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**United in Diversity
Multilingualism in the European Union
and India**

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SUMMARY

The present study wants to assess a very specific political conundrum: whether it is true or not that multilingualism is a brake for the implementation of a more entrenched political union in Europe.

The present analysis tries to answer to this research question in assessing two specific hypothesis: multilingualism does not hamper the pursuit of a more definitive political construction in the European Union (EU); by stressing that a more workable language regime in the EU would avoid the numerous technical problems that affect its management.

In order to test these hypothesis we will adopt a specific theoretical framework that should entrench the problem arising by linguistic diversities within the borders of Federal Theory, and more specifically within the borders of multicultural federalism.

It is the aim of this study to prove that a more clear and definite definition of EU's power in language regime and management, through the means provided by multicultural federalism, would avoid the problems connected to the management of a 24-language union. It is exactly the *half hearted* compromise reached in India, at the time of its independence, that will prove to be a lesson for Europe.

INTRODUCTION

“The EU is in essence a pluralist union. The basis of our unity lies in the diverse and multilingual nature of Europe’s culture, which has never been open to assimilate elements from cultures of other. European unity is clearly not, therefore, the result of some kind of uniformisation or levelling, but of a productive inclusiveness of differences, of contracts, and to a certain degree, even tensions. In this way, the diversity of languages and cultures which co-exist side by side at the heart of the EU are in no way exclusive, in the sense that they do not mutually exclude each other but instead reciprocally strengthen one another.”¹

Problematisation of the Issue

The European Union (EU) is a unique creature. 28 Member States have decided to share part of their sovereignty to establish a Union able to address challenges and goals in a unique construction. The idea behind this project was initially to foster peace in one of the most bellicose continent in the World. The Six founding members decided to pull together their coal and steel production, raw materials that were once used in war industries. As this integrationist-technocratic project evolved, also the competences conferred to this regional organization started to increase. Since 1957, Europeans developed and enforced the idea of the four liberties; an idea that supports the free movement of goods, services, people and capital. This has determined that today, at the basis of the European construction, there is the idea of the single market. The successes and the merits of this evolutionary project determined that more and more countries applied to join this reality. The downside of this evolution and success has been that as the EU grew in competences and membership, also its language regime evolved.

If at the beginning of the European Coal and Steel Community (ECSC), the leaders coming from West Germany, France, Italy, the Netherlands, Belgium, and Luxembourg could easily speak and comprehend themselves in French, notwithstanding the equal status of each national language, the idea of equal representation of national languages was affected by the increasing the success of the organization. Enlargement processes increased the spectrum of the official languages recognized at the EU level. This “act of generosity”² has currently produced a reality in which 24 languages are recognized as official languages of the EU.

¹ This is the foreword written by Manuel Barroso for COSMAI, Domenico, *The Language of Europe: Multilingualism and Bilingualism in the EU* in *The Economist, Practical Problems and Perspectives*, translated from <http://www.economist.com/blogs/prospero/2015/04/multilingualism-and-eu-0> (page consulted on 1st May 2015)

The current language regime has concrete effects on the EU institutional structure, so much that large parts of civil and academic society started to look at EU multilingual character as the main reason preventing the EU to become a fully-fledged political union. This concern has always been latent, but it became even more palpable after the “Big Bang enlargement,” the single biggest enlargements that determined the addition of 9 new official languages.

The official position of the EU on multilingualism is addressed through its motto “*United in diversity*”³ a formal attitude that presupposes the protection of linguistic diversity, all across Europe as one of the most prominent European values. At the same time, the EU coupled this official position with the aim of promoting multilingualism also across EU citizenry. The Head of States and Government in 2002 introduced in the final document issued from the Barcelona European Council a proposition “to improve the mastery of basic skills, in particular by teaching at least two foreign languages from a very early age.”⁴ Also the Commission intervened on the issue and, in 2005, it declared that “The Commission’s long-term objective is to increase individual multilingualism until every citizen has practical skills in at least two languages in addition to his or her mother tongue.”⁵ Notwithstanding these important declarations of principles, the former European Commission’s spokesman for education, culture, multilingualism and youth, Dennis Abbot, declared in 2014 “unfortunately, results from recent surveys and studies have been disappointing as far as languages skills are concerned.”⁶ He was referring to a 2011 survey that underlined that only 42% of 15-year-olds across 14 European countries were “independent user”, meaning to be able to hold a conversation in another language.⁷ These negative results should be linked to the fact that, notwithstanding the great importance of multilingualism in terms of social and cultural components of EU integration, the EU does not possess any jurisdiction over the content of education or national language policies across its Member States.

³ «*United in diversity*» first came into use in 2000, when the then President of the European Parliament, Nicole Fontaine, concluded one of her official speeches by introducing this motto. Since then, it has been used in numerous official publications and posters.

⁴ COUNCIL OF THE EUROPEAN UNION, *Presidency Conclusions*, Barcelona 15th and 16th March 2002, retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf (page consulted on 1st May 2015)

⁵ EUROPEAN COMMISSION, *Communication From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions: A New Framework Strategy for Multilingualism*, Brussels 22nd November 2015, 596 final, retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0596&from=EN> (page consulted on 1st May 2015).

⁶ TEFFER, Peter, “E.U. Fights to Get Everyone Speaking Same Language on Education”, *The New York Times*, 16th March 2014, retrieved from http://www.nytimes.com/2014/03/17/world/europe/eu-fights-to-get-everyone-speaking-same-language-on-education.html?_r=0 (page consulted on 26th April 2015)

⁷ EUROPEAN COMMISSION, *First European Survey on Language Competences. Final Report*, 2011, retrieved from http://ec.europa.eu/languages/policy/strategic-framework/documents/language-survey-final-report_en.pdf (page consulted on 1st May 2015)

This brief account should underline the reasons why scholars have always been pessimists about the possibility of a more entrenched political union. The lack of a single medium able to link EU citizens, politicians and society in general has been considered as one of the main brakes for the establishment of a real political Union.

In order to assess the untruthfulness behind the consideration that multilingualism hampers the future of a possible political union in the EU, our main expectations concerning this conundrum are the following: multilingualism is not hampering the pursuit of a more definite political construction; EU language regime needs to be revised in order to institutionalize a workable communicative situation that respects EU multicultural diversity, while empowering EU institutions of decision-making power over linguistic and educational policies as well.

In order to test these hypotheses, we must first assess whether multilingualism constitutes a problem on his own, especially in multinational settings. For this reason it is important to question us on how other democratically polities of a comparable continental dimension and intrinsic heterogeneity, as the EU, are governed and managed their linguistic diversities. This justifies the recourse to a comparative analysis and more precisely to the case study of India. The recourse to India will justify also another important assumption: multilingualism, in the peculiar case of the EU, should be entrenched and governed through the means of a Federal compact. More precisely, it should favour the applications of those tools introduced in multicultural federations.

The idea behind the recourse to multicultural federalism stems from the fact that culture, and more specifically linguistic diversity, is connected to a sense of belonging and identity. Identity based demands connected to political recognition of cultural differences in diverse societies have usually resulted in a tension between universalism and particularism.⁸ Usually, the suitability and feasibility of a balance between unity and diversity has tended to the institutionalization of a Federal Compact. In the broadest sense, federalism seeks to connect different levels of government within a same polity: individuals, groups and polities in a context of shared rules and self-rules.⁹ For this reason the EU language regime will be

⁸ KARMIS, Dimitros, GAGNON, Alain-G., "Federalism, federation and collective identities in Canada and Belgium: different routes, similar fragmentation", in GAGNON, A.-G., TULLY, James, *Multinational Democracies*, Cambridge University Press, 2001, pp.338-365.

⁹ Notwithstanding how tight is the link between language and nationalism, here we are not going to analyse it. This is especially true in the case of the EU, because within the European construction is very hard to distinguish among the different levels under analysis, being language related not only to states' interest, but also to regionals, and provincials ones. The complex and intricate system of multiple identities could result problematic, and even more importantly, not completely related to the aims of the present study.

analysed through the lenses of the Federal Theory and compared to the language regime in place in India, in order to best assess the specificities and commonalities of the two different polities.

State of the Art

“The language issue within the European constitutional space is one of the most fascinating challenges to supranational integration. On the one hand, the principle of equal standing of all official and working languages is constantly reaffirmed; on the other hand the necessity to simplify the European Babel on the basis of a more functional consideration of the language issue seems unavoidable.”¹⁰

Numerous articles, books, studies have been focused and centred on the analysis of EU multilingualism, and more generally to the complex and problematic relations existing among language and power. The interdisciplinarity and sensitiveness of the issue, however, have frequently hampered and affected the development of a sound inquiry on whether multilingualism is a brake for a European political union. Those studies usually start by assuming that multilingualism is a brake for Europe. In fact, the underlying rationale of most of EU multilingual-related studies is to consider that the EU cannot move in the direction of a more coherent political union, due to the fact that multilingualism hampers the construction of shared political instructions. However, other polities like India have shown that this is not the case, but most of the studies related to the EU situation seem to neglect this.

Moreover, another impediment to the analysis of the issue seems to be the same hybrid structure of the EU, that it is believed to be an impediment to the adoption of a comparative approach to the issue. In fact, the countless studies of EU multilingualism are usually more oriented towards legal, linguistic, economic aspects. All these aspects that are all inward-looking. More concretely, studies have always concerned what are the practical implications of managing such a diverse union with so many official languages, more than comparing EU polities with other successful examples of managing multilingualism. The lack of a robust assessment of whether multilingualism hampers the possibility of establishing a real political union is mainly due to the indefiniteness of the EU construction.

Judging the EU as a case on its own, has determined that the majority of EU multilingualism has a self-absorbed approach. All these works assessed multilingualism or by looking at its

¹⁰ PALERMO, F. “Linguistic Diversity Within the Integrated Constitutional Space”, *European Diversity And Autonomy Papers - EDAP*, Vol. 2, 2006, p. 3.

origins, or by looking and assessing EU translation services, or addressing its practical implications.

Studying multilingualism by looking at its origins has implied that scholars focused their attention on how the current language regime took its form and how it could evolve due to the consequences of modern-day politics. They assessed the relation between the definition and selection of an official language within a territory, as in the case of Baggioni, in his *Langues et nations en Europe*.¹¹ In this field, scholars then looked also at the impact of globalization. Calvet, in his *L'Europe et ses langues* has examined whether the current trend of dominance of the English language in world-wide politics would have consequences to the EU construction as well.¹²

EU multilingualism is most importantly the preferred field of research of linguists and translators. The width of EU language regime requires for considerable translations and interpretations services. For this reason, linguist in general, but more specifically translators have studied the EU phenomenon. They do not only assess the relations between languages, states and EU as an all, but they have underlined also the impracticability of the creation of equivalent concepts and meanings in different languages, as in the works of Ballard and Cosmai.¹³ Moreover, the fact that the EU is able to issue legal texts, has implied that translators and practitioners had to face the narrow link between law and languages. De Groot, analysed the issue by arguing that the difficulty of translating legal texts in the EU depends on the fact that translators have to be proficient not only in foreign languages but also in comparative politics. Of a similar view, Grossfeld has inferred that EU 'invested meaning' cannot be translated and that it is impossible to transfer concepts from one language to another when legal texts are concerned.¹⁴

Furthermore, the economic reasoning has long been employed in measuring the costs and the economic capitalization of linguistic diversity, especially in the technocratic construction as the EU, as it was in Grin and Villancourt, Duchêne and Del Percio.¹⁵ These kind of study

¹¹ BAGGIONI, Daniel, *Langues et nations en Europe*, Paris, Payot & Rivages, 1997.

¹² CALVET, Louis-Jean, *L'Europe et ses Langues*, Paris, Plon, 1993.

¹³ BALLARD, Michel (ed.), *Europe et traduction*, Artois Presses Université, Les Presses de l'Université de Ottawa, 1998. And COSMAI, Domenico, *The Language of Europe: Multilingualism and Translation in the EU Institutions: Practice, Problems, and Perspectives*, Editions de l'Université de Bruxelles, 2014.

¹⁴ GROSSFELD, Bernhard, *Comparative Law as a Comprehensive Approach: A European Tribute to Professor J. A. Hiller*, I. Rich J. Global & Bus, 2000.

¹⁵ UNGER, Johann W., KRZYZANOWSKI, Michal and WODAK, Ruth (eds.), *Multilingual Encounters in Europe's Institutional Spaces*, London, Bloomsbury Academic, 2014.

have assessed how much the EU spends to manage its multilingual nature, and what are the results in term of cost-benefit analysis.

However, the present study wants to assess if multilingualism is a brake for developing a more political European Union, by analysing internal features and compare them to other polities. It is exactly, considering the aim of this study that we have to point out an other important scarcity in scholarly debates concerning linguistic diversity and multicultural settings. When scholars have analysed the issue in comparative terms, they have usually preferred to concentrate themselves in terms of ethno-linguistic conflicts and process of nation building, like in the case of Horowitz, Walker, and O’Leary.¹⁶ All these studies have taken into account not only the concept of divided societies developed by Kymlicka, but also they have considered the issue especially in non-democratic contexts, as in the case of O’Leary and McGarry.¹⁷ “Not surprisingly, conflict over official languages is a major political issue in linguistically diverse societies.”¹⁸

For all these reasons this study aims to fill these gaps and assess whether the presence of multilingualism – in stable and democratic contexts such as the EU – constitutes a serious drawback for the unity of a more political union, by looking at how India has addressed the issue.

“All things Equal”: A Priori Warnings

A Justification for the Recourse to the Federal Theory

It is time for the first and most important *a priori* warning of the present study. As we have just hinted at before, the nature of the European polity asks for some caution in the use of concepts and comparisons forged in other contexts.

It is of pivotal importance to clarify here that this study considers the European construction as a particular kind of federal experience. The EU is neither a state, nor an International organization, but it is surely something more than a traditional regional union. The EU can be conceived as a Union of independent nation states that are pooling together resources and

¹⁶ HOROWITZ, Donald, *Ethnic Groups in Conflict*, Berkley, University of California, 1985. And O’LEARY, Brendan, *Multi-national Federalism, Federacy, Power-sharing and the Kurds of Iraq*, paper presented at the Conference on Multi-nationalism, Power-sharing and the Kurds in a New Iraq Cafritz Foundation Conference Center, George Washington University, 2003.

¹⁷ CHOUDRY, Sujit (ed), *Constitutional Design for Divided Societies: Integration or Accomodation?*, Oxford University Press, 2008.

¹⁸ CHOUDRY, S. “Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies” in CHOUDRY, Sujit (ed), *Constitutional Design for Divided Societies: Integration or Accomodation?*, Oxford University Press, 2008, p. 5.

powers by building a union with the purpose of addressing common challenges. For this reason, what is required here is a “sober, historically informed assessment of the possibilities of, and limits to, federalization.”¹⁹ The EU can indeed be seen as a federation *sui generis*, using the category developed by Tömmel. More precisely the EU can be defined as a *sui generis* federation, because it possesses some feature of a federal polity but it does not comply totally with what the descriptive idea of federation requires. Acknowledging that the EU is a federation *sui generis* serves the ends of the present study because in this way we can link and compare the EU experience to the Indian one, as the main example of multicultural federalism.

In this way we can imply and infer that the EU can be considered as a political construction analogous to a multicultural federation. A multicultural federation is defined as a polity in which there “is not a shared national identity, but a shared conception of federal citizenship and multilevel self-government.”²⁰ In fact “the essence of federalism is not to be found in a particular set of institutions but in the institutionalization of particular relationships among participants in political life.”²¹

In order to assess whether multilingualism hampers the future of a possible United States of Europe, one must first assess how multilingual and multinational federations address the issue and if the EU can learn from this other experiences. In fact, in order to prove that if a particular theory or institutional setting is good and able to address a specific issue it must be proved empirically. For this reason, the “practical application of federal arrangements”²² in terms of language regime is especially important. For this purpose, the EU language regime will be compared to the one in place in India. India, as a matter of fact, is one of the most evident examples of multinational and multilingual federations.

The EU and India: Two Unions “United in Diversities”

It is time for the second a priori warning of the present study. In fact, to some the comparison of the EU with India could appear baseless and impervious. In this context, the work of Philipp Dann Heidelberg has proved to be important in assessing the practicability of the

¹⁹ HESSE, Joachim Jens, and WRIGHT, Vincent, “Introduction”, in ¹⁹ HESSE, J. J., and WRIGHT, V., (eds.) *Federalizing Europe? The Costs, Benefits, and Preconditions of Federal Political Systems*, Oxford University Press, 1996, p. 4.

²⁰ BAUBÖCK, Rainer, *United in Misunderstanding? Asymmetry in Multinational Federation*, *ICE Working Paper*, Austrian Academy of Sciences – Research Unit for Institutional Change and European integration, No. 26, 2001, p. 3.

²¹ ELAZAR, Daniel J. *Exploring Federalism*. The University of Alabama University Press, 1987, p. 12.

²² *Ivi*, p. xii.

present comparison. In fact, the scholar in *Federal democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law* has clearly showed that a similar comparison is not like “comparing apples and oranges.”²³

The scholar demonstrates that the numerous similarities existing between the two polities justify and legitimize the comparison. The first characteristic that the two polities share is the common experience of cultural and linguistic tensions encapsulated within the democratic interplay. Secondly, both polities have, in order to assess their intrinsic heterogeneity, enforced federal or para-federal structures as organizing principles, albeit in different ways, in order to manage the relations and clashes between the different national communities.

“The heterogeneity has many facets: both polities operate with a multitude of official languages [...] As to cultural and socio-cultural customs, there is no dominating or majority patten either in India or the EU [...] Both polities are, simply put, rather continents than countries. They both face the challenge of creating rules of democratic participation that can accommodate this immense diversity.”²⁴

India, in fact, is not a state in the classical sense but more concretely the embodiment of a multinational and multicultural federation. As argued by Bereciartu, usually a state presupposes the existence of a single community that is likely to develop totalitarianist policies, trying to homogenise the existing community.²⁵ India, instead, had and continues to comply and coexist with diverse communities that enable the central polity of totalitarianist policies. “India’s as a multicultural federation has showed how India’s national identity was continuously being negotiated vis-à-vis the growing autonomy needs of ethno-national groups.”²⁶

Structure of the Dissertation

In order to test whether the multilingualism is a serious drawback for the establishment of a more political European Union, this study will be divided in three parts.

²³ HEIDELBERG, P. D. “Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law”, *Verfassung und Recht in Übersee VRÜ*, 2011, p. 162.

²⁴ HEIDELBERG, P. D. “Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law”, *Verfassung und Recht in Übersee VRÜ*, 2011, p. 162.

²⁵ BERECIARTU, Gururtz J., *Decline of the Nation-State*, University of Nevada Press, 1994.

²⁶ BHATTACHAYYA, Hariar, *Federalism and Competing Nations*, in in BURGESS, M., PINDER, J. (eds.), *Multinational Federations*, London, Routledge, 2007, p. 50.

The first part will be devoted to the methodological framework. As already said previously, the theoretical framework of the present study is the ability and capability of multinational federal compacts to provide space to the various internal nations that usually are competing with each other in multicultural and multilingual contexts. However, before doing so and explaining what are the benefits of multicultural federation in the management of diverse societies, the first part will address and justify the application of the Federal theory to the peculiar case of the EU, defined as a peculiar type of federal political system: a federation *sui generis*.

The second part will be dedicated to the description of the two Unions, from the point of view of their linguistic diversities. The first chapter will be devoted to India, while the second will concern the EU. This part will dispense important information about the existing language regimes in the two Unions. In the part dedicated to India, the chapter will be focused on accounting how Indian constituent fathers were able to entrench, in the constitutional text, a language regime that was able to address the needs of the newly independent reality to democracy and stability. In the part dedicated to the EU, we will point out how the current language regime has been affected by nationalist thrives that produced a situation in which multilingualism has been completely neglected by EU leaders.

The third, and conclusive, part will be focused on the EU. Here, it will be analysed what the EU can learn from the Indian experience. Here, firstly we will provide some important legal cases justifying the assumption that the current EU language regime is increasingly unmanageable. Then, it will be inferred that the EU should be bold and leave aside any indefiniteness over language policies. The EU should look at India and equip itself with a more workable language regime.

A THEORETICAL FRAMEWORK FOR MULTICULTURAL FEDERALISM:

Justifying the application of Federal Theory in the analysis of the EU

“Diversities are not to be considered as a burden but as an asset that states can build upon.”²⁷

“Today, claims for sub-states and supra-state territorial relevance call into question the assumption of the centrality of the nation-state but it would be naive to propose that regions could replace state as the central territorial level for Europe of the future. The state is being challenged not because new problems are emerging which cannot be adequately handled at the state level – whatever that level is, given the wide differences in geographical extension and population size among equally “sovereign States” – but because new (individual and collective, public and private) actors are pursuing strategies that imply the redefinition of the scale at which problems should be handled and are promoting the involvement of the level at which they are active and the subjects that they representing new decision-making arrangements.”²⁸

Introduction

European integration developed in the presence of multiple languages in the European Continent. One of the most important issues raised by this evidence has been how the European Union (EU) decided to address this phenomenon within the increasing economic and political construction and institutional setting that has progressively took the form of what is now known as the EU. This concern, by virtue of EU enlargement processes has usually been addressed by broadening the spectrum of EU official languages. Linguistic diversities

²⁷ MAJEED, Akhtar, ELAIGWU, Jonah Isawa, FLEINER, Thomas, SINGH, Mahendra Prasad, “Building on and Accomodating Diversities”, in WATTS, Ron, and CHATTOPADHYYAY, Rupak (dir.), *Building on and Accomodating Diversities*, Viva Books, New Delhi, 2007, pp. 3-20, at p. 3.

²⁸ PIATTONI, Silvia, “Federalism and the European Union”, in Loughlin, J., KINCAID, J., and SWENDEN, W. (eds.), *Routledge Handbook of Federalism and Regionalism*, London, Routledge, 2013, pp. 547-558, at p.553.

are indeed a sensitive issue within the EU, able to paralyze any concrete decision over its management.

Officially the EU, and its institutions, have addressed the issue of multilingualism – and European heterogeneity in general – with the motto “United in diversity”, which is supposed to summarize “how Europeans have come together; in the form of the EU, to work for peace and prosperity, while at the same time being enriched by the continent’s many different cultures, traditions and languages.”²⁹

Notwithstanding this declaration of intents, multilingualism has always been perceived as one of the main impeding components in the development of a more entrenched political integration in Europe. But the EU is not the only one susceptible to the challenges coming from linguistic diversities; other polities had and continue to have to cope with problematic issues deriving from the languages spoken.

