

Giornale di
Storia
costituzionale

n. 30 / II semestre 2015

CONSTITUTIONAL POLYMORPHISM.
HISTORICAL PARADIGMS AND CONSTITUTIONAL SHAPES

*Polimorfismo costituzionale. Paradigmi storici
e modelli costituzionali*



eum > edizioni università di macerata

Giornale di Storia costituzionale / Journal of Constitutional History
n. 30 / II semestre 2015 Issue n° 30 / 2nd semester 2015

Chief Editors

Luigi Lacchè, Roberto Martucci, Luca Seuccimarra

International Board

Bruce Ackerman (University of Yale), Vida Azimi (CNRS-Cersa, Paris II), Bronislaw Backo (Université de Genève), Olivier Beaud (Université Paris II, Panthéon-Assas), Giovanni Busino (Université de Lausanne), Bartolomé Clavero (Universidad de Sevilla), Francis Delperée (University of Leuven), Alfred Dufour (Université de Genève), Dieter Grimm (Wissenschaftskolleg zu Berlin), António Manuel Hespanha (Universidade Nova de Lisboa), Martti Koskenniemi (University of Helsinki), Lucien Jaume (CNRS-Cevipof, Paris), Peter L. Lindseth (University of Connecticut), Martin Loughlin (London School of Economics & Political Science), Heinz Mohnhaupt (Max-Planck Institut für Europäische Rechtsgeschichte, Frankfurt am Main), Peter S. Onuf (University of Virginia), Michel Pertué (Université d'Orléans), Jack Rakove (University of Stanford), Dian Schefold (Universität zu Bremen), Michael Stolleis (Max-Planck-Institut für Europäische Rechtsgeschichte, Frankfurt am Main), Gunther Teubner (Goethe Universität, Frankfurt am Main), Michel Troper (Université de Paris Ouest-Nanterre-La Défense), Joaquin Varela Suanzes-Carpegna (Universidad de Oviedo), H.H. Weiler (New York University), Augusto Zimmermann (Murdoch University).

Board of Editors

Ronald Car, Ninfa Contigiani, Paola Persano, Monica Stronati

Editors' Assistant

Antonella Bettoni

Address

Giornale di Storia costituzionale, c/o Dr. Antonella Bettoni, Dipartimento di Giurisprudenza, Università di Macerata
Piazzale dell'Università, 2 - 62100 Macerata, Italy
giornalestoriacostituzionale@unimc.it
www.storiacostituzionale.it

I testi inviati alla redazione sono sottoposti a referaggio anonimo da parte di due esperti selezionati dalla Direzione sulla base delle proprie competenze e interessi di ricerca. Responsabili del processo di valutazione sono i Direttori della rivista.

The papers submitted for publication are passed on two anonymous referees (double-blind paper review), which are chosen by the Chief Editors on the base of their expertise. The Chief Editors are responsible for the peer review process.

I libri per recensione, possibilmente in duplice copia, vanno inviati alla Segreteria di redazione. La redazione si rammarica di non potersi impegnare a restituire i dattiloscritti inviati.

Books for review should be submitted, if possible in two copies, to the Editors' Assistants. The Editors regret the fact that they cannot commit themselves to sending back received books and papers to the authors.

Il Giornale di Storia costituzionale è indicizzato nelle seguenti banche dati / The Journal of Constitutional History is indexed in the following databases:

Scopus - Elsevier; Heinonline; Historical Abstracts - EBSCO; Summon by Serial Solutions (full-text dal 01.01.2005); Google Scholar; DoGi (Dottrina Giuridica) - ITTIG (Istituto di Teoria e Tecniche dell'Informazione Giuridica)-CNR; BSN (Bibliografia Storica Nazionale); AIDA (Articoli Italiani di Periodici Accademici); Catalogo Italiano dei Periodici - ACNP; Casalini Libri; EUM (Edizioni Università di Macerata).

Direttore responsabile

Angelo Ventrone

Registrazione al Tribunale di Macerata n. 463 dell'11.07.2001

Editore / Publisher

Edizioni Università di Macerata

Via Carducci, snc - 62100 Macerata

T (39) 0733 2586081 - F (39) 0733 2586086

info.ceum@unimc.it

http://eum.unimc.it

Distributed by PDE

ISBN 978-88-6056-442-9

ISSN 1593-0793

Tipografia / Printer

Global Print, Gorgonzola (MI)

La rivista è pubblicata con fondi dell'Università di Macerata.

In copertina: Giuristi della Sorbonne, miniatura del XVI secolo

Finito di stampare nel mese di dicembre 2015

Printed in the month of December 2015

Prezzo di un fascicolo / Single issue price

euro 30

Arretrati / Back issues

euro 30

Abbonamento annuo (due fascicoli) / Annual Subscription rates (two issues)

Italy, euro 43; European Union, euro 56; U.S.A. and other countries, euro 82

Gli abbonamenti possono essere sottoscritti tramite:

bonifico bancario a Banca dell'Adriatico, IBAN IT07 Y05748 13402 10000300004 BIC IBSPT3P

Please remit amount due in Euro drawn on Banca dell'Adriatico, IBAN IT07 Y05748 13402 10000300004 BIC IBSPT3P payable to Edizioni Università di Macerata

For further information, please contact:

ceum.riviste@unimc.it

T (+39) 0733-258 6080 (Mon.-Fri.: 10am-1pm)

F (+39) 0733-258 6086

Gli abbonamenti non vengono rinnovati automaticamente. Per ricevere l'annata successiva a quella in corso occorre inviare una richiesta esplicita all'indirizzo ceum.riviste@unimc.it

Subscriptions are not renewed automatically. To receive subscriptions the next year, please send an explicit request at ceum.riviste@unimc.it



La presente opera è rilasciata nei termini della licenza Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International CC BY-NC-ND 4.0
<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Sommario / Contents

GIORNALE DI STORIA COSTITUZIONALE n. 30 / II semestre 2015
JOURNAL OF CONSTITUTIONAL HISTORY n. 30 / II semester 2015

Constitutional Polymorphism. Historical paradigms and constitutional shapes / *Polimorfismo costituzionale. Paradigmi storici e modelli costituzionali*

- 5 Between traditions and changes / *Tra tradizioni e cambiamenti*
LUIGI LACCHÈ

Lezioni

- 11 Traditions and Changes and the Role of Legal History / *Tradizioni e cambiamenti e il ruolo della storia del diritto*
MICHAEL STOLLEIS
- 17 Standards of Europe's Constitutional Heritage / *Standards dell'eredità costituzionale europea*
SERGIO BARTOLE

Fondamenti

- 25 Synopsis of legal sources of portuguese *Habeas Corpus* (14th to 16th centuries) / *Sinossi delle fonti giuridiche dell'Habeas Corpus portoghese (XIV-XVI secc.)*
JOSÉ DOMINGUES, FRANCISCO CASTELO BRANCO
- 39 The Formation of the Elements of Parliamentary and Constitutionalism at the Territory of Latvia in Middle Ages and Early Modern Times (13th-18th centuries) / *La formazione degli elementi di parlamentarismo e costituzionalismo nei territori lettoni nel Medioevo e nella prima Età moderna (XIII-XVIII secolo)*
VALDIS BLŪZMA
- 51 From the People to the Constitution. Inventing Democracy during the French Revolution / *Dal popolo alla costituzione. L'invenzione della democrazia durante la Rivoluzione francese*
MARCO FIORAVANTI

