluwer Law 2012) 139-159.

determinate system, forming its own 'language'.³⁰⁴ This renders law particularly difficult to translate. A further complicating factor within the EU is that some languages are used for more than one legal system, Dutch is used in the Netherlands and Belgium, German is used in Austria and Germany, French is used in Belgium, Luxembourg and France and English is the language of the legal systems of Malta, Ireland, and in the United Kingdom, the Common Law English and Welsh systems and within the Civil law-based Scots system.³⁰⁵ This is represented in the map below, which demonstrates the multiple languages used in each of the legal systems of the Member States.³⁰⁶

³⁰⁴Barbara Pozzo, 'Comparative Law and Language' in *Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

³⁰⁵Colin Robertson, 'How the EU Functions in 23 Languages' (2013) 28 *SYNAPS* 14.

³⁰⁶Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010); infographic courtesy of Cielito Lindo Kommunikációs Szolgáltató Bt..

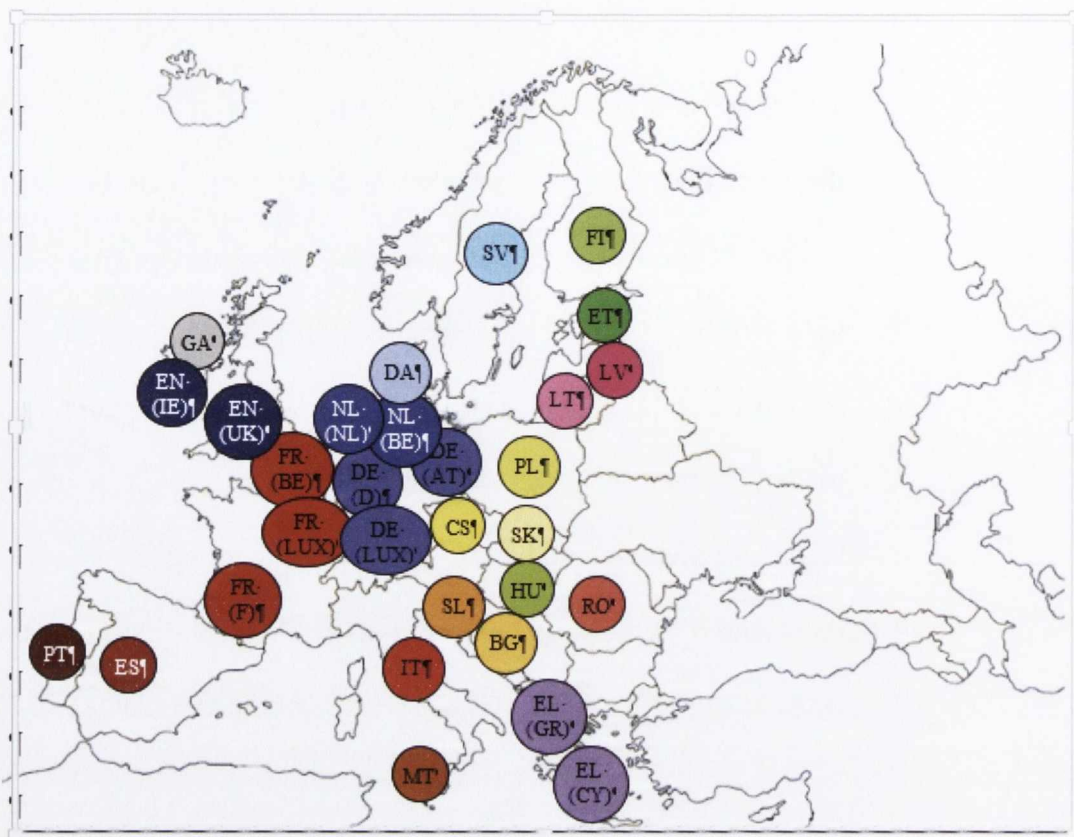


Fig. 4 multilingual systems of EU law

Robertson states

‘Each text is a semiotic act and is fitted within the larger structure of its thematic domain, within EU law generally and within the broader concepts of European law and culture. Within each text the words are matched and aligned with the goal of semantic equivalence across languages.’³⁰⁷

Therefore, any European Union text is composed of the 24 authentic language versions of the same legal text, which all have the same legal value. EU legislative texts are described as ‘synoptic’; there is

³⁰⁷ Colin Robertson, ‘EU Law and Semiotics’ (2010) 23 (2) International Journal for the Semiotics of Law 145, 150.

one single text, in 24 languages. The key concern is that the message of the legislative text is the 'same' in each version. The next section will examine how this works, first from the point of view of drafting and translation, and then how the Court manages this multilingual, multijural law.

(i) The role of translation in the EU's multilingual legal system

Translated law is necessarily less clear than law designed in one original language.³⁰⁸ David Bellos describes this difficulty, affirming 'Law is the very model of an untranslatable text, because the language of law is self-enclosed, and refers to nothing outside of itself. In practice however, laws do get translated, because they must.'³⁰⁹ Cross legal communication is a key feature of an interconnected globalised world.³¹⁰ Legal translation is particularly complex, but increasingly necessary.³¹¹ Tiersma and Solan point out that:

We live in a time of unparalleled effort to create supranational legal systems that cut across legal cultures and national boundaries, and to harmonise the laws of individual legal systems so that cross-border transactions are not impeded by the

³⁰⁸ Lucja Biel, *Lost In The Eurofog: The Textual Fit Of Translated Law* (Peter Lang 2014).

³⁰⁹ David Bellos *Is That a Fish in your Ear? Translation and the Meaning of Everything* (Penguin, 2011) 224

³¹⁰ Giuliana Garzone and Francesca Santulli (eds), *Comunicazione giuridica nel mondo contemporaneo: scelte linguistiche e pratiche discorsive* (Giuffrè 2008).

³¹¹ Deborah Cao, 'Legal Translation: Translating Legal Language' in Alison Johnson and Malcolm Coulthard (eds), *Routledge Handbook of Forensic Linguistics* (Routledge 2010).

fact that the participants do not communicate in the same language, and at times do not even share the same legal concepts.³¹²

Legal translation is at the forefront of this new push for multilateralism.³¹³ There has been a rise in importance of translation theorists to deal with the multilingual legal orders which have arisen as a result of international cooperation.³¹⁴ Although it has always been necessary to facilitate the cooperation of states in international organisations, legal translation is brought to its zenith in the system of the European Union, the most multilingual and the most integrated of them.

Mc Auliffe declares the EU's legal system to be a 'new supranational legal system *with its own language*.'³¹⁵ The language of the EU's legal system is one of equal multilinguality. Translation is the behind the scenes tool which permits the multijural multilingual operation of this supranational legal system. Law has its own language, which is connected to a concrete legal system. Translation in law, therefore, causes difficulties on the theoretical plane.³¹⁶

³¹² Lawrence Solan and Peter Tiersma (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012) 7.

³¹³ Deborah Cao, *Translating Law* (Multilingual Matters 2007).

³¹⁴ Lawrence Solan and Peter Tiersma (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012) 7.

³¹⁵ Karen Mc Auliffe, 'Translation at the Court of Justice of the European Communities' in Frances Olsen, Alexander Lorz and Dieter Stien (eds), *Translation Issues in Language and Law* (Palgrave 2009) 49.

³¹⁶ Susan Šarčević, *New Approach to Legal Translation* (Kluwer 1997) Susan Šarčević 'Coping with the Challenges of Legal Translation in Harmonization' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonization* (Kluwer Law 2012) 83.

Theorists such as Legrand and Glanert assesses the possibilities and limits of legal translation.³¹⁷ They 'see languages and their structural aspects at lexical and or deeper typological levels as so deeply rooted in cultures that they prevent people from understanding each other at deeper levels across linguistic barriers.'³¹⁸ Language is thus viewed as a barrier and one which is in principle insurmountable, even by translation, particularly in the context of law. They sustain comparative law and translated law contain so many cultural foundations that they cannot meaningfully have claims as to truth.³¹⁹ Law undergoes a negotiated process in its creation, and then must further undergo a negotiated process in translation. The singularity of EU law, however, lies in its absence of translation. Bellos explains:

'whether we are dealing with four or twenty three languages, the revolutionary meaning of the basic rule, ill understood when adopted and not widely acknowledged even now, is that in the whole huge mass of paper put out by the EU, there are no translations. Everything is the original, already.'³²⁰

Nonetheless, the *process* of translation plays an important part in sustaining this legal fiction. The multilingual legal order of the

³¹⁷ Simone Glanert, *De la traductibilité du droit* (Daloz 2011).

³¹⁸ J Engberg, 'Word Meaning And The Problem Of A Globalised Legal Order' in Lawrence Solan and Peter Tiersma (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012) 179.

³¹⁹ Pierre Legrand and Simone Glanert, 'Translation and Truth' in Michael Freeman and Fiona Smith (eds), *Language and Law* (Oxford University Press 2013).

³²⁰ David Bellos *Is That a Fish in your Ear? Translation and the Meaning of Everything* (Penguin, 2011) 238

European Union is only rendered possible by extensive translation services. Translation of legal texts can itself cause difficulties, and these are magnified when the translation takes place across over 500 language combinations. The translation services of the European Union institutions are seen as fundamental to the guarantee of coherence of EU law.³²¹ The European Union system requires massive coordination, and has led to the invention of tools such as ELISE,³²² a database which permits all bodies involved in a text to 'share linguistic information on the text (for instance, terminology issues, explanations, and experts who have been consulted).'³²³ The main instrument for terminology coordination in the European Union is their inter-institutional terminology database IATE: 'With more than 8 million terms, including abbreviations and standard phrases, IATE is the largest terminology database in the world.'³²⁴

Clearly, however, despite these attempts to guarantee consistency in the creation of a repository of knowledge, there is potential for human error, and for certain concepts and ideas to become 'lost in translation'. There were 506 possible language combinations with only 23 official languages, a number which has

³²¹ Leo Mulders, 'Translation at the Court of Justice of the European Communities' in Sacha Prechal and Bert van Roermund (eds), *The Coherence of EU Law: The Search for Unity in Divergent Concepts* (Oxford University Press 2008) 45.

³²² European Institutions Linguistic Information Storage and Exchange database.

³²³ Council of the European Union, 'The Language Service of the General Secretariat of the Council of the European Union: Making Multilingualism Work' (European Union 2012).

³²⁴ *ibid.*

increased since the addition of Croatian in 2013.³²⁵ 24 official languages provides 522 potential combinations. To save time, and as resources are stretched a relay system is used.³²⁶ Documents in less widely spoken languages are first translated into one of the three most commonly used relay languages (English, French or German) and then into other languages. These 'pivot' or relay languages then become the basis for translation.³²⁷ This system has been criticised by the United Nations in their own practices.³²⁸ Within the structures of the CJEU, the pivot system means that drafting of AG opinions, takes place in one of the pivot languages to save time on translations.³²⁹ Although correct translation of terminology is important, correct translation of the conceptual foundations is more important. As a further guarantee, to ensure coherence and conformity, the European Union has an additional layer of translators

³²⁵ Karl-Johan Lönnroth, 'Why is the language policy in EU political dynamite?' (Centre for European Policy Studies speech, 22 February 2008)

³²⁶ Martina Künnecke, 'Translation in the EU: Language and Law in the EU's Judicial Labyrinth' (2013) 20(2) *Maastricht Journal of European and Comparative Law* 243.

³²⁷ The pivot system facilitates translation and limits the number of language combinations that direct translation would require, which would currently number over 500, and could potentially expand with each accession. French is used as a universal base language, Italian is translated from Romanian, Slovak and Slovenian; German is translated from Bulgarian, Polish and Estonian; English is translated from Czech and Lithuanian; Spanish from Hungarian and Latvian. For more detail see Karen Mc Auliffe, (2008) *European Law Journal* (14) 6 806–818 particularly a very helpful diagram at p.814 also by the same author 'Translation at the Court of Justice of the European Communities' in Frances Olsen, Alexander Lorz and Dieter Stien (eds), *Translation Issues in Language and Law* (Palgrave 2009).

³²⁸ CE King, AS Bryntsev and FD Sohn, 'The Implications of Additional Languages in the United Nations System' (United Nations Doc A/32/237, 1977) para 93, quoted in Piron, *Le défi des langues* (L'Harmattan 1994) 110.

³²⁹ Karen Mc Auliffe, Language and Law in the European Union: the Multilingual Jurisprudence of the ECJ in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook Of Language And Law* (Oxford University Press 2012)

in place, the 'lawyer-linguists'. The difference between drafting and translating in the context of the European Union is not clear-cut.

Within the EU system 'the mutual basis for the semiotic process is performed on the basis of 23 (sic.) different language versions and not on the basis of any monolingual official text with a privileged position.'³³⁰ The Lawyer-Linguists verify both the linguistic and legal equality of the texts and ensure the conformity of legal texts across all 24 EU official languages. The drafting stage also comprises comparison of all language versions as we can see from the *Netherlands v Commission* case.³³¹ A member state cannot rely on an interpretation of the law which is different only in their language, where the mistake is an obvious one and occurs only in one language version. The Court states:

The Netherlands authorities were closely involved in the drafting of Regulation No 1469/94. By comparing the Dutch version with the other language versions, they should have noticed immediately that there was an error. In any event, they should have contacted the Commission's representatives to discuss the problem and find a solution to it.³³²

³³⁰ J Engberg, 'Word Meaning And The Problem Of A Globalised Legal Order' in Lawrence Solan and Peter Tiersma (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012) 179, 185.

³³¹ Case C-132/99 *Netherlands v Commission* [2002] ECR I-02709.

³³² Case C-132/99 *Netherlands v Commission* [2002] ECR I-02709, para 24.

In order to combat this difficulty, the lawyer-linguists must be careful not only to translate but to coordinate across legal concepts and legal systems to ensure the conformity of EU law.³³³ The legislators, of course, also have a duty to make clear their meaning during this coordination process.

The European Union has an amalgamated system of drafting and translating, using Lawyer-Linguists as cultural and legal mediators, as well as linguistic experts.³³⁴ Legal language must be precise and clear, and ambiguity must be eradicated insofar as possible during the drafting process. Within the United Nations, a similar editorial process takes place, which is called 'concordance'.³³⁵ These are a unique solution to the problems of multilingual operations and are present at the UN and in the Canadian system.³³⁶ Due to the scale of the operation of EU multilingual law, the EU's lawyer-linguists are uniquely skilled.³³⁷ Schilling points out that

[w]hat gives additional traction to the special situation of the EU... [is the fact that] while much of the said Toolbox] is

³³³ Annarita Felici, 'Translating EU law: legal issues and multiple dynamics' (2010) 18(2) *Perspectives: Studies in Translatology* 95.

³³⁴ Susan Šarčević and Colin Robertson, 'The work of lawyer-linguists in the EU institutions' in Anabel Borja Albi and Fernando Prieto Ramos (eds), *Legal Translation in Context: Professional Issues and Prospects* (Peter Lang 2013); Barbara Pozzo and Valentina Jacometti (eds), *Multilingualism and the Harmonisation of European Law* (Kluwer Law International 2006).

³³⁵ Deborah Cao and Xingmin Zhao, 'Translation at the United Nations as Specialized Translation' (2008) 9 *The Journal of Specialised Translation* 54

³³⁶ Termed *Jurlinguists* in Canada: Daithí Mac Carthaigh, 'Interpretation and Construction of Bilingual Language Laws: A Canadian Lamp to Light the Way?' 2007 (2) *Judicial Studies Institute Journal* 211

³³⁷ Samantha Hargitt, 'What Could Be Gained in Translation: Legal Language and Lawyer-Linguists in a Globalized World' (2013) 20(1) *Indiana Journal of Global Legal Studies* 425.

accessible only in the language of the respective legal system, which is not necessarily widely understood outside its country of origin, the competent EU Institutions have staff who are between them conversant with all those legal systems and fluent in all their languages.³³⁸

The next section analyses the porous barrier between translation and drafting within the context of multilingual EU law.

(ii) Drafting or translating?

The drafting of EU legislation takes place across 24 official languages.³³⁹ Unlike in systems which rely on translation, in the EU there is no one single authentic version '*qui fait foi*'. Translation, therefore, is an important harmonisation tool.³⁴⁰ Legal texts are composed of all 24 language versions cumulatively, rather than one original and 23 equally valid translations. Therefore, the law is drafted not in one language, but across 24 languages and legal systems.³⁴¹ The interinstitutional agreement on drafting of legislation recommends that '[t]hroughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures

³³⁸ Theodor Schilling, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 German Law Journal 1460, 1477.

³³⁹ William Robinson, 'How the European Commission Drafts Legislation in 20 Languages' (2005) 53 (4) Clarity International, 6.

³⁴⁰ Ingemar Strandvik, 'Legal Harmonisation Through Legal Translation: Texts that Say the Same Thing?' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonisation* (Kluwer Law 2012) 25.

³⁴¹ Agnieszka Doczekalska, 'Drafting or Translation: Production of Multilingual Legal Texts' in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan 2009).

which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care.³⁴² Ingemar Strandvik, Quality Manager in the European Commission's Directorate General for Translation highlights that: 'The addressees' expectations as regards readability and understandability are determined by national drafting and genre conventions.' The style of legislative drafting varies across languages and legal systems in the European Union. Lawyer-linguists play a central role in this drafting process.³⁴³

The specificity of the EU's multilingual system lies in the number of language versions it protects. Bilingual drafting takes place in multilingual legal systems, for example in Canada, Switzerland and Belgium. A process of co-drafting takes place in the Canadian context.³⁴⁴ Canada is a bilingual but also in certain states, bijural, country, due to Quebec's Civil Law system which coexists with the common law of other Canadian states.³⁴⁵ The importance of bilingual drafting has been emphasised by the Government of Canada in a 1999 Cabinet Directive on Law-Making.

³⁴² Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting [1999] OJ C73/01.

³⁴³ Susan Šarčević and Colin Robertson, 'The work of lawyer-linguists in the EU institutions' in Anabel Borja Albi and Fernando Prieto Ramos (eds), *Legal Translation in Context: Professional Issues and Prospects* (Peter Lang 2013) 181.

³⁴⁴ Will Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010).

³⁴⁵ Will Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010) 301.

The Constitution Act 1867 requires federal laws to be enacted in both official languages and makes both versions equally authentic. It is therefore of primary importance that bills and regulations be prepared in both official languages. It is not acceptable for one version to be a mere translation of the other. For this reason, sponsoring departments and agencies must ensure that they have the capability to develop policy and to consult and instruct legislative drafters in both official languages.³⁴⁶

This ideal can also be identified in the drafting guidelines for legislation in the European Union.³⁴⁷ These further underscore the principle of equal authenticity of all language versions, emphasising that the 'original' is a composite of all 24 official language versions.³⁴⁸

The drafting that takes place in the European Union is a hybrid of translation and co-drafting. The key difference for legislative drafters where the principle of equal authenticity is in place, is that there is no 'original' to work from.³⁴⁹ Strandvik reminds us that 'In multilingual law-making, the resulting language versions are the law,

³⁴⁶ Privy Council Office, *Cabinet Directive on Law-Making* (March 1999).

³⁴⁷ Joint Practical Guide of the European Parliament, the Council and the Commission for the Drafting of Community legislation (Office for Official Publications of the European Communities 2003) ISBN: 92-894-4063-5

³⁴⁸ *ibid.*

³⁴⁹ Richard Wainwright, 'Drafting and interpretation of multilingual texts of the European Community' in Sacco (ed), *L'interprétation des textes juridiques rédigés dans plus d'une langue* (L'Harmattan Italia 2002).

not just information about law applicable elsewhere.³⁵⁰ Within the EU;

Multilingual law-making is based...on a mixed system where drafting, and translating activities and those ensuring the legal-linguistic consistency alternate and where each phase is supported by procedural guarantees in order to achieve high-quality legal texts.³⁵¹

However, English is increasingly used as the base language of legislative drafting.³⁵² This can be seen from the table below, which demonstrates the increased prevalence of English as a source language for translation.³⁵³

Source language for translation	1997	2004	2008
EN	45 %	62 %	72 %
FR	41 %	26 %	12 %
DE	5 %	3 %	3 %
Other	9 %	9 %	13 %

³⁵⁰ Ingemar Strandvik 'EU Translation – Legal Translation in Multilingual Lawmaking speech at 'The Eleventh International Forum "The Life of Interpreters and Translators – Joy and Sorrow?" 19-21 September 2013, Belgrade. Proceedings. Miodrag Vukčević (ed) Belgrade: Udruženje naučnih i stručnih prevodilaca Srbije (2014 Cobalt Blue).

³⁵¹ Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010) 151.

³⁵² Jaakko Husa, 'English as a Legal Lingua Franca in the EU Multilingual Context' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonization* (Kluwer Law 2012).

³⁵³ Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010), table courtesy of Cielito Lindo Kommunikációs Szolgáltató Bt..

Strandvik states that within the EU context, 'In practice, in 23 out of the 24 official languages the 'drafters' are the translators.'³⁵⁴ These must perform a translation process which is somewhere between translating and drafting, all the while remaining aware of the strict need for conformity across 24 language versions.

In light of this necessity of conformity, the Legal Services of the Commission, the Council and the European Parliament have issued practical drafting guidelines.³⁵⁵ The Joint Practical Guide (JPG) complements other, more specific guidelines from each of the institutions, and an inter-institutional style guide which aims to guarantee conformity across language versions.³⁵⁶ These guidelines demonstrate an explicit concern for legal certainty and legitimate expectations regarding multilingual EU legislation.³⁵⁷ The Joint Practical Guide also prioritises the use of generic terms, or terms which have been established within the canon of EU law, stating 'the

³⁵⁴ Ingemar Strandvik 'EU Translation – Legal Translation in Multilingual Lawmaking speech at 'The Eleventh International Forum "The Life of Interpreters and Translators – Joy and Sorrow?"' 19-21 September 2013, Belgrade. Proceedings. Miodrag Vukčević (Ed.). Belgrade: Udruženje naučnih i stručnih prevodilaca Srbije, (2014 Cobalt Blue). ISBN 978-86-917873-0-1.

³⁵⁵ Joint Practical Guide of the European Parliament, the Council and the Commission for the Drafting of Community legislation (Office for Official Publications of the European Communities 2003) ISBN: 92-894-4063-5

³⁵⁶ Council Resolution of 8 June 1993 on the quality of drafting of Community legislation [1993] OJ C166/1; Commission, 'General guidelines for legislative policy' SEC (1995) 2255/7 ; Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation [1999] OJ C73/1; Council of the European Union and General Secretariat of the Council, *Manual of precedents for acts established within the Council of the European Union* (2002).

³⁵⁷ Joint Practical Guide of the European Parliament, the Council and the Commission for the Drafting of Community legislation (Office for Official Publications of the European Communities 2003) ISBN: 92-894-4063-5 emphasised at point 1.2.

use of expressions and phrases - in particular, but not exclusively, legal terms- too specific to the author's own language or legal system, will increase the risk of translation problems.³⁵⁸ The multilinguality of EU Law is responsible for its characteristic drafting style.³⁵⁹ Legislative instruments must be equivalent in all versions and are meticulously checked for consistency, both with previous laws but also across language versions. This holds true for the judgements of the Court also. McAuliffe states that the multilingual jurisprudence of the Court of Justice of the European Union is 'necessarily shaped by the way in which it is produced: drafted in a language that is rarely the mother tongue of the drafter; consisting of a blend of cultural and linguistic patterns; constrained by a rigid formulistic drafting style and put through many permutations of translation.'³⁶⁰ Negotiated meaning, in a multicultural and multilingual system, is the result of the different background knowledge, cultural factors, political compromises and linguistic art of its drafters and translators.³⁶¹ The EU system has its own legislative language.³⁶² This is true both in

³⁵⁸ Joint Practical Guide of the European Parliament, the Council and the Commission for the Drafting of Community legislation (Office for Official Publications of the European Communities 2003) ISBN: 92-894-4063-5 emphasised at point 5.3.

³⁵⁹ E Wagner, 'Quality of Written Communication in a Multilingual Organisation' (2000) 1 *Terminologie et Traduction* 5.

³⁶⁰ Karen Mc Auliffe, Language and Law in the European Union: the Multilingual Jurisprudence of the ECJ in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook Of Language And Law* (Oxford University Press 2012) 214.

³⁶¹ Tito Gallas, 'Coredazione e Traduzione Giuridica nella Legislazione Multilingue, in Particolare Quella Comunitaria' (1999) 43(4) *Quaderni di libri e riviste d'Italia: la traduzione, saggi e documenti*.

³⁶² Richard Foley, 'Legislative language in the EU: The crucible' (2002) 15 *International Journal for the Semiotics of Law* 361.

terms of the style employed in the drafting of EU texts, and in the emergence of terms specific to the legal system of the EU.

(iii) Terms in EU law

Legal concepts are specific to their context. They are moulded by the culture and the system they are designed to control.³⁶³ Although the European Union is a new legal order,³⁶⁴ it is one composed of and drawing upon the traditions of the legal systems of its Member States. Pozzo describes the problems this can entail for the European legal order thus:

‘Legal concepts are the result of the stratification of different meanings which have been developed by the various traditions over the course of time and they may vary quite consistently from legal system to legal system.’³⁶⁵

The conceptual incongruity occurs as there is often only marginal equivalence between concepts in legal systems. Unique legal terms arise in drafting, and are implemented in the interpretation of the Court. This leads to the creation of an EU-negotiated meaning for previously established terms. Robertson explains that:

‘Term equivalences become attached at the level of the primary law and these equivalences have to be respected by

³⁶³ Vijay Bhatia, Christopher Candlin and Maurizio Gotti, ‘Introduction’ in *Language, Culture and the Law: The Formulation of Legal Concepts Across Systems and Cultures* (Peter Lang 2008).

³⁶⁴ Case 26/62 *Van Gend en Loos* [1963] ECR 1.

³⁶⁵ Barbara Pozzo, ‘Multilingualism as a value in the European Union’ in *The Multilanguage Complexity of European Law: Methodologies in Comparison* (European Press Academic Publishing Florence 2007) 134.

the secondary law, in order for coherence, consistency and clarity of message to be maintained as far as possible. Thus the picture is of a vast matrix of lexical webs that are fixed within each language and fixed across and between all the languages.³⁶⁶

Meaning in EU law derives from all 24 language versions as a whole. The creation of new terms is an integral part of the EU's supranational multilingual system.³⁶⁷ Concepts simply may not have a correspondence in all 28 legal systems of the EU, yet, all language versions of EU legislation are 'authentic'. Therefore, European Union law has its own legal concepts. This is reflected in the terminology used within the EU's legal system. The Court of Justice of the European Union established, in the *CILFIT* judgement³⁶⁸ that EU legal terms enjoy 'conceptual autonomy', that is to say that a term may mean one thing at national law, but this term may have different implications in the context of EU terminology. Even where terms have a common meaning across all the language versions, the EU usage of that term may have an independent meaning.³⁶⁹ This doctrine of independent meaning of Community terms has been reinforced in *Kingscrest* where the Court stated that 'the word 'charitable' ... has its

³⁶⁶ Colin Robertson, 'EU Law and Semiotics' (2010) 23 (2) *International Journal for the Semiotics of Law* 145, 153

³⁶⁷ James Brannan, 'Coming to Terms with the Supranational: Translating for the European Court of Human Rights' (2013) 26(4) *International Journal for the Semiotics of Law* 909.

³⁶⁸ Case 283/81 *CILFIT v Ministero della Sanità* [1982] ECR 3415, para 18

³⁶⁹ Deborah Cao, 'Judicial Interpretation of Bilingual/Multilingual Laws: A European and Hong Kong Comparison' in Joanna Jemielniak and Przemyslaw Miklaszewicz (eds), *Interpretation of Law in the Global World: from Particularism to a Universal Approach* (Springer 2010).

own independent meaning in Community law which must be interpreted taking account of all the language versions of that directive.³⁷⁰ The AG recommending that 'In order to clarify the meaning of the expression 'charitable' ...reference must be made to the other language versions of those provisions, and the term cannot be given the meaning which it has in national law if that would lead to divergent interpretations.'³⁷¹

The European Union is tasked with drafting its original legislation in the form of 'a single multilingual text created in 23 language versions that are authentic within the context of the EU legal order.'³⁷² That, therefore, implies close term equivalence across languages. The hybridity of this negotiated law is a defining feature of the law of the European Union and defines the sui generis nature of EU law as international law. EU law is its own language, resulting from a combination of linguistic interpretations.

EU legal concepts may, as a result of the conceptual autonomy of EU law, partly or fully secede from their original content in the various legal systems, resulting in the

³⁷⁰ Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise* [2005] ECR I-04427, para 27.

³⁷¹ Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd v Commissioners of Customs & Excise* [2005] ECR I-04427, Opinion of AG Ruiz-Jarabo Colomer.

³⁷² Colin Robertson, 'Multilingual Legislation in the European Union: EU and National Legislative-Language Styles and Terminology' (2011) 9(1) *Research in Language* 51.

complexity of the relationship between the national and European concepts.³⁷³

This interlingual cooperation, and the production of texts across multiple languages can pose ontological legal problems. Kjaer believes that there should be a particular and specialised theory of translation developed for the specific translations that take place within the framework of the EU legal order, where the negotiation of meaning takes place over 24 possible language versions, and the meaning of each of these is comprised within the law.³⁷⁴ The concrete possibility of irreconcilable versions of texts means that Pierre Legrand believes that there is no convergence possible in the creation of a multilingual legal system for the EU, as the concepts coming from each language version of EU law are necessarily different.³⁷⁵ Legal translation in a system of 24 languages is an imperfect science.³⁷⁶ The next section considers how the Court deals with the outcome of this translation process, analysing the principle of multilingual authenticity in practice.

³⁷³ Réka Somssich et al, *Study on Lawmaking in the EU Multilingual Environment* (European Commission Directorate General for Translation 2010) 132.

³⁷⁴ Annelise Kjaer, 'Legal Translation in the European Union: A Research Field In Need Of A New Approach' in Krzysztof Kredens and Stanislaw Gozd-Roszkowski (eds), *Language And The Law: International Outlooks* (Peter Lang 2007).

³⁷⁵ Pierre Legrand, 'The Impossibility of 'Legal Transplants'' (1997) 4 *Maastricht Journal of European and Comparative Law* 111; Pierre Legrand *Comparer les droits, résoluement* (Presses Universitaires de France 2009).

³⁷⁶ Karen Mc Auliffe, 'The limitations of a multilingual legal system' (2013) 26(4) *International Journal for the Semiotics of Law* 861.

IV Multilingual Authenticity: the Implementation of Full Linguistic Equality

As outlined at the beginning of this chapter, the principle of equal authenticity is not unusual within multilingual regimes. When interpreting the legislative provisions of the EU, all language versions are considered official, and of equal validity. This equality has far reaching implications, which this section will examine in action within the European Union's legal system. The Vienna Convention is the international standard for interpretation of multilingual agreements and laws³⁷⁷, and although the European Union is not a signatory, its rules are recognised broadly as binding.³⁷⁸ Article 33 of the Vienna Convention on the Law of treaties covers interpretation of equally authentic language versions, stating: '[w]hen a Treaty has been authenticated in two or more languages, the text is equally authoritative in each language.'³⁷⁹ This equality of authoritativeness finds its ultimate expression in the multilingual system created in the European Union.

The fundamental question in interpreting any translated legal document goes to interpreting from the definitive version of the text. In light of all versions being equal, this is not the case with EU law. The Court has clearly stated the principle that the Maltese or

³⁷⁷ Günther Grewendorf and Monika Rathert (eds), *Formal Linguistics and Law* (Walter de Gruyter 2009).

³⁷⁸ TC Hartley, *The Foundations of European Union Law: An Introduction to the Constitutional and Administrative Law of the European Union* (Oxford University Press 2010).

³⁷⁹ Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331.

Estonian version of a legislative instrument carries just as much weight as the English or French version, declaring 'All the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question.'³⁸⁰ Creating a doctrine of equal authenticity designates *multiple* definitive versions, within the EU philosophy that all versions enjoy equal legitimacy. Each language version enjoys the same formal status. This is a legal fiction which can cause some confusion.³⁸¹ The 'fiction of equivalence' is necessary to allow the EU to operate multilingually.³⁸²

Multilingual Authenticity has been described as a 'translational paradox'.³⁸³ The European Union's system of multilingual authenticity is described as 'strong multilingualism'. Schilling suggests adopting 'weak multilingualism', where official language versions would not all enjoy equal validity. He claim this would permit the existence of many language versions of legal texts, but advocates one official language version to be designated as the authentic source document, claiming this would resolve problems of

³⁸⁰ Case C-296/95 *The Queen v Commissioners of Customs and Excise ex parte EMU Tabac and others* [1998] ECR I-1605.

³⁸¹ Agnieszka Doczekalska, 'Drafting and interpretation of EU Law: Paradoxes of legal multilingualism' in Günther Grewendorf and Monika Rathert (eds), 'Formal Linguistics and Law' (de Gruyter 2009); Mattias Derlén, *Multilingual Interpretation of European Union Law* (Kluwer Law International 2009).

³⁸² Anthony Pym, 'The European Union and its Future Languages: Questions for Language Policies and Translation Theories' (2000/1) *Across Languages and Cultures* 1.

³⁸³ Agnieszka Doczekalska, 'Drafting and interpretation of EU Law: Paradoxes of legal multilingualism' in Günther Grewendorf and Monika Rathert (eds), 'Formal Linguistics and Law' (de Gruyter 2009).

certainty.³⁸⁴ This is unlikely to happen, as chapter 5 demonstrates.³⁸⁵ The practice of having one authoritative version which is the 'original', from which others are translated is standard practice.³⁸⁶ It was the method of drafting multilateral treaties. The process of multilingual drafting put in place by the EU marks a huge innovation. Multilingual drafting is not unique to the European Union, as the beginning of this chapter shows, however, the scale is unprecedented. This is a significant and remarkable innovation of the system of the European Union, and it is strongly protected by the Court. The *Skoma Lux*³⁸⁷ and *Pimix*³⁸⁸ cases established that the enforceability of those acts of Community law against third parties was not effective until its publication of the relevant language version in the Official Journal of the European Union.

David Bellos remarks that in the European Union, 'Nothing is a translation- except that everything is translated.'³⁸⁹ Translation obligations generally occur within the context of guaranteeing other

³⁸⁴ Theodor Schilling, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 *German Law Journal* 1460.

³⁸⁵ Agnieszka Doczekalska, 'Drafting and interpretation of EU Law – Paradoxes of legal multilingualism' in Günther Grewendorf and Monika Rathert (eds), *Formal Linguistics and Law* (de Gruyter 2009).

³⁸⁶ Daithí Mac Carthaigh, 'Interpretation and Construction of Bilingual Language Laws: A Canadian Lamp to Light the Way?' 2007 (2) *Judicial Studies Institute Journal* 211.

³⁸⁷ Case 0161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I 10841

³⁸⁸ Case C-146/11 *AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus and Põllumajandusministeerium* (Judgement of 12 July 2012).

³⁸⁹ David Bellos *Is That a Fish in your Ear? Translation and the Meaning of Everything* (Penguin, 2011)238

rights, such as fair trial rights.³⁹⁰ Within the European Union legal system however, the translation obligation is *a priori* in place. The citizen has access to the law in all language versions and a law in force can be considered unenforceable unless the relevant language version appears in the Official Journal.³⁹¹ Translation is necessary for the language rights the EU guarantees.

Equal authenticity is enshrined in the treaties. Article 55 is the foundational text for this authenticity. Article 358 TFEU adopts it, stating: 'The provisions of Article 55 of the Treaty on European Union shall apply to this Treaty.' Therefore, each language version is equally 'authentic'.³⁹² The principle of equal authenticity was designed to confer full authority to all language versions, abolishing, therefore, the disparity in status between 'source' and 'translated' legal documents.³⁹³ Despite this, and the unique nature of this particular multilingual law spanning 24 versions, it has not stopped the court from carrying on without major linguistic difficulty.³⁹⁴ We have already touched upon the 'multijural' nature of EU law and its legal

³⁹⁰ Gabriel González Núñez, 'Translating to Communicate with Linguistic Minorities: State Obligations under International Law' (2013) 20(3) *International Journal on Minority & Group Rights* 405.

³⁹¹ Case 0161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I 10841; Case C-146/11 *AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus and Põllumajandusministeerium* (Judgement of 12 July 2012).

³⁹² Mattias Derlén, *Multilingual Interpretation of European Union Law* (Kluwer Law International 2009).

³⁹³ Susan Šarčević, *New Approach to Legal Translation* (Kluwer 1997).

³⁹⁴ CJW Baaij, 'Fifty Years of Multilingual Interpretation in the European Union' in Tiersma and Solan (eds), *The Oxford Handbook of Language and Law* (Oxford University Press, 2012); Barbara Pozzo, 'L'interpretazione della Corte del Lussemburgo del testo multilingue: una rassegna giurisprudenziale' in Barbara Pozzo and Marina Timoteo (eds), *Europa e Linguaggi giuridici* (Giuffrè 2008).

system earlier in this chapter. Robertson states 'The concept of 'authenticity' carries the meaning that the text is official and may be used for all official purposes, including relying on it before the authorities and pleading its terms before a court; the text stands alone and a judge, for example, uses it directly in making decisions. All the language versions are intended to carry the same message.'³⁹⁵ Equal authenticity of all language versions obviously poses interpretative problems.³⁹⁶

The Court has explicitly stated that 'it follows from the consistent caselaw of the Court that an interpretation of a provision of law involves a comparison of the language versions.'³⁹⁷ This principle was established in the *CILFIT* case,³⁹⁸ which states 'it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic.'³⁹⁹ Pauino discusses this concept of legal certainty (an important administrative notion) and how it can be guaranteed despite multilinguality of EU law.⁴⁰⁰ The Court does this by employing a range of interpretative methods. The Court looks to the 'general

³⁹⁵ Colin Robertson, 'EU Law and Semiotics' (2010) 23(2) *International Journal for the Semiotics of Law* 145, 147.

³⁹⁶ Mattias Derlén, *Multilingual Interpretation of European Union Law* (Kluwer Law International 2009).

³⁹⁷ Case C-36/98 *Kingdom Of Spain v. Council Of the European Union* [2001] ECR I-779, para 47.

³⁹⁸ Case 283/81 *CILFIT v Ministero della Sanità* [1982] ECR 3415, para 18.

³⁹⁹ *ibid.*

⁴⁰⁰ Elina Pauino, *Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice* (Ashgate Publishing 2013).

scheme and purpose' of the legislation.⁴⁰¹ By applying a teleological method of interpretation, the court interprets the meaning of legislative instruments across all language versions given their equal authenticity.⁴⁰² However, the Court has expressed its reluctance to become embroiled in minute comparison of linguistic discrepancies, holding that:

The elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words. Consequently, it is preferable to explore the possibilities of solving the points at issue without giving preference to any one of the texts involved.⁴⁰³

Thus, the Court engages in teleological reasoning to circumvent the inconvenience of multilingual law.

Where there is a discrepancy between different language versions, the need for interpretation is greatest, as established by the

⁴⁰¹ CJW Baaij, 'Fifty Years of Multilingual Interpretation in the European Union' in Tiersma and Solan (eds), *The Oxford Handbook of Language and Law* (Oxford University Press, 2012).

⁴⁰² Case 9/79 *Koschniske* [1979] ECR 2717, para 6; Case 100/84 *Commission v United Kingdom* [1985] ECR 1169, para 17; Case C-152/01 *Kyocera Electronics Europe* [2003] ECR I-13821, para 33; and Case T-80/97 *Starway v Council* [2000] ECR II-3099, para 81.

⁴⁰³ Case 80/76 *North Kerry Milk Products Ltd v Minister for Agriculture and Fisheries* [1977] ECR 425.

Court in *Bouchereau*⁴⁰⁴, and in *Netherlands v Commission*.⁴⁰⁵ Looking to the object and purpose is necessary to guarantee the implementation of the objectives and thus the Court chooses the interpretation which best fits the objectives.⁴⁰⁶ This method of interpretation is necessitated by the multilingual nature of EU law, but also the doctrines of uniform and harmonious application and interpretation. Where there is a discrepancy between the language versions of a community instrument the court interprets the direction in question teleologically.⁴⁰⁷ In *Stauder v City of Ulm*, a foundational judgement for EU law, the Court decided that one text version of Community law could not be considered in isolation, because of the overarching doctrines of uniform application and interpretation. By the same token, language versions may be interpreted harmoniously. As the Court states in *Sumitomo*

the need for a uniform interpretation of Community regulations means that a particular provision should not be considered in isolation but, in cases of doubt, should be interpreted and applied in the light of the other official languages, in the case of divergence between language versions, the provision in question must be interpreted by

⁴⁰⁴ Case 30/77 *Regina v Bouchereau* [1977] ECR 1999.

⁴⁰⁵ Case 11/76 *Netherlands v Commission* [1979] ECR 245, para 6.

⁴⁰⁶ Agnieszka Doczekalska, 'Drafting or Translation? The Production of Multilingual Legal Texts' in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan 2009).

⁴⁰⁷ Case 100/84 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169.

reference to the purpose and general scheme of the rules of which it forms part.⁴⁰⁸

Furthermore, the Court held in *Van der Vecht*⁴⁰⁹ that a global interpretation, taking into account all the language versions was necessary, stating

the need for a uniform interpretation of Community regulations necessitates that this passage should not be considered in isolation, but that, in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other ... languages.⁴¹⁰

Reliance on one language version is not possible, given the principle of multilingual authenticity in place.⁴¹¹

It has been suggested, however, that having 23 equally authentic language versions actively harms legal certainty,⁴¹² and means that EU citizens cannot foresee certain implications of EU law, despite the doctrine of Uniform Application.⁴¹³ The equality of authenticity is an ontological impossibility. Contradictory versions or

⁴⁰⁸ Joined Cases T-22/02 and T-23/02 *Sumitomo Chemical and Sumika Fine Chemicals v Commission* [2005] ECR II-04065. The same principle can be identified in Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-04291.

⁴⁰⁹ Case 19/67 *Van der Vecht* [1967] ECR 345, 354.

⁴¹⁰ Case 19/67 *Van der Vecht* [1967] ECR 345.

⁴¹¹ Case C-372/88 *Milk Marketing Board v. Cricket St Thomas*, 1990 ECR I-1345

⁴¹² Elina Paunio and Susanna Lindroos-Hovinheimo, 'Taking Language Seriously: An Analysis of Linguistic Reasoning and its Implications in EU Law' (2010) 16(4) *European Law Journal* 395.

⁴¹³ Theodor Schilling, 'Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of Community Law' 16(1) *European Law Journal* 47.

interpretations are necessarily intractable if all language versions are equal. Solan actually suggests that consulting various translations of the same text may help to derive a clearer meaning.⁴¹⁴ Comparison of language versions, although not a priori always necessary is not unusual within the decision of the Court, however, this tends to take place at the level of AG decisions.⁴¹⁵ The comparison of different language versions by national courts, however, is not required. The Opinions of AGs have tried to mitigate this onerous burden, which appeared to be imposed by the *CILFIT* judgement. AG Jacobs has said it would be 'disproportionate effort' for national courts to compare all language versions.⁴¹⁶ AG Tizzano has declared that the *CILFIT* judgement, while clearly setting out that the interpretation of Community law involves comparison of all the different language versions, this is not a duty of each national jurisdiction, stating;

In my view, the Court is insisting not that the national court should always compare the various language versions of a provision but that it should bear in mind that the provision in question produces the same legal effects in all those versions so that, before assuming that an interpretation is

⁴¹⁴ Lawrence Solan, 'The Interpretation of Multilingual Statutes by the European Court Of Justice' (2009) 34 Brooklyn Journal of International Law 277.

⁴¹⁵ Koen Lanaerts, 'Interlocking Legal Orders in the European Union and Comparative Law' (2003) 52 International and Comparative Law Quarterly 873. See for example Case C-371/02 *Björnekulla Fruktindustrier AB V Procordia Food AB*, Opinion of AG Léger.