It is important to state that the concept of diversity, here, is connoted and mainly seen as a “qualitative collective characteristic based on language, religion, ethnicity, nationality, culture, and race”.³⁰ Among numerous examples, there is especially one that can be useful to the ends of the present analysis: the case of India. Demographically speaking both India and the EU contain sound ethnic groups or “thick” nations,³¹ and in the case of the EU proper nations. “The magnitude of India’s diversity is legendary”³² eminently that:

“A fundamental political question has been at the heart of India’s freedom movement and post-independence nation building: how should democracy and ethnic diversity be combined? For centre-state relations per se, this question takes a specific form: how should democracy and geographically concentrated ethnic diversities be brought together?”³³

This is why it is important to analyse whether the presence and recognition of multilingualism constitutes or not a serious drawback for the emergence of a unitary political entity. In

²⁹ This is how the motto is explained in one of the official websites of the EU, see in http://europa.eu/about-eu/basic-information/symbols/motto/index_en.htm (consulted on 11/04/2015).

³⁰ WATTS, Ron, KINKAID, John, “Introduction”, in WATTS, Ron, and CHATTOPADHYAY, Rupak (dir.), *Building on and Accommodating Diversities*, Viva Books, New Delhi, 2007, p. XI.

³¹ The term thick nation refers to those “nations in the ethnic sense defined by such terms as language and tribal ethnicity, and are usually deeply rooted in history, culture and tradition.” See more in BHATTACHARYYA, Harihar, “India and Switzerland as multinational federations” in BURGESS, M., PINDER, J. (eds.), *Multinational Federations*, London, Routledge, 2007, pp. 212- 224, at p. 218.

³² ARORA, Balveer, “Republic of India”, in MORENO, L., COLINO, C., (eds), *Diversity and Unity in Federal Countries*, McGill University Press, 2010, p. 229.

³³ VARSHNEY, Ashutosh, “How has Indian Federalism Done?”, *Studies in Indian Politics*, Vol. 1, No. 1, 2013, pp. 43-63, at p. 44.

particular, the present analysis is intended to contribute to a more balanced assessment of a very specific riddle: whether it is true that in the modern EU, the current language regime constitutes an obstacle to a more entrenched political union. For this reason it becomes important to see how this alleged problem could be theoretically managed by grounding linguistic diversity in a system able to address the existing tension between universalism and particularism.

But more importantly, this theoretical framework has the duty to address also to the indefiniteness of the EU construction, especially if confronted to the *statehood* of India.

In the broadest sense, federalism is able to connect different levels of government within a single polity, being those individuals, groups or polities in general, in a context of self-rules and shared-rules. Chiefly, federalism is able to address a specific political conundrum: the desire of being united with the desire of remaining different.³⁴ It puts in place a political system able to provide concrete and tailored tools for polities that label themselves as being *united in diversity*. Federalism, in few words, is a “dynamic political equilibrium which, when backed by democracy, better accommodates nations in culturally diverse countries, and serves as an effective tool of resolving ethnic conflicts.”³⁵

On the basis of these considerations, this part is concerned with developing a reasoned theoretical framework for justifying the categorization as a EU as a federation *sui generis*, in order to link linguistic diversity and its management within the boundaries of multicultural federalism. It aims at looking at how the broader concept of federalism can justify the statement that multilingualism is not an impediment to a more entrenched political union. The following sections can draw evidence supporting this basic assumption. Firstly it will be assessed the default category of federalism, its original meaning and its original applications. Secondly, it will be pointed out how federalism has evolved, meaning how scholars started to look for federal solutions in order to appease heterogeneous societies, this has been true especially from the point of view of languages, determining an evolution of the federal compact, what has been called cultural federalism. Here we will introduce a further differentiation, between cultural and multicultural federalism. We will try to support the thesis that the social make up of the society under analysis can influence the type of cultural federal arrangement in the state itself. Multicultural federalism will be presented as the theoretical framework and set of tools that addresses specifically the difficulties and problems

³⁴ SCHIMITZ, Thomas, *The Conception of the European Union as a Supranational Federal Polity*, Georg August Universität Göttingen, 2004, pp. 2-20.

³⁵ BHATTACHARYYA, H., *op. cit.*, p. 214.

arising in the context of heterogeneous societies Finally, in the last section, we will deal with further evolutions of the wider genus of federalism; in this case we will examine especially the concept of federation *sui generis* applied to the EU, by pointing out how this federal system is similar to multicultural federations. Then, a partial conclusion will be provided.

Federalism, Federal Political Systems, Federations

“In the early years of the 21st century the world appears to be in the midst of a paradigm shift from a world of sovereign nation-states to a world of diminished state sovereignty and increased interstate linkages of a constitutionally federal character.”³⁶ The reasons why federalism has become so popular in modern times are consequent to the evolution of society in general, with the modern developments such as transportation, trans-border communications, technology, industrial interdependence and more generally globalization.³⁷ It is by no means strange that in a similar context, federal solutions have been preferred to other normative solutions. “They enable a combination of (a) shared governance in a large political unit for certain common purposes, and (b) autonomous self-governance for the various diverse groups in smaller constituent units of government directly and democratically responsible to their own electorates”.³⁸ As a result, nowadays among the 193 states in the United Nations 25 of them are federations; those states comprise nearly 40 per cent of the world’s population. For all these reasons, it becomes important to look and define federalism, analysing the reasons behind the progressive evolution of *statism towards federalism*.³⁹

Here, the concept of federalism is not taken as a simple descriptive category of random political institutions, instead, it is conceived as a normative idea that combines and refers to multi-tiered system of governance. Federalism, here, represents “united in diversity and as such it has been used as a *desirable* principle of *governance* for many political systems”.⁴⁰ A normative idea that presupposes that:

“Federal principles [that] are concerned with the combination of self-rule and shared-rule.
In the broadest sense, federalism involves the linking of individuals, groups, and polities
in lasting but limited union in such a way as to provide for the energetic pursuit of

³⁶ WATTS, Ronald L., KINKAID, John, “Introduction”, in WATTS, R. L., *Comparing federal systems*, Third Edition, Institute of Intergovernmental Relations, McGill-Queen’s University Press, 2008, pp. 1-28, at p. 1.

³⁷ Watts gives an inside look at the modern causes to the rise of federalism. See it in WATTS, Ronald L., KINKAID, John, “Introduction”, in WATTS, R. L., *Comparing federal systems*, Third Edition, Institute of Intergovernmental Relations, McGill-Queen’s University Press, 2008, pp. 1-28, at pp. 5-7.

³⁸ WATTS, Ronald L., KINKAID, John, *op. cit.*, p. XII.

³⁹ ELAZAR, Daniel J., “From Statism to Federalism: A Paradigm Shift”, *International Political Science Review*, New Trends in Federalism, Vol. 17, No. 4, October 1996, pp. 417-429.

⁴⁰ SWENDEN, Wilfred, *Federalism and Regionalism in Western Europe. A Comparative and Thematic Analysis*. Palgrave, New York, 2006, p.6.

common ends while maintaining the respective integrities of all parties. As a political principles, federalism has to do with the constitutional diffusion of power so that the constituting elements in a federal arrangement share in the process of common policy making and administration by right (...) federal system do this by constitutionally distributing power among general and constituent governing bodies in a manner designed to protect the existence and authority of all.”⁴¹

Beyond the normative idea presupposed by the term federalism, there are two other terms that – instead – are connoted by descriptive meanings; these are *federal political systems* and *federation*.

Federal political systems refers to:

“a broad category of political systems in which, by contrast to the single central source of political and legal authority in unitary systems, there are two (or more) levels of government thus combining elements of shared –rule (collaborative partnership) Through a common government and regional self-rule (constituent unit autonomy) for the governments of the constituent units. This broad genus encompasses a whole spectrum of more specific non-unitary forms, i.e., species ranging from “quasi-federations” and “federations” to “confederacies” and beyond.”⁴²

It is exactly within the descriptive category of federal political systems that we can distil another descriptive category, that of federation, which:

“represent a particular species in which neither the federal nor the constituent units of the government are constitutionally subordinate to the other, i.e., each has sovereign powers derived from the constitution rather than from another level of government , each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers, and each is directly elected by its citizens.”⁴³

Historically and originally, federalism has appeared to limit excessive governmental powers, by dividing – as we have seen in the various definitions – powers between the centre and the constituent units.

Scholars usually tend to disagree on many important issues relating to federalism. The most debated issue is the same justifications behind establishing a similar model. They debate on what are the final goals of federalism, what could be their relative priorities if compared to

⁴¹ ELAZAR, Daniel Judah, *Exploring Federalism*, The University of Alabama Press, Tuscaloosa, 1987, p.6.

⁴² WATTS, R.L, and KINKAID, J., *op. cit.*, p. 8.

⁴³ *Ibidem*, p. 9.

other forms of governance, what is the weight of any countervailing considerations and what should be the reasoning at the basis of a federal systems for supporting these calculations.

Notwithstanding these clashes, the literature has largely convened on the original causes for the appearance of federalism. Most notably, Riker and Wheare explained that the genesis of federalism has been justified on grounds of *collective security* and *economic prosperity*. Federations, in the classical federal pattern, form from pre-existing political units that find “a more effective deterrent together than alone. A federation also can be understood as a common market that is larger and more efficient than one in which international borders impede the floods of goods, services and capital.”⁴⁴

Nonetheless, as the society evolved also the demands towards federalism changed. This determined a situation in which even though federal systems and federations were comparable in descriptive terms, the reasons behind choosing federalism changed drastically. In fact, existing pressures within a society may determine and produce particular political expression able to affect the institutional pattern of the state itself in a dynamic and continuous interaction.

“In comparing federal systems and their design we shall be concerned, therefore, not only with the influence of social forces upon the adoption, design and subsequent operation of federal constitutional structures, but with the influence that particular federal political superstructures and the related processes and political practices have had upon social loyalties, feelings and diversity”⁴⁵

It is exactly this interplay, between social characteristics, written constitutions, how governments actually behave and act, the primary locus where to find the effectiveness of federal compacts in the management of conflicts and various quests. Social diversity and social heterogeneity are not new in world politics. However, they started to become an issue when social diversities – from ethnic or cultural affiliation, religious beliefs, to languages spoken – appeared within the boundaries of a state. Notwithstanding their related complexities, federalism was able to develop new tools for the management of these societies. This led to the appearance of a distinctive nuance of the wider genus of federalism: multicultural federalism.

⁴⁴ CHOUDRY, Sujit, and HUME, Nathan, “Federalism, devolution and secessions: from classical to post-conflict federalism” in GINSBURG, T., DIXON, R. (eds), *Comparative Constitutional Law*, Edwards Elgar, Cheltenham/Northampton, 2011, pp. 356-386, at p. 358.

⁴⁵ WATTS, R.L, and KINKAID, J., *op. cit.*, p. 21.

However, before looking at how federalism has been able to appease the tension between universalism and particularism through the means of multicultural federalism we should justify the application of the federal theory in the case of the EU experience.

The Tension Between Universalism and Particularism: Multicultural Federalism

“Insofar as federal systems seek to accommodate diversity, conflict must be recognized as inherent in the federal setting. In contrast to the American view which believes that ‘too much federalism’ endangers the foundations of a country, and represents an impediment to the realization of one-nation concept [...] the notion of the ‘federal bargain’ stressing and accepting, as fait accompli [envisions] relationships prevalent at the origin of the federal system”⁴⁶

“Federalism, it is argued here, has the advantage of accommodating diversity and unity.”⁴⁷ For this reason, we have witnessed situations in which policymakers proposed, promoted and enforced federal solutions in post-war situations like Iraq, and Nepal, just to name few of its recent applications. This trend was justified on the grounds that federalism is believed to be one of the suitable responses in accommodating different ethnic groups within the boundaries of a single polity.

The reasons and justifications behind preferring this solution to others are quite simple: federalism is believed to be able to reduce internal conflict “by a measure of disengagement, of separation. Harmony will be increased in a system in which territorially concentrated minorities are able to exercise autonomy or self-determination on matters crucial to their identity and continued existence, without the fear of being overridden or vetoed by the majority group.”⁴⁸

For all these reasons, federalism has started to be selected as a possible model of governance in highly complex societies, marked by internal conflicts as a result of the breakdown of colonial empires, which started little before the two world wars and ended in the 70s. Those newly independent states inherited complex societies. These newly independent ethnically

⁴⁶ GAGNON, A-G., *op. cit.*, 29.

⁴⁷ GAGNON, Alain-G., “Federalism: A Conflict Management Device For Europe”, in LLOYD BROWN-JOHN, C., *Federal-Type Solutions and European Integration*, Lanham, University Press of America, 1989, p. 29.

⁴⁸ SIMEON, Richard, and CONWAY, Daniel-Patrick, “Federalism and the management of conflict in multinational societies”, in GAGNON, A.-G., and TULLY, J. (eds.), *Multinational Democracies*, Cambridge University Press, 2001, pp. 338-365, at p.339.

and culturally diverse realities found in federalism the only promise able to accommodate this “incongruence of colonial territory and plural identity.”⁴⁹

Among the numerous difficulties that could impinge the establishment of democratic and stable institutions, there was one amongst them that represented a real sensitive issue: linguistic diversity. Language, in those ethnically diverse societies, does not only have the obvious communicative function, but it is – even more importantly – one of the most powerful symbols of group identity.⁵⁰ For this reason, the normative idea of federalism, as “an ideology that recuperates and re-values feelings of membership that history has repressed (...) have always had to deal with [language diversity].”⁵¹ And exactly for this reason that federalism started to deal with linguistic diversity, right from its beginning. However, recent applications of this peculiar type of federalism seem to detach from the old and most common examples. In fact, it is the purpose of this study to introduce a distinction that is not common in the federal literature on the theme of accommodating social differences. Here we will introduce the distinction between cultural and multicultural federations, based precisely on the type of society that we are dealing with. Progressively, as societies grew in complexities the pattern of cultural federalism had to diversify as well and evolve into what is now commonly known as *multicultural federalism*.

Cultural Federalism

Cultural federalism has been defined as a “federalization arisen out of the desire to build a stronger union without giving up regional cultural autonomies.”⁵² Practically, federal polities were conceived and thought in order to acknowledge these internal differences at the institutional level, by granting to the different ethnic and linguistic groups – recognized at the territorial level – true means of autonomy in the their portion of territory and real possibilities of participating in the political life of the federation. In fact, linguistic accommodation, or cultural accommodation, in federal compacts – as in other kind of polities – has generally

⁴⁹ HUEGLIN, Thomas O., and FENNA, Alan, “Federal Systems”, in HUEGLIN, T. O., and FENNA, A., *Comparative federalism: a systematic inquiry*, Broadview Ltd., 2006, p. 55.

⁵⁰ See more in EDWARDS, John R., *Language, Society, and Identity*, Oxford, Blackwell, 1985. Cfr. in particular Chap. III: “Language Maintenance and Language Shift”.

⁵¹ RUSSOILLO, Francesco, “Federalism and Linguistic Behaviour”, *The Federalist – a political review*, N. 17, 2009, pp. 17-41, at p.17.

⁵² HUEGLIN, Thomas O., and FENNA, Alan, “Federal Systems”, in HUEGLIN, T. O., and FENNA, A., *Comparative federalism: a systematic inquiry*, Broadview Ltd., 2006, p. 57.

taken the form of territorial accommodations, because of the easiness of addressing the kind of political issues through the means of partial autonomy.⁵³

Federalism, in this nuance, was able to face the flaw of traditional constitutional principles by recognizing internal diversity. Nevertheless, the kind of internal diversity that we are approaching in this model had to manage quite few internal minorities that asked for recognition but were not “thick nations”. Canada and Switzerland, the leading cases of this model, had to manage linguistic minorities that were not composing different nations within the single polity.

However, as societies evolved, cultural complexity escalate as well. For this reason the original model of cultural federalism had to evolve too. The type of constitutional arrangement of Canada and Switzerland were soon taken as examples by these new complex societies. Nevertheless, these societies – due to their internal thick nations – developed a new type of cultural federalism: multicultural federalism.

Multicultural Federalism

“So, in analysing success of a [cultural] federal system, one obvious criterion is the capacity to manage conflict, so as not to create ‘crises’ that threaten the social contract, and the stability and unity of a specific political arrangement”⁵⁴

Multiculturalism federalism here is considered as the consequent next step in ethnically diverse societies. The leading cases in cultural federalism are Canada, and Switzerland. Those polities had to face, and continue to cope, with internal diversity especially from the point of view of the languages spoken. However, those polities had to manage a reduced number of ethnic groups in their territories. In the case of the EU and the counterpart chosen in the present study, India, we are talking of numerous and countless thick nations. A situation where even identifying the different nationalities can become a serious issue.

Remarkably the end of colonial empires and the result of globalization determined difficult and impervious situations for the resulting newly independent states. It is in those years that Federalism, and more concretely its *cultural* variant, evolved and equipped itself of the tools necessary to cope with cultural and linguistic diversity. In fact, multicultural federalism is able to promote even more diversities as the core mechanism for holding the society together.

⁵³ There are indeed other types of non-territorial solutions, but this topic would merit its own analysis, and we do not intend to treat it any further.

⁵⁴ GAGNON, A-G, *op. cit.*, 30.

Multicultural federalism, in fact, gives new meaning to self-rule and shared-rule. Decentralization, here, is conceived and given to internal communities in order to limit the autonomy and powers of the central government, specifically in all those sensitive areas as for instance culture or linguistic rights. More specifically, and more importantly if we look at the aims of the present study, multicultural federalism is able to grant and justify the imposition of a multilingual language regime in a single polity. It gives to each constituent unit the freedom to speak, write and communicate in their own language. At the same time, those important self-government powers are exercised in accordance with the majority principle. The central government retain important powers in defying how governmental power can be divided. In concrete terms, central government engage itself in protecting cultural and linguistic diversity, in a reasonable fashion: by adopting only a selected numbers of language for the management of the centre.

Only a balance between these *nuances* of self-rule and shared-rule give to internal communities the chance to foster their social individuality within the boundaries of their territories, in accordance with the affinity of the wider polity. Multiculturalism is, in few words, able to combine the sense of particularism and universalism in a unique way. Only on the basis of this important institutional and constitutional scheme, the multicultural state is able to provide fertile soul for the continuous and respectful development of internal communities. Only a multicultural federal design can achieve this.

These premises are important to underline and stress that cultural fragmentation requires important changes in terms of tools, procedure and institution to adopt or apply. If polities want to meet the requirements and challenges related to hold multicultural societies together, they have to understand, recognize and guarantee cultural diversity seriously. Taking cultural diversity seriously means officially recognizing the rights of those communities within the single polity.

“[Multicultural federalism] is a tool for a multicultural state to derive maximum benefit from diversity. It is the constitutional implementation of the principle of unity in diversity. The diversity of a state becomes an advantage that merits protection and enhancement. While necessarily committed to universal values, such a state has an additional focus on its own specific values. It is equipped to answer its citizen’s question: what is good for us and for our communities?”⁵⁵

⁵⁵ FLEINER, Thomas, KÄLIN, Walter, LINDER, Wolf and SAUNDERS, Cheryl, “Federalism, Decentralization and Conflict Management in Multicultural Societies”, *Politorbis*, No. 32, Vol. 1, 2003, pp. 39-57, at p. 48.

The benefits related to the implementation of a federal compact, or more precisely of a multicultural federal compact are related to the same recognition of cultural differences. The increasing recognition of cultural differences, such as the language spoken in a particular country, has usually taken the form of identity-based demands, which usually meant a tension between universalism and particularism.⁵⁶ These tensions have tended to result in a growing polarization of political and theoretical positions with portions of the populations willing to grant as much recognition as possible. It is in this context that multicultural “federalism offers a way to approach political phenomena in its own right and is not to be subsumed within other models of political inquiry”, even though the author of this sentence did not contemplate the category of multicultural federalism.⁵⁷

Among multicultural federation the case of India is of pivotal importance for the ends of the present study. The linguistic diversities of India, joint to other social and cultural characteristics, created serious limitations to the Constituent fathers at the dawn of Indian independence. “The founding fathers sought to create an integrated polity for a society that had never been integrated”⁵⁸ by designing the new state as a true multicultural federation.

The Federal Theory Applied to the European Union: a *Federation Sui Generis*

“‘Federal Union’, ‘union of democracies’, ‘union of states and people’, ‘compound republic’ are equally plausible terms that denote the simultaneous preservation of unity and autonomy, of federal and confederal arrangements, supranational and transnational traits”⁵⁹

The EU is not a state; this means that it does not possess on its own any kind of sovereignty.⁶⁰ The EU is a supranational entity in which sovereignty is granted to the supranational level by Member states, being them the final actors able to determine which, what and how much powers can be allocated to the European level.⁶¹ Notwithstanding this important caveat, the EU can be explained and assessed through the means of federalism. The aim of the present paragraph is to justify this understanding of the European experience, by explaining on what

⁵⁶ KARMIS, Dimitros, GAGNON, Alain-G., “Federalism, federation and collective identities in Canada and Belgium: different routes, similar fragmentation”, in GAGNON, A.-G., TULLY, James, *Multinational Democracies*, Cambridge University Press, 2001, pp.338-365.

⁵⁷ ELAZAR, Daniel J. *Exploring Federalism*. The University of Alabama University Press, 1987, p.7.

⁵⁸ ARORA, Balveer, “Republic of India”, in Moreno, L. Colino, C. (eds), *Diversity and Unity in Federal Countries*, McGill University Press, 2010, pp.200-226, at p. 220.

⁵⁹ PIATTONI, Silvia, *op. cit.*, p.550.

⁶⁰ This is to stress that EU sovereignty seems to be, and it is perceived by some of its Member States as a sovereignty delegated to the supranational level, but more importantly, a sovereignty on loan.

⁶¹ This is the so-called “principle of conferral”, art. 5.2 of the TFEU that says “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out in the treaties”.

grounds the EU can be considered to be something more than a confederation, but it cannot be considered a proper federation. In few words, here it will be explained on what grounds and on what extents the EU cannot be considered neither a confederation nor a fully developed or conventional federation, being it considered as a “*federation sui generis*”⁶² that re-enters in what was previously defined as federal system.