- 59 Establishment, Evolution and Interaction of Modern Direct Democratic Traditions / *Costituzione, evoluzione e interazione delle moderne tradizioni di democrazia diretta*
LÁSZLÓ KOMÁROMI

Itinerari

- 75 Is defense of stock the same as defense of race? An itinerary from the Penal Code to racial laws / *La difesa della stirpe e la difesa della razza sono la stessa cosa? Un itinerario dal codice penale alle leggi razziali*
ERNESTO DE CRISTOFARO
- 89 Past and future of authoritarian regimes: constitution, transition to democracy and amnesty in Brazil and Chile / *Passato e futuro dei regimi autoritari: costituzione, transizione verso la democrazia e amnistia in Brasile e Cile*
CRISTIANO PAIXÃO
- 107 Historical facts and constitutional adjudication: the case of the Australian constitutional preamble / *Fatti storici e giudizio costituzionale: il caso del preambolo della Costituzione australiana*
ELISA ARCIONI
- 125 Western European perspectives towards language minorities and linguistic rights – then and now / *Prospettive dell'Europa occidentale verso le minoranze linguistiche e i diritti linguistici – allora e ora*
NOÉMI NAGY
- 141 Seven Categories of Constitutional Critical Judging: An Interpretation of Nordic Case-Law / *Sette categorie di giudizio costituzionale critico: una interpretazione del diritto casistico nordico*
MARTIN SUNNQVIST

Ricerche

- 157 Per un profilo di Antonio Ferracciu, un costituzionalista da rivalutare / *A profile of Antonio Ferracciu, a constitutionalist that should be reconsidered*
SALVATORE MURA

- 179 Un socialismo panteista. Appunti sugli inizi filosofici di Jean Jaurès / *A Pantheistic Socialism. Notes on Jean Jaurès' Philosophical Beginnings*
GIORGIO RIDOLFI

Librido

- 195 Ventotto proposte di lettura / *Twenty-eight reading proposals*

219 Autori / Authors

221 Abstracts

Western European perspectives towards language minorities and linguistic rights – then and now¹

NOÉMI NAGY

1. *The history of linguistic legislation in Spain*

During its long history, the Iberian Peninsula gave home to multitudes of peoples: Iberians, Basques, Celts, Greeks, Phoenicians, Romans, Visigoths, and Moors – a mixture of which eventually developed into Spain's modern nations forming larger or smaller independent kingdoms and loose dynastic alliances. The marriage of *Isabella I of Castile* and *Ferdinand II of Aragon* in 1469 led to the establishment of the Kingdom of Spain, which, after the expulsion of the Moors, gradually extended its power across the Iberian Peninsula.

Official use of the Castilian language began in the Kingdom of Castile under *Alfonso VIII* (1158-1214) – at that time 99,3% of royal documents were written in Latin. By the reign of *Alfonso X* (1252-1284), the language of the royal chancellery became exclusively Castilian². It was the Wise king who started to standardize the language,

and introduced the *Siete Partidas*, the first vernacular law code in Spain. Two hundred years later, after the union of the crowns, the language of the central administration and official contacts was exclusively Castilian. Under Habsburg rule, the Spanish monarchy was mainly engaged in the mission of Catholic restoration on the inside and expansion towards the outside, thus the issue of regulating the legal status of languages of Spain received little attention. Castilian language was exported to the New World, where a surprisingly high level of language standardization was achieved, in turn, the political and cultural unification of the peninsular territories was almost neglected³. The situation changed radically after the establishment of absolutism when state centralization policy entailing Castilian linguistic supremacy increasingly came into conflict with the other languages and nationalities of the country. The *Nueva Planta* decrees (1707-1716) – promulgated by *Philip V*, the first Bourbon king of Spain – abolished the ancient political institutions

and charters (*fueros*) of Aragon, Valencia, Mallorca (the Balearic Islands) and Catalonia, reorganized the territorial-administrative structures of these regions, and designated Castilian as the official language of public administration⁴. Making Castilian the exclusive language of instruction in 1768 greatly contributed to the decline of regional languages⁵. *Charles III's* decree also prescribed that courts should act in the Castilian language, however, this provision had to be reinforced ten years later⁶. In 1857, the law on public education ordered that all schoolchildren must be taught the Castilian grammar⁷. The first constitution to contain linguistic rules and to reflect a non-unitary state dates from 1931 and was in force until 1939, during the Second Republic. It declared that «Castilian is the official language of the Republic. All Spaniards have the duty to know it and the right to use it without prejudice to the rights that the laws of the State recognize for the languages of the provinces or regions. Except as provided in special laws, no one shall be required to know or use any regional language»⁸. Self-governing regions were allowed to organize the educational system in their respective languages, however, the teaching of Castilian was obligatory everywhere (Art. 50).

The authoritarian regime of *Franco* (1936-1975), in accordance with the concept of centralized nation-state, pursued an assimilationist policy: the existence of national minorities was denied, political institutions of the regions were abolished. The only language of the state was Castilian, and the use of other languages of Spain was prohibited and persecuted in the administration, education, culture, and every form of public manifestations⁹.

The process of democratization started after the adoption of the 1978 Constitution which tied the issue of linguistic minorities to the territorial organization of administration and the decentralization of power¹⁰. Political power has been distributed between the central state and 17 autonomous communities holding different degrees of self-government, however – in order to avoid any aspirations for sovereignty in the traditional sense –, there is a strong emphasis on «the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards». (Art. 2.) Autonomous communities are free to define the extent of their autonomy within the constitutional framework.

According to Art. 3. of the Constitution, linguistic diversity of Spain is a cultural heritage which shall be specially protected. The official language of the state is Castilian; as such, all Spaniards have the duty to know it and the right to use it. However, in addition to Castilian, the self-governing communities may have other (co-) official languages. The Constitution makes a key distinction between Castilian and the regional languages: while Spaniards have a duty to know Castilian, no such duty is imposed regarding the co-official languages. In fact, the Constitutional Court held that Art. 3 *prohibits* the imposition of a duty to know any language other than Castilian¹¹. The Spanish system of co-official languages merely imposes a duty on the authorities of autonomous communities, but does not ensure individual rights for the members of linguistic minorities.

Currently, six autonomous communities have a co-official language. These languages are: Catalan and Aranese in Catalonia¹²; Valencian in Valencia¹³; Catalan in the Balear-

ic Islands¹⁴; Galician in Galicia¹⁵; Basque in the Basque Country¹⁶ and Navarra¹⁷. A few autonomous communities recognize and protect other autochthonous languages without ensuring co-official status to them. These languages are: "Aragon's own language of the Pyrenees and Pre-Pyrenees areas" and "Aragon's own language of the eastern area" in Aragon¹⁸. Asturian (Bable) and Asturian Galician in Asturias¹⁹. Leonese and Galician in Castile and León²⁰.

The status of co-official languages is regulated by the *Statute of Autonomy* of the respective self-governing community, approved by the Spanish *cortes*. These statutes are quite similar to each other in terms of their linguistic provisions: they declare the official status of the own language of the autonomous community, the right of all inhabitants to know and use it, the prohibition of linguistic discrimination, and they obligate the authorities to ensure the official and "normal" use of the regional language, as well as to provide for the measures necessary to its knowledge.

Detailed rules of the use of co-official languages are included in the *laws of linguistic normalization*²¹ which seek to eliminate the detrimental situation of regional languages, and to bring them into an equal situation with the state language in the public and private spheres alike. Although these laws in certain aspects closely resemble each other, differences in terms of "assertiveness" may be observed. The most "interventionist" legislation is that of Catalonia which contains language requirements even for the private media²².