⁴¹⁶ Case C338/95 *Wiener SI GmbH v. Hauptzollamt Emmerich* ECR I-6495, Opinion of AG Jacobs, para 65.

correct, it must be sure that it is not doing so merely for reasons associated with the wording of the provision.⁴¹⁷

He argues the Court meant that a provision of Community legislation 'produces the same legal effects in all these versions' and that this should be merely borne in mind by national courts.⁴¹⁸

The legislative production of the European Union, and, as a consequence, the caseload of the CJEU has expanded at a prodigious rate since the inception of the EEC. The language uncertainty implicit in an equal multilingualism regime creates interpretative problems.⁴¹⁹ Where all versions enjoy equal authenticity and the core text is comprised cumulatively of these versions, it is hard to divine a core meaning. Put simply:

When more languages are involved, the initial vagueness of the provision does not disappear, but rather, a new element of indeterminacy is added ... In a multilingual legal system, linguistic indeterminacy may become relevant to legal argumentation even in cases in which, if the language versions are taken separately, no apparent linguistic uncertainty exists.⁴²⁰

⁴¹⁷ Case C-99/00 *Criminal proceedings against Kenny Roland Lyckeskog* [2002] ECR I-04831, Opinion of AG Tizzano, para 75.

⁴¹⁸ Case C-99/00 *Criminal proceedings against Kenny Roland Lyckeskog* [2002] ECR I-04831, Opinion of AG Tizzano, para 75.

⁴¹⁹ Barbara Pozzo, 'L'interpretazione della Corte del Lussemburgo del testo multilingue: una rassegna giurisprudenziale' in Barbara Pozzo and Marina Timoteo (eds), *Europa e Linguaggi giuridici* (Giuffrè 2008).

⁴²⁰ Elina Paunio and Susanna Lindroos-Hovinheimo, 'Taking Language Seriously: An Analysis of Linguistic Reasoning and its Implications in EU Law' (2010) 16(4) *European Law Journal* 395, 414.

The CJEU gets around this problem to some extent, with its doctrines of interpretation. However, Schilling questions how the EU's multilingual legal system complies with the requirements of the rule of law both in terms of accessibility of law and legal certainty,⁴²¹ stating;

when all 23 language versions are equally authentic, and not all of them, considered in isolation, have the same meaning, it follows that different meanings—in the case of laws, this translates into different commands, or different legal consequences—are equally authentic, or equally binding.⁴²²

This is seen as problematic as it is inevitable that it will lead to ambiguities. Baaij argues that 'discrepancies between these language versions both jeopardise the equal authenticity of these versions and make a uniform interpretation and application of EU law in all EU Member States more difficult.'⁴²³ However, these discrepancies are smoothed out by the court in its applications of EU law, as this chapter has shown.

The extensive multilingual drafting system the European Union has devised, which is described at length in this chapter is all

⁴²¹ Theodor Schilling, 'Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of Community Law' 16(1) *European Law Journal* 47.

⁴²² Theodor Schilling, 'Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of Community Law' 16(1) *European Law Journal* 47, 52.

⁴²³ CJW Baaij, 'Fifty Years of Multilingual Interpretation in the European Union' in Tiersma and Solan (eds), *The Oxford Handbook of Language and Law* (Oxford University Press, 2012) 125.

part of a broader effort to provide a unified legal message across language versions. The job of the court, on the other side is to create a unity of legal effect. There is one EU law, whether it is expressed in Spanish, Slovenian or Swedish. The job of the drafters and the lawyer-linguists is to provide for this unity of legal message. The predictability of outcome is central to 'good' law. The legal message should be clear, and its effects should be predictable. However, as a general rule, even in monolingual situations, it is never fully clear what the legal message is until it has been applied by a court. The words on the page in black and white exist in an abstract sphere of meaning. This can be considered the 'legal message' of the text. As soon as they are applied to a concrete situation, their interpretation creates their 'legal effect'.

The interpretation of the law (by an authority, usually a court) is the key step in the application of the law. Law which only exists in the abstract, in the 'black and white words on the page' stage, can be in the same language as its potential application, but this does not lessen the interpretative jump required. The legal message is carefully constructed in an illusion of certainty. Within the process of legislative drafting, legal language often tries to cover all possible combinations of conditions and contingencies.⁴²⁴ The crafting of the legal message is the result of an extensive process of hypothetical

⁴²⁴ Vijay Bhatia 'Cognitive Structuring in Legislative Provisions' in Gibbons (ed) *Language and the Law* (Longman 1994).

worst-case-scenarios and careful definitions. A drafter's aim is that the legal message she has drafted should withstand the battering of real life application. The message of the legislation should be sufficiently clearly drafted that it should be patently obvious to citizens in their daily behaviour and to the court in its application of the law, what is and isn't in the boundaries of the legislation. However, this is an illusion.

In the European Union, the court interprets the meaning with the explicit purpose of providing an *effet utile*. It is brazen in its purposive approach, attempting to close the gap between the legal message and the legal effect of provisions of European Union law. Millet points out that 'Methods of interpretation do not exist in a void but develop in relations to the legislation which falls to be interpreted.'⁴²⁵ Textual ambiguity is not the preserve of European Union law. It is submitted that the legal system of the European Union is unfairly criticised in this regard. The core of meaning and the penumbra of uncertainty HLA Hart so famously described are present in EU law, as in all other systems of law.⁴²⁶ This is no different, on the philosophical plane, whether it takes place in 24 languages or in one language. A drafter drafts, an incident unforeseen by the drafter happens, a judge interprets the applicable law, whose message then

⁴²⁵ T. Millett 'Rules of interpretation of EEC legislation' (1989) *Statute Law Review* 10 (3) 163-82, 167.

⁴²⁶ HLA Hart *The Concept of Law* (Oxford University Press 1961).

comprises the results of that incident. Whether the drafter is one scribe with a quill, a compact team of civil servants, or a sprawling multilingual team of lawyers, translators, and hybrid lawyer-translators, the *process* is the same. It is misleading to frame this as substantively different where more than one language is involved. Legal rules are constantly adjusted and adapted to new situations. Court interpretation of meaning acquires authority- this then becomes the applicable law. When speaking of cross-lingual interpretation, this becomes more complex. However, the essence of the act of interpretation is no different.

All multilingualism does is to enlarge the abstract sphere- so the range of possible meanings is broader. However, the act of interpretation required for application of the legal message, in other terms, creation of the legal effect, is identical. Although the aim of the careful legal drafting and translation of multilingual legislation within the European Union is to eradicate ambiguity, as this chapter has explained, this aim cannot be extracted from the broader legal philosophical problem of the eradication of ambiguity. The system of multilingual authenticity that this chapter describes aims to provide both unity of message and unity of effect. The extent to which either of these is possible is a matter of philosophical debate which goes to the very nature of the existence of a multi-jurisdictional legal system. The fact that this unusual legal system then exists within 24 different languages could further serve to complicate the aims of unity.

However, the Court presses on with its interpretation, aiming to establish a unity of sorts. Legal certainty is one of the fundamental precepts of administrative law across Europe.⁴²⁷ The law must not change without due notice and its meaning must be clear, and relatively fixed through time. Within a multilingual legal system, legal certainty must also operate within another dimension, the interpretation of concepts and of the laws themselves must be consistent across languages.⁴²⁸ The next chapter will examine this further in light of the concept of 'translational justice.'⁴²⁹

V Conclusions

This chapter assessed the centrality of equal authenticity of language versions from a legal point of view. By first analysing the increase in language versions, the political implications of a regime of multilingual authenticity became clear. This chapter explored the difficulties encountered in trying to design a multilingual regime for an expanding organisation. Chapters 5 and 6 demonstrate that the bar for what can be an 'official language' even simply within the structures of the European Union has not been set clearly, and may be broadened to include further state-recognised minority languages. On the other hand, Schilling reasons

⁴²⁷ Jurgen Schwarze, *European Administrative Law* (Sweet and Maxwell 1992) and, by the same author, 'Sources of European Administrative Law' in Stephen Martin (ed), *The Construction of Europe: Essays in Honour of Emile Noel* (Kluwer 1994).

⁴²⁸ Geert Van Calster, 'The EU's Tower of Babel – The Interpretation by the European Court of Justice of Equally Authentic Texts Drafted in more than One Official Language' (1998) 17 *Yearbook of European Law* 363.

⁴²⁹ Reine Meylaerts, 'Translational justice in a multilingual world. An Overview of Translational Regimes' (2011) *Meta:le journal des traducteurs* 56(4), 743-757.

'as not even the use of all official languages is a general principle of Community law, it is not possible to discern in Community law any basis for a general principle giving an additional role to this second tier of additional official languages of the Member States.⁴³⁰

The implications of official status for language, whether giving a degree of recognition to minority languages, or declaring one national language, varies in different national contexts. This is reflected in the reluctant attitude towards language planning undertaken by the European Union, and the minimalistic interpretation of language rights, which will be further explored in the next chapter.

By engaging in a legal analysis of the implications of the equal authenticity of all language versions of EU law, the importance of the language question was demonstrated. Some commentators do believe that the EU should strive for full multilingualism, allowing for the use for every language everywhere in its institutions.⁴³¹ This is a practical impossibility, given the time pressures and delays that the current regime imposes. However, multilingualism is ensured to the degree possible, via extensive translation and drafting practices, and this is central to a doctrine of EU language rights.

⁴³⁰ Theodor Schilling, 'Language Rights in the European Union' (2008) 9(10) *German Law Journal* 1219, 1234.

⁴³¹ Michele Gazzola 'Managing Multilingualism in the European Union: Language Policy Evaluation For The European Parliament' (2006) 5 *Language Policy* 393–417, 396.

The parity of language enshrined in the language rules of the EU is described by the EU as 'a fundamental requirement for the democratic legitimacy of a Union with 28 culturally and linguistically diverse Member States.'⁴³² This quotation from Karl-Johan Lönnroth, head of translation services for the European Commission summarises the view of the European Union institutions on this matter: 'We are looking at rights, not numbers. If there is one Maltese person who does not understand the paper put before him, he has the same rights as any German to have the document translated into his own language.'⁴³³

Relying on Member States to be the final arbiters of the rights protected for EU languages may be contested, but it remains logically coherent with the mission and view of the European Union. The vision of multilingualism effectively embraced by the EU institutions is one of a multilingualism enshrined in symbolic concerns rather than functional ones, and this can be located within a historical context, from the very inception of the language regime of the newly formed European Communities. The view from the institutions themselves is that: 'The multilingualism embraced from the start was thus a pragmatic solution rather than a political

⁴³² Council of the European Union, 'The Language Service of the General Secretariat of the Council of the European Union: Making Multilingualism Work' (European Union 2012).

⁴³³ Karl-Johan Lönnroth, 'Why is the language policy in EU political dynamite?' (Centre for European Policy Studies speech, 22 February 2008) reported in Ivan Camilleri, 'EU translation boss defends Maltese language' *Times of Malta* (Valletta, 10 March 2008) and 'Language director defends EU's costly translations' *EU Observer* (Brussels, 25 February 2008)

statement.⁴³⁴ However, the pragmatism of this solution can be questioned, given the operational difficulties highlighted in this chapter and the previous chapter. I argue that it is a highly political solution, and one which is central to understanding the legal protections of language which exist in the European Union legal system.

As mentioned in Part I, the preservation of linguistic diversity has become a great concern since the late twentieth century. Robertson interprets the EU motto of 'unity in diversity', as implying that the EU's single system of law is expressed in a diversity of languages.⁴³⁵ This chapter examined the validity of that statement, exploring the underlying concept of multilingual authenticity.

The equal status of the official languages is enshrined in the EU's legal foundation. Therefore, equality of authenticity is a significant distinguishing feature of European Union law, which is another marker of its innovative *sui generis* nature. This validity between and across languages appears to be fundamental in the linguistic constitution of the EU. The legal system of the European Union encounters a range of practical difficulties, which is to be expected when dealing with a multilingual and international legal system and the incongruent results this can produce, but legal

⁴³⁴ European Commission, *Translation at the European Commission - A History* (Office for Official Publications of the European Communities 2010) ISBN 978-92-79-08849-0.

⁴³⁵ Colin Robertson, 'EU Law and Semiotics' (2010) 23 (2) *International Journal for the Semiotics of Law* 145.

indeterminacy is among the most serious of the legal problems multilingualism could cause. The Court, however, through a doctrine of interpretation and some pragmatism, has managed to circumvent this threat.

Chapter 7 will explore the evolution of language rights in Europe, in light of the actions of the European Union. The previous chapters have demonstrated that language policy, language politics and language management are deliberated over not merely across multiple academic disciplines, but also in very real governance contexts.

Chapter 7: Language Rights, Citizenship and Democracy in the EU System

The language protections focused on in chapters 5 and 6 regard the language rules of the European Union, its institutions and agencies. They demonstrated language to be central to the political and legal equilibrium achieved by the European Union. This chapter argues that those language policies impact on the democratic shape of the European Union.

It will be argued in this chapter that language rights in the EU are mainly procedural, rather than substantive in nature. The extent to which the multilingual nature of the EU is a distinctive feature of its legal order has been repeatedly emphasised in this thesis. The substantive protection of a general broad category of language rights does not exist in the European Union. The European Union has no competence to implement supranational language policies, or to guarantee extensive language rights. This thesis argues, however, that the language rights provided within the EU legal order, that is to say, rights linked to the official languages of the European Union, are a central part of the legal system of the EU. This chapter explores the potential of language rights within the notion of administrative rights, investigating the administrative guarantees of the European Union's legal system.

This research examines the legal protections of language in the European Union. It argues that the language rights protected in

the European Union are distinct from the language rights protected at international law, outlined in chapter 4. Chapter 5 explained that linguistic diversity is a key challenge for multilateral international politics. However, a further challenge is posed within the context of the European Union, given that it is an international organisation with a direct relationship with its citizenry.⁴³⁶ This is reflected in the extensive system of provision for languages which has been put in place by the EU.

This thesis maintains that language rights within the context of the European Union are only one part of the protection of language in the European Union. They are granted through the medium of the Member States' approval and consent. Although this formulation of EU language rights may appear minimalistic, this chapter argues that it is a key part of citizenship of the European Union and is viewed as central to the democratic legitimacy of the EU. This distinctive language rights of the EU system in facilitating communication with the EU institutions will be considered in this chapter. It claims that these are the core language rights guaranteed by the European Union.

⁴³⁶ Joan de Bardeleben and Achim Hurrelmann (eds) *Transnational Europe : promise paradox limits* (Palgrave Macmillan 2011)

I Languages, Legitimacy and Democracy in the EU

Language forms a core aspect of the democratic governance and legitimacy of the EU. The political, institutional and procedural structures of the EU are established such that they prevent any Member State from finding itself in a position of structural weakness.⁴³⁷ The European Union's non-hierarchical, post-national character is an archetype of multilateral governance.⁴³⁸ The European Union transnational governance structures which are a feature of the 21st century world have not yet adjusted to the new role for language in a globalised world touched upon in chapters 2 and 3. The European Union is a completely new iteration of political power.⁴³⁹ Bonotti summarises the difficulties facing the European Union:

On the one hand, members of national and sub-national communities increasingly claim the right to preserve their linguistic identities and to be able to use their mother tongues for both official and non-official purposes. On the

⁴³⁷ Armin Von Bogdandy 'The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity : Elements of a Beautiful Friendship' (2008) 19 (2) *European Journal of International Law* 241-275

⁴³⁸ Jan Zielonka *Europe as Empire. The Nature of the Enlarged European Union* (Oxford University Press, 2006); Nicholas Tsagourias, *Transnational Constitutionalism International and European Perspectives* (Cambridge University Press 2007).

⁴³⁹ S. Bartolini *Restructuring Europe: Centre Formation System Building and Political Structuring Between the Nation State and the European Union* (Oxford University Press 2005); Jan Zielonka *Europe as Empire. The Nature of the Enlarged European Union* (Oxford University Press 2006); Ming Sung Kuo 'From Administrative Law to Administrative Legitimation? Transnational Administrative Law and the processes of European Integration' (2012) 61(4) *International and Comparative Law Quarterly* 855-879.

other hand, more than ever in its history, the EU needs to create a common ground for a smooth public debate involving all its citizens, in order to enhance its democratic accountability and legitimacy.⁴⁴⁰

Democratic legitimacy is a concern for the European Union, and for other supranational systems of governance.⁴⁴¹ This thesis examines this problem from the point of view of linguistic legitimacy. Within the European Union, democratic participation is constantly being refined and revised inside its 'community of communication'.⁴⁴² The European Union's creation of a transnational, multilingual parliament is particularly relevant to the role of language in deliberative democracy, and the creation of a European *demos*.⁴⁴³

This chapter examines the European Union in detail, considering the explicit language rights it provides for and how these interact with citizenship in particular. The unique international cooperation which takes place in the European Union governing structures has wrought a transformation in governance.⁴⁴⁴ The

⁴⁴⁰ Matteo Bonotti, 'Politics without the Vernacular: Liberal Culturalism and the Language Policy of the European Union' (2013) 33 (3) *Politics* 196-206.

⁴⁴¹ A. Schütz 'The Twilight of the Global Polis: On Losing Paradigms Envrioning Systems and Observing World Society' in G Teubner (ed) *Global Law Without A State* (Dartmouth Gower 1997); David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press 1995).

⁴⁴² Sue Wright *Community and Communication: the role of language in Nation-State Building* (Multilingual Matters 2000)

⁴⁴³ D. Archibugi 'The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives' (2005) *Political Studies* 53(3) 537-555.

⁴⁴⁴ Charles F. Sabel and Jonathan Zeitlin (eds) *Experimentalist Governance In The European Union: Towards A New Architecture* (Oxford University Press 2010).

advent of such transformation means that administrative rights are more central than originally thought of in a classic democracy. Douglass Scott underlines that administrative justice is the fundamental justice we can speak of in the EU.⁴⁴⁵

In this thesis, in referring to language rights as ‘administrative’ it is meant that they relate to the relationship between the citizen and the state. Administrative language rights are citizenship provisions, which serve to legitimise the EU as a new form of transnational democracy. It is important to note that sometimes administrative language rights refer to the provision of minority language rights in relations with the public administration in specific areas. Ní Drisceoil characterises ‘administrative language rights’ as political and discretionary in nature. This version of language rights is policy-based and encompasses a range of policy instruments for the provision of language schemes or language plans for public sector bodies, usually supervised by a language commissioner.⁴⁴⁶ Certain Member States of the European Union have granted regional languages or dialects a degree of formal recognition in addition to the national language of that state. These languages can usually be employed in relations with local administrations.⁴⁴⁷ Sometimes these

⁴⁴⁵ Sionaidh Douglas-Scott ‘Justice Injustice and the Rule of Law in the EU’ in G de Búrca, D Kochenov and A Williams (eds) *Europe’s Justice Deficit? Beyond Good Governance* (Hart 2014).

⁴⁴⁶ Verona Ni Dhricceoil ‘Language conflict in Northern Ireland: revisiting the Irish language rights debate’ (2013) 4 *Public Law* (693). 693-701.

⁴⁴⁷ Colin Williams (Ed) *Linguistic Minorities Society and Territory* (Multilingual Matters 1991); F.Palermo ‘When the Lund Recommendations are Ignored Effective

languages have constitutional recognition, but languages can be used at subnational level without necessarily having national constitutional status. Here, we speak of administrative language rights as rights which fall into the classical canon of administrative rights.

It is argued in this thesis that the only language rights which are in place in the European Union are of a limited and administrative nature. Hofmann and Mihaescu analyse the right to good administration as a lens through which we can generalise about the relationship between fundamental rights defined in the Charter and those arising as general principles of EU law.⁴⁴⁸ The concept of 'Good Administration' encompasses a range of different guidelines and rules, as well as more substantive issues.⁴⁴⁹ 'New Governance' techniques bring a different perspective to the traditional 'command and control' type of regulation and legal institutions.⁴⁵⁰ This is compatible with the theory of language rights as administrative rights, where basic participation in society is guaranteed. Language rights in the EU guarantee the possibility of participation to the

Participation of National Minorities through Territorial Autonomy' (2009) 16 (4) *International Journal on Minority & Group Rights* 653-663.

⁴⁴⁸Hofmann and Mihaescu 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (2013) (9) *European Constitutional Law Review* 73-101

⁴⁴⁹ L. Azoulai 'Le principe de bonne administration' in J.-B. Auby and J. Dutheil de la Rochère (eds) *Droit Administratif Européen* (Bruylant 2007) 493

⁴⁵⁰ G de Búrca J. H. H. Weiler *The Worlds of European Constitutionalism: Contemporary I* (Cambridge University Press 2011) Dickson and Eleftheriadis (eds.) *The Philosophical Foundations of EU Law* (Oxford University Press 2012)

citizens of the European Union, by recognising all the official languages of the Member States.

II Language and Relations with EU Public Administration

As touched upon in chapters 2 and 3, globalisation means the world is increasingly interconnected. Technological developments, supranational integration and the globalisation of capital all necessitate a new theorisation of citizens' interaction with governance systems.⁴⁵¹ Constitutional theories are being devised to respond to the new realities of a digital, globalised world where states compete with private companies for power.⁴⁵² Fundamental procedural principles such as accountability and transparency have been used to reinforce the legitimacy of transnational institutions.⁴⁵³ The role of the traditional nation-state is being supplemented, perhaps even supplanted by multilateral international organisations, particularly in Europe.⁴⁵⁴ International institutions can be seen as the answer to governing this new reality.⁴⁵⁵ The advancement of the

⁴⁵¹ Francesco Palermo, Giovanni Poggeschi, Günther Rautz, Jens Woelk (eds .) *Globalization Technologies and Legal Revolution. The Impact of Global Changes on Territorial and Cultural Diversities on Supranational Integration and Constitutional Theory* (Nomos 2012).

⁴⁵² A Verhoeven, *The European Union in Search of a Democratic and Constitutional Theory* (Kluwer 2002).

⁴⁵³ Ming Sung Kuo, 'From Administrative Law to Administrative Legitimation? Transnational Administrative Law and the processes of European Integration' (2012) 61(4) *International and Comparative Law Quarterly* 855-879.

⁴⁵⁴ A. Schütz 'The Twilight of the Global Polis: On Losing Paradigms Environing Systems and Observing World Society' in G Teubner (ed) *Global Law Without A State* (Dartmouth Gower 1997) David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press 1995)

⁴⁵⁵ B Fassbender 'The United Nations Charter as Constitution of the International Community' (1998) 37 *Columbia Journal of Transnational Law*, 529- 619.

global capitalist system is such that problems are perceived to be better governed transnationally, usually by multilateral international organisations.⁴⁵⁶ The dawn of the 21st century has witnessed the growth of bilateral cooperation between trading blocs, such as the increase in trade cooperation between the USA and the EU, and, equally, a growth in multilateralism via organisations such as the WTO. Global trade in goods and services is subject to ever increasing international scrutiny and regulation. The role of the EU in implementing regulations and governing at a supranational level is seen as necessary in a globalised economy.⁴⁵⁷

This chapter assesses how this integrated, supranational organisation deals with language in relations with its citizens. The European Union guarantees a very broad choice of (officially sanctioned) languages in communication with its public authorities. The opinion of AG Poiares Maduro in the *Eurojust* case distinguishes between communications between the Community Institutions or bodies and citizens of the EU and the internal operations of these bodies and institutions. He claims that multilingual operation with regard to citizens poses 'technical difficulties which an efficient institution can and must surmount,'⁴⁵⁸ affirming the centrality of

⁴⁵⁶ Neil Walker 'Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders' (2008) 6 *International Journal of Constitutional Law* 373–96.

⁴⁵⁷ Gráinne de Búrca and Joseph H.H. Weiler eds *The Worlds Of European Constitutionalism* (Cambridge University Press 2012).

⁴⁵⁸ Opinion of Advocate General Maduro in Case C-160/03 *Spain v Eurojust* [2005] ECR I-2077.

communication with the citizen to the language regime of the EU.⁴⁵⁹

Chapter 5 demonstrated how the language rules in place in the European Union bear out the delicate political equilibrium necessary to govern the European Union. The language rules of the EU have been outlined in chapter 5 and 6. The underlying philosophy of these language rules resides in the fact that the wording of the Treaty is equally valid in all 24 Member State languages. The nature of EU multilingual law is summarised by Robertson:

A citizen in any Member State is entitled to have regard to any language version and to use it for the purpose of reading and interpreting it and asserting his or her rights; the language versions are authentic and have equal status.⁴⁶⁰

This is then extended to all legislative provisions in the EU. The legal fiction of equal authenticity can cause problems, as demonstrated in chapter 6, however, it has been demonstrated that maintaining multilingualism is politically necessary. The extent of this multilingualism and the role of official languages has been investigated in this research. Pupavac identifies two ways in which language functions to exclude individuals from the public sphere - language comprehension on a practical level and, on a symbolic level,

⁴⁵⁹ The *Eurojust* case was an action brought by Spain against a calls for applications for the recruitment of temporary staff for Eurojust an EU agency because of a lack of respect for the principle of linguistic diversity in publishing relevant documents only in English. The claim was declared inadmissible by the Court under article 230 EC so we do not have a statement from the Court on the linguistic aspects.

⁴⁶⁰ Colin Robertson 'EU Law and Semiotics'(2010) 23 (2) International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique 145-164, 147.

language as reflective of identity.⁴⁶¹ The EU allows for the inclusion of all 24 official languages. This is guaranteed at a symbolic level insofar as the concept of equal multilingual authenticity symbolises the equality of the 24 official languages, and at a practical level via the provision of translation.

In terms of language rights, there are two main entitlements for languages with 'official' status. Overall, these are (i) that citizens may send documents to EU institutions and are guaranteed a reply in any of the 24 official languages, and (ii) that Official Journals and EU legislative documents will all be published in all the official languages. Substance is given to the treaty provisions by Article 2 of Regulation 1/1958, which stipulates that:

Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.

Furthermore, the Regulation also states that:

Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.⁴⁶²

⁴⁶¹ Vanessa Pupavac, *Language Rights: from Free Speech to Linguistic Governance* (Palgrave 2012), 162.

⁴⁶² Article 3 Regulation 1 determining the languages to be used by the European Economic Community (OJ 017) 06/10/1958

The right to correspond with European Institutions in all treaty languages has been the EU's core language right since 1997. This right was established in the Treaty of Amsterdam. This Treaty formally gave the right to Irish speakers to write to the EU institutions, and to receive a reply, in Irish, in line with the hybrid status of Irish as a 'treaty language', as analysed in the previous chapter. These rights are of an administrative nature and strictly apply only to those languages with official status. This thesis argues that they are linked to the unique version of democratic participation and citizenship the European Union instigated.

It is important to note the extent to which the European Union has created a new form of citizenship and sense of belonging.⁴⁶³ The recognition of subnational and regional forms of governance, and the potential for this to expand the language rights present in the European Union is examined in the next chapter. The European Union, in providing a supranational arena for governance, and for democratic participation, allows for the participation of citizens in a transnational governance structure.⁴⁶⁴ On the other hand, the primacy of the Member States in the current balance of powers of the EU can be seen from the language rights granted. The only explicit language rights guaranteed by the European Union

⁴⁶³ Johannes W. Pichler and Bruno Kaufmann (eds.) *Modern transnational democracy : how the 2012 launch of the European Citizens' Initiative can change the world* (NWV Neuer Wissenschaftlicher Verlag 2012)

⁴⁶⁴ Jo Shaw, Richard Bellamy and Dario Castiglione (eds.) *Making European Citizens* (Palgrave, 2006)

relate to official languages of the European Union. These rights are concerned with communication with the European Institutions themselves. Article 24(4) TFEU⁴⁶⁵ declares that:

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.⁴⁶⁶

This guarantee of language rights is echoed in Article 41(4) of the European Charter of Fundamental Rights. The formulation of this article is of interest, as it refers to citizens of the European Union. Furthermore, it explicitly avoids mention of official or working languages, or of EU languages, but mentions the Treaties as the main point of reference. It refers strictly only to 'institutions', and on any reading of this right it is extremely narrow. It can be seen as purposely so, and as a clear enunciation of the lack of political consensus on language rights. In relation to the rights of citizens to petition or to contact the democratic institutions of the EU, Art 20(d) of the TFEU echoes this tight formulation while protecting:

the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and

⁴⁶⁵ Formerly article 21(3) EC

⁴⁶⁶ Art 24 Treaty on the Functioning of the European Union [2012] OJ C326/01

advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

Article 55 (1) TEU establishes the languages which may be employed for this participation. This reference to clearly established languages demonstrates the importance of the politically sanctioned 'languages of the EU'. Any language rights granted explicitly as part of fundamental rights guarantees of the EU refer solely to those languages.

These provisions bear witness to the centrality of language to the principle of the European nation-state. On the other hand, this minimalistic iteration of explicit language rights correspondence with the institutions is proof of the caution with which these nation-states tread regarding linguistic issues.⁴⁶⁷ Article 4(2) TEU provides that the Union also respect the national identity of its Member States, which includes allowing states to protect their official national language(s).⁴⁶⁸ Article 22 of the Charter of Fundamental Rights of the European Union expressly recognises the principle of linguistic diversity, guaranteeing that the EU will 'respect[s] cultural, religious and linguistic diversity'. This is implemented by allowing the use of all official EU languages in correspondence with EU institutions, along with the provisions explored in chapters 5 and 6. The European Union

⁴⁶⁷ Bruno De Witte 'Surviving in Babel? Language Rights and European Integration' in Dinstein and Tabory (eds) *The Protection of Minorities and Human Rights* (Martinus Nijhoff 1992).

⁴⁶⁸ Case C-379/87 *Groener* [1989] ECR 3967 and Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787.

provides more broadly for language than the European Convention of Human Rights, where 'the Convention *per se* does not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice.'⁴⁶⁹ Albeit that the choice of language is restricted to those officially sanctioned by the EU, the principle of language equality dictates that there is free and full choice between the 24 language versions. It is clear that if there are language rights in the European Union, they are not fundamental human rights guaranteeing protection to the speakers of Europe's many minority languages.

The EU language rights are limited to official languages of the EU, and are subject to strict formulations with little room for interpretation. Article 24 (4) TFEU and article 41 (4) ECFR constitute a minimum provision for language rights, but this is strongly protected. This right of interaction, classifiable as an administrative right given its procedural concerns, is the only definite 'language right' that is discernible within EU law. The other language rights are all within grey areas. It is difficult to see the political incentive to extend EU language rights further, however, this may grow incrementally, as will be explored in chapter 8.

Civic participation in the EU system is facilitated, and this is seen as important to justifying the democratic legitimacy of the

⁴⁶⁹ *Mentzen alias Mencena v Latvia* 71074/01 2004-XII Eur. Ct. H.R 25.

European Union. The questions of 'domains'⁴⁷⁰ of European Union language policy arise in drawing a distinction between internal and external language regimes. This chapter focuses on the *external* language regimes of the EU institutions, that is, in their direct interactions with the general public. There is a difference in the language regimes between 'input and output languages.'⁴⁷¹ Schilling refers to procedural or working languages as 'input' languages. These are governed by a deliberately ambiguous, superficial embracing of multilingualism which is not borne out in practice. Output languages, however are strictly subject to a principle of multilingualism which is defended as a central principle, as part of the linguistic citizenship of the European Union. Kraus states that:

[O]n the one hand, there is the regulation of the internal modes of communication, which essentially means how multilingualism is processed, in the context of the regular political and administrative routines within the European Institutions. On the other hand the language question concerns the sphere of external communication: how do the EU institutions communicate with European citizens?⁴⁷²

⁴⁷⁰ T. Van Els (2006). The European Union its Institutions and its Languages: Some Language Political Observations in R. Baldauf. and R. Kaplan (eds .) *Language Planning and Policy in Europe*. (Vol. 2) (Multilingual Matters 2006; Van Els 'Multilingualism in the European Union'(2005) 15(3) *International Journal of Applied Linguistics* 263-281.

⁴⁷¹ Theodor Schilling 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' *German Law Journal* (2011) 1469.

⁴⁷² Peter Kraus *A Union of Diversity: Language Identity and Polity-Building in Europe* (Cambridge University Press 2008) 112

Language rights in the EU are intimately related to citizenship, thus, the evolution of administrative law in the European Union and the relations between the citizen and the EU administration will be traced. The involvement of citizens has increased since the Treaty of Lisbon.⁴⁷³ The EU institutions are obliged under Article 13 TFEU to serve the interests of EU citizens.

Presently, an increased attention for private rights is noticeable within governance structures of the European Union.⁴⁷⁴ Since the expansion into the area of Justice and Home Affairs, and political integration beyond a common market, the concerns for administrative and procedural rights in the European Union have come to the fore.⁴⁷⁵ The Treaty of Maastricht explicitly introduced the concept of 'openness'⁴⁷⁶, stating that it would mark '[a] new phase in the process of bringing the citizens of Europe closer, where decisions are taken in a manner more transparent and closer to its citizens'.⁴⁷⁷ Administrative principles such as procedural rights, the protection of legitimate expectations, equal treatment and

⁴⁷³ Jane Reichel 'Communicating with the European Composite Administration' (2014) 15 *German Law Journal*

⁴⁷⁴ Anna Simonati 'The Principles of Administrative Procedure and the EU Courts: an Evolution in Progress?' *Review Of European Administrative Law* (2011) 4 (1) 45-81

⁴⁷⁵ Sionaidh Douglas-Scott 'Justice Injustice and the Rule of Law in the EU' in G de Búrca D Kochenov and A Williams (eds) *Europe's Justice Deficit? Beyond Good Governance* (Hart 2014)

⁴⁷⁶ Monar Jorg 'Justice and Home Affairs: The Treaty of Maastricht as a Decisive Intergovernmental Gate Opener' (2012) 34 (7) *Journal of European Integration* 717-734.

⁴⁷⁷ Treaty on European Union (Maastricht text) July 29 1992 (1992 O.J. C 191/1) Art.

proportionality are all protected by the EU's legal system.⁴⁷⁸ More detailed iterations of these principles have been developed by the political EU. Since the Treaty of Lisbon there has been a renewed role for national parliaments.⁴⁷⁹ Article 12 states that national parliaments 'contribute actively to the good functioning of the Union,'⁴⁸⁰ and the Treaty comprises a number of measures which allow for the increased input of national parliaments. In addition, the European Citizens' Initiative procedure was introduced which has the potential to expand democratic participation in the EU substantially.⁴⁸¹ The most significant rules from a linguistic perspective, however are those regarding Good Administration. Citizenship entails 'the ability to participate fully'⁴⁸² in all the workings of the state, and language is an essential part of this citizenship. Nehl maintains that good administration is essentially procedural rather than substantive in nature.⁴⁸³ Principles of administrative procedure are fundamentally protected at a

⁴⁷⁸ Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁴⁷⁹ T. Christiansen, A.L. Högenauer and C. Neuhold 'National Parliaments in the Post-Lisbon European Union: Bureaucratization rather than Democratization?' (2014) 12(2) *Comparative European Politics* 121-140.

⁴⁸⁰ Art 12 Treaty on the Functioning of the European Union [2012] OJ C326/01

⁴⁸¹ Graham Smith 'The European Citizens' Initiative: A New Institution for Empowering Europe's Citizens?' in Michael Dougan Niamh Nic Shuibhne and Eleanor Spaventa (eds) *Empowerment and Disempowerment of the European Citizen* (Hart 2012) ; J. Ziller 'The European Citizens' Initiative: a First for Participatory Democracy?' (2012) 13(3) [special issue] *Perspectives of European Politics and Society* 251.

⁴⁸² V. Ramanathan *Language Policies and (Dis) Citizenship: Rights Access Pedagogies* (Multilingual Matters 2013).

⁴⁸³ H.P. Nehl 'Good Administration as Procedural Right and/or General Principle?' in H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009) 322-351.

'constitutional' level in EU Law, but Good Administration remains procedural rather than substantive in its aims. Article 41 of the Charter of Fundamental Rights of the European Union provides for a general right to Good Administration. Good Administration is a collection of legal and non-legal rules. Transparency and accountability, and the maximal participation of citizens in rule making and the possibility of challenging those rules are key concepts.⁴⁸⁴ Implementing a policy of 'Good Administration' is seen as fundamental to proper governance and modern institutions in Europe.⁴⁸⁵ Although there is a lack of clarity as to its content, Good Administration can be described as a

[f]ramework concept on the basis of the rule of law and principles of procedural justice which draws together a range of rights, rules and principles guiding administrative procedures with the aim of ensuring procedural justice, public administrative adherence to the rule of law, and sound outcomes for administrative procedures.⁴⁸⁶

Mendes deconstructs the multifaceted concept of Good Administration into: (i) procedural guarantees protecting the

⁴⁸⁴ Joanna Mendes 'Participation and Participation Rights in EU Law and Governance' in: H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009).

⁴⁸⁵ Thierry Tanquerel 'Good Administration – Its Role in Good Governance in a Democratic Society' in *In pursuit of Good Administration* (Council of Europe Publishing 2007)

⁴⁸⁶ Hofmann and Mihaescu 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (2013) 9 *European Constitutional Law Review* 73-101, 84

substantive rights of persons dealing with their administration, (ii) legal rules structuring the exercise of the administrative function and (ii) non-legal rules, which are essentially standards of conduct.⁴⁸⁷ Language is protected through the EU principle of Good Administration in the correspondence rights enshrined in the Treaties and the Charter of Fundamental Rights. These comprehend all three aspects of Mendes' typology.

Since the mid-twentieth century, in the legal systems of the European Union, scrutiny of Public Administration has largely been carried out via Ombudsman figures, who provide an extra-judicial method of enforcement of administrative rights.⁴⁸⁸ The most significant legislative creation in the ambit of the protection and promotion of Good Administration in Europe was the creation of the office of the European Ombudsman. The decisions of the Ombudsman in the ambit of language rights will be assessed later in the chapter. First of all, we must understand the genesis of the institutions and legislation which aims to guarantee administrative rights in Europe.

Regional efforts to coordinate administrative justice in Europe date back to the 1970s. One of the first documents to explore

⁴⁸⁷ Joanna Mendes 'Participation and Participation Rights in EU Law and Governance' in: H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009) cited in Buck Kirkham and Thompson (eds) *The Ombudsman Enterprise and Administrative Justice* (Ashgate 2011) 32

⁴⁸⁸ Buck Kirkham and Thompson (eds) *The Ombudsman Enterprise and Administrative Justice* (Ashgate 2011) P. Magnette 'Between Parliamentary Control and the Rule of Law: the Political Role of the Ombudsman in the European Union' (2003) (10)5 *Journal of European Public Policy* 678-681.

the principles of Good Administration at an abstract level was a Council of Europe resolution.⁴⁸⁹ This document outlines five basic principles pertaining to 'the protection of the individual in relation to the acts of administrative authorities,'⁴⁹⁰. These fundamental underpinnings included the right to be heard, the right of access to information, the right to assistance and representation, obligations to provide reasons for decisions by the administrative authority in question and a duty of notification to affected parties of the remedies available.

The regional requirements of good administration across Europe were updated and extended in 2007 by the Council of Europe to include:

Lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time limit, participation, respect for privacy and transparency; and that they provide for procedures to protect the rights and interests of private persons, inform them and enable them to participate in the adoption of administrative decisions.⁴⁹¹

The establishment of general principles of Good Administration have been part of a constitutionalising project within the EU. Harlow identifies an

⁴⁸⁹ Council of Europe Resolution: CM/Rec 1977(31) on the Protection of the Individual in Relation to the Acts of Administrative Authorities.

⁴⁹⁰ Council of Europe Resolution: CM/Rec 1977(31) on the Protection of the Individual in Relation to the Acts of Administrative Authorities.

⁴⁹¹ Council of Europe Recommendation CM/Rec(2007)7 on Good Administration.

[i]ntegrationist tendency that has led the ECJ from the earliest days to treat the general principles that form the building blocks of the European system of administrative law as constitutional principles.⁴⁹²

The European Parliament had various transparency initiatives, which linked good administrative behaviour to delays in access to information or to the hiring procedures of European Institutions. However, it has been identified by a working group of the European Parliament that: '[t]he current legal framework is fragmented, patchy and uneven and the detailed provisions needed to enforce this right are lacking.'⁴⁹³

The European Charter of Fundamental Rights has also integrated within its guarantees a right to Good Administration, within and across the European Union. The complexity of the concept of Good Administration is revealed by the oscillation as to its definition within a rights context.⁴⁹⁴ Article 41 (4) of the European Charter of Fundamental Rights states that 'Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.' Mendes claims that the language rights of Article 41 of the European Charter of

⁴⁹² Harlow 'Three Phases in the Evolution of European Administrative Law' in P Craig and G de Burca *The Evolution of EU Law* (Oxford University Press 2nd ed 2011) .440.

⁴⁹³ European Parliament, Law of Administrative Procedure of the European Union: European Added Value Assessment [2012] PE.494.457

⁴⁹⁴ K. Kańska 'Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights' 10 *European Law Journal* (2004) 296-326

Fundamental Rights are 'part of the founding procedural principles of the European Community.'⁴⁹⁵ As Boustia points out, this is a right with 'no specific content.'⁴⁹⁶ Despite what might be perceived as an essential difficulty, a justiciable right to good administration is now codified in the European Union and is explicitly protected by the European Charter of Fundamental Rights.

Article 41 lists a number of procedural rights and principles of Good Administration. This includes language rights, but by its very specificity limits the potential for further development of other rights as implicit in the EU's protection of Good Administration. It would appear that the provisions of Article 41 '[s]erve to establish a minimum protection of certain elements generally accepted in the existing case law of the European Courts as principles of good administration and rights of defence.'⁴⁹⁷ These principles are in place in the EU and are already protected in EU law, beyond Article 41's narrow definition. Hoffman and Mihaescu point out the potential limitations of the codification of this right, stating:

⁴⁹⁵ Joanna Mendes 'La bonne administration en droit communautaire et le code européen de bonne conduite administrative' *Revue française d'administration publique* 2009 (3) 131 available in English at: <http://cadmus.eui.eu/handle/1814/12101> <last accessed 5th March 2013> as Paper 9 'Good Administration in EU Law and the European Code of Good Administrative Behaviour' EUI Working Papers (2009).

⁴⁹⁶ Rhita Boustia 'Who Said there is a Right to Good Administration? A critical analysis of Article 41 of the Charter of Fundamental Rights of the European Union' (2013) 19 (3) *European Public Law*, 481-488.

⁴⁹⁷ H. Hofman G Rowe and A Turk *Administrative Law and Policy of the European Union* (Oxford University Press 2011) at 203

The material, personal and institutional scope of the right in Article 41 CFR is defined in a significantly more limited way than the general principle of good administration such as it has been developed in the case-law of the EU courts.⁴⁹⁸

However, Mendes links this article and the Code of Good Administrative Behaviour, arguing that Article 41 remains open-ended because of this link, despite its apparent specificity.⁴⁹⁹

Despite the existence of the EU Code of Good Administrative Behaviour and its crystallisation in Article 41 ECFR, the concept of 'Good Administration' and its implementation remains amorphous. The General Court⁵⁰⁰ mentions that the right to Good Administration is not only protected in Article 41 of the EU Charter of Fundamental Rights, but also protected as principle in the EU judiciary's case-law. The difference between the principles of Good Administration, which are by necessity general, and the rights listed under Article 41 of the Charter of Fundamental Rights is not fully clear. The right to Good Administration was enshrined because of pressure from the office of

⁴⁹⁸ Hofmann and Mihaescu 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (2013) (9) *European Constitutional Law Review* 73-101, 74.

⁴⁹⁹ Joanna Mendes 'La bonne administration en droit communautaire et le code européen de bonne conduite administrative' *Revue française d'administration publique* 2009 (3) 131 available in English at: <http://cadmus.eui.eu/handle/1814/12101> <last accessed 5th March 2013> as Paper 9 'Good Administration in EU Law and the European Code of Good Administrative Behaviour' EUI Working Papers (2009).