“The EU is neither a sovereign state nor an international organization but rather an entity in which otherwise sovereign states have agreed to pool part but not all of their sovereignty”⁶³ for these reasons scholars have started to consider the EU as a *post-modern confederation*.⁶⁴

“In confederal arrangements member states remained the locus of sovereignty and retained the bulk of their powers, assigning a minimum of powers and responsibilities to their common government.”⁶⁵ However this is not the case. The justification at the basis of this strong statement is validated by acknowledging the significant powers transferred to the EU as a system of governance. The EU has exclusive competences – which encompass monetary policy for those member states whose currency is the Euro, consumer policy related to the internal market, the conservation of marine biological resources in the light of common fisheries policy and the common commercial policy – that are wider if confronted to those of a confederation. Moreover, the EU does not just regulate the conduct and the extension of the relationship of/with member states, it has the power of passing EU legislation that is directly applicable also to EU citizens and businesses.

The EU legislation, in fact, can count on the principle of direct applicability of EU law, introduced with the landmark of the European Court of Justice, the *Van Gend en Loos* case:

“The Community constitutes a new legal order of international law for the benefits of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States, Community law therefore not only

⁶² It is important here to acknowledge the contribution of Tömmel for the justification of the sui generis nature of EU federalism. See more in TÖMMEL, Ingeborg, “The European Union – A Federation Sui Generis?”, in LAURSEN, F., *The EU and Federalism: Politics and Policies Compared*, Farnham, Ashgate, 2011, pp. 41-56.

⁶³ WOLINETZ, Steven B., “Comparing the Incomparable: Treating the EU in Comparative Context”, in LAURSEN, F., *The EU and Federalism: Politics and Policies Compared*, Farnham, Ashgate, 2011, pp. 27-40, at p.29.

⁶⁴ Here we are referring explicitly to Gian Domenico Majone. For further evidences see MAJONE, Gian Domenico, “Federation, Confederation, and Mixed Government: A EU-US Comparison”, in MENON, A., SCHAIN, M., *Comparative Federalism: The European Union and the United States in Comparative Perspective*, New York, Oxford University Press, 2006, pp.121-147. However, envisioning the EU as a confederation is not something new, also Elazar conceptualized the EU in this manner, for further reference, please see ELAZAR, Daniel E., “The United States and the European Union: Models of Their Epochs”, in NICOLAIDIS, K., and HOWSE, R. (eds), *The Federal Vision: Legitimacy and levels of Governance in the United States and the European Union*, New York, Oxford University Press, 2001, pp. 31-53.

⁶⁵ HUEGLIN, Thomas O., and FENNA, Alan, “Federal Systems”, in HUEGLIN, T. O., and FENNA, A., *Comparative federalism: a systematic inquiry*, Broadview Ltd., 2006, p. 34.

imposes obligations on individuals, but is also intended to confer upon them rights which become part of their legal heritage”⁶⁶

For all these reasons, and even though the EU does not possess sovereignty on its own, “the constitutional language of federalism appears to be more adequate to analyse and discuss the ways in which the division of power is organized between the different levels of government in the European Union.”⁶⁷ This is justified not only on the basis of regulatory powers that the EU possess, or in the blurred concept of European citizenship, but for possessing most of the features used to describe a fully-fledged federation.

Apart from the principle of “direct applicability of EU law” that is further strengthened by European Court of Justice (ECJ) power of umpire over horizontal and vertical conflicts; if we take the aforementioned definitions of what is a federation, we can indeed underline how much the EU complies with them. Firstly, the EU system of governance is divided along two levels of government, if not three, being each of these levels completely autonomous from the others and directly accountable to citizens. Notwithstanding this important consideration of the spectrum of EU self-rule, the EU is equipped with important shared-rule government areas in which EU, national and regional competences tend to overlap.⁶⁸ The same nature of the decision-making system is of pivotal importance in determining the extent of EU federalism. In fact, since its creation the EU has witnessed an enlargement in the spectrum of majority-voting systems to detriment of unanimity votes in numerous areas of competences of EU legislation. This is further highlighted and supported by systems of majoritarian representation, and numerous guarantees of minority rights granted to EU smaller entities that tend to be overrepresented in some of EU institutions. It is exactly this last point that highlights another important characteristic, since 1979 the EU is equipped by a directly elected Parliament, and – notwithstanding the gigantic debate on whether the EU is democratic or not – it is acknowledging a progressive, however slowly wave of democratic improvements, as the recent developments in the President of the European Commission, his cabinet and the selection of other EU public figures suggest.

⁶⁶ Case 26/62 NV Algemene Transporten Expeditie Onderneming Van Gend en Loos v. Nederlandse Administratie der Belastingen [1963] ECR I, p. 12.

⁶⁷ BOERZEL, Tanja A., HOSLI, Madeline O., “Brussels between Bern and Berlin: Comparative Federalism meets the European Union”, *Constitutional Webpapers on Constitutionalism & Governance beyond the State*, No. 2, 2002, pp.179-202, at p.185.

⁶⁸ This is the field of the so-called “shared competences” comprised in Art. 4 of TEU “Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”

Notwithstanding how well the EU complies with Hueglin and Fenna's definition of a federal system, as being a "system of government [where] sovereignty is shared and powers divided between two or more levels of government each of which enjoys a direct relationship with the people"⁶⁹, the EU cannot be considered a federal state lacking an important feature: its own sovereignty; but it neither can be considered a federation *tout court*. The controversial factors that have been daunting the conception of EU as a federal entity for long time are mainly two.

Firstly, the EU lacks a constitution, and neither the treaties can be considered as constitutional texts insofar as they do not specify the extent of divisions of powers, being this one of the main feature of federal compacts. Powers and divisions of powers are roughly mentioned in EU treaties, and even when specific powers are allocated as exclusive competences of the EU, the EU is not formally independent in cases when further legislation is required in these areas. In fact, in order to pass EU legislation there is the need to have the consent of the Council, which membership symptomatize – not only how federal the legislative process may appear, the weight of Member States' final say have on EU legislation.

Secondly, and related to the first point, even though the EU law has is primacy through the means of regulations, which is directly applicable and binding for both member states and their citizens, this instrument is mostly used for regulating procedures in determined EU policy area, while as far as more complex issues are decided, the legal instrument of directive is preferred. This because directives are basic legal provisions, that provide for basic policy objective and have to be transposed into national legislation. In this manner, the custom of preferring directives to regulations determines a system in which there is a "two-level process that gives member states a large degree of discretion to implement European policy objectives according to their own possibilities and preferences"⁷⁰.

Notwithstanding these important caveats, federalism remains the best way to define the EU. More specifically, the EU can be categorized as a *sui generis* federation, a true federal system. This "open and rather descriptive label"⁷¹ stresses how peculiar is the institutional equilibrium reached in EU decision-making and governance system. It underlines two contrasting features: the EU is surely structured as a multi-level system where each tier is engaged in "a continuous federal balancing act."⁷² Nonetheless, this inverse distribution of powers is not an anomaly in itself; it is the extent that helps the EU institutional structure to be in place. In

⁶⁹ HUEGLIN, Thomas O., and FENNA, Alan, *op. cit.*, p. 32-33.

⁷⁰ FALKNER, G., TREIB, O., HARTLAPP, M., and LEIBER, S., *Complying with EU Harmonisation and Soft Law in the Member States*, Cambridge, Cambridge University Press, p. 29.

⁷¹ TÖMMEL, Ingeborg, *op.cit.*, p. 44.

⁷² *Ibidem*, p. 42.

fact, the EU institutional structures empower supranational European institutions of important powers, which – and here we arrive to the negative feature in considering the EU as a federation tout court – are counterbalanced by the massive room of manoeuvre of Member States, being EU constituent members the sole actors holding sovereignty. The EU is, in fact, an outlier in the distribution of powers if compared to other democratic and advanced polities.⁷³

“the EU’s institutions disperse power while simultaneously concentrating it at the EU level. That is, power is dispersed horizontally while it is simultaneously concentrated vertically. Even though the EU’s institutions may be in different cities, they collectively concentrate power at the EU level.”⁷⁴

For these two contrasting features the “EU *cannot* be regarded as a federal *state*”⁷⁵ and in this event the typology of *sui generis* federation comes in hand. The European experience has something in common with some existing federations in terms of basic federal principles. However and as we already pointed out before, there are some intrinsic differences and features that are peculiar of EU experience, which can be thought as direct consequences of a non-state actor as the EU is. Moreover, the categorization of EU as a federation *sui generis* has an importance consequence to the ends of this study:

“Conceptualizing the EU as a federation *sui generis* by no means excludes comparisons with other federal systems. On the contrary, it is only on the basis of such comparison that the specific nature of the Union as well as its federal features can adequately be captured and clarified. The *sui generis* label is not meant to define the political system of the Union as unique. Although we can state that such a system currently does not exist elsewhere [...] the *sui generis* label indicates that the EU, although founded under an explicit federal perspective, is evolving beyond the concept of classical systems or states. It constitutes a model which might be copied or re-invented by other forms of associations among sovereign states”⁷⁶

Notwithstanding the merits of the *sui generis* envisioning of EU federalism developed by Tömmel, the scholar concludes his assessment by saying “in looking back at the evolution of the political system of the EU for more than fifty years, it is obvious that in spite of many

⁷³ See more in SBRAGIA, Alberta, “The United States and the European Union: comparing Two Sui Generis Systems”, in MENON, A., SCHAIN, M., *Comparative Federalism: The European union and the United States in Comparative Perspective*, New York, Oxford University Press, 2006, pp.15-34.

⁷⁴ SBRAGIA, A., *op. cit.*, p. 22.

⁷⁵ *Ivi.* Stressed originally added by the author.

⁷⁶ SBRAGIA, A., *op. cit.*, p. 22.

institutional changes, the basic structure of the system has not changed.”⁷⁷ This, however, it is hardly the case for the EU. Even though the European project and progressive integration seemed to have reached a stall, the history and theory of the EU have to acknowledge the impressive evolution of the project itself. It is exactly the EU progressive enlargements, treaties modifications, cultural exchange programmes – as for instance the Erasmus programme – that we are witnessing the birth of a true and sound European citizenship. It is exactly in the acknowledging how much the EU has accomplished and by stressing the how complex is the institutional equilibrium reached by the EU, that we stress and point out how important is to see and to analyse the evolutions of the sui generis federation.

“Safe and immune from any imperialistic views, and almost introverted, Europe is forging a unity which it lost around the time of the emergence of the nation-state.”⁷⁸ The EU is evolving, by slowly discovering – through the means of the creation of the Common market – the extents of a common European identity, by developing “some underlying basic principles of federalism.”⁷⁹

The main challenge, and the extent of its evolution, is to build up a project that learns from the existing multinational setting how to deal multilingualism accordingly. The need to reorganize and to redress the EU language regime is something that needs to be done, not only for building up a more manageable Union, but also to present to its citizen a concrete example of common EU identity, by highlighting also the need for a real mobility within EU boundaries. All these challenges and needs can only be managed through the means of multicultural federalism, and in this case India is a useful term of comparison.

Conclusion

This chapter wanted to provide a theoretical framework able to enclose the phenomenon of the EU within the boundaries of the Federal Theory. The chapter in fact wanted to assess why in heterogeneous societies and polities the federal compact is one of the main policy tool developed in order to foster democracy and respect of common institution.

Federalism is that normative idea that redresses particularism within the main frame of universalism. Mechanisms of self-rule and shared-rule are able to provide concrete political tools to all those minorities that would fear to be stigmatized in a unitary setting. Beyond this

⁷⁷ SBRAGIA, A., *op. cit.*, p. 22.

⁷⁸ MARTENS, Wilfred, “The Theme”, in BROWN-JOHN, L., *Federal-type Solutions and European Integration*, University Press of America, 1993, p. 4.

⁷⁹ *Ibidem*, p. 5.

normative idea, there are also some descriptive meanings like federal political systems and federations that are able to label and define the list of characteristic to accomplish in order to be a possible federal entity.

It is exactly from these descriptive definitions that we have introduced another important one: *cultural federalism*. Cultural federalism is a descriptive category that seeks to accommodate diversity and conflicts by granting important autonomous powers to internal minorities. Here, after a very brief account on the reasons leading to the appearance of this category within the wider genus of federalism, it was stressed that cultural federalism cannot be used in complex societies. When nations are affected, or better composed by thick nations but there is a will of building a unity within these differences, multicultural federalism is the best solution. Here, the example of India was introduced. India is one of the most important and leading examples of multicultural federalism nowadays. The way it redressed its internal conflicts deriving from linguistic pluralism is a true lesson for other polities affected by the same problematic. Among these there is the controversial case of the EU.

The specific nature of the EU seems to cause some problems in comparative analysis. But if one looks at the EU phenomenon and construction cannot avoid to see how similar is to other federal polities. Therefore, after having stressed the problems and the important minuses of the European institutional structure, we have proposed to conceptualize the EU as a federation *sui generis*, a federal political system. The reason, as we have seen does not lie in how much the EU complies with the descriptive characteristics of the aforementioned definitions, while on the observation of how the EU polity is marked with increasing and important connection among the different levels of government. This practical evidence put indeed in place a federal balance, which is not backed up by any kind of constitutional order.

Assessing the nature of EU construction served to introduce the next part of the present study: the description of how the two multicultural federations have assessed and managed multilingualism.

MULTILINGUALISM IN MULTICULTURAL FEDERATIONS

“Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”⁸⁰

“The Union shall respect cultural, religious and linguistic diversity.”⁸¹

⁸⁰ Article 29, *Indian Constitution*, 1950.

⁸¹ Article 22, *Charter of Fundamental Rights of the European Union*, 2000.

LINGUISTIC DIVERSITIES IN THE REPUBLIC OF INDIA

“India does not have a mother tongue, it has mother tongues”⁸²

Introduction

India is a highly heterogeneous country, with a population of over 1, 27 billion of people.⁸³ This heterogeneity is manifested by the co-existence of multiple languages, cultures and religions. The path followed by India for managing such a diverse society is decisive when considering the “political and social aspects of language planning and promotion”.⁸⁴

In 1947, deciding which Indian language would become the national language of the newly independent Union, gradually led to numerous disputes in the Constituent Assembly. The intermixture of numerous cleavages present in the Indian society – especially the north-south divide – affected the selection of a *national* language, or *rashtra bhasha*. There was not a single Indian language capable of ensuring a vast consensus in the entire country. Eventually a “half-hatred compromise”⁸⁵ was found: proclaiming “Hindi in Devanagari script”⁸⁶ as the *official* language of the Union, and providing for a fifteen-year period the use of English, only for official purposes. However, the temporal reprieve accorded to English will subsequently lead to numerous troubles, especially in the South of the country, where the majority of the population did not – and continues not to – speak Hindi fluently.

This chapter describes the evolution of India’s linguistic regime. It is divided in the following sections. Firstly, the measure of Indian multilingualism will be investigated. Secondly, the debates leading to Part Seventeenth of the Constitution, dedicated to the Indian language regime, as well as the 1956 territorial redefinition according to linguistic boundaries will be surveyed. Thirdly, the evolutions of constitutional provisions, generated from violent events in the early 1960s, will be examined. A partial conclusion will then be provided.

⁸² SUBHASH, « Three Language Education Formula in Multilingual India : Problems and Prospects », *International Journal of Educational Research*, 2013, Vol. 1, Issue 4, p. 150.

⁸³ Office of the Registrar General & Census Commissioner, *Census of India 2011*, New Delhi, 2011, 00-036-2011-Cen-Data Highlights (E), 2 p.

⁸⁴ BALRIDGE, Jason. *Reconciling Linguistic Diversity: The History and Future of Language Policy in India*. Language in India, August 1996, <http://www.ling.upenn.edu/~jason2/papers/natlang.htm> (page consulted on 14/02/2015) Introduction..

⁸⁵ GRANVILLE, Austin, *The Indian Constitution: Cornerstone of a Nation*, London, Oxford University Press, 1966, at p. 265.

⁸⁶ Art. 343 of the Constitution of India.

Languages of India

“The multitude of languages reflects India’s lengthy and diverse history”.⁸⁷ It is the very size of India and its varied composition that prevented, in 1947, the establishment of a unitary state. Its intrinsic characteristics were the reason why a federation, in all features but in name, was preferred for the future Indian state. The presence of innumerable languages posed problems not only at the central level – deciding which language would acquire the *national language* status – but also in terms of its territorial division. India, in fact, has progressively evolved in a distinctive case of “cultural” federalism, being now divided into 36 entities, – 29 States and 7 Union territories – that are mostly set up according to linguistic characteristics.⁸⁸ This linguistic principle was firstly adopted in 1956 and continues to be the criterion for redefining the boundaries inside the Union.⁸⁹ It is for this reason that it becomes important to assess the extent of Indian linguistic heterogeneity.

It is India’s millenary history of conquests, empires and dynasties, that has produced constant language contact that ended up in the modern multilingual India. India has been the home of several empires that have affected Indian language composition, as for instance the role of Persian under the Muslim invasions in the north part of India.⁹⁰ Notwithstanding these important and fascinating roots, our purpose is not to discuss the origins of Indian linguistic setting. Rather, we will focus on the contemporary dimensions of this phenomenon.

There are numerous languages in India belonging to five different languages families: Indo-European, Dravidian, Austro-Asiatic, Tibeto-Burman, and Semito-Hamitic.⁹¹ Currently, the Indian Constitution recognizes as *official* language of the Union Hindi in Devanagari script,

⁸⁷ BALRIDGE, Jason, *op. cit.*, p.2.

⁸⁸ The difference between States and Union Territories lies in the fact that the President of India administers Union Territories, though an administrator appointed by him/her, as provided in Art. 239 of the Indian Constitution.

⁸⁹ The States Reorganization Act of 1956 will be explained in detail in next paragraph. At this stage, it suffices to underline that its primary force rests on the capability of reorganizing the boundaries of Indian states along linguistic lines. It continues to be employed even nowadays. In fact, its latest application was in 2014 when the Telagana State was created as a separation from Andra Pradesh, becoming the 29th State of India. The Andra Pradesh Reorganisation Act, Ministry of Law and Justice, 1935 GAZ India, New Delhi, 1st March 2014 (retrieved from <http://www.indiacode.nic.in/acts2014/6%20of%202014.pdf> , page consulted on 02/04/2015)

⁹⁰ See more in NAVAR, Baldev Raj, *National Communication and Language Policy in India*, New York, Frederick A Praeger Publishers, 1969.

⁹¹ Indo-European includes 21 languages spoken by 76,86% of the population. Dravidian includes 17 languages, spoken by 20,82% of the population. There are 14 Austro-Asiatic languages, spoken by 1,11% of the population. Tibeto-Burmese covers 66 languages, spoken by 1% of the population. Finally, there is only one Semito-Hamitic language, spoken by 0,01% of the population. These data were retrieved from Office of the Registrar General & Census Commissioner, *Census of India 2001*, http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/statement9.aspx (page consulted on 02/04/2015)

and an *associate* status is granted to English.⁹² The Constitution also identifies 22 major *ancillary* languages, listed in the “Eight Schedule of the Constitution” (ES).⁹³ Their respective numerical importance is described in Table 1. Originally, in 1950 when the Indian constitution was adopted, it recognized only 13 languages, 14 counting also Sanskrit, as “*scheduled*” languages⁹⁴ and this recognition was important in terms of their representation in the Official Languages Commission in 1955⁹⁵. The then first Prime Minister of India, Jawarharlal Nehru, while addressing Parliament on additions to the schedule, said that:

“The makers of our Constitution were wise in lying down that all the 13 or 14 languages were to be national languages. There is no question of anyone language being more a national language than the others. The languages listed in this schedule had acquired different names at different stages. They are better known as the *scheduled* languages now”⁹⁶

Progressively, the Schedule has acquired further importance, as the Government of India “in the interest of the educational and cultural advancement of the country [has an obligation] that concreted measures should be taken for the full development of these languages”.⁹⁷

⁹² As it was provided in The Official Languages Act of 1963 and the Official Language Resolution of 1968. Art. 2.2 , The Official Languages Act, Government of India, ACT No. 19 OF 1963.

⁹³ The Eight Schedule (ES) includes: Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telegu, and Urdu.

⁹⁴ Bodo, Dogri, Konkani, Maithili, Manipuri, Nepali, Santhali, and Sindhi were added later. More specifically, the Eight Schedule has been amended thrice since the adoption of the Constitution in 1950. Firstly, constitution amendment No. 21 in 1967 included Sindhi in the list. Secondly, the constitutional amendment No. 71 in 1992 included in the list Konkani, Manipuri and Nepali. Finally, the Constitutional amendment No. 92 of 2003 included Bodo, Dogri, Maithili and Santali.

⁹⁵ The Commission constituted in 1955 by the then President of India, Rajendra Prasad, through a notification of the Ministry of Home Affairs. It was established in order to pursue the provisions stated in Art. 344 of the Indian Constitution, that prescribes the duties of the Commission and Committee of Parliament on Official Language.

⁹⁶ KURMARAMANGALAM, S. Mohan; India’s Language Crisis: An Introductory Study. New Dehli, New Century Book House, 1965, 44 p. Emphasis added.

⁹⁷ *The Official Language Resolution*, 1968, p.2.

Table 1 : Scheduled Languages in descending order of speaker's strength – 2001⁹⁸

S. No.	Language	Persons who returned indicated/declared the language as their mother tongue	Percentage to total population **
1	Assamese	13,168,484	1.28
2	Bengali	83,369,769	8.11
3	Bodo	1,350,478	0.13
4	Dogri	2,282,589	0.22
5	Gujarati	46,091,617	4.48
6	Hindi	422,048,642	41.03
7	Kannada	37,924,011	3.69
8	Kashmiri	5,527,698	0.54
9	Konkani	2,489,015	0.24
10	Maithili	12,179,122	1.18
11	Malayalam	33,066,392	3.21
12	Manipuri *	1,466,705	0.14
13	Marathi	71,936,894	6.99

⁹⁸ Office of the Registrar General & Census Commissioner, *Census of India 2001*, Data on Language, Statement 4, New Delhi, retrieved from http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/Statement4.aspx DATE

14	Nepali	2,871,749	0.28
15	Oriya	33,017,446	3.21
16	Punjabi	29,102,477	2.83
17	Sanskrit	14,135	N
18	Santali	6,469,600	0.63
19	Sindhi	2,535,485	0.25
20	Tamil	60,793,814	5.91
21	Telugu	74,002,856	7.19
22	Urdu	51,536,111	5.01

Source: Census of India 2001

* Excludes figures of Paomata, Mao-Maram and Purul sub-divisions of Senapati district of Manipur for 2001 Census.