Variations between the individual regions can well be illustrated by the example of education²³. A common feature in each educational model is that equal proficiency

of the state language and the community's own language is required from all students by the end of compulsory education. Furthermore, each autonomous community provides the right for everyone to receive (pre-)primary education in their mother tongue. This means that parents are entitled to choose the language of instruction for their children at the beginning of the school-carrier.

Navarra²⁴, the Basque Country²⁵ and Valencia²⁶ follows the model of *linguistic separation* where educational programs are defined according to which is the mother tongue of the pupils, or the main language in a given territory (Spanish or the regional language). Thus, in Navarra and Valencia, learning of the regional language is compulsory only in those territories which are legally classified as Basque- or Valencian-speaking areas, respectively. In the Basque Country and Navarra, parents can basically choose from among 3 bilingual programs (in addition to the purely Spanish-speaking program): *Model A* corresponds roughly to Spanish-speaking teaching, having Basque as a compulsory subject. *Model B* combines Basque and Spanish as vehicular languages in a balanced basis. *Model D* means that Basque is the language of instruction for all subjects, except Spanish language and literature. The Valencian education system is currently switching from the bilingual programs to plurilingual ones²⁷, where English also serves as a vehicular language in addition to Valencian and Spanish.

The regions having a model of *linguistic conjunction* explicitly forbid the separation of students on linguistic grounds. The teaching of the regional language is obligatory at all levels and in all types of education.

While in Catalonia²⁸ there is a strong shift in favour of the regional language as compared to Castilian (meaning that Catalan is the default language of instruction), the trilingual educational models of Galicia²⁹ and the Balearic Islands³⁰ try to achieve a balance between the two official languages.

To sum it up, the legal system applicable to languages in Spain is a multi-layered one, where a great deal of power concerning the legislation on language use lies with the Autonomous Communities. However, this power must always be practiced within the constitutional framework (hence the important role of the Constitutional Court in interpreting autonomous legislation), and «the system of division of powers gives the State an important role in the effective development of autonomous language policies»³¹. As a sign of commitment towards its linguistic diversity, Spain signed the European Charter for Regional or Minority Languages (hereinafter: ECRML) in 1992 and ratified it in 2001. Although the Committee of Experts³² praised Spain several times as being in the forefront of the European countries committed to the protection and promotion of regional or minority languages, there seems to remain a gap between some of the undertakings chosen and their practical implementation, furthermore, most of the suggested changes are repeatedly ignored by Spanish authorities. On the other hand, in 2005 the Spanish Government initiated that regional languages recognised as co-official in any of the EU Member States be recognised by the EU institutions. As a result, Spanish citizens were granted the right to address the EU institutions in Catalan, Basque or Galician on the basis of administrative arrangements concluded with Spain³³.

2. *The history of linguistic legislation in the United Kingdom*

The first³⁴ recorded legislative measure concerning the official status of English in Britain is the 1362 *Statute of Pleading* which – ironically, written in Norman French, the language of the conquerors – imposed English as the language of oral pleadings in all courts of the realm:

Because it is often shewed to the King [...] of the great Mischiefs which have happened [...] because the laws, customs and statutes of this commonly holden and kept in the same realm, for that they be pleaded, shewed, and judged in the French tongue, which is much unknown in the said realm, so that the people which do implead, or be impleaded [...] have no knowledge nor understanding of that which is said for them or against them [...], the King [...] hath ordained [...] that all pleas [...] shall be pleaded, shewed, defended, answered, debated, and judged in the English tongue, and that they be entered and enrolled in Latin³⁵.

Despite the Statute, Norman French held sway in law courts well into the 17th century, whereas court records, writs and written common law pleadings remained in Latin³⁶. Since the law did not require the use of English in all legal matters, French remained the standard language of parliamentary statutes until 1489³⁷.

Due to the different political, linguistic, etc. situations in the specific regions annexed to the Kingdom of England, we find separate legal documents concerning them³⁸. The first territory which came under direct English rule was Wales. By 1100 Normans had overrun large areas of eastern and southern Wales, establishing in the Marches their own authority. The law in these areas was Anglo-Norman and the languages used in the records were Latin and

French, with Welsh admitted in evidence. Welsh independence came to an end with *Edward I's* conquest in 1284. The *Statute of Rhuddlan* provided for the administration of English law in parts of Wales ruled directly by the Crown, but no attempt was made to forbid the Welsh language in the courts³⁹ (until the 1362 Statute of Pleading). In the 15th century the political and economic life of Wales became increasingly integrated with that of England. Ironically, in 1485 it was a largely Welsh army which put Henry, descent from the Tudors of Penmynydd in Anglesey, on the English throne followed by the destruction of Welsh independence⁴⁰. The *Acts of Union* passed in 1536 and 1542 proclaimed English as the only official language in Wales:

All Justices [...] and all other officers and ministers of the lawe shall proclayme and kepe [...] all courtes [...] in the Englishshe Tonge [...] And also from hensforth no persone or personnes that use the Welsche speche or langage shall have or enjoy any maner of office or fees [...] onles he or they use and exercise the speche or langage of Englishshe⁴¹.

However, Welsh could hold its position in one field, which turned to be vital for its survival: although in 1549 the *Act of Uniformity* insisted that all parish churches were to use the English Book of Common Prayer, in 1563 *Elizabeth I* passed the *Act for the Translating of the Bible and the Divine Services into the Welsh Tongue*, so that «by conferring both tongues together, the sooner attain to the knowledge of the English tongue».

In Ireland, the Anglo-Norman invasion of 1169 brought to the relatively self-contained Gaelic culture a number of languages (Norman French, Welsh, Flemish, English)⁴². French and Latin were the languages of administration and of the municipal

records of major towns, whereas French was used in acts of parliament between 1310 and 1472⁴³. As for the vernaculars of the people, the complex linguistic situation narrowed to an Anglo-Irish bipolar system by the 14th-15th century, roughly parallel to the contraction of the English colony to the "Pale" (Dublin and its hinterland)⁴⁴. Even there, Anglo-Irish settlers had assimilated into Irish society to such an extent that the *Parliament of Kilkenny* in 1366 passed a law (written in Norman French) for bringing them to order:

[I]t is ordained and established, that every Englishman do use the English language, [...] and if any English, or Irish living among the English, use the Irish language amongst themselves, [...] his lands and tenements [...] shall be seized⁴⁵.

After the coronation of *Henry VIII* as king of Ireland in 1541, ethnic and linguistic fractionalization became sharper and – since the Irish Catholic Church did not have the least intention of entering the Anglican Church – developed along religious lines. Royal practices to the Irish language were, at least initially, somewhat ambivalent. On the one hand, legislation ordered people to use English (see e.g. the 1537 *Act for the English Order, Habit and Language*⁴⁶), on the other hand – in light of the doctrine of the Reformation that religious instruction shall be delivered in the vernacular – it did not completely ban the use of Irish either. The easiest solution of the dilemma was to convert native Irish into English-speakers once and for all. *Tudor* monarchs realized fairly early that this goal can be achieved successfully by means of education, thus in 1570 *Elizabeth I* ordained⁴⁷ the set-up of free English-language schools⁴⁸.

