

Translatability and transplantability of law: Legal translation and comparative law brought together around the concept of legal transplants¹

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Abstract: Legal transplants refer to the spread of legal ideas across legal and cultural borders and are seen as a crucial conduit of legal change. Sparked by Alan Watson's scholarship, the legal transplant debate is a central theme of comparative law. One significant controversy it has engendered is, as put by Günter Frankenberg, 'how legal transfer happens and what happens when it happens'. While some consider transplants relatively unproblematic, indicating evidence of borrowing between very different societies (e.g. the receptions of BGB in Japan or ZGB in Turkey), others strongly disagree, arguing that rules as cultural forms do not travel easily – or cannot travel at all – between interpretive communities. There is also a linguistic side to this discussion, as legal transplants mark an important, yet somewhat neglected, point of contact between legal translation and comparative law. Even more interestingly, the transplantability debate is reminiscent of the long-standing discussion over translatability in general and legal translation theory. Hence, this paper aims to juxtapose the respective arguments and explore how these two research streams can inform each other. The results are intended to shed light on the assumptions made by

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advocates of (un)transplantability and (un)translatability of law and foster understanding between legal and translation scholars.

Keywords: comparative law, legal translation, legal transplants, translatability of law, transplantability of law, definitional incompatibility

Przekładalność i przeszczepialność prawa:

O tym, co łączy tłumaczenie prawnicze i prawo porównawcze, na tle pojęcia przeszczepów prawnych

Streszczenie: Pojęcie przeszczepów prawnych dotyczy rozprzestrzeniania się idei prawnych ponad granicami prawnymi i kulturowymi. Przeszczepy prawne są postrzegane jako jedna z kluczowych ścieżek przemian prawa, a dotycząca ich dyskusja – zainspirowana piśmiennictwem Alana Watsona – należy do głównych wątków nauki prawa porównawczego. Jedną z istotnych kontrowersji, które zrodziły się na kanwie tej debaty, jest – jak ujął to Günter Frankenberg – to, „w jaki sposób następuje przeszczep prawny i co się dzieje, kiedy on nastąpi”. Choć niektórzy traktują przeszczepy prawne jako zjawisko względnie mało problematyczne, wskazując na dowody zapożyczeń dokonywanych pomiędzy bardzo odmiennymi społeczeństwami (np. recepcja BGB w Japonii czy ZGB w Turcji), inni stanowczo nie zgadzają się z takim postawieniem sprawy, argumentując, że reguły prawne jako formy kulturowe nie przenoszą się łatwo – lub w ogóle nie mogą się przenosić – pomiędzy społecznościami interpretacyjnymi. Dyskusja ta ma również aspekt językowy. Przeszczepy prawne stanowią bowiem ważny – choć nie zawsze dostrzegany – punkt styku tłumaczenia prawniczego z prawem porównawczym. Tym bardziej interesujące jest to, że debata dotycząca przeszczepialności prawa przypomina trwającą od wielu lat dyskusję na temat przekładalności w teorii tłumaczenia – w tym również tłumaczenia prawniczego. W związku z powyższym niniejszy artykuł ma na celu zestawienie odnośnych argumentów i zbadanie, w jaki sposób te dwa nurty badawcze mogą być dla siebie użyteczne. Autor ma nadzieję, że uzyskane wyniki przybliżą założenia przyjmowane przez zwolenników tez o (nie)przeszczepialności i (nie)przekładalności prawa, a także że pozwolą one na lepsze wzajemne zrozumienie wśród badaczy prawa i przekładu.

Słowa kluczowe: prawo porównawcze, komparatystyka prawnicza, tłumaczenie prawnicze, przeszczepy prawne, przekładalność prawa, przeszczepialność prawa, rozbieżności definicyjne

1. Introduction

The concept of legal transplants lies at the intersection of comparative law, legal translation and legal linguistics (jurilinguistics). It refers to:

‘a transfer of the normative content in its legal form constituting functional entirety, having considerable load of normative novelty, or a transfer of a new method of legal regulation, not yet present in a legal system, from one system of law (foreign) to another one (host)’ (Król 2010: 10).

Put another way, legal transplants concern ‘a spread of legal ideas regardless of political borders or cultural differences’ (Fedtke 2006: 434).

While legal transplants may occur between legal systems using the same language (Brand 2009: 24–25), they typically cross both national and linguistic borders, entailing massive translation efforts (Graziadei 2019: 456; see also Sacco 1991: 11–12). The availability of translated materials can determine the adoption of a particular legal transplant, as was the case with the introduction in Chiang Kai-shek’s China of a civil code based on the German BGB, earlier rendered into Chinese characters by Japanese scholars (Ferrerri 2022: 66).

Legal languages, in turn, respond to the new situation created by legal transplants – for instance by providing new terminology, including borrowings and neologisms (Chromá 2014: 141). As the history of legal languages can be seen to parallel the evolution of legal systems (Pozzo 2012: 88–94, 2019), ‘the study of legal translations becomes a new way to tell the history of legal transplants’ (Pozzo 2012: 91, 2019: 66). Interestingly, the processes of autochthonous law-making and borrowing from others have been compared to word-building and word-borrowing in linguistics, with both legal transplants and foreign language borrowings raising concerns among comparative lawyers and linguists, respectively (Jamieson 2011: 425–26, 436).

It is important to note, however, that the links between legal transplants and language are not only metaphorical but, first and foremost, deeply substantive. As ‘legal norms and institutions work only through language as normative creatures’ (Husa 2023: 65), it needs to be emphasised that ‘all legal transplants, rely more or less on language for their substantive effect’ (Jamieson 2011: 458).

Further links can be observed when the debates over transplantability and translatability in comparative law and legal translation studies are compared.

The concept of legal transplants is not uncontroversial, raising the crucial question of ‘how legal transfer happens and what happens when it happens’ (Frankenberg 2013: 30). Legrand (1997, 2001, 2005, 2015: 438–39) has repeatedly argued against it, pointing out that a legal rule is a cultural form that goes beyond its verbal content, so it cannot be separated from the meanings attached to it by a particular interpretive community. This is apparently at odds with the scholarship of Watson (1981: 14, 1993, 2001: 98–114), who sparked, or perhaps revived, the transplant debate in the 1970s (Cairns 2013), seeking to demonstrate that legal rules and institutions can function in very different societies, allowing for their possible modifications. Most scholars take the middle ground between Watson and Legrand (Siems 2019: 238).

The controversy over legal transplants is paralleled by the debate on translatability in general and legal translation theory. At one extreme, legal translation is described as ‘a contradiction in terms’ (Chaffey 1997 in Szemińska 2017: 355); at the other extreme, it is argued that ‘law is translatable despite the various inherent difficulties’ (Cao 2007: 5). Yet others suggest that there are degrees of translatability (see e.g. Kielar 2013: 89–91).

Both untransplantability and untranslatability theses need to confront themselves with common-sense arguments. For instance, supposing legal transplants are impossible, one can ask ‘what exactly it is that thousands of law reformers are doing when they perform the task the rest of us are inclined to call (...) “legal transplantation”’ (Harding 2021: 14). In the same vein, it is argued that ‘legal translation cannot be impossible. The proof is all around us – in a globalized world, legal texts are translated and retranslated, and the translations made use of (...)’ (Ainsworth 2014: 47).

Given the links between comparative law and legal translation emerging around the concept of legal transplants, the present paper aims to bring together and juxtapose the debates on the transplantability and translatability of law. Despite these parallels, the respective literatures do not seem to engage with each other as much as could be expected. It may not be surprising, however, as it has been noted that comparative lawyers do not pay sufficient attention to translation (Glanert 2014), and – reciprocally – translation scholars often have a somewhat narrow picture of comparative law (Kusik 2023a: 201–3; 2024a).