⁵⁰⁰ Case T-458/09 *Slovak Telekom v. Commission* and T-171/10 *Slovak Telekom v. Commission* [2012] ECR II-(not reported) (22 March 2012).

the European Ombudsman.⁵⁰¹ It can be described as: 'A right which is itself defined by a mixture of, in part, written sub-concepts and, in part, unwritten general principles of law'.⁵⁰²

Article 10.3 of the Treaty of the European Union (TEU) sets out that every citizen has the right to participation 'in the democratic life of the Union', and the language rules of the EU implement this. Administrative theory varies according to the legal system in place.⁵⁰³ However, in particular across Europe, Boughey identifies a convergence which is taking place, proposing that the same forces which contributed to the spread of Western constitutional norms have also led to the dissemination of common fundamental principles of administrative law.⁵⁰⁴ This European model of 'new governance', has been followed at an institutional level within the European Union.⁵⁰⁵ Administrative rights are procedural and thus can be contained within a relatively uncontroversial tradition, common to European nation-states of administrative justice. This section assesses the administrative language rights in place in the European Union

⁵⁰¹ A Tsadiras 'The European Ombudsman' chapter in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁵⁰² Hofmann and Mihaescu 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' 2013 *European Constitutional Law Review* (9) 73 – 101, 79.

⁵⁰³ Janina Boughey 'Administrative Law: The Next Frontier For Comparative Law' *ICLQ* (62) 2013 55- 95

⁵⁰⁴ Janina Boughey 'Administrative Law: The Next Frontier For Comparative Law' *ICLQ* (62) 2013 55- 95

⁵⁰⁵ For more on the innovative governance methods employed by the EU see Sabel Charles F. and Jonathan Zeitlin (eds). *Experimentalist Governance In The European Union: Towards A New Architecture* (Oxford University Press 2010).

(i) The legislative history of administrative rights in the EU

Administrative law guarantees rights, but also more generally in doing so regulates the way in which the executive, and the civil servants who support the executive, carry out their daily business.⁵⁰⁶

Communication with this transnational administration is a central aspect of participative governance.⁵⁰⁷ It is important to note the significance of the introduction of alternative forms of governance and regulation for the improvement of administration of the European Union, and their broader influence on the European Union's development. The office of the Ombudsman was tasked with acting as a watchdog, and in this role of surveying the administrative role of European bureaucracy suggested guidelines for behaviour, in the form of a Code: the EU Code of Good Administrative Behaviour.

The role of the Ombudsman will be outlined, before examination of the Code. The Ombudsman was founded as part of a transparency initiative, originally concerned mainly with the workings of the institutions of the European Union. Although originally proposed in the 1970s by certain members of the European Parliament, the embryonic European Ombudsman was the victim of inter-institutional rivalry, and the project did not get off the ground

⁵⁰⁶ Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁵⁰⁷ Joanna Mendes *Participation In EU Rulemaking A Rights- Based Approach* (Oxford University Press 2011); Jane Reichel 'Communicating with the European Composite Administration' (2014) 15 *German Law Journal*.

until the 1990s.⁵⁰⁸ A political compromise was reached during the Treaty of Maastricht negotiations. A resolution of the European Parliament in 1994 marked the formal beginning of the office of the European Ombudsman.⁵⁰⁹ An Ombudsman was elected on 12 July 1995 and took office on 27 September 1995.⁵¹⁰ Since 1994, the remit of the European Institutions expanded considerably; therefore the role of the Ombudsman was expanded in accordance with this.⁵¹¹ This was part of the evolving EU's general move towards more collaborative methods of legislation and governance. The implementation of an Ombudsman office is often to perform functions that would previously have been carried out by a judge. The Ombudsman aims to offer solutions other than traditional, more adversarial, legal remedies.⁵¹² The Ombudsman is appointed after each election of the Parliament, for the duration of a full term, with a possibility of reappointment. The Ombudsman's functions must be exercised independently and the Ombudsman cannot hold any other office. The Ombudsman has considerable powers, Art 228 of the

⁵⁰⁸ For background on this issue see A Tsadiras 'The Origins and Birth of the European Ombudsman' 2006 10 *International Ombudsman Yearbook* and A Tsadiras 'The European Ombudsman' chapter in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁵⁰⁹ European Parliament, Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the ombudsman's duties (Statute of the Ombudsman) [1994] OJ L113/15.

⁵¹⁰ A Tsadiras 'The European Ombudsman' in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁵¹¹ European Parliament, Decision amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties [2002], OJ L 92/13.

⁵¹² Mark Thomas *New Governance and the Transformation of European Law* (Cambridge University Press 2011).

Treaty on the Functioning of the European Union empowers the Ombudsman to conduct inquiries into maladministration in the activities of the Union institutions, bodies, offices, and agencies. The Court of Justice of the European Union is exempted from investigation when acting in its judicial role, in an effort to ensure the independence of the EU judiciary. The right to complain to the Ombudsman is one of the basic rights of citizenship since the Treaty of Maastricht. Article 43 of the Charter of Fundamental Rights guarantees the right to complain to the Ombudsman, with no requirement that the complainant be personally affected. This right extends to legal persons. The European Ombudsman has laid out some important principles with regard to language rights, which will be examined later in this chapter.

In 1999 a European Code of Good Administrative Behaviour (ECGAB) was proposed by the European Parliament and was adopted in 2001.⁵¹³ The European Code of Good Administrative Behaviour was adopted by the Commission on 13 September 2000. This code applies to all Commission staff in their dealings with the public, the Code permits members of the public to file a complaint against offending Commission officials and allows for sanctions. The Code also extends to 'persons employed under private law contracts,

⁵¹³ European Code of Good Administrative Behaviour [2011] C285/03.

experts on secondment from national civil services and trainees and other relevant persons working for the Agency.’⁵¹⁴

Article 13 of the European Code of Good Administrative Behaviour dictates that letters should be replied to in the language the citizen sends them in, however, it strictly limits this right to Treaty Languages:

The official shall ensure that every citizen of the Union or any member of the public who writes to the Institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies.⁵¹⁵

Article 14 guarantees a response in a timely manner. These limited formulations draw upon the language rights guaranteed in the Treaties, that is to say limited formulations which unambiguously restrict language rights protections to officially sanctioned languages in contact between citizens and the executive.

The Code sets out the principles that must guide administrative conduct: lawfulness, non-discrimination, proportionality (measures taken should be proportional to the aim pursued) and consistency. These principles are based upon the principles laid down by the European Ombudsman in the 'Statement

⁵¹⁴ Article 2, European Code of Good Administrative Behaviour [2011] C285/03.

⁵¹⁵ Article 13 European Code of Good Administrative Behaviour [2011] C285/03.

of public service principles for the EU civil service⁵¹⁶. These five public service principles are: Commitment to the European Union and its citizens, Integrity, Objectivity, Respect for others and Transparency. They were identified as core principles following consultation with both the national ombudsmen of the European Network of Ombudsmen, and a public consultation process.⁵¹⁷ The European Code of Good Administrative Behaviour mirrors the double scope of the Ombudsman's power of control, covering both review legality as well as control over non-legal aspects of administrative actions, that is to say civil servants carrying out their functions.⁵¹⁸ Given the level of detail the Code contains, the necessity of further legislation beyond this has been called into question. It highlights the complexity of the concept of 'good administration'. There is also considerable complexity in the relationship between legislative and political measures taken in the European Union and the guarantee of administrative rights. In June 2012, following a public consultation, the Ombudsman published a summary of the 'standards to which the EU public administration adheres'⁵¹⁹, drawing upon the Commissions 2001 White Paper on Governance.⁵²⁰ These 'five public service

⁵¹⁶ European Ombudsman, Statement of public service principles for the EU civil service [2012].

⁵¹⁷ European Ombudsman, Statement of public service principles for the EU civil service [2012]

⁵¹⁸ Joanna Mendes *Participation In EU Rulemaking A Rights- Based Approach* (Oxford University Press 2011) . 265

⁵¹⁹ European Ombudsman, Guide to the European Code of Good Administrative Behaviour [2011].

⁵²⁰ European Commission *White Paper on Governance* COM 2001 258 final [2001] OJ C287 1 10

principles', namely openness, participation, accountability, effectiveness and coherence lay the foundation for further legislation on good administration. Language rights, although central to the execution of this institutional openness, are rarely explicitly mentioned. The Inter-institutional Agreement of 16 December 2003 on Better Law-making⁵²¹ mentions language in an administrative context, and attempts to deal with the impacts of multilingualism on the administration and of the EU. It sets out the necessity of legal drafting training for EU staff, which aims to raise awareness of the effects of multilingualism on the drafting of EU legislation.⁵²²

The EU operates at a level of direct administration, indirect administration and shared administration.⁵²³ The problems of organisation implicit in a multi-nation, transnational system mean that sometimes, the administrator of a particular action is not clear. It has been proposed that this concern would in part be addressed by a so-called General Law on Good Administrative Behaviour, which would more generally synchronise and coalesce the various aspects of Administrative Law and guidelines of the EU. A generalised law on Good Administrative Behaviour for the European Union has been the

⁵²¹ Interinstitutional agreement on better law-making [2003] OJ C321/01

⁵²² Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation [1999] OJ C73/01.

⁵²³ These three forms of administration have been teased out by the ECJ to explain the interaction between Member States and the EU administration in executing their functions. See further C. Harlow 'Three Phases in the Evolution of European Administrative Law' in P Craig and G de Burca *The Evolution of EU Law* (Oxford University Press, 2nd edn 2011)

subject of academic debate since the 1990s.⁵²⁴ It seems, in 2014, that this may become a reality. The European Parliament's Committee on Legal Affairs has passed a resolution recommending the enactment of a general law regarding administrative procedures in the EU.⁵²⁵ The European Parliament endorsed this recommendation.⁵²⁶ The proposed legislation would extend to 'all EU institutions, agencies, offices and bodies in relation to direct administration and individual administrative decisions.'⁵²⁷ The modernisation of Public Administration is an objective of the 2014-2020 programmes and this entails giving administrative rights a more firm footing in the EU structures.⁵²⁸

The proposed law would create a default procedure in line with the recommendations on good administrative behaviour, and it is envisioned that this law would provide a general minimum standard of protection. Sector specific rules are not precluded, but these should not provide less protection than the proposed general

⁵²⁴ Carol Harlow 'Codification of EC Administrative Procedures? Fitting the Foot to the Shoe or the Shoe to the Foot?' (1996) 2 *European Law Journal* 3 and George Bermann *A Restatement of European Administrative Law: Problems and Prospects* (2009) available on <http://www.renewal.eu/>

⁵²⁵ Committee on Legal Affairs Draft Report with Recommendations to the Commission on a Law on Administrative Procedure of the European Union 2012/2024 (21 June 2012) (the Report is also known as 'the Berlinguer Report' after the Rapporteur Luigi Berlinguer)

⁵²⁶ European Parliament, Resolution of 15 January 2013 with Recommendations to the Commission on a Law on Administrative Procedure (2012/2024 INL) P7_TA(2013)0004

⁵²⁷ Committee on Legal Affairs Draft Report with Recommendations to the Commission on a Law on Administrative Procedure of the European Union 2012/2024 21 June 2012

⁵²⁸ European Commission (Directorate-General for Employment, Social Affairs and Inclusion) *Promoting good governance European Social Fund thematic paper* (European Commission 2014).

procedural law.⁵²⁹ Certain sectors have generalised rules on administrative procedures already in place. Currently, rules for administrative procedures are in place for a variety of different sectors within the European Union (regarding for example public participation, or access to files).⁵³⁰ An EU-wide regulation on Administrative Procedure Law would be a codification of appropriate administrative procedures for EU institutions, bodies, offices and agencies based on Article 298 TFEU. Craig's analysis of the working documents for this provision reveals its dual concerns, on the one hand with efficiency of the internal procedures of EU institutions, and on the other with the impact of EU administrations on citizens and others interacting with them.⁵³¹ The proposed law lays out general principles such as non-discrimination, legality, proportionality, and goes into some detail on procedural rights in specific cases. Its scope is broad and it attempts to cast its net widely to cover as much activity of the part of officials of the European Union as possible. In a submission to the EP working group on this matter, a leading academic in the area of EU Administrative Law, Jacques Ziller has noted:

⁵²⁹ Paul Craig 'A General Law on Administrative Procedure Legislative Competence and Judicial Competence' (2013) 19 (3) *European Public Law* 503-524.

⁵³⁰ Craig uses the examples of Regulation 1/2003 the Framework Directive for Electronic Communications Networks and Services and the Directive on Integrated Pollution Prevention and Control.

⁵³¹ Paul Craig 'A General Law on Administrative Procedure Legislative Competence and Judicial Competence' (2013) 19 (3) *European Public Law* 503-524.

[s]uch a law should cover not only single decision making but also rule-making (the use of regulatory powers) as well as the adoption and management of contracts and agreements, and all the issues linked with information management.⁵³²

The enactment of a general law of administrative procedure suggests some tension between the ascribing of competences between the EU judiciary and the legislative powers, Craig suggests, as the courts of the EU have developed general principles of law in this ambit.⁵³³ The implementation of a general law on Good Administration is considered to be necessary for the full implementation of the right to Good Administration.⁵³⁴ Its impact, however, on linguistic issues in the administration of the European Union will not be felt.

It limits any discussion of use of language to concerns regarding clarity and comprehensibility, and does not address, for example, issues of choice of language. However, procedurally speaking it contains the principles through which language rights are protected in the European Union.

The proposed law would, in fact be a regulation under the new ordinary legislative procedure, this regulation would be adopted

⁵³² Jacques Ziller 'Alternatives in Drafting an EU Administrative Procedure Law' Note for European Parliament Working Group on EU Administrative Law of the Committee on Legal Affairs. [PE 462.417] available online at <http://www.europarl.europa.eu/studies>

⁵³³ Paul Craig 'A General Law on Administrative Procedure Legislative Competence and Judicial Competence' (2013) 19 (3) *European Public Law* 503-524, 505.

⁵³⁴ Paul Craig 'A General Law on Administrative Procedure Legislative Competence and Judicial Competence' (2013) 19 (3) *European Public Law* 503-524.

on the basis of Article 298 TFEU. The legal basis for the enactment of a generalised law on Good Administrative Behaviour resides in the competences ascribed by Art 352 TEU.⁵³⁵ In the context of administrative law, the general principles of Good Administration have laid the foundations for the legislative actions.⁵³⁶

If what constitutes good administration is difficult to articulate, perhaps it can be deduced by a logic of opposition. Poor administration, or bad administrative behaviour has been defined as 'Maladministration'. The European iteration of the concept of Maladministration was defined by the European Ombudsman, during the 1990s in an attempt to establish the reach of the powers of that office.⁵³⁷ This was considered a way to establish a standard for administrative behaviour by European institutions through the back door. In the Annual Report of the European Ombudsman 1995, Maladministration was defined through a list of conduct including 'administrative irregularities and omissions, abuse of power, negligence, unlawful procedures, unfairness, malfunction or incompetence, discriminations, avoidable delay and lack or refusal of information.'⁵³⁸ Unsatisfied with this, the European Parliament

⁵³⁵ J. Ziller 'Is a Law of Administrative Procedure for the Union Institutions Necessary?' (2011) 3 (4)

Rivista italiana di diritto pubblico comunitario 699-725.

⁵³⁶ Paul Craig 'EU Administrative Law The Acquis' (2011) 3 (4) *Rivista Italiana di Diritto Pubblico Comunitario* 329.

⁵³⁷ A Tsadiras 'The European Ombudsman' in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

⁵³⁸ European Ombudsman Annual report [1995] at 17 quoted in Tsadiras *The European Ombudsman* in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

requested that the Ombudsman develop a more precise and clear definition.⁵³⁹ The Ombudsman's 1997 annual report states that 'maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.'⁵⁴⁰ Tsadiras identifies a dual purpose to the European Ombudsman's iteration of maladministration, initially, where maladministration delineates the jurisdiction of the European Ombudsman and secondly, where the concept is used as a 'yardstick', both as a criterion for admissibility and for assessing the merits of individual cases.⁵⁴¹ It is clear that the language rules both of EU institutions and agencies have been considered by the administrative watchdogs. As we have seen, the Ombudsman does not sustain that the language rules currently in place have any adverse impact on the principles of good administration in the EU. More broadly, maladministration can be defined as the failure of institutions to follow their own rules. The Ombudsman has clearly stated that a failure to adhere to the language rights as provided in Article 24 (4) TFEU would be an instance of maladministration, stating:

The Ombudsman notes that it is in the interests of democracy, transparency, legitimacy and effectiveness that the fundamental right of citizens to correspond with the EU institutions in any of the

⁵³⁹ Point 4 of EP Resolution on the Annual Report of the Activities of the European Ombudsman (1996) C4-0293/97-A4-0211/1997

⁵⁴⁰ European Ombudsman Annual report 1997 23

⁵⁴¹ A Tsadiras 'The European Ombudsman' in Paul Craig *EU Administrative Law* (Oxford University Press 2012) 755

Treaty languages, and to receive an answer in the same language, has been recognised. Further, any failure to respect this fundamental right impacts upon the dignity and individuality of the citizen. Any infringement of this fundamental right by the EU institutions constitutes an instance of maladministration.⁵⁴²

However, following the dicta of the Court in *Kik*, this does not extend to agencies and other bodies of the European Union.⁵⁴³ Language rights in the European Union are protected by the right to Good Administration, but only within very strict limits.

Nonetheless, this thesis contends that the Administrative Law of the European Union is a potential source for further EU language rights. The citizen's relationship both directly with EU institutions and with their Member State institutions since accession to the EU has been profoundly affected.⁵⁴⁴ Any theory of the State must take into account the exponential growth in administrative bureaucracy.⁵⁴⁵ Nowhere is this more evident than in the case of the European Union. For a realistic understanding of EU administrative law, one must start by acknowledging the specific contextual factors of functional unity,

⁵⁴² Decision of the European Ombudsman on complaint 2580/2006/TN against the Council of the European Union.

⁵⁴³ Case C-361/01 P *Christina Kik V OHIM* [2003] ECR I- 8283 para 83.

⁵⁴⁴ See for example Johannes W. Pichler and Bruno Kaufmann (eds) *Modern transnational democracy : how the 2012 launch of the European Citizens' Initiative can change the world* (Intersentia 2012).

⁵⁴⁵ Eoin Carolan, *The New Separation of Powers: A Theory for the Modern State* (Oxford University Press 2009).

organisational separation, and procedural cooperation which determine the development of the EU administration.⁵⁴⁶

The concept of Good Administration at the incipit of the 21st century is associated with theories of New Public Management.⁵⁴⁷ The principles of good administration can be classed within a 'new governance' approach,⁵⁴⁸ synonymous with New Public Management, as ways to describe the flood of largely regulatory and administrative functions the state has been called upon to bear out in modern times.⁵⁴⁹ However, a core difficulty may be that the concept of 'good administrative behaviour' is complex and appears to have escaped concrete definition. Miriam Aziz believes that there are legal and normative claims for example, to transparent and accessible language on behalf of the European Union as part of a 'good administration' approach.⁵⁵⁰ The Ombudsman has underlined the importance of 'the fundamental right to choose in which of the 23 official languages of the EU communicate they wish to

⁵⁴⁶ Hofmann H. 'Seven challenges for EU administrative law' in K.J. de Graaf J.H. Jans A. Prechal and R.J.G.M. Widdershoven (eds.) *Review of European Administrative Law: Top Down and Bottom-up* (Proceedings of the First REALaw Research Forum Vol. 2. Groningen) (Europa Law Publishing 2009) 37–58.

⁵⁴⁷ Pollitt, Van Thiel and Homburg *New Public Management in Europe: Adaptation and Alternatives* (Palgrave 2007).

⁵⁴⁸ Nick Bernard 'A 'New Governance' Approach to Economic Social and Cultural Rights in the EU' in Hervey and Kenner (eds.) *Economic and Social Rights under the EU Charter of Fundamental Rights: a Legal Perspective*. (Hart Publishing 2003).

⁵⁴⁹ Pollitt Van Thiel and Homburg *New Public Management in Europe: Adaptation and Alternatives* (Palgrave 2007).

⁵⁵⁰ Miriam Aziz 'Language Rights in the European Union: Mainstreaming the Duty of Transparency and Clarity' (2004) 10 (8) *European Law Journal* 282-295.

communicate with the EU institutions',⁵⁵¹ stating that 'failing to respect this right is injurious to the dignity of the citizen, since a citizen's choice of language is intrinsically linked to his or her identity as an individual'⁵⁵². However, as noted, not all bodies of the EU must engage in the balanced multilingualism. AG Poiares Maduro set out clearly the principle that although linguistic diversity is of fundamental importance, the linguistic regime regarding contact with the institutions of the EU must be mediated through the Member States.

Linguistic diversity is the fundamental rule in the context of outside contacts that is because it is necessary to respect the linguistic rights of persons having access to Union institutions and bodies. The Treaty and the case-law are based on the understanding that the choice of the language of communication is a matter for the Member State or the person who has a relationship with the institutions.⁵⁵³

Based on the principles of administrative justice we have laid out in the first section and the overview of their legislative and judicial interpretation provided, it is clear that the EU has its own language rights. These are participation guarantees, channelled through

⁵⁵¹ Decision of the European Ombudsman closing his inquiry into complaint 2533/2009/VIK against the European Personnel Selection Office, para. 34.

⁵⁵² Decision of the European Ombudsman closing his inquiry into complaint 2533/2009/VIK against the European Personnel Selection Office.

⁵⁵³ Opinion of Advocate General Maduro in Case C-160/03 *Spain v Eurojust* [2005] ECR I-2077 para 46.

Member States, which avoid broader language political issues such as the role of minority languages, but are clear language rights nonetheless.

III Language and Participation in the EU

Processes of global governance beyond State frameworks have developed exponentially since the mid-20th century, and this has led to a globalisation of administrative law, which regulates this governance.⁵⁵⁴ The creation of the European Union has been credited as the 'emergence of a transnational political society and supranational political system.'⁵⁵⁵ This is reflected in its policy of multilingualism which comprises all the languages of its constituent Member States. The European Union is unique as a political project, as a legal structure and as a multilingual polity. It is a multilateral organisation which has tried to introduce democratic governance.⁵⁵⁶ There is a constitutional structure in the European Union, in the sense of principles of procedural justice at least.⁵⁵⁷ These protect the 24 official languages of the 28 Member States through the provisions of multilingual authenticity, and the guarantees for citizen interaction.

⁵⁵⁴ Anthony Arby Morrisson and Zwart (eds) *Values in Global Administrative Law* (Hart 2011)

⁵⁵⁵W. Kaiser B. Leucht and M. Rasmussen (eds) *The History of the European Union: Origins of a Trans- and Supranational Polity 1950-72* (Routledge 2008).

⁵⁵⁶Joseph S. Nye Jr. 'Globalization's Democratic Deficit - How to Make International Institutions More Accountable' 80 (4) (2001) *Foreign Affairs* 1264-1318.

⁵⁵⁷ Rosas and Armati *EU Constitutional Law* (Hart Publishing, 2nd ed 2012).

The European Union's provision for languages can be examined in the context of the EU as a multinational organisation with its own constitutional structures. The choice of official language within a state is reflective both of practicality and of cultural symbolism. International organisations are also faced with these choices, as examined in chapter 5. Mowbray reminds us that

the tension between multilateralism and linguistic diversity is fundamental, far-reaching and manifests itself in a variety of ways. It also revealed that the relationship between these two concepts is complicated by the central role given to states within the international order.⁵⁵⁸

The multilinguality of the European Union, and the fact that it allows for all citizens and public representatives to interact in their respective languages, facilitated by the world's largest translation service, is significant. It follows logically from the historical role of language for European nation-states, as explored in the initial chapters of the thesis. This adherence to multilinguality, however, adds a layer of difficulty to the already challenging enterprise of creating a transnational democracy. Creating a democracy across cultures and peoples is difficult as values and traditions can vary in

⁵⁵⁸ Jacqueline Mowbray 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8 (1) *New Zealand Journal of Public and International Law* 91-115.

substantial ways. The additional factor of communication across languages creates a further barrier to comprehension.

Shared language facilitates state building, in that it creates what Wright terms a 'community of communication'.⁵⁵⁹ Theories of deliberative democracy focus on communication as central to democratic governance.⁵⁶⁰ The foundational discussions on the communicative aspect of law are provided by Habermas and Foucault's conceptions of the public arena.⁵⁶¹ Rawls⁵⁶² and Dryzek⁵⁶³ also assess the importance of participation to democratic practice and the creation of a political community. Therefore it is legitimate to consider the position of languages and the extent to which one can speak of language rights as part of the European Union's political and legal structure. Schmidt asserts that 'theorists working in the tradition of participatory democracy have had little, if anything, substantive to say about reconciling linguistic diversity with democratic theory and practice.'⁵⁶⁴ Liberal political theory has been briefly outlined in chapter 4's elaboration of multiculturalism and

⁵⁵⁹S. Wright *Community and Communication: the role of language in Nation-State Building* (Multilingual Matters 2000).

⁵⁶⁰J Habermas *Between Facts and Norms: Contributions to a discourse theory of law and democracy* (Polity 1996).

⁵⁶¹Jurgen Habermas *The Theory of Communicative Action Volume I* (Beacon 1981) T. McCarthy (translation).

Michael Foucault 'Two Lectures' in Colin Gordon ed *Power/Knowledge: Selected Interviews and Other Writings* (Pantheon 1980).

⁵⁶²John Rawls *A Theory of Justice: revised edition* (Harvard University Press 1999)

⁵⁶³John S. Dryzek *Foundations and Frontiers of Deliberative Governance*.

⁵⁶⁴R Schmidt 'Democratic theory and the challenge of linguistic diversity' (2014) 13 (4) *Language Policy* 395-411

language rights. Wright identifies the importance of communication for the modern state.⁵⁶⁵

A consideration of deliberative democracy necessarily contains significant linguistic aspects. For a workable and representative legitimate democracy, public discourse is the key.⁵⁶⁶ The issue of language diversity, however, is under-considered in the models of deliberate democracy that political theorists have proposed to date.⁵⁶⁷ Kymlicka and Patten note that 'virtually all existing models of deliberative democracy simply take for granted that everyone share a common language'⁵⁶⁸. Peled also points out this shortcoming.⁵⁶⁹ Kymlicka considers 'the vernacular' as the language of democracy, emphasising the centrality of dialogue.⁵⁷⁰ These theories closely interlink law and the use of language, and communication between the state and the citizen as key to legitimate rule. Habermas considers language important for the creation and facilitation of bourgeois political dialogue in Europe.⁵⁷¹ In purely

⁵⁶⁵ Sue Wright, *Community and communication: the role of language in nation building and European integration* (Multilingual Matters, 2000).

⁵⁶⁶ John Rawls *A Theory of Justice: revised edition* (Harvard University Press 1999)

⁵⁶⁷ Y Peled 'Language rights and the language of language rights The need for a new conceptual framework in the political theory of language policy' (2011) 10 (3) *Journal of Language and Politics* 436–456.

⁵⁶⁸ W. Kymlicka and A. Patten, *Language Rights and Political Theory* (Oxford University Press 2003), 15

⁵⁶⁹ Y Peled 'Language rights and the language of language rights The need for a new conceptual framework in the political theory of language policy' (2011) 10 (3) *Journal of Language and Politics* 436–456.

⁵⁷⁰ Archibugi D. 'The language of democracy: Vernacular or Esperanto? A comparison between the multiculturalist and the cosmopolitan perspectives' *Political Studies* (2005) 53 537–555. W. Kymlicka *Politics in the Vernacular: Nationalism Multiculturalism and Citizenship* (Oxford University Press 2009)

⁵⁷¹ J. Habermas *Between facts and norms: Contributions to a discourse theory of Law and Democracy* (transl. William Rehg published in English by MIT press 1998)

practical terms it could also be argued that language is necessary for the creation of a political dialogue and the formation of a shared identity.⁵⁷² This 'community of communication' is exactly the European public space or '*offentlichkeit*' which Habermas laments as being fundamentally lacking the European Union. Language is used in communication between the citizen and the State; therefore, it is essential to speak of language rights if we speak of democracy, even if we conceive of language rights only to fulfil this basic procedural function. The European Union must communicate not only with its citizens, but also with the national governments of its Member States, their systems of public administration, and also with the other organisations it deals with, both in corporate and civil society. Democratically speaking, these should all be able to understand the EU laws and rules which are applicable to them. Mendes argues that the European Union's multilingualism may hinder the exercise of participation rights within the European Union.⁵⁷³

Any example of multilingual democracy will certainly have organisational difficulties and problems of representation of the language communities. The operation of a multilingual parliament is particularly relevant to the role of language in deliberative

⁵⁷² This is often an argument debates in the USA regarding the establishment of English as an official language: the American context will be analysed further in chapter 8.

⁵⁷³ Joanna Mendes *Participation In EU Rulemaking A Rights- Based Approach* (Oxford University Press 2011) 265.

democracy, and the creation of a European *demos*.⁵⁷⁴ Grindheim and Lohndal believe that there is a prospect of the development of a European civic identity based in multilingualism.⁵⁷⁵ The EU represents the belief that Europeans possess some commonality which can actually transcend the smaller national boundaries. This inclusivity is reflected in its embracing of multilingualism.

It is clear, however, that it is possible to be both multilingual and democratic, one need only look to obvious and long-established examples such as Belgium, Canada or Switzerland to see this is the case.⁵⁷⁶ These manage to temper the difficulties presented by a diversity of language and the guarantee for citizens of participation in public life.⁵⁷⁷ Administrative rights are based in participative democracy, according to Mendes.⁵⁷⁸ This participation is guaranteed by the language rules of the EU. As highlighted, governance structures make a proactive language choice any time it attempts to communicate with its citizenry. The explicit endorsement of one language or variety over others, in a process of official language

⁵⁷⁴ Archibugi D. 'The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives'(2005) 53(3) *Political Studies*537–555.

⁵⁷⁵ Grindheim Jan Erik and Lohndal Terje(2008) 'Lost in Translation? European Integration and Language Diversity' *Perspectives on European Politics and Society* 9: 4 451 - 465

⁵⁷⁶ K.D. McRae, 'Towards language equality: four democracies compared', (2007)187/188 *International Journal for the Sociology of Language* 13.

⁵⁷⁷ Mowbray J, *Linguistic Justice: International Law and Language Policy* (Oxford University Press 2012)

⁵⁷⁸ Joanna Mendes 'Participation and Participation Rights in EU Law and Governance' in H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009).

choice, is laden with significance. The view of the European Union is that its official language choice, being so extensive and inclusive as to include the language of each Member State, demonstrates the equality and the parity of esteem of each of the Member States. Athanassiou refers to the 'intrinsic value [of multilingualism] as a democratic representation safeguard', asserting that:

Within the context of a united Europe of over 450 million inhabitants, the importance of multilingualism as a democratic representation tool is infinitely greater compared to the role that multilingualism can ever aspire to play within the confines of any individual Member State where more than one language is spoken.⁵⁷⁹

The European Union aims to facilitate this, by espousing rules of language parity, and embracing a formal multilingualism which is unique in the world. Public consensus is arrived at through democratic discourse across 24 languages, facilitated by the language rules in place to the extent possible. The next section argues that this is a key aspect of citizens' interaction with the EU.

Language rights in the EU only refer to those languages which are of the member states, therefore we can conclude that language rights in the EU are not human rights or fundamental rights. On the

⁵⁷⁹ P. Athanassiou 'The application of multilingualism in the European context' ECB Legal Working Paper (2) (European Central Bank 2006)

other hand, the EU clearly protects language rights as part of its administrative system, giving these minimalistic language rights protection in the Treaties. Therefore, the characterisation of language rights in the EU must be limited to the rights which come with its 24 official languages. Arzoz had proposed five categories for the classification of language rights; human rights, 'old' minority rights, 'new' minority rights, indigenous peoples' rights and the official language model.⁵⁸⁰ Schilling's three main characteristics which distinguish official languages: usually an official language will include the language the citizens use in communication with the state and vice versa. Furthermore, an official language is one which may be used in parliament and it is the language in which the official version of legal texts is published.⁵⁸¹ Within the European Union the 24 official languages appear to have this complement of characteristics. If there are language rights in the EU, they are official language rights; there is no affirmation of the 'minority protection' model with regard to language on a meaningful supranational level. It must be the case that any concrete language rights within the European Union can link only to its official languages. These can be classified as procedural rather than substantive in nature. Article 24 4 TFEU explicitly outlines

⁵⁸⁰Xabier Arzoz 'Accommodating Linguistic Difference- five normative models of Language Rights' *European Constitutional Law Review* 6 (2010) 102-122; Xabier Arzoz (2009): 15 (4) 'Language Rights as Legal Norms' *European Public Law* 541-574. 541

⁵⁸¹ Schilling, Theodor 'Language Rights in the European Union' *German Law Journal* Vol 9 (10) pp 1219-1242

the right to write to any EU institution or body in one of the languages of the Member States and to receive a response in the same language. This right which is strongly protected in the EU Charter of Fundamental rights is a citizenship based language right.

IV Linguistic Citizenship in the European Union

Article 9 TEU places the citizen at the centre of the EU system, stating:

The Union shall in all its activities observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies.⁵⁸²

2013 was declared the European Year of the Citizen, marking the twentieth anniversary of the signing of the Treaty of Maastricht, which heralded the introduction of EU citizenship. The EU has introduced a new conception of citizenship.⁵⁸³ European Union citizenship has been described as the world's first post-national citizenship.⁵⁸⁴ It operates on local national and multinational level.⁵⁸⁵ It is increasingly conceived of as a political form of citizenship, which crosses national boundaries.⁵⁸⁶ Article 25 TFEU emphasises that EU citizenship is a dynamic concept. The European Union is fostering a new understanding of citizenship, which brings with it transnational

⁵⁸² Article 9, Consolidated Version of the Treaty on European Union, (2010 O.J. C 83/0).

⁵⁸³ F Jacobs 'Citizenship of the European Union- a legal Analysis' (2007) 13 (5) *European Law Journal* 1591.

⁵⁸⁴ Patricia Mindus 'Dimensions of Citizenship' 15 *German Law Journal* (2014).

⁵⁸⁵ Rainer Bauböck 'The Three Levels of Citizenship within the European Union.' (2014) 15(5) *German Law Journal* 751 -763

⁵⁸⁶ Patricia Mindus and Marco Goldoni 'Between Democracy and Nationality: Citizenship Policies in the Lisbon Ruling' (2012) 18 *European Public Law* 351-370 .

rights.⁵⁸⁷ This is part of the European Union's unique constitutional structure which is in a new mould, beyond the State-focused understandings which have preceded it.⁵⁸⁸

(i) Language testing and citizenship

The use of language testing is a common precondition for citizenship in many Member States of the European Union, as discussed in chapter 2.⁵⁸⁹ The increasing prevalence of these tests demonstrates the continued centrality of language to the ideological creation of a cohesive nation within the European context. These requirements are not standardised across EU Member States but are determined by individual states, and are used to control the linguistic environment in Member States by closely linking the condition of citizenship to linguistic competence.⁵⁹⁰ This language testing has been criticised by sociolinguists as it further implicates the state in control of the linguistic environment. Blommaert, Leppanen and Spotti assert that this testing is further promoting the ideology of state-controlled language. They claim that

⁵⁸⁷ J Shaw *The Transformation of citizenship in the European Union: Electoral Rights and the restructuring of Political Space* (Cambridge University Press 2007).

⁵⁸⁸ J. Weiler and M. Wind (eds) *European Constitutionalism Beyond the State* (Cambridge University Press 2003).

⁵⁸⁹ Baubock R. and S. Wallace Goodman 'Naturalisation' (2010) EUDO Citizenship Policy Brief (European University Institute Florence) Bocker A. and Tineke S. 'Language and Knowledge Tests for Permanent Residence Rights: Help or Hindrance for Integration?' (2011) 13(2) *European Journal of Migration and Law* 157-184.

⁵⁹⁰ Van Oers Ersbøll and Kostakopoulou (eds) *A Re-definition of Belonging? Language and Integration Tests in Europe* (Brill Publishing 2010) Elspeth. Guild C. A. Groenendijk Sergio Carrera(eds) *Illiberal Liberal States: Immigration Citizenship and Integration in the EU* (Ashgate 2009).

The increasing importance of language testing in the context of immigration and 'integration' policies ... represents a form of modernist linguistic border control in which 'modern' (and thus, essentialist) regimes of identity attribution are central, and in which a static, mono-normative and artefactualised concept of language is used.⁵⁹¹

Chapter 2 has already pointed out the increasing prevalence of language testing as a means of 'proving' allegiance and belonging in the EU.⁵⁹² It has been observed that the instrumentality of language to achieving citizenship can vary:

[w]ith regard to language, a general trend is that states that wish to encourage immigration (e.g. Romania, Poland and Hungary) place less emphasis on language and assessment than states that perceive immigration as a 'problem' (e.g. Austria, Finland, United Kingdom, Denmark, the Netherlands, France and Germany).⁵⁹³

Mouritsen believes that states within the European Union 'have begun to reinvest citizenship with meaning and pathos.'⁵⁹⁴ The increasingly stringent conditions for citizenship, not least among

⁵⁹¹ J. Blommaert S. Leppanen and M. Spotti 'Introduction' in J. Blommaert S. Leppanen P. Pahta and T. Rasiainen (eds) *Dangerous Multilingualism; Northern Perspectives on Order Purity and Normality* (Palgrave 2012).

⁵⁹² P. Van Avermaet 'Fortress Europe? Language policy regimes for immigration and citizenship.' in G. Hogan-Brun C. Mar-Molinero and P. Stevenson (eds) *Discourses on Language and Integration: Critical Perspectives on Language Testing Regimes in Europe*. (2009: John Benjamins) 15-27.

⁵⁹³ Ruth Wodak 'Language Power and Identity' (2012) 45 (2) *Language Teaching*. 215-233, 226

⁵⁹⁴ Per Mouritsen 'Beyond Post-National Citizenship: Access Consequences and Conditionality' in Triandafyllidou, Modood and Meer (eds) *European Multiculturalisms* (Edinburgh University Press 2012)

which language testing, are a testimony to this. These language tests, in strengthening the borders of Europe, form part of the conditions to entry into the EU. The CJEU recently delivered judgment on a Turkish national who was refused a visa to Germany for the purpose of family reunification, on the grounds of insufficient knowledge of German.⁵⁹⁵ This was held to be a further restriction in light of the 'standstill' clause of the EU's Association Agreement with Turkey which stipulates that the introduction of new restrictions on the freedom of establishment is forbidden. The language requirement had been introduced by Germany in 2007, and demonstrates the increasing link drawn by Member States of the EU between language and citizenship.⁵⁹⁶

Member States may legitimately adopt policies to protect their national language within the confines of the European Union free movement rules.⁵⁹⁷ AG Jääskinen in the *Anton Las* case, however, stated that that 'the principle of linguistic diversity ... cannot be relied on by a Member State against citizens of the Union in order to justify a restriction on their fundamental freedoms'.⁵⁹⁸ Language concerns may only be invoked to protect the interests of Member

⁵⁹⁵ Case C 138/13 *Naime Dogan v Bundesrepublik Deutschland* judgement of 10/07/2014 (unreported)

⁵⁹⁶ G. Extra, M. Spotti and P. van Avermaet (Eds.) *Language Testing Migration and Citizenship: Cross National Perspectives on Integration Regimes* (Continuum 2009).

⁵⁹⁷ This falls under 'national identity' under Art 4(2) TEU and established in *Groener* Case C-379/87 *Groener* [1989] ECR 3967 paragraph 19 and Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787 paragraph 85). This was recently confirmed in case C-202/11 *Anton Las v PSA Antwerp NV* (unreported) (16/4/2013)

⁵⁹⁸ C-202/11 *Anton Las v PSA Antwerp NV* (unreported) opinion of AG Jääskinen.

States within the limits of proportionality determined by the court. The *Kik* case clearly stated that ‘the rules governing languages laid down by Regulation No. 1 cannot be deemed to amount to a principle of Community law.’⁵⁹⁹ However, a certain level of participatory language rights are very strongly protected, both in the Treaties and in the Charter of Fundamental rights. The European Union introduced post-national citizenship has been challenged in terms of the provisions of the welfare state, migration and other rights and duties.⁶⁰⁰

The citizenship rights related to language within the system of the European Union are not particularly extensive, remaining limited to the broad protection of ‘respect (for the Union’s) rich cultural and linguistic diversity’ in Article 3(3) TEU and Article 22 of the Charter of Fundamental Rights of the European Union, and the explicit correspondence rights of Article 20(2)(d) (TFEU) which provides the right for citizens of the ‘to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language’, which is further protected in Article 41(4) of the Charter of Fundamental Rights of the European Union. This is a clear right which goes hand in hand with citizenship of the European Union.

⁵⁹⁹ *Kik v. OHIM* Case C-361/01 P [2003] ECR. I-8283 para. 74 upholding the CFI’s decision.

⁶⁰⁰ Michelle Everson ‘A very cosmopolitan citizenship: but who pays the price?’ in Dougan Nic Suibhne and Spaventa (eds) *Empowerment and Disempowerment of the European Citizen* (Hart 2012).

AG Maduro states that -

that principle is linked with a fundamental democratic principle of which the Court takes the greatest care to ensure observance. That principle requires in particular that subjects of the law of the Union, be they Member States or European citizens, should have easy access to the legal texts of the Union and to the institutions which produce them. Only such access can offer Union citizens the opportunity to participate effectively and equally in the democratic life of the Union.⁶⁰¹

In recognition of this form of language rights, which is closely linked with citizenship, Stroud and Heugh propose a new form of 'linguistic citizenship'.⁶⁰² This is a move away from linguistic human rights, as they argue, as does this thesis, that language rights concepts are too amorphous. Linguistic citizenship encapsulates the EU's guarantees for language rights outlined in this chapter.⁶⁰³ Harlow points out that where citizenship as a concept is so unclear or so intricate, it might cause problems for the consequent conceptualisation of a system of administrative justice in the classical tradition.⁶⁰⁴

⁶⁰¹ Opinion of Advocate General Maduro in Case C-160/03 *Spain v Eurojust* [2005] ECR I-para 43.

⁶⁰² C. Stroud and K. Heugh 'Linguistic human rights and linguistic citizenship' in Donna Patrick and Jane Freeland (eds.). *Language Rights and Language Survival: A Sociolinguistic Exploration* (St Jerome 2004).191-218.

⁶⁰³ Christopher Stroud 'African Mother-tongue Programmes and the Politics of Language: Linguistic Citizenship Versus Linguistic Human Rights' (2001) 22 (4) *Journal of Multilingual and Multicultural Development* 339-355

⁶⁰⁴ C. Harlow 'Three Phases in the Evolution of European Administrative Law' in P Craig and G de Burca *The Evolution of EU Law* (Oxford University Press, 2nd ed 2011).

The nature of EU citizenship is such that it transcends traditional understandings of citizenship and nationality.⁶⁰⁵ Citizenship can be described as 'one of the cornerstones of the Union constitutional order,'⁶⁰⁶ which brings with it rights of a pan-European nature.⁶⁰⁷ Citizenship has been linked to European Union-wide protection of fundamental rights.⁶⁰⁸ In the European Union language is enshrined as an aspect of the accessibility of the European Union institutions to their citizens. It is recognised at a symbolic level as acknowledgement of the 'cultural and linguistic diversity'⁶⁰⁹ of the Member States. This then results in the multilingual authenticity enshrined in Article 55 TEU. For the modern state, language is perceived as fundamental to belonging, in particular given the wide-ranging nature of citizen/state communication.⁶¹⁰ This is also the case for the European Union. Even a commentator such as Cristina Rodriguez, in favour of official bilingualism in the USA focuses more on democratic participation than on the preservation of difference as

⁶⁰⁵ A. Ilopoulou Penot 'The Transnational Character of Union Citizenship' in Dougan Nic Suibhne and Spaventa (eds.) *Empowerment and Disempowerment of the European Citizen* (Hart 2012).

⁶⁰⁶ Rosas and Armati *EU Constitutional Law* (Hart Publishing, 2nd ed 2012) 157.