Scotland managed to retain its independence from England the longest: until

the beginning of the 17th century. *James VI*, King of Scotland, who became King of England and Ireland in 1603 as *James I*, sought to break the unity of the Gaelic cultural zone which stretched from the South of Ireland to the Scottish Hebrides. Under his “plantation policy” English and Lowland Scots were planted in both Ulster and the Highlands of Scotland⁴⁹. The first legal measure specifically directed at the extirpation of the Gaelic language and its culture stems from 1609. The *Statutes of Iona* provided for the introduction of Protestant ministers into Highland parishes and the education of chiefs’ heirs in Lowland schools. The Statutes were ratified by an *Act of the Privy Council* in 1616 prescribing that «the vulgar English tongue be universallie planit, and the Irishe language, whilk is one of the chief and principall causis of the continuance of barbaritie and incivilitie amongis the inhabitants of the Ilis and Helandis, be abolisheit and removit»⁵⁰.

During the Commonwealth a comprehensive English only policy was imposed by *An Act for turning the Books of the Law, and all Proces and Proceedings in Courts of Justice, into English* (1650), and *An Additional Act concerning the Proceeding of the Law in English* (1651). With the Restoration in 1660 these were repealed⁵¹, but a few decades later the *Courts of Justice Act of 1731* required the use of English in all courts of justice in England and Wales, and in the courts of exchequer in Scotland, in written records as well. This law was repealed by the *Civil Procedure Acts Repeal Act* in 1879, however, its Irish equivalent, the *Administration of Justice (Language) Act (Ireland) 1737*⁵² is formally still in force in Northern-Ireland⁵³.

The final blow on autochthonous languages was struck by the introduction of

universal state-supported education at the second half of the 19th century assigning English as the sole medium of instruction through the *Act to provide for public Elementary Education in England and Wales* (1870) and the *Education (Scotland) Act* (1872). In Ireland, the system of national schools was set up in 1831 based on the so-called *Stanley letter*, and had been ruled by government regulations until the first parliamentary legislation was enacted in 1875 (*The National School Teachers [Ireland] Act*)⁵⁴.

The 20th century brought positive changes in the *legal* position of minority languages – the luckiest one being Welsh. Primary schools in the Welsh-speaking areas began to use Welsh as a medium of instruction for certain subjects in 1927, and the first Welsh-language primary school was opened in 1939. After the adoption of the *Education Act 1944*, a series of Welsh-language primary and secondary schools were opened in English-speaking areas as well, and Welsh became a degree subject at the University of Wales⁵⁵. The *Welsh Courts Act 1942* repealed the language clause in the Act of Union of 1536, and provided that «the Welsh language may be used in any court in Wales by any party or witness who considers that he would otherwise be at any disadvantage by reason of his natural language of communication being Welsh». This Act also made the provision of an interpreter obligatory, but all proceedings were to continue to be recorded in English⁵⁶. The *Welsh Language Act 1967* admitted the oral use of Welsh in court by any person who desired to use it, and gave the relevant Minister the right to authorize the production of a Welsh version of any documents required or allowed by the Act. The first complete case heard entirely in Welsh in a Crown Court was held

in 1973⁵⁷. The *Education Reform Act 1988* made Welsh one of the four core subjects in the curriculum for all students in Wales between age of 5 and 16, independently of the language of instruction. The *Welsh Language Act 1993* provided that the Welsh and English languages be treated equally in the public sector, «so far as is both appropriate in the circumstances and reasonably practicable». The Act was based on the administrative enabling or planning-based model⁵⁸, requiring public bodies to prepare a Welsh Language Scheme – to be approved by the Welsh Language Board – indicating their commitment to the equality of treatment principle. Thanks to the *Government of Wales Act 2006* it is now possible for the Welsh Assembly to pass primary legislation on the Welsh language. The *Welsh Language (Wales) Measure 2011* confirms the official status of Welsh, ensures linguistic rights in the provision of services (including the right to appeal to the Welsh Language Tribunal), and establishes the post of Language Commissioner with strong enforcement powers to protect the rights of Welsh speakers. The Measure abolishes the Welsh Language Board and the system of language schemes, instead imposes duties on public bodies to use the Welsh language. Finally, the *National Assembly for Wales (Official Languages) Act 2012* – the first bill passed in Wales to become law in over 600 years⁵⁹ – provides that the National Assembly for Wales shall have two official languages, English and Welsh, which shall be treated on a basis of equality.

As for the Scottish Gaelic language, since 1886⁶⁰, at least one member of the Crofters Commission is required to be a Gaelic speaker. The same rule applies to the Land Court since 1911⁶¹. Both provisions

remain in force by the successor statutes of 1993⁶². Nonetheless, the general position of Gaelic in front of courts remains unsatisfactory. Pursuant to the 1982 case of *Taylor v. Haughney*, Gaelic-speakers can only use their language if they can demonstrate an insufficient command of English⁶³. Although since 2001 parties have been allowed to give oral evidence in Gaelic in the *civil* courts in Lochmaddy, Portree and Stornoway, however, a person wishing to do so must make written application to the court in advance of the hearing, and sheriffs might veto this right if they consider that otherwise the proper administration of justice would be hampered⁶⁴. As for education, teaching of Gaelic have been provided for in Gaelic-speaking areas since 1918, but development was very slow until Gaelic was introduced as a medium of instruction in Inverness-shire and Ross-shire in 1958⁶⁵. Under *Education (Scotland) Act 1980* education authorities are required to provide adequate and efficient school education including the teaching of Gaelic in Gaelic-speaking areas. With regard to legislature, the *Standing Orders of the Scottish Parliament* permit the use of Gaelic in parliamentary debates⁶⁶, but it is not possible to legislate in Gaelic. Scotland's first comprehensive language law, the *Gaelic Language (Scotland) Act 2005* was closely modeled on the Welsh Language Act 1993 in terms of the *Bòrd na Gàidhlig's* consultative role (comparable to that of the former Welsh Language Board) and the introduction of Gaelic Language Plans (akin to the Welsh Language Schemes). Nevertheless, this Act is significantly more limited in terms of both its scope and the powers of the Bòrd⁶⁷. The purpose of the Act – «securing the status of Gaelic as an official

language of Scotland commanding equal respect to the English language» – is to be achieved through a national Gaelic language plan⁶⁸ to be prepared by the Bòrd.

The least satisfactory legal position is that of the Irish language. After the Easter Rising of 1916, the Anglo-Irish War of 1919-21, and the Irish Civil War of 1922-23, the story of Irish continued on two separate paths. The 1922 constitution gave the *Saorstát* the status of Dominion within the Commonwealth, while the six counties of Ulster decided to have autonomy within the British Crown. In Northern Ireland, due to its association with Irish nationalism, the Irish language was treated with hostility by the first devolved government until the dissolution of the Stormont Parliament (1921-1972). In education, Irish was tolerated as an optional foreign language only in secondary schools⁶⁹. The first Irish-medium primary schools were opened in Belfast in the 1970s, but initially did not receive any state support. Irish-language broadcasting was banned until 1982. The situation began to improve in the 1980s when Northern Ireland came under direct rule from Westminster⁷⁰. The *Good Friday (Belfast) Agreement* (1998)⁷¹ between the United Kingdom and the Republic of Ireland recognized

the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

The British Government committed itself to take resolute action to promote the language, facilitate its use in private and public life, and seek to remove restrictions which would discourage its development. Although as part of the *St. Andrews Agree-*

*ment*⁷² in 2006 (to restore devolution) the United Kingdom made a commitment to introduce an Irish Language Act and «work with the incoming Executive to enhance and protect the development of the Irish language», the *Northern Ireland Act 2006* itself provides no more than a reference to a future strategy «setting out how it proposes to enhance and protect the development of the Irish language». So far no strategy has been adopted. The lack of activities on the part of the Northern Ireland Executive is strongly criticized by the Council of Europe⁷³.