** The percentage of speakers of each language for 2001 has been worked out on the total population of India excluding the population of Mao-Maram, Paomata and Purul subdivisions of Senapati district of Manipur due to cancellation of census results. N - Stands for negligible.

As this table shows, Hindi is spoken by over 40% of the Indian population, while none of the other languages is spoken by more than 8.11% of the population. As we shall see, this asymmetry has generated tensions. It should be mentioned that beyond the Scheduled languages, India counts also numerous supplementary idioms. In the 2001 Census language-related data identified 1365 rationalised mother tongues.⁹⁹ Among these, there are languages

⁹⁹ A mother tongue is defined, in the *General Note of the 2001 Census Data* as, “the language spoken in childhood by the person’s mother to the person. If the mother died in infancy, the language mainly spoken in the person’s home in childhood will be the mother tongue. In the case of infants and deaf mutes, the language usually spoken by the mother should be recorded. In case of doubt, the language mainly spoken in the household may be recorded.” Office of the Registrar General & Census Commissioner, *Census of India 2001*, General note,

that are used by groups of native speakers like Kodava Takk¹⁰⁰ and Dakshina Kannada that do not have a script.¹⁰¹ The number of languages may vary from census to census; this results notably from the difficulty in asserting whether a language is actually a language of its own or a dialect of another language. We now turn to the evolution of the legal regime which sought to respond to this wide linguistic diversity, so as to understand how the newly independent India resolved the “nation’s most delicate problem”.¹⁰²

The Evolution of the Indian Language Regime

“The question of national language, its recognition and representation over and above the colonial language and other regional languages has remained central to the making of language policy in independent India”.¹⁰³ In 1947 India obtained its long-awaited independence. The independence acquired a bittersweet connotation due to the events leading to Pakistan’s independence.¹⁰⁴ This event, commonly referred as Partition, meant among other things, the parcelling out of two languages – Hindi and Urdu – whose national identities started to mirror India and Pakistan as independent states.¹⁰⁵ Correspondingly, this division was also a turning point for the fate of Hindustani as the potentially national – and unifying – language for India.

Hindustani was the language proposed and promoted by a group of politicians belonging to the Indian National Congress, whose most eminent figures were Gandhi and Nehru. Supporters of Hindustani, even before India got independence, prescribed it as a viable medium of communication. Notwithstanding the problems that Hindustani posed in terms of

2001, retrieved by http://www.censusofindia.gov.in/Census_Data_2001/Census_Data_Online/Language/gen_note.html (consulted on 28th February 2015). The mother tongues were then “rationalised”, meaning that the data acquired was revised in order to identify the languages or the dialects through a careful analysis of their names. This because, sometimes, peoples interviewed gave the name of their caste as the name of their language, not distinguishing between the two. Sometimes, instead, they said to speak a language in which they were not proficient, because it was supposed to be the one spoken by the members of the religious group they belong to, etc. For this reason the data on languages have to be rationalised.

¹⁰⁰ This language is usually referred as Coorg, spoken by Kodagu tribes.

OM, Gupta. “Kodava Takk”, in *Encyclopedia of India, Pakistan and Bangladesh*, Delhi, Isha Books, 2006; 1282p.

¹⁰¹ SHETTY, Malavika. « Identity Building through Narratives on a Tulu Call-in TV Show, in Schiffirin D., De Fina A., Nylund A. (eds.), *Telling Stories: Language Narrative and Social Life*, Washington D.C., Georgetown University Press, 2010, p. 95.

¹⁰² GRANVILLE, Austin, *op. cit.*, p. 270 p.

¹⁰³ DUA, Hans R. “The National Language and the ex-Colonial Language as Rivals: The Case of India”, *International Political Science Review*, July 1993, vol. 14, no. 3, p. 293..

¹⁰⁴ This event is commonly known as the Partition of the Indian Empire that led to the creation of the sovereign states of the Dominion of Pakistan and the Union of India on 15th of August 1947. The term Partition does not only refer to the territorial division, but also to the respective division of assets like the British Indian Army, the Indian Civil Service and other administrative services, and the central treasury.

¹⁰⁵ SARANGI, Asha. « Introduction. Language and Politics in India », in Sarangi A. (ed.), *Language and Politics in India*, New Delhi, Oxford University Press, 2009, pp. 1-38.

relationship between north and south of the country.¹⁰⁶ Granville Austin explains the problems arising with Hindustani because the language could be considered as being a northern language, mainly because it was – and it is still – used in the northern part of the country. Moreover, its proponents were north Indians like, Nehru; Prasad, and Azad and north-oriented Gujaratis like Gandhi and Patel. As the scholar affirms “these men were above choosing Hindustani because they were born to it or had adopted it”.¹⁰⁷ Political leaders saw Hindustani as a bridge capable of connecting Hindi and Muslim communities.¹⁰⁸ Be that as it may, Partition put to an end the dream of consecrating a language of the North as the *national* language for India.

These considerations about Hindustani are closely connected to the difficulties related to languages encountered by the Constituent Assembly. These can be classified into three main categories: choosing the working languages for the Assembly, selecting the official language of the constitution, and finally designating India’s national language.

Defining the Language of the Constituent Assembly

The Constituent Assembly started to address the issue of India’s language regime by selecting its working languages. It is important to stress that India’s Constitutional Assembly started its works before the Partition of Pakistan. For this reason, when the Rules of Procedure Committee chose its working languages in 1946, it decided that works of the Assembly would be carried out and reported in both Hindustani and English, providing at the same time that any member of the Constituent Assembly could use his or her mother tongue during the debates. However, the Assembly itself did not agree on the position conceded to English. A considerable number of delegates to the Constituent Assembly – most notably from the north of the country – were opposed to the use and recognition of English in the post-colonial India. Southern representatives, whose position was to continue to use English because not all the delegates could speak Hindustani, confronted those members.¹⁰⁹ Notwithstanding these

¹⁰⁶ The problems became evident even before India attained independence. In 1939, the Prime Minister of Madras, Rajagopalachari, introduced Hindustani as compulsory subject in the first school years of High school. This decision implemented resulted in violent reactions.

¹⁰⁷ Granville Austin, *op. cit.*, p. 273.

¹⁰⁸ Hindustani is a language that condensates a large amount of vocabulary from Persian, Arabic, Sanskrit and Chagatai but most importantly, it can be written in both Urdu and Nagari scripts; scripts connoted by religious overtones for Muslims and Hindi communities, respectively.

¹⁰⁹ These positions are remarkably represented by two amendments to the rule of language of 1946. The amendments were proposed by Seth Govind Das and K. Santhaman. The former described by Granville Austin as “a Hindi extremist from Mahakoshal”, an historical region of central India. The latter being an important member of the Assembly coming from the Southern Madras State: *ibidem*, p. 275.

divergent positions, the decisions of the Rules of Procedure Committee were enforced in the Assembly.

In May-June 1947, in-between the third and fourth sessions of the Constituent Assembly, the Hindiwallahs were able to invalidate Hindustani and threaten the position of English and that of *provincial* languages. Hindustani suffered this fate because the Muslim community was held accountable to have caused the division of the country. In the opening of the fourth assembly session on 14 July 1947, just one month before Partition, delegates started to radicalize their positions over Hindustani as India's national language. The "Hindiwallahs"¹¹⁰ were ready to fight against Hindustani, English and provincial languages, by proposing five amendments that would have replaced Hindustani by Hindi as the second language for legislating in all constituent units of India. Those amendments contained also provisions that would have halted the employment of English in States' legislatures. According to these amendments, only the *provincial* language and Hindi could be used in provincial legislation.¹¹¹

Yet, two weeks after the Constituent Assembly officially disqualified Hindustani in 1948, Gandhi still talked in favour of it during a Congress party meeting. He said:

"The Congress has always kept a broad vision...The omens of today seem to point to the contrary. During the crisis the Congress must stand firm like a rock. It dare not give away on the question of the *lingua franca* for India. It cannot be Persianized Urdu or Sanskritized Hindi. It must be a beautiful blend of the two simple forms written in either script".¹¹²

Which Language for the Constitution?

As the selection of a national language worsened, another problem surfaced: choosing the language for adopting the Constitution. In fact, the Hindi-extremists put a lot of efforts to have a Constitution adopted in Hindi. This position was counterbalanced by southerners, who could not speak Hindi, and also among Hindi speakers worried that the Hindi version – that would have been written in a Sanskritized version – would be incomprehensible even for most

¹¹⁰ This term, adopted by Granville Austin, refers to the Arabic word "Wallah". This term, as explained also in the *Concise Oxford Dictionary*, denotes a suffix indicating a person involved in some kind of activity. In this context, it alludes to those members engaged in making Hindi and not Hindustani the official language for India.

¹¹¹ Here the reference to provincial languages and provinces is because Constituent fathers before envisioning the establishment of Union territories and states, considered the administrative division of India along the existing provincial lines developed during the British Raj.

¹¹² GANDHI, M. K., «*The Collected Works of Mahatma Gandhi*», site Gandhi Serve Foundation, Vol. 96, No. 7 26 July 1947, <http://www.gandhiserve.org/cwmg/VOL096.PDF> (page consulted 17/02/2015).

Hindi-speakers. After becoming aware of this problem, the Assembly decided to adopt its constitution in English.¹¹³

The Munshi-Ayyagar Formula

If at the beginning of the drafting of the Constitution, the Assembly was eager to favour a *rashtra bhasha* (national language), as the discussions evolved members became conscious of the obstacles to such an agreement. Delegates, slowly but steadily, opted for radical positions, resulting in a paralysis in the discussions. As Austin Granville explains:

“Language assumed such surpassing importance in the Assembly because, like fundamental rights, [it] touched everyone. The power of the Executive or the Judiciary would rarely affect most individuals. Federalism was a question for politicians. But in a nation composed of linguistic minorities, where even provinces were not linguistically homogeneous...problems of language were an everyday affair”.¹¹⁴

After increasing radicalizations of debates, the Assembly was able to resolve the language question. The final provisions were brought to a conclusion in the “Munshi-Ayyagar formula”¹¹⁵. The proposal prescribes Hindi in Devanagari script to be the *official* language of the India and that, for a period of fifteen years from the adoption of the constitution; English could be used for all the official purposes of the Union. Shifting the status of Hindi from *national* to *official* language of the Union appeased the protests of Southern delegates. Moreover, the formula included important provisions for regional languages by listing them in the Eight Schedule (ES) of the Constitution, in order to grant them representation in the Official Language Commission, along with providing that these languages would be the sources for broadening Hindi language.¹¹⁶

Notwithstanding the rights provided to non-Hindi speakers and non-Hindi languages, through their inclusion in the ES, the set of constitutional provisions remained problematic for Southern states. When the language formula was put to the final vote, it obtained 78 against

¹¹³ The alleged problems connected to the Hindi version were confirmed when, in the summer of 1948, the Hindi translation appeared, as well as the Urdu and Hindustani ones. In a letter to Prasad, Nehru confessed that – after having read the Hindi version – he did not understand anything. As Hindi speakers and non-Hindi speakers expected, the Sanskritization made the translation indecipherable, see more in GRANVILLE, Austin, *op. cit.*

¹¹⁴ GRANVILLE, Austin, *op. cit.*, p. 268.

¹¹⁵ It was called like this after K. M. Munshi and Galsami Ayyangar, members of the Indian Constituent Assembly coming from the north and the south of the country, respectively.

¹¹⁶ These provisions are contained in Article 351 of the Indian Constitution, the article explains the concept of broadening the Hindi language by underlining that the other languages spoken in India should “serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating (...) by drawing, whenever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages”.

77 of the votes cast. According to Asha Sarangi: “the one vote margin has been seen as a sign of disapproval for Hindi more than any undisputed victory for it”.¹¹⁷

After having reached the final vote on the language question, the members of the Assembly signed the final version of the Constitution on 24th January 1949. The Indian Constitution was finally adopted on 26th November 1949, and it entered into force on 26th January 1950.

In its complexity, the Munshi-Ayyagar formula is contained in Part Seventeen of the Indian Constitution, entitled as “Official language”. Articles 343-351 are, like the rest of the Indian Constitution, very detailed and run for several pages and are divided into four chapters: Language of the Union; Regional Languages; Languages of the Supreme Court, High Court, etc.; and lastly Special directives.

Paragraphs 1 and 2 of article 343 pronounces Hindi in Devanagari script as the sole *official* language of the Union, providing that for a period 15 years English could be used for official purposes. Regarding the languages of constituent units, Article 345 affirms that in addition to its official language, the Legislature of a State may use Hindi or English for official purposes. Article 346, provides that “the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State”. Chapter three is devoted to the language regime of the Courts. English is the normal language of the Supreme Court. However, a Governor may file an appeal in Hindi, with the consent of the Union President. The official languages of the states may also be used in their High Courts.

The last Chapter is devoted to special directives. Article 350 states that “every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State”. According to 350A states must “endeavour” to provide facilities for instruction in mother-tongue at the primary stage; Article 350B further enunciates the creation of a Special Officer for linguistic minorities, charged with investigative powers in safeguarding linguistic minorities. The last article of this section, Article 351, outlines the duty of the Union in promoting the spread of Hindi all over India, in order to make it a medium of expression in each aspect of India’s culture.

Following the adoption of the Constitution, India proceeded to rearrange its territory along linguistic lines. Starting in 1956, under the recommendations of the States Reorganization

¹¹⁷ SARANGI, Asha, *op. cit.*, p. 23.

Commission (SRC), and preceded by the 1920s Congress reorganization of Provincial Congress Committees on linguistic basis, India abandoned the territorial division between Part A, B, C states, by simply declaring States and Union Territories to be constituent units of the Union.¹¹⁸ This territorial reorganization coincided with the Seventh Amendment to the Constitution that modified the text concerning the previous territorial division.¹¹⁹

The territorial re-organization along linguistic lines could not accommodate everyone's position, but it was a mere attempt to simplify Indian's reality.¹²⁰ It became clear that linguistic boundaries considered as political categories in the process of redrawing the Union also had to take into account other factors, such as geographic adjacency, distinctions in socio-cultural characteristics, economic viability, caste, regions, as well as socio-cultural distinctiveness.¹²¹ Notwithstanding these numerous caveats, on 1st November 1956 India proceeded with its largest territorial reorganization since its independence, with the formation of 14 States and 6 Union Territories.¹²² "For the first time in India's modern history there was not a single state or province...in which all linguistic minorities combined comprised more than half of the total population".¹²³ The principle of linguistic homogeneity was thought to be the most appropriate criterion in the redefinition of the country. According to Asha Sarangi, "the reorganization process was an exercise in initiating the democratic order in independent India".¹²⁴ However, the demands for linguistic states and its consequent territorial modification could not be completed for the whole country in 1956. As noted above, the latest territorial redefinition has been done in 2014 with the creation of the State of Telangana.

¹¹⁸ This Commission was appointed by the then Prime Minister Jawaharal Nahru, under the leadership of the retired Chief of Justice of the Supreme Court Fazal Ali.

¹¹⁹ The Constitution of India declared India as a "Union of States", which were distinguished among Part A, Part B, and Part C states. The nine Part A states were the former governor's provinces of British India, and ruled by an elected governor and state legislature. The eight Part B states were the formerly princely states or groups of them, which were governed by a *rajpramukh* – appointed by the Union President – and an elected legislature. Finally, the ten Part C states included both former chief commissioners' provinces and some princely states, each of them governed by a chief commissioner appointed by the President of India.

¹²⁰ As Asha Sarangi remarkably puts it, Indian national leaders have varied position over territorial organization of the territory. For instance, Gandhi thought that language should be integrally art of *swaraj* (self-rule). For what concern Nehru, Patel, Azad, Rajgoalachari the language question was important to find a national and official language for India as a whole. See SARANGI, Asha, *op. cit.*, p.19 and RANI, Asha, "Language as a Maker of Religious Difference", in Intiaz, A and Helmut, R. (eds.), *Lived Islam in South Asia: Adaptation, Accomodation and Conflict*, Delhi, Social Science Press, 2004.

¹²¹ SARANGI, Asha, *op. cit.*, p. 19.

¹²² The states created were: Andra Pradesh, Assam, Bihar, Bombay State, Jammu and Kashmir, Kerala, Madhya radish, Madras State, Mysre State, Orissa, Punjab, Rajasthan, Uttar radish, West Bengal. The Union Territories created were: Himachal Pradesh; Andaman and Nicobar Islands; Dehli; Laccadive, Minicoy and Amindivi Islands; Manipur; Tripura.

¹²³ SCHWARTZBERG, Joseph E. « Factors in the Linguistic Reorganization of Indian States », in Sarangi A . (ed.), *Language and Politics in India*, New Delhi, Oxford University Press, 2009, p.161., 139-182 pp., at p. 161.

¹²⁴ SARANGI, Asha, *op. cit.*, p. 20.

Norms Concerning the Language Regime

The Official Language Act

Article 343 and 351 of the Indian Constitution are important to understand the roots for further changes in the official language regime of India. As mentioned previously, Article 343 prescribed the phasing-out of the use of English for official affairs, while Article 351 provides that the Union has to promote Hindi as official medium in the entire country. As the 26th January 1965, the expiry date for the use of English, approached, the situation in the country worsened. As the Government was occupied in financing numerous projects to comply with the constitutional provision, the country – especially the South – started to protest against the rise of Hindi as *sole* official language of the Union. For this reason the Union Parliament adopted the Official Languages Act of 1963. This document provided, in paragraph 3, that notwithstanding the “appointed date” of 26th January 1965 “for all the official purpose of the Union for which it was being used immediately before that day; and for the transaction of business in Parliament, a state that did not adopted Hindi as official language *may* continue to use English for official communications “between one state which has adopted Hindi as its official language and another State which has not adopted Hindi as its Official Language”.¹²⁵

Nonetheless, this possibility of continuing to use English did not appease the situation. As the 1965 approached, protests against the use of Hindi especially in the educational sector continued. Most notably, the Dravida Munnetra Kazagham (DMK) – a political party in the Southern state of Madras – helped to organize an Anti-Hindi Conference on 17th January 1965. The day before the deadline, students demonstrated lamenting “Hindi Imperialism” and shouting “Hindi never, English ever!”. During this period, sixty-six people committed suicide – two of them were members of the DMK – to further express their opposition to Hindi.¹²⁶ In the meantime, in the North there were specular protests against “English Imperialism”.

These protest had, however, an unexpected consequence. It forced authorities to squarely address underlying tensions regarding language in the country. As Jyotirindra Das Gupta notes:

“As in many Indian agitations, the Madras agitation made visible what the official leaders had consistently refused to see. Violence brought into the open what was seething underneath and thereby opened a way to the seeking of a solution of the

¹²⁵ The Official Languages Act, Act. No. 19 of 1963.

¹²⁶ See BALRIDGE, Jason, *op. cit.*, p.11.

problem. In this sense it performed an important political function ...to construct a bridge of communication between the leaders in power, who lacked sensitivity, and the sensitive people, who lacked power. This is not to say that the Madras agitation was entirely based on violence. In fact, the magnitude of violence in the initial stage was minimal and the acts of violence were largely products of the ruling authority's failure to establish communication with the people who had intense feelings concerning the language issue. The effect of violence was to initiate this communication and to open up the subsequent opportunities for compromise"¹²⁷

At the basis of Madras students' protests there was a consideration of their *unfair* position. They perceived themselves as disadvantaged because they had to attend school and learn in a foreign language, while this was not necessary for (most of) their colleagues in the north of the country. The protests led to the publication of two important norms in 1968: the Three-Language Formula and the Official Language Resolution.

The Three Language Formula

The Three-Language Formula (TFL) was developed by the Union Education Ministry, in consultation with state governments. It was enunciated as National Policy Resolution in 1968 and was able to provide a reasonable language policy for a multilingual state, even though it is still not completely implemented. In practice, it provides that each child has to learn at least three languages: L1, meaning his/her mother tongue or the regional language; L2, meaning the official language of the Union or the associated official language (English); L3, meaning a modern Indian language or a foreign language (see Table 2). Kamal Sridhar has described the TLF as:

“A compromise between the demands of the various pressure groups and has been hailed as a masterly-if imperfect-solution to a complicated problem. It seeks to accommodate the interests of group identity (mother tongues and regional languages), national pride and unit (Hindi), and administrative efficiency and technological progress (English)”¹²⁸

¹²⁷ JYOTIRINDRA, Das Gupta, *Language Conflict and National Development: Group Politics and National Language in India*, Berkley, Los Angeles and London, University of California Press, 1970, p. 240.

¹²⁸ SRIDHAR, Kamal K., *English in Indian Bilingualism – Language in South Asian Society*, Delhi, South Asia Books, 1989, p.22.

The Official Language Resolution

The TLF was contained in the Official Language Resolution of 1968, as an example of a “more intensive and comprehensive programme” in the educational policy. The aim of this constitutional amendment was to further improve the provisions contained in the 1963 Official Languages Act. It declared – only in relation to the language of government activities – Hindi and English as co-official languages. This recognition was considered important, not only to address southern demands but also to address the exclusion of English from the ES. This marginalization was justified on the grounds that English is not an Indian language. So, in order to prevent further violence and problems, especially with non-Hindi State, English became to be an associate official language *indefinitely*, providing at the same time that if a state government wished to, it could replace Hindi by English as the official and link language within the borders of that state.

