

Impact Objectives

- Investigate the impact that language and multilingualism may have on the development of EU law
- Examine the production of the multilingual jurisprudence of the Court of Justice of the European Union
- Cultivate a new understanding of the development of EU case law and of EU law more generally

The L word

Dr Karen McAuliffe is a Reader in Law and Birmingham Fellow at Birmingham University Law School. Below, she explains how she came to develop an interest in both law and language, and introduces her novel work to develop the interdisciplinary field at the intersection of the two



Can you talk briefly about your background?

I have always had an interest in

languages, and it was that interest that led me to choose to study common and civil law with French at the Queen's University of Belfast (QUB), as an undergraduate. I completed part of that course at l'Université Catholique de Louvain, Belgium. Doing this dual degree sparked my interest in the relationship between language and law: even as an undergraduate it was very obvious to me that questions of language and culture shouldn't be ignored when trying to understand different legal systems.

After I graduated, I successfully applied for a job as a lawyer-linguist at the then Court of Justice of the European Communities (ECJ) in Luxembourg. My experience there opened my eyes to two things: firstly, that studying European Union (EU) law at university hadn't given me any insight into how exactly that law was produced! I found the workings of the court fascinating and, in particular, the role of language and translation in the production of its case law. Secondly, I became more and more interested in the relationship between translation and law, in particular how to reconcile 'untranslatable' legal concepts across different languages and legal systems. In fact, I became less interested in my work outputs and more

interested in understanding all of the processes and other factors that went into producing those outputs, so that after a while I knew that a return to academia was inevitable for me!

In 2002, I won a Scholarship Projects for Undergraduate Researchers (SPUR) research scholarship and returned to QUB (this time to the Institute of Governance) to complete a PhD on Translation at the ECJ. During my PhD studies, I also completed a postgraduate diploma in European Public Law at The European Public Law Academy in Greece. After completing my PhD, I took a job as lecturer at Exeter University and continued to develop my research agenda in law, language and translation. In January 2016 I moved to the University of Birmingham as a Reader in Law and Birmingham Fellow.

How did the Law and Language at the European Court of Justice (LLECJ) project arise?

As I developed my research on multilingual law, the gaps in the literature became evident. EU law is an entire body of multilingual law, produced in a very unique way. However, there were very few researchers, and even fewer lawyers, considering the impact of multilingualism on the development of that body of law. In 2012, I was awarded a European Research Council (ERC) Starting Grant of €1 million

to carry out the LLECJ project. I was then also awarded an ERC Proof of Concept Grant to work on a project that arose during the course of investigations on the LLECJ project and to develop a corpus of EU Case Law.

What is the key objective of this work?

I want to challenge EU law scholarship to look beyond conventional approaches to the development of a rule of law which draw on law alone. By making such a unique contribution to the literature on the development of a rule of law by the ECJ, I hope to provide an opportunity to rethink how differing versions of EU integration may fit together.

Do you face any hurdles when it comes to moving your research forward?

I think the most significant hurdle relates to the interdisciplinary nature of the work that I do. It is often very difficult to speak in a meaningful way across different fields and to different audiences. It is important to figure out a way to bring together the analysis done using diverse research methods in a way that speaks across disciplines and makes a genuine and significant contribution across disciplines, while at the same time developing the interdisciplinary field of law and language studies.



A new understanding

An innovative project led by Dr Karen McAuliffe, and based at the University of Birmingham, is bringing together disparate disciplines to elaborate a new understanding of the development of European Union constitutional law

Language and law are inextricably linked, with the law being an inherently linguistic institution. The belief that issues of language should not be overlooked if a full understanding of European Union (EU) law is to be gleaned is a driving factor behind research at the University of Birmingham in the UK. This work is cementing and expanding the relatively young field of law and language.

Law and Language at the European Court of Justice (LLECJ) is an EU Seventh Framework Programme (FP7) project that explores the production of multilingual jurisprudence by the Court of Justice of the European Union (ECJ), with a view to shedding greater light on the development of EU case law and consequently on EU law more generally. The project is led by Dr Karen McAuliffe, who heads a team of legal and socio-legal researchers, linguists and lawyer-linguists.

SOLID FOUNDATIONS

The project builds upon McAuliffe's earlier research, and seeks to fill a gap in the literature. 'The development of a rule of law within the EU is due in a large part to the judicial pronouncements of the ECJ, and there is an extensive literature on the ECJ (notably legal and political science literatures) which focuses primarily on its role in developing the EU legal order,' McAuliffe explains. 'However, such literature remains predominantly focused on why the Court makes certain decisions and the effects of those decisions, and there has been very little research into how its multilingual jurisprudence is produced.'

Setting out to investigate the 'how', the LLECJ project explores the relationship

between law, language and translation in the jurisprudence of the ECJ. To do this, McAuliffe and her team use methodological tools borrowed from fields outside of law, making the work multidisciplinary in nature. 'This project is inherently interdisciplinary and brings together research fields which traditionally pay little attention to each other: law, translation studies, legal anthropology and linguistics,' McAuliffe states.

