

# Imola projects

## General Issues on terminology

1

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# Linguistics and the theory of the formants

2



**Matteo Bartoli**, *Introduzione alla neolinguistica* ("Introduction to neolinguistics»), 1925 and *Saggi di linguistica spaziale* ("Essays in spatial linguistics») 1945.



# Terms and terminology

3

Locke (1690) and Hume (1739) defined terms as

*Ideas*

and consider them mental images

Z. Nemickienė, *Concept in modern linguistics: the component of the concept good*, in *Filologija*, 2011, p. 26 ff.

# Terms and terminology

4

Linguistically, a terminological choice creates a new, abstract “object”, that exists independently of speaker’s linguistic competence.

When we acquire or create a **concept** we do that in order to understand our surroundings (which include fictional or imaginary worlds too).

T.R. Carney, *Linguistics for legal interpretation*, UJ Press, 2006, p. 13.



# Sunset, coucher de soleil

5



# Terms and terminology

6

The terms, the concepts are mental representations of the world, structures that represent **the knowledge of an individual about a particular segment of the world.**

It should be borne in mind that the meaning of a concept remains within the frame of a **particular culture** and period of time.

Margolis, Eric and Stephen Laurence, "Concepts", *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition), Edward N. Zalta & Uri Nodelman (eds.),



# Terms and culture

7

Kuuk thaayorre

Porm puraaw, Cape York  
(Australia)

~~Left~~—right



Cardial points (north, south...)



# Terms and Terminology

8

Lera Boroditsky, *How language shapes the way we think*,  
TedVideo at:

- <https://www.youtube.com/watch?v=RKK7wGAYP6k>



# Death

9

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# Death

10

According to National Committee for Bioethics of 15 February 1991, integrated in legislation, clinical death is identified only with the phase of **decerebration** (brain death)



# Specialized terminology

11

- In linguistic terms, a specialized vocabulary composes the language of science like, for instance, medicine or the law.
- Legal terms/concepts, in particular, are part of the mental lexicon of a smaller group of people (specialists): the jurists.

S. Cavagnoli, E. Ioriatti, *Tradurre il diritto. Nozioni di diritto e di linguistica giuridica*, Cedam, 2009.

# The legal language

12

The ordinary language is a natural language

The language of mathematics is an artificial language

The legal language is an administrated language

F. De Saussure, *Cours de linguistique Générale*, ed. By C. Bally and A. Sechehaye, Payot, 1916.

M. Jori and A. Pintore, *Introduzione alla filosofia del diritto*, Giappichelli, 2014.  
T.R. Carney, *Linguistics for legal interpretation*, UJ Press, 2006, p. 13.



# The origins of the legal language

13

## The Romans

*datio pignoris*

pignus conventum (hypotheca) similar to an institute originated in Greece, with the name hypotheca

Massimo Brutti, *Il diritto privato nell'antica Roma*, 2015, pp. 361 ss. e 471 ss. Mario Talamanca, *Istituzioni di diritto romano*, 1990, p. 481. Bove, *Pegno (diritto romano)*, in *Novissimo Digesto italiano*, 1965, p. 763.

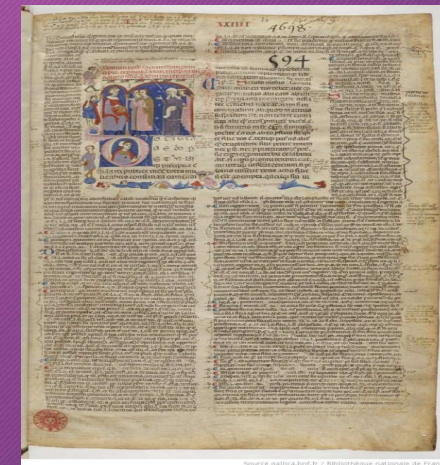


# The Continent (Civil law Family)

14

The hypoteca could have movable things as its object (slaves) or immovable property.

This regime was in force in the Corpus Iuris Civilis (Emperor Justinian, 500), which was rediscovered in the 11<sup>th</sup> century and re-elaborated as the foundation of the Civil law family.





# England (The Civil law family)

15

Hastings battle (1066)

The Norman conquest  
of Britain

Royal court - case law



Legal concepts are often of an **onomatopoeic nature** - tort, slander (oral defamation) - or originated in the **folk etymology**, like morgtgage.



