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The Role of Language in Shaping Legal Interpretation: A Comparative Study of Common Law and Civil Law Systems

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Abstract
The paper is a comparative study of the use of legal language in creating an interpretative approach in both Common Law and Civil Law systems. It states that, Judicial interpretation is not an objectively technical action but it is profoundly conditioned by the shape, custom and natural characteristics of the language of the law itself. The paper indicates that, because of its Common Law tradition, based on precedence (stare decisis), the Common Law language of drafting has a natural tendency towards boring particularity, and gives rise to interpretive canons, including textualism and the plain meaning rule. The tradition of the Civil Law, founded on the conception of a broad codification, and having its language that of general principle, rationally requires a teleological formulation of the law, towards the spirit and towards the systemic end of the law. The paper also examines the differentiation of the positions of the judge based on these different linguistic foundations: The Common Law judge as a decoder of statutory text in a web of binding precedent and the Civil Law judge as an applier of general codes based on intent and coherence. As much as globalization, statutory proliferation and the effect of supranational courts are suggested as driving forces behind a major convergence of practices forcing Common Law judges to be increasingly more purposive and Civil Law judges to recognize jurisprudence constant the analysis concludes that fundamental linguistic and philosophical differences remain. The very essence of any system, which in its individual way is anchored in the language, is still necessary to make sure that the ways to ascertain the legal meaning keep their own essential diversity in the world of legal thinking.
Keywords: Legal Interpretation, Comparative Law, Common Law, Civil Law, Legal Language, Statutory Drafting, Precedent (*Stare Decisis*), Codification, Teleological Interpretation, Textualism, Judicial Reasoning, Convergence.

Introduction: The Indissociability of Law and Language
The law is, as David Mellinkoff put it in 1963, "a profession in words" (p. vii), a proposition which seems to be universally true in all juridical systems. Although the contours of legal reasoning and the linguistic nature of legal argument are a complex and intimate, they nevertheless form the very core of legal systems across the globe, yet the different expressions of this relationship lead to very different dynamics of justice down its various avenues. Language is not merely a tool for use in expressing the law; it is also part of the subject matter out of which law is produced, interpreted, and constantly reconstructed. Each statute, or case, or body of law is an instance or application in verbal veracity, or usually to its

inevitable vagueness. Consequently, the task of legal interpretation cannot be cast into an authoritarian machine, or an arid technical exercise based on the application of clear rules to facts. Rather, it is a context-rich hermeneutic process which is intrinsically implicated in the structure, tradition and philosophy of legal language itself (Tiersmaed 1999).

This article purports to show that legal interpretation is not solely a technical exercise but is highly shaped by the organization, clarity and tradition of the legal language itself and such factors produce different, but sometimes converging, approaches in Common Law and Civil Law systems. Whether the statute is written in the admirably positive and definitively clear terms of exhaustive detail, or rather in the more flexible terms of simple generality, the choice of diction is a determination of the field upon which the subsequent conflict for interpretation is to be fought. This genetic code of the legal system determines the instruments to be used by the judges, the authorities from which they seek advice, and the very legitimacy and validity of their creative mantle. To see the distinction between the Common and the Civil Laws, the first thing to do is to note, that these are not merely two different sets of rules, but they are two different cultures of discourse, both having their special relation of the word to the law in history.

Lastly, it describes the fundamental doctrine of the customary law and civil law tradition and shows its origins and written codification of texts. An elaborate comparative study of the characteristic draft structures of each of the traditions follows upon which we observe how the aspiration to precision turns into a specificity or even principle. In the following passages, the main methodological strategies of meaning fulfilment are contrasted as well and how judges in the two systems address ambiguities that exist in their respective linguistic system are taken into account.Finally, after a short discussion of areas of contemporary convergence, which complicates deeply occupationalized linguistic distinctions through experiencing the surge of globalization and cross-jurisdictional challenges, the thesis concludes in the deeply felt belief of the power that language wields as the first architecture- maker of legal meaning.