To conclude, although the legal positions of Welsh, Scottish Gaelic and Irish are not balanced, there has been an undeniably favorable shift in UK language policy since the beginning of the 20th century. This trend seems to be reinforced by, on the one hand, ratifying important European instruments, on the other, establishing devolved governments for Northern Ireland, Wales and Scotland. In 2001, the United Kingdom ratified the ECRML, Part III of which applies to Welsh, Scottish Gaelic and Irish, while Scots, Ulster Scots, Cornish and Manx fall under Part II. Irish became the EU's 21st official and working language in 2007 (though Ireland joined the EEC in 1973, Irish had been accorded only a Treaty Language status so far). In 2008 the status of co-official language was granted to Welsh and Scottish Gaelic which means that Scottish Gaelic and Welsh speakers can now write to EU bodies in their mother tongue and receive a reply in that language.

3. *The history of linguistic legislation in France*⁷⁴

The first law dealing with the official status of French is the *Ordonnance of Villers-Cotterêts* signed by *François I* in 1539 which prescribed the mandatory use of the French language in the public sector: «[W]e wish that all decisions and other procedures in our sovereign or lesser or lower courts, including registries, inquiries, contracts, commissions, legal transactions, wills, or any other acts and deeds of justice, be henceforth pronounced, recorded and issued to the parties in the French mother tongue and not otherwise» (Art. 110-111, translation is mine)⁷⁵.

Although the edict probably «had more to do with reducing the role of Latin in public life than with propagating Parisian French in the provinces»⁷⁶, it nevertheless resulted in curbing the use of regional languages and paved the way for the expansion of French. Initially used only in public administration and business, the French language gradually infiltrated the universities, science and literature, and the informal language use of aristocracy as well. Its prestige was greatly promoted by the *Académie française*, founded in 1635 by Cardinal *Richelieu*. In the second half of the 16th century French started to play a prominent role in international diplomacy, and by the 18th century the concept of *le rayonnement de la langue et de la culture française* has been established⁷⁷.

The first comprehensive language policy in France was the product of the French Revolution which established the concept of nation-state. In December 1789, the old political divisions were replaced by 83 new administrative units (*départements*). The

territorial reorganization of the country resulted in breaking up several linguistic boundaries⁷⁸. As for explicitly language-related measures, on 14th January 1790, the revolutionaries – acting in the fervor of national solidarity – ordered that all decrees of the National Assembly be translated into all languages (*idiômes*) of the country, so that every people could read and understand them⁷⁹. During the Jacobin dictatorship, translation policy was abandoned for the belief that regional languages hinder the expansion of revolutionary ideas, keep the peasant masses in obscurantism, so they must be extirpated completely⁸⁰. On 21st October, 1793, the set-up of state primary schools was decreed where pupils were taught to speak, read and write the French language⁸¹. On 27th January, 1794, following *Bertrand Barère*'s dishonorable speech at the Committee of Public Safety⁸², the Convention adopted a law (*Décret du 8 pluvoise an II*) prescribing that a French teacher would be appointed in every commune in those regions where local people spoke regional languages⁸³.

The Jacobin language policy culminated in the law of 20th July 1794 (*2 thermidor an II*), which imposed criminal sanctions for failure to comply with its provisions: from the day of the publication of the law, no public document could be written in any language other than French in any part of the Republic (Art. 1). After a one-month grace period the same rule applied to the registration of documents under private signet (Art. 2). Any civil servant, public official, or registration fee collector who violated these provisions, was brought before the correctional police court in his place of residence, condemned to six months of imprisonment, and dismissed (Art. 3-4)⁸⁴.

After the fall of *Robespierre*, “linguistic terror” has lost a lot of its vehemence. The law of 17th November, 1794 (*27 brumaire an III*) allowed the auxiliary use of regional languages in education⁸⁵, and an educational decree of one year later did not contain a clause on the language of instruction at all⁸⁶. Centralizing ambitions of *Napoleon*, with an army and public administration functioning in the state language only, nevertheless, facilitated the spread of the French language and resulted in a further loss of ground for regional languages⁸⁷.

Language policy in the 19th century can be traced primarily through legislation on education. The *Loi Guizot* of 28th June 1833 required basics of the French language as a compulsory subject in elementary education⁸⁸, and the law of 17th August 1851 explicitly stated that the language of the instruction is exclusively French⁸⁹. It is remarkable that in spite of all efforts of Francization, a great many people still did not speak French at the time. According to an official survey of 1863, in 8381 of France’s 37,510 communes no French was spoken, 450,000 of some four million school children spoke no French at all, and about one and half million could not write it⁹⁰. A more “effective” solution was realized during the Third Republic, under *Jules Ferry* as minister of education (1879-1883)⁹¹. By the introduction of free, compulsory and secular public education an ever greater number of people could be involved in education where the only language admitted was French⁹².

The 1951 *Loi Deixonne* was the first law that allowed regional languages specifically: Basque, Breton, Catalan and Occitan – to be taught in public schools: as an optional subject, in one hour per week (a figure

extended in 1975 to three hours for senior high school students)⁹³, and only if the teacher so requested. The scope of the Act was extended in 1974 to the Corsican language⁹⁴, and the *Loi Haby* of 1975 permitted the teaching of regional languages and cultures throughout the school career⁹⁵. Bilingual education of the regional languages in general has been permitted since the *Savary* circular⁹⁶ of 1982⁹⁷. Pursuant to the *Code de l’éducation* (replacing *Loi Deixonne* in 2000), the teaching of regional languages can now be provided for by an agreement between the State and the local community concerned. Furthermore, teachers are allowed to use regional languages in primary schools and kindergartens whenever they can benefit from this for the purposes of education, including the teaching of the French language⁹⁸.

Although the status of regional languages in education has been strengthening since the 1950s, their position in other areas of the public sector is far less favorable. The 1975 *Loi Bas-Lauriol*⁹⁹ prescribed the mandatory use of the French language in advertising, commerce and business. Only months before the Council of Europe passed the ECRML, an amendment of the French Constitution had designated French as «the language of the Republic»¹⁰⁰. The current official language law, *Loi Toubon*¹⁰¹ has been in vigor since 1994. According to Article 1, the French language is «a key element in the personality and the heritage of France», as well as «the chosen bond between the States comprising the community of French-speaking countries», therefore, it «shall be the language of instruction, work, trade and exchanges and of the public services».

Even today, French public policy is built upon the outdated doctrine of one nation-one language, and keeps insisting the absurd claim that minorities do not exist in France. This is well reflected in the argumentation of the Constitutional Council in 1999 when rejecting the ratification of the ECRML:

[T]hese provisions [...], in that they confer specific rights on "groups" of speakers of regional or minority languages within "territories" in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people. These provisions are also contrary to the first paragraph of Article 2 of the Constitution in that they seem to recognise a right to use a language other than French not only in "private life" but also in "public life" – a category in which the Charter includes judicial authorities and administrative authorities and public services¹⁰². (emphasis added)

There are some recent positive developments, though. After a lengthy discussion, a constitutional amendment in 2008 declared that "regional languages belong to the patrimony of France"¹⁰³ which is by all means a very important – even if only symbolic – step forward. Unfortunately, individual rights cannot be derived from this article itself, as the Constitutional Council hastened to point out in a 2011 decision¹⁰⁴. A meaningful progress may begin by the ratification of the ECRML which was amongst President *François Hollande's* election promises. On 28th January 2014, members of the French National Assembly voted by an overwhelming majority for a new law that will enable the ratification – the outcome is being awaited.