Hence, the research questions addressed in this paper are, first, what similarities and differences exist between the arguments for and against the transplantability and translatability of law and, second, in what ways, if any, the respective comparative law and legal translation perspectives can inform each other. The findings will likely shed some light on the assumptions made by the advocates of (un)transplantability and (un)translatability of law, as well as raise mutual understanding between legal and translation scholars, helping them appreciate some novel perspectives the other field offers.

The paper is structured as follows. The second section defines legal translation and comparative law and briefly outlines their relationship to provide a wider background for further discussion. Sections 3 and 4 present the major positions emerging in the legal transplants and translatability debates. In Section 5, these two research streams are juxtaposed, and the arguments raised as part of them are compared and discussed. Section 6 concludes with answers to the research questions.

2. Comparative law and legal translation – the same or different?

Contrasting views have been expressed on the relationship between comparative law and legal translation. On the one hand, it has been argued that ‘legal translation and comparative law are, and must be, the very same thing’ (Schroth 1986: 53), or that ‘translating legal texts is comparative law in practice’ (de Groot 1987: 189). Legal translation is said to be, or to entail, an exercise in/of comparative law (Künnecke 2013: 246; Prieto Ramos 2011: 13, 16; Soriano-Barabino 2016: 19). On the other hand, some (*n.b.* sometimes the same) authors point out that the goals or interests pursued by comparative law and legal translation are different (Doczekalska 2013: 70; Dullion 2015: 99; Engberg 2020: 279; Pommer 2006: 154–55; Prieto Ramos 2014: 267; Soriano-Barabino 2016: 19–20). This requires some clarification.

2.1 Defining comparative law and legal translation

Both comparative law (Samuel 2014: 10–13) and legal translation (Wolff 2011: 16.3) raise definitional problems, so all-encompassing definitions of either field cannot be expected.

In simple terms, comparative law denotes ‘an intellectual activity with law as its object and comparison as its process’ focused on ‘the comparison of the different legal systems of the world’ (Zweigert and Kötz 1998: 2). It refers to ‘an academic field of legal knowledge that studies law comparatively as a normative phenomenon of organised human communities’ and is thus ‘a shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems’ (Husa 2022: 1). It has also been described as ‘the hermeneutic explication and mediation of different forms of legal experience within a descriptive and critical metalanguage’ (Legrand 1997: 122–23). Watson (1993: 6) defines comparative law as ‘the study of the relationship of one legal system and its rules with another’. The core components of comparative law emerging from these definitions are reference to more than one legal system, an act of comparison, searching for similarities and differences and formulating explanations.

The key to defining legal translation is the notion of a legal text, which can be explained either by providing a non-exhaustive list of examples or by referring to the text’s function or setting (Wolff 2011: 16.1–16.3). The former approach is illustrated by books discussing the problems of the translation of particular genres of legal texts (Alcaraz Varó and Hughes 2002: 101–52; Matulewska 2007: 160–292). The latter refers to legal translation as ‘the translation of texts used in law and legal settings’ (Cao 2007: 12) or ‘translation of texts for legal purposes and in legal settings’ (Engberg 2002: 375). The legal translator’s overarching goal can be described as an attempt to convey the legal sense of the source text (source term) by means of the target text (target term) (*cf.* Kielar 1977: 152; Šarčević 1997: 235).

2.2 Intertwined but separate domains

Considering the characteristics of comparative law and legal translation, one needs to recognise them as intertwined yet separate domains (Doczekalska 2013: 72).

Indeed, comparative law is not about producing texts that bear a certain relationship to texts in other languages or about finding or creating terminological equivalents. Nor is legal translation intended to scientifically explore similarities and differences between legal systems. Moreover, law comparison in legal translation is, at best, an element of a broader process, while ‘one cannot begin to speak about comparative law until (...) the comparison is at the heart of the work’ (Bogdan 2013: 8). Such comparison is not carried out for every problematic term, given, among others, the availability of alternative and quicker-to-use resources (Biel 2008: 22). Admittedly, the sheer scale of a professional comparative law enquiry is typically impracticable for a legal translator, as evidenced by the research models offered in the literature (de Cruz 1999: 235–39; Eberle 2011; Kischel 2019: 194–200).

As Kischel (2019: 12) aptly notes, while comparative law can be helpful in legal translation, solving translation problems ‘remains the translator’s task’. Accordingly, comparative law contributes to, but does not substitute for, legal translation studies (Prieto Ramos 2014: 266–67). Similarly, while legal translation is a crucial part of comparative law research – ‘the hinge between the comparatist and foreign law’ (Husa 2022: 45; see also de Groot 2006: 423; Kischel 2019: 10–12) – legal translation or legal translation studies cannot replace comparative law.

The growing number of interdisciplinary contributions (see e.g. Bestué 2019; Engberg 2020; Glanert 2014; de Groot 1987; Husa 2022: 43–74; Pommer 2006) confirms that there are points of contact and potential for cooperation between the fields. As stated in the introduction, this paper seeks to highlight such a common ground by juxtaposing the transplantability and translatability debates.

3. The transplantability debate in comparative law

There are three basic approaches to the nature – and indeed the feasibility – of legal transplants: the instrumentalist approach, the formalist approach and the culturalist approach (Michaels 2013: 63–67).

3.1 The instrumentalist approach

The instrumentalist approach to legal transplants is characteristic of law reformers, who see law as a means to an end. It assumes that law leads to predictable consequences, and its effects are generally the same anywhere, so one solution can be optimal for any society. This means that the best laws can be chosen to produce the best consequences (Michaels 2013: 62–63). This ‘one size fits all’ approach, represented by such institutions as the World Bank, is particularly common in business law reform, though not confined to it (Michaels 2013: 56). ‘Optimistic normativism’, or the conviction that law can be used as an instrument of ‘social engineering’, for instance as a prerequisite for building a free market, has been observed in transition economies (Ajani 1995: 103).

Similar ideas have also been expressed by some researchers, especially economists, including those personally involved in reform programmes (see Bakardjieva Engelbrekt 2015: 121). According to the so-called ‘legal origins theory’, legal rules can be measured to indicate countries’ expected economic and social performance. For example, strong legal protection for investors is supposed to predict financial development (La Porta, Lopez-de-Silanes and Shleifer 2008). Referring to Watson, legal origins theory also assumes that law in various countries is usually not written from scratch but transplanted, voluntarily or not, from several legal traditions or families (La Porta et al. 1996: 4). As a result, the theory aggregates countries belonging to the same legal family but having significantly different economic, social or cultural backgrounds. This suggests that transfers of formal rules potentially lead to broadly comparable economic results (Bakardjieva Engelbrekt 2015: 126; see also Berkowitz, Pistor and Richard 2003).

In constitutional law, Frankenberg has critiqued the instrumentalist approach to law reform by developing ‘the IKEA theory of legal transplants’. According to this concept, such items as ideas,

institutions, ideals, ideologies, norms, arguments, doctrines and theories are decontextualised and then circulate in local, regional and transnational discourse, becoming, as it were, standardised products stored in a global supermarket (Frankenberg 2010, 2013). The IKEA theory thus demonstrates ‘the commodification of the legal rule’ (Michaels 2013: 62).

3.2 The formalist approach

The formalist perspective focuses on the transplantation of rules seen as mere propositional statements. It is distinguished from the instrumentalist approach by assuming the irrelevance of the connection between law and society. Hence, it does not treat laws as instruments transplanted to improve society (Michaels 2013: 66).

According to Watson (1993: 95–97, 111), who focuses on Western private law, in particular borrowings from Roman and English law, legal transplants are the most prolific source of legal development. The transplantation of individual rules or larger components is a widespread phenomenon known since ancient times. Transplanting law is also easy in social terms. This means that legal rules move between legal systems even when the system they come from is significantly different from the host system. Watson also points out that voluntary transplants almost always involve a change in the law.