# Mortgage

16

Latin: mortuus (dead)

Old French: mort gage (pledge). The deal dies when the debt is paid or it fails. Folk etymology

Old French: morgage

English law (Middle age): mortgage



# English Common Law

17

Proprietary case law rules developed over the centuries by the courts, and have the feudal system at the basis

The common law does not know a concept of property as the civil law: ownership relationship do not have the same basic content as on the continent.

S. van Erp, *A comparative analysis of mortgage law: searching for principles*, in M.E. Sánchez Jordán, A. Gambraro, *Land Law in comparative perspective*, Kluwer law international, 2002.



# The English mortgage

18

This system has influenced the mortgage too, even if, according to prof. van Erp, some general principles common to the continent and England can be traced in order to create a «Euro-mortgage».

S. van Erp, *A comparative analysis of mortgage law: searching for principles*, in M.E. Sánchez Jordán, A. Gambraro, *Land Law in comparative perspective*, Kluwer law international, 2002, p. 82 ff.



# The national states (legal systems)

19

*Hypothèque*

*Ipoteca*

*Hypothek, Grundschuld*

*Hipoteca*

*Mortgage*

# The European doctrine legal thinking

20

## *Security Rights over Immovables*

The terminology elaborated by the Study Group on a European Civil Code—Working Team Proprietary Security Rights

F. Fiorentini, Proprietary Security Rights in the Western European Countries.pdf

F. Fiorentini, quoting, Cousins, *The Law of Mortgages*, 2nd ed. (London 2001) 13 and Turner R.W., *The Equity of Redemption. Its Nature, History and Connection with Equitable Estates Generally* (Cambridge 1931).



# IMOLA?

21

According to linguistics, the characters IMOLA projects do classify it as a terminological project (too).

Aim: interconnection of legal terms.

Need of a uniform legal terminology, but the aim is different from the harmonization one (like in the project of the European doctrine)

Highly technical nature of the terminology, addressed to specialists, but to citizens too.

## Imola terminological choices

22

Because of these features, linguistically, behind Imola terminological choices **communicative needs** have to be considered too, together with...



# Terminological choices

23

...impact on the realty.

“The creation of terms/concepts in the legal field are of great moral and prudential significance.

In the case of legal concepts, the terms imposed will influence what is done in the real word”.

.....and visibility of the terminological choices around the world.

K. E. Himma, *Conceptual Jurisprudence*, in *Revus*, 2015, p. 65 ff.



# The Socio-cognitive Approach to terminology

24

“Socio-cognitive Approach to terminology”, originally proposed by Rita Temmerman, claims that the traditional approach to terminological definitions imposes constraints that are not realistic, because linguistic meanings are based on **prototypes**.

Rita Temmerman, *Towards a new Ways of Terminology Description: The Sociocognitive Approach*, John Benjamin, 2000.

# Aristotele's human being: the traditional approach

25

In classical Aristotle's example,  
an anthropus (“human being”)  
is definite as an animate being with two legs and no feathers.





# How to define a cup?

26

According to the Socio-cognitive Approach to terminology this approach does not work for terms like, for instance, “cup”



# Prototypes

27





# Prototypes

28



# Prototypes

29

When people know a term, because they reconnect it to a **prototype**, they do probably recognize the corresponding object, even in lack of a precise, technical, scientific or professional knowledge about the characters needed to classify that object.



## Prototypes in the legal field

30

- On the basis of the study of terms in scientific field, Temmerman argues that when a **communicative need** is present, scientific terms are not different from words, in the sense that both are **partially based on prototypes**.
- This implies that in specific contexts, terminological scientific definitions should be interpreted in the same way as terms of the natural language (lexicographic definitions).

# Prototypes in the legal field

31

- Terminological juridical choices can evoke what is present in people's mind on prototypes.
- In law it is reasonable to think that we have some pre-linguistic capacity to develop legal concepts.
- But the contents of IMOLA legal concepts are also highly responsive to the linguistic context (English as the *lingua franca* of the project).



# What English are we speaking about?

32

The distance between the International (or Global English) as the “traditional” language of the English Common law is the result of supranational legal languages evolving in an entirely independent way from the terminology formulated at Westminster since the 11<sup>th</sup> century.