⁶⁰⁷ N Nic Shuibhne 'The Outer Limits of EU Citizenship: Displacing Economic Free Movement Rights?' in CBarnard and O Odudu (eds.) *The Outer Limits of European Union Law* (Hart 2009).

⁶⁰⁸ Sara Iglesias Sánchez 'Fundamental Rights and Citizenship of the Union at a Crossroads: A Promising Alliance or a Dangerous Liaison?' (2014) 20 (4) *European Law Journal* 464–481.

⁶⁰⁹ Article 3 of the Treaty of European Union states: '(The Union)... shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced'.

⁶¹⁰ Sue Wright 'Language policy, the nation and nationalism' in B. Spolsky (ed) *The Cambridge handbook of language policy* (Cambridge University Press 2012).

a positive outcome of policies favourable to multilingualism.⁶¹¹ Patten argues that the delicate balance of multilingual recognition is crucial to the EU's external communications with its citizens.⁶¹² Within the political compromises that make up the system of the European Union, the provision of language rights as procedural rights is highly protected. This is a protection of the right to participate in the EU's democratic governance. The rights protected are procedural rather than substantive in nature, and they include explicit and implicit provisions for language, such as communication with the institutions, a parliament which can function multilingually, and laws which enjoy equal authenticity. Administrative justice itself is an intricate theory which varies across legal systems.⁶¹³ With the advent of the pervasive modern state and the modern legal system there has been an explosion of procedural law and procedural complaints: Large scale bureaucracies created new opportunities for both arbitrary and incompetent exercises of power and, as a consequence a growth in citizens' complaints against the various emanations of the State.⁶¹⁴

⁶¹¹ Cristina M Rodriguez 'Language and Participation' *NYU Public Law and Legal Theory Working Papers*. Paper 7 (2005).

⁶¹² Alan Patten 'Theoretical Foundations of European Language Debates' in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

⁶¹³ For a comparative overview spanning the USA and Europe see Juli Ponce 'Good Administration and Administrative Procedures' (2005) 12 (2) *Indiana Journal of Global Legal Studies*.

⁶¹⁴ U. Preuss, 'Disconnecting Constitutions from Statehood: Is Global Constitutionalism a Viable Concept' in Loughlin and Dobner (eds) *The Twilight of Constitutionalism* (Oxford University Press 2010) Buck Kirkham and Thompson (eds) *The Ombudsman Enterprise and Administrative Justice* (Ashgate 2011).

Public institutions worldwide are increasingly interconnected and communicate with each other and with citizens.⁶¹⁵ This chapter has argued that the only language rights which are in place in the European Union are of a limited and administrative nature. The problems of EU governance, have led to the adoption of new techniques of conflict prevention and resolution in administrative matters, to the point where the European Union has been heralded as the paradigm case of administrative legitimation and the cosmopolitanisation of administrative law.⁶¹⁶ EU administrative law has developed on a somewhat ad hoc basis.⁶¹⁷ The principles of the EU legal order are broadly drawn from four legal families.⁶¹⁸ The administrative framework of the EU legal system was built through a process of integration by the ECJ, which identified commonalities and distilled them into general principles, creating a foundation for the development via political means of legislation enshrining these principles.⁶¹⁹ The CJEU has recognised Good Administration as a fundamental legal principle of the European Union.⁶²⁰ Administrative

⁶¹⁵ Lafarge, Larat and Mangenot 'Democratic Trends in Public Administration: A New Citizen-Centred Approach To Government Services' (special issue) 2011 (137-138) *Révue Française d'administration Publique*.

⁶¹⁶ Ming Sung Kuo, 'From Administrative Law to Administrative Legitimation? Transnational Administrative Law and the processes of European Integration' (2012) 61(4) *International and Comparative Law Quarterly* 855-879

⁶¹⁷ P. Craig, 'EU Administrative Law The Acquis' (2011) *Rivista Italiana di Diritto Pubblico Comunitario* 329

⁶¹⁸ J. Bell, 'Mechanisms for Cross-Fertilisation of Administrative Law in Europe' in J. Beatson and T. Tridimas (eds) *New Directions in European Public Law* (Hart 1998).

⁶¹⁹ S. Prechal 'Competence Creep and General Principles of Law' (2010) 3 *Review of European Administrative Law* 5-22.

⁶²⁰ K. Lenaerts and Gutiérrez-Fons 'The Constitutional Allocations of Powers and General Principles of EU Law' (2010) 47 *Common Market Law Review* 1629-1669.

rights could be interpreted as the keystone of the EU legal order's relationship with its citizens.

The imprecision present in the descriptions of language rights we have visited in the preceding chapters mean that it is very difficult to sustain the legal claims to EU-wide language rights as fundamental rights, in substantive terms. It is commonplace to speak of language rights as if there were a clear cut category, or at least a distinct grouping of rights, despite the fact that the conceptual difficulties we touched upon in previous chapters are nowhere near being ironed out. The imprecision present in the descriptions of language rights mean that it is very difficult to sustain the legal claims to EU-wide substantive language rights. That is to say that rather than being linked to human rights or dignity of the individual, they are related to the role of the citizen.

Interestingly, however, the Ombudsman has explicitly stated that he considers that a citizen's choice of language is intrinsically linked to his or her identity as an individual.⁶²¹ However, I argue the European Union does not protect an identitarian ideal of language, but closely protects language as a functional tool. Pupavac argues with the importance accorded to subjective identity in the international protections of language rights.⁶²² She criticises the lack

⁶²¹ Decision of the European Ombudsman on complaint 2533/2009/VIK see also Decision of the European Ombudsman on complaint 2580/2006/TN para 2.5.

⁶²² Vanessa Pupavac, *Language Rights: from Free Speech to Linguistic Governance* (Palgrave 2012).

of emphasis on the communicative function of language which an approach focusing on 'difference', such as those common in multiculturalist political philosophy outlined in the chapter 3 entail. Those who criticise a language rights approach are often reacting against its determinism and ethnonational focus and its ignorance of the nature of language.⁶²³ In Europe, language rights discourse has been used mainly in relation to 'regional or minority languages'. However, it is submitted that within the legal order of the European Union, language rights are administrative in nature. O'Riagain describes language rights as a medium through which one then exercises civil functions or asserts rights.⁶²⁴ Rubio-Marin would describe this category of language rights as 'instrumental'.⁶²⁵ It is a framing of language rights as facilitative rather than substantive. This is the genre of language rights protected within the system of the European Union.

Language cannot fully be individualised as a concept, due to its function as a means of communication. This difficulty poses a problem for the discourse of 'Language Rights', as explored in chapter 3. Therefore, it is sometimes claimed that the language rights claimed

⁶²³ Wee L, *Language Without Rights* (Oxford University Press 2011); Vanessa Pupavac, *Language Rights: from Free Speech to Linguistic Governance* (Palgrave 2012); Stephen May *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (Routledge 2nd end 2011)

⁶²⁴ Donall O'Riagain 'All languages great and small' in S. Trifunovska (ed) *Minority Rights in Europe: European Minorities and Languages* (T.M.C. Asser Press 2001) and Ò Riagáin Dónall The European Union and lesser used languages (2001) 3(1) MOST Journal on Multicultural Societies 33-43.

⁶²⁵ See discussion in Chapter 3.

are merely rights of another nature which happen to have a linguistic aspect.⁶²⁶ These include, for example, freedom of language in the private sphere, or the right to an interpreter as part of fair trial rights. In reality, Paz claims, these are not full language rights.⁶²⁷ Rather than viewing them as somehow incomplete, it is submitted that it is more accurate to view EU language rights as different. They are rooted in legitimising a union of states, whose histories are intimately tied up with their national official languages. The language rights associated with the conceptualisation of language as an integral aspect of identity or human dignity, cannot be said to be protected within the EU system. However, administrative language rights as part of an EU citizen-identity, which mean full access to institutions and equal recognition of all language versions of EU legislation are strongly protected within the EU system. This is not to say that procedural rights are lesser rights. In fact, Administrative rights are strongly protected within the system of the European Union. Schilling states that

In the case of both multilingual States without a lingua franca and International Organisations, the services of a translator/interpreter are indispensable for communications between public authorities and citizens while the responsibility

⁶²⁶ Robert Dunbar 'Minority Language Rights in International Law' (2001) *International and Comparative Law Quarterly* (50) 90-120.

⁶²⁷ Moria Paz, 'The Failed Promise of Language Rights: A Critique of the International Language Rights Regime' (2013) 54 *Harvard International Law Journal* 157-218, 172

for securing such services depends on the respective situation.⁶²⁸

This provision is part of what Meylaerts calls 'translational justice', justice guaranteeing the use of language and the translation into language.⁶²⁹ As emphasised, the European Union operates in 24 languages. This thesis focuses on language as part of the democratic process in the European Union, which is extensively facilitated by the provision of translation across 24 official languages. These language provisions are central to the European Union's relationship with its citizens. The European Union wants to communicate with the citizens, and is concerned with securing the administrative justice of this communication.

V Conclusions

After an examination of the difficulties inherent in any attempt at classification of language rights in general, it created a typology of the language rights protected in the European Union. These are mediated through the member states. They are democratic rights. The EU defines itself as a multilingual polity which is committed to recognising the language rights of its citizens, but the level of language rights accorded to the citizen within the EU varies depending on the language's level of official endorsement by the

⁶²⁸ Theodor Schilling, 'Language Rights in the European Union' (2009) *German Law Journal* Vol 9 (10) 1219-1242

⁶²⁹ Reine Meylaerts, 'Translational justice in a multilingual world. An Overview of Translational Regimes' (2011) *Meta:le journal des traducteurs* 56(4), 743-757

Member States. The provision of translation can be an important vehicle for language rights.⁶³⁰ González-Núñez identifies this as the approach chosen by the European Union and set out in its legislation.⁶³¹

This research analyses the phenomenon of language in interaction between the European Union and its citizens, looking at the concrete language rights which are provided in the legal system of the European Union.

Douglas Scott postulates that the only justice we can properly assess in a pluralist integrated complex legal system such as the EU is procedural.⁶³² The question of constitutionalism in Europe can be approached from many different points of view.⁶³³ The European Union has famously and repeatedly been described as *sui generis*. This term was first used in relation to the EU in 1955.⁶³⁴ The European Union's advanced form of supranational integration makes it the focus of a variety of theorisations of transnational

⁶³⁰ Gabriel González Núñez, 'Translating to Communicate with Linguistic Minorities: State Obligations under International Law' (2013) 20 (3) *International Journal on Minority & Group Rights* 405.

⁶³¹ G. Núñez, 'Translating To Communicate With Linguistic Minorities: State Obligations Under International Law' (2013) 20.3 *International Journal on Minority & Group Rights* 405-441.

⁶³² Sionaidh Douglas-Scott 'Justice Injustice and the Rule of Law in the EU' in G de Búrca D Kochenov and A Williams (eds) *Europe's Justice Deficit? Beyond Good Governance* (Hart 2014).

⁶³³ A Verhoeven *The European Union in Search of a Democratic and Constitutional Theory* (Kluwer 2002).

⁶³⁴ HL Mason *The European Coal and Steel Community: experiment in supranationalism* (Martinus Nijhoff 1955)

constitutionalism.⁶³⁵ This thesis investigates the legal protection of language within this framework. The use of all the official languages, in particular in the European Parliament, and in contact with its citizens is an attempt to forge legitimacy.⁶³⁶ The roots of the legal protection of language in the European Union lie outside a human rights conception of language rights, however. This chapter has clearly demonstrated this. The distinctive linguistic features of the EU's political and legal system such as the multilingual authenticity of EU law, the multilingualism of the EU institutions and the citizenship-based language rights investigated in this chapter all form the basis of the legal protection of language in the European Union.

The normative order in the European Union, although finding its roots in the nation-state nationalism evoked in chapter 2, revealed itself to be more tolerant of procedural language rights, in relations with the public authorities than might initially appear. However, it does not protect language rights in a holistic 'human rights sense', its protections are limited to administrative citizenship based rights. These are the language rights granted within the EU system. The maintenance of a diverse language regime is viewed as crucial, at

⁶³⁵ Joan de Bardeleben and Achim Hurrelmann (eds) *Transnational Europe: promise paradox limits* (Palgrave Macmillan 2011) Antje Wiener and Thomas Diez *European Integration Theory* (2nd ed Oxford University Press. 2009).

⁶³⁶ T. Van Els (2006). The European Union its Institutions and its Languages: Some Language Political Observations in R. Baldauf. and R. Kaplan (eds .) *Language Planning and Policy in Europe*. (Vol. 2) (Multilingual Matters 2006) and 'Multilingualism in the European Union' (2005) 15(3) *International Journal of Applied Linguistics* 263-281.

institutional level, to the European Union's unique system of governance.⁶³⁷ The role of cultural and linguistic diversity, albeit limited to a diversity sanctioned by the Member States, remains strong in the European Union. This will be analysed from a comparative perspective in the next chapter. The next chapter builds on the typology created in this chapter and reassesses the potential for minority language rights in the EU, within the participatory conception of language rights identified.

Chapter 8 Protections of language in the European Union: Comparative Perspectives.

This thesis argues that the legal protection of languages in the European Union goes beyond the provision of language rights. Multilingualism is a core aspect of how the EU operates, both from a pragmatic, functional point of view and from a theoretical point of view. The linguistic policies of the European Union that this thesis has investigated, and the broad ranging commitment to multilingualism in the operation of its legal system supplement the distinctive language rights identified by chapter 7. Translation is central to the provision of the EU's extensive language guarantees. Part I of this thesis has shown that the difficulties in defining language rights lie in the cultural complexity of the concept of language, the imprecision of the concept 'language rights', and the weight of language in the

⁶³⁷ Karl-Johan Lönnroth 'Why is the language policy in EU political dynamite?' (speech given at Centre for European Policy Studies 22 February 2008).

history of the European nation-state. It concludes by asking whether there is space – practically and theoretically – for EU protection of minority languages within the legal protections identified in the EU system.

This thesis argues that the language *rules* of the European Union, and the translation that gives effect to them are the key to understanding language rights in the European Union. The rules are enunciated in the central regulation, Regulation 1/1958. These are grounded in Article 3 TEU and Article 22 of the Charter of Fundamental Rights of the European Union's pledges to respect 'cultural and linguistic diversity', but do not have language preservation as their ultimate aim.⁶³⁸ They are limited to the official languages of the member states, and do not include regional or minority languages. Article 55 TFEU, guaranteeing equal authenticity, along with the provisions of Article 24 of the TFEU, and Article 21.3 of the European Charter of Fundamental Rights, guaranteeing European citizens the right to write to the European institutions in any official EU language and ensuring an answer in the same language, form the basis of the language rights present within the EU system. Ost affirms that translation is the official language of

⁶³⁸ Grindheim and Londahl argue that this may be changing: -Jan Erik Grindheim and Terje Lohndal 'Lost in Translation? European Integration and Language Diversity' (2008) 9 *Perspectives on European Politics and Society* 451-465.

Europe.⁶³⁹ This allows for the operation of the European Union through 24 official languages.

The EU is a uniquely democratic multilateral organisation.⁶⁴⁰ This is manifested through the inclusive language regime assessed in this thesis. Kraus argues that this can be seen as Europe's 'linguistic constitution', referring not to a specific legal document, but instead to 'the different regulations and practices that give the Union's language regime its actual form.'⁶⁴¹ The EU's granting of special status to certain regional or minority languages comes under this rubric. Despite the assertions of partisan commentators and the calls for increased involvement,⁶⁴² it is clear that the EU is not a new arena for extended language rights in a fundamental rights sense. This thesis has demonstrated the lack of clarity in fundamental rights conceptions of language rights.

It argues that EU language rights are participatory rights, essential to the democratic administrative governance of the EU, rather than minority rights. This chapter looks to the place of minority

⁶³⁹ F. Ost *Traduire: défense et illustration du multilinguisme* (Fayard 2009)

⁶⁴⁰ Mark Thomas *New Governance and the Transformation of European Law* (Cambridge University Press 2011)

⁶⁴¹ Peter Kraus, 'Neither United nor Diverse: the language issue and political legitimation in the European Union' in Kjaer L. and Adamo S. (eds) *Linguistic Diversity and European Democracy* (Ashgate 2011).

⁶⁴² S.B. Elias, 'Regional Minorities, Immigrants and Migrants: The Reframing of Minority Language Rights in Europe' (2010) 28 *Berkeley Journal of International Law* 261-312; Tawhida Ahmed, 'Demanding Minority (Linguistic) Rights from the EU: Exploiting Existing Law' (2009) 15 (3) *European Public Law* 379-402; Iñigo Urrutia and Iñaki Lasagabaster *Language Rights and Community Law* European Integration Online Papers vol.12, 2008; Iñigo Urrutia and Iñaki Lasagabaster, 'Language Rights as a General Principle of Community Law', (2007) 8 *German Law Journal* 479.

languages in the European Union. The EU explicitly recognises the languages of all its constituent states. Kraus reflects that 'if the nation-states were about achieving unity through homogenization, the EU is working out an approach to integration that cherishes cultural and linguistic diversity.'⁶⁴³ This may perhaps reflect a move towards further recognition of a multiplicity of languages internationally.⁶⁴⁴

This chapter assesses the minority protection potential in the European Union, building on the regional language rights instruments present in Europe which were examined in chapter 4. In a comparative analysis it also examines how the normative order in Canada, the USA and Europe attempt to cope with their linguistic minority issues, and how their legal orders deal with multilingualism. The European Union context closely correlates language and nation, and thus the languages used by the European Union are those used by the institutions of its Member States. However, this thesis argues that the regional and minority languages present in the European Union are not entirely left in the cold.

I Official Language revisited

Language raises important questions relating to citizenship, representativity and participation. Communication is central to the

⁶⁴³ Kraus, Peter 'Neither United nor Diverse: the language issue and political legitimation in the European Union' in L. Kjaer and S. Adamo (eds) *Linguistic Diversity and European Democracy* (Ashgate Publishing 2011) 19

⁶⁴⁴ Michel Doucet (ed.) *Le Pluralisme Linguistique : L'aménagement de la Coexistence des Langues* (Yvon Blais, 2014)

modern democratic system of government.⁶⁴⁵ The advances in bureaucracy and the expansion of the role of the state since the dawn of the twentieth century mean that the modern state communicates with its citizens more than any medium of governance ever has. In many legal environments across the world, particularly in postcolonial contexts, there is little or no correlation between the official language of the state institutions, and the language(s) the citizens of that state employ at home.⁶⁴⁶ It is commonplace in postcolonial contexts for the colonial language to be retained as the language of the administration, to avoid the ethnic tensions that may arise from the choice of languages.⁶⁴⁷

In Namibia, for example, English was chosen as the official language of the state, although it was the 'mother-tongue' for a mere 3% of its population.⁶⁴⁸ This is not unusual in state administrations outside of Europe. India, for instance, has extraordinary linguistic diversity within a unitary state. The official languages of India are Hindi and English, in that they are the languages used by the Indian State. There are 22 regional languages recognised by the Constitution as 'scheduled languages' named after the eighth schedule to the Indian constitution. Each Indian state can designate its own official

⁶⁴⁵ S. Wright *Community and Communication: the role of language in Nation-State Building*, (Multilingual Matters, 2000)

⁶⁴⁶ Hüning, U.Vogl and O.Moline (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins, 2012)

⁶⁴⁷ A. Suresh Canagarajah, 'Dilemmas in planning English/vernacular relations in post-colonial communities' (2005) 9 (3) *Journal of Sociolinguistics* 418.

⁶⁴⁸ See further United Nations Human Rights Committee (UNHRC), comm. No. 760/1997, *Diergaardt et al. v. Namibia* cited in chapter 4

language, which may be used for State legislative purposes.⁶⁴⁹The people's linguistic project⁶⁵⁰ in India, however, found 780 languages present within India.⁶⁵¹ The lack of linguistic diversity in Europe renders this divergence almost unimaginable to the modern European speaker. This kind of scenario is also commonplace in other postcolonial systems, and has been resolved in a variety of ways.⁶⁵² An example of such a case is the Republic of South Africa, which officially recognises 11 languages, but restricts its working languages to two.⁶⁵³ The links between the creation of an ideology of national language and the creation of a cohesive nation-state are fundamental to understanding the current approach to language rights in the European Union.

Chapter 4 assessed the actions of the bodies established under the Council of Europe for minority protection. This chapter looks to the actions of the European Union specifically, and assesses how minority languages have fared in the European Union's structures. Building on the analysis of chapter 4, it compares the legal protection of language in the European Union with that by the

⁶⁴⁹ Asha Sarangi (ed) *Language and Politics in India* (Oxford University Press 2010).

⁶⁵⁰ Bhasha Research & Publication Centre 'People's Linguistic Project' (30 volumes) (Orient Blackswan Pvt. Ltd. 2013/14).

⁶⁵¹ This research project claims to be the first comprehensive survey of Indian languages since the British Raj's Linguistic Survey of India (which was carried out between 1894 and 1928). This survey was compiled and edited by George A. Grierson, and described 733 languages and dialects.

⁶⁵² A Bamgbose *Language and the nation: The language question in Sub Saharan Africa* (1991).

⁶⁵³ Victor Webb *Language in South Africa: The Role of Language in National Transformation, Reconstruction and Development* (John Benjamins, 2002).

European Court of Human Rights. The EU's recognition of language rights does not go beyond the parameters set by the Member States which compose it. Although, in light of the broad ranging policy protections contained in the European Charter for Regional and Minority Languages, and the cultural protections of international law this may seem like a weak protection, on inspection of the protections afforded by the European Convention on Human Rights, the provisions of the European Union are significant. Moira Paz asserts that the international legal system has 'consistently favoured linguistic assimilation rather than the robust protection of linguistic diversity that is formally espoused,'⁶⁵⁴ The language rights protected by the European Convention on Human Rights are instrumental, as Williams and Rainey assert, and are respectful of states' choice of official language.⁶⁵⁵

(i) Official language in the European Court of Human Rights and the European Union.

The current discourse in the major multilateral Human Rights institution of the European region is one of clear deference to the nation-state in matters of language, notwithstanding its political charters analysed in chapter 4. This section demonstrates the reluctance of the European Court of Human Rights to intervene in the

⁶⁵⁴ Moira Paz 'The Failed Promise of Language Rights: A Critique of the International Language Rights Regime' (2013) 54 *Harvard International Law Journal* 157-218 [abstract].

⁶⁵⁵ K. Williams and B. Rainey 'Language Education and the European Convention on Human Rights in the Twenty-first Century' (2002) 22 *Legal Studies* 625.

traditional role of the nation-state as being the arbiter and owner of language, building on our analysis of the Court's caselaw in chapter 4. Article 6 TEU declares that the Union recognises the rights set out in the Charter of Fundamental Rights of the European Union and that it will accede to the European Convention for the Protection of Human Rights. The ECHR cases mentioned in chapter 4 concentrated on substantive protection of minority language rights, and thus were relevant to demonstrating the complicated nature of minority language rights protections. The cases treated here involve procedural language rights. According to the European Court of Human Rights, states are free to select an official language, their national language, and to use only this in communications with their citizens. Public authorities do not have the obligation to comply with the language preferences of their citizens. Woherling comments in relation to the European Charter for Regional or Minority Languages that:

The use of the regional or minority language is not, therefore, except in special cases, a practical necessity but a voluntary exercise dictated by the satisfaction felt in speaking the language and the desire to make room for it in dealings with public bodies. A state which accepts this obligation recognises the legitimacy of this wish and undertakes to respect it.⁶⁵⁶

⁶⁵⁶ J-M Woehrling *The European Charter for Regional or Minority Languages : A Critical Commentary* (Council of Europe Publishing 2005) 178–179.

In the EU, Member States are explicitly allowed give preferential treatment to their national languages. The Court of Justice of the European Union has stated that 'the provisions of European Union law do not preclude the adoption of a policy for the protection and promotion of one or more official languages of a Member State.'⁶⁵⁷

The European Court of Human Rights recognised the central role of the official language for the state. It stridently declared that:

The official language is, for these States, one of the fundamental constitutional values in the same way as the national territory, the organisational structure of the State and the national flag. A language is not in any sense an abstract value.⁶⁵⁸

The ECHR strictly does not guarantee the right to communicate with public authorities in the language of one's own choice and to receive an answer in that language.⁶⁵⁹ The Court has stated :

La Cour rappelle qu'aucune disposition de la Convention ne garantit la liberté linguistique en tant que telle, et notamment le droit de se servir de la langue de son choix dans les rapports avec

⁶⁵⁷ C-202/11 *Anton Las v PSA Antwerp NV* (unreported) para 25 Case C-379/87 *Groener* [1989] ECR 3967 paragraph 19 and Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787 paragraph 85).

⁶⁵⁸ *Mentzen alias Mencena v Latvia* App no 71074/01 (ECtHR, 7 December 2004) XII 25

⁶⁵⁹ *Igors Dmitrijevs v Latvia* App no 61638/00 (ECtHR, 30 November 2006) (available only in French)

les institutions publiques et de recevoir une réponse dans cette langue'^{660 661}

Within the system of the European Convention on Human Rights Linguistic freedom as such is not one of the rights and freedoms governed by the Convention, and that with the exception of the specific rights stated in Articles 5(2)⁶⁶² and 6 (3) (a) and (e)⁶⁶³ the Convention *per se* does not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice.⁶⁶⁴

In *Podkolzina v. Latvia*⁶⁶⁵ an election candidate from the Russian-speaking minority was removed from a list for parliamentary elections in Latvia due to a lack of proficiency in Latvian, the official language of the state. The Court was concerned that there had been a lack of impartiality, in the context of Latvia's restrictions on citizenship and other privileges for the Russophones still resident there. However, the Court was not opposed to the *principle* of the striking off for lack of language proficiency. The Court stated that the

⁶⁶⁰ *Igors Dmitrijevs v Latvia* App no 61638/00 (ECtHR, 30 November 2006) (available only in French) para 85

⁶⁶¹ Personal translation: 'the Court emphasises that no provision of the Convention guarantees unfettered linguistic freedom in particular it does not protect the right to choose a language in relations with public institutions and receive an answer in the same language.'

⁶⁶² The right to be informed promptly in a language which one understands of the reasons for arrest.

⁶⁶³ the right to be informed promptly in a language which one understands of the nature and cause of the accusation against him or her and the right to have the assistance of an interpreter if he or she cannot understand or speak the language used in court)

⁶⁶⁴ Research Division ECHR/Council of Europe *Cultural Rights In The Case-Law Of The European Court Of Human Rights* (Council of Europe 2011) 14

⁶⁶⁵ *Podkolzina v. Latvia* App no 46726/99 (ECtHR, 24 April 2003).

aims of the measure were legitimate. Allowing a considerable margin of appreciation in matters of official language, the Court specified that:

It considers that the interest of each State in ensuring that its own institutional system functions normally is incontestably legitimate. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State. Similarly, regard being had to the principle of respect for national characteristics enunciated above, the Court is not required to adopt a position on the choice of a national parliament's working language. That decision, which is determined by historical and political considerations specific to each country, is in principle one which the State alone has the power to make.⁶⁶⁶

This is a firm statement from the ECHR that the choice of institutional language(s) is part of contracting states' exclusive area of competence. Although the appeal was granted in the case as the Court found a procedural violation,⁶⁶⁷ the relevant aspect of the decision for the establishment of a European perspective on procedural language rights, is that the State remains at the centre of

⁶⁶⁶ *Podkolzina v. Latvia* App no 46726/99 (ECtHR, 24 April 2003) para 34.

⁶⁶⁷ Procedural Violation of Protocol 1 to the ECHR's Article 3 regarding the right to free elections due to the method of the striking off. This case is significant more generally as the Court spelt out certain procedural and other requirements that needed to be satisfied for compliance with Article 1 of the ECHR. Case Comment: *Podkolzina v Latvia* [2002] 5 EHRLR 670

the language rights regime in the eyes of the European Court of Human Rights.

This same line of reasoning was echoed in *Birk-Levy v. France*⁶⁶⁸ concerning the quashing by the *Conseil d'Etat* (the highest French administrative court) of a decision regarding language use in Parliament. This case concerned a resolution passed by the Assembly of French Polynesia allowing the use of Tahitian as well as French in the Assembly. The Court eschewed competence in this case, and therefore it was rejected pursuant to Article 35 of the Convention. It quoted its decision in *Podkolzina* reaffirming the right for States to determine their own language regimes. The Court found that it was not competent to comment on the linguistic regimes its Member States choose for themselves.

Even in the European Court of Human Rights, the states of the Council of Europe remain the final arbiters of language use. As highlighted, the State makes a proactive language choice any time it attempts to communicate with its citizenry. In its adherence to multilingualism, however superficial its critics might characterise it,⁶⁶⁹ the European Union is showing its commitment to an administration which guarantees its citizens minimum functional comprehension. Although the lack of concrete provision for minority language communities and migrants in the language regime of the EU

⁶⁶⁸ *Birk-Levy v. France* App no 39426/06 (ECtHR, 21 September 2010)

⁶⁶⁹ Koskinen K. (2013) 'Social media and the institutional illusions of EU communication' *International Journal of Applied Linguistics* (23) 80–92.

allows space for criticism, it is not out of step with the status quo of language rights protection internationally, and at European level.

The treatment of minorities still provokes academic debate, as demonstrated in the discussion of multiculturalism and political philosophy in chapter 3, and the international measures outlined in chapter 4. The advent of nationalist philosophies in the 19th and 20th centuries, as explored in chapter 2, meant that language and nation were even more intertwined, and linguistic skills came to the fore as markers of group identity.⁶⁷⁰ The socio-political developments which mark the history of Europe, which have been briefly sketched, resulted in minorities being created where their

[s]overeign allegiance and belonging have been contested among competing national states. Often the territory has been contested through bellicose means thus rendering the national minorities of the region objects of wars and eventually of settlements. At times the settlements have resulted in transfer of sovereignty to new rulers, thus incurring a need for the minorities to change allegiance to the new rulers or flee the territory.⁶⁷¹

⁶⁷⁰ N. S. Rodley, 'Conceptual Problems in the Protection of Minorities: International Legal Developments' (1995) *Human Rights Quarterly* (1995) 48–71.

⁶⁷¹ Tove H. Malloy 'National minorities in the 21st century Europe: new discourses, new narratives?' Issue Brief no. 24 European Centre for Minority Issues (2010)

The European Union has been an important instrument in changing this narrative.⁶⁷² The basic importance of EU membership for many minority communities has been external validation of their identity, and support for their languages and traditions.⁶⁷³ Chapter 2 has shown how language is inextricably tied up in Europe's nationalistic history. Sue Wright reminds us:

[L]anguage was at the heart of Nationalism. In the struggle for independence, it could be enlisted to define the ethnicity of the group and, after independence, it could be fostered to provide the state-wide community of communication that nationalism seemed to require.⁶⁷⁴

Nelde views the European Union as a politico-linguistic instrument which tries to manage languages issues.⁶⁷⁵ However, the European Union is reluctant to view itself as such, leaving all language issues to be decided at the intergovernmental level and restricting this to procedural issues of institutional language use, as chapter 5 has shown. Part I of this thesis investigated the academic criticism of the language rights paradigm by political philosophers, by sociolinguists and by lawyers. Despite the lack of consensus as to its content, this

⁶⁷² Tawhida Ahmed, 'Demanding Minority (Linguistic) Rights from the EU: Exploiting Existing Law' (2009) 15 (3) *European Public Law* 379-402.

⁶⁷³ Bartolini, S. *Restructuring Europe: Centre Formation, System Building, and Political Structuring Between the Nation State and the European Union* (Oxford University Press 2005).

⁶⁷⁴ S. Wright *Community and Communication: the Role of Language in Nation State Building and European Integration* (Clevedon Multilingual Matters, 2000.)

⁶⁷⁵ PH Nelde 'Maintaining Multilingualism in Europe: Propositions for a European Language Policy' in Pauwels, Winter and Lo Bianco (eds.) *Maintaining Minority Languages in Transnational Contexts* (Palgrave 2007)

paradigm has been used as a basis for laws in the form of International Covenants, Regional Charters and many instruments of varying 'soft'ness. Chapter 4 in particular showed that a concern for minority rights colours the approach taken by the international community to regulate issues of language rights. Within the international community, and in the protections provided by European regional organisations, the protection of language rights generally takes place via expert supervision, however, this is not the case with the EU. The preservationist approach identified in chapter 4 does not feature in the procedural language rights of the European Union. Chapter 5 demonstrated the divergent institutional language regimes within the European Union, showing the lack of clarity regarding the question of working languages for the institutions of the European Union. Official languages benefit from the fullest legal protections possible in the system of the European Union, a protection which benefits, in theory at least, to the extent that they could be used in every official meeting. The main aim of this thesis is to analyse the legal protections of language in the European Union. As demonstrated, these pertain to the 24 official languages of the EU.

However, minority languages are not entirely forgotten in this regime. This chapter assesses the role of minorities in the European Union's language regime.

II Minorities and language in the European Union

This section begins with a historical overview, to provide context for the debates regarding the topic of protection of minority languages in Europe. As mentioned briefly in the preceding chapters, issues of minority management have been at the fore of regional cooperation in Europe. Language was frequently a factor marking one group of people out as a 'minority', for this reason, language rights are closely interconnected with minority rights in general. This is the case in particular in the European context.

The lack of consensus on language rights as substantive human rights was exposed in part I. These investigations then set up our analysis of the provisions in the framework of the European Union. The norms of minority management have been enshrined in international and European law, despite comparable conceptual indeterminacy. Part I traced the evolution of those norms, in particular with regard to the protection of languages and language rights. This section builds on the analysis of regional protections of language rights set out in chapter 4.

Before assessing the provisions for minority language in the EU, a brief historical outline of the history of minority treatment in Europe is necessary.

(i) Minorities in Europe: Historical Overview

The question of minority treatment and minority protection has been a legal debate since the Middle Ages in Europe.⁶⁷⁶ The existence of minority populations has been a thorn in the side of the theory and practice of the implementation of a unitary nation-state, as Part I explored. As a result of attempts to foster homogeneity and national unity, minority groups were created, and marginalised. In Medieval Europe, Jews, Muslims and Christians were all granted special status respectively where they were minorities.⁶⁷⁷ This legal regulation of religious diversity can be seen as the precursor to the European minority management of regional organisations outlined in chapter 4.⁶⁷⁸ Chapter 2 sketched how the European system of nation states began, its evolution through colonialism, and the effects that this had on language.⁶⁷⁹ Tensions between religious minorities, and legal solutions for their resolution and appeasement has been a notable feature of European statist history.⁶⁸⁰ The social and political developments of the Early Modern period, which we explored in

⁶⁷⁶ Bardo Fassbender and Anne Peters (eds) *The Oxford Handbook of the History of International Law*, (OUP 2012) G. Pentassuglia and G. Guliyeva eds. 'Minority groups across legal settings: Global and Regional Dimensions' (Special Issue 2010) 17 (2) *International Journal on Minority and Group Rights* 265-285.

⁶⁷⁷ J. Tolan, H. Laurens & G. Veinstein, *Europe and the Islamic World*, (Princeton University Press, 2013) see also J. Tolan & Hassen el Anabi (eds.) *Identités en mutation: l'Europe et le bassin méditerranéen* (Peter Lang 2013).

⁶⁷⁸ RELMIN is an EU funded project which collects and analyses legal texts defining the status of religious minorities in pre-modern Europe (www.relmin.eu) and is a fantastic source showing the deep roots of minority conflicts in the history of the European continent.

⁶⁷⁹ P. Leuprecht 'Minority Rights Revisited: New glimpses of an old issue' in P. Alston (ed.) *Peoples' Rights* (Oxford University Press 2001).

⁶⁸⁰ E.J. Ruiz Vieytes 'The Protection of Linguistic Minorities: A Historical Approach' (2001).3(1) *UNESCO Most Journal on Multicultural Societies: Lesser Used Languages and the Law in Europe*

Chapter 2 meant that religious uniformity, along with language, became an important marker of the newly-forming States. A side effect of the emancipation of vernacular languages at this time was the development of the monolingual state model, whose later contribution to the formation of minority groups, particularly where language is concerned, has been laid out in Part I of this thesis. Religion was an important marker for group identity, but as the European evolution of the nation-state occurred, groups which differed from the rest of the Nation in other ways also began to stand out.⁶⁸¹ With the Treaty of Westphalia (1648), a system of nations within whose borders minorities, who were different in significant ways from the 'nation' commenced. National boundaries shifted regularly.⁶⁸² This is in part due to the nation state formation efforts highlighted in chapter 2, and to the highly developed trade networks that were established across Europe.

Although minorities have been a feature of States since the genesis of the idea, a satisfactory solution to dealing with them has never been found. Once the concept of the nation-state began to take hold, minorities were dealt with via complicated systems of bilateral treaties.⁶⁸³ With the Congress of Vienna (1815), national

⁶⁸¹ Rogers Brubaker, *Nationalism Reframed. Nationhood and the National Question in the New Europe* (Cambridge University Press, 1996).

⁶⁸² Tove H. Malloy 'National minorities in the 21st century Europe: new discourses, new narratives?' Issue Brief no. 24 European Centre for Minority Issues (2010)

⁶⁸³ Camille O'Reilly, *Language, Ethnicity and the State, vol II, Minority Languages in Eastern Europe post-1998* (2001, Palgrave Macmillan)

minorities were recognised as a multilateral issue in Europe, and the notion of a national minority was formally recognised.⁶⁸⁴ After the First World War, the persistence of this issue led to an extensive and detailed system of protection and provision for minorities within the League of Nations system.⁶⁸⁵ The protections of the United Nations outlined in chapter 4 are based on the historical precedent whereby the League of Nations system was a system for the protection of group rights. This mechanism, however, was a contributory factor in the rise in ethnic tensions before the Second World War, in particular where state boundaries had been redesigned.⁶⁸⁶ Furthermore, the processes of decolonisation were slowly taking root. The Second World War created more pressing problems regarding minority treatment for the members of the League of Nations and the ILO.⁶⁸⁷ During the nineteenth century minorities were perceived as a stumbling-block for the romantic nationalist ideals of nation. Minorities often created competing national narratives. The pre-war ideal was peaceful cohabitation of separate groups, and the International legal system at the time was designed to facilitate this, via granting rights to minorities. As we have explored, however, the focus shifted to Human Rights, as opposed to the rights of minorities,

⁶⁸⁴ Bardo Fassbender and Anne Peters (eds) *The Oxford Handbook of the History of International Law*, (Oxford University Press 2012).

⁶⁸⁵ P. Thornberry *International Law and the Rights of Minorities* (Oxford University Press 1991)

⁶⁸⁶ Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century* (Martinus Nijhoff, 2005.)

⁶⁸⁷ Steven Wheatley, *Democracy, Minorities and International Law* (Cambridge University Press 2005)

in the post-war world order. The First and Second World Wars were seen as having been caused to some extent by the over recognition of minorities.⁶⁸⁸ During the period after the end of the Second World War, 'the great project was person-centred, the premises universal, the concerns transcendent.'⁶⁸⁹ It is obvious from the paucity of UN documents in this arena that group rights and minority provisions were taboo in the UN system in the post-war period. This is in contrast to the historical precedent whereby the League of Nations system was a system for the protection of group rights. The use of group rights went out of vogue due to what is understated by Pentassuglia as 'the bad experience of the use of the minority question by Nazi Germany as a tool for aggressive policies.'⁶⁹⁰ After the Second World War there was a shift towards universalism and the philosophy of Human Rights, as briefly touched upon in chapter 3, and a clear move away from isolating minorities.⁶⁹¹

Language ideology, or the popular understanding of languages, has been formed by these historical facts, as explored in the initial chapters.⁶⁹² There is a very complicated situation in Europe with

⁶⁸⁸ P. Leuprecht 'Minority Rights Revisited: New glimpses of an old issue' in P. Alston (ed.) *Peoples' Rights* (Oxford University Press 2001).

⁶⁸⁹ P. Thornberry 'Introduction' in Peter Cumper and Steven Wheatley (eds.), *Minority Rights in the 'New' Europe*, (Kluwer 1999) 1

⁶⁹⁰ G. Pentassuglia, *Minorities in International Law: An Introductory Study* (Council of Europe Publishing, 2002). 55

⁶⁹¹ For an overview see P. Thornberry *International Law and the Rights of Minorities* (Oxford University Press 1991) D.J. Galbreath and J. McEvoy *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness* (Palgrave 2011),

⁶⁹² Susan Gal 'Migration, Minorities and Multilingualism: Language Ideologies in Europe' Chapter 2 in Mar-Molinero, Clare and Stevenson, Patrick (eds.) *Language*

regard to minority protection, in particular in Central and Eastern Europe. The dilemmas over how to deal with minorities have been at the root of the regional European legal instruments outlined in chapter 4. However, this is also a factor in the weakness of these instruments. However, broadly speaking, at the very least at a discursive level the rights of minority groups to preserve their traditional language is recognised across Europe. Linguistic minorities have caused political difficulty and been associated with separatist movements in many European countries.⁶⁹³ The nexus between a state and its language has a firm hold in the hearts and minds of Europeans. The close association between some separatist claims and language demands can bear witness to this.⁶⁹⁴ These associations can often cloud the language question, as it becomes subsumed in larger questions of self-determination and controversial political movements.⁶⁹⁵ The discussion of a rights protection framework for regional or ethnic minorities in Europe has been triggered by conflicts such as the disintegration of multistate unions in Eastern and South Eastern Europe and increasing demands for autonomy by regional

ideologies, policies and practices: language and the future of Europe (2006 Palgrave Macmillan)

⁶⁹³ Colin Williams, 'Language policy territorialism and regional autonomy' in B. Spolsky (ed) *The Cambridge Handbook of Language Policy* (Cambridge University Press 2012).

⁶⁹⁴ J. Cabestan, A. Pavkoviac (eds) *Secessionism and Separatism in Europe and Asia: To Have a State of One's Own* (Routledge 2013); Igor Primorac and A. Pakoviac *Identity, Self-determination And Secession* (Ashgate 2006).

⁶⁹⁵ Colin Williams *Minority Language Promotion, Protection and Regulation: The Mask of Piety* (Palgrave 2013).

minorities across Europe including demands for recognition of their cultural and linguistic rights.⁶⁹⁶ Colin Williams identifies that

Today, a degree of national recognition, and sub-state autonomy has resulted in a lessening of violence as a movement tactic within these territories, yet, even within these territories there is quite some distance to go before the respective legislative regimes reflect official linguistic diversity as an uncontested fact.⁶⁹⁷

This research does not have 'regional and minority languages' as its focus. However, many language communities in Europe do not have recognition, or feel they have insufficient recognition, within their Member State. The European Union has certainly provided a forum for these language communities, and has been an important actor in the sphere.⁶⁹⁸

Although the construction of the European Union was concentrated around states, sub-state regional identities have flourished in this supranational framework.⁶⁹⁹ This new reality has created room for potential new solutions for language communities

⁶⁹⁶ Ulrike Schmidt 'Language Loss and the Ethnic Identity of Minorities' ECMI Brief no. 18 *European Centre for Minority Issues* (2005).

⁶⁹⁷ Colin Williams *Minority Language Promotion, Protection and Regulation: The Mask of Piety* (Palgrave 2013) 14.