Watson further claims that governments are often uninterested in creating private law, leaving this task largely to a legal elite. In this way, Roman jurists, English judges and continental law professors became subordinate law-makers, even though law-making competencies were not formally transferred to them (Watson 1993: 117–18, 1995: 469–70). Nor does society usually care about the state of private law. The latter thus lags behind social needs and desires. Accordingly, there is no ‘close, inherent, necessary relationship between existing rules of law and the society in which they operate’ (Watson 2001: 130–34), and legal rules tend to be ‘equally at home in many places’ (Watson 2001: 130). This notwithstanding, Watson acknowledges that legal rules must have some relationship with society’s needs and desires, which, however, seems impossible to define (Watson 2001: 134).

While Watson's theory might seem unsophisticated in that it simply observes that rules – seen as mere propositional statements – are subject to constant borrowing and transfers, Michaels (2013: 66–67, 78) emphasises the power such formal rules wield. It lies in the fact that they have very little inherent meaning and thus can transcend national contexts, be used in considerably different legal systems and link legal systems to each other. A good example is the wholesale transplantation of English 'Acts of general application' in former British colonies. Despite originating at a different time and in a different cultural context, these statutes continue in force in a number of countries, e.g. Pacific nations, where they give rise to a discourse involving national courts and the UK's Privy Council (Corrin 2021).

3.3 The culturalist approach

In the history of legal thought, a number of views have pointed to the close relationship between law and the society in which it operates, suggesting that law naturally responds to local social, economic, political and geographical conditions (Watson 2001: 1–4).

Montesquieu (2001: 23) wrote that laws 'should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another'. His thought is echoed in the views of Savigny (Menski 2006: 91), who rejected the point of studying laws other than Roman and German and fostered the idea of the 'spirit of the people' (*Volksgeist*), underlying both law and language (Tokarczyk 1999: 50). A more nuanced position was taken by Bobrzyński (1922: 341–42), who, whilst arguing that law retained its native essence as an organic creation of each nation's spirit, recognised the need to study foreign influences.

The idea of an organic link between law and a particular character of the people became immensely popular in European legal thought and was also adopted by sociology. Its deficiencies were highlighted only later, and its explanatory power is being contested today (Graziadei 2019: 467).

A prominent opponent of the claim that legal transplants play an important role in legal change is Legrand (Graziadei 2019: 468), whose views are linked to those of Savigny (Siems 2019: 144) and Montesquieu

(Teubner 1998: 14). His position is both anti-instrumentalist and anti-formalist (Michaels 2013: 65).

Legrand (1997: 111–16, 2001: 55–60) is opposed to reducing law to rules and reducing rules to mere propositional statements. Such a model, he argues, must be broadly accepted by anyone who subscribes to the theory of legal transplants. Seen this way, law becomes an autonomous entity devoid of its historical, epistemological and cultural baggage – and thus can travel. In contrast to that, Legrand claims that a rule is more than its verbal content. It is a cultural form buttressed by ideological and historical formations. The meaning of a rule is its essential component and depends on the interpreter's epistemological assumptions, which are historically and culturally conditioned. The act of interpretation is thus embedded and guided by the Gadamerian 'pre-understanding'.

As the meaning given to a legal rule by a particular interpretive community is part of its essence, a meaningful legal transplant would only be feasible if both the propositional statement and the meaning, which together form a rule, were transferred from one culture to another. As the meaning is culture-specific, such transfer is difficult to imagine (Legrand 1997: 116–17, 2001: 60). 'At best, what can be displaced from one jurisdiction to another is, literally, a meaningless form of words' (Legrand 1997: 120, 2001: 63). Hence, according to Legrand (2015: 438–39, emphasis in the original):

'(...) laws do not travel or at least they do not travel *as such*. While ideas are freely borrowed across frontiers, when it comes to law acculturation ensures that the law there is "on arrival" is never the self-same law as the law there was "on departure" (...).'

Along the same lines, Carvalho (2019: 45) claims that the notion of legal transplants rests on the belief that the transfer of a legal institution will carry the entire background of locally and historically developed conceptual practices. Contrary to that, a legal institution's intertextuality to the web of local practices is likely to entail crucial changes in its conceptual grammar when the rule is detached from its cultural background.

A good example to illustrate this thesis is the propositional formula 'We the people', which has been replicated by constitution-makers around the world – from Albania to Liberia to Cambodia. Yet, even if the words are reused, the pronoun 'We' acquires a different

historical and political meaning depending on a particular national context (Frankenberg 2013: 25–26).

3.4 Intermediate approaches

There is not enough space here to cover in detail all alternative approaches to legal transplants. What is generally common to them is that they point to the complexity of legal transplants, transcending the culturalist, formalist and instrumentalist trichotomy.

An early contribution to the legal transplant debate is that of Kahn-Freund, who invoked the metaphor of transplantation virtually parallel to Watson (Cairns 2013: 642–44). While stating he did not wish to deter legislators from using comparative law, Kahn-Freund warned against the risk of rejection of transplanted laws, emphasising the need to know not only the foreign law but also its social and political context. As he put it, ‘we cannot take for granted that rules or institutions are transplantable’ (Kahn-Freund 1974: 27). Kahn-Freund proposed a metaphorical continuum reflecting different degrees of transplantability: from the mechanical insertion of a device (e.g. a carburettor) to transplanting a part of a living organism (e.g. a kidney) (Kahn-Freund 1974: 5–6; see also Van Hoecke 2014: 275).

Some scholars differentiate their views by proposing alternative terminology. For example, Örüçü (2002) prefers the term ‘transposition’, which expresses the need to adapt an institution or regulation to the host system’s particular socio-economic needs and culture. Teubner (1998) has proposed the term ‘legal irritant’, claiming that a foreign regulation imposed on a domestic culture triggers a series of new and unexpected events, or ‘irritates’ the existing arrangements. In this way, it leads to their reconstruction and to the reconstruction of the imported law itself. Curiously, Langer (2004), in his study on the transplantation of American plea bargaining to civil law jurisdictions, uses the metaphor of ‘legal translation’ to point to the transformations that legal concepts and institutions undergo when transferred between legal systems *qua* meaning-creating systems.

Challenging the legal origins theory (see Subsection 3.1), Berkowitz, Pistor and Richard (2003; see also Milhaupt and Pistor 2008: 203–12) demonstrate that the manner in which a particular country

received its formal law matters much more than the legal family it became part of. They argue that locally developed law leads to greater effectiveness of legal institutions. For legal transplants to work, they need to be adapted, or the population should already be familiar with their basic principles. Law is a cognitive institution, so laws compatible with the pre-existing social norms stand a greater chance of good reception.

4. The translatability debate in (legal) translation theory

Translatability has been an important theme in translation theory and philosophy, with the debates about it revolving around whether translation from one language into another is possible and, if so, to what degree or in what sense. Contrasting answers to these questions are given by the universalist and monadist views (Hermans 2011; see also Steiner 1975: 73–109). This discussion is also reflected in legal translation studies.

4.1 The universalist view

According to the universalist view, all languages can convey all possible meanings, even if they package them differently. Differences between languages are, therefore, on the surface. The dissociation between form and meaning is reflected by the conduit metaphor of language, according to which meaning is carried and can be preserved intact while it travels along its conduit. In this approach, translation just substitutes one carrier for another. Notably, the West has a long tradition of taking translatability for granted. An example is the Bible, which – read and disseminated in translation – implies that its truth can be expressed regardless of language (Hermans 2011: 300–301).

Translatability can also be defended on different grounds, focusing on the various tools available to translators when faced with legal and linguistic incongruity. Discussing translation in general, Tomaszewicz (1996: 126–40) states that the phenomenon of untranslatability is marginal in the entire translation theory, and there are no entirely untranslatable texts. In her view, translation is interpretive;

namely, it is about communicating sense rather than comparing languages. What matters is the appropriate selection of resources available in the target language and knowledge of cultural realities. The latter is necessary to explain the meaning or scope of concepts referring to the culture of the source text. Some useful techniques include borrowings, calques and compensation.