Table 2 : Comparative rankings of Scheduled Languages in descending order of speaker's strength-1971, 1981, 1991 and 2001¹²⁹

Language	Persons who returned the language as their mother tongue				Percentage to total population			
	1971	1981	1991	2001	1971	1981	1991	2001
Hindi	202,767,971	257,749,009	329,518,087	422,048,642	36.99	38.74	39.29	41.03
Bengali	44,792,312	51,298,319	69,595,738	83,369,769	8.17	7.71	8.30	8.11
Telugu	44,756,923	50,624,611	66,017,615	74,002,856	8.16	7.61	7.87	7.19
Marathi	41,765,190	49,452,922	62,481,681	71,936,894	7.62	7.43	7.45	6.99
Tamil ²	37,690,106	**	53,006,368	60,793,814	6.88	**	6.32	5.91
Urdu	28,620,895	34,941,435	43,406,932	51,536,111	5.22	5.25	5.18	5.01

¹²⁹ Office of the Registrar General & Census Commissioner, *Census of India 2001*, Data on Language, Statement 5, New Delhi, retrieved from http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/Statement5.aspx

Gujarati	25,865,012	33,063,267	40,673,814	46,091,617	4.72	4.97	4.85	4.48
Kannada	21,710,649	25,697,146	32,753,676	37,924,011	3.96	3.86	3.91	3.69
Malayalam	21,938,760	25,700,705	30,377,176	33,066,392	4.00	3.86	3.62	3.21
Oriya	19,863,198	23,021,528	28,061,313	33,017,446	3.62	3.46	3.35	3.21
Punjabi	14,108,443	19,611,199	23,378,744	29,102,477	2.57	2.95	2.79	2.83
Assamese ²	8,959,558	**	13,079,696	13,168,484	1.63	**	1.56	1.28
Maithili [@]	6,130,026	7,522,265	7,766,921	12,179,122	1.12	1.13	0.93	1.18
Santali	3,786,899	4,332,511	5,216,325	6,469,600	0.69	0.65	0.62	0.63
Kashmiri	2,495,487	3,176,975	#	5,527,698	0.46	0.48	#	0.54
Nepali	1,419,835	1,360,636	2,076,645	2,871,749	0.26	0.20	0.25	0.28
Sindhi	1,676,875	2,044,389	2,122,848	2,535,485	0.31	0.31	0.25	0.25
Konkani	1,508,432	1,570,108	1,760,607	2,489,015	0.28	0.24	0.21	0.24
Dogri	1,299,143	1,530,616	#	2,282,589	0.24	0.23	#	0.22
Manipuri [§]	791,714	901,407	1,270,216	1,466,705	0.14	0.14	0.15	0.14
Bodo ²	556,576	**	1,221,881	1,350,478	0.10	**	0.15	0.13

This table shows that no matter the numerous critics to the Three Language Formula, Hindi has been the only language that has acquired new speakers in comparison to other Scheduled-languages.

Notwithstanding the important evolutions in managing language-related protests, language has continued to pose problems. Notable are the crisis of Punjab, the separatist insurgencies in the Northeast – more precisely in Mizoram and Nagaland – and in Jammu Kashmir. Apart from the latter, where linguistic issues overlap with religious beliefs, India has always been able to redress separatist movement. This has been accomplished either through redefinition of the territory (Punjab); successful agreement, as for instance it was the in Mizoram with the Mizo National Front (MNF); or through a now peaceful stalemate as it is the case in Jammu and Kashmir.¹³⁰ This said, the recent behaviour of the current Indian Prime Minister – Narendra Modi – shows how India’s language regime continues to be disputed, especially with regards to the status of English.¹³¹ The current Indian Prime Minister and his government have proposed to give Hindi a prominent role in all official communications of the Union, by progressively declassing the associated role granted to English. The move of the government has been criticised by many, especially when it was practically used on social media platforms. This mean that government has been favouring, on Twitter, Facebook, and various government websites, the use of Hindi over English. Southern states criticised the move by leading the government to revise its policy, by declaring that the move was addressed especially fro northern states.

Conclusion

As this chapter has tried to show, Indian multilingualism has always been under severe strain. The challenge was to accommodate Indian linguistic diversity by selecting a language regime that could promote the establishment of a legitimized state. In this context, territorial cleavages – like the one existing between the north and south of the country – are accountable for the results in the determination of Indian specific language regime. Indian politicians were, and continue to be, unable to promote Hindi as the sole language for the entire country. For this reason they had, and continue to, rely on a colonial language as English is, for managing the Union.

Constituent fathers wanted to provide for the newly independent state a *rashtra basha* for the entire country. However, the submission of India to numerous empires and colonisations joint

¹³⁰ See more in STEPAN, A., LINZ, J.J., YADAV, Y., “Four Indian Cases that Challenge State-Nation Theory?” in STEPAN, A., LINZ, J.J., YADAV, Y., *Crafting State-Nations. India and Other Multinational Democracies*, Baltimore, The John Hopkins University Press, 2001, 89-115 pp.

¹³¹ PASRICHA, Anjana, «Hindi or English? Contentious Language Issue Resurfaces in India», *Voice of America website*, 3rd July 2014, <http://www.voanews.com/content/hindi-english-contentious-language-issue-resurfaces-india/1949861.html>, page consulted on 14th February 2015.

to the vastness of the territory determined a complex multilingual setting that impeded the selection of a sole language. Moreover, the fate of Hindustani has been daunted by the outcomes of Partition.

All these elements affected the writing of the Constitution. The delegates to the Constituent Assembly divided along the north-south divide, had difficulties in writing down the future language regime of the Union. After harrowing months and years, they agreed on the set of articles 343-351 of the Indian Constitution. Those articles, which put in place a limited bilingual regime, contained the means to equip the Union of a sole official language. Moreover, the other languages could count on the inclusion in the Eight Schedule.

However, as soon turned out, phasing out the role of English as communication language between the Union and the Constituent units turned out to be complicated. Promptly the State had to figure out how to resolve the issue, as a response to the numerous violent conflicts in the South of the country. For this reason the original language regime has been enriched by the Official Language Act, and further entrenched with the Three-Language formula and the Official Language Resolution.

In conclusion, India has showed that multilingualism can be assessed and managed only through the direct commitment of the Central power. Even though the federal government has guaranteed important power in the management of linguistic diversity to its Constituent units, it was the sole actor able to resolve the issue by imposing a limited multilingual setting that took the former colonial language as one of the official language of the Union.

LINGUISTIC DIVERSITIES THE EUROPEAN UNION

“The most serious problem for the European Union is that it has so many languages, this preventing real integration and development of the Union”¹³²

Introduction

Currently, the European Union (EU) counts 28 Member States, 24 official languages and a population of over 500 million inhabitants.¹³³ Since the European Economic Community (EEC) in 1957, the European construction has always favoured linguistic diversity by sanctioning the use of Member States national languages at the supranational level. As the European project evolved, the linguistic profile of the EU “has grown considerably more complex”.¹³⁴ This was evident especially in the aftermath of the Big Bang enlargement of 2004, when the EU welcomed 10 new Member States.¹³⁵ Even though multilingualism has always been justified on grounds of equality and respect of EU intrinsic differences, it started to create a series of practical problems for the management of new competences and powers of the EU.¹³⁶ For this reason it is essential to analyse how “the great *non-dit* of European integration”¹³⁷ has been installed and how it has evolved overtime.

Leaving aside European national experiences, the EU did not inherit multilingualism. The EU, as a whole, *decided* to become a multilingual entity, meaning that it decided to fully commit itself to multilingualism. Since their appearance nation-states supported an increasing homogenization within their boundaries. States started to level down internal differences, in

¹³² Reported in PHILLIPSON, Robert, *English-Only Europe? Challenging Language Policy*, London, Routledge, 2003, p.1. This remark was made by Mr Elton, the Ambassador of the USA to Denmark, in 1997 at an informal lunch at the University of Roskilde.

¹³³ EUROSTAT, *Population on 1 January 2014*, Kirchberg, Code: tps00001.

¹³⁴ CREECH, Richard L., *Law and Language in the European Union. The paradox of a Babel “United in Diversity”*, Groningen, Europa Law Publishing, 2005, p.3.

¹³⁵ The 2004 enlargement is occasionally referred as Big Bang considering that it has been the largest single expansion of the European Union, both in terms of: territory, number of states and population, but not for what concerns the Gross Domestic Product of applicant states. It occurred on 1st May 2004 with the welcoming of: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

¹³⁶ For the moment it can be mentioned the example of the European Unitary Patent. The proposal to create a unified Community patent was envisioned in the Munich Convention in 1973, without entering into force. After another unsuccessful attempt, the Luxembourg Agreement of 1989, the Commission released a Green Paper that led to the 2000 proposal that sunk in 2004 over linguistic issues. Formal agreement was then reached with two EU regulations, which made the Unitary Patent possible, by following the enhanced cooperation procedure. However, Spain and Italy contested the legality of the two regulations over linguistic issues. As a consequence, 26 Member States have joined the proposal and the unitary patent will enter into force not before 2014, at the reaching of the 13th ratification procedure. See, PALERMO, Francesco, “Linguistic Diversity within the Integrated Constitutional Space”, *European Diversity and Autonomy Papers*, Vol. 2, 2006; and COSTA, Olivier, and BRACK, Nathalie, *How The EU Really Works*, Ashgate, Farnham, 2014.

¹³⁷ DE SWAAN, Abram, “The evolving European language system; a theory of communication potential and language competition”, *International Political Science Review*, Vol. 14, No. 3, 1993, p. 244, emphasis added by the author.

order to create more solid and homogeneous entities. This attempt affected in particular national language policies. According to many political scientists, language represents “one of the most important socio-political constructs of national identity”¹³⁸ and for this reason, states started to apply a “one-state-one-nation-one-language” policy. All over Europe, multilingualism was fought, suppressed and native speakers of non-official languages were discriminated through assimilationist policies.¹³⁹ As Grillo showed, Britain and France were, and in parts continue to be, the main examples supporting the cause of linguistic centralization in connection to the building of a sense of national identity.¹⁴⁰

The advent of the 20st century, with its intrinsic economical and political consequences – like globalization, international trades, the Second World War and the end of colonial empires – has supported a reverse trend: states left aside any kind of linguistic nationalism. States re-discovered and started to promote, within their boundaries, linguistic diversities and linguistic rights. From this moment on quests of partial independence according to linguistic rights started to be put on the agenda of many multilingual states.¹⁴¹ This general trend evidently influenced the European project. Europeans started to acknowledge their linguistic plurality and for this reason they decided to install it in the EU project, which progressively started to comply with it. This resulted in a Union composed by 28 Member States, talking 24 *official* different languages, written in three different scripts. Moreover, in this computation we should also take into consideration another phenomenon: the *60-regional or minority languages* spoken all over the EU.¹⁴²

This chapter considers the European language regime along two major axes: the European territorial growth and what are its legal foundations. Firstly, European enlargements will be assessed by looking at how they have the EU managed the inclusion of Member States languages at the European level. Secondly, EU language regime will be analysed by looking at how it was installed and what was its evolution overtime. Then, the EU language regime will be assessed in the main EU institutions. Finally, a partial conclusion will be provided.

¹³⁸ MARÁ CZ, László, “Multilingualism in Europe: Policy and Practice”, in MARÁ CZ, L., ROSELLO, M. (eds), *Multilingual Europe, Multilingual Europeans*, European Studies, 2012, pp. 22-35, at p.27.

¹³⁹ See more in ANDERSON, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Revised Edition, London and New York, 1991. And GELLNER, Ernst, *Nations and Nationalism: New Perspectives on the Past*, Oxford, Blackwell, 1983.

¹⁴⁰ GRILLO, Ralph D., *Dominant Languages: Language and Hierarchy in Britain and France*, Cambridge University Press, 2009.

¹⁴¹ Taking Europe as point of reference, this is evident for instance in the case of Spain or Belgium.

¹⁴² The *European Charter for Regional or Minority Languages*, in Article 1 defines Regional or minority languages as those languages that are « traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State’s population; and it does not include either dialects of the official language(s) of the State or the language of migrants.

Languages of the EU: an Enlargement Derivate

The EU – throughout the years – has always professed the highest deference in linguistic terms. This was evident at the signing of the European Economic Community (EEC), the international organization that put in place the European Common Market. Its constituent Treaty, signed on 25th March 1957, stated in article 248 – the last provision of the Treaty – that “a single original in the German, French, Italian and Netherlands languages” had equal standing. This was further developed in the first legislative act of the Council that addressed the issue of defining the language regime of the Community. Regulation No. 1 of 15th April 1958 provided in Article 1 that the *official and working language* of the Community were: German, French, Italian and Dutch.¹⁴³ But the concrete consequences of this shift in the language regime were immediately evident:

“When the plenipotentiaries of the six nations assembled in the Roman Capitol on Monday, march 25, 1957, to sign the Treaty establishing the European Economic Community, the original of that Treaty ‘drawn up in a single original in the German, French, Italian and Netherlands languages’ (article 248) was not yet ready”¹⁴⁴

From this point on, each enlargement has *generally* confirmed this policy.¹⁴⁵ In fact, each territorial enlargement meant a linguistic enlargement as well.

The First EC Enlargement, to United Kingdom, Ireland and Denmark, widened the language regime arriving to 7 official languages, adding Danish, English and Irish.¹⁴⁶ Apart its idiosyncratic meaning, by being the first enlargement, this accession – considering the EC Language Regime – had a triple meaning. Firstly, when Denmark acceded to the EEC it proposed to revise the internal Community language regime, by refusing to add Danish as official language, and by contemplating the idea of a bilingual Community, being French and

¹⁴³ THE COUNCIL, Regulation No. 1/1958, Bruxelles, 6 October 1958, Official Journal of the European Communities 017/385, English Special Edition (I) p. 59. Here, it will not be assessed the problems concerning the differences in the epithet of working, official, regulation language since also within the EU construction and institutions there it not agreement on that.

¹⁴⁴ MAAS, Herman Hendrik, “The English Version of the Treaty of Rome”, *Common Market Law Review*, Vol. 6, No. 2, 1969, p.205.

¹⁴⁵ The term « generally » will be justified in next paragraphs, as the enlargement process continued, not always Member States’ national languages were accepted as official and working languages. In this sense are paradigmatic the examples of Irish and Luxemburgish.

¹⁴⁶ It is important to underline that also Norway applied for membership in EEC, but the negative vote obtained in the referendum on the accession to the EEC (scheduled on 24th and 25th September 1972) shut down Norwich entrance in the Community. This influenced also the language regime since the EC Council already provided to enlarge the language regime to Norwegian.

English the proposed leading languages.¹⁴⁷ However, and we came to the second point, the Danish proposal did not match France's posture. Pompidou agreed to accept British accession at one condition: that the predominance of French in the European institutional setting would be maintained. France feared that the joining of the UK would have had negative consequences to French as the preferred medium in European intergovernmental talks.¹⁴⁸ The third meaning refers to the fate of Irish. Since it got independence, Ireland declared as its first official language Irish. However, Ireland "obtained a unique and murky position in the EC's language framework", this meant that Irish obtained an official/regulation language status – by being recognised the status of official Treaty language – but it did not acquired the status of regulation language. In practical terms this meant that, even though the founding treaties of the EEC were translated to Irish, any piece of legislation promulgated by the EEC would enter in Irish legislation in English.¹⁴⁹ Exceptions would be made only in cases of modifications to the Treaties or in case of matters of "wide importance and interest to all citizens".¹⁵⁰ Notwithstanding the obscure reasons for the singular status of Irish,¹⁵¹ the Commission produced "documents, films, and poster" in Irish and maintained a liaison office in Dublin.¹⁵²

The second and third enlargements happened in 1981 and 1986, respectively, when the EC firstly welcomed Greece, and then Spain and Portugal. These enlargements, leaving aside discussions concerning the promotion of democratic values in previous authoritarian regimes, practically meant the addition of a new script, and incoming problems concerning Spanish multilingual nature. As soon as Greece entered in the EC, its national language – Greek – obtained the status of Official and Regulation language. Complications arose from the fact that Greek uses a different alphabet, an alphabet that could not be reproduced in EC countries' typewriters or word processors, which were conceived for the Roman script.¹⁵³

¹⁴⁷ See PALERMO, Francesco, *op. cit.*, p. 5. See CREECH, Richard L., *op. cit.*, p. 17. See NELDE, Peter H., "Contact or Conflict? Observations on the Dynamics and Vitality of European Languages", in JAHR, E., (ed), *Language Conflict and Language Planning*, Berlin, Mouton de Guyter, 1993, p. 166.

¹⁴⁸ PHILLIPSON, Robert, *op. cit.*, p.54.

¹⁴⁹ Being English the second official language of the State, as it is provided in Art. 8.2 of the Constitution of Ireland (1937).

¹⁵⁰ Answer to Written Question No. 896/86, [1987] O.J. C82/11.

¹⁵¹ Some scholars have speculated that it was the Irish government itself that wanted Irish to play a marginal role in the EEC, see AHLQVIST, Andres, "Language Conflict and Language Planning in Ireland", in JAHR, E., (ed), *Language Conflict and Language Planning*, Berlin, Mouton de Guyter, 1993.

¹⁵² CREECH, Richard L., *op. cit.*, p. 16.

¹⁵³ In this manner it is central the case C-168/91, Konstantinidis, 1993 ECR I-1191. This case referred to the Court of Justice of the European Communities (CJEC) by Christos Konstantinidis against Stadt Altensteig – Stadesamt and Landratsamt Calw – Ordnungsamt. The question posed to the CJEC Sixth Chamber concerned whether a Member State – in which a different script is used – is entitled, in virtue of Article 12 of the EC concerning prohibition of discrimination on the grounds of nationality and Article 43 on the right of

In 1986, when Spain and Portugal acceded, the EC language regime reached 10 official languages. The problem, however, was posed by Spain. Even though Spain was not the first multilingual state joining the EC, the complication resulted because its other official languages are spoken only in Spain. The Constitution of Spain recognizes as official language *el castellano*, along with the co-official status granted to some regional languages in corresponding *comunidades autónomas*.¹⁵⁴ Notwithstanding nationalist outcries for a multiple recognition at the EU level, it was decided to maintain only *el castellano* as official and regulation language in the EC for Spain.

Meanwhile, one of the Founding Members of the EC modified its national language regime. This was the case for Luxembourg that in 1984 modified its language law in order to appease the wave of nationalism that steamed in 1960-1970s.¹⁵⁵ If before the modification, French was the official language of the State, with German having the status of working language, after 1984 Luxembourgish was recognized as official language, and French and German became administrative, legislative and judicial languages. This official recognition is important especially if compared to the fact that – at the EU level – there was not a plea for officially recognizing Luxembourgish. As the *European Parliament Resolution of 11 December 1990 on the Situation of Languages of the Community and the Catalan Language* affirms, it was Luxembourg itself that did not want to officially recognize Luxembourgish. This is important to underline because it practically, and paradoxically, means that Luxembourg citizens are among those European citizens that do not enjoy the right to refer to the ECJ in their national language whose, even more paradoxically, premises are located in the Grand Duchy.¹⁵⁶

The entry of Austria, Finland and Sweden, in 1995, also had problematic outcomes for the EU language regime. More specifically there were two difficulties arising from this enlargement: Finnish distinctiveness, and questions arising from the German language spoken in Austria. Finnish presented technical difficulties because it was the “the first non-Indo-European

establishment, to oppose the transliteration of personal names in manners that seriously misrepresented their pronunciations and offended religious sentiment. Eventually the CJEC affirmed that in EC Treaty there was not any provision precluding a Member state that uses the Roman alphabet to provide a transcription of Greek-written names in Roman alphabet. When problems occurred, the Member State has to adopt internal legislative and administrative procedures, laying down detailed conditions for such transcription.

¹⁵⁴ Those are Basque, Catalan/Valencian, Galician, and Occitan. Apart those co-official languages, Spain partly recognizes also Aragonese, Austrian/Leonese and Catalan, in this case Aragonese and Catalan are recognized in the autonomous community of Aragon, as provided in Art. 3 of the Spanish Constitution, and in the respective statuses of the autonomous communities.

¹⁵⁵ CREECH, Richard L., op. cit.

¹⁵⁶ LABRIE, Normand, *La Construction Linguistique de la Communauté Européenne*, Honoré Champion Editeur, Paris, 1993.

language used in the EU”.¹⁵⁷ Translators and interpreters had to cope with challenges posed by this substantial difference, which impinged the general comprehension of regulations and directives.¹⁵⁸ For what concerns Austria, the problem occurred because the German language used in Austria differs from the one spoken in Germany. In order to address this issue, the Treaty on Accession included a protocol giving the same status to “twenty-three distinctly Austrian terms, all of them relating to food”.¹⁵⁹

The enlargement process that completely changed the EU, and that had serious repercussions on its language regime, was the Big Bang enlargement. 2004 marked a dramatic shift for Europe, not only the EU greeted eight Eastern European States, coming from the Soviet bloc, but it also took a stand on the Cyprus dispute.¹⁶⁰

The largest single enlargement in the EU history practically meant the acknowledgement ten new official and regulation languages. Among these there was the striking absence of Turkish. In Cyprus, Turkish and Greek enjoy the same status as official languages of the State. In an act of April 2004, the EU responded to this exclusion by mentioning that it should be accorded the same status as official and regulation language to Turkish “upon fulfilment of the necessary personnel and technical requirements”.¹⁶¹ However, the aforesaid justification seems contradictory – especially after the immediate measures taken considering Greek and Finnish examples – nonetheless because Turkish translators are still absent in the perimeter of EU institutions. Moreover, the aforesaid argument was further denied by the fact that Turkish was not the only language requiring important adjustments in terms of personnel and technical requirements. Each language joining the EU language regime in 2004 required special adaptations, with the most obvious case of Maltese. On the day of accession of the ten, upon request of the Maltese government itself, the Council proclaimed that at least for a

¹⁵⁷ CREECH, Richard L., *op. cit.*, p.18

¹⁵⁸ Not only the same Commission, in an answer to a written question No. 1983/97 [1998] O.J. C060/74, acknowledged that Finnish translations “occasionally left something to be desired”, but according to Creech, Finns usually refer to English materials and not to EU materials in Finn because they experiment problems to understand what is written in it. *Ibid.*, p.18.

¹⁵⁹ *Protocol No. 10 to the Act Concerning the Conditions of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the Adjustments to the Treaties on which the European Unions is Founded.* [1994] O.J. C241/370. The same inclusion was meant, according to what is prescribed in Article 1, to grant to those terms the “same legal effect as the corresponding terms used in Germany”.

¹⁶⁰ The tenth state was another Mediterranean island: Malta.