D. Mellinkoff, *The language of the law*, Wipf and Stock Publishers, 2004.

# IMOLA: a juridical-terminological project addressed to citizens too

33

Terminological choices: **prototypes**

**Mortgage** - *Security Rights over Immovables*

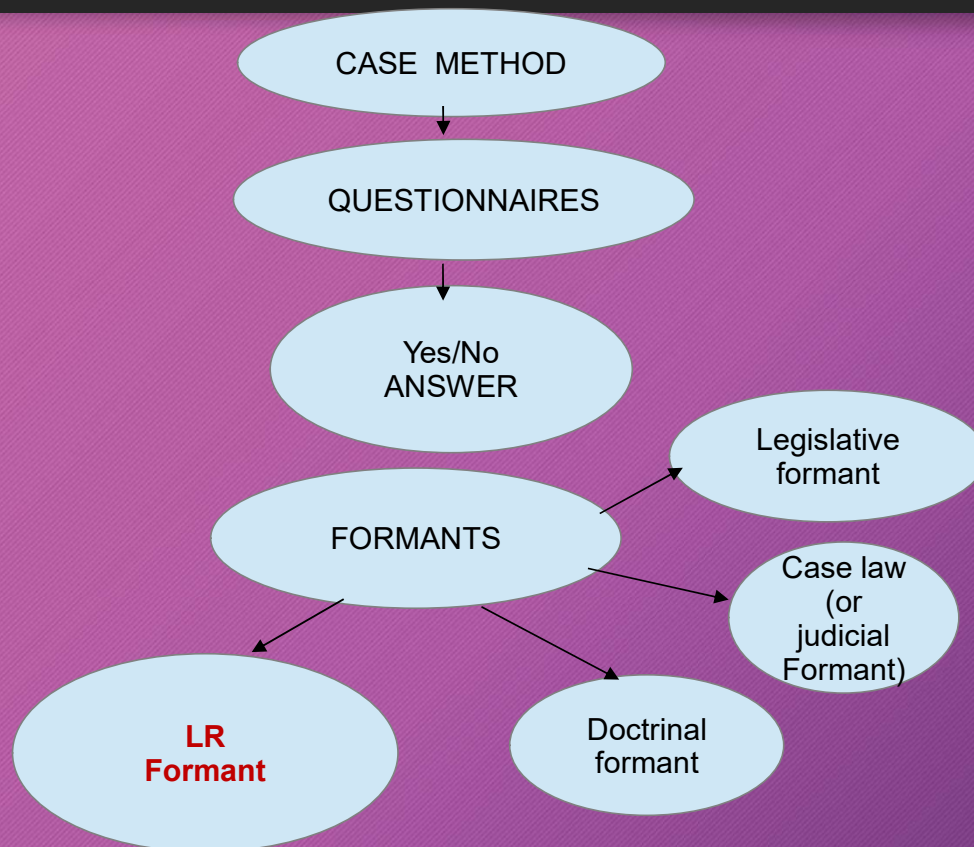
**Property** - Ownership

**Other property rights** - Real rights



# Comparative law

34



# The legal formants

35

- to define the attributes of the legal concepts in a more complete and systematic way.
- to collect data in a structured way.
- to connect the pivot terms with the national definitions, by uncovering the operative rules beyond the declamatory/abstract definitions.
- to fill the general definitions with a more accurate and detailed legal meaning;  
to contribute to the data collection;
- to update (and keeping updated) the template with all the innovations and changes that can affect a legal system (and which can be brought by either the legislative of the case law formants);
- to identify differences and similarities among several legal systems and the operational rules of those systems



# The operational rules

36

Operational rules contributed in:

- distinguishing the operational rules that are actually applied within a legal system (living law) from the definitions used by the jurists/legislators to describe the legal rules.
- in observing not only how cases are solved in a specific legal system, but also to acknowledge all the clues/signs present today which determine how cases will be solved in the near future.
- In monitoring the fields in which it is probable that a change in legislation or case law will intervene.

# Mortgage and the formants

37

MORTGAGES FORMANTS		
QUESTIONS	ANSWER	FORMANTS
Is it necessary to register the mortgage so that it exists legally (constitutive registration of the mortgage)?	Yes	Civil Code, Article 1875 Mortgage Act, Article 145 Case law: Supreme Court, resolutions 31.07. 2002, 23.09. 2004, 3.06.2016 Doctrine Land Register practice
Is this mortgage considered as a property right in accordance with the applicable law?	Yes	Civil Code, Article 104 Case law Doctrine
Is the mortgage collateral according to the applicable law?	Yes	Civil Code, Article 1875 Mortgage Act, Article 105 Case law Doctrine
Does the mortgage guarantee a money debt?	Yes	Civil code, Article 1857 Mortgage Law, Article 105 Case law Doctrine



Thank you for Your attention

38