Hence, one can assume ‘that law is translatable despite the various inherent difficulties, and despite the often-heard claims to the contrary’ (Cao 2007: 5). Translation should not be guided by the search for identity but by the principle of equivalence of situations, be it dynamic, formal or other (Pieńkos 1999: 119).

4.2 The monadist view

The monadist view dates back to the German Romantics and was later taken up by Sapir and Whorf (the ‘Sapir-Worth hypothesis’). Particular attention to translation was paid by Derrida, who considered untranslatability a challenge that dares the translator to face the impossible (Hermans 2011: 301–3).

Notably, a strong untranslatability position has been taken by some comparative lawyers. As put by Glanert (2014: 1, emphasis in the original), ‘*Everything* is being translated. However, it remains the case that *nothing* is translatable’. Since languages do not have identical signification, law cannot be translated faithfully. Translation involves a process of interpretation, which is neither neutral nor objective. Quoting Derrida, she thus notes that translation necessarily implies transformation (Glanert 2014: 1–10).

Legrand (2015: 443–45), who also draws on Derrida’s philosophy, claims that ‘no foreign term is translatable as such’ (Legrand 2015: 443). Translating a term involves accepting that it is untranslatable. As the gap between languages is unbridgeable, translation cannot achieve sameness or synonymy. ‘Because translation cannot surpass iterability, that is, repetition with a difference, it thus registers a change. It is a difference-generating practice (...)’ (Legrand 2015: 444).

There are, however, limits to this ‘translational anarchism’. The existence of translation depends on its hearkening to the text, which means that an absurd rendition of a text could be said not to operate as its

translation (Glanert and Legrand 2013: 529). Yet, being inherently ‘maladjusted’, translation cannot be ‘true’. It can, at best, purport to ‘do justice to the text through a process of incessant negotiation with it’ (Glanert and Legrand 2013: 530).

A similarly radical view has been expressed by Chaffey (1997 in Szemińska 2017: 355):

‘As translators we all know deep in our hearts that legal translation is impossible. The very expression legal translation seems to be a contradiction in terms, and yet we do have to translate legislation and legal documents.’

4.3 Degrees of translatability

The empirical evidence of ever-present translation seems to demonstrate that translation is possible. Therefore, the argument on absolute untranslatability is not usually posited (Hermans 2011: 301). Similarly, according to Hejwowski (2006: 16, 21), the claim of absolute translatability would be unrealistic. Translation, as a form of linguistic communication, is complicated by linguistic and cultural differences and the presence of a third party, that is, the translator.

The question about the feasibility of legal translation may arise as one realises its particular challenges (Ainsworth 2014: 47). Therefore, many authors – without questioning translatability in principle – point to its limitations.

Hendry (2014: 99–100), for instance, notes that although some deep structures of law are untranslatable, partial understanding is better than none. Rather than asking about the possibility or impossibility of translation, one should ask how translation can be satisfactorily operationalised, bearing in mind its constraints.

Bercea (2014: 148–52) claims that the actual limit of a translator’s capabilities is determined by extreme cases of the so-called ‘legal culturemes’, the smallest units of language important from the point of view of the identity of a given legal culture. The risks involved in translating legal culturemes include unauthenticity, inappropriateness, aleatoricism, meaning loss or artificial meaning gain, xenocentrism or ethnocentrism, etc. A solution to the apparent impossibility of legal

translation is negotiation, with formal correspondence being replaced by dynamic or functional equivalence.

Gémar (2014: 72–73, 76) distinguishes three groups of terms: terms for which equivalence is obvious, terms for which equivalence is only partial, and terms that cannot be translated. The first two categories make it possible to achieve functional equivalence; the last one forces the translator to borrow foreign words. There are degrees of equivalence, and perfect equivalence in legal translation cannot be achieved.

Along the same lines, some authors distinguish a category of ‘terms with no equivalents’ (Kierzkowska 2002: 113–23), or terms ‘for which equivalence is not the aim’ (Soriano-Barabino 2016: 164–65). When no natural equivalents are available in the target system, such terms, for instance the names of institutions specific to a particular legal system, require other translation techniques.

Kielar (2013: 89–91) – referring to translation in general – considers it the most reasonable to adopt degrees of translatability. This means that a text can be more or less translatable but not completely translatable or completely untranslatable. Relative linguistic untranslatability occurs when the source language contains a certain formal feature that the target language does not have, e.g. due to polysemy or homophony. Even in such cases, satisfactory results can often be achieved through slightly changed wordplay, and cultural and linguistic differences can be explained using comments or paraphrases.

5. (Un)transplantability and (un)translatability juxtaposed

The above outline of the transplantability and translatability debates in comparative law and legal translation studies brings to light some more or less evident parallels and commonalities between them.

5.1 A dispute over words or substance?

The most apparent connection between the debates is probably the personal one. Legrand has contributed to both debates, taking the extreme

untransplantability and untranslatability positions. His views seem an obvious starting point for the discussion to follow.

When responding to Legrand's criticism, Watson (2006: 10) identifies a reason for the misunderstanding between the scholars as follows:

'I suspect that Pierre Legrand's exaggerated emphasis on my interest in rules is because rules very obviously can be, and are, copied from those of another society. But this copying would not for him (I think) be a transplant because the cultural ethos of the two societies are different. If I am correct then to a large extent he and I are talking at cross-purposes, using the word "transplant" in different senses.'

This diagnosis is correct, as Legrand acknowledges that imports of words take place between legal systems² (Legrand 1997: 117, 2001: 61) but does not consider rules to consist of words only. If a legal transplant denotes carrying a rule understood as words plus meaning, it cannot happen, as meanings are culturally embedded.

On the face of it, the argument over the possibility of legal transplants is superficial, revolving around whether one calls the borrowing of legislative or jurisprudential language between legal systems 'legal transplant' or not. Indeed, the term 'legal transplant' has also been contested by some authors taking the middle-ground position (see Subsection 3.4), and arguments over which metaphor describes the phenomenon better are even referred to as 'the battle of metaphors' (Perju 2012: 1306–8).

It is, however, important not to exaggerate the significance of metaphors. All metaphors are misleading in some respect, and different metaphors can be used for different purposes (Nelken 2001: 16–21, 30–31). It should be noted that most comparative lawyers nowadays keep using the term 'legal transplant' (Husa 2018: 136). It seems to be treated as a generic reference, not necessarily a manifestation of any specific theory.

Even if the use of words considerably contributes to the Watson-Legrand controversy (Harding 2021: 14–15), the debate between them is more than purely a matter of varying terminology. One cannot fail to note that Legrand's critique reinvigorated interest in legal transplants in the 1990s – notably the time when the debate over legal culture was on the

² Accordingly, Watson does not deny modification of transplanted laws (see Subsection 3.2).

rise (Cairns 2013: 683). The substantive outcome of the Watson-Legrand debate is best summarised by Frankenberg (2013: 8):

‘Whatever Watson and Legrand may have intended with their comparative projects, they certainly did polarize the field of comparative legal studies and succeeded in elucidating that the transfer of law cannot be treated as a factual given but is deeply problematic and calls for theoretical and methodological assistance that has to move beyond the stand-off between textualism/formalism versus contextualism.’

Is the translatability debate about words, substance or – like the legal transplants debate – about both? Certainly, as observed in the literature, it matters how one understands the terms ‘translation’ (Hermans 2011: 300) and ‘translatability’. Claiming that a certain word is translatable may imply a specific definition of translation – which leads to tautology (Ng 2014: 50).

Starting from Legrand again, his view on untranslatability seems to rest on the assumption that ‘true’ translation, were it possible, would allow the same meaning to be carried between the source and target texts. This perfectly matches his argument concerning legal transplants (which, to wit, he compares to literary translation³). If legal transplants were possible, they would allow the same rule (understood as the propositional statement and its cultural baggage) to be carried from one legal system to another.