NEW OPPORTUNITIES

LLECJ comprises three separate yet interlinked subprojects that investigate: the limitations of producing a multilingual jurisprudence; the linguistic construction of de facto precedents in ECJ case law; and the linguistic aspects of the activity of Advocates General.

The project's specific focus is on the Court of Justice of the EU. As McAuliffe highlights: 'This was chosen because much of EU law and the development of EU law has come, not from legislation, but from judgments of that Court.' Despite a mass of literature focusing on the ECJ's role in developing the EU legal order, McAuliffe wished to delve a little deeper. That existing body of work tends to focus on the judgments themselves – that is, why the court makes certain decisions and what the effects of those decisions are. 'But as soon as you look at disciplines outside of law and political science, you begin to see that there is a myriad of other factors at play in the production of judgments and opinions at the ECJ,' she elaborates. 'My research, in this sense, is grounded in work done by anthropologists (primarily Marc Abélès and Irène Bellier) who demonstrated that

"cultural compromises" at play in the functioning of the European Commission and Parliament were reflected in a culture of compromise in the "output" of those institutions.'

McAuliffe is working from the reasonable assumption that the process behind the production of jurisprudence could have implications for the development of EU law. Going beyond an investigation of cultural compromises within the ECJ, she and her team are considering the multilingual and multicultural aspects of the production process, and the multilingual aspects of the jurisprudence itself.

In addition to wanting to challenge EU law scholarship to look beyond conventional approaches to the development of a rule of law which draw on law alone, McAuliffe wishes to open up new opportunities for research across different disciplines that can potentially have an impact on how EU law is understood, created and applied, and build and strengthen the still new field of law and language study. Furthermore, McAuliffe hopes her work might have an impact on how translations are handled at the ECJ. 'In order for any institution to remain current and successful, it must embrace new challenges and the cycles of development that they bring. I think that now is a good time for the ECJ to think about its language and translation policies generally,' she comments. 'One issue that can be particularly significant relates to inconsistencies in translation that can potentially lead to a lack of clarity in implementing/following the judgments of the ECJ at Member State level. That then leads to a risk that those judgments may



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not be uniformly interpreted/applied across Member States, undermining the entire EU legal order. My team and I have developed a tool which allows us to find and analyse such inconsistencies. Using this tool, we can potentially work with the ECJ's own lawyer-linguists to develop new strategies for drafting as well as translating so that such inconsistencies can be minimised. At the very least, I would like to think that my research could highlight some aspects of the workings of the Court and its translation regime that may have an impact on the "output" of that Court and subsequently on how that "output" (i.e. judgments) may be interpreted at a member state level.'

BLESSING AND A CURSE

The interdisciplinary nature of the LLECJ project has presented challenges in its execution, with difficulties faced in terms of reconciling different methods from different disciplines. 'For example, analysing the text of judgments from a linguistics/corpus linguistics angle is very different from analysing the same text from a legal angle,' McAuliffe highlights. However, she believes that the multidisciplinary nature of the project is ultimately beneficial and adds to the quality of the research, lending itself to a more rounded and coherent analysis.

A further challenge experienced by the team comes in the form of presenting findings to diverse audiences. 'It is often very difficult to decide how to pitch a presentation or paper. When your audiences are interdisciplinary, there will always be people left dissatisfied

by a perceived gap or lack of explanation in a presentation or paper,' she explains. 'The easiest solution to this is to produce multiple outputs, each produced for a specific audience, and we do this in the project. However, I feel very strongly that I would like to develop truly interdisciplinary work for a truly interdisciplinary audience. Working out how to present that work so that it reflects the project fully and serves that interdisciplinary audience well is an ongoing challenge.'

DRIVING FORWARD

McAuliffe's work on the project highlights various layers of translation, both hidden and overt, in the production of a judgment, as well as the role of French in the Court. 'It is, in effect, a monolingual institution: working internally in French and producing case law in up to 23 languages. But within that monolingualism are layers of hidden translation as, most often, French is not the mother tongue of the actors in question,' she reveals.

Looking ahead, McAuliffe intends to continue to drive her research forward by striving to find a way to unite the analyses performed using diverse research methods so that they can transcend disciplines. She is also working on an edited book entitled *Precedent in EU Law: the Linguistic Aspect*. 'This will include not only chapters by a number of authors, but those chapters will be interspersed with commentary to formulate a coherent argument on the creation of a de facto precedent in EU law based on interdisciplinary work,' she elaborates.

Project Insights

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CONTACT

Karen McAuliffe
Principal Investigator

T: +44 1214147269
E: k.mcauliffe@bham.ac.uk
W: <http://llecj.karenmcauliffe.com/>

PRINCIPAL INVESTIGATOR BIO

Dr Karen McAuliffe is a Reader in Law and Birmingham Fellow at the University of Birmingham, UK. She is also a Fellow of the Robert Schuman Institute for European Affairs at the University of Luxembourg. McAuliffe has founded a Law and Language research group at Birmingham University Law School at which both of her ERC-funded projects on law and language – the LLECJ and EUCLCORP projects – are based.



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