⁶⁹⁸ Diarmait Mac-Giolla Chriost, 'The turn to rights in the language question' in Wesley Hutchinson, and Clíona Ní Riordáin, (eds.) *Language Issues: Ireland, France, Spain* (Peter Lang, 2010)

⁶⁹⁹ Jo Shaw, Richard Bellamy and Dario Castiglione (eds.) *Making European Citizens* (Palgrave, 2006)

in the new State or quasi-State entities.⁷⁰⁰ Colin Williams argues that groups whose languages were eclipsed in nation building have regained some political control, and have reintroduced the language of the group into education, local and national levels of government and the private or voluntary sectors across the European Union.⁷⁰¹ Certainly, the initiatives of the European Union have allowed for the support, financial and otherwise, of citizen activities relating to regional rather than national identity, including funding for various minority language projects.⁷⁰² Although the EU has no powers in the arena of supranational minority protection, it has had significant impact, particularly as part of accession conditionality. However, as a supranational political arena, the EU is constantly targeted by linguistic lobbyists and it has proven a relatively useful tool in language campaigns for minority languages. The European Union funds many regional and minority language projects through the Commission's various funding streams.⁷⁰³ Heather Grabbe has identified positive effects, both implicit and explicit, of EU language

⁷⁰⁰ Sue Wright, *Language Policy and Language Planning* (Multilingual Matters 2000) 183

⁷⁰¹ Colin H Williams, *Minority Language Promotion, Protection and Regulation: The Mask of Piety* (Palgrave 2013).

⁷⁰² Lynne Pearce and Ruth Wodak '(Re)constructing the region in the 21st Century' *European Journal of Cultural Studies*, 13(1), (2010) 3-8.

⁷⁰³ C. Williams, (ed.) 'Rights, promotion and integration issues for minority languages in Europe.' (2009, Palgrave Macmillan)

policies, as a result, in particular, of accession conditionality within the policies of the newer members of the EU.⁷⁰⁴

The European Union is not competent to carry out the protections of indigenous languages advised by the international community's language rights instruments, or the policy provisions of the Council of Europe's instruments. Minority language groups put their faith in the EU and see it as their hope for further recognition and more extensive language rights. Campaigners across the EU seek recognition for their language community via this supranational entity. Many language communities in Europe do not have recognition, or feel they have insufficient recognition, within their Member State. The recognition by the EU of languages is of crucial importance, both as a potential source of external validation outside of the structures of a potentially hostile nation-state, and as an internal validation within the structures of an international cooperation body. The EU began to change the nature of its linguistic regime in granting status first to Irish and Maltese, and then to other 'minority languages'. The case of Maltese and Irish, investigated in the previous chapters, are qualitatively different because they benefitted from the support of a Member State. Rodriguez notes that the use of minority languages in the public sphere has important

⁷⁰⁴ Heather Grabbe, 'Six Lessons of Enlargement Ten Years On: The EU's Transformative Power in Retrospect and Prospect' (2014) *Journal of Common Market Studies* (52), 40-56.

symbolic and practical dimensions of inclusion.⁷⁰⁵ This is echoed by Monica Heller's notion of institutions as discursive spaces, where the construction of discourse is a key aspect of the function of institutions in the world, and therefore even tacit support of minority languages is significant.⁷⁰⁶

It is evident from examination of the co-official languages implemented since 2005 that the support of the member state is the key factor in determining the success of requests for legal protection of language within the European Union. The Council Conclusions of 2005 require endorsement from the Member States. They refer to 'languages whose status is recognised by the Constitution of a Member State on all or part of its territory or the use of which as a national language is organised by law', therefore creation of this new status for languages, however significant, was not the extension of linguistic rights towards a broader category encompassing all minority languages, as was hoped for.⁷⁰⁷ The concessions granted by the Council Conclusions may seem minimal, given the scant provisions they contain but these were a significant symbolic supranational nod to minority languages.

⁷⁰⁵ Cristina M Rodriguez 'Language and Participation' (2006) 94 California Law Review 687-722

⁷⁰⁶ Heller, M. *Linguistic Minorities and Modernity: A Sociolinguistic Ethnography* (2nd edition) Continuum. (2006)

⁷⁰⁷ Generalitat de Catalunya 'Catalan, language of Europe' document available online at:

http://www20.gencat.cat/docs/Llengcat/Documents/Publicacions/Catala%20llengua%20Europa/Arxius/cat_europa_angles_07.pdf

This compromise, whereby certain 'regional and minority languages' were to be recognised at EU level was perceived as a potentially significant development in the language policy of the EU.⁷⁰⁸ The political parameters of the officially sanctioned languages in the European Union changed.⁷⁰⁹ As Williams points out, however; 'reliance on this form of super-structural promotion of rights could provide a false dawn of optimism, if it is not also accompanied by a parallel sub-structural reform of many aspects of life within multicultural societies at regional, metropolitan and local levels.'⁷¹⁰

Although the potential of the co-official language regime created by the Council Conclusions of June 2005 has been observed, there is limited scope to view these as providing concrete minority language rights in the European Union.⁷¹¹ It is highly unlikely that the dominant political powers in Europe would extend current provisions to grant language rights of a broader nature in the European Union. Chapter 6 revealed that despite the potentially significant development of co-official language status, following the Council Conclusions of 13 June 2005, the status of minority languages in the EU remains firmly within the control of the Member States.

⁷⁰⁸ Iñigo Urrutia and Iñaki Lasagabaster 'Language Rights as a General Principle of Community Law' (2007) 8 *German Law Journal* 479

⁷⁰⁹M. Krzyżanowski, 'Political communication, institutional cultures, and linearities of organisational practice: A discourse-ethnographic approach to institutional change in the European Union' (2011) *Critical Discourse Studies*, 8(4), 281–296.

⁷¹⁰Colin Williams *Linguistic Minorities in Democratic Context* (Palgrave 2013) 124

⁷¹¹ Schilling, Theodor 'Language Rights in the European Union' *German Law Journal* Vol 9 (10) pp 1219-1242, at 1234.

The new EU structures have been a vehicle for 'old' language communities, who did not fit into the 'one state, one nation, one language' model to assert themselves.⁷¹² European integration has also led to the devolution of power to more local forms of government.⁷¹³ The European Union is trying to find the middle ground between conceding language rights to its linguistic communities, and executing the wishes the Nation States of which it is composed. Williams points to four reasons for the EU's stance on the integration of languages in its policies and within its structures. He claims (a) the faded threat of politically active separatist movements and hostile conflicts, for example in Northern Ireland and the Basque Country;(b) The maturation of sub-state government in regions such as Wales and Flanders, such that they are now active participants in European politics; (c) enlargements of the EU have successively forced the EU institutions to change their outlook and include the diverse 'official communities' which make up many of the member states.

Indeed, there is a recognition of the importance of minority languages at the supranational level. The European Council's Resolution of the 21 November 2008 on a European strategy for Multilingualism notes that: 'linguistic and cultural diversity is part and

⁷¹² Andrew Geddes (2012) 'Regions and regionalism', in M. Rosenblum and D. Tichenor (eds.) *Oxford Handbook of the Politics of International Migration*, Oxford: Oxford University Press, 573-93

⁷¹³ Mark Dawson *New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy* (Cambridge University Press 2011)

parcel of the European identity; it is at once a shared heritage, a wealth, a challenge and an asset for Europe.' This is in line with the principles outlined in chapters 5 and 6. However, it also states that 'the promotion of less widely used European languages represents an important contribution to multilingualism.'⁷¹⁴ The interaction between the citizen and the State in its abstract form has changed in Europe with the intervention of a new form of government divorced to some extent from national politics.⁷¹⁵ This echoes a worldwide shift and a move towards more transnational governance structures. Throughout the twentieth century, the nationalistic hegemonic European model of the state lost some of its sheen, and the process of decolonisation called many of its fundamental precepts into question.⁷¹⁶ The transition from twentieth to twenty-first century has witnessed the growth of demands for devolution, or even independent sovereign status.⁷¹⁷ Within the European Union, increased calls for independent statehood for developed regions such as Catalonia and Scotland reflect this growing trend. The rise in regionalism and multilevel governance in the European Union may provide the political impetus for stronger protection for minority languages. A theme running throughout this thesis has been the

⁷¹⁴ (Council Resolution of 21 Nov 2008 on a European Strategy for Multilingualism).

⁷¹⁵ Philip Allott *The Health of Nations. Society and Law beyond the State* (Cambridge University Press, 2002).

⁷¹⁶ Morten Egberg (ed.) *Mutli-Level Union Administration: the Transformation of Executive Politics in Europe* (Palgrave 2004).

⁷¹⁷ M. Guibernau, *The Identity of Nations* (Polity Press, 2007).

extent to which the European Union calls into question traditional models of the nation. The ongoing calls for independent statehood for developed regions such as Catalonia and Scotland within the EU may completely change the political game, resulting in extended legal protections for languages in the European Union.

Van Els refers to as 'institutional and non-institutional language policies of the European Union'.⁷¹⁸ His distinction between institutional and non-institutional policies, broadly speaking, is that the EU's 'institutional language policy' applies to language use, and the regulation of language use, *within* the EU institutions, and its 'non-institutional language policy' refers to the policies regarding language that the EU undertakes, for instance its strategies to promote language learning. 'Non-institutional language policy', moreover, is used to refer to languages 'used within the member states and between their citizens mutually, without EU institutions being party to this'.⁷¹⁹ The 'non-institutional' actions of the European Union have had strong effects on minority languages within Europe. Nic Suibhne points out that the content of European Union language policy is 'derived rather than regulated systematically'.⁷²⁰ The power

⁷¹⁸ TJM Van Els 'The European Union, its Institutions and its Languages: Some Language Political Observations.' (2001) 2 (4) *Current Issues in Language Planning* 209

⁷¹⁹ TJM Van Els 'The European Union, its Institutions and its Languages: Some Language Political Observations' in R. Baldauf and R. Kaplan (eds.) *Language Planning and Policy in Europe* (Vol. 2). (Multilingual Matters 2006) and Van Els, 'Multilingualism in the European Union' (2005) 15(3) *International Journal of Applied Linguistics* 263-281.

⁷²⁰ Niamh Nic Suibhne, *EC Law and Minority Language Policy- Culture, Citizenship and Fundamental Rights* (Kluwer Law International 2002).

of the European Union in this area is limited, other than in setting out its own rules for multilingual operation. The EU has no competence in the area of substantive supranational language policy.⁷²¹ The EU has no original competence in the area of education or of culture. However, the EU does have a substantial level of implicit power in this ambit.⁷²² Thanks to the European Union, minority languages are entering spheres where they have not previously been used. The European Union engages in the promotion of multilingualism and funds language projects, including those promoting minority languages. This thesis has not entered into the details of the various language policies of the European Union, beyond the linguistic rules of the institutions. However, EU-level policy concerns for the management of language demonstrate the role of language in the European Union contextualised within a globalised economy. The Language Rich Europe report, a study carried out via the British Council and funded by the European Commission, claims that:

EU language policies aim to protect linguistic diversity and promote knowledge of languages, for reasons of cultural identity and social integration, but also because multilingual citizens are better placed

⁷²¹ Hugo Baetens Beardsmore 'Language Promotion by European Supra-national Institutions', in Ofelia Garcia, *Bilingual Education in the 21st Century. A Global Perspective* (Wiley-Blackwell 2009). 197–217.

⁷²² B. de Witte, 'Language Law of the European Union: Protecting or Eroding Linguistic Diversity?' in Rachel Crauford Smith (ed.) *Culture and European Union Law* (Oxford University Press 2004).

to take advantage of the educational, professional and economic opportunities created by an integrated Europe.⁷²³

This has meant policies providing support and funding from the Commission for language education projects in an attempt to create a more mobile multilingual workforce.⁷²⁴ Nic Suibhne laments the lack of a 'proactive drive towards more systematic language policy planning or management that might cut across the various strands of EU language need.'⁷²⁵

The responsibility for education policy, however, remains squarely within the Member States, with the European-level coordination of language learning playing only a minor role.⁷²⁶ The changing role of language in a globalised world is reflected in the new focus on language as key to labour force mobility and advantage, rather than simply of cultural importance.⁷²⁷ This can be seen by analysis of the profile of Multilingualism policy in the European Commission. . The EU has no explicit 'language policy', and language

⁷²³ Guus Extra and Kutlay Yağmur (eds) *Language Rich Europe: Trends in Policies and Practices for Multilingualism in Europe* (Cambridge University Press; British Council 2012)

⁷²⁴ M. Krzyzanowski and R. Wodak, 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy.' (2011) *Language Policy* 10(2), 115-136.

⁷²⁵ Niamh Nic Shuibhne, EC Law and Minority Language Policy: Some Recent Developments in X. Arzoz (ed.) *Respecting Linguistic Diversity* (John Benjamins 2008).

⁷²⁶ P. Dewey 'Transnational Cultural Policymaking in the EU' (2008) (summer) *Journal of Art Management, Law and Society* 99-118

⁷²⁷ J. Blommaert ed *Language Ideological Debates* (Mouton de Gruyter 1999) Clare Mar-Molinero and Patrick Stevenson (eds) *Language ideologies policies and practices: language and the future of Europe* (2006 Palgrave Macmillan) A. Duchêne and M. Heller (eds) *Discourses of Endangerment: Ideologies and Interests in the Defense of Languages* (Continuum 2007).

is among the most sensitive political issues within the EU.⁷²⁸ It was also pointed out throughout this thesis that major languages which previously occupied a position of power are struggling to defend their institutional position. As a result of this, following the linguistic expansion of the European Union in 2004, a Framework Strategy for Multilingualism was published.⁷²⁹ Policy responsibility for Multilingualism was part of the Education and Culture Portfolio under Commissioner J. Figel. This was 'a very active period in the Union's multilingualism policy'⁷³⁰ which alongside the Framework Policy also marked the creation of a High Level Group on Multilingualism⁷³¹. In 2007, with the formation of a new Commission, a Multilingualism portfolio was created⁷³² Under Commissioner Orban, an Action Plan on multilingualism was adopted.⁷³³ However, there was limited political appetite for substantive changes in policy. The Multilingualism portfolio was moved in 2010 to a Commissioner for Education, Culture, Multilingualism and Youth⁷³⁴ until 2014, and in the newly formed Juncker Commission there is no specific portfolio on Multilingualism. It has been moved to the policy area of

⁷²⁸ CJW Baaij 'The EU Policy on Institutional Multilingualism: Between Principles and Practicality' (2012).1 *Language and Law*

⁷²⁹ Commission, A new framework strategy for multilingualism COM (2005) 596

⁷³⁰ Krzyzanowski, M. and R. Wodak, 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy.' (2011) *Language Policy* 10(2), 115-136.

⁷³¹ Commission Decision setting up the High Level Group on Multilingualism. (2006/644/EC)grouping

⁷³² Commissioner Leonard Orban, 2007-2010.

⁷³³ Commission, Multilingualism: an asset for Europe and a shared commitment (COM (2008) 566.

⁷³⁴ Commissioner Androulla Vassiliou, 2010-2014.

employment and skills, under the remit of the new Commissioner for Employment, Social Affairs, Skills and Labour Mobility.⁷³⁵ The European Council's Resolution of the 21 November 2008 on a European strategy for Multilingualism notes that: 'Linguistic and cultural diversity is part and parcel of the European identity; it is at once a shared heritage, a wealth, a challenge and an asset for Europe.' It also states that 'the promotion of less widely used European languages represents an important contribution to multilingualism'.⁷³⁶ Romaine discusses the politics of multilingualism promotion by the European Union institutions, identifying that they tend to be centred on the economic rationale for developing language skills, with the cultural aspects of language as an afterthought.⁷³⁷

For many citizens, the EU level of governance has been used as a valuable political arena in which to air their concerns. This has led to an increased prominence of minority language issues, as linguistic activists could voice their demands at a level above that of their (often discriminatory) Member-State. Some theorists even argue that an element of European public identity is being built through campaigning at EU-level for recognition of minority

⁷³⁵ Commissioner Marianne Thyssen 2014.

⁷³⁶ Council of the European Union, Resolution on a European strategy for multilingualism [2008] OJ C320/01.

⁷³⁷ S. Romaine, 'Politics and policies of promoting multilingualism in the European Union' (2013) 12(2) *Language Policy* 115; M. Krzyzanowski and R. Wodak, 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy.' (2011) *Language Policy* 10(2), 115-136.

languages.⁷³⁸ An increased consideration of minority language issues can clearly be identified in the EU since approximately the 1980s, particularly in the European Parliament.⁷³⁹ As regards the 'non-institutional language policy' of the European Parliament, it has been a driver for multilingualism in the European Union. The Parliament has been instrumental in the promotion and protection of minority languages in the European Union. Although the Parliament has displayed munificence at a discursive level,⁷⁴⁰ for example in the vote on its Endangered Language Report⁷⁴¹ which was enthusiastically commended by a staggering majority of the European Parliament (not endorsed by only 26 MEPs) would appear to call for much stronger action on this issue. However, the enthusiasm for language rights is in a concern for the preservation of linguistic diversity, and the cultural and linguistic heritage of Europe, rather than the provision of robust language rights.

This thesis analysed the place of minority languages and outlines the political development of a new status for certain languages in the European Union during its linguistic expansion in

⁷³⁸ Hans-Jorg Trenz 'Language Minorities in Europe: dying species or forerunner of a transnational civil society?' *Arena Working Paper no.20* 2005

⁷³⁹ European Parliament, Resolution with recommendations to the Commission on European regional and lesser-used languages – the languages of minorities in the EU – in the context of enlargement and cultural diversity (2003/2057(INI)) OJ C76E/374; European Parliament, Resolution of 24 March 2009 on Multilingualism: an asset for Europe and a shared commitment (2008/2225(INI)) OJ C117E/59

⁷⁴⁰ See for example, European Parliament, Study - Implementing the UNESCO Convention of 2005 in the European Union [2010] PE 438.587

⁷⁴¹ Rapporteur: François Alfonsi European Parliament, Report on endangered European languages and linguistic diversity in the European Union (A7-0239/2013).

2004. It briefly considered potential developments for minority languages in the EU, however, it cannot claim to be an overview of the position of minority languages in the EU. As demonstrated by this thesis, notions of the nature of language, and on the nature of rights can vary so largely that it is difficult to form a coherent explanation of the concept 'language rights'. Different justifications and rationales are used to protect languages, and to guarantee rights to speakers. These have been untangled from a theoretical point of view in Part I of the thesis. It is also useful to compare the implementation of language rights in practical terms, given the close level of political integration in the EU as compared to other regional European organisations such as the OSCE or the Council of Europe, whose instruments for the protection of language rights are policy focused.

The next section sets up a comparative analysis between the European Union and the language regimes and conceptualisations of language rights present in the USA and Canada. It looks at language rights in a broad 'European' context, and specifically at the language rights protected in the European Union.

III Comparative Perspectives: Language in Europe, the USA and Canada

Linguistic diversity is characterised as both a foundation of and an obstacle to the EU's creation of a 'transnational democracy'. A theme running throughout this thesis has been the extent to which the European Union calls into question traditional models of the nation. The European Union has created a new form of transnational

citizenship.⁷⁴² The relationship between the individual and the state has been transformed.⁷⁴³ This, it is argued, then permits the individual to focus on his own localised preferences, therefore leading to an increased awareness of local issues such as regional languages.⁷⁴⁴ We have seen from the preceding chapters that language issues are highly political in nature and cannot be treated as straightforward.

The jurisdictions of the United States of America and Canada provide an interesting counter to European approaches to language.⁷⁴⁵ These were chosen, rather than European examples of multilingual polities such as Belgium or Switzerland, or examples of postcolonial multilingual governance, because of their specific systems of rights protection. Both Canada and the USA are federations, and therefore are analogous to the European Union in that there is a level of diversity permitted at State level, which is ultimately subject to centralised governance. Canada operates with a bilingual, bijural legal system, whereas in the USA, although there is

⁷⁴² Seyla Benhabib 'Transformations of Citizenship: The Case of Contemporary Europe' (2002) 37,4 *Government and Opposition* 439–465

⁷⁴³ Philip Allott *The Health of Nations. Society and Law beyond the State* (Cambridge University Press, 2002)

⁷⁴⁴ Loughlin, J. (2000) 'Regional Autonomy and State Paradigm Shifts', *Regional and Federal Studies: An International Journal*, 10 (2) Summer 10–34.

⁷⁴⁵ J. Loughlin, 'Les changements de paradigmes de l'État et les politiques publiques envers les minorités linguistiques et culturelles en Europe de l'Ouest', in J.-P Wallot, (ed.), *La gouvernance linguistique: le Canada en perspective*, (Presses de l'Université d'Ottawa 2005).

no constitutional official language, English prevails.⁷⁴⁶ However, the USA is more multilingual than it would like to admit.⁷⁴⁷

The European Union plays host to what Gorter and Cenoz deem 'unique minority languages' such as Basque or Frisian, which are not the dominant languages of any state, and what they call 'cross-border minority languages' which are the official and dominant language in a European Union Member State, but might also be a minority language in another member state, such as for example Swedish in Finland or German in Italy.⁷⁴⁸ Furthermore, the European Union has cross-border minority languages which were formerly majority languages, such as the case of Russophones in the Baltic Republics. The issue of language is contentious and divisive within many of the EU's member states. It is no less controversial in the EU itself, which is distinctive among international organisations for its multilingual regime.

When discussing minorities in the European context there is tension, to some extent analogous to that mentioned in the Canadian and America contexts between autochthonous minorities and 'new' groups. These are separated from indigenous autochthonous

⁷⁴⁶ Kim Potowski (ed.) *Language diversity in the United States* (Cambridge University Press 2010).

⁷⁴⁷ Marc Shell, 'Babel in America; Or, the Politics of Language Diversity in the United States' (1993) 20 (1) *Critical Inquiry* 103-127; Kim Potowski (ed.) *Language diversity in the United States* (Cambridge University Press 2010).

⁷⁴⁸ Gorter and Cenoz 'Legal Rights of Linguistic Minorities in the EU' in L. Solan and P. Tiersma (eds) *The Oxford Handbook of Language and Law* (Oxford University Press 2012).

'traditional' minorities and differentiated in terms of linguistic protections as we will see. In the USA and in Canada the historical background to the creation of the nation complicates this treatment. Both Canada and the USA deal with linguistic minorities and language rights within a post-colonial context, but also with immigrant language issues. Both have considerable indigenous communities. These are treated differently to what are seen as 'immigrant' communities.

Within the European Union, we have seen that multilingualism forms an underrated foundation block of the identity and uniqueness of the EU legal system.

Bastarache argues that bilingual interpretation rules are a component of language rights in Canada.⁷⁴⁹ This fits in with the approach taken in this thesis of a broader understanding of language rights, and a broader understanding of legal protections afforded to language.

Canada is notable for its stability and its 'constitutionalisation' of its minority communities. Multilingualism is a central part of its identity as a political entity, as is the case with the European Union. However, as the preceding chapters have demonstrated, full operational multilingualism has been characterised as only an 'aspirational value' by the Court of Justice of the European Union,⁷⁵⁰

⁷⁴⁹ M Bastarache 'Bilingual Interpretation rules as a component of language rights in Canada' in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook Of Language And Law* (Oxford University Press 2012).

⁷⁵⁰ Case C-361/01 P *Christina Kik V OHIM* [2003] ECR I- 8283.

and this position has been echoed by the European Ombudsman. Canada provides an interesting counter example to the European Union as 'full operational multilingualism' is a central tenet of its legal system.

Canada has one of the most decentralised federal systems in the world, and is characterised by a firmly established multilingualism. Both French and English are the Official Languages of Canada. The Francophone community in Canada is strongly protective of its distinctive identity, and bilingualism is a central part of the Canadian Constitutional structure. The survival of French in Canada as opposed to areas of the USA colonised by France, for example, Louisiana, can be explained by the differing colonial policy of the British Empire, in combination with a number of demographic and social factors.⁷⁵¹ For this reason Kymlicka warns against using it as an example for other contexts.⁷⁵² Its Southern neighbour, the USA has a more multilingual history, being host to a rainbow of immigrant languages, and a rich portfolio of native languages however the attitudes to language in the USA do not embrace this multilingual history.

⁷⁵¹ Schmid C. *The Politics of Language: Conflict, Identity and Cultural Pluralism in Comparative Perspective* (Oxford University Press 2001)

⁷⁵² Kymlicka 'Marketing Canadian pluralism in the international arena' (2004) 59 (4) *International Journal*, 829–852.

The pluralism inured into Canadian politics forms the foundation for its successful multilingualism.⁷⁵³ Canada has 'actively embraced the politics of multiculturalism and minority rights, giving public recognition and accommodation to its ethnic and linguistic diversity in a wide range of public institutions.'⁷⁵⁴ Canada has 'constitutionalised'⁷⁵⁵ its diversity practices and accommodations, to such an extent that the Canadian Constitution includes a so-called 'multicultural clause'⁷⁵⁶; Section 27 of the Charter of Rights and Freedoms, states that all rights and freedoms recognised in the Charter must be interpreted in line with the protection and enhancement of the multicultural heritage of Canada.⁷⁵⁷ Regarding language rights specifically, the Canadian Supreme Court affirmed that protection of minorities forms part of the Canadian Constitutional order.⁷⁵⁸ This pioneering approach in dealing with minorities and the history of creation of a stable multilingual state means that Canada is regarded as exemplary in terms of dealing with

⁷⁵³ Eve Haque *Multiculturalism within a bilingual framework : language race and belonging in Canada* (University of Toronto Press 2012)

⁷⁵⁴ Will Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010) 301.

⁷⁵⁵ Will Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010).

⁷⁵⁶ M. Zachariah, A. Sheppard and L. Barratt (eds.) *Canadian Multiculturalism: Dreams, Realities, Expectations* (Canadian Multicultural Education Foundation, Edmonton, 2004).

⁷⁵⁷ Section 27, Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

⁷⁵⁸ *Reference re secession of Quebec* [1998] 2 SCR 217 at para 80

multilingualism.⁷⁵⁹ It is contended that Canada must be treated as a case apart since it has provided for a multilingual state relatively unproblematically, and its culture is one of language communities coexisting.

French was not the language of the ruling class in Canada. Until the early-to-mid twentieth century, Anglophone and Francophone Canada coexisted in separate spheres.⁷⁶⁰ There was a strong urban/rural divide, where French was a rural language. Furthermore, linguistic and religious differences largely coincided, with the French speaking population being, broadly, Catholic.⁷⁶¹ The social upheaval which took place in the 1960s led to unrest and to demands for recognition and accommodations from the French speaking populations. It has been suggested that the accommodations for the Francophone community arose as a response to the threat of secession by the Francophone province of Quebec.⁷⁶² This unrest began a process of multicultural governance, where Canada's indigenous 'first nations' are also catered for in the Canadian system, although in a different way to the Francophone

⁷⁵⁹ For an overview see C. Michael MacMillan, *The Practice of Language Rights in Canada* (1998 University of Toronto Press)

⁷⁶⁰ Schmid C. *The Politics of Language: Conflict, Identity and Culutral Pluralism in Comaprative Perspective* (Oxford University Press 2001)

⁷⁶¹ Haque E, *Multiculturalism within a bilingual framework : language, race, and belonging in Canada* (University of Toronto Press 2012).

⁷⁶² K. Mc Roberts *Quebec: Social Change and Political Crisis* (3rd edn., Oxford University Press 1999)

community.⁷⁶³ As attitudes shifted, and in response to the growing demand for recognition of indigenous communities, in certain provinces of Canada, indigenous languages have been given equal status to English and French. The unprecedented statutory protection for aboriginal languages provided by the 2013 Nunavut Official Language Act serves only to further the pluralism by which the Canadian approach can be characterised. Although not without criticism, it is fair to say that the Canadian approach to a multiplicity of languages is to provide for them, and a general attitude of positive recognition can be identified.⁷⁶⁴

The possibility of more serious political consequences, in particular at the time of the 1969 Official Bilingualism Act should not be underestimated. Language rights were bitterly divisive. However, a peaceable solution was arrived at and today Canada is a model of bilingual governance. Language rights are today a central facet of Canadian identity.⁷⁶⁵ Canada combines an official-language rights model with rights for its indigenous peoples and other linguistic accommodations for immigrant groups. In Canada, 'territorially based linguistic rights do not require unilingualism and personally based

⁷⁶³ Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010)

⁷⁶⁴ Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010)

⁷⁶⁵ C.H. Williams (ed.), *Language and Governance* (University of Wales Press 2007)

linguistic rights are circumscribed by territorial considerations.⁷⁶⁶

The language rights given to French and English speakers depend largely on the geographic location of the rights holder. The language rights granted in Canada follow Arzoz's model of official language rights. They have been arrived at as a form of constitutional compromise. They are in place to protect Canada's indigenous minorities- French speakers, and, more recently the aboriginal minorities, the First Nations, Métis and Inuit populations, recognised in section 35 of the Canadian Constitution Act 1982.⁷⁶⁷

The historical circumstances of the construction of the State have power very clearly on one side in North America. Thus, the colonial past of both Canada and the US quite clearly frame their approaches to language issues. This clear cut approach is not present in Europe, where shifting borders and changing political allegiances, in conjunction with two major wars have coloured the landscape. Tensions between old and new minorities are a common feature in both the European and North American regimes. Generally, the autochthonous or indigenous communities are in an extremely disadvantaged position and may feel challenged by immigrant communities. In Europe, and in much of the rest of the world,

⁷⁶⁶ M Bastarache 'Bilingual Interpretation rules as a component of language rights in Canada' in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook Of Language And Law* (Oxford University Press 2012).

⁷⁶⁷ Kymlicka 'Ethnic, Linguistic and Multicultural Diversity of Canada' in Courtney and Smith (Eds.) *Oxford Handbook of Canadian Politics* (Oxford University Press 2010)

granting language rights has been used as a foil for integrationist, even, assimilationist tendencies. Chapter 4 details the development of these minority-protecting bodies in the European Union. The creation, for example of the OSCE even elevated minority issues to be an element of security policy in the region.⁷⁶⁸ After the fall of the Berlin Wall the Member States of the European Union were faced with a political challenge. The reintegration of Europe was seen as a key objective and the only way to complete the European Projects aim of pacification and stabilisation of Europe. The European Union implemented a system of trade and aid programmes, the PHARE programmes,⁷⁶⁹ which aimed to aid the economic development of these important trading partners for Europe. These were direct grants which aimed, for example, to eliminate barriers to trade. With the Independence of the Baltic Republics from the Soviet Union in 1991, the Velvet Divorce of Czechoslovakia in 1993, and the ongoing dissolution of Yugoslavia, the pressure was on for the European Union to act. In 1991, the first Europe Agreements were signed with Poland and Hungary, and it appeared that the remaining Central and Eastern European Countries (CEECs) would also be joining the European Union. With this in mind, the European Council in Copenhagen in 1991 set out membership conditions.

⁷⁶⁸ María A. M. Estébanez 'Minority Protection and the OSCE' in Peter Cumper and Steven Wheatley (eds) *Minority Rights in the 'New' Europe* (Kluwer Law Publishing 1999).

⁷⁶⁹

These conditions, and their significance for the development of language rights instruments, coincided with initiatives such as the High Commissioner on National Minorities (HCNM) and were created to preserve rights for European minorities. Programme between the European Commission and the Council of Europe, entitled "Minorities in Central European Countries", was carried out in the 1990s to support the Stability Pact. European regional organisations worked together. Sasse states that "In the field of minority protection the EU borrowed legal tools and policy recommendations from the Council of Europe and the OSCE in particular."⁷⁷⁰ Minority management and respect was, and remains, a fundamental aspect of the accession criteria for the European Union. During this process the Member States of the EU had to answer huge questions in terms of how to deal with multi-nation states and how to deal with minorities.⁷⁷¹ Colin Williams points out also that the increased inclusiveness of the European Union has led to a change in mentality

The successive enlargements of the EU especially the integration of sovereign states such as Estonia, Malta and Slovenia have forced EU policymakers to devise more inclusive and innovative pan-European policies that do not consciously

⁷⁷⁰ Gwendolyn Sasse, *The politics of EU conditionality: the norm of minority protection during and beyond EU accession*, (2008) *Journal of European Public Policy*, 15 (6), pp. 842-860 at 844.

⁷⁷¹ María Amor Martín-Estébanez, "The protection of national or ethnic, religious and linguistic minorities", in N. A. Neuwahl and A. Rosas (eds.), *The European Union and Human Rights*, (Kluwer, 1995) pp. 133-163

discriminate against the smaller official national communities that are now ostensibly equal partners in the European Project.⁷⁷² The expansion of the European Union was historic. It was innovative and used the full bargaining power of the EU, making the most of the asymmetry to benefit minorities.

This is a rather stark contrast to the US approach, where language rights are granted only as an aid to assimilation.⁷⁷³ The American approach differs greatly from the Canadian. Many states within the US refuse to formally recognise their multilingual populations and have categorised their linguistic minorities in order to cater for their procedural needs. Many American commentators take for granted the linguistic homogeneity of their country.⁷⁷⁴ The belief that English has always been the common language in the United States, although commonplace, is historically inaccurate.⁷⁷⁵ Entirely apart from autochthonous Native American languages, multiple immigrant languages featured heavily in US life until the early 20th century.⁷⁷⁶ The unifying power of a common language has

⁷⁷² Colin Williams *Minority Language Promotion Protection and Regulation: The Mask of Piety* (Palgrave 2013) 199.

⁷⁷³ K.D. McRae, 'Towards language equality: four democracies compared', 187/188 (2007) *International Journal for the Sociology of Language*

⁷⁷⁴ For interesting discussion of this see Nafziger Paterson and Renten (Eds.) *Cultural Law: International Comparative and Indigenous* (Cambridge University Press 2010) and chapter 5 in Michael A. Morris (ed) *Culture and Language: Multidisciplinary Case Studies* (Peter Lang 2011)

⁷⁷⁵ Schmid C. *The Politics of Language: Conflict, Identity and Culutral Pluralism in Comaprative Perspective* (Oxford University Press 2001).

⁷⁷⁶ A. Pavlenko 'We have room for but one language here' Language and National Identity in the US at the turn of the twentieth century' (2002) *Multilingua* 21 163-96

been explored in preceding chapters. The 'Americanization' movement of the late nineteenth and early twentieth centuries wanted to create an American identity and this was strongly associated with English.⁷⁷⁷ In this enthusiasm to create a homogeneous America, native communities were either banished to reservations or forcibly assimilated into the English speaking majority.⁷⁷⁸ The indigenous languages of Native Americans were sidelined and indigenous populations coerced into assimilation to English.⁷⁷⁹ The history of English in the United States is one of imposition and shows the gradual achievement of a dominant position, as against other languages of immigration in the USA.⁷⁸⁰

The equalising effect of having what is perceived as an essentially monolingual population over such a great land mass has led to a difference in focus between language rights campaigning in the USA and elsewhere.⁷⁸¹ The American language rights movement

⁷⁷⁷ A. Pavlenko 'We have room for but one language here' Language and National Identity in the US at the turn of the twentieth century' (2002) *Multilingua* 21 163-96 see also Schmid C. *The Politics of Language: Conflict, Identity and Cultrual Pluralism in Comaprative Perspective* (Oxford University Press 2001) p. 32 *et seq.*

⁷⁷⁸ For current statistics on autochthonous languages in the USA see Ogunwole S. *We the People: American Indians and Alaska Natives in the United States Census 2000 Special Report* US Census Bureau (2006)

⁷⁷⁹ Peter Tiersma, 'Language Policy in the United States' in Peter Tiersma, and Lawrence Solan, eds. *The Oxford handbook of language and law* (Oxford University Press, 2012)

⁷⁸⁰ Peter Tiersma, 'Language Policy in the United States' in Peter Tiersma, and Lawrence Solan, eds. *The Oxford handbook of language and law* (Oxford University Press, 2012)

⁷⁸¹ M. Rafael Salaberry (ed) *Language allegiances and bilingualism in the U.S* (Multilingual Matters 2009) Schmidt, Ronald Jr. *Language Policy and Identity Politics in the United States*. (Temple University Press 2010)

covers areas such as the action against 'accent discrimination'⁷⁸² which, although it is coherent with the opinions of sociolinguists who lament the focus on intralanguage discrimination, is out of the norm of claims for language rights generally. Furthermore, language rights activism in the USA tends to have an explicit social justice bent; to the extent that one commentator claims that US sociolinguistic activity, both academic and campaign-based 'has made great advances in helping to demonstrate the links between language use and social justice across racial and cultural groups.'⁷⁸³ With the focus remaining on marginalised communities within the English-speaking population, this affects the general perception of language. Language rights campaigns in the US centre mainly on English, often in opposition to the perceived encroachment of Spanish in American public life.⁷⁸⁴ The threat of immigrant communities to the monolingual cultural monolith created of America is keenly felt. Since the 1980's the 'English Only' movement, composed of organisations such as 'English First' and 'English Only' has campaigned to make English the official language of the USA.⁷⁸⁵ This issue is very much

⁷⁸² See Rosina Lippi Green 'Accent Standard Language Ideology and Discrimination Pretext in the Court' (1994) *Language in Society* 163 (10) p.23, or Mari J Matsuda 'Voices of America: Accent Antidiscrimination Law and a Jurisprudence for a Last Reconstruction!' (1991) *Yale Law Journal* 100 1329-30 and Gerrit B. Smith 'I want to speak like a native speaker: The Case for Lowering the Plaintiff's Proof in Title VII Accent Discrimination Cases' (Note) (2005) *Ohio State Law Journal* 66 p.231

⁷⁸³ A.H. Charity Hudley 'Sociolinguistics and Social Activism' in *The Oxford Handbook of Sociolinguistics* (Oxford University Press 2013)

⁷⁸⁴ A. Zentella 'The Hispanophobia of the Official English movement in the US' (1997) *International Journal of the Sociology of Language* 127 71-86

⁷⁸⁵ Crawford (ed.) *Language Loyalties: A Source Book on the Official English Controversy* (University of Chicago Press 1992), Stephen May *Language and*

alive in American public discourse.⁷⁸⁶ Schlesinger famously derides the rise of the 'cult of ethnicity'⁷⁸⁷ in the USA which he believes has led to disunity and fragmentation of American society.

A markedly Anglo-centric view of language in the US concentrates on the extent to which individuals who are not proficient in English should be protected or indeed, assisted in learning English, revolving around a non-discrimination approach, rather than valuing language variety.⁷⁸⁸ Language is seen as 'a disadvantage for non-English speakers which must be managed until it can be overcome'.⁷⁸⁹ This approach can also be seen at times in the Member States of the European Union, and indeed in the Court's own reasoning. The CJEU upheld 'insufficient knowledge of German' as a valid reason for the refusal to issue a visa for Germany.⁷⁹⁰ As chapter 7 reveals, language is becoming an ever-increasingly integral aspect of citizenship of the Member States of the European Union. This language (the official language of the member state) is then given

Minority Rights: Ethnicity, Nationalism and the Politics of Language (2nd edn, Routledge 2012).

⁷⁸⁶ For background see Schildkraut D. *Press One for English: Language Policy, Public Opinion and American Identity* (Princeton University Press 2005)

⁷⁸⁷ Schlesinger A. *The Disuniting of America: Reflections on a Multicultural Society* (W. W. Norton & co. 1992).

⁷⁸⁸ For a different point of view regarding 'equal treatment' with regard to languages see Cristina Rodriguez who bases her approach in democratic participation (Rodriguez, Cristina M., 'Language and Participation' (2005) *New York University Public Law and Legal Theory Working Papers*. Paper 7 . available online at http://lsr.nellco.org/nyu_plltwp/7)

⁷⁸⁹ Denise Gilman, 'A 'Bilingual' Approach to Language Rights: How Dialogue Between U.S. and International Human Rights Law May Improve the Language Rights Framework.' (2011) *Harvard Human Rights Journal*, 24 (1), 1-70 8

⁷⁹⁰ Case C 138/13 Naime Dogan v Bundesrepublik Deutschland judgement of 10/07/2014 (unreported)

further protection at the EU level via the official language policies explored in this thesis.

Protection by the law in the US 'only follows a non-English speaker until such a time as she becomes fluent in English'.⁷⁹¹ This is evidenced by Gilman's finding that while monolingual speakers are protected, bilingual speakers are not. Within the European Union, the legal protection of language is not linked only to competence. It is linked to identity and citizenship, as this thesis has explored. When she compares claims for language rights in Europe with the 'English Only' debate in the USA, Gilman finds a striking difference in focus. In the United States language is essentially viewed as a mutable characteristic.⁷⁹² Therefore, language rights for the speakers of languages other than English in the USA are not protected because of a desire to protect the language itself as a unique, culturally specific characteristic, but their protection is rooted rather in equal treatment.⁷⁹³ Patten describes this type of protection as 'norm and accommodation rights' which aim only so far as providing transitional assistance to those who have not yet learned the language of their

⁷⁹¹ Denise Gilman, 'A 'Bilingual' Approach to Language Rights: How Dialogue Between U.S. and International Human Rights Law May Improve the Language Rights Framework.' (2011) *Harvard Human Rights Journal*, 24 (1), 1-70 16

⁷⁹² Denise Gilman, 'A 'Bilingual' Approach to Language Rights: How Dialogue Between U.S. and International Human Rights Law May Improve the Language Rights Framework.' (2011) *Harvard Human Rights Journal*, 24 (1), 1-70

⁷⁹³ Denise Gilman, 'A 'Bilingual' Approach to Language Rights: How Dialogue Between U.S. and International Human Rights Law May Improve the Language Rights Framework.' (2011) *Harvard Human Rights Journal*, 24 (1), 1-70

society.⁷⁹⁴ While supporting the duty to learn the language of the 'host' state, Ruth Rubio Marin believes language rights in the USA should not be contingent on a lack of proficiency, believing that there is a further non-instrumental goal in the protection of language.⁷⁹⁵ The USA is a clear divergence from the European model of language rights protection. Although the European Union does not protect language minorities, there is no one dominant language in the European Union. 24 languages all benefit from equal status, and thus the citizens are free to use all these languages in contact with the State.

The legal protection of language rights in the US is unrelated to language, in the conceptual, historical or communitarian senses laid out in part I of the thesis. Language protections in the European Union differ in their underlying philosophy, however they are rooted in a similar jingoistic state-based understanding of language as a phenomenon. The ultimate aim of the legal protection afforded to language in the European Union is different to the American aim. The legal protection of administrative language rights in the European Union is based in a concern for the citizen's comprehension of, and engagement with, the law, as argued in chapter 7. The protection of language rights in the USA is rooted in equal treatment

⁷⁹⁴ Alan Patten 'Who Should Have Official Language Rights?' (2006) 31 *Supreme Court Law Review* 101-115

⁷⁹⁵ Rubio Marin in W. Kymlicka and A. Patten, *Language Rights and Political Theory* (Oxford University Press 2003).

considerations, which dissipate once the speakers' (English) language capacity develops sufficiently.⁷⁹⁶ The rights in the European Union and Canada aim towards a preservation of difference, those in the USA aim towards a creation of similarity.

It is interesting to note a difference in approach between America and the rest of the world. There is an explicitly integrationist bent to the US outlook. The US government is uncomfortable with the ideas of social and cultural rights in general⁷⁹⁷ and the protections of group identity and personal culture implicit in language rights protections do not fit in with the *E Pluribus Unum* philosophy of American citizenship. In contrast, International Human Rights law and the European regional instruments explored within this thesis tend to specifically focus on cultural and identitarian aspects of language.⁷⁹⁸ An official language rights model, predicated on equality between official languages does not require a lack of proficiency to enjoy the rights which come with an official language.⁷⁹⁹ This is the case for the European Union, which grants a full choice of 24 official languages to all of its citizens in correspondence with and access to its institutions. This is in sharp contrast to the American approach outlined, where

⁷⁹⁶ Denise Gilman, 'A 'Bilingual' Approach to Language Rights: How Dialogue Between U.S. and International Human Rights Law May Improve the Language Rights Framework.' (2011) *Harvard Human Rights Journal*, 24 (1), 1-70 8

⁷⁹⁷ See for example F. Michelman 'Socioeconomic Rights in Constitutional Law: Explaining America Away' (2008) *International Journal of Constitutional Law* 6

⁷⁹⁸ Vanessa Pupavac *Language Rights: from Free Speech to Linguistic Governance* (Palgrave 2012)

⁷⁹⁹ Rubio Marin in W. Kymlicka and A. Patten, *Language Rights and Political Theory* (Oxford University Press 2003).

language rights *only* operate in a situation of lack of proficiency. It was also pointed out throughout this thesis that major languages which previously occupied a position of power are struggling to defend their institutional position.