Like the term ‘legal transplant’, ‘legal translation’ can be understood differently. Among the authors advocating (limited) translatability, barely anyone assumes that legal translation is intended to carry unchanged meanings. Rather, it is taken to be an approximation and the outcome of a compromise (Gémar 2014: 81). It takes place in a continuum and ‘is not solely the question of crossing languages or the question of identity or synonymy’ (Cao 2007: 33). Due to the incongruity of different legal systems’ terminology, legal translators cannot be expected to use conceptually identical natural equivalents. ‘Near equivalence’ seems the best that can be achieved (Šarčević 1997: 233–39).

³ ‘Literary translation is neither mere interpretation of the original text nor mere departure or license from the original (...) It shares these key features with legal borrowing, which also exemplifies the openness of law to transformation and renewal and its inherent inexhaustibility’ (Legrand 2005: 42).

This confirms that the advocates of translatability and untranslatability of law – just like participants in the legal transplants debate – argue over definitions. Neither in this case, however, is the debate about words only. Indeed, the proponents of untranslatability raise important and thought-provoking questions. While, as suggested above – theoretically – hardly anyone needs to be convinced that identity between the source and target texts is unattainable in legal translation (an exception is perhaps the concept of ‘total equivalence’ (Cheng and Sin 2008)), it should be admitted that legal translation practice has long been influenced by the doctrine of textual fidelity (Wolff 2011: 16.4.1; see also Šarčević 1997: 16, 23–41). In parallel to the legal culture debate, emphasis on the cultural incompatibility between legal languages can be considered part of the wider cultural turn in translation studies (see Munday 2008: 124–25).

In the same vein, the views of postmodern scholars also constitute an important corrective for the doctrine of equivalent effect⁴. This is a bolder approach compared to the textual fidelity doctrine but still carries the risks of assuming that there are fixed and discoverable legal meanings (Wolff 2011: 16.4.2). Thus it may fail to realise the indeterminacy of law, language and translation (Joseph 1995: 34).

Hence, the untransplantability and untranslatability arguments, even if one finds them extreme, have the important value of reminding legal and translation scholars that neither laws nor legal terms can be easily transmitted between legal systems and legal languages.

5.2 Any way beyond contradictions?

It seems useful to consider whether the intermediate positions adopted in both research streams can help find a way beyond the terminological contradictions to shift greater attention to substantive issues.

Some interesting observations can be made by analysing the views of the translation scholars who try to qualify translatability (see

⁴ Noteworthy is, in particular, the influential concept of functional equivalence, directly related to the functional method in comparative law (Kusik 2023a: 200–202; see Šarčević 1997: 235–49). The functional method is challenged by postmodern comparatists (see Samuel 2014: 108–20), and the limitations of using functional equivalents in legal translation, already recognised by Šarčević (1997: 236), have been elaborated on by Doczekalska (2013).

Subsection 4.3)⁵. By arguing that the most culture-bound terms are untranslatable, they make two questionable assumptions.

First, the claim that some words are translatable as opposed to others implies that these words have obvious equivalents in other languages. As language is interrelated with culture (Bermann 2005: 3–4), assuming the obviousness of *any* equivalents seems risky. For instance, foreign language terms corresponding to the word ‘death’, apparently easily ‘translatable’, will be given different meanings in different legal systems depending on whether death is associated with the ceasing of brain or heart functions (Sacco 1991: 13).

Secondly, these authors appear to assume that legal translation is predominantly about finding natural equivalents (*n.b.* the concept of ‘terms with no equivalents’, mentioned in Subsection 4.3). *Ergo*, a source term is untranslatable if its equivalent cannot be found in the target legal system. This assumption ignores – or at least undermines – some other techniques in the translator’s toolbox, including lexical expansion, paraphrases, neutral terms, borrowings, neologisms (Šarčević 1997: 250–63) and translator notes (Kierzkowska 2002: 85; Lenzen 2011). Using these techniques – even leaving the source word ‘untranslated’ and adding a note – is part of translation, for it requires from the translator a particular decision-making process. Consequently, such techniques should not be treated as signs of a translator’s failure or powerlessness (*cf.* Bercea 2014: 150–52) but rather as an exercise of his or her skill and responsibility.

The above critique implies a universalist (but not thoughtless) proposition that everything is translatable – which obviously and tautologically (like any other view on (un)translatability) is predicated on a certain definition of translation. Namely, if legal translation is not about identicalness or about natural equivalents only, every text can be translated somehow, with the translator trying to build a certain relationship (ensure equivalence) between the source and target texts. In this sense, translatability can be defined as ‘the capacity of meaning to be transferred from one language to another without undergoing *fundamental change*’ (Palumbo 2009: 121, *emphasis added*).

Assuming the above view, the debate over the incongruity of legal languages is indeed moved to a different plane, namely that of

⁵ Likewise, the comparative lawyers who take the middle ground qualify transplantability (see Subsection 3.4).

equivalence – and essentially concerns the question of under what conditions ‘X can be used to translate Y’ (Šarčević 1997: 234).

It might be the present author’s personal preference, but this perspective seems less exposed to contradictions (i.e. the view that translation is impossible but one must translate anyway (Glanert 2014: 10)) and more appreciative of the legal translator profession. Avoiding the pejorative, resigned language of ‘untranslatability’ or ‘impossibility’ helps see the diversity of legal languages and legal cultures as a value that challenges the translator rather than as a barrier or symbol of failure.

While the above considerations do not have exact counterparts in the transplantability debate, they – in a more general sense – point out that the terminology used, even if relative, matters.

This could be referred to the criticisms levelled at Legrand, who has been accused of inconsistency in claiming that legal transplants are impossible and, at the same time, arguing against their undesirable outcomes, that is, the threat they pose to the integrity of legal cultures⁶ (Michaels 2013: 64–65). Empirical evidence of ample borrowing between legal systems can also be adduced to demonstrate the apparent fallacy of the untransplantability thesis. To avoid such contradictions, it can be assumed – without giving up arguments on the lack of identity between the source and transplanted rules – that a legal transplant does not presuppose identity (just like translation does not create perfect synonymy).

In the case of the legal transplant debate, the discussion can be transferred from the level of transplantability to the level of ‘fit’, namely the degree of the necessary ‘adaptation of the transplanted law to the socio-economic and political environment of the recipient jurisdiction’ (Dufková 2022: 52).

To summarise, the claims of the impossibility of legal transplants or untranslatability are both prone to apparent contradictions and will be dismissed by some with arguments pointing to empirical evidence of omnipresent transplants and translations. Their authors obviously do not question this empirical reality (Legrand (2005: 42) even states that ‘legal borrowing is necessary’). What is most valuable in the scholarship raising these apparently extreme views is not contestation over terminology but the emphasis it places on the need for cultural sensitivity. Rather than

⁶ Legrand’s attack on legal transplants can be related to his opposition to the idea of a common civil code for the EU (Watson 2006: 4).

being challenged as inadequately accounting for everyday reality (cf. Kjær 2008: 72), such theories deserve thorough consideration. Regrettably, the crucial points they raise may be ignored or overlooked just because of the strong language⁷. This also raises the question of whether there is a point in arguing over such terms as ‘legal transplants’ or ‘translatability’.

5.3 Legal transplants and legal translation as interrelated phenomena

One last point in comparing both research streams is the direct interrelatedness of legal transplants and legal translation. As stated in the introduction, legal transplants typically entail translation efforts. It seems that both comparative lawyers and legal translation practitioners and scholars should be mutually aware of the respective challenges involved in the processes of legal transplantation and legal translation. These challenges, as the above discussion suggests, go to the essence of the transplantability and translatability debates.

Comparative lawyers should realise that translation itself may lead to differences between the source law in the donor legal system and the transplanted law in the host system (Fedtke 2006: 435–36). Translation theory may thus, in more general terms, warn about the complexity of crossing boundaries between legal systems. As aptly put by Ainsworth (2014: 52):

‘Yet, the same lessons learned from translation theory that so bedevil the attempts to create equivalence in texts in legal translation also suggest that the process of legal globalization will be more complex and less one-sided than the champions of legal convergence applaudingly predict and the critics of legal imperialism harshly denounce.’