Gender and Drivers: Common Law vs Civil Law

Common Law and Civil Law systems constitute a classic pole-ends in the world split of laws that are characterized by divergent historic roots that have continued to determine the operative rationales. The system of Common Law which took form in the royal courts of England after the Norman conquest is essentially a judge-made law tradition. Its fundamentals revolve around the doctrine of stare decisis - the tendency of courts to adhere to precedent, to fundamentally build a body of law by slow accretion evidenced in a sequence of judicial decisions (Baker 2019). Finely speaking, legal statutes, which are passed by legislatures, in this school occupy a position of ultimate authority, but they rarely mean what they conceal. In contrast, statutes are seen as legislative overlays on an existing common law field that is normally governed by the courts in common practice and interpretation of their meaning is a kind ofGive and take where the meaning is ultimately determined through their application in a given case. Accordingly, the principle text is not one code, but a massive tapestry of case reports, where the ratione decidendi of former judgments are looked to as the rules governing future disputes to which the other catalyst is the ratio decidendi of future judgments (Llewellyn 1960).

Instead, the Civil Law system is the intellectual offspring of the Corpus Juris Civilis of Emperor Justinian and the intellectual ferment of the European Enlightenment. The modern embodiment is dominated almost entirely by codification, a school of philosophical thought that tried to eliminate a system based on exploits of the capriciousness of judging by bringing

all law into one written code setting the systems coherently and in an easily accessible format. Scholars like Montesquieu saw the judge as simply la bouche de la loi ("the mouth of the law") who had to "head for the strict rules of application of the code in an impartial manner without making law" (Merryman & Perez-Perdomo, 2007). in this system, the source of law is the legal code that is supposed to be the exhaustion of the law-a conceptual whole of abstract statements that is then to be translated into concrete details of sheer oppressions through their application by judges. This earliest distinction has a fundamental effect on the role of the law; for instance, with Common Law the authorizing texts are those with which judicial arguments were reformulated in a countless series of opinions; with Civil Law, the authorizing texts consist of those used by the legislator to define the law within the framework of a code. This difference establishes the basis for the formation of two separate dialects of legal language that are each constituted for its respective purpose and theory of legal authority.

The Nature of Legal Proof Reading and Drafting

The conflict between the Common Law and the Civil Law has perhaps been most directly exemplified in the styles of legal writing, where the common purpose of the precision is fulfilled in two extremitely opposite-minded ways, namely specificity versus principle. Common Law is marked by an exactness in specificity, which is uncompromising, in its brotherhood of drafting. This form of judicial interpretation, which perhaps has found its most fruitful development in such jurisdiction as the United States, is due to the existence of a deep-rooted cultural distrust of judicial discretion. Due to the wish to reduce the interpretive freedom, the lawmaker is likely to write abnormally long, thin, and comprehensive statutes, trying to cover as many potential scenarios as possible and deciding on them (Solan 2010).The used language is very technical, repetitive and complicated with defined terms, lists and cross-references. Not surprisingly then, there is a preference for the "letter of the law," where the particular lexicography is believed to be of paramount importance, as this is considered the sole object of interpretation. Excessive verbosity is by design, not defect; it is designed as a protective measure from judicial overreach. A good example is the Internal Revenue Code of the United States which is made up of many thousands of words with rows and rows of conditions and exclusions.

In contrast, Civil Law drafting is defined by its principle and is oriented towards precision. Its task is not to exhaust comprehensively all the possibilities but to establish firmly general and logically consistent principles from which the solution of individual cases can be deduced. As a language style it emphasises brevity, comprehensibility and rational coherence over comprehensive enumeration (Hesselink 2017). Its language, as in such codes using that of a citizen (gemeinsamer Rechts ajustiertes) as the German Burgerliches Gesetzbuch (BGB) or the Code civil in France is more abstract, philosophic, and open to the educated layman. For example, whereas a Common Law statute governing contracts can contain a list of specific terms that must be included in a contract, the BGB may express in a general banner of good faith (art. 242) that is applied throughout the field of contractual duties. This approach leaves the job to judges of discerning the "spirit of the law" and stretching general standards judiciously to make those decisions that allow an enforcement within the system of values inherent in the integrity of the code, but are not limited by the narrow query of general words from the text of the act. Thus, the purpose of the drafter of the Common Law is to chain down the judge with words, whereas the drafter of the Civil Law is to provide the judge with principles -- a fundamental philosophical difference, already stamped out on every word of their legal texts.