4. *Conclusions and the Western European model of linguistic legislation*

As it has been demonstrated, Western European monarchs had used linguistic unification as a means of empire-building at least from the era of absolutism, but certainly well before the concept of one nation-one language became widespread during the 19th century. There have been legal provisions for the (exclusive) use of the state language (even if the term itself was not used) since the 14th century in England, the 16th century in France, and the beginning of the 18th century in Spain.

Based on the thorough analysis of the three case studies, a *Western European model of linguistic legislation* can be established, the essence of which is that *the historical tradition of monolingualism has been slowly shifting toward the acceptance of linguistic diversity*. The steps of the process are as follows:

1. total intolerance of minority languages, and attempts of homogenization by the introduction and expansion of an exclusive state language (*prohibition*).
2. partial concessions in various domains of language use (*implicit recognition or tolerance*).
3. legal regulations on the use of minority languages (*explicit recognition*).
4. ensuring *language rights* for minority speakers (enforceable in court).
5. *active state support* for and *promotion* of the use of minority languages.

The last step is in most cases only a possible and long-awaited culmination of the upward evolutionary arc, not yet a reality.

To formulate this tendency in terms of majority-minority relations, we can expand *Hans-Jörg Trenz's* account on Spanish

minorities to all Western European minorities stating that their story «goes from violent confrontation and resistance to enhanced cooperation, tolerated diversity and enforced, but not yet peaceful, coexistence»¹⁰⁵.

Despite the similar patterns in the approaches of Western European countries towards the language issue, a great deal of variety can be observed in the legal – let alone demographic – positions of the minority languages examined. To begin with, while in Spain and the United Kingdom autochthonous minorities have managed to gain a greater or lesser degree of territorial autonomy (including the competence to legislate on linguistic rights), autochthonous minorities in France – with the only exception of Corsica¹⁰⁶ – have no such power. Instead, France keeps pushing the myth of monolingualism. National minorities do not exist under French law, and regional languages have been recognized by the Constitution since only 2008. Huge differences may exist within the very same country, as well. In Spain, for instance, Catalonia could make considerably more out of the autonomy arrangement than oth-

er regional languages, while in the United Kingdom, the prospects for Scottish Gaelic and Irish are much more constrained than those for Welsh.

This paper does not aim to analyze the reasons of these differences¹⁰⁷, instead the author would like to point out that in addition to the commitment and advocacy skills of linguistic minorities regarding what position they can achieve for their own languages, a lot depends on the nature and extent of legal provision, financial assistance and “moral” support provided by a given state, as well. In this respect, the pan-European commitment to the fate of national minorities and minority languages – reflected especially by the activities of the Council of Europe, and to a smaller extent, that of the European Union, offering benchmarks for the language policies of the individual states – may give a reason for guarded optimism that regional/minority languages of Spain, the United Kingdom and France will long remain part of the valuable linguistic diversity of Europe.

¹ This paper is based on the author's lecture presented at the third biennial ESCLH conference “Traditions and changes” in Macerata, Italy, 8th-9th July 2014.

² I. Fernández-Ordóñez, *Las lenguas vernáculas en las cancillerías regias de la Península Ibérica*, in P. Martínez Sopena, A. Rodríguez López (edited by), *La construcción medieval de la memoria regia*, València, Universitat de València, 2011, pp. 325-363.

³ T. Hans-Jörg, *Reconciling Diversity and Unity: Language Minorities and European Integration*, in «Ethnicities», n. 7, 2007, pp. 168-169.

⁴ R. Bonell Colmenero, *Los decretos de Nueva Planta*, in «Saberes», n. 8, 2010, pp. 1-38.

⁵ Real Cédula de su Magestad, a consulta de los señores del Consejo, reduciendo el arancel de los derechos procesales a reales de vellón en toda la Corona de Aragón, y para que en todo el Reyno se actué y enseñe en lengua cas-

tellana, con otras cosas que se expresa. Reported by G. Llompart, *La Real Cédula de 1768 sobre la difusión del castellano y su repercusión en la diócesis de Mallorca*, in «Boletín de la Sociedad Arqueológica Luliana», n. 801-803, 1965, pp. 365-367.

⁶ Real cédula de 23 de junio de 1778: Derogación de la práctica de motivar las sentencias, y extenderlas en latin en los Tribunales, in *Novísima Recopilación de las Leyes de España*, Tomo V, Libro XI, Título