This should, at the same time, involve the recognition of the role of a legal translator as ‘an active participant in legal communication’ (Šarčević 1997: 3) and of the value of a professional legal translator’s competence (Kusik 2023b).

⁷ Notably, Legrand has antagonised part of comparative law scholarship (Jońca and Zimmermann 2023: 259–60).

Translators, in turn, must stay alert to the changes that transplanted laws undergo – even if transplants do not entail translation – not to let themselves be deceived by ‘a false sense of familiarity’ (Brand 2009: 24–25). An interesting example is the borrowing of the U.S. limited liability partnership into different jurisdictions, including Poland, the U.K. and Germany, where the target institutions assumed quite different characteristics. This raises serious doubts about the possibility of using their names as translation equivalents (Kusik 2024b).

6. Conclusions

The present paper has shown that legal translation and legal transplants not only often co-occur but also raise similar conceptual challenges related to crossing boundaries between legal systems and legal languages. In the case of legal translation, this happens when the translator attempts to communicate the legal sense of the source text (term) through the target text (term). In legal transplantation, this is when an attempt is made to use a certain legal idea from one legal system in another. As for the first research question, the above is the most obvious and general similarity between the translatability and transplantability debates. It is also a guiding idea for comparing them in greater detail.

An obvious similarity between these two research streams is definitional incompatibility. The most apparent reason why there are scholars arguing that legal transplants are perfectly possible and those who claim the opposite and – accordingly – scholars considering law translatable or untranslatable is that these authors subscribe to different definitions of ‘legal transplants’ and ‘legal translation’, respectively. The advocates of untransplantability and untranslatability (with Legrand representing both ‘camps’) seem to assume that legal transplants and ‘true’ legal translation would carry identical meanings. Since such a ‘lossless’ transfer across cultural barriers is unattainable, neither legal translation nor legal transplants are possible⁸. This group is confronted by

⁸ To be sure, these authors do not deny the empirical reality to which these concepts refer. In the case of legal transplants, they challenge the term ‘legal transplant’. In the case of legal translation, they prefer to say that legal translation is impossible but, paradoxically, must be performed.

those who do not assume that legal translation or legal transplants presuppose the identity of meaning.

In neither debate is the controversy limited to words only. What the proponents of the untransplantability and untranslatability theses do is to reiterate the cultural complexity of the respective phenomena. They thus emphasise that the boundary between legal systems and legal languages is not easily crossed. Even if their opponents do not, in principle, deny this, Legrand and similar-thinking scholars provide a vital corrective so that this cultural complexity is not forgotten – especially in the formalist and instrumentalist approaches to legal transplants and the doctrines of textual fidelity and equivalent effect in legal translation.

Another similarity between the research streams is that in both, multiple authors try to go beyond the black-and-white distinctions. Some of them propose alternatives to the metaphor of legal transplants or suggest that there are degrees of translatability.

Notwithstanding the above parallels, one must recognise some differences between both debates. First, while legal translation and legal transplants are often interrelated, they are not the same phenomena – and they are studied by the distinct fields of legal translation studies and comparative law. Each of these fields has its own methods, approaches and perspectives. Moreover, considerations concerning the adaptability of transplanted law to the host environment are obviously not the same as those concerning the reception of a target text by its readers.

Both similarities and differences can be observed in how the debates are structured. The legal transplant debate is trifurcated into the instrumental, formalist and culturalist approaches. The first two, however, may be put under the ‘transplantability’ heading. In the case of the translatability debate, there seem to be two main opposing approaches: translatability and untranslatability. However, at the level of legal translation doctrines, there are, in fact, three: textual fidelity, equivalent effect and ethical intervention (Wolff 2011: 16.4). The first two seem to be associated with the idea of translatability, while the latter can be linked to the untranslatability thesis. Due to subject-matter differences, it would be difficult to match them up directly with the approaches in the legal transplants debate, but their general perspectives of law can be linked. Namely, a formalist perspective can be identified in the formalist approach to transplants and the textual fidelity doctrine; a functionalist perspective – in the instrumentalist approach to transplants and the equivalent effects doctrine; and a culturalist perspective – in the culturalist approach to transplants and the ethical intervention doctrine.

Regarding the second research question, due to the similarities between the transplantability and translatability debates indicated above, comparative law and legal translation studies can draw valuable conclusions from each other's perspectives and from their juxtaposition. First, it has been shown that placing too much emphasis on words, i.e. arguing whether one should speak of legal transplants or translatability, may overshadow the important substantive points raised in the debates. Even if using such phrases as 'the impossibility of legal transplants' (Legrand 1997) or 'making the impossible possible' (Glanert 2014: 10) is, for some, rhetorically attractive and thought-provoking, some others might outright ignore or reject these apparently extreme positions.

A useful lesson can thus be to transfer the debates from the levels of transplantability and translatability to the more suitable and perhaps less terminologically sensitive planes of 'fit' and equivalence, respectively. The two are the core issues in the respective debates, raising questions of whether and how a foreign law can be adapted to the circumstances of the host jurisdiction and whether and how certain linguistic formulations can convey the legal sense of the source text.

Furthermore, a realisation of the difficulties involved in the translation and transplantation of law may mutually alert comparative lawyers and legal translators to the need to pay special attention to the inherently intertwined incongruity of legal systems and legal languages. This is of particular importance when legal transplantation and legal translation co-occur in the same processes, i.e. when foreign materials must be translated to make the borrowing of foreign legal ideas possible. In this case, the theoretical considerations concerning transplantability and translatability have an important contribution to make in the very practice of law-making and translation.

To summarise, this paper elucidates but one specific point of contact between legal translation studies and comparative law, demonstrating how the approaches of these domains can be useful for each other at theoretical and practical levels. While definitely more research is needed into their shared areas of interest, it is hoped that this paper – by showing how the concept of legal transplants can be related to the concept of translatability – will bring closer comparative lawyers and legal translation scholars and practitioners. They have ample, perhaps not yet discovered, opportunities to search for ideas in their respective intellectual repertoires, for which the common denominator is law – inherently embodied in language.

Conflict of Interest Statement

The author declares no conflicts of interest to disclose related to this manuscript. If any conflicts arise in the future, the Author will promptly inform the journal.

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The author confirms that artificial intelligence (AI) tools were not used in any aspects of this research.

Bibliography

- Ainsworth, J. (2014). Lost in translation? Linguistic diversity and the elusive quest for plain meaning in the law. In L. Cheng, K. K. Sin, & A. Wagner (Eds.), *The Ashgate handbook of legal translation* (pp. 43–55). Ashgate.
- Ajani, G. (1995). By chance and prestige: Legal transplants in Russia and Eastern Europe. *The American Journal of Comparative Law*, 43(1), 93–117. <https://doi.org/10.2307/840578>
- Alcaraz Varó, E., & Hughes, B. (2002). *Legal translation explained*. St Jerome Publishing.
- Bakardjieva Engelbrekt, A. (2015). Economic and legal discourses on legal transplants: Lost in translation? *Law and Development*, 60, 111–142.
- Baron de Montesquieu, C. de S. (2001). *The spirit of laws*. Batoche Books.
- Bercea, R. (2014). The powerless translator: An argument based on legal culturemes. In S. Glanert (Ed.), *Comparative law – Engaging translation* (pp. 140–154). Routledge.
- Berkowitz, D., Pistor, K., & Richard, J.-F. (2003). The transplant effect. *The American Journal of Comparative Law*, 51(1), 163–203. <https://doi.org/10.2307/3649143>