Judicial Interpretation: Techniques Created from Language

One of the answers to this is that the varied linguistic versions of the texts in the common law and the civil law obviously enact and condition radically dissimilar judicial modalities. In both of these systems the judge is not merely inviting it up and ceasing to write in a plain English style but employing tool and standard which have come to be a recognised practice of language management in order to circumscribe the inherently ambiguous quality of the different legal idioms. The Common Law judge himself is both a lexicographer and a historian of the law, and the Civil Law judge is a systematizer and a philosopher, who depends on the reason to the principle. It is not merely a technical quibble that this difference of interpretive ethos exists between the two systems, but it is to the very root of each system of thinking of one thing or another as law in the first place, whether it be a collection of words spoken by judges or a radius of intellectual coherence in the text of a written document. Even the methodology they employ, their canons of construction to quantity of precedent, are the immediate by-products of the type of document they are supposed to interpret. Accordingly the line taken between a legal text and a last determination adopted is via two preset channels, each of which possesses its own rules of navigation, its sources of authoritative power and an intuition of the location of the law. This part is further divided into the reverberations or codes of this two-worldviews discovering the classical fundamental methodologies and then into the world of delicate equilibria where the pure doctrinal view is made to encounter.

4.1. Platitudes of the Common Law Judge: Reading Precedent, Reading Text

The foremost function of the Common Law judge is to decipher the exact statutory words but this task is never done on a lined sheet of paper. Such social reality is that of a sprawling and binding web of case law, which itself contains and in part determines the linguistic domain in which words in the law operate. The doctrine of stare decisis, in particular, creates a linguistic positivist environment in which in the interpretation of words and phrases, the judicial decisions from previous cases are governing orders on future cases. When the court defines a word in one name like employee, reasonable, or instrument under a specific context, the above definition is a judicature to be applied upon the subordinate sites, which must be accepted or rejected in the higher sites to construct a dictionary in a dynamic way in centuries (Scalia & Garner, 2012). In this would-be tangle and constructions of new laws, judges use a collection of codified linguistic rules. The text and the plain-meaning canon require the traditional approach of starting (and usually ending) with the ordinary meaning of the statutory language as interpreted at the time it was enacted. Canons of inducement such as ejusdem generis ("of the same kind") (when a general term follows a list of specific ones) tells you that you would typically have to mean the general term to be interpreted as being limited to the same class of things as the ones specifically listed. In order to achieve their purposes, these instruments aim to supply an objective factual vocabulary of interpretation by eliminating judicial discretion from the creation of meaning and tying meaning to the statute itself.

For the purely textualistic approach, however, has always been tempered by purposive techniques that may look beyond the bare words on the page. Related to that, the old principle of mischief rule, adopted in Heydon's Case (1584), instructs judges to take into account the common-law defect or "mischief" a statute was intended to correct and to construe a statute so as to avoid the mischief and effect the remedy. In the modern era there

has been a move towards a more general purposive approach in which judges look at legislative history, reports, and extrinsic sources to determine the general purpose of a law and read the provisions of that law within the context of that purpose (Eskridge, 2016). This central conflict in the process of adjudication is contained in the common law, which looks to the literal meaning of the text and the purpose of the author. Further, in those jurisdictions like the United Kingdom increasing a more express contextual approach as affirmed in cases like Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] nurtures the judges to analyze documents on a commercial and factual background rather than odium of literal and pedantic interpretation. This makes some allowance for the fact that language's meaning comes in large part from use and context, not just dictionaries and canons.