As a result of this, the multilinguality of the EU has acquired significant additional political weight, as this thesis has investigated. With the advent of globalisation and the spread of English, states within the European Union who until recently enjoyed full linguistic sovereignty are beginning to understand the problems and frustrations faced by the linguistic minorities within their territories. In the new model of the European Union, there is no dominant language, at least in theory. All languages are competing and could therefore be said to be in a 'minority' position within this polity. Trezn points out that at least relative to the sovereignty they previously enjoyed, the languages are minoritised in that they compete for resources.⁸⁰⁰

Conclusions

In the European Union all the languages of the Member States are recognised, and protected by the Treaties, and there is a blurred distinction between official and working languages. EU language rights are based in the role of the citizen, they are connected with democratic participation and interaction with the EU Institutions.

⁸⁰⁰ Hans-Jorg Trezn 'Language Minorities in Europe: dying species or forerunner of a transnational civil society?' (2005). *Arena Working Papers*.

However, language is also integral to the overall legal system of the EU. The normative basis for the EU's linguistic regime is a complex mix of nationalist perspectives and the EU's own push for integration. Its accommodations for language are unrivalled in other international organisations, and yet as a political structure it overlooks many of the marginalised linguistic groups within its geographical boundaries.

The comparisons in this chapter aimed to give a snapshot of the range of different concerns that the concept of language rights is used to address. In the USA, speakers of languages other than English are protected not because of a desire to protect the variable characteristic of 'language', as is the case with language preservation approaches, but as part of a concern for due process. The language rights instruments created within the organs of the Council of Europe implement a heritage based conception of language rights, which provides recommended policy options to states in catering for their minority language communities, as investigated in chapter 4.⁸⁰¹ Chapter 4 established that language rights have emerged internationally as an element of the normative order which attempts to legally protect minorities. Stephen May identifies the movement for minority language rights as a distinct movement within language rights discourse generally.⁸⁰²

⁸⁰¹ Máiréad Nic Craith 'Linguistic Heritage and Language Rights in Europe: Theoretical Considerations.' in Langfeld M. Logan W. and Nic Craith M. (eds) *Cultural Diversity Heritage and Human Rights*. (Routledge 2010) 45-62.

⁸⁰² S. May 'Language Rights: moving the debate forward' (2005) *Journal of Sociolinguistics* 9(3) , pp 319- 347

Language rights in the EU extend only to those languages it officially sanctions. To extend beyond these languages opens the debate into language preservation and the treatment of immigrant communities.⁸⁰³ There is no rationale for protecting language as inherent in the concept of human dignity on one hand, but on the other hand restricting protection to minorities who are autochthonous.⁸⁰⁴ The language rights protected in the European Union avoid this, by remaining strictly procedural. After an examination of the difficulties inherent in any attempt at classification of language rights in general, provided by part I of this thesis, the role of the legal protections of language in the EU should now be clearer. Languages in the European Union are protected for reasons linked to the role of the citizen, in a logic of guaranteeing administrative justice, rather than a concern for cultural heritage. Although the cultural aspects of language may play a role, as a broad source of inspiration, the European Union does not have the competence to decide on these issues supranationally. The member states remain the drivers of language policy, and thus language rights are limited to official languages.

⁸⁰³ Joppke emphasises the differences between an approach of multiculturalism and one of antidiscrimination. He maintains that there are two opposing logics at stake, one which is cementing difference and the other which seeks to eradicate it. Like Kymlicka, he believes that there must be a qualitative difference between the treatment of immigrant groups who can constitute minorities and the traditional minority groups 'who formed functioning societies on their historical homelands prior to being incorporated into a larger state'. (C. Joppke 'The retreat of multiculturalism in the liberal state: theory and policy' (2004) 55 (2) *British Journal of Sociology* 237-257.

⁸⁰⁴ See chapter 3 for further discussion of this point.

However, this chapter has argued that the European Union is an entirely new model of governance, and the protection of national languages appears to be ingrained in this mode of governing.⁸⁰⁵ The role of official languages within the European Union is the key to determining the scope and the limits of European Union language protections. Although the EU has been described as transcending the traditional powers of states, Schütze questions this description, placing the EU within a firmly statist tradition in terms of constitutional organisation.⁸⁰⁶ This is demonstrated in the EU's implementation of strictly procedural language rights - the more 'official' a language in a State, the more extensively its use is guaranteed within or in contact with the EU. In other words, the speakers of that language will be granted more extensive language rights if it has official status. Based on the historical and political context of the European Union, as well as its implicit and explicit language rules, however, there may be space for further legal protection of minority languages in the European Union.

⁸⁰⁵ B de Witte 'The EU and the International Legal Order: The Case of Human Rights', in M. Evans and P. Koutrakos (eds), *Beyond the Established Legal Orders-Policy Interconnections between the EU and the Rest of the World* (Hart 2011).

⁸⁰⁶ Robert Schütze *European Constitutional Law* (Cambridge University Press 2012).

Chapter 9. Conclusions

This research set out to determine the nature and extent of the legal protections of language present in the EU legal system. Language is central to that system; article 3(3) TEU enshrines 'respect (for the Union's) rich cultural and linguistic diversity' and this formulation is repeated in article 22 of the EU Charter of Fundamental Rights. This respect is implemented by article 55 TEU, which consecrates the equal multilingual authenticity of EU law, with the central phrase 'the texts in each of these languages being equally authentic.', and article 20(2)(d) (TFEU) and article 41(4) of the Charter of Fundamental Rights of the European Union's correspondence rights further apply this principle. This thesis has examined the theory and practice of the legal protections of language present in the European Union. It has shown the unique and innovative protections for language present, and has analysed their theoretical and historical foundations.

Part I embarked upon a theoretical and practical analysis of the interaction between language and law. Chapter 2 deconstructed the power dynamics implicit in any definition of language, and showed their roots in European history. These insights into the nature of language are important in understanding why a simple analysis of the legal protection of languages in the European Union is not possible. Chapter 3 addressed the definitional difficulties in the concept of 'language rights', and the difficulties in assessing legal

protections of language. The interdisciplinary academic background of language rights issues was explored. The explanations of, and justifications for language rights in sociolinguistics, political philosophy and the philosophy of law were analysed. Chapter 4 outlined the protections of language rights at international law and in the European regional organisations. It demonstrated the weakness of the legal provisions for language rights at regional and international level.

Part II looked to the practical implementation of the legal protections for language in the European Union, based in the protections enshrined in the Treaties. In chapter 5, the question of official language was considered. This chapter examined how the establishment of European nation-states and their creation and promotion of national languages, has played out in the context of the European Union. The political and legal importance of the principle of language equality in the EU institutions was assessed, and its practical implementation critiqued.

Chapter 6 evaluated the multilingual character of EU law. This character was revealed as one of its core defining features. Its effects on drafting were assessed and the potential problems caused by enlargement outlined. Chapter 7 looked to the legal protection of language via language rights in the European Union. It characterised EU language rights as largely procedural in nature, related to citizenship and democratic participation in the EU and contextualised

this within the EU's broader administrative rights canon. Chapter 8 assessed the legal protections of language in the European Union in a comparative perspective. It compared the European Union with the USA and Canada. It examined the protection of official languages by the European Court of Human Rights, and compared this with the European Union's own protection. Based on the historical and political context of the European Union, as well as its implicit and explicit language rules, it also evaluated the potential role of minority languages in the European Union.

Each Member State of the EU has a stake in the maintenance of the 24 official languages of the European Union. The political weight of the notion of official language must be borne in mind when assessing the framework for languages in the EU. This weight is central to the legal protections of language in the European Union. These recognise the use of the 24 official languages as essential to the EU's legitimacy as a transnational, multilingual, democratic institution. The European Union creates a new infrastructure for languages. They may be used by the citizens in contact with the institutions. The official languages of the European Union shape the character of EU law.

This thesis has identified the three key themes of language protection in the legal system of the EU; institutional use, equal multilingual authenticity and official language rights. These broad types of legal protection of language show that the European Union

goes far further than simply declaring each Member State's national language official in its legal bolstering of language. The whole nature of the EU's unique legal system centres on multilingualism and language equality. The legal protections implicit in official language status are wide ranging and reveal much about the historical and cultural centrality of language to European states.

I The Institutional Use of Language

Equal validity of all languages is part of the respect for languages of the Member States which is central to the political and legal system of the European Union. The oldest regulation in the EU rulebook refers to language, and the language rules are made and modified at the highest intergovernmental level. Furthermore, it was shown that the official languages of the European Union go much further than those of the United Nations, reflecting the political nature of the European Union, and the residual primacy of the nation-state in this integrated supranational system.

The European Union's protection of multilingualism, in the equal authenticity of 24 languages is seen as a legitimising tool.⁸⁰⁷ It is unhelpful however, that this is often conflated with the operational multilingualism in the internal workings of institutions. These are separable as issues. Yet, as this thesis has demonstrated, minimal

⁸⁰⁷ Matthias Hüning, Ulrike Vogl and Olivier Moliner (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012); M. Krzyzanowski and R. Wodak, 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy.' (2011) *Language Policy* 10(2), 115-136.

efforts have been made to separate them. The Court and the Ombudsman unambiguously favour a very limited multilingualism in working practices, on the one hand,⁸⁰⁸ and on the other, they affirm the importance of citizens' contact with the institutions of the EU and the fundamental nature of multilingualism.⁸⁰⁹ The lack of distinction between official and working languages further adds to the confusion in defining EU language rights. The (multilingual or monolingual) regime of languages for internal use need not be the same as the language regime in place for interaction with the public. If the EU were to more clearly implement this distinction, it would make for a more effective protection of language at EU level. This would not affect the core principle of equality of language, as it would not harm the fundamental principle of equality of authenticity of European Union law outlined in this thesis. However, it would ease some of the practical difficulties posed by the current language regime. The main barrier to change however is the lack of political will on behalf of the Member States of the European Union. This thesis has demonstrated the political sensitivity of the implementation of an

⁸⁰⁸Case C-566/10 P *Italy v Commission* (Judgment of the Court (Grand Chamber) of 27 November 2012- not yet published). Decision of the European Ombudsman closing his enquiry into complaint 3035/2008/(MHZ)RT against the European Personnel Selection Office [2009] Decision of the European Ombudsman on (BB)MH 259/2005 [2005] Decision of the European Ombudsman on (PB)GG 3114/2005/MHZ 2580/2006/TN Decision of the European Ombudsman on complaint 2580/2006/TN against the Council of the European Union [2007] Decision of the European Ombudsman on complaint 3191/2006/(SAB)MHZ [2007] Decision of the European Ombudsman on complaint 871/2006/ (BB) MHZ [2007].

⁸⁰⁹ Case T-120/99 *Kik v. OHIM* (2001) E.C.R. II-2235; Case T-333/99 *X v European Central Bank* [2001] ECR 11-302.

operational regime of working languages. The Member States cultivate the ambiguity in the distinction between official and working languages. This legal ambiguity serves to protect language in the European Union. It means that all official languages are, at least theoretically, on an equal level. They may, in theory, be used within the operation of the institutions. However, it conceals the true institutional practices. As the language regime of the EU expands, even the maintenance of an apparent multilingualism becomes untenable. The internal working and official language regime of the European Union should be clarified, this would provide for a clearer and better protection of language.

This thesis has also regarded the language rules in place, or the 'external' language regime of the EU institutions, which they use for interaction with citizens. Within the context of the European Union, Adrey classifies working languages as 'horizontal', given that they are reserved for intra-EU communication, whereas official languages are classified as 'vertical', as they come into play where Community (EU) institutions interact with citizens and with the Union as a whole.⁸¹⁰ This thesis has explored the EU rules on working languages and the languages of interaction with citizens at length. The protection of the official languages of the Member States is

⁸¹⁰ T. Van Els 'The European Union, its Institutions and its Languages' in Kaplan and Baldauf (Eds) *Language Planning and Policy in Europe*, Volume II *The Czech Republic the European Union and Northern Ireland* (2006, Multilingual Matters)

strong at this 'vertical' level in the legal system of the European Union.

This thesis has shown that the recognition of language at the supranational level is highly politically sensitive. Despite the fact that not all Member States of the EU have an explicitly recognised official language, the regulation of language is an important feature of the history of many of the Member States.⁸¹¹ The endorsement of one language or variety over others, in a process of official language choice is laden with significance.⁸¹² This was shown through the changing status of the Irish language and the creation of co-official language status. The strongest protection of language in the European Union, however, lies in the guarantee of equal multilingual authenticity in Article 55 TEU.

II Equal Multilingual Authenticity

This thesis illustrated the political weight of language issues, in particular in light of the expansion of the European Union, and the extensive provisions for multilingual authenticity in the EU. This research has shown that the role of language is central to the essence of what it means to be a modern European nation state. This has resulted in the European Union's extensive protection of the principle of equality of language. The European Union guarantees the

⁸¹¹ Matthias Hüning, Ulrike Vogl and Olivier Moliner (eds.) *Standard Languages and Multilingualism in European History* (John Benjamins 2012).

⁸¹² Ammon, Dittmar, Mattheier and Trudgill (eds.), *Sociolinguistics: An International Handbook of the Science of Language and Society* (2nd ed. 2006 Mouton de Gruyter).

equal legal validity of each of the 24 language versions of the treaties, and by extension, of legislative instruments. This is a fundamental aspect of the European Union as a multilingual polity, which places its official languages on an equal footing with each other in law.

In practical terms, translation across 24 languages is very complex and time consuming. This translation, however, is essential to the operation of the multilingual system of the European Union, given the equality of authenticity of all language versions of EU legislation. This translation is central to the drafting of legislation in the EU. Article 55 declares that all language versions of the EC Treaty shall be considered as authentic. The equality of authenticity and its legal implications were examined in chapter 6. Multilingual authenticity is a particular feature of the European Union's legal texts.⁸¹³ In the European Union, the principle of equal authenticity means that all official languages are of equal value. Every permutation of meaning of every EU legislative document across 24 languages is included within the original understanding of the text. Nothing is translated, as every language version is the original. Translation takes place at a practical level, but at a theoretical level it does not exist. This is the most robust form of legal protection possible. This 'strong'⁸¹⁴ multilingualism ensures that EU law

⁸¹³Réka Somssich, *Study On Lawmaking In The EU Multilingual Environment* (European Commission [EC-DGT] 2010).

⁸¹⁴Theodor Schilling, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 German Law Journal 1460.

inherently protects the 24 official languages. This multilingualism is intrinsic to the unique character of EU law.

III Official Language Rights

Language rights within the European Union are grounded in the status of its citizens within its unique multinational multilingual polity. EU language rights are based on participation in a unique transnational governance project. However, they are mediated through the Member States of the EU, and are limited to the languages sanctioned by them, with Member State assent remaining the most important factor in the granting of language rights within the EU system. It is within the correspondence rights of Article 20(2) (d) (TFEU) and Article 41(4) of the Charter of Fundamental Rights that the language rights protected in European Union can be found. These form part of the 'linguistic citizenship'⁸¹⁵ of the EU.

This thesis began with an examination of the idea of 'languages', revealing that this idea is intimately intertwined with European history. It explains the theoretical basis for language rights. Part I of this thesis investigated the roots of the concept of language rights. It outlined that as sociolinguists began to investigate issues regarding multilingual societies and bilingualism, they approached language, and languages, not as fixed entities but as human tools. It is a key tenet of sociolinguistics that language is a variable

⁸¹⁵ C. Stroud and K. Heugh 'Linguistic human rights and linguistic citizenship' in Donna Patrick & Jane Freeland (eds.). *Language Rights and Language Survival: A Sociolinguistic Exploration* (St Jerome 2004).

phenomenon in constant flux and evolution.⁸¹⁶ This then creates difficulty for the protection and promotion of language, and conceptualisations of language rights. The insights from political philosophy help us to consider the normative bases behind conceptions of language rights. The conclusion is that the substance of language rights is very complicated to ascertain. The language rights granted therefore in the European Union are procedural in nature, to guarantee participation in this new polity. This thesis has argued that the status or even basic existence of language rights as fundamental human rights is as yet unclear. Part I furthermore demonstrated that advent of the philosophy of 'national languages' came at a time when nation-states began to compete with one another, and languages were used as political tools.⁸¹⁷ This in turn had an effect on the academic study of language, and on conceptualisations of language rights. This may be the reason that:

International law does not speak with one voice on the issue of language. Different areas of law approach the question of language use from different perspectives, such that the vision of linguistic justice inherent in international law is not unitary but fragmented.⁸¹⁸

⁸¹⁶ S. Romaine, *Language in Society, an Introduction to Sociolinguistics* (Oxford University Press 2000).

⁸¹⁷ Robert Mc Coll Millar *Authority and Identity: A Sociolinguistic History of Europe before the Modern Age* (Palgrave Macmillan 2010).

⁸¹⁸ Vanessa Pupavac *Language Rights: from Free Speech to Linguistic Governance* (Palgrave 2012) 202

As explored in chapter 4, the 'soft law' of the Council of Europe on this issue⁸¹⁹ was generated mainly as a response to the problems experienced in Central and Eastern Europe after the fall of Communism. However, the problem of minority languages had always existed across Europe. This is part of the complication of trying to divine the essence of language rights in the European Union context. Part I established that there exists no coherent concept of 'language rights' by which to measure the EU's performance or provisions beyond what is textually protected in the Treaties. Therefore, this research focused on treaty protections to theorise on EU language rights. It showed that these are effective in guaranteeing the citizens access to the democratic structures of the European Union.

The European Union is a system of governance which is tailored, on the one hand to a globalised world with worldwide trade in goods and services, and on the other to suit the political objectives of its Member States.⁸²⁰ This thesis has shown that the language regime of the European Union reflects this difficult balance.

The European Union is a transnational democratic entity. It has adopted its language policies in view of facilitating representative democracy and representing the national 'essence' of each of its

819 European Charter for Regional or Minority Languages (1992), Council of Europe Treaty Series No 148. Framework Convention for the Protection of National Minorities (1998), Council of Europe Treaty Series No 157.

820 Robert Schütze *European Constitutional Law* (Cambridge University Press 2012).

Member States. Equal respect for the 24 languages of the 28 Member States is central to the political and legal system of the European Union. This thesis has demonstrated that unusual language rules of the EU provide considerable and innovative protections for language.

BIBLIOGRAPHY

Books

- Adamson R, *The Defence of French: A Language in Crisis?* (Multilingual Matters 2007)
- Adrey, J.B. *Discourse and Struggle in Minority Language Policy Formation: Corsican Language Policy in the EU Context of Governance* (Palgrave 2009).
- Agar M., *Language Shock. Understanding the Culture of Conversation.* (Harper Collins 1996)
- Ager D, *Identity Insecurity and Image. France and Language.* (Multilingual Matters 1999)
- Ahmed, T., *The Impact of EU Law on Minority Rights* (Hart Publishing 2011).
- Aitchison, J. *Language Change: Progress or Decay?* (3rd ed) (2001 Cambridge University Press).
- Albrow M and King E (eds), *Globalization knowledge and society: readings from International sociology* (Sage 1990).
- Alexander J C, Jacobs R. and Smith P., *The Oxford Handbook of Cultural Sociology* (Oxford University Press 2012).
- Allan K and Jaszczolt K M (eds.), *The Cambridge Handbook of Pragmatics* (Cambridge University Press 2012).
- Allott P, *The Health of Nations. Society and Law beyond the State* (Cambridge University Press, 2002).
- Ammon, Dittmar, Mattheier and Trudgill (eds.), *Sociolinguistics: An International Handbook of the Science of Language and Society* (2nd ed. 2006 de Gruyter).
- Anderson B, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (2nd edn Verso 2006).
- Anthony G, Arby JB, Morrison J and Zwart T (eds), *Values in Global*

Administrative Law (Hart 2011).

Antony L M and Hornstein N (eds), *Chomsky and His Critics* (Blackwell 2003).

Appadurai, 'Modernity at large: cultural dimensions of modernity' (University of Minnesota Press 1996).

Ayer, A. J. *Language, truth and logic* (Courier Dover Publications 2012).

Baaij CJW (ed), *The Role of Legal Translation in Legal Harmonization* (Klüwer Law 2012).

Bakhtin, M. *The Dialogic Imagination: Four Essays*. Michael Holmquist (ed) trans. Caryl Emerson and Michael Holmquist (University of Texas Press 1989).

Baldauf R and Kaplan R (eds) *Language Planning and Policy in Europe* (Vol. 2) (Multilingual Matters 2006).

Ball M.J. ed. *Routledge Handbook of Sociolinguistics around the World*. (Routledge 2010)

Bamgbose A, *Language and the nation: The language question in Sub Saharan Africa* (1991).

Ban C, *Management and Culture in an Enlarged European Commission: From Diversity to Unity?* (Palgrave 2013).

Barnard, F. *Herder's social and political thought: from enlightenment to nationalism* (Clarendon Press 1965).

Barry B, *Culture and Equality* (Oxford University Press 2000)

Bartolini S, *Restructuring Europe: Centre Formation System Building and Political Structuring Between the Nation State and the European Union* (Oxford University Press 2005).

Baubock R. and Wallace Goodman S 'Naturalisation' *EUDO Citizenship Policy Brief* (European University Institute Florence 2010).

Baumann R and Briggs C L, *Voices of Modernity: Language Ideologies and the Politics of Inequality* (Cambridge University Press

2003).

Beattie and Ellis A, *The psychology of language and communication* (Psychology Press 2014)

Bellos D, *Is That a Fish in your Ear? Translation and the Meaning of Everything* (Penguin, 2011).

Berthoud A, Grin F, Lüdi G (eds.), *Exploring the Dynamics of Multilingualism: The DYLAN project* (John Benjamins 2013).

Biel L, *Lost In The Eurofog: The Textual Fit Of Translated Law* (Peter Lang 2014).

Billig M, *Banal Nationalism*. (SAGE 1995).

Bix B, *Law Language and Legal Determinacy* (Oxford University Press 1993).

Blank P, *Broken English* (Taylor and Francis 2002).

Blommaert, J. (ed), *Language Ideological Debates* (Mouton de Gruyter 1999).

Bobbio N., *The Age of Rights* (Polity Press 1996)

Bohl, D. 'Language Rights in the World Polity – From Non-Discrimination to Multilingualism' D. Richter and others (eds) *Language Rights Revisited - The Challenge of Global Migration and Communication* (Berliner Wissenschafts-Verlag 2012).

Bourdieu P, *Language and Symbolic Power* (edited by Thompson JB) (Polity Press 1991).

Bowring and Fotherell (eds), *Minority and Group Rights in the New Millennium*. (1999 Kluwer Law International).

Bowring B, *The Degradation of the International Legal Order?: The Rehabilitation of Law and the Possibility of Politics* (Routledge 2008)

Bix B, *Law Language and Legal Determinacy* (Oxford University Press 1993)

Brownlie I and Goodwin-Gill G, *Basic Documents on Human Rights* 5th (ed) (Oxford University

Brubaker R, *Nationalism Reframed. Nationhood and the National Question in the New Europe* (Cambridge University Press, 1996).

Buck Kirkham and Thompson (eds) *The Ombudsman Enterprise and Administrative Justice* (Ashgate 2011)

Burke P and Porter R (eds), *The Social History of Language* (Cambridge University Press 1987).

Burke P, *Languages and Communities in Early Modern Europe* (Cambridge University Press 2004).

Burling R, *The Talking Ape: How Language Evolved* (Oxford University Press 2005).

Busch and Kelly-Holmes (eds) *Language Discourse and Borders in the Yugoslav Successor States* (Multilingual Matters 2004).

Bussmann H, *Routledge dictionary of language and linguistics* (Routledge 2006).

Cabestan J and Pavkoviac A, (eds) *Secessionism and Separatism in Europe and Asia: To Have a State of One's Own* (Routledge 2013).

Carmichael and Barbour (eds), *Language and Nationalism in Europe* (Oxford University Press 2000).

Carolan E, *The New Separation of Powers: A Theory for the Modern State* (Oxford University Press 2009).

Cassese A, *International Law* (Oxford University Press 2001)

Cassese A, *Self Determination of Peoples* (Cambridge University Press 1995).

Castiglione and Longman (eds), *The language question in Europe and diverse societies: political legal and social perspectives* (Hart Publishing 2007).

Castiglione D and Longman C (eds.), *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

Chambers J K and Trudgill P, *Dialectology*. (Cambridge University Press 1999).

Chambers J K, *Sociolinguistic Theory* (2nd ed. Oxford 2002)

Christopher M, *Encyclopedia of the World's Endangered Languages* (Routledge 2007).

- Coulthard (eds), *Routledge Handbook of Forensic Linguistics* (Routledge 2010).
- Coupland N (ed), *The Handbook of Language and Globalisation* (Blackwell 2010).
- Coupland and Jaworski (eds), *The New Sociolinguistics Reader* (Palgrave Macmillan 2009).
- Creech R, *Law and Language in the European Union* (Europa Law Publishers 2005).
- Crimmins M, 'Philosophy of Language' in E. Craig (Ed) *Routledge Encyclopedia of Philosophy* (Routledge 1998).
- Crowley T, 'The Politics of Language in Ireland 1366-1922- a Sourcebook' (Routledge 2000).
- Crowley T, *Language in History: Theories and Texts* (Routledge 1996).
- Crowley T, *Wars of Words: the politics of language in Ireland 1537-2004* (Oxford University Press 2005)
- Cruse A, *Meaning in Language* (Oxford University Press, 2nd edn 2004)
- Crystal D, *English as a Global Language* (Cambridge University Press, 2nd edn 2012)
- Crystal D, *Language death* (Cambridge University Press 2000)
- Crystal D, *How Language Works* (Penguin 2007).
- Curtin D and Egeberg M (eds.) *Towards a new executive order in Europe?* (Routledge 2009).
- Dalby A, *Language in Danger: the loss of linguistic diversity and the threat to our future* (Penguin 2003).
- Dawson M, *New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy* (Cambridge University Press 2011).
- De Bardeleben J and Hurrelmann A (eds), *Transnational Europe: Promise, Paradox, Limits* (Palgrave Macmillan 2011).
- De Búrca G and Weiler JHH (eds), *The Worlds Of European*

Constitutionalism: Contemporary European Politics (Cambridge University Press 2012).

De Schutter H, 'Herder Johann Gottfried' in Claeys G. (eds), *Encyclopedia of Modern Political Thought* (CQ Press 2013).

De Swaan A, *Words of the World: The Global Language System* (Wiley 2002).

Diamond J, *Guns Germs and Steel: The Fates of Human Societies* (Vintage 1998).

Dickson J and Eleftheriadis P (eds), *The Philosophical Foundations of European Union Law* (Oxford University Press 2012).

Doczekalska A, 'Drafting or Translation: Production of Multilingual Legal Texts' in Frances Olsen A L and Stein D (eds), *Translation Issues in Language and Law* (Palgrave Macmillan 2009).

Donders Y, *Towards a Right to Cultural Identity?* (Intersentia 2002)

Dorian C, *Investigating Obsolescence Studies in Language Contraction and Death* (Cambridge University Press 1992)

Doucet M (ed), *Le Pluralisme Linguistique : L'aménagement de la Coexistence des Langues* (Yvon Blais, 2014)

Douzinas C, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Hart 2000)

Dryzek J S and Niemeyer S, *Foundations and Frontiers of Deliberative Governance* (Oxford: OUP 2010).

Duchêne and Heller, *Discourses of Endangerment: Interests and Ideology in the Defence of Languages* (Continuum 2007)

Duchêne, A. *Ideologies across Nations: The construction of linguistic minorities at the United Nations*. (2008 Mouton de Gruyter)

Dunbar R, *Grooming, Gossip and the Evolution of Language* (Harvard University Press 1996).

Dunbar R, Parry G and Klinge S (eds), *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008).

Egberg M, (ed) *Mutli-Level Union Administration: the*

- Transformation of Executive Politics in Europe* (Palgrave 2004).
- Errington J, *Linguistics in a Colonial World: A story of Language Meaning and Power* (Blackwell 2008).
- Everson M, Monda C and Vos E (eds.), *European agencies in between institutions and Member States* (Kluwer Law International 2014)
- Extra G, Spotti M and Van Avermaet P (eds), *Language Testing Migration and Citizenship: Cross National Perspectives on Integration Regimes* (Continuum 2009).
- Extra G and Yağmur K (eds) *Language Rich Europe: Trends in Policies and Practices for Multilingualism in Europe* (Cambridge University Press; British Council 2012).
- Farfán J A F and Ramallo F, *New perspectives on endangered languages: Bridging gaps between sociolinguistics, documentation and language revitalization* (John Benjamins 2010).
- Fassbender B and Peters A (eds), *The Oxford Handbook of the History of International Law*, (Oxford University Press 2012).
- Fauconnier, G. *Mental spaces: Aspects of meaning construction in natural language* (Cambridge University Press 1994).
- Fishman J A (ed) *Can Threatened Languages Be Saved? Reversing Language Shift, Revisited: A 21st Century Perspective* (Multilingual Matters 2001).
- Fishman J A and Garcia O (eds) *Handbook of Language and Ethnic Identity: The Success-Failure Continuum in Language and Ethnic Identity Efforts (Volume 2): The Success-Failure Continuum in Language and Ethnic Identity Efforts* (Oxford University Press 2011).
- Footit H. and Kelly M.(eds) *Languages at War: the Politics and Practice of Language Contacts in Practice* (Palgrave).
- Fought C, *Language and Ethnicity: Key topics in Sociolinguistics* (Cambridge University Press 2006).
- Fraser N, *Justice Interruption* (Routledge 1997).
- Galbreath D J and McEvoy J, *The European Minority Rights Regime:*

Towards a Theory of Regime Effectiveness (Palgrave 2011).

Garzone G and Ilie C (eds), *The Role of English in Institutional and Organizational Settings: An intercultural Perspective* (2007: Peter Lang).

Garzone G and Santulli F (eds), *Comunicazione giuridica nel mondo contemporaneo: scelte linguistiche e pratiche discorsive* (Giuffrè 2008).

Geddes A, *Britain and the European Union* (Palgrave 2013)

Geertz C, *The Interpretation of Cultures* (Basic Books 1973)

Gellner E, *Nations and Nationalism* (first published 1983 2nd edn Blackwell 2006);

Gellner E, *Nations and Nationalism* (first published 1983 2nd edn Blackwell 2006).

Gibson K and Ingold T (eds), *Tools Language and Cognition in Human Evolution* (Cambridge University Press 1993).

Gibson K and Ingold T (eds), *Tools, Language and Cognition in Human Evolution* (Cambridge University Press 1993).

Glanert, S. *De la traductibilité du droit* (Daloz 2011).

Glendon M.A., *Rights Talk: the Impoverishment of Political Discourse* (The Free Press 1991).

Gomien D, *Short Guide to the European Convention on Human Rights* (3rd ed Council of Europe 2005).

Goodin R E, Pettit P and Pogge T (eds), *A Companion to Contemporary Political Philosophy* (2nd ed).

Goodwin and Duranti A (eds), *Rethinking context: Language as an interactive phenomenon* (1992 Cambridge University Press).

Greenberg R, *Language and Identity in the Balkans: Serbo-Croatian and Its Disintegration* (Oxford University Press 2004).

Grenoble and Whitley, *Saving Languages: An Introduction to Language Revitalization* (2006 Cambridge University Press)

Grin F, 'The Cost-Effectiveness Evaluation of Minority Language Policies: Case Studies on Wales Ireland and the Basque Country'

(European Centre for Minority Issues 1999)

Guibernau M, *The Identity of Nations* (Cambridge: Polity Press 2007)

Guild E, Groenendijk K and Carrera S (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009)

Guus Extra and Yağmur K (eds), *Language Rich Europe: Trends in Policies and Practices for Multilingualism in Europe* (Cambridge University Press; British Council 2012)

Habermas J, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Rehg W tr, MIT Press 1998).

Haque E, *Multiculturalism within a bilingual framework : language, race, and belonging in Canada* (University of Toronto Press 2012).

Haque E, *Multiculturalism within a bilingual framework: language race and belonging in Canada* (University of Toronto Press 2012).

Harris R, *Language Saussure and Wittgenstein: How to Play Games with Words* (Routledge 1990).

Harrison K.D., *When Languages Die: The Extinction of the World's Languages and the Erosion of Human Knowledge* (Oxford University Press 2007).

Hartley T.C., *The Foundations Of European Union Law: An Introduction To The Constitutional And Administrative Law Of The European Union* (Oxford University Press 2010).

Harvey D, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Blackwell 1990).

Haugen E, *The Ecology of Language* (Stanford University Press 1972).

Held D, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press 1995).

Held, D. McGrew, A. Goldblatt, D. and Perraton, J. *Global Transformations: Politics Economics and Culture* (Polity Press 1999).

— — *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press 1995)

- Hellinger M. and Pauwels A. (Eds), *Handbook of Applied Linguistics* (Mouton de Gruyter 2007)
- Henrard and Dunbar (eds) *Synergies in minority protection: European and International law perspectives* (Cambridge University Press, 2008).
- — *Synergies in Minority Protection* (Cambridge University Press 2008).
- — *Devising an Adequate System of Minority Protection* (Kluwer Law International 2000)
- — *Double-Standards Pertaining to Minority Protection* (Martinus Nijhoff 2010)
- Herder J G, 'Abhandlung über den Ursprung der Sprache' (1772).
- Hiphold P, 'Union Citizenship and Language Rights' in Xabier Arzoz (ed), *Respecting Linguistic Diversity in the European Union* (John Benjamins 2008).
- Hobsbawm E, *Nations and Nationalism since 1780* (Cambridge University Press 1990)
- Hofman H, Rowe G and Turk A, *Administrative Law and Policy of the European Union* (Oxford University Press 2011).
- Hogan-Brun, G and Wolff, S. (eds), *Language Nationalism and Democracy in Europe* (Palgrave 2003).
- Holland D. and Quinn N. (Eds.) *Cultural Models in Language and Thought* (CUP 1987).
- Hüning, M. and Vogl U. and Moline O. (eds), *Standard Languages and Multilingualism in European History* (John Benjamins 2012).
- Hurford, J.R. and Studdert-Kennedy M. and Knight C. (eds) *Approaches to the Evolution of Language* (Cambridge University Press 2000).
- Husa J, 'English as a Legal Lingua Franca in the EU Multilingual Context' in Baaij (ed.) *The Role of Legal Translation in Legal Harmonization* (Wolters Kluwer 2012).
- Hutton C.M., *Linguistics and the Third Reich Mother-Tongue,*

- Fascism, Race and the Science of Language* (Routledge 1998).
- Janse M and Tol S (eds), *Language Death and Language Maintenance* (2003).
- Janson T, *Speak: A short history of languages* (Oxford University Press 2002).
- — *The History of Languages* (Oxford University Press 2012).
- Joseph J E, *Eloquence and Power: The rise of language standards and Standard Languages* (Blackwell 1987).
- Joseph, S., Schultz, J. and Castan, M. *The International Covenant on Civil & Political Rights: Cases Materials and Commentary* (Oxford University Press 2000).
- Jourdan, C. and Tuite, C. (eds) *Language Culture and Society: Key topics in Linguistic Anthropology* (Cambridge University Press 2006).
- Kaiser W, Leucht B and Rasmussen M (eds), *The History of the European Union: Origins of a Trans- and Supranational Polity 1950-72* (Routledge 2008).
- Kaplan R and Baldauf R (ed) *Language Planning: from Practice to Theory* (Multilingual Matters 1997).
- Kelly P (ed), *Multiculturalism Reconsidered: Culture and Equality and its Critics* (Oxford University Press 2002).
- Kemp W (ed), *Quiet Diplomacy in action: The OSCE High Commissioner on National Minorities* (Kluwer Law Publishing 2001).
- Ker-Lindsay J, *The Cyprus Problem What Everyone Needs to Know* (Oxford University Press 2010).
- Kloss H, *The American Bilingual Tradition* (Newberry House Publishers, 1977).
- Kontra M Skutnabb-Kangas T , Phillipson R. and Várady T.(eds), *Language: A Right and a Resource. Approaching Linguistic Human Rights* (Central European University Press 1999)
- Kortmann and van der Auwera (eds), *The Languages and Linguistics of Europe a Comprehensive Guide Vol II* (Berlin:Walter de Gruyter 2011).

- Kraus P, 'Neither United nor Diverse: the language issue and political legitimation in the European Union' in Kjaer L. and Adamo S. (eds) *Linguistic Diversity and European Democracy* (Ashgate 2011).
- Krauss M, *The world's languages in crisis* (1992) *Language* 68(1) 1-42.
- Kuhnle F and Urwin (eds), *State Formation Nation Building and Mass Politics in Europe: The Theory of Stein Rokkan* (Oxford University Press 1999)
- Kymlicka and Patten, *Language Rights and Political Theory* (Oxford University Press 2003).
- Kymlicka W, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford University Press 2009).
- Kymlicka W and Norman W (eds), *Citizenship in Diverse Societies* (Oxford University Press 2000) p. 245 *et seq.*
- Kymlicka W, *Contemporary Political Philosophy: An Introduction* (2nd edn., Oxford University Press 2002)
- — *Multicultural Citizenship : A Liberal Theory of Minority Rights* (Oxford University Press 1995)
- — *Multicultural Odysseys* (Oxford University Press 2007).
- Labov W., *Principles of Linguistic Change* (Blackwell 1994).
- Law V, *The History of Linguistics in Europe From Plato to 1600.* (Cambridge University Press 2003).
- Leersen J, *National Thought In Europe: A Cultural History* (Amsterdam University Press 2006).
- Lepore Eand Smith B C (eds), *The Oxford Handbook of Philosophy of Language* (Oxford University Press 2006).
- Leung C. and Jenkins, J. (eds), *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006).
- Love N (ed), *Language and History: Integrationist Perspectives* (Routledge 2006).
- Mackenzie R, Romano C, Shany Y and Sands P (eds), *The Manual on*

- International Courts and Tribunals* (2nd ed 2010).
- Makoni and Pennycook *Disinventing and Reconstituting Languages* (Multilingual Matters 2007).
- Malik K., *The Meaning of Race: Race, History and Culture in Western Society* (Palgrave / New York University Press, 1996)
- Malloy, T. H. , *National Minority Rights in Europe* (Oxford University Press 2005)
- Marks, S. and Clapham, A. *International Human Rights Lexicon* (Oxford University Press, 2005),
- Mar-Molinero, C. and Stevenson, P. (eds), *Language ideologies policies and practices: language and the future of Europe* (Palgrave Macmillan 2006)
- Mason HL, *The European Coal and Steel Community: Experiment in Supranationalism* (Martinus Nijhoff 1955).
- May S, *Language and Minority Rights Ethnicity Nationalism and the Politics of Language* (2001 Longman).
- — *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (Routledge 2nd end 2011)
- Mc Coll Millar, R. *Authority and Identity: A Sociolinguistic History of Europe before the Modern Age* (Palgrave Macmillan 2010)
- — *Language Nation and Power* (Palgrave Macmillan 2005).
- Mc Crum R, *Globish: How the English Language Became the World's Language*
- Mc Nay L, *Against Recognition* (Polity Press 2008)
- Mendes J, *Participation in EU Rulemaking: A Rights-Based Approach* (Oxford University Press 2011).
- Methstrie R (ed), *The Cambridge Handbook of Sociolinguistics* (Cambridge University Press 2004)
- — *The Cambridge Handbook of Sociolinguistics* (Cambridge University Press 2004)
- Millikan R, *Language: A Biological Model* (Oxford University Press 2005)

- Montserrat M. and Rex J. (eds), *The Ethnicity Reader: Nationalism, Multiculturalism and Migration* (Polity Press 2010)
- Morris M and Maurais J (eds), *Languages in a Globalising World* (Cambridge University Press 2003).
- Morris M.A.(ed) *Culture and Language: Multidisciplinary Case Studies* (Peter Lang 2011)
- Moseley C (ed), *Atlas of the World's Languages in Danger*, (2010. 3rd ed. UNESCO Publishing) Online version: <http://www.unesco.org/culture/languages-atlas> (accessed 19/5/2013)
- Mowbray J, *Linguistic Justice: International Law and Language Policy* (OUP 2012)
- Mufwene S., *The Ecology of Language Evolution* (Cambridge University Press, 2001)
- Mugglestone, L. (ed), *The Oxford History of English* (Oxford University Press 2012).
- Mühlhäusler, P. *Linguistic Ecology: Language Change and Linguistic Imperialism in the Pacific Region*. (Routledge 1996).
- Musgrave, T. *Self Determination and National Minorities* (Oxford University Press 2000).
- Myhill, J. *Language, Religion and National Identity in Europe and the Middle East: a Historical Study* (John Benjamins 2006)
- Nettle and Romaine, *Vanishing voices: the extinction of the world's languages* (Oxford University Press 2000).
- Newmeyer, F.J. *Linguistic Theory in America* (New York Academic Press 2nd ed 1986).
- Nic Cráith, M. *Europe and the Politics of Language: Citizens, Migrants and Outsiders* (Palgrave 2006).
- Nic Suibhne N, 'EC Law and Minority Language Policy- Culture, Citizenship and Fundamental Rights' (Kluwer Law International 2002).
- Ó Conaill S, 'An Ghaeilge mar theanga oifigiúil seachas teanga

mhionlaigh' in Elaine Fahey and Catherine O'Connor (eds), *Súil ar an Dlí* (Lonsdale Law Publishing 2009).

O'Reilly C. C. (ed), *Language Ethnicity and the State Vol. 1: Minority Languages in the European Union* (Palgrave Macmillan 2001).

Ohly A and Pila J (eds), *The Europeanization of Intellectual Property Law: Towards a European Legal Methodology* (Oxford University Press 2013).

Olsen F, Lorz A and Stien D (eds), *Translation Issues in Language and Law* (Palgrave 2009).

Olthuis, Kivelä and Skutnabb-Kangas, *Revitalising indigenous languages : how to recreate a lost generation* (Multilingual Matters, 2013)

Ost F, *Traduire: défense et illustration du multilinguisme* (Fayard 2009)

Ostler N, *Empires of the Word: A Language History of the World* (London 2005)

Palermo F, Poggeschi G., Rautz G., Woelk J.(eds.) *Globalization, Technologies and Legal Revolution: The Impact of Global Changes on Territorial and Cultural Diversities, on Supranational Integration and Constitutional Theory* (Nomos, 2012).

Parekh B, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (2nd ed Palgrave, 2000).

Pentassuglia G, *Minorities in international law: an introductory study* (Council of Europe Publications 2002).

Percy and Davidson (eds), *The Languages of Nation: Attitudes and Norms* (Multilingual Matters 2012).

Philippe V P, *Linguistic Justice for Europe and for the World* (Oxford University Press 2011).

— *Rights to Language: Equity, Power and Education*. (Lawrence Erlbaum, 2000)

— *English Only Europe? Challenging Language Policy* (Routledge 2003).