- Bermann, S. (2005). Introduction. In S. Bermann & M. Wood (Eds.), *Nation, language, and the ethics of translation* (pp. 1–10). Princeton University Press.
- Bestué, C. (2019). A matter of justice: Integrating comparative law methods into the decision-making process in legal translation. In Ł. Biel, J. Engberg, M. R. Martín Ruano, & V. Sosoni (Eds.), *Research methods in legal translation and interpreting* (pp. 143–169). Routledge.
- Biel, Ł. (2008). Legal terminology in translation practice: Dictionaries, Googling or discussion forums? *SKASE Journal of Translation and Interpretation*, 3(1), 22–38.
- Bobrzyński, M. (1922). O dawnym prawie polskiem, jego nauce i umiejętnem badaniu. In *Szkice i studia historyczne* (Vol. 2, pp. 298–375). Krakowska Spółka Wydawnicza.
- Bogdan, M. (2013). *Concise introduction to comparative law*. Europa Law Publishing.
- Brand, O. (2009). Language as a barrier to comparative law. In F. Olsen, A. Lorz, & D. Stein (Eds.), *Translation issues in language and law* (pp. 18–34). Palgrave Macmillan.
- Cairns, J. W. (2013). Watson, Walton, and the history of legal transplants. *Georgia Journal of International & Comparative Law*, 41, 637–696.
- Cao, D. (2007). *Translating law*. Multilingual Matters.
- Carvalho, J. (2019). Law, language, and knowledge: Legal transplants from a cultural perspective. *German Law Journal*, 20(1), 21–45. <https://doi.org/10.1017/glj.2019.4>
- Cheng, L., & Sin, K. K. (2008). Terminological equivalence in legal translation: A semiotic approach. *Semiotica*, 2008(172), 33–45. <https://doi.org/10.1515/SEMI.2008.088>
- Chromá, M. (2014). Making sense in legal translation. *Semiotica*, 201, 121–144. <https://doi.org/10.1515/sem-2014-0018>
- Corrin, J. (2021). Transplant shock: The hazards of introducing statutes of general application. In V. Breda (Ed.), *Legal transplants in East Asia and Oceania* (pp. 34–62). Cambridge University Press.
- de Cruz, P. (1999). *Comparative law in a changing world*. Cavendish Publishing.
- Doczekalska, A. (2013). Comparative law and legal translation in the search for functional equivalents – Intertwined or separate domains. *Comparative Legilinguistics*, 16, 63–76. <https://doi.org/10.14746/cl.2013.16.5>
- Dufková, B. (2022). *Success in legal transplanting* [Rigorózní práce, Univerzita Karlova].

- Dullion, V. (2015). Droit comparé pour traducteurs: De la théorie à la didactique de la traduction juridique. *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, 28(1), 91–106. <https://doi.org/10.1007/s11196-014-9360-2>
- Eberle, E. J. (2011). The methodology of comparative law. *Roger Williams University Law Review*, 16(1), 51–72.
- Engberg, J. (2002). Legal meaning assumptions – What are the consequences for legal interpretation and legal translation? *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, 15(4), 375–388.
- Engberg, J. (2020). Comparative law for legal translation: Through multiple perspectives to multidimensional knowledge. *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, 33(2), 263–282. <https://doi.org/10.1007/s11196-020-09706-9>
- Fedtko, J. (2006). Legal transplants. In J. M. Smits (Ed.), *Elgar encyclopedia of comparative law* (pp. 434–437). Edward Elgar.
- Ferreri, S. (2022). The unpredictable path of legal transplants: Some analogy with language evolution. *Comparative Law and Language*, 1(1), 60–73. <https://doi.org/10.15168/cll.v1i1.2204>
- Frankenberg, G. (2010). Constitutional transfer: The IKEA theory revisited. *International Journal of Constitutional Law*, 8(3), 563–579. <https://doi.org/10.1093/icon/moq023>
- Frankenberg, G. (2013). Constitutions as commodities: Notes on a theory of transfer. *Comparative Law Review*, 4(1), 1–30.
- Gémar, J.-C. (2014). Catching the spirit of the law: From translation to co-drafting. In S. Glanert (Ed.), *Comparative law – Engaging translation* (pp. 67–84). Routledge.
- Glanert, S. (2014). Translation matters. In S. Glanert (Ed.), *Comparative law – Engaging translation* (pp. 1–19). Routledge.
- Glanert, S., & Legrand, P. (2013). Foreign law in translation: If truth be told... In M. Freeman & F. Smith (Eds.), *Law and language* (pp. 513–532). Oxford University Press.
- Graziadei, M. (2019). Comparative law, transplants, and receptions. In M. Reimann & R. Zimmermann (Eds.), *The Oxford handbook of comparative law*. Oxford University Press.
- de Groot, G.-R. (1987). Problems of legal translation from the point of view of a comparative lawyer: Seven theses for the XIth World Conference of Federation Internationale Des Traducteurs. *Van Taal Tot Taal*, 31(4), 189–189.
- de Groot, G.-R. (2006). Legal translation. In J. M. Smits (Ed.), *Elgar encyclopedia of comparative law* (pp. 423–433). Edward Elgar.

- Harding, A. (2021). The legal transplants debate: Getting beyond the impasse. In V. Breda (Ed.), *Legal transplants in East Asia and Oceania* (pp. 13–33). Cambridge University Press.
- Hejwowski, K. (2006). *Kognitywno-komunikacyjna teoria przekładu*. Wydawnictwo Naukowe PWN.
- Hendry, J. (2014). Legal comparison and the (im)possibility of legal translation. In S. Glanert (Ed.), *Comparative law – Engaging translation* (pp. 87–100). Routledge.
- Hermans, T. (2011). Translatability. In M. Baker & G. Saldanha (Eds.), *Routledge encyclopedia of translation studies* (pp. 300–303). Routledge.
- Husa, J. (2018). Developing legal system, legal transplants, and path dependence: Reflections on the rule of law. *Chinese Journal of Comparative Law*, 6(2), 129–158.
<https://doi.org/10.1093/cjcl/cxy008>
- Husa, J. (2022). *Interdisciplinary comparative law: Rubbing shoulders with the neighbours or standing alone in a crowd*. Edward Elgar Publishing.
- Husa, J. (2023). Critical approaches to comparative legal linguistics. In A. Wagner & A. Matulewska (Eds.), *Research handbook on jurilinguistics* (pp. 52–69). Edward Elgar.
- Jamieson, N. J. (2011). Legal transplants: Word-building and word-borrowing in Slavic and South Pacific legal discourse. *Victoria University of Wellington Law Review*, 42(2), 417–458.
<https://doi.org/10.26686/vuwlr.v42i2.5123>
- Jońca, M., & Zimmermann, R. (2023). Istnieje wiele dróg pozwalających zbliżyć się do prawdy. *Zeszyty Prawnicze*, 23(2), 257–274.
<https://doi.org/10.21697/zp.2023.23.2.10>
- Joseph, J. (1995). Indeterminacy, translation and the law. In M. Morris (Ed.), *Translation and the law* (pp. 13–36). John Benjamins Publishing.
- Kahn-Freund, O. (1974). On uses and misuses of comparative law. *Modern Law Review*, 37(1), 1–27.
- Kielar, B. (1977). *Language of the law in the aspect of translation*. Wydawnictwo Uniwersytetu Warszawskiego.
- Kielar, B. (2013). *Zarys translatoryki*. Wydawnictwo Naukowe Instytutu Kulturologii i Lingwistyki Antropocentrycznej, Uniwersytet Warszawski.
- Kierzkowska, D. (2002). *Thumaczenie prawnicze*. Wydawnictwo TEPIS.
- Kischel, U. (2019). *Comparative law*. Oxford University Press.
- Kjær, A. L. (2008). The every-day miracle of legal translation. *International Journal for the Semiotics of Law – Revue*