4.2. The Civil Law Judge: Severus and Legespoetus of The Code and The Code's Mind

In sharp contrast, the main task of the Civil Law judge is not to interpret an individual category against the background of binding precedents but to serve as a skilled logician, as its general provisions tell the judge what to do with an individual case. The judge's concern furthers itself towards the code as an organic conglomerate of principles, and their task is to arrive at the correct result by ideating the will of the legislator and logical cogency of the entire juridical building. The main technique here is the teleological interpretation - the search for the purpose and goal (telos) of law. The judge then asks not necessarily what the words mean, but what problem this particular law was intended to further, and what is the likely outcome of the law that assures the achievement of the social objective of the legislature. This approach is also supported by the structure of the law code itself, which is usually composed of general principles, acting as springs for more specific articles, thus offering the judge the philosophical approach to the decision (Zweigert and Kotz, 1998). As an instance, when a judge is interpreting a contract dispute, he or she will first consider overriding principles such as good faith (§ 242 of the German BGB) and the policy of the state and use these principles as the prism through which the director sees the particular contractual terms.

The place of precedent under this system is misinterpreted. Although the official doctrine of stare decisis lacks, i.e. one precedent does not bind other courts, the situation is much more subtle. The jurisprudence constanter principle implies that a sequence of decisions of high courts has enormous persuasive force and forms an effective de facto precedent. Such settled interpretations are very likely to be followed by lower courts to pursue predictability, uniformity and legal certainty (Siems, 2022). This produces a living, developing linguistic tradition to the abstract text of the code, with regularly put into practice in judicial adjudication concrete meaning to its general principles. However, there is also a back-and-forth to the point. The tradition of the Civil Law itself requires a more textualist approach in some fields of law, most notably tax law, administrative law, and criminal law. The legality doctrine (nullum crimen, nulla poena sine lege, no crime, no punishment without law) demands that criminal law be construed very narrowly and strictly based on its wording in order to ensure that the state does not infringe upon individual freedom. Equally, sophisticated current rules, in particular those implementing finer-grained EU directives, may be so narrow that duty-bound to apply them in a more textualist, more code-based way, reflecting the Common Law method in a very curious instance of functional convergence fueled by linguistic form.

5. Convergence and Modern Challenges: The Blurring Lines

In a world that is becoming more interconnected, the classic lines between Common Law and Civil Law approaches are becoming pervious. There is an ongoing process of an insidious

yet meaningful merging together in a process led by massive external forces that force every system to take on the characteristics of the other. This is not a merging into a one global system but a complicated mixture at the boundaries where judges and lawyers will have to be bilingual and not only in words but also in judgments. The idealized and pristine models of the judge as either a passive mouth of the code or an in-the-pure-and-impartial messenger of the common law are under attack, by the exigencies of globalization, international cooperation and the sophistication of the contemporary administration. This intersection proves that even though historical and linguistic paths can move in different directions, the practical issues of language interpretation and justice obtainment are such strong motivating factors of cross-fertilization. This part analyzes the factors behind this convergence although it must be accepted that the influence of legal cultures that are ingrained will endure and divergence will continue to be the theme of domestic law.

5.1. Driving Forces of Convergence.

A number of powerful factors are setting this interpretive convergence in motion. To begin with, the hegemony of international law compels both regimes to deal with new legislative tongues. The supranational courts such as the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR) formulate the hermeneutic styles to be followed by the member state courts. In their interpretation of EU treaties and directives, the ECJ, in example, is teleological in its approach, striving to have the ECU law toll positive effect (utile). This means that when applying the law created by the EU, British Common Law judges must reason like Civil Lawyers, focusing on the purpose and not on textual specifics (Adams and Bomhoff, 2012). Secondly, the globalization and cross border operations generate practical necessity to make the judges interpret laws and legal principles of other countries. In order to apply a contract that is governed by German law, a New York court will be required, in effect, to attempt to apply a teleological interpretation of the BGB, referring to German scholarly works and case law to interpret the spirit of the law, but not only the letter of the law.