¹⁶¹ Act 7 April 2004 on the Adaptation of the Terms of Accession of the United Cyprus Republic to the European Union, COM(2004), Art.8.

period of three years “the institutions of the European Union shall not be bound by the obligation to draft all acts in Maltese”.¹⁶²

Following the path already traced by 2004 enlargement, in 2007 the EU admitted Romania and Bulgaria. Here, the main problem was represented by the fact that Bulgarian membership meant the advent of the third EU script, resulting in numerous problems as well.¹⁶³ In 2013 the EU welcomed its latest addition in terms of Member states and language as well. In fact, after a ten-year long period, Croatia entered into the EU. With this accession the EU language regime reached 24 official and treaty languages. Even in this case there were problems concerning the EU language regime with the most evident one being that Croatia still does not possess a Croatian version of his Treaty on Accession.¹⁶⁴

The problem concerning EU language regime should contemplate also the rising of nationalist stances within EU Member States, which in some cases ended up in being also linguistic outcries. As the EU language regime increased at each enlargement process, speakers of official national languages not recognized at the EU level and minority or regional languages started to manifest. The main examples are the protests of Irish, Catalan, Galician, and Euskera/Basque, Welsh and Frisian speakers.¹⁶⁵ Among these, Irish obtained in 2005 the status of regulation language – after the Irish Government reconsidered its position on the issue.¹⁶⁶ In case of Spanish co-official languages the decision not to grant them the official

¹⁶² Council Regulation No. 930/04 of 1 May 2004 on Temporary Derogation Measures Relating to the Drafting in Maltese of the Acts of the Institutions of the European Union, Art. I [2004] O.J. L169/1. The Maltese government required such provision as result of intrinsic difficulties of Maltese language and lack of professional and qualified translators. In fact, the government was not able to find a sufficient number of translators and interpreters for all EU institutions. Nowadays, all the EU legislation was translated into Maltese, meanwhile the government has increased its efforts to intensify the training of proper professional translators and interpreters.

¹⁶³ Problems occurred especially in consideration to the translation of the word “euro”, in fact in Cyrillic the correct spelling would be “evro”. Quarrels appear before signing the EU accord with Montenegro. Bulgarian officials said that they would have not signed the treaty if the word euro was spelt incorrectly. The then Commissioner on European Enlargement, Olli Rehn, affirmed “it is regrettable that Bulgaria is prepared to take Montenegro hostage to an unrelated linguistic issue, whatever its domestic importance”. In their defense Bulgarian officials said that the problem occurred because in the accession agreements the term used was “evro”. On the contrary, the European Central Bank stand still on the issue, it said that the name of the common currency should remain the same in all the official languages of the Union, notwithstanding the different alphabets. BBC NEWS, “EU and Bulgara in alphabet row”, BBC news website, 12 October 2007, <http://www.news.bbc.co.uk/2/hi/business/7041384.stm> (page consulted on 20 February 2015 at 12.13 am) Eventually the Stabilisation and Association Agreement was signed in Luxembourg on 15 October 2007. Bulgaria, even if it still not possess all the requirements to join the Eurozone, obtained that in the issuance of new €5 and €10 banknotes Cyrillic appears in the common currency.

¹⁶⁴ This statement can be easily checked by looking at the Euro-Lex portal, <http://eur-lex.europa.eu> (page consulted on 20 February 2015).

¹⁶⁵ There have been also calls for recognizing Welsh from the Plaid Cymru (The Party of Wales), in CREECH, Richard L., *op. cit.*, p.23.

¹⁶⁶ STAUNTON, Dennis, “Government to Seek Official EU Status for Irish Language”, *The Irish Times*, 24 November 2004. <http://www.irishtimes.com/news/government-to-seek-official-eu-status-for-irish-language-1.1167739> (page consulted on 24th February 2015). This means that not all EU documents will be translated in

status was justified on grounds that those language are not spoken all over Spain. However, contrary to the initial decision to recognize only *el castellano*, continuous expressions of grievances have been able to produce concrete results. According to the decision of the General Affairs Council, on 13th June 2005, a limited use of minority or regional language has been confirmed. The Council provided that in case the Member State arranges the appropriate arrangements with European institutions, minority or regional languages can indeed be used.¹⁶⁷ This is not a complete appreciation on the status of the minority or regional languages, meaning that all the costs of translation should be borne by the Member State itself and those translations are not legally authentic documents. More recently, Patxi Baztarrica – the Vice-Councillor for linguistic policy of the Basque government – has presented, along with members of Welsh, Frisian communities a proposal to the European Parliament for the protection of regional and minority languages in the EU, whose are “mistakenly assigned minority status”.¹⁶⁸

The Norms Concerning the EU Language Regime

“The concept of multilingualism stands out as one of the most prominent symbols of European historical, political and cultural diversity and has gradually assumed, in addition to its inherently symbolic dimension, the mandatory nature of a legal imperative and the significance of a political necessity.”¹⁶⁹

The decision to put in place the *«biggest experiment in multilingualism in human history»* was something that resulted from the fact that everyone started to be uninterested to this apparent non-issue.¹⁷⁰ Since the evolution from a regional community, as it was the European Coal and Steel Community (ECSC), to a more entrenched economic community, and increasingly political union, as the EEC was and now the EU is, the European language regime changed completely. In fact there is a difference between Article 100 of the ECSC and the disposition introduced with Regulation 1/1958 re-affirmed in Article 3 of the Treaty establishing the European Union (TEU). If article 100 of the ECSC prescribed that the French

Irish, for instance ECJ judgments will not be translated, but for what concern regulations adopted by the Council or the Parliaments Irish translations will be provided.

¹⁶⁷ ATHANASSIOU, Phoebus, “The Application of Multilingualism in the European Union Context”, *Legal Working Paper Series*, European Central Bank, Vol. 2, March 2006. The Council decision is that of 13 June 2005 (2005/C 148/01).

¹⁶⁸ WHITE, Samuel, “Linguistic minorities launch European roadmap for diversity”, Euractiv, 11 February 2015. <http://www.euractiv.com/sections/languages-culture/linguistic-minorities-launch-european-roadmap-diversity-311990> (page consulted on 14th March 2015)

¹⁶⁹ ATHANASSIOU, P, *op. cit.*, p.5. See more in WAGNER, Emma, BECH, Svend, and MARTÍNEZ M. Jesús, *Translating for the European Union Institutions*, St. Jermone Publishing, 2002.

¹⁷⁰ VOLMAN, Yvo, “The Lisbon Treaty and Linguistic Diversity: Policy and Practice in the European Institutions”, *European Studies*, Vol. 29, 2012, p. 37.

version of the treaty was the only one to be authentic, with Regulation 1/1958 the European Economic Community introduced the principle of equal status for all language version of the treaties.

As the European construction evolved, on the sensitiveness of Member States regarding the resulting European language regime evolved as well. This manifested itself in designing a pure multilingual institutional setting by discharging the equilibrium reached in 1952 with the ECSC. Article 100 of the ECSC treaty was drafted only in French and provided that only the original French version of the Treaty was authentic. This position was radically changed in 1957 at the signing of the Treaties establishing both the EEC and the Euratom Treaty, which were authenticated in French, German, Italian and Dutch, the languages of the six founding members. With the treaties of Rome “multilingualism attained the status of the firmly entrenched Community policy that it nowadays commands”.¹⁷¹ This status, as we have already seen in the previous paragraph, was continuously reaffirmed at each accession agreement.

The current EU language regime has its legal foundations in Articles 21, 314 and 290 of the TEU and Regulation No 1/58, which was continuously amended at each enlargement process.

Article 314 is the one acknowledging the equal standing of the different language versions of the Treaty. Article 21, recognizes the right of EU citizens to write to “any of the institutions or bodies...in one of the languages mentioned in Article 314 and have an answer in the same language”.¹⁷² This article, which is now reaffirmed in article 55 of the Treaty on European Union (TEU), that lists all the 24 languages of the Union, is of pivotal importance because it is the expression of the peculiarity of EU nature by contrast to other international or regional organization. The justification of the quasi-full recognition of the multilingual nature of the EU derives from its specific legal nature and the effects coming from the direct applicability of both its primary and secondary legislation. “This entails that not only Treaty provisions, regulations and decisions, but also directives can be invoked by EU national courts. Absent a fully multilingual legal regime, neither the principle of direct effect nor the doctrine of the supremacy of Community law could entirely operate.”¹⁷³

Art. 290 prescribes that “the rules governing the languages of the institutions of the Community shall, without prejudice to the provision in the Statute of the Court of Justice, be

¹⁷¹ *Ibidem*, p.5.

¹⁷² Art. 21 of the Consolidated Version of the Treaty Establishing the European Community, the Official Journal of the European Communities.

¹⁷³ ATHANASSIOU, P, *op. cit.*, p.6.

determined by the Council, acting unanimously”.¹⁷⁴ This was confirmed, in fact, by Regulation No 1/58, which was the first regulation adopted by the Council. It affirms that both institutional communication between a Member State and a EU institution or between EU institutions and EU citizens should be held in the language of such State or citizen. Providing, at the same time, that ad hoc system could be put in place by each EU institution, that “may stipulate...which languages are to be used in specific cases” (art. 6), given that the European Court of Justice has its proper language regime prescribed in its rules for procedure (art. 7), and recommending that in the case that a Member State has more than one official language “the language to be used shall, at the request of such State, be governed by the general rules of its law” (art. 8).

All these articles and regulation are further entrenched by the provisions contained in Article 22 of the Charter of Fundamental Rights of the European Union and Article 3 of the TEU. These articles have not produced a new policy regarding multilingualism, but they have recognized the existence of other languages within the Union.¹⁷⁵ Article 22 recognizes and protects linguistic diversity along with cultural and religious ones, while Article 3 of the TEU affirms that the Union has to respect its intrinsic diversity by ensuring that its cultural heritage is safeguarded and enhanced. “Thus...the multilingual legal system of the EU is based on the principle that legal acts of the EU shall be drafted and published in all official languages”.¹⁷⁶

Institutional Application Concerning the EU Language Regime

As provided by Regulation 1/58 in Article 6, European institutions can decide their own language regime. For this reason it can be said that the first Council Regulation on the European language regime does not represent a legally binding document prescribing a full-fledged multilingual space.¹⁷⁷ It has provided that each institution could decide on the preferred language regime and apply it. Moon, in 1985, affirmed that the rule prescribing what type of language regime to adopt within an institution followed a pragmatic reasoning. The scholar affirmed that the more politically important a decision is, the more the number of

¹⁷⁴ Art. 290 of the Consolidated Version of the Treaty Establishing the European Community, the Official Journal of the European Communities.

¹⁷⁵ VOLMAN, *op. cit.*, p. 37

¹⁷⁶ European Commission Directorate-General for Translation, *Lawmaking in the EU multilingual environment*, Luxembourg, Publications Office of the European Union, 2010, p. 16.

¹⁷⁷ CREECH, *op. cit.*

languages employed will increase.¹⁷⁸ However, this pragmatic rule seems to be surpassed by recent developments, especially in the Commission and in the Council. In fact, in reality when important decisions are taken the spectrum of the languages used shrink considerably.

The Council of the European Union

The Council of the European Union, as prescribed in its internal ruling, respects the principle of full-multilingualism, at least in public sessions. In fact, when private meetings are held English, French or German are the languages preferred. This general trend was confirmed by the Council decision of 5 June 2000, that adopted the Council's Rules of procedures and that in article 14 affirms that "except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages".¹⁷⁹

The European Commission

For what concerns the European Commission, its internal rules of procedure make small reference to its working languages, but when the issue is contemplated, it allows for great discretion. This is evident if we take into consideration Article 25 of the Commission's Rules of Procedures that gives complete authority to the Commission in deciding over its internal language, this put in place a trilingual language regime, with English, French and German as Commission's working languages.¹⁸⁰

The European Parliament

The European Parliament (EP) is the institution where the principle of multilingualism is applied in its totality. this stems from the fact that it is the assembly representing European citizens and multilingualism acquires its full recognition in order to respects their rights. For this reason, in its Rules of Procedures numerous provisions cover the internal language regime, more specifically articles 117, 121, 138, 151 and 174. However, article 117 it is

¹⁷⁸ MOON , Brian, "Preserving Multilingualism in the European Community" in TONKIN, H., and JOHNSON-WEINER, K. (eds.), *Language Planning at the International Level*, New York, Center for Research and Documentation on World Language Problems, 1985, pp. 83-92.

¹⁷⁹ OJ L 149, 23/06/2000, p. 21-25.

¹⁸⁰ OJ L 202, 02/08/1999, p.1.

important insofar as it provides that the EP President can, in cases of discrepancies, decide between the different language versions and the original one.¹⁸¹

The European Court of Justice

Also the European Court of Justice has its own language regime, as it was originally provided in article 7 of the Regulation 1/58 that directly mentions an internal statute for the definition of its language regime. This concretely took the form of several provisions contained in articles 22, 27.4, 37, 104, 110, 123a, 123b, 127 and – above all – the articles contained in Chapter 6. This practically meant that in its internal works the Court *speaks* in French, while contemporary recognizing the right to every citizen to appeal in any of the EU internal languages, determining different “language case”. This is, in fact, the most important practical meaning of EU multilingualism, as Volman clearly explained: “European citizens have the right to address the Union’s institutions in their own mother tongue and must be answered in the language they chose to address the Union’s institutions”.¹⁸²

Conclusion

The aim of this chapter has been to provide an historical account on EU multilingualism, its origin, its evolution and its legal foundations. What has been indirectly underlined in this chapter is the fact that the possibility and the political opportunity to maintain and to foster EU multilingualism have become more and more difficult. Problems arising from considerations on the practical impossibility to respect in its entirety linguistic equality all over Europe, which has resulted in numerous outcries of regional and minority language communities that are largely excluded in the EU institutional scheme, but also problems considering the management of EU multilingualism.

The decision to add at every enlargement a new official language turned out to be complicated mainly in terms of EU internal institutional organizations. For this reason in the last paragraph we have outlined how EU institutions have started to limit their internal working languages, in order to avoid the problems connected to a the current EU language regime.

¹⁸¹ 14th Edition, June 1999, OJ L 202, 02/08/1999, p. 1.

¹⁸² MARÁ CZ, L., *op. cit.*, p.21.

ASSESSING EU MULTILINGUALISM THROUGH THE LENSES OF THE INDIAN EXPERIENCE

“Si c’était à refaire je commencerais par la culture.”¹⁸³

“The reasons why the European Union needs 20 official languages are not hard to find: they are democracy, transparency and the right to know. EU legislation applies throughout the EU, and therefore to all its citizens. New legislation must be published and made available to them in their own language. As in any democracy, each citizen has a fundamental right to know why a particular item of legislation is being adopted and what it requires him or her to do. It is also a basic tenet of the European Union that all its citizens and their elected representatives must have the same right of access to the EU and be able to communicate with its institutions and authorities in their national language.”¹⁸⁴

Introduction

“Europe’s language question stands out for its lack of a single majority unifying or dominating tongue and for the absence – ignoring those who advocate for the use of English as lingua franca – of any significant movement that endeavours to impose one or, indeed, to generate the myth of one. In stating that ‘the language of Europe is translation’, as Umberto Eco once did, the speaker implicitly identifies our continent as being solidly embedded in its plurilingualism.”¹⁸⁵

Since the inception of the European construction, linguistic pluralism has always been regarded as the main important feature of Europe’s cultural heritage. Indeed, linguistic diversities are interlocked with the theme of cultural heritage, but – and this is the contribution of this study in analysing multilingual settings – linguistic diversity should not only be viewed as a feature for the promotion of the cultural asset. Language goes also

¹⁸³ This sentence was pronounced by Jean Monnet found in Directorate-General for Translation, *Study on Law making in the EU Multilingual Environment*, Luxembourg, Publications Office of the European Union, 2010, p. x.

¹⁸⁴ Directorate-General for Press and Communication, *Many tongues, one family*, Luxembourg, Publications Office of the European Union, 2004, p. 17.

¹⁸⁵ COSMAI, Domenico, *The Language of Europe: Multilingualism and Translation in the EU institutions. Practice, Problems and Perspectives*, translated and edited by BEST, A.D., Editions de l’Université Libre de Bruxelles, 2014, p. 17.

beyond the cultural spectrum by being an important medium in humans' everyday life. Language serves as "as a system of signs, which serves to transfer information."¹⁸⁶

The simple definition of what language is underlines also why Member States have always been so prudent in the defining what are the EU competences in the field of language policy. In fact, language policy is unanimously considered to be a state competence. This consideration derives from the former art. 308 of the Treaty Establishing the European Community (TEC), now article 352 of the TFEU, that reject any kind of harmonisation in fields not conferred to the EU. However, the nature of the EU construction, organisation and politics required some action and for this reason, the Union stepped-in and overlapped with state policies in matter of language policies by developing important programmes in the language sector. Just as Member States can decide freely on the subject of their language regime, as for instance the choice of the language in the education sector, the Union has intervened and has contributed – in the field of language learning – by recommending to increase the language learning throughout Europe, suggesting the revise of the content and the organisation of Member states education systems in order to facilitate the future movement of citizens and labours within the common boundaries.¹⁸⁷

This progressive "intrusion" of the EU, in developing programmes in the field of language learning, was the direct consequence of the indefiniteness of the issue at the supranational level. In the EU, the transversal nature of language and signals in the various field of public policies and activities produced problems coming out form the exact definition of the limits of public action in the field. The EU and his Member states need to understand that in order to attain a reasonable equilibrium in the European language regime, important steps need to be taken. The EU formal attitude of protecting its internal linguistic diversity should not stop the path that will lead to adopt a more manageable language regime.

¹⁸⁶ GERHARDS, Jürgen, *From Babel to Brussels: European Integration and the Importance of Transnational Linguistic Capital*, Berlin Studies on the Sociology of Europe (BSSE). No. 28. Berlin, Freie Universität Berlin, 2012, p. 22.

¹⁸⁷ The EU has developed numerous programmes in the field of ameliorating and suggesting improvements to national systems, as for instance: *Socrates Programme*, and within it *The Lingua Action* and the *Comenius*; the *Multilingual Information Society Programme (MILS)*; *e-Content*; *Media Plus*; the *Culture 2000 Programme*; *Culture for a better quality* within the structural regional funds; *PAROLE project* then followed by *SIMPLE* within the Research and Development agenda; language-learning programme can be found in the *Leonardo da Vinci Programme*, *Youth Community action programme*, *Tempus programme*, *Erasmus* and now *Erasmus +*; 2001 was declared the *year of languages*, a joint programme that was proposed by the Council and supported by the Commission. Apart from these programmes there are also the numerous European programmes backing up tea language learning and defence of the numerous European regional and minority language, as for instance *Mercator*, the *European Bureau for the Lesser Used Language (EBUL)*. See more in the European Parliament Working Paper, "*The European Union and Lesser-Used Languages*", Education and Culture Series, EDUC 108 EN, 07-2002.

The debate on the EU language regime undergoes the fact the larger part of the existing literature on the theme of EU multilingualism accepts and supports the idea of considering EU multilingualism as one of the main brakes in the path leading to a European political union. This assumption is even worsened by another theoretical complexity characterizing the EU experience, which is the ever-lasting debate of EU democratic deficit.¹⁸⁸ However, the present analysis, as it was stated at its beginning, wants to present what is the intrinsic fallacy in this common belief. In this chapter we will directly confront the problems experienced by the EU in the management of its multilingual setting, by presenting the case of India. The finest practical case study for the management of multilingualism within one single polity.

“Since her independence, India is managing multilingualism through policies and laws of languages use in administration, judiciary, education, and other domains in a more effective manner as a model to other countries to emulate. The legislature makes policy, and the executive knows how best to implement the policy. The fluid and volatile linguistic situation that existed at the time of framing the Indian Constitution has become stable and peaceful to a large extent. Earlier multiple languages were considered as problems that need to be tackled. Now they are considered as resources to be utilized. This is an important turning point and is a significant contribution from India.”¹⁸⁹

As we have seen in the previous part, the path leading to the VIII Schedule of the Constitution and of the Munshi-Ayyangar formula was tortuous and was mainly complicated by the will of creating a unitary state speaking one *national* language. However, the managing of Indian multilingual nature paralleled the nation’s acceptance of a formal federal compact entrenched in the Constitution. The federal compact put in place a system in which centre and constituents’ part roles and competences are clearly defined. This clear definition and the recognition of the impossibility to select a single national language, determined the achievement of a stable and democratic equilibrium.

In this context, European multilingualism needs to be defended and protected as a manifestation of the EU cultural heritage, but this recognition should not impinge envisioning a manageable language regime. India has demonstrated the suitability and feasibility of

¹⁸⁸ See more in KRAUS, Peter A., *A Union of Diversity: Language, Identity, and Polity-building in Europe*, Cambridge University Press, 2008; and also in LOOS, Eugène, “Language choice, Linguistic Capital and symbolic Domination in the European Union, *Language Problems and Language Planning*, No. 24, Vol. 1, pp. 37-53.

¹⁸⁹ MALLIKARJUN, B., “The Evolution of language Laws in Post-independence India”, *Language in India – Strength for Today and Bright Hope for Tomorrow*, Vol. 12, 9 September 2012, p.5.

managing multilingualism by developing and institutionalizing a federal entity. Federalism has been able to foresee a system in which powers and limits of centre-periphery relations were clearly defined. In this way, constituent fathers were able to foresee a limited language regime for the Union that was justified by the impossibility to find a sole national lingua franca. Moreover, the importance of the Indian case study is recognized also to the provision of the so-called “scheduled languages”, languages that enjoy an official status in constituent units territories.

Multilingualism poses, indeed, difficulties in the management of a unitary polity, but it can surely be addressed and entrenched. Multilingualism is not an impediment *per se*. What seems to impede the set-up of a European political union is not the multilingual character of the European continent, but the will to govern it. What seems to lack in the EU, in fact, is the will to tackle the problems posed by multilingualism within a more coherent language regime. Multilingualism calls for bold decisions: a more entrenched federal compact, as it was in the Indian case.

Consequently, in this part of this study we will try to demonstrate that the EU language regime poses problems because the EU *decided not to act*. After each enlargement, EU leaders clearly understood that daring decisions should have been taken, but national sensitiveness stopped any attempt to clearly define the scope and limits of the EU’s role in language related issues. This has negatively affected the nature of EU polities that had to comply with an unreasonable system. For this reason the first section would be devoted to the inventory of EU practical inefficiencies due to its language regime. Nonetheless, the consequent section will justify the consideration that multilingualism is not an impediment to the capability of a polity to act and to peacefully and democratically exist. India showed the way to other multilingual polities. Daring decisions have to be taken, otherwise multilingualism will hamper any possibility to build a more coherent unit. Then, a partial conclusion will be provided.