- *Linguistic Imperialism* (1992 Oxford University Press) and *Linguistic Imperialism Continued* (Routledge 2010).
- Pichler JW and Kaufmann B (eds), *Modern transnational democracy: how the 2012 launch of the European Citizens' Initiative can change the world* (NWV Neuer Wissenschaftlicher Verlag 2012).
- Pinker S *The stuff of thought: language as a window into human nature* (Viking 2007)
- *The Language Instinct: The New Science of Language and Mind* (Penguin 1994)
- Poggeschi G, *Language rights and duties in the evolution of public law* (Nomos 2013).
- Pollitt C, Van Thiel S and Homburg V (eds), *New Public Management in Europe: Adaptation and Alternatives* (Palgrave 2007).
- Pozzo B and Jacometti V (eds), *Multilingualism and the Harmonisation of Press* 2006).
- Pupavac V, *Language Rights: From Free Speech to Linguistic Governance* (Palgrave 2012).
- Ramanathan V, *Language Policies and (Dis) Citizenship: Rights Access Pedagogies* (Multilingual Matters 2013).
- Rawls J, *A Theory of Justice: Revised Edition* (Harvard University Press 1999).
- Rehman, J. *International Human Rights Law* (2nd ed Pearson Education 2010).
- Robert P, *English-only Europe?: Challenging Language Policy* (Routledge 2003).
- Romaine S, *Language in Society, an Introduction to Sociolinguistics* (Oxford University Press 2000).
- *Socio-historical linguistics: its status and methodology* (Cambridge University Press 1982).
- Rosas A and Armati L, *EU Constitutional Law* (2nd edn, Hart Publishing 2012).
- Ross M, *Culture and Belonging in Divided Societies* (University of

- Pennsylvania Press, 2012)
- Sabel CF and Zeitlin J (eds), *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford University Press 2010).
- Sacco (ed), *L'interprétation des textes juridiques rédigés dans plus d'une langue* (L'Harmattan Italia 2002).
- Šarčević, S. *New Approach to Legal Translation* (Kluwer 1997).
- Sasse G, 'The Council of Europe as a Norm Entrepreneur: The Political Strengths of a Weak International Institution' in Neil Walker, Jo Shaw & Stephen Tierney (eds) *Europe's Constitutional Mosaic* (Hart 2011).
- Schieffelin, B. Woolard, K. and Kroskrity, P. V. *Language Ideologies: Practice and Theory* (Oxford University Press 1998).
- Schmid, C. *The Politics of Language: Conflict Identity and Cultural Pluralism in Comparative Perspective*. (Oxford University Press 2001).
- Seidlhofer B, *Understanding English as a Lingua Franca* (Oxford University Press 2011)
- Shaw J, *International Law* (Cambridge University Press 2008).
- Bellamy R and Castiglione D (eds), *Making European Citizens* (Palgrave, 2006).
- *The Transformation of Citizenship in the European Union: Electoral Rights and the restructuring of Political Space* (Cambridge University Press 2007).
- Shoamy E., *Language policy: Hidden agendas and new approaches* (Routledge, 2006).
- Skutnabb-Kangas T. and Phillipson R. (eds.) *Linguistic Human Rights: Overcoming Linguistic Discrimination* (Mouton, The Hague, 1994).
- Skutnabb-Kangas T., *Linguistic genocide in education, or worldwide diversity and human rights?* (L. Erlbaum Associates 2000).
- Smith G, 'The European Citizens' Initiative: A New Institution for Empowering Europe's Citizens?' in Dougan M, Nic Shuibhne N and

- Spaventa E (eds), *Empowerment and Disempowerment of the European Citizen* (Hart 2012).
- Solan L and Tiersma P (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012).
- Spolsky, B. *Sociolinguistics* (2nd Edition) (Oxford University Press 2010).
- Steiner and Alston *International Human Rights in Context: Law Politics Morals- Texts and Materials* (3rd edn Oxford University Press 2008).
- Stevens A and Stevens H, (eds) *Brussels Bureaucrats? The Administration of the European Union* (Palgrave 2001).
- Symonides J (ed), *Human Rights: Concept and Standards* (Ashgate 2000).
- Tabory M, *Multilingualism in International Law and Institutions* (Brill 1980).
- Tanquerel T, 'Good Administration: Its Role in Good Governance in a Democratic Society' in *In Pursuit of Good Administration* (Council of Europe Publishing 2007).
- Taylor, T. and Joseph J.E. (eds), *Ideologies of Language* (Routledge 1990).
- — *The stuff of thought: language as a window into human nature* (Viking 2007).
- Thio, L. *Managing Babel: The International Legal Protection of Minorities in the Twentieth Century* (Martinus Nijhoff, 2005).
- Thomas M, *New Governance and the Transformation of European Law* (Cambridge University Press 2011).
- Thornberry, P. 'Introduction' in Peter Cumper and Steven Wheatley (eds) *Minority Rights in the 'New' Europe* (Kluwer Law Publishing 1999).
- — *International Law and the Rights of Minorities*, (Clarendon 1991).
- Tolan J & el Anabi H (eds), *Identités en mutation: l'Europe et le*

- bassin méditerranéen (Peter Lang, 2013).
- — Laurens H and Veinstein G, *Europe and the Islamic World*, (Princeton University Press, 2013)
- Tomalin, M. *Linguistics and the Formal Sciences: The Origins of Generative Grammar* (Cambridge University Press 2006).
- Trask R.L., *Language and Linguistics: The Key Concepts* (2nd Edition) P.Stockwell Ed. (Routledge, 2007).
- Trifunovska S (ed), *Minority Rights in Europe: European Minorities and Languages* (TMC Asser 2001).
- Troebst S, 'Preface ' in Maria Amor Martin Estebanez and Kinga Gál (eds) *Implementing the FCNM* (European Centre for Minority Issues 1999)
- Trudgill and Cheshire (Eds.) *The Sociolinguistics Reader Vol.1 Multilingualism and Variation* (Arnold)
- Trudgill, P. *Investigations in Sociohistorical Linguistics: Stories of Colonialisation and Contact* (Cambridge University Press 2010).
- Tsunoda T., *Language Revitalisation and Endangerment* (Mouton de Gruyter 2002).
- Tully J, *Strange Multiplicity: Constitutionalism in an age of diversity* (Cambridge University Press 1995).
- Vaillancourt F. (ed) *Economie et langue* Conseil de la langue française (1985)
- Van Dijk, T. A. *Ideology: A multidisciplinary approach* (Sage 1998). Van Parijs P, *Linguistic Justice for Europe and for the World* (Oxford University Press 2011).
- Van Oers R, Ersbøll E and Kostakopoulou D (eds), *A Re-definition of Belonging?: Language and Integration Tests in Europe* (Brill Publishing 2010).
- Van Parijs P., *Linguistic Justice for Europe and for the World* (Oxford University Press 2011)
- Verhoeven A, *The European Union in Search of a Democratic and Constitutional Theory* (Kluwer 2002).

- Wagner, E. *Translating for the European Union* (Routledge 2014).
- Wardhaugh R, *An Introduction to Sociolinguistics* (Blackwell 2006) .
- Watt, D. and Llamas, C. *Language Borders and Identity*. (2014
Edinburgh University Press).
- Webb V, *Language in South Africa: The Role of Language in
National Transformation, Reconstruction and Development* (John
Benjamins, 2002).
- Wee L, *Language Without Rights* (Oxford University Press 2011).
- Weiler J and Wind M (eds), *European Constitutionalism Beyond the
State* (Cambridge University Press 2003).
- Weinreich M, (first published in YIVO Bleter 25.1, 1945, p. 13)
- Weller, Blacklock and Nobbs (eds.) *The Protection of Minorities in
Wider Europe* (Palgrave 2008)
- Weller, M. and Nobbs, K. *Political Participation of Minorities A
Commentary on International Standards and Practice* (Oxford
University Press 2010).
- Weller M, (ed) *Universal Minority Rights: A Commentary on the
Jurisprudence of International Courts and Treaty Bodies* (Oxford
University Press 2008).
- Wheatley, S. *Democracy, Minorities and International
Law* (Cambridge University Press 2005).
- White R C A and Ovey C, *Jacobs White and Ovey on The European
Convention on Human Rights* (5th edition Oxford University Press
2010).
- Wiener A and Diez T, *European Integration Theory* (2nd edn, Oxford
University Press 2009).
- Williams C, (Ed) *Linguistic Minorities Society and Territory*
(Multilingual Matters 1991).
- 'Rights, promotion and integration issues for minority
languages in Europe.' (2009, Palgrave Macmillan).
- *Minority Language Promotion Protection and Regulation: The
Mask of Piety* (Palgrave 2013).

Windischer R M, *Old and New Minorities: Reconciling Diversity and Cohesion* (Nomos 2009).

Wodak, Johnstone and Kerswill (eds) *Sage Handbook of Sociolinguistics* (SAGE 2011)

Wright, S. (ed), *Language Politics and Society: Festschrift in honour of Prof D.E Ager* (Multilingual Matters 2000).

Wright, S Community and communication: the role of language in nation building and European integration. (Multilingual Matters, 2000)

Xanthaki A, *Indigenous Rights and United Nations Standards* (Cambridge University Press 2007).

Young I M, *Justice and the Politics of Difference* (Princeton, 1990).

Zielonka J, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford University Press 2006).

Contributions to Edited Books

Ammon U, 'The European Union (EU: formerly: European Community) -Status change of English during the last fifty years.' in Fishman Conrad and Rubal-Lopez. (eds.) *Post-Imperial English. Status Change in Former British and American Colonies 1940-1990.* (1996 Mouton de Gruyter).

Azoulai L, 'Le principe de bonne administration' in Auby JB and Dutheil de la Rochère J (eds), *Droit Administratif Européen* (Bruylant 2007).

Baetens Beardsmore H, 'Language Promotion by European Supra-national Institutions', in Ofelia Garcia, *Bilingual Education in the 21st Century. A Global Perspective* (Wiley-Blackwell 2009).

Ban C 'Sorry I don't speak French: the impact of enlargement on language use in the European Commission' in Gueldry (ed.)

Professions and Languages: Studies in Conflict and Cooperation (the Edwin Mellen Press 2009).

Barbour S, 'National Language and Official Language' in Ammon Dittmar Mattheier and Trudgill (eds), *Sociolinguistics: An International Handbook of the Science of Language and Society* (2nd ed. 2006 de Gruyter).

Bell J, 'Mechanisms for Cross-Fertilisation of Administrative Law in Europe' in J. Beatson and T Tridimas (eds) *New Directions in European Public Law* (Hart 1998).

Blommaert, Leppainen and Spotti 'Introduction' in Blommaert and others (eds), *Dangerous Multilingualism: Northern Perspectives on Order Purity and Normality* (Palgrave 2012).

Bohl D, 'Language Rights in the World Polity – From Non-Discrimination to Multilingualism' D. Richter and others (eds) *Language Rights Revisited - The Challenge of Global Migration and Communication* (Berliner Wissenschafts-Verlag 2012).

Busch B, *New national Languages in Eastern Europe* in N. Coupland (ed) *The Handbook of Language and Globalisation* (Blackwell 2010).

Cameron D, 'Demythologizing Sociolinguistics' in Coupland and Jaworski (eds), *The New Sociolinguistics Reader* (Palgrave Macmillan 2009).

Cao D, 'Judicial Interpretation of Bilingual/Multilingual Laws: A European and Hong Kong Comparison' in Joanna Jemielniak and Przemyslaw Miklaszewicz (eds), *Interpretation of Law in the Global World: from Particularism to a Universal Approach* (Springer 2010).

Coulmas F, 'European integration and the idea of the national language: Ideological roots and economic consequences' in F. Coulmas (ed), *A language policy for the European Community: Prospects and Quandaries* (Mouton de Gruyter 1991).

Crimmins M, 'Philosophy of Language' In E. Craig (Ed) *Routledge Encyclopedia of Philosophy* (Routledge 1998).

Darquennes J, 'Minorities Language Policies and Language Planning in Europe' in Kortmann and van der Auwera (eds), *The Languages and Linguistics of Europe a Comprehensive Guide*. Vol II (Walter de Gruyter 2011).

De Groot G R, 'The Influence of Problems of Legal Translation on Comparative Law Research' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonisation* (Kluwer Law 2012).

De Swaan A, *Words of the World: The Global Language System* (Wiley 2002) and Ulrich Ammon *World Languages: Trends and Futures*' in N. Coupland (ed) *The Handbook of Language and Globalisation* (Blackwell 2010).

De Witte B, 'Language Law of the European Union: Protecting or Eroding Linguistic Diversity?' in Rachel Crauford-Smith *Culture and the European Union* (Oxford University Press 2004).

De Witte and Mancini, 'Language Rights as Cultural Rights - a European Perspective' in F. Francioni and M. Scheinin (eds) *Cultural Human Rights* (Brill 2008).

—, 'Surviving in Babel? Language Rights and European Integration' in Dinstein and Tabory (eds) *The Protection of Minorities and Human Rights* (Martinus Nijhoff 1992).

—, 'The Impact of European Community Rules on Linguistic Policies of the Member States' in F. Coulmas (ed) *A language policy for the European Community: Prospects and Quandaries* (Mouton de Gruyter 1991) 163.

Douglas-Scott S, 'Justice Injustice and the Rule of Law in the EU' in G de Búrca D Kochenov and A Williams (eds) *Europe's Justice Deficit? Beyond Good Governance* (Hart 2014).

Dunbar R, 'Definitively interpreting the ECRML: the legal challenges' in R. Dunbar G Parry and S Klinge (eds) *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Council of Europe Publishing 2008).

- , 'The European Charter for Regional or Minority Languages' in Kirsten Henrard and Robert Dunbar (eds) *Synergies in Minority Protection* (Cambridge University Press 2008).
- Edwards J in Percy and Davidson (eds), *The Languages of Nation: Attitudes and Norms* (Multilingual Matters 2012).
- Engberg J, 'Word Meaning And The Problem Of A Globalised Legal Order' in Lawrence Solan and Peter Tiersma (eds), *The Oxford Handbook Of Language And Law* (Oxford University Press 2012).
- Estébanez M A M, 'The United Nations Covenant on Economic Social and Cultural Rights' in Kirsten Henrard and Robert Dunbar (eds) *Synergies in Minority Protection* (Cambridge University Press 2008).
- Everson M, 'A very cosmopolitan citizenship: but who pays the price?' in Dougan Nic Suibhne and Spaventa (Eds .) *Empowerment and Disempowerment of the European Citizen* (Hart 2012)
- Ferreri S, 'Communicating in an international context' in Pozzo and Jacometti (eds) *Multilingualism and the Harmonisation of European Law* (Kluwer Law International 2006)
- Gal S, 'Migration, Minorities and Multilingualism: Language Ideologies in Europe' in Clare Mar-Molinero and Patrick Stevenson (eds) *Language ideologies policies and practices: language and the future of Europe* (Palgrave Macmillan 2006).
- Geddes A, 'Regions and regionalism', in M. Rosenblum and D. Tichenor (eds.) *Oxford Handbook of the Politics of International Migration* (Oxford: Oxford University Press, 2012).
- Ghebali VY, 'La CSCE et la question des minorités nationales' in Liebich and Reyler (eds) *L'Europe Centrale et ses Minorités : vers une solution Européenne ?* (L'Harmattan 1993).
- Gorter and Cenoz 'Legal Rights of Linguistic Minorities in the EU' in L. Solan and P. Tiersma (eds) *The Oxford Handbook of Language and Law* Oxford University Press 2012).

Grin F and Vaillancourt F, 'The economics of multilingualism: Overview and analytical framework' in William Grabe (ed). *Annual Review of Applied Linguistics* (Cambridge University Press 1997).

—, 'Economic Considerations in Language Policy' in Ricento Thomas (Ed), *An Introduction in Language Policy* (Blackwell 2006).

—, 'Economics and Language Policy: Recent Advances and Controversies' in M. Hellinger and A. Pauwels (eds) *Handbook of Applied Linguistics* (vol. 9) (Mouton de Gruyter 2007).

Guy G, 'Sociolinguistics and Formal Linguistics' in Wodak, Johnstone and Kerswill (eds), *Sage Handbook of Sociolinguistics* (SAGE 2011).

Habermas J, *The Theory of Communicative Action Volume I* (T. McCarthy (translation) (Beacon 1981)

Harlow 'Three Phases in the Evolution of European Administrative Law' in P Craig and G de Burca *The Evolution of EU Law* (Oxford University Press 2nd ed 2011).

Heller M, 'Language as a Resource in the Globalised New Economy' in N. Coupland (ed) *The Handbook of Language and Globalisation* (Blackwell 2010).

Hofmann H, 'Seven challenges for EU administrative law' in K.J. de Graaf J.H. Jans A. Prechal and R.J.G.M. Widdershoven (eds) *Review of European Administrative Law: Top Down and Bottom-up* (Proceedings of the First REALaw Research Forum Vol. 2. Groningen) (Europa Law Publishing 2009).

Hornsby, M. and Agarin, T. 'The End of Minority Languages? Europe's Regional Languages in Perspective' (2012) (11) 1 *Journal on Ethnopolitics and Minority Issues in Europe* 88-116.

Hymes, D. 'The emergence of sociolinguistics: A response to Samarin' (2000) *Journal of Sociolinguistics* 312

House J, 'Unity in Diversity: English as a lingua franca for Europe ' in Constant Leung and Jennifer Jenkins (eds), *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006)

Ilopoulou Penot A, 'The Transnational Character of Union Citizenship' in Dougan Nic Suibhne and Spaventa (eds) *Empowerment and Disempowerment of the European Citizen* (Hart 2012).

Irvine and Gal S, 'Language-Ideological Processes' in Coupland and Jaworski (eds) *The New Sociolinguistics Reader* (Palgrave Macmillan 2009).

Jaffe A, 'The production and reproduction of language ideologies in practice' in Coupland and Jaworski (eds), *The New Sociolinguistics Reader* (Palgrave Macmillan 2009).

Kirchmeier-Andersen S, Robustelli C and others (eds.) *European Language Monitor* in Gerhard Stickel and Michael Carrier (eds.) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

Kokoroskos D et al. 'European Language Monitor (interim report) in Gerhard Stickel and Michael Carrier (eds) *Language Education in Creating a Multilingual Europe* (Peter Lang 2012).

Kraus P, 'Neither United nor Diverse: the language issue and political legitimation in the European Union' in L. Kjaer and S. Adamo (eds) *Linguistic Diversity and European Democracy* (Ashgate Publishing 2011).

—, *A Union of Diversity: Language Identity and Polity-Building in Europe* (Cambridge University Press 2008).

Krzyżanowski M and Wodak R, 'Hegemonic Multilingualism in/of the EU Institutions: An Inside-Outside Perspective on the European Language Policies and Practices' in H. Böhringer Hülmbauer C and Vetter E (eds) *Mehrsprachigkeit in europäischer Perspektiv* (Peter Lang 2010)

— 'Dynamics of multilingualism in post-Enlargement EU institutions: perceptions conceptions and practices' in Berthoud A-C. Grin F. and Lüdi G. (eds) *Exploring the dynamics of multilingualism: the DYLAN project.* (2013 John Benjamins).

Lantschner E, 'Minority Participation in International and Bilateral Monitoring and Reporting Processes ' in Marc Weller and Katherine Nobbs (eds) *Political Participation of Minorities: A Commentary on Legrand P and Glanert S, 'Translation and Truth'* in Michael Freeman and Fiona Smith (eds), *Language and Law* (Oxford University Press 2013).

Leith D and Jackson L, 'English: colonial to postcolonial' p.117-52 in D. Graddol and others (eds) *Changing English* (Routledge 2007).

Leuprecht P, 'Minority Rights Revisited: New glimpses of an old issue' in P. Alston (ed.) *Peoples' Rights* (Oxford University Press 2001).

Longman C, 'English as Lingua Franca: A Challenge to the Doctrine of Multilingualism ' in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

Lüdi G, 'Parlez-vous européen?' in Greta Komur-Thillooy and Agnès Celle (Eds.) *Le Discours Du Nationalisme En Europe* (éditions l'improviste 2010)

Mc Auliffe K, 'Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ' in L. Solan and P. Tiersma (eds) *The Oxford Handbook of Language and Law* (Oxford University Press 2012).

Mac-Giolla Christ D, 'The turn to rights in the language question' in Wesley Hutchinson, and Clíona Ní Ríordáin, (eds.) *Language Issues: Ireland, France, Spain* (Peter Lang, 2010).

May S, 'Language Nationalism and Democracy in Europe' in G. Hogan-Brun and S. Wolff (eds) *Minority Languages in Europe* (Palgrave Macmillan 2003).

Mc Auliffe K, 'Language and the Institutional Dynamics of the Court of Justice of the European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence', in M Gueldry (ed), *How*

Globalizing Professions Deal With National Languages: Studies in Cultural Conflict and Cooperation (The Edwin Mellen Press, 2010).

— 'Translation at the Court of Justice of the European Communities' in Frances Olsen, Alexander Lorz and Dieter Stien (eds), *Translation Issues in Language and Law* (Palgrave 2009).

Medda Windischer R, *Changing Paradigms in the Traditional Dichotomy of Old and New Minorities* in Kristin Henrard (ed) *Double Standards Pertaining to Minority Protection* (Martinus Nijhoff 2010).

— 'Participation and Participation Rights in EU Law and Governance' in: H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009).

— 'Participation and Participation Rights in EU Law and Governance' in: H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009).

Michael Foucault 'Two Lectures' in Colin Gordon ed *Power/Knowledge: Selected Interviews and Other Writings* (Pantheon 1980).

Milian-Massana A, 'Languages that are official in part of the territory of the Member States: Secondclass languages or institutional recognition in EU law?' in Xabier Arzoz (ed), *Respecting Linguistic Diversity in the European Union* (John Benjamins 2008).

Milroy A, 'Sociolinguistics and Ideologies in Language History' in JM Hernández-Campoy and JC Conde-Silvestre (eds), *The Handbook of Historical Sociolinguistics* (Wiley Blackwell 2012).

Mouritsen P, 'Beyond Post-National Citizenship: Access Consequences and Conditionality' in Triandafyllidou, Modood and Meer (eds) *European Multiculturalisms* (Edinburgh University Press 2012).

Mollin S, 'Euro-English: Assessing Variety Status' in Peter Halter (ed) *Language in Performance* (2006 Günter Narr Verlag).

- Mufwene S, 'Globalization Global English and World English(es): Myths and Facts' in Coupland (ed.) *Handbook of Language and Globalisation* (Blackwell 2010).
- Mulders L, 'Translation at the Court of Justice of the European Communities' in Sacha Prechal and Bert van Roermund (eds), *The Coherence of EU Law: The Search for Unity in Divergent Concepts* (Oxford University Press 2008).
- Nehl PH, 'Good Administration as Procedural Right and/or General Principle?' in: H.C.H Hofmann and A. H. Türk (eds) *Legal Challenges in EU Administrative Law* (Elgar Publishing 2009).
- Nelde P H, 'Maintaining Multilingualism in Europe: Propositions for a European Language Policy' in Pauwels, Winter and Lo Bianco (eds.) *Maintaining Minority Languages in Transnational Contexts* (Palgrave 2007).
- Nic Craith M, 'Linguistic Heritage and Language Rights in Europe: Theoretical Considerations' in M. Langfeld, W. Logan and M. Nic Craith (eds), *Cultural Diversity Heritage and Human Rights*. (Routledge 2010).
- Nic Shuibhne N, 'The Outer Limits of EU Citizenship: Displacing Economic Free Movement Rights?' in CBarnard and O Odudu (eds) *The Outer Limits of European Union Law* (Hart 2009).
- Nick B, 'A 'New Governance' Approach to Economic Social and Cultural Rights in the EU' in Hervey and Kenner (eds) *Economic and Social Rights under the EU Charter of Fundamental Rights: a Legal Perspective*. (Hart Publishing 2003).
- Normann Jørgensen J, 'Language and Languages in European Ideology, Political Documents and Real life' in Kjaer L. and Adamo S. (eds), *Linguistic Diversity and European Democracy* (Ashgate 2011).
- O'Riagain D, 'All languages great and small' in S. Trifunovska (ed) *Minority Rights in Europe: European Minorities and Languages* (T.M.C. Asser Press 2001).

Packer J, 'Problems in Defining Minorities' in Bowring and Fotherell (eds) *Minority and Group Rights in the New Millennium* (Kluwer Law International 1999).

Patten A, 'Theoretical Foundations of European Language Debates' in Dario Castiglione and Chris Longman (eds.) *The Language Question in Europe and Diverse Societies: Political Legal and Social Perspectives* (Hart 2007).

Phillipson R, 'Figuring out the Englishisation of Europe' in Constant Leung and Jennifer Jenkins eds. *Reconfiguring Europe: the Contributions of Applied Linguistics* (Equinox Publishing 2006).

Pozzo B, 'Comparative Law and Language' in *Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

— 'Multilingualism as a value in the European Union' in Gianmaria Ajani, Ginevra Peruginelli, Giovanni Sartor and Daniela Tiscornia (eds), *The Multilanguage Complexity of European Law: Methodologies in Comparison* (European Press Academic Publishing 2007).

Preuss A, 'Disconnecting Constitutions from Statehood: Is Global Constitutionalism a Viable Concept' in Loughlin and Dobner (eds) *The Twilight of Constitutionalism* (Oxford University Press 2010)

Robertson C, 'Multilingual Law: A Framework for Understanding' in Felix Mayer (ed), *Language for Special Purposes: Perspectives for the new Millennium*, vol 2 (Gunter Narr 1999).

Sankoff D and Laberge F, 'The linguistic market and the statistical explanation of variability' in *Linguistic Variation: models and Methods* 239-50 (Academic Press New York) cited in Nikolas Coupland 'introduction: Sociolinguistics in the Global Era' in N. Coupland (ed) *The Handbook of Language and Globalisation* (Blackwell 2010).

Šarčević S and Robertson C, 'The work of lawyer-linguists in the EU institutions' in Anabel Borja Albi and Fernando Prieto Ramos (eds),

Legal Translation in Context: Professional Issues and Prospects
(Peter Lang 2013).

Šarčević S, 'Coping with the Challenges of Legal Translation in Harmonization' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonization* (Kluwer Law 2012).

Schütz A, 'The Twilight of the Global Polis: On Losing Paradigms Environing Systems and Observing World Society' in G Teubner (ed) *Global Law Without A State* (Dartmouth Gower 1997).

— — 'The Twilight of the Global Polis: On Losing Paradigms Environing Systems and

Smits J M, 'Nordic Law in a European Context: Some Comparative Observations' in Jaakko Husa, Kimmo Nuotio and Heikki Pihlajamäki (eds), *Nordic Law - Between Tradition and Dynamism* (Intersentia 2007).

Strandvik L, 'Legal Harmonisation Through Legal Translation: Texts that Say the Same Thing?' in CJW Baaij (ed), *The Role of Legal Translation in Legal Harmonisation* (Kluwer Law 2012).

Stroud C and Heugh K, 'Linguistic human rights and linguistic citizenship' in Donna Patrick and Jane Freeland (eds.). *Language Rights and Language Survival: A Sociolinguistic Exploration* (St Jerome 2004).

Van Els T J M (2006). The European Union its Institutions and its Languages: Some Language Political Observations in R. Baldauf. and R. Kaplan (eds .) *Language Planning and Policy in Europe*. (Vol. 2) (Multilingual Matters 2006).

Thornberry P, 'Introduction' in Peter Cumper and Steven Wheatley (eds.), *Minority Rights in the 'New' Europe*, (Kluwer 1999).

Thornberry P, cited in Daniel J. Whelan and Jack Donnelly, 'The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight' (2007) 29(4) *Human Rights Quarterly*.

Tsadiras A, 'The European Ombudsman' in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

Tsadiras A, "The Origins and Birth of the European Ombudsman" 2006 10 *International Ombudsman Yearbook* and A Tsadiras "The European Ombudsman" chapter in Paul Craig *EU Administrative Law* (Oxford University Press 2012).

Van Avermaet P, 'Fortress Europe? Language policy regimes for immigration and citizenship.' in G. Hogan-Brun C. Mar-Molinero and P. Stevenson (eds) *Discourses on Language and Integration: Critical Perspectives on Language Testing Regimes in Europe*. (2009: John Benjamins).

Van Els T, The European Union its Institutions and its Languages: Some Language Political Observations in R. Baldauf. and R. Kaplan (eds) *Language Planning and Policy in Europe* (Vol. 2) (Multilingual Matters 2006) and 'Multilingualism in the European Union' (2005) 15(3) *International Journal of Applied Linguistics*.

Vroldjak A F, 'Liberty Equality Diversity: States Cultures and International Law ' in Vroldjak (ed) *The Cultural Dimension of Human Rights* (Oxford University Press 2013).

Weller M, 'The Contribution of the European Framework Convention for the Protection of National Minorities to the Development of Minority Rights ' in M. Weller (ed) *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press 2005).

Weller M, *The Twenty Year's Crisis International Legal Aspects of the Dissolution of Yugoslavia* (Oxford University Press 2012).

Williams C, 'Language policy territorialism and regional autonomy' in B. Spolsky (ed) *The Cambridge Handbook of Language Policy* (Cambridge University Press 2012).

Williams C, 'Let Freedom Reign: the Impress of EU Integration on Minority Survival ' in Elisabeth Prugl and Markus Thiel (eds) *Diversity in the EU* (Palgrave 2009).

Wodak R, 'History of Sociolinguistics' in Wodak, Johnstone and Kerswill (eds), *Sage Handbook of Sociolinguistics* (SAGE 2011).

Wright S, Chapter 20 'Language Policy and Language Planning' in *The Routledge Companion to Sociolinguistics* (Routledge 2007).

Wright S, *Community and Communication: the Role of Language in Nation State Building and European Integration* (Clevedon Multilingual Matters 2000).

Articles

Abayasekara, S. 'A Dog without a Bark: A Critical Assessment of the International Law on Language Rights' (2010) 17 *Australian International Law Journal* 89-111.

Abélès M et Bellier I, 'La Commission Européenne-du compromis culturel à la culture politique du compromis.' 1996 (3) *Revue Française de Science Politique*.

Ager, D. *Motivation in Language Planning and Language Policy* (Multilingual Matters 2001).

Ahmed, T. 'Demanding Minority (Linguistic) Rights from the EU: Exploiting Existing Law' (2009) 15 (3) *European Public Law* 379-402.

Ammon U, 'Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests' (2006) 16(3) *International Journal of Applied Linguistics* 319-338.

Andrássy, G. 'Freedom of Language: A Universal Human Right to Be Recognised' (2012) 19 *International Journal on Minority and Group Rights* 195-232

Appadurai, A. 'Disjuncture and difference in the global cultural economy' (1990) 2(2) *Public Culture* 1-24.

Archibugi D, 'The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives' (2005) 53(3) *Political Studies* 537.

Arletta, F. 'Derechos de Las Minorías en el Pacto Internacional de Derechos Civiles y Políticos' (2013) 20(3) *Jurisprudencia/ Jurisprudence* 901–922

Arzoz X, 'Language Rights as Legal Norms' *European Public Law* (2009): 15 (4) 541-574. 541

Arzoz, X. 'Accommodating Linguistic Difference- five normative models of Language Rights' *European Constitutional Law Review* 6 (2010) 102-122

Arzoz, X. 'The Nature of Language Rights' (2007) *Journal on Ethnopolitics and Minority Issues in Europe* (2) 1-34

Aureli A, 'Majority or Minority Languages? For a new discourse ' (2008) *Journal on European Minority Issues* 7 (2).

Aziz M, 'Language Rights in the European Union: Mainstreaming the Duty of Transparency and Clarity' (2004) 10(8) *European Law Journal* 282.

Baaij CJ, 'The EU Policy on Institutional Multilingualism: Between Principles and Practicality' (2012).1 *Language and Law*

Barelli, M. 'The Role of Soft Law in the International Legal System: the case of the United Nations Declaration on the Rights of Indigenous Peoples' 58(4) *International & Comparative Law Quarterly* (2009) 957-983.

Blommaert, J. 'The Asmasra Declaration as a Sociolinguistic Problem: Reflections on Scholarship and Linguistic Rights' (2001) 5(1) *Journal of Sociolinguistics* 131-42

Blommaert, J. 'Review of Skutnabb-Kangas 2000 Linguistic Genocide in Education or Worldwide Diversity and Human Rights?' (2001) 22(4) *Applied Linguistics* 539-42

Bocker A and Tineke S, 'Language and Knowledge Tests for Permanent Residence Rights: Help or Hindrance for Integration?'

- (2011) 13(2) *European Journal of Migration and Law* 157.
- Bonotti M, 'Politics without the Vernacular: Liberal Culturalism and the Language Policy of the European Union' (2013) 33(3) *Politics* 196.
- Boughey J, 'Administrative Law: The Next Frontier for Comparative Law' (2013) 62 *International and Comparative Law Quarterly* 55.
- Bousta R, 'Who Said There is a Right to Good Administration? A Critical Analysis of Article 41 of the Charter of Fundamental Rights of the European Union' (2013) 19(3) *European Public Law* 481.
- Bowring, B. 'European Minority Protection: The Past and Future of a 'Major Historical Achievement'' (2008) *International Journal on Minority and Group Rights* 15 413-425
- Brandist, C. 'The origins of Soviet sociolinguistics' 2003 7 (2) *Journal of Sociolinguistics* 213-231.
- Brannan, J. 'Coming to Terms with the Supranational: Translating for the European Court of Human Rights' (2013) 26(4) *International Journal for the Semiotics of Law* 909.
- Cao D and Zhao X, 'Translation at the United Nations as Specialized Translation' (2008) 9 *The Journal of Specialised Translation*
- Castellino, J. 'Affirmative Action for the Protection of Linguistic Rights: An Analysis of International Human Rights; Legal Standards in the Context of the Protection of the Irish Language' (2003) *Dublin University Law Journal* (25) 1.
- Castellino, J. 'The Protection of Minorities and Indigenous Peoples in International Law: A Comparative Temporal Analysis' (2010) (17) *International Journal on Minority and Group Rights* 393-422.
- Caviedes, A. 'The role of language in nation building within the European Union' (2003) 27 *Dialectal Anthropology* 249-268.
- Chiti E, 'Decentralisation and Integration into Community Administrations: A new perspective on European Agencies' (2004) *European Law Journal* (10) 402-438.
- Christiansen P, 'Language policy in the European Union. European/

English/ Elite/ Equal/ Esperanto Union?' (2006) 30(1) *Language Problems and Language Planning* 21–44

Christiansen T, Högenauer AL and Neuhold C, 'National Parliaments in the Post-Lisbon European Union: Bureaucratization rather than Democratization?' (2014) 12(2) *Comparative European Politics* 121.

Codó, E. and Pérez-Milans, M. 'Multilingual discursive practices and processes of social change in globalising institutional spaces: a critical ethnographic perspective' (2014) 11 (4) *International Journal of Multilingualism*

Cogo A and Jenkins J, 'English as a lingua franca in Europe. A mismatch between policy and practice'(2010) 2 (2) *European Journal of Language Policy* 271–294

Copsey N. and Haughton T. 'Farewell Britannia? 'Issue Capture' and the Politics of David Cameron's 2013 EU Referendum Pledge' (2014) *Journal of Common Market Studies* (52) 74- 89.

Craig P, 'A General Law on Administrative Procedure Legislative Competence and Judicial Competence' (2013) 19(3) *European Public Law* 503.

Craig P, 'EU Administrative Law: The Acquis' [2011] *Rivista Italiana di Diritto Pubblico Comunitario* 329.

De Schutter H. 'Language policy and political philosophy: on the emerging linguistic justice debate.' *Language Problems & Language Planning* (2007) 31.1 1–23.

De Schutter, H. 'The linguistic territoriality principle: A critique' (2008) *Journal of Applied Philosophy*, 25(2), 105–120.

De Swaan, A. 'Endangered languages, sociolinguistics and linguistic sentimentalism' (2004) *European Review* 12 (4) 567-80

De Varennes F. and Murray, C. 'Thematic Introduction' (2001) *International Journal on Multicultural Societies* (3) 2, 56-60.

De Varennes, F. 'Language Rights as an Integral Part of Human Rights ' (2001) 3 *MOST Journal on Multicultural Societies* 124

Del Valle Gálvez, A. and Remi Njiki, R. 'The Use of Spanish Regional

Official Languages in the Court of Justice of the European Communities' (2009) 2(51) Series VII, *Bulletin of the Transylvania University of Braşov* 180.

Dewey P, 'Transnational Cultural Policymaking in the EU' (2008) (summer) *Journal of Art Management, Law and Society* 99-118

Dickson, B. 'The United Nations and Freedom of Religion' (1995) 44 *International & Comparative Law Quarterly* 354

Donnelly, J. 'Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights' (1982) 76 (2) *The American Political Science Review* 303-316

Dorian, N.C. 'Language shift in community and individual: The phenomenon of the laggard semi-speaker' (1980) 25 *International Journal of the Sociology of Language* 85-94.

Dunbar R, 'Minority Language Rights in International Law' (2001) 50 *International and Comparative Law Quarterly* 90.

Dunbar, R. 'Minority Language Rights in International Law' (2001) (50) *International and Comparative Law Quarterly* 90-120

Duranti, A. 'Language as Culture in U.S. Anthropology' *Current Anthropology* 44 (3) 2003 323-47

Edwards, J. 'Contextualising Language Rights' (2003) (2) *Journal of Human Rights* 551-71

— 'Players and power in minority-group settings' (2006) *Journal of Multilingual and Multicultural Development* 27(1)

Elias, S.B. 'Regional minorities, immigrants, and migrants : The Reframing of Minority Language Rights in Europe' (2010) 28 *Berkeley Journal of International Law* 261.

Errington, J. 'Getting Language Rights: The Rhetoric of Language Endangerment and Loss' (2003) 105(4) *American Anthropologist* 723-732

Fassbender B, 'The United Nations Charter as Constitution of the International Community' (1998) 37 *Columbia Journal of Transnational Law* 529.

- Felici, A. 'Translating EU law: legal issues and multiple dynamics' (2010) 18(2) *Perspectives: Studies in Translatology* 95.
- Fink, C. 'The League of Nations and the Minorities Question' (1995) 157(4) *World Affairs*, 197-205
- Foley, R. 'Legislative language in the EU: The crucible' (2002) 15 *International Journal for the Semiotics*.
- Fraser Gupta, A. 'When Mother-tongue Education is not Preferred', (1997) *Journal of Multilingual and Multicultural Development*, 18 (6), 496-506
- Gal, S. 'Linguistic theories and national images in Nineteenth century Hungary' *Pragmatics* 5(2) 1995: 155-166.
- Gallas, T. 'Coredazione e Traduzione Giuridica nella Legislazione Multilingue, in Particolare Quella Comunitaria' (1999) 43(4) *Quaderni di libri e riviste d'Italia : la traduzione, saggi e documenti* 135.
- Gazzola M and Volpe A, 'Linguistic justice in IP policies: Evaluating the language regime of the European Patent Office' (2014) (38) *European Journal of Law and Economics* 47-70.
- 'Managing Multilingualism in The European Union: Language Policy Evaluation For The European Parliament' (2006) 5 *Language Policy* 393-417.
- Gazzola M. and Grin F. (2013) Is ELF more effective and fair than translation? An evaluation of the EU's multilingual regime. *International Journal of Applied Linguistics* 23: 93-107
- Gilbert , G. 'The Council of Europe and Minority Rights' 18 (1996) *Human Rights Quarterly* 189.
- Gilbert, G. 'The Burgeoning Minority Rights Jurisprudence of the ECHR ' (2002) *Human Rights Quarterly* (24) 736
- Grabbe, H. 'Six Lessons of Enlargement Ten Years On: The EU's Transformative Power in Retrospect and Prospect' (2014) *Journal of Common Market Studies* (52), 40-56.
- Gravier, M. 'The 2004 Staff Enlargement Policy of the European

Commission: The Case for Representative Bureaucracy' (2008) 46(5) Journal of Common Market Studies 1025.

Green, L. 'Are language rights fundamental?' (1987) Osgoode Hall Law Journal, 25 639-669. Green, L. 'Freedom of expression and choice of language' (1991) Law & Policy, 13, 215-29 Green, L. and Réaume, D. 'Education and linguistic security in the Charter.' (1989) McGill Law Journal (34) 777-816.

Green, M.S. 'Dworkin's Fallacy Or What the Philosophy of Language Can't Teach Us About the Law' Virginia Law Review 89 (2003) 1897.

Grin, F. 'English as Economic Value: Facts and Fallacies' (2003) 20 (1) World Englishes 65-78.

Grin, F. 'Linguistic human rights as a source of policy guidelines: A critical assessment', Journal of Sociolinguistics, (2005) 9(3), pp 448-460 at 452

Grin, F. 'The Cost-Effectiveness Evaluation of Minority Language Policies: Case Studies on Wales Ireland and the Basque Country' (European Centre for Minority Issues 1999).

Grin, F. 'The economics of language planning. Current Issues in Language Planning' (2003) (4) pp1-66.pp 17-44.

Grin, F. 'The Economics of language: Survey, assessment, and prospects.' International Journal of the Sociology of Language 121 (1996).

Grin, F. 'Language planning and economics' (2003) 4(1) Current Issues in Language Planning 1-66;

Grindheim JE and Lohndal T, 'Lost in Translation? European Integration and Language Diversity' (2008) 9(4) Perspectives on European Politics and Society 451.

Guliyeva, G. 'Joining Forces or Reinventing the Wheel? The EU and the Protection of National Minorities ' (2010) International Journal on Minority and Group Rights (17) 287-305.

Harlow C, 'Codification of EC Administrative Procedures? Fitting the Foot to the Shoe or the Shoe to the Foot?' (1996) 2 European Law

Journal 3. Halpin, S. 'Or Even What the Law Can Teach the Philosophy of Language: A Response to Green's Dworkin's Fallacy' *Virginia Law Review* 91 (2005) 175.

Hamel, R.H. 'Language Conflict and Language Shift: A Sociolinguistic Framework for Linguistic Human Rights', *International Journal of the Sociology of Language*, Vol.27 (1997) 1-24

Hamel, R.H. 'Language Conflict and Language Shift: a Sociolinguistic Framework for Linguistic Human Rights' (1997) *International Journal of the Sociology of Language* 127 pp105-34.

Hargitt, S. 'What Could Be Gained in Translation: Legal Language and Lawyer-Linguists in a Globalized World' (2013) 20(1) *Indiana Journal of Global Legal Studies* 425.

Haugen, E. 'Dialect Language Nation' *American Anthropologist* (1966) 68 922-935

Haugen, E. 'Dialect, language, nation' (1966) *American Anthropologist* 68 922-935.

Heal, F. 'Mediating the Word: language and dialects in the British and Irish reformations' *Journal of Ecclesiastical History* 56 (2005) 261-286.

Heller, M. 'Globalization the new economy and the commodification of language and identity.' (2003) 7(4) *Journal of Sociolinguistics* 473-492

Heller, M. 'The commodification of language.' *Annual Review of Anthropology* 2010 (39) 101-114.

Henrard K, 'Participation' 'representation' and 'autonomy' in the Lund Recommendations and its reflections in the supervision of the FNCM and several human rights conventions' (2005) 12 (2-3) *International Journal of Minority and Group Rights* 133-168.

Hofmann HCH and Mihaescu C, 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (2013) 9 *European Constitutional Law Review* 73.

Holt, S. & Packer, J. 'OSCE Developments and Linguistic Minorities' *International Journal on Multicultural Societies* 3 2 (2001) 99-126

Hornsby, M. and Agarín, T. 'The End of Minority Languages? Europe's Regional Languages in Perspective' (2012) *Journal on Ethnopolitics and Minority Issues in Europe* (11) 1, 88-116.

Iglesias Sánchez S, 'Fundamental Rights and Citizenship of the Union at a Crossroads: A Promising Alliance or a Dangerous Liaison?' (2014) 20(4) *European Law Journal* 464.

Ives, I. 'Cosmopolitanism and global English: language politics in globalisation debates' (2010) 58 (3) *Political Studies* 516-535.

Ives, P. 'De-politicizing language: obstacles to political theory's engagement with language policy' (2014) 13 (4) *Language Policy*

Jacquemet, M. 'Transidiomatic practices: Language and Power in the age of globalisation' 2005 (25) *Language and Communication* 257-77.

Jones, P. 'Human rights, Group rights, and People's rights', *Human Rights Quarterly*, 21:1 (1999) 80-107.

Joppke, C. 'The retreat of multiculturalism in the liberal state: theory and policy' 2004 55(2) *British Journal of Sociology* 237-57.

Jacobs F, 'Citizenship of the European Union: A Legal Analysis' (2007) 13 (5) *European Law Journal* 1591.

Laitin, D. 'The Game Theory of Language Regimes' *International Political Science Review* 14 (1993): 227-239.

Koskinen K. (2013) 'Social media and the institutional illusions of EU communication' *International Journal of Applied Linguistics* (23) 80-92.

Kirkup and Evans 'The myth of Western opposition to Economic Social and Cultural Rights: a reply to Whelan and Donnelly ' (2009) 31 (1) *Human Rights Quarterly* 221-38

Kańska K, 'Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights' (2004) 10 *European Law Journal* 296.