Also, internal forces are crossing the boundaries in domestic systems. Common Law countries have become so prolific and complex in statutory proliferation that the amount and complexity of legislation is approaching those of a civil code, and require a more systematic and less precedent-bound method of interpretation. The sheer volume of the contemporary regulatory regimes in subjects such as the environmental or financial law requires that the judges consider statutes as a whole, in the same way their counterparts in the Civil Law tradition consider codes. On the other hand, the Jurisprudence Constanter Effect is more and more being appreciated by the Civil Law systems. The need to have predictability in practice and the authoritative quality of the Supreme Court ruling implies that reports of published cases are no longer peripheral sources of law education but have become the heart of law, generating a mass of de facto precedent that will lead a Common Law lawyer to feel right at home (Glenn, 2014). This establishes a feedback mechanism whereby the broad principles of the code receive the concrete meaning developed in the course of the judicial application, constructs around the civil code something of a common law like structure.

5.2. Persistent Divergence

In spite of these convergent forces, however, the extent of assimilation would be an exaggeration. The language, philosophical and institutional difference that is deeply rooted in the systems is still deeply entrenched in their domestic operations. The educations and the professional settings of the legal actors, the judges, lawyers, and scholars differ

fundamentally in terms of their mentalities. An English judge is trained in the art of case distinction and analogy reasoning whilst a French juge is trained in the exegesis of the code and deductive logic (Bell, 2021). This has become so embedded in the culture of law. Moreover, the fundamental basis of law retain their formal hierarchical disparities. Even in a Common Law world, where a sea of statute prevails, the analysis of a higher court on a matter of common law is the most authoritative statement of the law. In a Civil Law jurisdiction, the code article itself is consistently the highest point of focus; previous judicial precedents, though equivalent, are still actually only formally of how that article may be utilized, and not a source of rule in their own right. This is a basic difference in power, which guarantees that the starting point of interpretation, text and precedent, are separated. Thus, cross-pollination is a fact, and a large one, but the nature of the linguistic and architectural underpinnings of both systems serves to guarantee the maintenance of their individual personalities, a multi-polar global legal ecosystem in which contrasting solutions to the issue of language remain valuable and worthy of consideration.

6. Conclusion

In conclusion, the comparison of the Common Law and the Civil Law systems has revealed the fact that legal interpretation is not just a vacuity process; legal interpretation is a profound cultural and even linguistic ritual. The manner in which judges arrive at the meaning of the legal texts is not made arbitrarily but it is naturally determined by the nature of the language with which the judges are given the duty of interpreting. The Common Law tradition, whose historical origins lie in the judicial precedent, has evolved a language of lavish particularity, and an attendant methodology of interpretation, biased in favor of the canons of the text, and the binding power of the earlier precedent. The Civil Law tradition, based on the ideal of comprehensive codification, in its turn, utilizes a language of abstract principle, which will always tend to induce some teleological approach, to the soul and the systematic intent of the law. Such a difference in the foundations actually demonstrates that the legal system structure of case-by-case v. article-by-article is based, in fact, on what instruments and materials a judge has to rely on as the primary ones, and thus language is the unquestioned genome that will encode in order to produce specific interpretive outcome. Lastly as the forces of globalization and harmonization of the world are creating curious cross-overs, compelling each system to borrow tool out of the other toolbox, the basic philosophical and language divide has not disappeared. The veneration of the judicial word which is the attribute of the Common Law, or of the veneration of the code of legislation to which is so strictly adhered to the Common Law in domestic matters, justifies the continuance of natural disparities of mentalite and practice. This has not been a weakness but has been an indicator of the abundance of resources that the human society has developed to address ambiguity of language that exists in every society and the pursuit of eternal justice that people seek. By doing so, the significance of the language is confirmed as the most significant shaping power in the interpretation of the law. It is the medium, the message, and the map, by which the jurists are guided on the manners prescribed centuries of linguistic tradition, although they occasionally blunder into the territory of each other. What really matters is that there is no single and good language of law, no good decisions, but a variety of decisions, with their pros and cons, and the eternal dilemma between them continues to refine the art of judgment in the world.

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