The brakes to the political union

The value and justification of the full recognition of multilingualism at the institutional level in the EU is justified as a legal guarantee of the European citizens as one of the addressees of EU legislation. Alternative to this legalistic justification, there seems to be also a political justification behind full multilingualism. It is commonly believed that a fully multilingual construction would not impinge the emergence of a common space – open to all EU citizens – for debating the institutional dynamics and the EU phenomenon at large. Notwithstanding the

underneath importance of those statements and common beliefs, they do not match with the reality of the EU phenomenon.

First of all, there are large sections of EU citizens that do not enjoy the right to speak and communicate in their own language, insofar as those are not recognized at the supranational level.¹⁹⁰ Secondly, since the 1957, the so-called common space for debating EU politics and news has produced the emergence of a shared language, denominated in various manners ranging from “bruxellish”¹⁹¹, “franglais” or “anglomania”¹⁹². Otherwise the EU civil society could not engage in a conversation at all. For these reasons, however important and necessary the recognition of EU multilingualism is, its justifications are unable to provide a univocal standpoint for not requiring a modification of the consequent language regime at the supranational level.

“The value of multilingualism lies, above all, in the fact that it is a way to preserve one’s cultural identity in a Union which aims at the widest possible political and economic integration of its Member States. The EU has always considered its many languages as an asset, rather than as a burden. The significance of multilingualism is recognised even more in the EU as more new Member States accede. However, one should not forget the fact that multilingualism poses several challenges in everyday practice.”¹⁹³

In the previous chapters, we have just mentioned the difficulties posed by multilingualism within the EU institutional architecture. It seemed that we have just assumed those concrete difficulties. However, the difficulties posed by multilingualism are not just perceptions, they are real. Multilingualism in the EU poses problems to political units, citizens and institutions. This because – and this is also the main assumption of the study – multilingualism is not managed accordingly to the nature of the polity.

Multilingualism if addressed in a continual dialogue between centre and periphery can become just a feature of the polity and not a leading negative feature, as it seems in the EU context. It is for this reason that we have to outline what are the concrete impediments to the EU institutional structure by the current bridled equilibrium reached in the institutional structure.

¹⁹⁰ This is the case of the numerous minority or regional language groups residing in the EU.

¹⁹¹ LOPEZ, Stéphane, “État et enjeux du multilinguisme dans les institutions européennes”, in HANF, D., MALACEK, K., and MUIR, E. (dir.), *Langues et construction européenne*, Cahiers du Collège d’Europe, Bruxelles, Peter Lang, 2010, p. 12.

¹⁹² PHILLIPSON, Robert, *English-Only Europe? Challenging Language Policy*, London, Routledge, 2003, p. 6.

¹⁹³ Directorate-General for Translation, *Study on Law making in the EU Multilingual Environment*, Luxembourg, Publications Office of the European Union, 2010, p. 2.

Chiefly, EU multilingualism poses problems of a three-fold nature: the indefiniteness of multilingualism in se, within the European institutional structure; the old-fashioned theme of the economic costs of a similar “Eurobubble”;¹⁹⁴ and the consequent organizational and normative inconsistencies and inefficiencies.

The Indefiniteness of Supranational Competences Over Language Within the EU

Since the inception of the European Community no single treaty has ever specified the extents of EU powers in the field of languages. Usually, it is said that language policy remains a national competence, under ex art. 308 TEC now art. 352 of the TFEU. However, as the European Parliament suggests “an overarching European approach to the issue of linguistic diversity is surely needed, given the clearly transversal nature of language as an instrument of communication and information closely associated with specific policies in the field of administration, consumers’ affairs, mass media, education and culture.”¹⁹⁵ As we already noted, languages are important, especially when we are talking about an integrated reality as the EU. It is exactly for the centrality of the question and the future development within a more integrated political union that the problem needs to be addressed.

The indefiniteness behind the management of multilingualism hampers the envisioning of any real reform in the language regime of the European construction. As Robert Phillipson noted “Language policies are often so vague (e.g. the Maastricht Treaty’s support for the maintenance of cultural diversity) and abstract that they seem to be divorced both from scientific analysis of what is at stake and from the harsher realities of linguistic hierarchisation”.¹⁹⁶

This indefiniteness calls into question also the same stance of EU institutions over the issue. Even if formally not in charge of language and educational policies, EU institutions – for the ends of the building up of the Common market and the disappearance of internal boundaries and the needed mobility of workers and citizens at large – intervened and issued official declarations. For instance, the Council of the European Union in the late 1997, passed a declaration in which affirmed that “proficiency in several Community languages has become a precondition of citizens of the European Union are to benefit from the occupational and

¹⁹⁴ PHILLIPSON, Robert, *op. cit.*, p. 3.

¹⁹⁵ European Parliament Working Paper, “*The European Union and Lesser-Used Languages*”, Education and Culture Series, EDUC 108 EN, 07-2002, p.52.

¹⁹⁶ PHILIPPSON, Robert, “Language policies: Towards a multidisciplinary approach”, in FETTES, M., and BOLDUC, S. (eds), *Toward Linguistic Democracy*, Rotterdam, UEA, pp. 95-7, p. 97.

personal opportunities open to them in the broader-free Single Market.”¹⁹⁷ However, the non-determination of which Community and then Union languages to promote all over Europe can indeed pose problems. A European citizen cannot become proficient in 24 languages in order to avoid the language barriers existing in the EU. For this reason the EU, other than defend linguistic diversity across the EU, should also select some languages in order to facilitate a real mobility across EU borders.

The indefiniteness of European powers over the issue has serious repercussions to intra-EU mobility. The leading case here is the *Groener v. Minister for Education*.¹⁹⁸ It demonstrated not only what are the practical limits of EU institutions over the language issue, but also the hilarious consequences of national sensitivity over linguistic issue.

The case originated from the appeal of Anita Groener, a Dutch national that contended for a permanent teaching position in an art college in Dublin. The problem leading to the appeal to the European Court of Justice, sprung from the decision of the Irish Minister for Education of imposing to some teaching position – as the one applied by Mrs Groener – the verification of Irish proficiency, either by a certification or through an examination procedure. Mrs Groener did not have any certificate and failed the examination; consequently she was not hired for the teaching position. She, however, decided to start a legal proceeding by affirming that requesting Irish proficiency for a job position was against the free movement of workers (formerly recognized in Art. 39 TEC and now in Art. 45 TFEU) and Regulation 1612/68,¹⁹⁹ that addresses specifically to linguistic requirements. Art. 3 of Regulation 1612/68 provides that:

“Member States shall not apply: where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered. This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.”

After having assessed that the decision of the Irish Minister of Education was not a case of direct discrimination, the European Court of Justice had to assess whether the position that

¹⁹⁷Notice 98/C1/02, *Official Journal of the European Communities (Information and Notes)* , 3 January 1998, p. 2.

¹⁹⁸ Case C-379/87, 1989 ECR 3987.

¹⁹⁹ Official Journal L 257, 19/10/1968, p. 0002-00012.

Mrs Groener wanted to fill in required and justified the language provision. The Court after having assessed that “the teaching of art, like that of most other subjects taught in public vocational schools, is conducted essentially in the English language” and that “knowledge of the Irish language is not required for the performance of the duties which teaching of the kind at issue specifically entails” it broadened the scope of the linguistic provision. The Court, in fact, was able to introduce a nuance to the reading of the aforementioned article, by affirming, “that finding is not itself sufficient to enable national court to decide whether the linguistic requirement in question is justified ‘by reason of the nature of the post to be filled.’”²⁰⁰ “Because something can be justified without being required,”²⁰¹ the ECJ essentially re-wrote that provision. It proceeded by looking at the justification behind the requirement of Irish proficiency, and here the Court could not act. In Ireland, as we have seen in the part devoted to the EU, Irish language is considered as the first official language of the country. “Although Irish is not spoken by the whole Irish population, the policy followed by the Irish governments for many years has been designed not only to maintain but also to promote the use of Irish as a means of expressing national identity and culture.”²⁰² This evidence, joint to the indefiniteness of EU power over the language issue, led the Court to reject the case by underlining also the limited power of the Community over the language issue. It is a question of boundaries. The decision of EU leaders not to decide over the powers of the Union and those of the Member States has direct consequences on the preservation of a particular language regime, especially related to the requirements of EU law. But the EU, as affirmed by the Court as well, does not possess the tools “to prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national and the first official language.”²⁰³

The Costs Behind the *Eurobabble*

As we have seen in the chapter devoted to the EU, all 24 languages have equal status in the EU institutional structure. This *fait-accompli* practically means that institutional language services, mainly translation services and link communications services within various EU institutions, are vital to the functioning of the European machine. Managing a similar complex system to defend the underlying principle of equality within the languages is a real

²⁰⁰ Groener, 1989 ECR 3987, paras. 13-14-15-16.

²⁰¹ CREECH, Richard L., *Law and Language in the European Union. The Paradox of a Babel “United in Diversity*, Europa Law Publishing, 2005, p.100

²⁰² Groener, 1989 ECR 3987, paras. 17-18.

²⁰³ Groener, 1989 ECR 3987, paras. 19.

“mammoth task.”²⁰⁴ To understand the extents of this effort before the Big-Bang enlargement the three main EU institutions – the Commission, the Council and the European Parliament – together produced nearly three million pages of translated text per year.²⁰⁵

“No other body at regional or global level uses as many official languages as the European Union. No other body spends so much on translation and interpretation (...) But then, no other body or grouping adopts legislation which applies directly to citizens in all its member states the way the EU does.”²⁰⁶

Notwithstanding that, in the *Agenda 2000: for a stronger and wider Union* – the original Commission communication at the basis of the EU western enlargement – foreseen and partly proposed a redefinition of the EU language regime due to “the problems which are likely to be created by the doubling of the number of official languages of the Union.”²⁰⁷ Notwithstanding this important concession to the need to revise the institutional language regime of the Union, it is this same official communication that pointed out that hen moves on it was not the aim of that report to cover a similar proposal.

It is exactly this typical European non-decision or deferral of audacious political and institutional reforms that has had important consequences in terms of costs and work force. Usually, the theme of the costs of EU translations services has been the first and most sound criticism moved to EU language regime. For this reason, EU institutions have always addressed the issue by publicly announcing the expenses devoted to the tackle EU linguistic diversity at the supranational level. In 2012, the European Commission has re-issued a press release on the theme of multilingualism. Here, as it was affirmed previously in 2004, the Commission affirmed that the total costs at the basis of EU translation and interpretation services in all EU institutions – ranging from the Commission itself, to the European Parliament, the Council, the Court of Justice, the European Court of Auditors, the European Economic and Social Committee, and the Committee of Regions – amounts to 1€ billion per year, a figure that represents less than 1% of the EU budget, or better the most famous slogan of *two euros a year per citizen*.²⁰⁸

²⁰⁴ CREECH, Richard L., *Law and Language in the European Union. The Paradox of a Babel “United in Diversity*, Europa Law Publishing, 2005, p.26.

²⁰⁵ Ivi.

²⁰⁶ Directorate-General for Press and Communication, *Many tongues, one family*, Luxembourg, Publications Office of the European Union, 2004, p. 3.

²⁰⁷ Commission Communication, *Agenda 2000: For a stronger and wider Union*, 1997, p. 135.

²⁰⁸ European Commission, Press Release database, *FAQ on multilingualism and language learning*, Brussels, 25 September 2012 retrieved from http://europa.eu/rapid/press-release_MEMO-12-703_en.htm (page consulted on 25th April 2015).

Nonetheless, a similar sum is possible because the principle of equality among languages leave un-translated an important volume of EU documents. Even though each institution is equipped by its own translation service, internally each of them prefers a more reasonable language regime. “While such cost-saving measures may be justifiable on economic grounds, they sit uneasily with the current notion that the EU should be brought closer to the citizens of Europe and its workings made more transparent, which includes allowing access to more documents,”²⁰⁹ whimsically the core justification of EU complete multilingualism.

Since the Treaty of Amsterdam the European Union introduced a provision that addresses exactly the transparency of Union’s works. This is currently affirmed in Art. 15 of TFEU that states that “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium.” However, even in this case the full equality is not respected, because it is this same article to provide some important limits to this right “general principles and limits on grounds of public or private interest governing this right of access to document shall be determined by the European Parliament and the Council.” However, the limits of this article were evident in the famous case of Mrs Chrstina Kik against the Office for Harmonisation in the Internal Market (OHIM).

As we have seen in the chapter devoted to the EU language regime and evolution, the Council has the right to define the language regime of the various European bodies. When in 1994 the OHIM was founded the Council decided to apply a *reasoned* multilingualism, this means that the institution recognizes as its official languages, only: English, French, German, Italian, and Spanish. The decision notified with Regulation No. 40/94 of 20 December 1993 addresses and pairs the idea behind the present study. In fact, the clash between the principle of equality at the institutional level and the reduced language regime in some of EU institutions clarifies the “*illusion of linguistic equality*.”²¹⁰ Returning to the OHIM, in principle the other official languages of the Union are not banned, but the applicant has to specify in the filing procedure the preferred second language amongst the official ones of the OHIM for the advancement of the proceeding.²¹¹

The case was filed by Mrs Chrstina Kik, a Dutch property intellectual lawyer that wanted to protest against the exclusion of Dutch as official language of the OHIM. Mrs Kik decided to

²⁰⁹ CREECH, Richard, *op. cit.*, p. 30.

²¹⁰ CREECH, Richard, *op. cit.*, p. 32.

²¹¹ In case that the language of the applicant and the second language are among the official working languages of the OHIM, Reg. 40/94, arts. 115 (3-7) further complicated the issue on which language to use.

apply for a trademark in her name by selecting as first and second language of the application Dutch. The OHIM, right after receiving the application, dismissed the document on the grounds that she did not comply with the rules of the application. Mrs Kik filed the case before the OHIM's Board of Appeal, which dismissed the case. But Mrs Kik was not satisfied, for this reason she decided to take the case to the Court of First Instance. Mrs Kik, at this point, could count on the backing of the Greek government that was against the exclusion of its mother tongue from the group of official languages of the OHIM.

Before the Court of First Instance, both parties affirmed and claimed that the limited language regime of the OHIM was against the non-discrimination clause contained in Art. 18 TFEU, and previously Art. 12 TEC.²¹² Greece added that the regime was against the provision of Regulation No.1/58 that affirmed the principle of equal status among EU official languages; while Mrs Kik also argued that the policy enforced by OHIM, with regard to its language regime, was against former Art. 21 TEC, and now contained in Art. 24 of TFEU "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language." The Council, then, bluntly stated, "there is no Community law principle of absolute equality between the official languages."²¹³

The Council, which was supported by the intervention of Spain in the proceeding, justified the selection of only five official languages by providing the justificatory argument contained in Regulation No. 40/94. The decision behind the selection of those languages was related to the fact that almost 97% of the European population speak at least one of the selected languages, either as a proficient user or as a foreign language.²¹⁴ The Council continued by affirming that the presumed competitive advantage of OHIM's official languages mother tongue speakers, inferred by Mrs Kik, was not true do to the fact that the application could be filed in any of the official languages of the EU at the condition that the applicant chose as second language of the proceeding one of the official languages of the OHIM.

²¹² Art. 18 TFEU affirms "Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination."

²¹³ Case T-120/99 *Kik*, para. 52.

²¹⁴ GINSBURGH, Victor, ORTUÑO-ORTÍN, Ignacio, and WEBER, Slomo, "Language Disenfranchisement in the European Union", Working Paper ECARES, January 2005, retrieved from <http://www.ecare.org/ecare/personal/ginsburgh/papers/132.disenfranchisement.pdf> (page consulted on 26th April 2015)

Notwithstanding both parties, it was the Court of First Instance that put on paper the real reason behind preferring a limited multilingualism. The court inferred in the appeal, the decision behind a similar language regime was “[Council’s] decision was also based on budgetary considerations. It points out in that connection that, without the chosen rules governing languages, it would be necessary to provide for an additional budget of several tens of millions of euros per year for the Office.”²¹⁵ For this reason both the Court of First Instance, the appellant and the institutions involved, found themselves “faced with a conflict between economic efficiency and egalitarian values, between exclusive practicality and cumbersome pluralism.”²¹⁶ For this reason, at the end the Court of First Instance had to renovate the dismissal of the plea.

Albeit there is part of the scholar debate that judges the argument of the costs related to EU multilingualism as the worst of the possible arguments to move, the day-to-day practices have showed that it is not only an issue of costs but also a question of democracy.²¹⁷ Moreover, the costs of managing this multilingual creature as the EU has other hidden costs, that are not quantifiable in terms of budget, but only in terms of institutions’ efficiency. This calls reasoning on the organizational and normative inefficiencies of EU institutions.

Institutional, Organizational and Normative Inefficiencies

“Language barriers hinder the flow of information both within and between the institutions and hamper a swift and flexible response to sudden changes in the political environment.”²¹⁸ In practice multilingualism results in a series of institutional, organizational, and normative inefficiencies that are not contemplated in the broadcasted slogan of *two euros a year per citizen*.

The most evident brake is the issue of time consequent and necessary to the preparations of official versions in all working and regulation languages. It is evident that this work cannot be prompt, due to the fact that the quality of the translation required by EU institutions is superior to other translation services in other supranational realities. The Commission, for instance, affirmed in 2014 that all its translations have to be of “high-quality.”²¹⁹ Moreover, in the European institutional boundaries translations are usually done twice. As we already pointed in the chapter dedicated to the EU, for some official languages – for instance Greek,

²¹⁵ Case T-120/99, *Kik*, paras. 50-54.

²¹⁶ CREECH, Richard, *op. cit.*, p. 35.

²¹⁷ See in particular LOPEZ, Stéphane, *op. cit.*, pp. 11-19.

²¹⁸ KRAUS, Peter A., *A Union of Diversity: Language, Identity, and Polity-building in Europe*, Cambridge University Press, 2008, p. 125.

²¹⁹ European Commission, “Translation and Multilingualism”, 2014, p.2

Finnish, Maltese – it is very hard to find reliable translators. Moreover, we should also take into account what affirmed by Creech that the number of translators at the time of 20 official languages, for translating a Regulation in a reasonable time, required the wondrous number of 380 people.²²⁰ For this reason EU institutions rely on defining a set of pivot²²¹ and relay²²² languages that will be considered the roots for other translations.

Relying on those sets of pivot and relay languages not only address the problem of simultaneous translation and interpretation services, but it also addresses the problem of textual fallacy or corruption from one version to the other. Translators have to be proficient not only in foreign languages but also on foreign and comparative law. As the Advocate General LaGrange observed in the then *quadrilingual* European Community “all four languages are authentic, which means that no single one of them is authentic.”²²³ The Advocate General’s remark was later re-affirmed by the Court of Justice when in the case *Erich Stauder v City of Ulmit* was appealed to judge over the interpretation of the decision of the European Communities of 12th February 1969 (69/71/EEC). The Court, then, affirmed that “the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in light of the versions in all four languages.” This practically determines that European citizens cannot rely only on their own language version of a EU legal text, but they have to master all other EU official languages for seizing the original interpretation of it.

What is more is that the complete multilingualism, or better the equal treatment of official and working languages of the EU, affects the rapidity of EU institutions to intervene. The practical derivate of this general principle results in re-scheduling official meetings, imposing

²²⁰ CREECH, Richard, *op. cit.*, p. 27.

²²¹ The pivot languages are mostly used in the case of the European Parliament that has the arduous job of producing rapidly documents in all the official languages in the EU. The set of languages are English, French, German, Italian, Polish and Spanish. “A document presented in, say Slovak or Swedish will not be directly translated in all other 19 languages. Instead it will be translated into the pivot languages and then translated from one of them into the others. (...) If texts were translated directly from all official languages into all the others, this would give a total of 380 bilateral combinations.” See more in Directorate-General for Press and Communication, *Many tongues, one family*, Luxembourg, Publications Office of the European Union, 2004, p. 19.

²²² The relay system is similar to the pivot one, but this time EU translators in case of an oral translation use it. In this case “a Finnish speaker’s words will be interpreted into a limited number of “relay” languages. A Slovenian interpreter, for example, will plug into one of these as the source language, removing the need for people who can interpret straight out from Finnish into Slovenian” See more in Directorate-General for Press and Communication, *Many tongues, one family*, Luxembourg, Publications Office of the European Union, 2004, p. 19.

²²³ Opinion of Advocate General La Grange in Case 13/61, *Bosh v. van Rijn*, 1962 ECR 45, 70.

stricter rules to MEP activities and drastic measures as providing a page-limit to reports and communications.²²⁴

What Can the EU Learn From the Indian Experience?

Multilingualism in itself does not hamper the installation of a real political union. India has provided a sound example of this. It is in this context that the EU should seriously think to redress his commitment to multilingualism, by developing a more reasonable system. The EU should concretely define the scopes and limits of its intervention by revolutionizing its approach to languages. Multilingualism will remain one of the most controversial issues of the EU, but its protection should not foster an unreasonable language regime at the institutional level. As we have seen, in practice European institutions have left behind complete multilingualism in their daily works, but the indefiniteness of its role and identity hampers their possibility to concretely change the overall system. National sentiments and grievances, that continue to be present, should leave space to a concrete definition of a workable language regime. This will be reached only with a Treaty able to provide a serious competence catalogue of various competences and spheres of action, able to give to EU institutions powers and institutional stance that would justify a limited multilingual regime. The experience of a similar linguistically complicated reality, as India, should prove to everyone that multilingualism is not a brake to the establishment of a more entrenched political union. Moreover, India has showed that Unity in diversity can be managed only through the establishment of a multicultural federal system.

As Indian constituent fathers understood, after India's independence from the British rules and after the dramatic consequences of Partition, linguistic diversity does not prevent particular institutions to obtain their official recognition and impose to a similar heterogeneous society a reasonable system able to address accordingly internal differences. Indian constituent fathers understood that selecting a *rashtra bhasha* was too difficult, so they moved on and they selected only two official languages. Nonetheless, their most important merit has been showing that the discourse about choosing official languages and the respect of linguistic diversity can be distinguished by promoting a system that recognize diversity at its highest levels. They have done this by reaching what is commonly known the *half-hearted compromise*. They understood that favouring sub-nationalist sentiments related to sub-national languages would have hampered the future of the Nation. So they decided to write

²²⁴ BBC News, "EU tackles translation 'crisis'", 26th May 2004, retrieved from <http://news.bbc.co.uk/2/hi/europe/3751079.stm> (page consulted on 26th April 2015)

down, in the Constitution and in following legislation, that multilingualism could be addressed and managed.