- XVI, Ley VIII, p. 215.
- ⁷ Ley de Instrucción Pública de 9 de septiembre de 1857 (cfr. Art. 2, 14 and 88).
- ⁸ Constitución de la República Española, 9 de diciembre de 1931, Art. 4 (translation is mine).
- ⁹ Cfr. M. L. Abellán, *Censura y literaturas peninsulares*, Amsterdam, Rodopi, 1987, pp. 90-92.
- ¹⁰ K. Szajbély, *Kisebbségi kérdés Spanyolországban*, in «Kisebbségkutatás», n. 4, 2003, p. 695.
- ¹¹ As for the fact that several autonomous communities do make the teaching of the regional language obligatory, the Court ruled as follows: there is a distinction between an obligation on behalf of the authorities to teach the regional language, and an obligation on behalf of the students to know it. The given regulations merely establish a goal to be reached by the authorities, and do not impose any duty on the students. Cfr. Sentencia 82/1986, de 26 de junio, del Tribunal Constitucional; Sentencia 337/94, de 23 de Diciembre, del Tribunal Constitucional. For the Catalan case especially, see J. R. Kasha, *Education Under Catalonia's Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law*, in «Columbia Journal of Transnational Law», n. 34, 1996, pp. 657-676.
- ¹² Ley Orgánica 6/2006, de 19 de julio, de reforma del Estatuto de Autonomía de Cataluña.
- ¹³ Ley Orgánica 1/2006, de 10 de abril, de Reforma de la Ley Orgánica 5/1982, de 1 de julio, de Estatuto de Autonomía de la Comunidad Valenciana.
- ¹⁴ Ley Orgánica 1/2007, de 28 de febrero, de reforma del Estatuto de Autonomía de las Illes Balears.
- ¹⁵ Ley Orgánica 1/1981, de 6 de abril, Estatuto de Autonomía de Galicia.
- ¹⁶ Ley Orgánica 3/1979, de 18 de diciembre, Estatuto de Autonomía del País Vasco.
- ¹⁷ Ley Orgánica 13/1982, de 10 de agosto, de Reintegración y Amejoramiento del Régimen Foral.
- ¹⁸ The word usage of the previous law of 2009 referring expressly to Aragonese (Fabra) and Catalan was abolished by Ley 3/2013 de uso, protección y promoción de las lenguas y modalidades lingüísticas de Aragón.
- ¹⁹ Ley 1/1998, de 23 de marzo, de uso y promoción del bable/asturiano.
- ²⁰ Ley Orgánica 14/2007, de 30 de noviembre, de reforma del Estatuto de Autonomía de Castilla y León.
- ²¹ Ley 10/1982, de 24 de noviembre, básica de normalización del uso del euskera (the Basque Country); Ley 7/1983, de 18 de abril, de normalización lingüística en Cataluña (in force until 1998), Ley 1/1998, de 7 de enero, de Política Lingüística (Catalonia); Ley 3/1983, de 15 de junio, de normalización lingüística (Galicia); Ley 4/1983, de 23 de noviembre, de uso y enseñanza del valenciano (Valencia); Ley 3/1986, de 19 de abril, de normalización lingüística (Balearic Islands); Ley Foral 18/1986, de 15 de diciembre, del vascuence (Navarre).
- ²² cf. Ley 1/1998, de 7 de enero, de Política Lingüística, Art. 26.
- ²³ Special thanks are due to Maria Areny (SEDEC) for her useful comments on this part of my paper. See also, *The Catalan language in education in Spain*, publication of the Mercator European Research Centre on Multilingualism and Language Learning, 2013.
- ²⁴ Decreto Foral 159/1988 de incorporación del vascuence a la enseñanza no universitaria de Navarra.
- ²⁵ Ley 1/1993, de 19 de febrero, de la Escuela Pública Vasca.
- ²⁶ Decreto 127/2012, de 3 de agosto, del Consell, por el que se regula el plurilingüismo en la enseñanza no universitaria en la Comunitat Valenciana.
- ²⁷ A Trilingual Educational Framework (MET) has recently been introduced on an experimental basis in the Basque Country, as well. Cfr. 4th State Periodical Report on the application in Spain of the European Charter for Regional or Minority Languages, 2014, p. 97.
- ²⁸ Educational Law of Catalonia, 12/2009 of 10th July.
- ²⁹ Decreto 79/2010 para el plurilingüismo en la enseñanza no universitaria de Galicia.
- ³⁰ Decreto 15/2013, de 19 de abril, por el cual se regula el tratamiento integrado de las lenguas en los centros docentes no universitarios de las Illes Balears.
- ³¹ 1st State Periodical Report on the application in Spain of the European Charter for Regional or Minority Languages, 2002, p. 25.
- ³² Cfr. Evaluation reports of the Committee of Experts on the application of the ECRML in Spain adopted in 2005, 2008 and 2011.
- ³³ Cfr. Council Conclusion of 13th June 2005 on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union (2005/C 148/01).
- ³⁴ According to Ager, British official language planning for English started much earlier, with King Alfred's decision in 880 to translate the materials of education into Anglo-Saxon, with the consequence that the Wessex form became the written standard. D. Ager, *Ideology and Image. Britain and Language*, Clevedon, Buffalo, Toronto, Sydney, Multilingual Matters Ltd., 2003, p. 63.
- ³⁵ Reported by R. Morris, *Great Mischief - An Historical Look at Language Legislation in Great-Britain*, in D.A. Kibbee (edited by), *Language Legislation and Linguistic Rights*, Amsterdam and Philadelphia, John Benjamins Publishing Company, 1998, p. 34.
- ³⁶ Ivi, p. 35.
- ³⁷ Ager, *Ideology and Image* cit., p. 64.
- ³⁸ Due to space restrictions and to the lack of legislation pertaining particularly to other minority languages in the United Kingdom, only Welsh, Irish and Scottish Gaelic will be dealt with in this paper.
- ³⁹ M. Stephens, *Linguistic minorities in Western Europe*, Llandysul,

- Gomer Press, 1976, p. 150.
- ⁴⁰ Ivi, p. 151.
- ⁴¹ Reported by K. Jones, S. Eaves, G. Ioan. *Creating a Truly Bilingual Wales: Opportunities for legislating and implementing policy*, p. 11. IAITH, <http://www.iaith.eu/uploads/report_on_welsh_languae_legislation.pdf>, November 2014.
- ⁴² T. Crowley, *The Politics of Language in Ireland 1362-1922 – A Sourcebook*, London-New York, Routledge, 2000, p. 12.
- ⁴³ T. Crowley, *Wars of Words: The Politics of Language in Ireland 1537-2004*, New York, Oxford University Press, 2005, p. 10.
- ⁴⁴ M. Pintér, *Nyelv és politika Írország történetében*, Veszprém, Pannon Egyetemi Kiadó, 2008, p. 43.
- ⁴⁵ Reported by Crowley, *The Politics of Language* cit., p. 15.
- ⁴⁶ Ivi, pp. 21–23.
- ⁴⁷ An Act for the Erection of Free Schools. Ivi, p. 27.
- ⁴⁸ Cfr. Crowley, *Wars of Words* cit., pp. 9–19.
- ⁴⁹ R. Dunbar, *Language Legislation and Language Rights in the United Kingdom*, in «European Yearbook of Minority Issues», n. 3, 2002, p. 101.
- ⁵⁰ K. Glazer, *Minority Languages and Cultural Diversity in Europe: Gaelic and Sorbian Perspectives*, Clevedon, Buffalo, Toronto, Multilingual Matters Ltd., 2007, p. 65. Note that until the late 15th century the Gaelic language was known in Scots (then known as *Inglis*) as *Scottis*, and in English as *Scottish*. From around the early 16th century, Scots speakers gave the Gaelic language the name *Erse* (Irish), and thereafter it was the Middle English dialects spoken within the Kingdom of Scotland, that they referred to as *Scottis* (Scots). M. Stephens, *Linguistic minorities* cit., p. 58.
- ⁵¹ Morris, *Great Mischiefs* cit., pp. 32–35.
- ⁵² Unless indicated otherwise, the source of legislative acts in this chapter is: <www.legislation.gov.uk> (November 2014).
- ⁵³ Dunbar, *Language Legislation* cit., pp. 96–97.
- ⁵⁴ Á. Hyland, K. Milne (edited by), *Irish Educational Documents*, Dublin, Church of Ireland College of Education, 1987, vol. 1, pp. 98–136.
- ⁵⁵ Stephens, *Linguistic minorities* cit., pp. 184–186.
- ⁵⁶ Morris, *Great Mischiefs* cit., p. 45.
- ⁵⁷ Stephens, *Linguistic minorities* cit., pp. 175–176.
- ⁵⁸ R. Dunbar, *International Comparisons: Celtic Cousins – Language Legislation for Welsh and Scottish Gaelic*, pp. 3–4. <http://www.cba.org/cba/dublin2009/pdf/Dunbar_Dublin%20Presentation%20Wales%20and%20Scotland%2017%2008%2009%20FINAL%2013%2008%2009.pdf> (November 2014).
- ⁵⁹ The Guardian, <<http://www.theguardian.com/politics/2012/nov/12/welsh-national-assembly-bill-law>>, November 2014.
- ⁶⁰ Crofters Holdings (Scotland) Act 1886.
- ⁶¹ Small Landholders (Scotland) Act 1911.
- ⁶² Crofters (Scotland) Act 1993; Scottish Land Court Act 1993.
- ⁶³ W. McLeod, *Official Status for Gaelic: Prospects and Problems*, in «Scottish Affairs», n. 21, 1997, pp. 95–118.
- ⁶⁴ H. MacQueen, *Laws and Languages: Some Historical Notes from Scotland*, in «Electronic Journal of Comparative Law» (July 2002), <http://www.ejcl.org/62/art62-2.html#N_17> (November 2014).
- ⁶⁵ Euromosaic, <<http://www.uoc.edu/euromosaic/web/document/gaelic/an/i1/i1.html>>, November 2014.
- ⁶⁶ Cfr. Rule 7.1. Scottish Parliament, <<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>> (November 2014).
- ⁶⁷ C.F. Huws, *The Welsh Language Act 1993: A Measure of Success?*, in «Language Policy», n. 5, 2006, p. 149.
- ⁶⁸ The *National Plan for Gaelic 2007-2012* focused on «sustaining a vibrant Gaelic language», namely language acquisition, usage, status and corpus. The somewhat broader developmental areas of the *National Plan for Gaelic 2012-2017* include inter alia communities, workplace, arts, media and tourism. The purpose of both plans is «to secure an increase in the number of people learning, speaking, and using Gaelic in Scotland». Bòrd na Gàidhlig, <<http://www.gaidhlig.org.uk/Downloads/National-Plan/National%20Plan%20of%20Gaelic.pdf>>; <<http://www.gaidhlig.org.uk/Downloads/National%20Gaelic%20Langauge%20Plan%202012%20-%202017.pdf>> (November 2014).
- ⁶⁹ M.N. Riordáin, *Where did it all go right? The socio-political development of Gaelge as a medium for learning mathematics in Ireland*, in *Published proceedings of Mathematics Education and Society 6th Conference, Berlin, March 2010*, p. 6.
- ⁷⁰ Dunbar, *Language Legislation* cit., pp. 122–123.
- ⁷¹ UK Government, <<http://www.nio.gov.uk/agreement.pdf>> (November 2014).
- ⁷² UK Government, <<https://www.gov.uk/government/publications/the-st-andrews-agreement-october-2006>> (November 2014).
- ⁷³ Cfr. Evaluation reports of the Committee of Experts on the application of the ECRML in the United Kingdom adopted in 2010 and 2014.
- ⁷⁴ This chapter is based on the author's paper: *The history of linguistic legislation in France*, in «Journal of European History of Law», n. 2, 2013, pp. 137–143. All legislation cited in this chapter – unless indicated otherwise – is available at the electronic database of the French Government: <<http://www.legifrance.gouv.fr/>> (November 2014).
- ⁷⁵ Académie française, <<http://www.academie-francaise.fr/la-langue-francaise/le-francais-aujourd-hui>> (November 2014). Note that public administration was not separated from the administra-