Kuo MS, 'From Administrative Law to Administrative Legitimation? Transnational Administrative Law and the processes of European Integration' (2012) 61(4) *International and Comparative Law Quarterly* 855.

Klabbers, G. 'The right to be taken seriously: Self determination in International Law' (28) *Human Rights Quarterly* (2006)

Kontra, M. 'Some Reflections on the Nature of Language and its Regulation', (1999) 6 *International Journal on Minority and Group Rights* [Special Issue on the Linguistic Rights of Minorities, ed. by J. Packer] 281.

Koskinen K, (2013) 'Social media and the institutional illusions of EU communication' *International Journal of Applied Linguistics* 23 80–92.

Kristmannsson, G. 'Iceland's Challenges in a Multilingual Europe' in Martin Forstner, Nikolay Garbovsky and Lee-Jahnke, H. (eds), *CIUTI-Forum 2013 Facing the World's New Challenges: The Role of Translation and Interpreting in Providing Integrated Efficient and Sustainable Solutions* (Peter Lang 2013).

Krizsan A and Erkkilä T, 'Multilingualism among Brussels-based civil servants and lobbyists: perceptions and practices' (2014) 13 *Language Policy* 201- 219

Krzyzanowski, M. and Wodak, R. 'Political Strategies and Language Policies: The 'Rise and Fall' of the EU Lisbon Strategy and its Implications for the Union's Multilingualism Policy' (2011) 10(2) *Language Policy* 115.

Kuner, C.B. 'The Interpretation of Multilingual Treaties: Comparison of Texts Versus the Presumption of Similar Meaning' (1991) 40 *International and Comparative Law Quarterly* 953, 954.

Künnecke, M. 'Translation in the EU: Language and Law in the EU's Judicial Labyrinth' (2013) 20(2) *Maastricht Journal of European and Comparative Law* 243.

Kunz, J. 'The Present Status of the International Law for the

Protection of Minorities' (1954) 48(2) *American Journal of International Law* 282-287

Kymlicka, W. 'The Internationalization of Minority Rights'(2008) 6(1) *International Journal of Constitutional Law* 1-32.

Krzyżanowski M, 'Political communication, institutional cultures, and linearities of organisational practice: A discourse-ethnographic approach to institutional change in the European Union' (2011) *Critical Discourse Studies*, 8(4), 281–296.

Lenaerts G, 'A failure to comply with the EU language policy: A study of the council archives.' (2001) 20(3)

Mac Giolla Chríost, D. 'A question of national identity or minority rights? The changing status of the Irish language in Ireland since 1922' (2012) 18(3) *Nations and Nationalism* 398.

Macklem, P. 'Minority Rights in International Law' 6(3/4) *International Journal of Constitutional Law* (2008) 531-553

Makoni, S. 'Language and human rights discourses in Africa: Lessons from the African experience' *Journal of Multicultural Discourses* (2012) Vol. 7 (1) 1-20

Malloy T H, 'National minorities in the 21st century Europe: new discourses, new narratives?' Issue Brief no. 24 *European Centre for Minority Issues* (2010)

— Deconstructing the 'Nation' for the 21st Century through a Critical Reading of the Parliamentary Assembly's Recommendation 1735 (2006) 5 *European Yearbook on Minority Issues* 161 (2005-06)

Marquand D, 'First Brexit then break-up.' *New Statesman* 27/9/2013 Vol. 142 Issue 5177 Editorial

May, S. 'Language Rights: moving the debate forward' (2005) 9(3) *Journal of Sociolinguistics* 319- 347

— 'Language Rights: The 'Cinderella' Human Right', (2011) *Journal of Human Rights*, 10 (3) p. 265-289, 265;

Mc Auliffe, K. 'Enlargement at the European Court of Justice: Law, Language and Translation' (2008) 14(6) *European Law Journal* 806.

— —. 'Language and the Institutional Dynamics of the Court of Justice of the European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence', in M Gueldry (ed), *How Globalizing Professions Deal With National Languages: Studies in Cultural Conflict and Cooperation* (The Edwin Mellen Press, 2010) 239-263.

— — 'The limitations of a multilingual legal system' (2013) 26(4) *International Journal for the Semiotics of Law* 861.

McRae, K. 'The principle of territoriality and the principle of personality in multilingual states.' 1975 (4) *International Journal of the Sociology of Language* 33-54.

McRae, K. 'The principle of territoriality and the principle of personality in multilingual states.' 1975 (4) *International Journal of the Sociology of Language* 33-54.

Mendes J, 'La bonne administration en droit communautaire et le code européen de bonne conduite administrative' (2009) 131 *Revue française d'administration publique* 555.

Meylaerts R, 'Translational justice in a multilingual world. An Overview of Translational Regimes' (2011) *Meta:le journal des traducteurs* 56(4), 743-757

Miller V, 'Leaving the EU' (2013) 24(3/4) *Current Politics & Economics Of Europe*) 215-362.

Milroy, J. 'Language Ideologies and the consequences of standardisation'(2001) 5(4) *Journal of Sociolinguistics* 530-55.

Mindus P, 'Dimensions of Citizenship' (2014) 15 *German Law Journal* 735.

Minett, J.W., Wang WS-Y., 'Modelling endangered languages: the effects of bilingualism and social structure' (2008) *Lingua* 118, 19 – 45

Monar J, 'Justice and Home Affairs: The Treaty of Maastricht as a Decisive Intergovernmental Gate Opener' (2012) 34(7) *Journal of European Integration* 717.

Moria , P. 'The Failed Promise of Language Rights: A Critique of the International Language Rights Regime' (2013) 54 *Harvard International Law Journal* 157-218, 172

Mowbray J, 'Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism' (2010) 8(1) *New Zealand Journal of Public and International Law* 91.

— 'Linguistic Justice in International Law: An Evaluation of the Discursive Framework' (2011). , 24(1) *International Journal for the Semiotics of Law* 79-95.

Mülhausler, P. 'Language Planning and Language Ecology' (2000) *Current Issues in Language Planning* (1) 306-367.

Mulhausler, P. 'Language Planning and Language Ecology' 2000 (1) *Current Issues in Language Planning* 306-367.

Lanaerts, K. 'Interlocking Legal Orders in the European Union and Comparative Law' (2003) 52 *International and Comparative Law Quarterly* 873.

Lafarge F, Larat F and Mangenot M, 'Democratic Trends in Public Administration: A New Citizen-Centred Approach to Government Services' (2011) 137-138 *Révue Française d'administration Publique* 7.

Lenaerts K and Gutiérrez-Fons JA, 'The Constitutional Allocutions of Powers and General Principles of EU Law' (2010) 47 *Common Market Law Review* 1629.

Lane J, 'The Prospect of BREXIT.' (2013) *Irish Political Review* 27(1) 1.

Lantschner, E. 'Standard-Setting in the Field of Minority Rights – From Soft Jurisprudence to Hard Law?' 8(6) *International Journal of Diversity in Organisations Communities and Nations* (2009) 129 137

Lantschner, E. 'Evolution and Value of the Thematic Commentaries of the Advisory Committee of the Framework Convention for the Protection of National Minorities ' (2010) *European Yearbook on Human Rights* 275-284

Lantschner, E., Kicker, R. and Möstl, M. 'Reforming the Council of Europe's Human Rights Monitoring Mechanisms' (2011) 29(4) *Netherlands Quarterly of Human Rights* 460-490.

Magnette P, 'Between Parliamentary Control and the Rule of Law: the Political Role of the Ombudsman in the European Union' (2003) 10(5) *Journal of European Public Policy* 678.

Medda Windschner R (2011) 12 'New Minorities Old Instruments' *International Community Law Review* 361-391

Nahir, M. 'The five aspects of language planning' (1977) 1 *Language Problems and Language Planning*, 107-123

Ni Dhrisceoil V, 'Language conflict in Northern Ireland: revisiting the Irish language rights debate' [2013] *Public Law* 693.

Nic Shuibhine 'Commentaire de l'arrêt Kik v OHIM (C-361/01)' (2004) 41 *Common Market Law Review* 1093

Núñez, G.G. 'Translating to Communicate with Linguistic Minorities: State Obligations under International Law' (2013) 20 (3) *International Journal on Minority & Group Rights* 405.

Nye Jr JS, 'Globalization's Democratic Deficit: How to Make International Institutions More Accountable' 80(4) (2001) *Foreign Affairs* 2.

Ó Riagáin D, 'The European Union and lesser used languages' (2001) 3(1) *MOST Journal on Multicultural Societies* 33.

Ó Riain, S. 'Irish and Translation: the EU Context' (2010) 35(2) *Études irlandaises* 65.

O'Reilly C, *Language, Ethnicity and the State, vol II, Minority Languages in Eastern Europe post-1998* (2001, Palgrave Macmillan)

Oeter, S. 'Minority Language Policy: Theory and Practice' (2007) 6(2) *Journal on Ethnopolitics and Minority Issues in Europe* 54-78.

Otero-Espinar, M.V. Seoane, L.F. Nieto J.J., Mira, J. 'An analytic solution of a model of language competition with bilingualism and interlinguistic similarity' (2013) *Physica D* 264, 17- 26.

- Phillipson R. and Skutnabb-Kangas, 'Getting Language Rights Right: A Response to Makoni' (2012) 7 (1) *Journal of Multicultural Discourses*, 29-35.
- Packer, J. & Siemienski, G. 'The Language of Equity: The Origin and Development of The Oslo Recommendations Regarding the Linguistic Rights of National Minorities' (1999) *International Journal on Minority and Group Rights* 6(3) 329-350.
- Palermo, F. 'When the Lund Recommendations are Ignored Effective Participation of National Minorities through Territorial Autonomy' (2009) 16 (4) *International Journal on Minority & Group Rights* 653-663.
- Patten, A. 'Liberal Neutrality and Language Policy' *Philosophy and Public Affairs* 31 (4) 2003 359-386.
- Patten, A. 'Survey article: The justification of minority language rights' (2009) *Journal of Political Philosophy* 17 (1) 102-128
- Paulston, C.B. 'Language Policies and Language Rights' (1997) *Annual Review of Anthropology* 26 pp 73-85
- Paunio, E. and Lindroos-Hovinheimo, S. 'Taking Language Seriously: An Analysis of Linguistic Reasoning and its Implications in EU Law' (2010) 16(4) *European Law Journal* 395.
- Paz, M. 'The Failed Promise of Language Rights: A Critique of the International Language Rights Regime' (2013) 54 *Harvard International Law Journal* 157-218, 172
- Pearce L and Wodak R, '(Re)constructing the region in the 21st Century' *European Journal of Cultural Studies*, 13(1), (2010) 3-8.
- Pejic, J. 'Minority Rights in International Law' 19(3) *Human Rights Quarterly* (1997) 666-685.
- Peled Y, 'Language rights and the language of language rights: The need for a new conceptual framework in the political theory of language policy' (2011) 10(3) *Journal of Language and Politics* 436.
- Peled, Y. 'Normative language policy: interface and interferences' (2014) 13 (4) *Language Policy* 301-315.

Pentassuglia G and Guliyeva G (eds), 'Minority groups across legal settings: Global and Regional Dimensions' (Special Issue 2010) 17 (2) *International Journal on Minority and Group Rights* 265-285

Phillipson R, 'Lingua franca or Lingua Frankenstein? English in European Integration and Globalisation' (2008) 27 (2) *World Englishes* 250-267

Phillipson, R. 'Review essay: languages, genocide and justice in the European Integration Process', *Journal of Contemporary European Studies* 20.3: (2012) 377-414

Pinker and Jackendoff. 'The faculty of language: What's special about it?' (2005) 95 *Cognition* 201-236.

Pogany, I. 'Minority Rights and the Roma of Central and Eastern Europe', 6(1) *Human Rights Law Review* (2006) 1-25

Poggeschi, G. 'Language rights and duties in domestic and European courts' (2003) *Journal of European Integration* 25(3) 207-224.

Ponce J, 'Good Administration and Administrative Procedures' (2005) 12(2) *Indiana Journal of Global Legal Studies* 551.

Pool J, 'Optimal Language Regimes for the European Union' (1996) 12(1) *International Journal of the Sociology of Language* 159-179

Pool J, 'The Official Language Problem' (1991) 85 (2) *American Political Science Review* 495-514

Prechal S, 'Competence Creep and General Principles of Law' (2010) 3 *Review of European Administrative Law* 5.

Pupavac, V. 'Language Rights in Conflict and the Denial of Language as Communication' (2006) *The International Journal of Human Rights* (10) 161-78.

Quell C, 'Language choice in multilingual institutions: A case study at the European Commission

Raz, J. 'Rights and Politics' (1995) 71 *Indiana Law Journal* 27.

Reichel J, 'Communicating with the European Composite Administration' (2014) 15(5) *German Law Journal* 883.

- Roberston, C. 'EU Legal English: Common Law, Civil Law or a New Genre?' (2012) 20 *European Review of Private Law* 1215.
- Robertson C, 'EU Law and Semiotics' (2010) 23(2) *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 145.
- Robertson, C. 'EU Law and Semiotics' (2010) 23 (2) *International Journal for the Semiotics of Law* 145.
- Robertson, C. 'EU Law and Semiotics' (2010) 23 (2) *International Journal for the Semiotics of Law* 145, 150.
- Robertson, C. 'How the EU Functions in 23 Languages' (2013) 28 *SYNAPS* 14.
- Robertson, C. 'Multilingual Law: A Framework for Understanding' in Felix Mayer (ed), *Language for Special Purposes: Perspectives for the new Millenium*, vol 2 (Gunter Narr 1999) 697-703.
- Robertson, C. 'Multilingual Legislation in the European Union: EU and National Legislative-Language Styles and Terminology' (2011) 9(1) *Research in Language* 51.
- Robinson, W. 'How the European Commission Drafts Legislation in 20 Languages' (2005) 53 *Clarity International* 4, 6.
- Rodley N S, 'Conceptual Problems in the Protection of Minorities: International Legal Developments' (1995) *Human Rights Quarterly* (1995) 48-71.
- Rodley, N.S. 'Conceptual Problems in the Protection of Minorities: International Legal Developments' 17(1) *Human Rights Quarterly* (1995) 48-71
- Romaine S, 'Politics and policies of promoting multilingualism in the European Union' (2013) *Language Policy*, 12(2), 115 - 137
- Rosi, M. 'Unesco and Languages: a commitment to Culture and Development ' 2008 60 (3) *Museum International* 8
- Rosting , H. 'The Protection of Minorities by the League of Nations' 17(4) (1923) *American Journal of International Law* 641-660;

Ruiz Vieyetez E-J, 'The Protection of Linguistic Minorities: A Historical Approach' (2001).3(1) UNESCO Most Journal on Multicultural Societies: Lesser Used Languages and the Law in Europe

Ruiz, R. (1984) 8(2) 'Orientations in language planning' 15–34.

Rodriguez CM, 'Language and Participation' (2006) 94 California Law Review 687-722

Schilling T, 'Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?' (2011) 20 German Law Journal 1460.

Schilling, T. 'Beyond Multilingualism: On Different Approaches to the Handling of Diverging Language Versions of Community Law' 16(1) European Law Journal

Schilling, T. 'Language Rights in the European Union' (2008) 9(10) German Law Journal 1219, 1234.

Schmidt R, 'Democratic theory and the challenge of linguistic diversity' (2014) 13(4) Language Policy

Schmidt U, 'Language Loss and the Ethnic Identity of Minorities' ECMI Brief no. 18 *European Centre for Minority Issues* (2005)

Schmidt, R. 'Democratic theory and the challenge of linguistic diversity' 2014 *Language Policy*

Schütze R, *European Constitutional Law* (2012)

Seidlhofer B, 'Closing a conceptual gap: the case for a description of English as a lingua franca' (2001) *International Journal of Applied Linguistics* (11) 2 133-158

Seidlhofer B, 'Common ground and different realities: world Englishes and English as a lingua franca' (2009) *World Englishes* (28) 2 236-245.

Simonati A, 'The Principles of Administrative Procedure and the EU Courts: an Evolution in Progress?' (2011) 4(1) *Review of European Administrative Law* 45.

Skutnabb-Kangas, T. and Kontra, M. and Phillipson R. 'Getting Linguistic Human Rights Right: A Trio Respond to Wee (2005)' (2006) *Applied Linguistics* 27 318–324.

Smits, J.M. 'Nordic Law in a European Context: Some Comparative Observations' in Jaakko Husa, Kimmo Nuotio and Heikki Pihlajamäki (eds), *Nordic Law - Between Tradition and Dynamism* (Intersentia 2007).

Solan, L. 'The Interpretation of Multilingual Statutes by the European Court Of Justice' (2009) 34 *Brooklyn Journal of International Law* 277.

Somssich R, *Study On Lawmaking In The EU Multilingual Environment* (European Commission [EC-DGT] 2010)

Spencer, V. 'Language, history and the nation: an historical approach to evaluating language and cultural claims' (2008) *Nations and Nationalism* 14 (2), 241–259.

Spitulnik, D. 'Comments on Language as Culture in U.S. Anthropology by Alessandro Duranti' *Current Anthropology*, (2003), 44 (3): 339-40.

Stamatopoulou, E. 'Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic' 16(1) *Human Rights Quarterly* (February 1994) 58-81

Stroud C, 'African Mother-tongue Programmes and the Politics of Language: Linguistic Citizenship Versus Linguistic Human Rights' (2001) 22(4) *Journal of Multilingual and Multicultural Development* 339.

Stroud, C. 'African Mother-tongue Programmes and the Politics of Language: Linguistic Citizenship Versus Linguistic Human Rights' (2001) *Journal of Multilingual and Multicultural Development* 22:4 339-355.

Uli, L. 'Ethnolinguistic racism :The predicaments of sovereignty and nationhood under global capitalism' 2004 (4) 2 *Anthropological Theory* 205-228

Urrutia I and Lasagabaster I, *Language Rights and Community Law* European Integration Online Papers vol.12, 2008

Urrutia I and Lasagabaster I, 'Language Rights as a General Principle of Community Law' (2007) 8 *German Law Journal* 479

Valentine, J.R. 'Toward a Definition of National Minority' 32 *Denver Journal of International Law and Policy* (Summer 2004) 445-474

Van Bossuyt, A. 'Fit for Purpose or Faulty Design? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of Minorities' (2007) *Journal on Ethnopolitics and Minority Issues in Europe* (1) 1-20, 5.

Van Calster, G. 'The EU's Tower of Babel – The Interpretation by the European Court of Justice of Equally Authentic Texts Drafted in more than One Official Language' (1998) 17 *Yearbook of European Law* 363.

Van Els T, 'Multilingualism in the European Union' (2005) 15(3) *International Journal of Applied Linguistics* 263.

Van Els TJM, 'Multilingualism in the European Union' (2005) 15(3) *International Journal of Applied Linguistics* 263-281

Van Els TJM, 'The European Union, its Institutions and its Languages: Some Language Political Observations.' (2001) 2 (4) *Current Issues in Language Planning* 209

Van Parijs, P. 'The ground floor of the world: on the socioeconomic consequences of linguistic globalization' *International Political Science Review*, 21, 2000 pp 217-34.

Vertovec, S. 'Super-diversity and its implications' (2007) 29(6): *Ethnic and Racial Studies* 1024-54

Vijapur A. 'International protection of minority rights' *International Studies* 2006 43(4) 367-394

Von Bogdandy A, 'The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity: Elements of a Beautiful Friendship' (2008) 19(2) *European Journal of International Law* 241.

- Rights Regime: Setting the Record Straight' (2007) 29(4) Human Rights Quarterly 908, 935
- Wagner, E. 'Quality of Written Communication in a Multilingual Organisation' (2000) 1 *Terminologie et Traduction* 5.
- Walker N, 'Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders' (2008) 6 International Journal of Constitutional Law 373.
- Weber S and Gainsburgh V 'Language disenfranchisement in the EU' 43 (2) 2005 Journal of Common Market Studies 273-286.
- Whelan, D. J. and Donnelly, J. 'The West, Economic and Social Rights, and the Global Human
- Williams , C. 'Perfidious hope: the legislative turn in official minority language regimes' (2013)*Regional and Federal Studies* 23(1) 101-122.
- Williams, K. and Rainey, B. 'Language Education and the European Convention on Human Rights in the Twentyfirst Century' (2002) 22 *Legal Studies* 625
- Wodak R, 'Language Power and Identity' (2012) 45(2) Language Teaching 215.
- Wodak R, 'The interplay of language ideologies and contextual cues in multilingual interactions: Language choice and code-switching in European Union institutions' (2012) 41 (2) *Language in Society* 157-186
- Woehrling J-M, *The European Charter for Regional or Minority Languages : A Critical Commentary*
- Woolard, K. and Schiffelin, B. 'Language Ideology' (1994) (23) *Annual Review of Anthropology* 55-82.
- Wright, S. 'The elephant in the room: Language issues in the European Union' (2009) 1(2) *Journal of European Language Policy* 93.
- Wright, S. 'The map the group and language ideology' (2014) 1 (2) *Journal of World Languages* 81-98.

Wright, S. 'The OSCE & the Protection of Minority Rights' 18(1)
Human Rights Quarterly (1996) 190-205

Ziller J, 'Is a Law of Administrative Procedure for the Union
Institutions Necessary?' (2011) 3-4 *Rivista italiana di diritto pubblico
comunitario* 699.

—, (ed.) 'The European Citizens' Initiative: a First for Participatory
Democracy?' (2012) 13(3) [special issue] *Perspectives of European
Politics and Society* 251.

Cases

ECHR

Igors Dmitrijevs v Latvia App no 61638/00 (ECtHR, 30 November
2006) (available only in French)

Mentzen alias Mencena v Latvia App no 71074/01 (ECtHR, 7
December 2004) XII 25

Cyprus v Turkey App no.25781/94 (ECtHR, 10 May 2001)

Oršuš and Others v. Croatia App no 15766/03 (ECtHR, 16 March
2010)

Ulusoy and Others v. Turkey App no 34797/03 (ECtHR, 3 May 2007)

Mentzen v. Latvia App no 71074/01 (ECtHR, 7 December 2004)

Mentzen v Latvia App no 71074/01 (ECtHR, 7 December 2004)

Baylac-Ferrer and Suarez v. France App no. 27977/04 (ECtHR, 25
September 2008)

Birk-Levy v France App no 39426/06 (ECtHR, 21 September 2010)

Podkolzina v Latvia App no 46726/99 (ECtHR, 24 April 2003)

D.H. and Others v the Czech Republic (No. 57325/00) (ECtHR, 13
November 2007).

Güzel Erdagöz v Turkey app no. 37483/02 (ECtHR, 21 October 2008)

Kemal Taşkın and Others v Turkey app no. 30206/04 (ECtHR, 2
February 2010).

CJEU

Case 26/62 *Van Gend en Loos* [1963] ECR 1.

Case T-333/99 *X v European Central Bank* [2001] ECR II-302

Case C-138/13 *Naime Dogan v Bundesrepublik Deutschland*

judgement of 10/07/2014 (unreported)

C-202/11 *Anton Las v PSA Antwerp NV* (unreported)

Case 0161/06 *Skoma-Lux sro v Celní ředitelství Olomouc* [2007] ECR I
I0841

Case 26/62 *Van Gend en Loos* [1963] ECR 1

Case C-566/10 P *Italy v Commission* Grand Chamber, 27 November
2012

Case C-36/98 *Kingdom Of Spain v. Council Of the European Union*
2001 ECR I-779, para 47

Case C-160/03 *Spain v Eurojust* [2005] ECR I-2077

Case 283/81 *CILFIT v Ministero della Sanità* [1982] ECR 3415, para
18

Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd v*
Commissioners of Customs & Excise [2005] ECR I-04427

Case C-132/99 *Netherlands v Commission* ECR [2002] I-02709

Case C-296/95 *The Queen v. Commissioners of Customs and Excise*
ex parte EMU Tabac and others [1998] ECR I-1605

Case 9/79 *Koschniske* [1979] ECR 2717, para 6

Case C-132/99 *Netherlands v Commission* [2002] ECR I-02709.

Case C-146/11 *AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja*
tollikeskus and Põllumajandusministeerium (unreported, Judgement
of 12 July 2012).

Case 100/84 *Commission v United Kingdom* [1985] ECR 1169, para
17

Case C-152/01 *Kyocera Electronics Europe* [2003] ECR I-13821, para
33

Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787

Case T-80/97 *Starway v Council* [2000] ECR II-3099, para 81
Case 80/76 *North Kerry Milk Products Ltd v Minister for Agriculture and Fisheries* [1977] ECR 425
Case C338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I 6495
Case 30/77 *Regina v Bouchereau* [1977] ECR 1999
Case 11/76 *Netherlands v Commission* [1979] ECR 245, para 6
Case 100/84 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169
Joined Cases T-22/02 and T-23/02 *Sumitomo Chemical and Sumika Fine Chemicals v Commission* ECR 2005 II-04065
Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark* [1995] ECR I-04291
Case C 99-00 2002 *Criminal proceedings against Kenny Roland Lyckeskog* ECR I-04831, para 75
Case C-371/02 *Björnekulla Fruktindustrier AB V Procordia Food AB* [2004] ECR I-5791
Case 19/67 *Van der Vecht* [1967] ECR 345
Case 19/67 *Van der Vecht* [1967] ECR 345
Case T-120/99 *Kik v. OHIM* [2001] E.C.R. II-2235
Case C-361/01 P *Christina Kik V OHIM* [2003] ECR I- 8283
Case C-372/88 *Milk Marketing Board v. Cricket St Thomas* [1990] ECR I-1345
T-171/10 *Slovak Telekom v. Commission* [2012] ECR II-(not reported) (22 March 2012)

UNHRC

UNHCR, *Diergaardt et al v Namibia*, Communication No 760/1997, UN Doc CCPR/C/69/D/760/1997 (25 July 2000)
UNHCR, *Ballantyne, Davidson, McIntyre v Canada*, Communication Nos 359/1989 and 385/1989, UN Doc. CCPR/C/47/D/359/1989 and 385/1989 13-14 (31 March 1993)

Canada

R v Beaulac [1999] 1 S.C.R. 768

Reference re secession of Quebec [1998] 2 SCR 217

Foreign Constitutions

Article 3, Constitution of Cyprus 1960 (Σύνταγμα της Κυπριακής Δημοκρατίας).

Article 70(1), Federal Constitution of the Swiss Confederation, 1999.

Canadian Charter of Rights and Freedoms, Part I of Constitution Act 1982, being Schedule B to the Canada Act 1982 (UK), 1982.

Section 18, Canadian Charter of Rights and Freedoms, Part I of Constitution Act 1982, being Schedule B to the Canada Act 1982 (UK), 1982.

International Treaties

International Covenant on Civil and Political Rights (1966), United Nations Treaty Series, volume 999, p 171.

United Nations Convention on the Rights of the Child (1989), United Nations Treaty Series , volume 1577, p 3.

OSCE

International Labour Organisation, Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, (No 107 of 1957).

OCSE Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, 29 June 1990.

OSCE High Commissioner on National Minorities, "The Oslo Recommendations Regarding the Linguistic Rights of National Minorities" (1998).

OSCE High Commissioner for National Minorities, Guidelines on the use of Minority languages in Broadcast Media, 10 June 2003 available electronically on <http://www.osce.org/hcnm/recommendations> <last accessed 23 April 2013>

United Nations

Report of the UN Joint Inspection Unit on the Implementation of Multilingualism in the United Nations System (as recommended to the members of the General Assembly), 10 June 2003, A/58/93.

UN General Assembly Resolution on Multilingualism, 2 November 1995, A/RES/50/11.

UN General Assembly Resolution on Multilingualism, 6 December 1999, A/RES/54/64.

UN General Assembly Resolution 2241(XXI) B, 20 December 1966.

UN General Assembly Resolution 42/207 C, 11 December 1987.

Report of the Secretary-General on Multilingualism, 5 September 2003, A/58/363.

UN General Assembly Resolution on Multilingualism, 22 June 2005, A/RES/59/309.

UN General Assembly Resolution, 16 May 2007, A/RES/61/266.

Statement of the UN Secretary-General (29 May 2008) SG/A/1138.

UN General Assembly Resolution, 5 December 2008, A/RES/63/100, part B.

UN General Assembly Resolution, 24 December 2008, A/RES/63/248.

UN General Assembly Resolution, 8 May 2009, A/RES/63/280.

UN General Assembly Resolution on Multilingualism, 25 November 1997, A/RES/52/23.

UN General Assembly Resolution on Multilingualism, 15 February 2002, A/RES/56/262.

UN General Assembly Resolution on Multilingualism, 15 February 2002, A/RES/56/262.

UN General Assembly Resolution on Multilingualism, 9 September 2009, A/RES/63/306.

UN General Assembly Resolution on Multilingualism, 22 December 2005, A/RES/61/244.

EU Treaties

Treaty on European Union (Consolidated version) [2012] OJ C326/1.

Treaty on European Union (post-Maastricht Treaty text) [1992] OJ C 191/01.

Treaty on the Functioning of the European Union (Consolidated version) [2012] OJ C326/01.

European Union Institutional Documents

European Code of Good Administrative Behaviour [2011] C285/03.

European Union, Interinstitutional Style Guide [2011] OA-31-10-655-EN-C.

General Secretariat of the Council of the European Union, Manual of precedents for acts established within the Council of the European Union [2002] QC-41-01-381-EN-C.

Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation [1999] OJ C73/01.

Interinstitutional agreement on better law-making [2003] OJ C321/01.

Joint Practical Guide of the European Parliament, the Council and the Commission for the Drafting of Community legislation [2003] Office for Official Publications of the European Communities.

Council of Europe

Research Division ECHR/Council of Europe *Cultural Rights In The Case-Law Of The European Court Of Human Rights* (Council of Europe 2011) 14

Council of Europe Advisory Committee On The Framework Convention For The Protection Of National Minorities, “Thematic Commentary No. 3: The Language Rights of Persons Belonging to National Minorities Under the Framework Convention” (44DOC, 2012).

Council of Europe Parliamentary Assembly Recommendation 285 on the rights of national minorities (1961).

European Charter for Regional or Minority Languages (1992),

Council of Europe Treaty Series No 148.

Framework Convention for the Protection of National Minorities (1998), Council of Europe Treaty Series No 157.

Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states
on good administration.

Resolution (77)31 of the Council of Europe, on the Protection of the Individual in Relation to the Acts of Administrative Authorities (adopted by the Committee of Ministers on 28 September 1977).

Thierry Tanquerel, “Good Administration – Its Role in Good Governance in a Democratic Society”, paper presented to Council of Europe conference on the Pursuit of Good Administration, 10 January 2008, DA/ba/Conf (2007).

Tove Skutnabb-Kangas, “Guide for the Development of Language Education Policies in Europe: From Linguistic Diversity to Plurilingual Education” (2002, Council of Europe Language Policy Division).

European Ombudsman

Decision of the European Ombudsman closing his enquiry into complaint 3035/2008/(MHZ)RT against the European Personnel Selection Office [2009]

Decision of the European Ombudsman closing his inquiry into complaint 2533/2009/VIK against the European Personnel Selection Office [2011]

Decision of the European Ombudsman on (BB)MH 259/2005 [2005]

Decision of the European Ombudsman on (PB)GG 3114/2005/MHZ
2580/2006/TN

Decision of the European Ombudsman on complaint 2580/2006/TN
against the Council of the European Union [2007]

Decision of the European Ombudsman on complaint
3191/2006/(SAB)MHZ [2007]

Decision of the European Ombudsman on complaint
871/2006/(BB)MHZ[2007]

European Ombudsman, Statement of public service principles for
the EU civil service [2012]

Court of Justice of the European Union

Protocol No. 3 on the Statute Of The Court Of Justice) art. 64 2010

O.J. (C83) 210:

Council of the European Union

Council of the European Union, Administrative arrangement
between the Kingdom of Spain and the Council of the European
Union [2006] OJ C40/02

Council of the European Union, Conclusions on language
competencies to enhance mobility [2011] OJ C372/27

Council of the European Union, Conclusions on multilingualism
[2008] OJ C140/14

Council of the European Union, Conclusions on the official use of
additional languages within the Council and possibly other
Institutions and bodies of the European Union [2005] OJ C148/01

Council of the European Union, Press release for the 2667th Council
Meeting (13 June 2005) -General Affairs and External Relations
[2005]

Council of the European Union, Resolution of 8 June 1993 on the
quality of drafting of Community legislation [1993] OJ C166/01

Council of the European Union, Resolution on a European strategy for multilingualism [2008] OJ C320/01

Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark [1994] OJ L11/01

Council Regulation (EC) 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations [2005] OJ L56/03

Council Regulation (EC) 930/2004 of 1 May 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union [2004] OJ L169/01, art 1

Council Regulation (EU) 1257/2010 of 20 December 2010 extending the temporary derogation measures from Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005 [2010] OJ L343/05

General Secretariat of the Council of the European Union 'The Language Service of the General Secretariat of the Council of the European Union: Making Multilingualism Work' [2012]

European Court of Auditors

Secretariat General of the EU Court of Auditors (Translation Directorate) 'Misused English words and Expressions in EU publications' [2013]

European Parliament

European Parliament Committee on Legal Affairs, Draft Report with Recommendations to the Commission on a Law on Administrative

Procedure of the European Union 2012/2024 (21 June 2012), A7-0369/2012

European Parliament, Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the ombudsman's duties (Statute of the Ombudsman) [1994] OJ L113/15

European Parliament, Decision amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties [2002], OJ L 92/13

European Parliament, Law of Administrative Procedure of the European Union: European Added Value Assessment [2012] PE.494.457.

European Parliament, Resolution of 15 January 2013 with Recommendations to the Commission on a Law on Administrative Procedure (2012/2024 INL) P7_TA(2013)0004

European Parliament, Resolution of 20 November 2008 on the Special Report by the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 1487/2005/GG (2008/2072(INI)), P6_TA(2008)0555

European Parliament, Resolution of 24 March 2009 on Multilingualism: an asset for Europe and a shared commitment (2008/2225(INI)) OJ C117E/59

European Parliament, Resolution with recommendations to the Commission on European regional and lesser-used languages – the languages of minorities in the EU – in the context of enlargement and cultural diversity (2003/2057(INI)) OJ C76E/374

European Parliament, Study - Implementing the UNESCO Convention of 2005 in the European Union [2010] PE 438.587

European Commission

Commission, A new framework strategy for multilingualism COM (2005) 596

Commission, 'Administrative Agreement between the European Commission and the Kingdom of Spain' [2006] OJ C73/06

Commission Decision 2010/138/EU amending its Rules of Procedure [2010] OJ L 55/60, Art. 18

Commission, 'General guidelines for legislative policy' SEC (95) 2255/7

Commission, *Interpreting and Translating for Europe* (2013).

Commission, 'Many tongues, one family Languages in the European Union' (2004)

Commission, *Multilingualism: an asset for Europe and a shared commitment* (COM (2008) 566

European Commission, *Translation at the European Commission : a history* (Office for Official Publications of the European Communities 2010)

French Resources

Délégation générale à la langue française et aux langues de France
Les politiques des langues en Europe (Ministère des Affaires étrangères et européennes- French Ministry of Foreign Affairs 2007).

Organisation internationale de la Francophonie 'Évaluation externe duprogramme Français dans l'Union européenne' Rapport de synthèse (Organisation internationale de la Francophonie 2011).

Résolution de l'Assemblée nationale sur sur la diversité linguistique dans l'Union européenne TA n° 229 JORF n° 5 du 7 janvier 2004 p. 605

Online Resources

Van Parijs and Aziz, 'Linguistic Legislation for 21st Century Europe'
Université catholique de Louvain: Chaire Hoover, DOCH 87;
available online
<http://www.etes.ucl.ac.be/Publications/dochs.htm>. <last accessed
14 March 2014>

Catalan, language of Europe (Generalitat de Catalunya 2007)
<[www20.gencat.cat/docs/Llengcat/Documents/Publicacions/Catala
%20llengua%20Europa/Arxius/cat_europa_angles_07.pdf](http://www20.gencat.cat/docs/Llengcat/Documents/Publicacions/Catala%20llengua%20Europa/Arxius/cat_europa_angles_07.pdf)> <last
accessed 1 October 2013>

Indigenous Peoples and Minority Unit, *Human Rights Legal
Framework and Indigenous Languages*, International Expert G
Meeting on Indigenous Languages, 8-10 January 2008, New York,
Office of the High Commissioner for Human Rights, UN Doc.
PFII/2008/EGM1/15.
[http://www.unesco.org/new/en/culture/themes/endangered-
languages/biodiversity-and-linguistic-diversity/](http://www.unesco.org/new/en/culture/themes/endangered-languages/biodiversity-and-linguistic-diversity/) <last accessed 7
May 2013>

General Delegation on the French Language and the Languages of
France at the Ministry of Culture and Communication *Report to
Parliament on the use of the French language* (2012) available at:
[http://www.diplomatie.gouv.fr/en/french-foreign-policy-
1/european-union/france-and-the-european-union/article/the-
french-language-in-european](http://www.diplomatie.gouv.fr/en/french-foreign-policy-1/european-union/france-and-the-european-union/article/the-french-language-in-european) <last accessed 3 July 2014>

C Heyes 'Identity Politics' The Stanford Encyclopedia of Philosophy
(2009). Available at:
[http://plato.stanford.edu/archives/spr2009/entries/identity-
politics/](http://plato.stanford.edu/archives/spr2009/entries/identity-politics/) <last accessed: 10 March 2011>.

AFFOI «Rapport Synthétique Des Analyses Des Pratiques
Linguistiques Appliquées Aux Sites Internet Des Organisations
Internationales »

http://www.affoimonde.org/documents/rapport_sites_2013.pdf
<last accessed 12 Nov. 2013>

Blommaert and Rampton 'Language and superdiversity' (70)

Working Papers in Urban Language & Literacies

<http://www.kcl.ac.uk/innovation/groups/ldc/publications/workingpapers/70.pdf> (Last accessed 7 December 2013).

Barbara C Scholz, Francis Jeffrey Pelletier, and Geoffrey K Pullum,
'Philosophy of Linguistics' *The Stanford Encyclopedia of
Philosophy* (Winter 2011 Edition) Edward N. Zalta (ed) available
online:

<<http://plato.stanford.edu/archives/win2011/entries/linguistics/>>.
(Last accessed 17 Feb 2013).

Working Papers

Rodriguez CM, 'Language and Participation' (2005) New York
University Public Law and Legal Theory Working Papers, Paper 7 <

Baubock R and Wallace Goodman S, 'Naturalisation' (EUDO
Citizenship Policy Brief, European University Institute 2010)

Alexander H. E. Morawa 'Minority Languages and Public
Administration: a Comment on Issues Raised in Diergaardt et al. v.
Namibia' ECMI Working Paper no.16 (2002)

C. Hülmbauer and B.Seidlhofer 'English as a lingua franca in
European multilingualism *DYLAN Working Paper 6* (2011)

Francesco Palermo 'Judicial Adjudication of Language Rights in Central Eastern and South-Eastern Europe: Principles and Criteria' in *EURAC European Diversity and Autonomy Papers* EDAP 02/2011

Grin F. and B. Kuzmany 'Evaluating Policy Measures for Minority Language in Europe: Towards effective, cost-effective and democratic implementation' ECMI Working Paper no.6 2000

Kronenthal, Melissa, A Critical Assessment of EU Minority Language, Policy and Practice, Mercator Working Paper No. 13, 2003

M. Safjan, 'Areas of Application of the Charter of Fundamental Rights of the European Union: Fields of Conflict?' EUI working paper Law 2012/22

P Timmermans and S Andoura 'Governance of the EU: The Reform Debate on European Agencies Reignited' CEPS Working Paper (19) (2008)

Trenz Hans-Jorg '*Language Minorities in Europe: dying species or forerunner of a transnational civil society?*' Arena Working Paper no.20 2005

Newspaper Articles

Von Robert Roßmann, 'In German please' *Süddeutsche Zeitung* (29 March 2014)

Philip Oltermann 'Something in common: should English be the official language of the EU?' *The Guardian*, Wednesday 24 April 2013

Kolbert Elizabeth 'Last words: a language dies' *The New Yorker* (6 June 2005) 46-59.

David Marquand 'First Brexit then break-up.' *New Statesman* 27/9/2013 Vol. 142 Issue 5177

Editorial 'Brexit Ramp' *The Times* (United Kingdom) 25/8/2014 p26

Ambrose Evans-Pritchard 'Why the European Court of Justice is leading the UK towards a 'Brexit'' *Daily Telegraph* (London) 01/05/2014

Speeches

European Commission Legal Service, 'How to interpret legislation which is equally authentic in twenty languages: Lecture by Advocate General Francis Jacobs, Brussels, 20 October 2003' (Summary Report, 26 November 2003).

European Commission Legal Service, 'How to interpret legislation which is equally authentic in twenty languages: Lecture by Advocate General Francis Jacobs, Brussels, 20 October 2003' (Summary Report, 26 November 2003).

Colin Robertson '2013 How the European Union functions in 23 languages' SYNAPS 28 (2013) (Presentation on 30 September 2011 at the Department of Professional and Intercultural Communication of the Norwegian School of Economics and Business Administration) available online at:

https://www.nhh.no/Files/Filer/institutter/fsk/Synaps/28-2013/Robertson_28_2013.pdf

Francesco Palermo "Judicial Adjudication of Language Rights in Central, Eastern, and South-Eastern Europe: Principles and Criteria" in *EURAC European Diversity and Autonomy Papers* EDAP 02/2011

Francis Jeffrey Pelletier and Geoffrey K Pullum 'Philosophy of Linguistics' *The Stanford Encyclopedia of Philosophy* (Winter 2011 Edition) Edward N. Zalta (ed) available online:
<<http://plato.stanford.edu/archives/win2011/entries/linguistics/>>. (Last accessed 17 Feb 2013)
http://ec.europa.eu/dgs/translation/publications/presentations/speeches/20080222_ceps_eu_language_policy_en.pdf

Karl-Johan Lönnroth, Why is the language policy in EU political dynamite? Centre for European Policy Studies Speech (2008) available online at:

Blogs

Economist's blog Johnson: Just speak English? Sep 17th 2013
<http://www.economist.com/blogs/prospero/2013/09/language-diversity> (last accessed 15 July 2014)

Anna Codrea Rado 'European parliament has 24 official languages, but MEPs prefer English' Guardian Data Blog (21.5.2014)
<www.theguardian.com/education/datablog/2014/may/21/european-parliament-english-language-official-debates-data> (last accessed 30 May 2014)

David Fernández Vítóres 'France has almost entirely failed in its strategy to prevent English taking over as the lingua franca of the EU' LSE Blogs
<http://blogs.lse.ac.uk/europpblog/2013/05/14/french-lingua-franca-eu-france-failed-english-david-fernandez-vitores/> (last accessed 30 May 2014)

Blog, 'les Coulisses de l'Europe' (from the online version of the French newspaper Liberation on 10 March 2013)
<<http://bruxelles.blogs.liberation.fr/coulisses/2010/03/lunion-dont-lesp%C3%A9ranto-est-langlais.html>> (last accessed 4 October 2013)

Blog, 'L'Anglais en Europe' online political affairs site YouGov
<<https://recherche.yougov.fr/news/2013/07/26/les-europeens-et-ladoption-de-langlais-comme-secon/>>

Maps

Special Eurobarometer 386 *Europeans And Their Languages* map (overlay) Tindo -fotolia.com(blank map) taken from

<http://jakubmarian.com/map-of-the-percentage-of-people-speaking-english-in-the-eu-by-country/>

Other

African Union Handbook 2014 (African Union Commission and New Zealand Ministry of Foreign Affairs and Trade/Manat Aorere 2014).

HRC General Comment number 23 The Rights of Minorities (art.27) 8/4/1994 (paragraph 6.1 and 6.2)

Koenig, Matthias and De Guchteneire, Paul (eds) *Democracy and Human Rights in Multicultural Societies* (Ashgate/UNESCO 2007)