India accepted the impossibility to have a national language, but most importantly it recognized that colonizers' language could not be discharged. English, in fact, is the main condition that enables a real mobility across all the Union.

The recognition of Hindi and English official status, and the inclusion of the other languages in Part VIII of the constitution, turned out to be the main conditionality to the installation of a democratic reality.

“As the society in India is plural, whereas the nation-state is uniform and polity is federal, potentialities of strife and frictions are all too obvious. The guarantee for the sustenance of a plural society has been provided by the Constitution of India in a *self-equilibrating system*.”²²⁵

India, in fact, has been able to show that a plural and diverse society is not a threat to the establishment of a democratic polity, or even more to a process of progressive integration in a wider context called nation. Though, in some states plurality and linguistic diversity were fertile grounds for riots and instabilities, India has imposed a system of accommodation of diversities able to empower minority groups of real decision powers, through the continuous process of territorial re-organization along linguistic lines. This has also been able thanks to the Federal compact at the base of the polity itself. Federalism is the guarantee that couples a desire of common identity and diverse goals in the wider context of political legitimacy and accountability.

The pressures of globalization ask for a revolutionary policy in Europe related to language. However, the indefiniteness of the polity, of the legal texts at its base and the controversial part played by Member States, worsen the general picture. Europe, now and then, has not ignored the need for a more rational and practical political approach related to the management of its language regime. However, the sensitiveness of the issue has always hampered any real success. One of the most recent partial steps was the one attempted during the European Council held in Seville, on 21st and 22nd of June 2002, when the Council in one of his conclusions it demanded to “study the question of the use of language in the context of an enlarged Union and practical means of improving the present situation without

²²⁵ AKHTAR, Majeed, “Shared-Rule-Self-Rule” in the working of Indian Federalism”, draft, p. 2, retrieved from <http://www.queensu.ca/iigr/conf/Arch/2007/Watts/papers/majeed.pdf> (page consulted on 27th April 2015) Emphasis added.

endangering basic principles.”²²⁶ This suggestion did not produce any step forward in the better definition of a more practical language regime. The only thing that changed after this Council meeting, and consequent to the Big Bang enlargement was that the then President of the Commission, José Manuel Barros, welcomed for the first time the figure of the Commissioner on multilingualism, an official charge held by Leonard Orban.

It is for this reason that we can assume multilingualism in Europe is not hampering the establishment of a political union, the indecisions behind how to manage it are. The federation *sui generis* should prove to be able to do like India did in 1947, this means to clearly define what are the competences over the language regime, and – as India did – it should do it in a more clear federal system. Federalism, as Ronald Watts affirmed, should not be seen as a set of rigid institutions or structures, but rather as a system able to define a division of power that continuously enables reconciliatory measures among constituent units. In plural societies, as in the case of India and the EU, the federal theory provides a system of governance in which accommodation and the recognition of differences become the pillars of the governance system. In the midst of similar heterogeneous societies, federalism is able to unite the diversity. For this reason multilingualism should not be considered a brake for envisioning any political system, especially in the case of the EU. Notwithstanding, in the case of the EU, the only possibility to manage it correctly will be by directly defining the scope and limits of EU’s action considering its language regime, in a more entrenched federal compact.

Surely there are limits to what the EU can learn from India. The Indian Federal Compact is very centralised and even if the EU decides to clearly define what it is, it would never chose a similar centralised federal system.

Conclusion

This last part wanted to address more concretely the issue of multilingualism. It has assumed that multilingualism is not hampering, and more generally does not hamper, the establishment of a more concrete political union.

If multilingualism has proved to be problematic at the EU level, it depends on the fact that EU leaders and institutions have always avoided to tackle the problem correctly. The sensitivity of the issue prevented them to take bold decisions and define the issue correctly. They have

²²⁶ COUNCIL OF THE EUROPEAN UNION, *Presidency conclusions*, point 6. Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/72638.pdf (page consulted on 27th April 2015)

preferred an indefinite system. They preferred not to empower the EU of decision-making powers in the cultural or linguistic areas. This has determined that problems do not only arise from the impracticability of governing, while speaking 24 different languages, but also to create a grey-zone area able to cause numerous problems in terms of interpretation of roles and powers, as for instance in the case of Mrs Groener.

It is at this point that the case India turns out to be important to analyse, by looking at it. Indian constituent fathers and then politicians understood from the inception of the newly independent state that addressing linguistic plurality should not mean to put in place an unreasonable language regime. They were able to take courageous steps, by recognizing an associate and then official status to the former language of colonization. The half-hatred compromise, at the basis of its constitutional text, institutionalized a language regime that has guaranteed democracy and respect of diversity throughout the years. India chose to be a multilingual identity with a workable limited language regime.

In the case of Europe, the *great non-dit* of European integration has, instead, put in place a real unequal system that has created, and continues to create, numerous problems, without being equal.

CONCLUSION

“Languages issues are, by definition, thorny ones, given the implications surrounding cultural identity of entire peoples. The mere suspicion that EU multilingual practice might contain an element of discrimination to the advantage or detriment of any language is sufficient to cause stir.”²²⁷

The present study aimed at studying EU multilingualism in comparison to the Indian one, in order to show that multilingualism does not hamper the establishment of a political Union. Multilingualism in the case of the EU constitutes a brake for its management and the implementation of its policies only because EU leaders, policy-makers and practitioners decided not to tackle the problem. Recognizing full multilingualism in the EU is not an endearment but the sign that the EU has no power over language and cultural policies, and Member states continue not to grant any kind of power-decision over the issue.

Underlying this important fact is underlying also one of the major theoretical complexities of the present study. The EU is not a nation-state and it cannot aspire to become one someday. It does not have an elected government, no matter the recent development in the *selection* of the President of the Commission. Its democratic credentials are every time questioned and subject of never-ending debates. Yet, this peculiar supranational organization has acquired a great deal of public authority over the years, and has become an actor in shaping political and economic contours in the European continent.

“Nevertheless, despite economic, social and structural preparations for an expanded European union, of which perhaps the most apparent and, in certain quarters, the most contentious is the introduction of a common currency, there is one significant policy largely ignored by planners and politicians. This is language (...) The link between language and nationality and, by extension, nationalism, accounts at least partially for the reluctance of the European institutional hierarchy to address language policy, which remains mired in the muddy thinking of a European community far smaller and far cosier than the one envisaged in the 21st century.”²²⁸

²²⁷ COSMAI, Domenico, *The Language of Europe: Multilingualism and Translation in the EU Institutions: Practice, Problems, and Perspectives*, Editions de l'Université de Bruxelles, 2014, p 189.

²²⁸ GUBBINS, Paul, HOLT, Mike (eds.), *Beyond Boundaries: Language and Identity in Contemporary Europe*, Multilingual Matters, 122, 2002, p. 47.

The sensitiveness of the issue has produced in the EU a “political culture of compromise”²²⁹ that today has become unmanageable. No matter how much translators, EU officials and politicians affirm in terms of costs and workload, managing a Union in which 24 languages have official status is becoming practically impossible. The evidence of this unmanageability has been confirmed also in the reduction of working languages in all EU institutions. As we have seen, in order to act in an efficient way EU institutions developed and have institutionalized formal restricted language regimes. However, these decisions have not been coupled with bold decisions at the higher institutional level, due to Member states’ fear of losing their identity.

Surely, the EU cannot imagine itself without being a multilingual reality, also because “languages are central to the process leading to a more deeply integrated Europe.”²³⁰ Modern times have amplified the role of languages and the need of constant communications within borders. In all these years of integration, the EU decided not to clearly define the roles and competences of the various actors in the play concerning its language regime. However, the *great non-dit of EU integration* cannot be perpetuated even more, nonetheless because “the way the EU deals with multilingualism has significant implications, both for internal relations and for what happens in each member country.”²³¹ For this reasons the EU should look forward and entrench itself in a more coherent and defined system for the accommodation of a similar cultural, and more specifically, linguistic diversity.

In this study that multicultural federalism can provide useful tools for the management of cultural diversities in the EU. But, before explaining this we have firstly introduced the wider genus of federalism. Federalism presupposes a system where power is divided through means of self-rule and shared-rule. Multicultural federalism, as a further steps in the theory of Federal Compact, envision this division of powers by granting to ethnically diverse communities forming the multicultural state important powers for self-organizing their sub-entities and identities, without denying “the desire to build a stronger union without giving up regional cultural autonomies.”²³²

Notwithstanding the importance of the multicultural federal compact, we had to justify the adoption of the Federal Theory to the EU case. In fact, the indefinite nature of the EU is needs

²²⁹ KRAUS, Peter A., *A Union of Diversity: Language, Identity and Polity-Building in Europe*, Cambridge University Press, 2008, p. 124.

²³⁰ PHILLIPSON, Robert, *op. cit.*, p. i.

²³¹ *Ivi.*

²³² HUEGLIN, Thomas O., and FENNA, Alan, “Federal Systems”, in HUEGLIN, T. O., and FENNA, A., *Comparative federalism: a systematic inquiry*, Broadview Ltd., 2006, p. 57.

justifications before engaging in a comparative analysis. The EU, as we have outlined in every part of this study, is neither a state nor an international organization. We have defined it as a federation *sui generis*, thanks to the intellectual effort of Tömmel.

Defining the EU as a federation *sui generis*, in fact, conceded to us the possibility to confront this polity in comparative terms. In fact, its *sui generis* nature should not drive us thinking that it is impossible to compare the polity with other federal system. Instead, it is only by means of this definition that the EU can be properly compared and analysed. It is through the means of the *sui generis* label that the EU, although unique in its position, is going beyond the classical concept of sovereign states by constituting a new model of polity that has taken many important tools and look-like institution from the Federal experience.

Is from these premises that we have introduced the case of India as a term of comparison for proposing possible solutions to the EU indecision over its language regime. Among all examples of cultural federations and multicultural federations, both in terms of internal diversity and the achievements made in encompassing unity, the case of India is of pivotal importance, especially if we take into consideration Indian linguistic diversity. “There are more linguistic variations in India than in any other federation on the globe”.²³³ In the *federation in all but in the name*, federal institutions, but also polities, ideas and arrangements were able to generate a stable and democratic polity that – notwithstanding the episodes of internal crisis and violence as we will see better in the chapter dedicated to India – now counts as one of the most durable examples of federal compact.

“So, in analysing success of a [cultural] federal system, one obvious criterion is the capacity to manage conflict, so as not to create ‘crises’ that threaten the social contract, and the stability and unity of a specific political arrangement”²³⁴

Initially, it was difficult for the constituent fathers to officially recognize India’s cultural and linguistic diversity at the central level. They envisioned and would have preferred a proper unitary state, with a single national language and no means for constituent unit autonomy. However, as the debates concerning the form of state began, they could not acknowledge the impossibility to envision a unitary nation-state. For this reason “the founding fathers sought to create an integrated polity for a society that had never been integrated”²³⁵ by designing the Indian Union as a true cultural federation, even though – and it is important to stress this point

²³³ WATTS, R.L, and KINKAID, J., *op. cit.*, p. xii.

²³⁴ GAGNON, A-G., *op. cit.*, 30.

²³⁵ ARORA, Balveer, “Republic of India”, in MORENO, L., COLINO, C., (eds), *Diversity and Unity in Federal Countries*, McGill University Press, 2010, p. 220.

– in the constitutional text there is no mention of the word “federation” as such. As we will see in the chapter dedicated to Indian linguistic diversity, the process that acknowledged a linguistically led territorial division of the countries, as the discourse of national-then-turned-official language, was something that the framers of the newly independent state saw with apprehension.

Even though cultural federalism is something quite old as the Canadian experience is – or if we want the Hapsburg Empire²³⁶ was – India’s constituent fathers feared the implementation of a federal solution within their borders:

“[Although] the framers of the Constitutions were acutely aware of the vast range of diversity for which they had to construct an encompassing frame, allowing adequate expression for diversity while at the same time maintaining the unity essential for national cohesion. They viewed with some apprehension the rising aspirations of ethno-linguistic communities and their demands for recognition and their demands for recognition and growing assertiveness in the political arena. Chastened by the failure to maintain an undivided India [...] and deliberating on the new framework in the midst of its bloody and chaotic sequel, they were cautious in their approach to the recognition of diversity”²³⁷

It is exactly for the fear of granting any kind of autonomy to constituent states that the Constituent fathers envisioned an Indian way of cultural federalism: multicultural federalism. The peculiarity of Indian federalisms is its centralized character. This determined that, the Union of states it is now a federal entity of continental magnitude that encapsulates numerous kinds of diversity, ranging from language, religious belief and the caste system, within an highly and powerful centre, that only recently is witnessing phenomena of progressive devolution of powers. It is this peculiarity that makes interesting to look at how India – in its endless debates – has addressed its diversity and promoted unity. Its adoption of cultural federalism has surely proved to be able to promote democracy and level-down secessionist and violent conflicts, by offering an alternative insight to the question of how particularism relates to universalism in a single polity.

In order to prove and assess the complexities of both polities we have presented what is the magnitude of linguistic diversity in each of the polities, by addressing to each of them a chapter. The mere description of their history and how they managed multilingualism was

²³⁶ See more, past experiences with multilingual settings in Europe in VOLMAN, Yvo, “Multilingualism and transnational communication strategies in Europe: from Hapsburg to the European Union”, in MARÁČZ, L., ROSELLO, M., *Multilingual Europe, Multilingual Europeans*, European Studies, 2012.

²³⁷ *Ivi.*

evident since their beginning. As we have said, India acknowledge its linguistic and cultural diversity and act accordingly by institutionalizing a multicultural federal system that has conceded important powers to linguistic community and redefining the territories along linguistic lines and providing a limited language regime at the central level.

In the case of the EU we have seen that as the process of integration develop and acquired new Member States, as the language regime evolved. In fact, Regulation No. 1/58 has been modified at each enlargement process in order to recognize as official language of the EU, the national language of the new member. This has produced a EU in which are officially recognized 24 working and regulation languages.

Thereupon the last part of the present study was devoted to showing how much the indefiniteness of EU powers in language and cultural policies has direct effects on its functioning. EU's language question derives from the lack of a single majority capable of promoting or endeavouring the selection of a more workable language regime. The sensitiveness of the issue has produced a situation in which "the language of Europe is translation."²³⁸

"Languages are the medium through which communication takes place in politics, commerce, defence, academia, the media, technology, the Internet, and most aspects of life. Languages are therefore central to our increasingly inter- national world, to globalization and the accelerating processes of European unification."²³⁹

For all these reasons we need a bold decision. EU Member states should look at how India managed the issue of linguistic diversity and promote a system where national languages are accepted, within a supranational frame that speaks with a limited set of language regime. Respecting linguistic diversity does not mean to put in place a system that is not able to be efficient.

²³⁸ As Umberto Eco once told, speaking at the Assises de la traduction littéraire in Arles, France, on Sunday 14 November 1993

²³⁹ PHILLIPSON, Robert, *English Only Europe? Challenging Language Policy*. London, Routledge, 2003, p. 7.

BIBLIOGRAPHY

AKÇA ATAÇ, C. “Empire of Languages: EU’s Multilingualism Policy and the Turkish Language”, *Turkish Studies*, Vol. 13, No. 4, 2012, pp. 581-598.

AMMON, U. “Language Conflicts in the European Union”, *International Journal of Applied Linguistics*, Vol. 16, No. 3, 2006, pp. 319-338.

ARZOZ, X. “Accommodating Linguistic Difference: Five Normative Models of Language Right”, *European Constitutional Law review*, Vol. 6, 2010, pp. 102-122.

BHARGAVA, R. “The Evolution & Distinctiveness of India’s Linguistic Federalism” in *Ethnic Federalism*, TURTON, D. (ed). Oxford, James Currey, 2006, pp. 65-92.

BROWN-JOHN, Lloyd C., *Federal-type solutions and European Integration*, University Press of America, 1995.

CASTIGLIONE, D., and LONGMAN, C. *The Language Question in Europe and Diverse Societies/Political, Legal and Social Perspectives*. Oñati International Institute for the Sociology of Law. DATA.

CHOUdry, S. “Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies” in CHOUdry, Sujit (ed), *Constitutional Design for Divided Societies: Integration or Accomodation?* Oxford University Press, 2008, pp. 3-40.

COSMAI, Domenico, *The Language of Europe: Multilingualism and Translation in the EU Institutions: Practice, Problems, and Perspectives*, Editions de l’Université de Bruxelles, 2014.

CREECH, Richard L. *Law and Language in the European Union/The paradox of a Babel “United in Diversity”*. Europa Law Publishing, 2005.

DE VARENNES, F. “Law, Language and the Multi-ethnic State”, *Language & Communication*, Vol. 16, No. 3, 1996, pp. 291-300.

DE WITTE, B. “Cultural Legitimation: Back to the Language Question” in SOLEDAD, G. (ed.), *European Identity and the Search for Legitimacy*, London, Printer Publishers for the Eleni Nakou Foundatons and the Royal Institue of international Affairs, 1993.

DUNBAR, R. "Is There a Duty to Legislate for linguistic Minorities?", *Journal of Law and Society*, Vol. 33, no. 1, 2006, pp. 181-198.

ELAZAR, Daniel J., *Exploring Federalism*, The University of Alabama University Press, 1987.

ERK, J. & ANDERSON, L. "The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?", *Regional and Federal Studies*, Vol. 19, No. 2, 2009, pp. 191-202.

ERK, J. *Explaining Federalism*. London, Routledge, 2008.

FABBRINI, Sergio (ed.), *Democracy and Federalism in the European Union and the United States: Exploring Post-National Governance*, London, Routledge, 2005.

FERNÁNDEZ VÍTORES, D. "El Dilema Lingüístico de la UE: El Multilingüismo Como Rémorra Institucional de la Unión", *Glossa*, Vol. 3, No. 1, Universidad Autónoma de Madrid, 2007, pp. 203-211.

FIDRMUC, J. GINSBURGH, V. "Languages in the European Union: The quest for equality and its cost", *European Economic Review*, Vol. 51, 2007, pp. 1351-1369.

GAZZOLA, M., "Managing Multilingualism in the European Union: Language Policy Evaluation for the European Parliament", *Language Policy*, Vol. 3, 2006, pp. 393-417.

GOLDNER LANG, I., "Languages as Barrier to Free Movement of Persons in the European Union" in SOCANAC, L., GODDARD, C., KREMER, L., (eds), *Curriculum, Multilingualism and the Law*, Zagreb, Globus, 2009, pp. 175-192.

GRIFFITHS, Ann L. (ed), *Handbook of Federal Countries*, McGill-Queen University Press, 2005.

GUBBINS, Paul, HOLT, Mike (eds.), *Beyond Boundaries: Language and Identity in Contemporary Europe*, and *Multilingual Matters*, 122, 2002.

HEIDELBERG, P. D. "Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law", *Verfassung und Recht in Übersee VRÜ*, 2011, pp. 160-176.

HESSE, Joachin Jens, WRIGHT, Vincent (eds.), *Federalizing Europe? The Costs, Benefits, and Preconditions of Federal Political Systems*, Oxford University Press, 1996.

JOSEPH, John E., *Language and Politics*, Edinburgh University Press, 2006.

KRAUS, Peter A., *A Union of Diversity: Language, Identity and Polity-Building in Europe*, Cambridge University Press, 2008.

LAURSEN, Finn (ed.), *The EU and Federalism: Politics and Policies Compared*, Federalism Studies, Farnham, Ashgate, 2011.

McAULIFFE, K., "The Limitations of a Multilingual Legal System", *International Journal for the Semiotics of Law*, No. 26, 2013, pp. 861-882.

MYHILL, John, *Language, Religion and National Identity in Europe and the Middle East*, Amsterdam/Philadelphia, John Benjamins Publishing Company, 2006.

NICOLAIDIS, Kalypso, HOWSE, Robert (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, 2001.

NOOR, Ahmad B., "Federalism and the Indian Experience with Nation Building: An Appraisal", *South Asian Survey*, Vol. 18, No. 1, 2011, pp. 109-120.

PALERMO, F. "Linguistic Diversity Within the Integrated Constitutional Space", *European Diversity And Autonomy Papers (EDAP)*, Vol. 2, 2006, pp. 5-44.

PERRUGINELLI, G., "Towards a Common Understanding of Law in a Multilingual World: The Role of Cross-language Legal Information Retrieval Systems", *The European Legal Forum*, 2007, pp. 64-71.

PHILLIPSON, Robert, *English Only Europe? Challenging Language Policy*, London, Routledge, 2003, 233 p.

PORTUESE, A. "Law and Economics of the European Multilingualism", *European Journal of Law and Economics*, No. 34, 2012, pp. 279-325.

RAU, Sri Benegal, *India's Constitution in the Making*, Calcutta, Orient Longams, 1960.

ROBERTSON, C., “Multilingual Law: What is it? How Is It Made? How Is It Used and Applied? (With reference to EU practice)” in SOCANAC, L., GODDARD, C., KREMER, L., (eds), *Curriculum, Multilingualism and the Law*, Zagreb, Globus, 2009, pp. 373-398.

SCHILLING, T., “Beyond Multilingualism: on Different Approaches to the Handling of Diverging Language versions of a Community Law”, *European Law Journal*, Vol. 16- No. 1, 2010, pp. 47-66.

SINGH, M., & VERNEY, D. V., “Challenges to India’s Centralized Parliamentary Federalism”, *Publius: The Journal of Federalism*, Vol. 33, No. 4, 2003, pp. 1-20.

SUBHASH, “Three Language Education Formula in Multilingual India: Problems and Prospects”, *International J. Educational Research*, Vol. 1, No. 2, 2013, pp. 150-158.

TILLIN, L., “United in Diversity? Asymmetry in Indian Federalism”, *Publius: The Journal of Federalism*, Vol. 37, No. 1, 2006, pp. 45-67.

URRITA, I. and LASAGABASTER, I. “Language Right as a General Principle of Community Law”, *German Law Journal*, Vol. 08, No. 05, 2007, pp. 479-500.

VAN ELS, T., “Multilingualism in the European Union”, *International Journal of Applied Linguistics*, Vol. 15, No. 3, 2005, pp. 263-281.

VARSHNEY, A., “How has Indian Federalism Done?”, *Studies in Indian Politics*, Vol. 1, No. 1, 2013, pp. 43-63.