- tion of justice at the time.
- ⁷⁶ D.A. Bell, *Lingua Populi, Lingua Dei: Language, Religion, and the Origins of French Revolutionary Nationalism*, in «The American Historical Review», n. 5, 1995, p. 1410.
- ⁷⁷ A. Judge, *French as a Tool for Colonialism: Aims and Consequences*, Institute of European Studies, UC Berkeley, 2005, pp. 3-4. <<http://www.escholarship.org/uc/item/6t22342r>> (November 2014).
- ⁷⁸ Schiffman, Harold F., *Linguistic Culture and Language Policy*, Routledge, New York, 1996, p. 101.
- ⁷⁹ J.E. Jacob, D.C. Gordon, *Language Policy in France*, in W.R. Beer, J.E. Jacob (edited by), *Language Policy and National Unity*, New Jersey, Rowman and Allanheld, 1985, pp. 113-114.
- ⁸⁰ Bell, *Lingua Populi* cit., pp. 1405-1406, 1415-1416.
- ⁸¹ Décret relatif à l'organisation de l'instruction publique et à la distribution des premières écoles dans les communes, in J.B. Duvergier (edited by), *Collection complète des lois, décrets, ordonnances, réglemens, et avis du Conseil-d'État. Tome sixième*, Paris, 1825, pp. 299-300.
- ⁸² Rapport du Comité de salut public sur les idiômes. L'aménagement linguistique dans le monde, <<http://www.axl.cefan.ulaval.ca/francophonie/barere-rapport.htm>> (November 2014).
- ⁸³ Décret qui ordonne l'établissement d'instituteurs de langue française dans les campagnes de plusieurs départements dont les habitans parlent divers idiômes, in Duvergier, *Collection complète* cit., *Tome septième*, Paris, 1834, p. 19.
- ⁸⁴ Décret portant qu'à compter de jour de sa publication, nul acte public ne pourra, dans quelque partie que ce soit du territoire français, être écrit qu'en langue française, Ivi, p. 225.
- ⁸⁵ Décret relatif aux écoles primaires, Chapitre IV, Art. 3. Ivi, p. 411.
- ⁸⁶ Schiffman, *Linguistic Culture* cit., pp. 113-114.
- ⁸⁷ K. Ortutay, *A franciaországi kisebbségi nyelvek a hatalom árnyékában*, Budapest, Gondolat Kiadó, 2011, pp. 32-35.
- ⁸⁸ Loi sur l'instruction primaire, Chapitre I, Art. 1., in Duvergier, *Collection complète* cit., *Tome trente-troisième*, Paris, 1842, p. 191.
- ⁸⁹ P. Vigier, *Diffusion d'une langue nationale et résistance des patois en France au XIX^e siècle*, in «Romanisme», n. 25, 1979, p. 196.
- ⁹⁰ Jacob, Gordon, *Language Policy* cit., pp. 114-115.
- ⁹¹ For further information on the activities of Ferry, see Cs. Herger, *Polgári állam és egyházi autonómia a 19. században*, Habsburg történeti monográfiák 10, Budapest, 2010, p. 41.
- ⁹² Arrêté du 7 juin 1880, Art. 14., in «Journal des Instituteurs», Dimanche 23 janvier 1881. <http://www.ape-louisgardes.org/occitan/INRP_JDI_18810123_FA.pdf> (November 2014).
- ⁹³ Jacob, Gordon, *Language Policy* cit., p. 121.
- ⁹⁴ Décret n. 74-33 du 16 janvier 1974 relative à l'enseignement des langues et dialectes locaux.
- ⁹⁵ Loi n. 75-620 du 11 juillet 1975 relative à l'éducation, Art. 12.
- ⁹⁶ Circulaire n. 82-261 du 21 juin 1982.
- ⁹⁷ V. Rogers, W. McLeod, *Autochthonous minority languages in public-sector primary education: Bilingual policies and politics in Brittany and Scotland*, in «Linguistics and Education», n. 17, 2006, pp. 354-355.
- ⁹⁸ Code de l'éducation, Art. L312-10-11.
- ⁹⁹ Loi n. 75-1349 du 31 décembre 1975 relative à l'emploi de la langue française.
- ¹⁰⁰ Loi constitutionnelle n. 92-554 du 25 juin 1992 ajoutant à la Constitution un titre "Des Communautés européennes et de l'Union européenne".
- ¹⁰¹ Loi n. 94-665 du 4 août 1994 relative à l'emploi de la langue française.
- ¹⁰² Decision 99-412 DC of 15th June 1999 (European Charter for Regional or Minority Languages), para. 10-11.
- ¹⁰³ Loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République.
- ¹⁰⁴ Décision n. 2011-130 QPC du 20 mai 2011: Mme Cécile L. et autres (Langues régionales), para. 3.
- ¹⁰⁵ Hans-Jörg, *Reconciling Diversity and Unity* cit., p. 168.
- ¹⁰⁶ Cfr. Loi n. 2002-92 du 22 janvier 2002 relative à la Corse.
- ¹⁰⁷ As for the comparison of Welsh, Scottish Gaelic and Irish, see the author's paper: *Policies and legislation on autochthonous languages in the United Kingdom*, in *Studia Iuridica Auctoritate Universitatis Pécs Publicata*, No. 151, Essays of Faculty of Law University of Pécs Yearbook of 2013, University of Law, Faculty of Pécs, 2013, p. 149.