- internationale de Sémiotique juridique*, 21, 67–72.
<https://doi.org/10.1007/s11196-007-9057-x>
- Król, M. Z. (2010). Legal culture and legal transplants. In B. Lewaszkiewicz-Petrykowska (Ed.), *Rapports Polonais XVIIIe Congrès International de droit comparé XVIIIth Congress of Comparative Law Washington*, 25.VII–1.VIII.2010 (pp. 7–16). Wydawnictwo Uniwersytetu Łódzkiego.
- Künnecke, M. (2013). Translation in the EU: Language and law in the EU's judicial labyrinth. *Maastricht Journal of European and Comparative Law*, 20(2), 243–260.
- Kusik, P. (2023a). The right to the environment? Article 4(1) of the Polish Environmental Protection Law Act from a combined comparative law and Polish-English legal translation perspective. *Comparative Legilinguistics*, 56, 195–221.
<https://doi.org/10.14746/cl.56.2023.3>
- Kusik, P. (2023b). Tłumacz prawniczy czy prawnik tłumacz? Rozważania na temat relacji pojęć „tłumacz prawniczy” i „prawnik” w kontekście tzw. myślenia prawniczego. *Rocznik Przekładoznawczy*, 18, 95–113.
<https://doi.org/10.12775/RP.2023.004>
- Kusik, P. (2024a). Comparative law in the eyes of translation scholars: Is legal translation really an exercise of comparative law? *Hermes Journal of Language and Communication in Business*, 64, 111–124. <https://doi.org/10.7146/hjlc.vi64.147304>
- Kusik, P. (2024b). Legal transplants and legal translation: A case study of the borrowing of the U.S. limited liability partnership into the Polish legal system. *Perspectives*, 33(5), 930–945.
<https://doi.org/10.1080/0907676X.2024.2331189>
- La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2008). The economic consequences of legal origins. *Journal of Economic Literature*, 46(2), 285–332. <https://doi.org/10.1257/jel.46.2.285>
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. V. (1996). *Law and finance: NBER Working Paper 5661*. NBER Working Papers.
https://www.nber.org/system/files/working_papers/w5661/w5661.pdf
- Langer, M. (2004). From legal transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure. *Harvard International Law Journal*, 45(1), 1–64.
- Legrand, P. (1997). The impossibility of “legal transplants.” *Maastricht Journal of European and Comparative Law*, 4(2), 111–124.

- Legrand, P. (2001). What “legal transplants”? In J. Feest & D. Nelken (Eds.), *Adapting legal cultures* (pp. 55–70). Hart Publishing.
- Legrand, P. (2005). Issues in the translatability of law. In S. Bermann & M. Wood (Eds.), *Nation, language, and the ethics of translation* (pp. 30–50). Princeton University Press.
- Legrand, P. (2015). Negative comparative law. *Journal of Comparative Law*, 10(2), 405–454.
- Lenzen, T. (2011). La note du traducteur en traduction judiciaire: Entre exégèse et rajout. *Revue internationale d'Études en Langues Modernes Appliquées*, 4, 201–208.
- Matulewska, A. (2007). *Lingua legis in translation: English-Polish and Polish-English translation of legal texts*. Peter Lang.
- Menski, W. (2006). *Comparative law in a global context: The legal systems of Asia and Africa*. Cambridge University Press.
- Michaels, R. (2013). “One size can fit all” – Some heretical thoughts on the mass production of legal transplants. In G. Frankenberg (Ed.), *Order from transfer: Comparative constitutional design and legal culture* (pp. 56–78). Edward Elgar.
- Milhaupt, C. J., & Pistor, K. (2008). *Law and capitalism: What corporate crises reveal about legal systems and economic development around the world*. University of Chicago Press.
- Munday, J. (2008). *Introducing translation studies: Theories and applications*. Routledge.
- Nelken, D. (2001). Towards a sociology of legal adaptation. In J. Feest & D. Nelken (Eds.), *Adapting legal cultures* (pp. 7–54). Hart Publishing.
- Ng, K. H. (2014). Legal translation and the problem of heteroglossia. In S. Glanert (Ed.), *Comparative law – Engaging translation* (pp. 49–66). Routledge.
- Örücü, E. (2002). Law as transposition. *The International and Comparative Law Quarterly*, 51(2), 205–223.
- Palumbo, G. (2009). *Key terms in translation studies*. Continuum.
- Perju, V. (2012). Constitutional transplants, borrowings and migrations. In M. Rosenfeld & A. Sajó (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 1304–1327). Oxford University Press.
- Pieńkos, J. (1999). *Podstawy juryslingwistyki: Język w prawie – prawo w języku*. Muza.
- Pommer, S. (2006). *Rechtsübersetzung und Rechtsvergleichung: Translatologische Fragen zur Interdisziplinarität*. Peter Lang.
- Pozzo, B. (2012). Comparative law and language. In M. Bussani & U. Mattei (Eds.), *The Cambridge companion to comparative law* (pp. 88–113). Cambridge University Press.

- Pozzo, B. (2019). Legal transplant and legal translation: How language impacts on the reception of foreign legal models. In I. Simonnæs & M. Kristiansen (Eds.), *Legal translation: Current issues and challenges in research, methods and applications* (pp. 65–86). Frank & Timme.
- Prieto Ramos, F. (2011). Developing legal translation competence: An integrative process-oriented approach. *Comparative Legilinguistics*, 5, 7–22. <https://doi.org/10.14746/cl.2011.5.01>
- Prieto Ramos, F. (2014). Legal translation studies as interdiscipline: Scope and evolution. *Meta*, 59(2), 260–277. <https://doi.org/10.7202/1027475ar>
- Sacco, R. (1991). Legal formants: A dynamic approach to comparative law (Installment I of II). *The American Journal of Comparative Law*, 39(1), 1–34. <https://doi.org/10.2307/840669>
- Samuel, G. (2014). *An introduction to comparative law theory and method*. Hart Publishing.
- Šarčević, S. (1997). *New approach to legal translation*. Kluwer Law International.
- Schroth, P. (1986). Legal translation. *The American Journal of Comparative Law*, 34(Suppl. 1), 47–65.
- Siems, M. (2019). *Comparative law*. Cambridge University Press.
- Soriano-Barabino, G. (2016). *Comparative law for legal translators*. Peter Lang.
- Steiner, G. (1975). *After Babel: Aspects of language and translation*. Oxford University Press.
- Szemińska, W. (2017). Helping the translator choose: The concept of a dictionary of equivalents. *Journal of Linguistics/Językovedný Casopis*, 68(2), 355–363. <https://doi.org/10.1515/jazcas-2017-0045>
- Teubner, G. (1998). Good faith in British law or how unifying law ends up in new divergences. *The Modern Law Review*, 61(1), 11–32.
- Tokarczyk, R. (1999). *Komparatystyka prawnicza*. Zakamycze.
- Tomaszkiewicz, T. (1996). Proces przekładu: Fazy i elementy składowe. In A. Pisarska & T. Tomasziewicz (Eds.), *Współczesne tendencje przekładoznawcze* (pp. 75–236). Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza.
- Van Hoecke, M. (2014). Legal culture and legal transplants. In R. Nobles & D. Schiff (Eds.), *Law, society and community* (pp. 273–291). Ashgate.
- Watson, A. (1981). *The making of the civil law*. Harvard University Press.
- Watson, A. (1993). *Legal transplants: An approach to comparative law*. University of Georgia Press.

- Watson, A. (1995). From legal transplants to legal formants. *American Journal of Comparative Law*, 43(3), 469–476.
- Watson, A. (2001). *Society and legal change*. Temple University Press.
- Watson, A. (2006). *Legal transplants and European private law*. Alan Watson Foundation. http://awf.ius.bg.ac.rs/legal_transplants.pdf
- Wolff, L. (2011). Legal translation. In K. Malmkjær & K. Windle (Eds.), *The Oxford handbook of translation studies* (pp. 228–242). Oxford University Press.
- Zweigert, K., & Kötz, H. (1998). *An introduction to comparative law*. Oxford University Press.