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### BECOMING (FALSE) FRIENDS: LINGUISTIC PRACTICES AND SOURCE ACCESS IN MALTA

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SWEET & MAXWELL



# BECOMING (FALSE) FRIENDS: LINGUISTIC PRACTICES AND SOURCE ACCESS IN MALTA

Gianluca Parolin\*

**Abstract:** The linguistic practices of the semiotic groups engaged in legal education, courtroom litigation or public administration in Malta seem to point to a trajectory where the mixity of Malta's legal system is quickly being renegotiated and reconfigured. This may be difficult to appreciate at first because, on the surface, the linguistic arrangement remains unchanged, just as the morphology of the words remains unaltered. Under the surface, however, English is exercising a firm and persistent traction on the meanings of Maltese words with Italianate morphology that has the potential to affect access to the legal sources of Malta's civil law heritage. New (false) friends can thus become useful tools to identify changes in the source languages which ultimately lead to deep, systemic changes, particularly meaningful in mixed jurisdictions as they can enhance or deprive access to the legal sources of a legal tradition.

**Keywords:** *false friends; legal translation; linguistic practices; Malta; mixed jurisdictions; source access*

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Bis-serjetà. Serjetà biss.  
– Maltese Satire and Parody News<sup>1</sup>

## I. Introduction

A chapter on Malta was added only to the second edition of *Mixed Jurisdictions Worldwide: The Third Legal Family* in the early 2010s.<sup>2</sup> Nevertheless, most scholars would not dispute that Malta meets the three criteria identified by Vernon Palmer for a mixed jurisdiction:<sup>3</sup> (1) Malta’s legal system contains features of both the civil law and the common law traditions, (2) their presence is conspicuous and obvious to an ordinary observer, (3) the civil law element tends to be predominant in private law while public law tends to be regulated within the common law tradition.<sup>4</sup>

A simple glimpse at a Maltese statute, a cursory eavesdropping on Maltese attorneys, or a swift perusal of a Maltese court ruling allows the observer to perceive the intricacy of the linguistic layers at work in this mixed jurisdiction. Various linguistic layers are at work in any jurisdiction—let alone mixed jurisdictions—but the distance between these layers in Malta facilitates the appreciation of the phenomenon, and possibly consider if some of the dynamics beneath these linguistic practices are at work also beyond the confines of the archipelago. Inasmuch as, lexically, Maltese blends Semitic, Romance and Germanic elements (or lexemes),<sup>5</sup> their remarkably distinct morphologies allow even non-specialists to notice the complex mixity and inextricable nature of Maltese and the legal history that they tell.

Non-specialists, however, can make erroneous assumptions based on morphology alone. Words sounding the same may suggest connections that are only historically relevant and may obscure more profound transformations of a certain jurisdiction. Turning to linguistic practices may in turn offer an opportunity to gain a deeper understanding of the processes at work in a given jurisdiction, identify their patterns and possibly even detect their direction in the constant reconfiguration of a legal system.

For legal scholars working on mixed jurisdictions, the interest in language is obviously tied to the question of the access that a language allows to a certain legal tradition, in the form of access to legal sources. Vernon Palmer thus speaks of source language(s), in order to differentiate them from the living language(s) spoken within a certain jurisdiction (and which may not give access to any officially-recognised legal tradition).<sup>6</sup> In the

1 “Seriously. Only Seriousness”. The name delivers a pun on *serjetà*, which is used first to render the English *seriously*, and then to render the more conventional Maltese use of *serjetà* tied to the Italian *serietà* (seriousness). The online Maltese satire and parody news is available at <https://bis-serjeta.com/>.

2 Biagio Andò, Kevin Aquilina, J Scerri-Diacano and David Zammit, “Malta” in Vernon Palmer (ed), *Mixed Jurisdictions Worldwide: The Third Legal Family* (Cambridge University Press, 2nd edn., 2012).

3 Vernon Palmer, “Introduction to the Mixed Jurisdictions” in Vernon Palmer (ed), *Mixed Jurisdictions Worldwide* (n. 2), 7–11.

4 David Zammit (author of the sections VI, VII-1, VII-2, VII-a, VII-b, VIII-e, IX, X) refers to the ruling *Cassar Desain v Forbes* (Court of Appeal), 7 January 1935, as expressing this very point. Biagio Andò and others, “Malta” (n. 2), 564.

5 Joseph Brincat, “Maltese: Blending Semitic, Romance and Germanic Lexemes” (2018) 33 *Lexicographica* 207.

6 Vernon Palmer cites Sinhala and Tamil in Sri Lanka as examples of official languages that are “not relevant for the sources or Roman-Dutch and English law”, although they are source languages of customary law in the country. See Vernon Palmer, “A Descriptive and Comparative Overview” in Vernon Palmer (ed), *Mixed Jurisdictions Worldwide* (n. 2), 50–54.

case of Malta, the source language for the civil law tradition (Italian) has been completely absorbed by the living language (Maltese),<sup>7</sup> whereas the source language for the common law tradition (English) is the second official language of the country.

Code-switching between Maltese and English is “regularly practiced” in everyday conversations,<sup>8</sup> and the traction that English has gained over the last few decades is manifesting itself on Italianate Maltese words acquiring the meaning most commonly used in English. False friends are thus “becoming friends” in everyday Maltese. Is legal terminology affected by these broader linguistic (and societal) changes?

Technically, the status of languages in Malta has not significantly changed for almost a century. The archipelago has however witnessed broader linguistic (and societal) changes that may have brought about significant transformations beneath an unchanged official status. In order to appreciate the contexts in which these transformations may have occurred, it is essential to delve into the linguistic practices in legal education, courtroom litigation and public administration. How are these the relations between the source language for the civil law tradition (Italianate Maltese) and the source language for the common law tradition (English) being (re)negotiated in these contexts? Observing what happens in a classroom in the law school, what registers are being used in court rulings, and how translators for EU institutions operate offers some preliminary data to appreciate the contexts in which these linguistic practices are embedded.

Were English exercising a similar traction onto Maltese as in everyday conversations, then we could expect significant changes in meanings under unaltered morphological patterns, ie false friends “becoming friends”. Whether a friend is false or true is of course a matter of perspective. Its becoming true or false, however, can be of interest to the legal scholar because it can reveal patterns of access to legal sources; or perhaps just confusion. Whereas an Italianate Maltese expression and its morphologically similar counterpart in English would originally be considered false friends, their constant and repeated use in the meaning most commonly used in English would eventually turn them into friends (and, viceversa, false friends with continental Italian). Besides the linguistic phenomenon, does “becoming a (false) friend” affect access to the legal sources of a particular tradition? For the purposes of law, then, would that mean that Malta is moving towards a form of (covert) unilingualism?<sup>9</sup>

Some of the first Maltese translators working for the European Union (EU) had to confront some of these questions since the mid 2000s. The first issue of the magazine *L-aċċent* [The Accent] featured one such debate: is *preskrizzjoni* a false friend? In the section of *L-aċċent* dedicated to vocabulary, Maltese EU translator Alan Xuereb first

7 Belgian legal scholar Michel van de Kerchove draws our attention to the gap between usages of the “same” words in a living and a source language (ie, “internal” false friends). This is particularly relevant for words of common use in both the everyday and the technical senses. Michel van de Kerchove, “Langage juridique et langage usuel: Vrais ou faux amis?” (2013) 26 *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 833. In the case of Maltese, the living language absorbed the source language on the technical level.

8 Joseph Brincat says by at least one third of the population. Joseph Brincat, “Maltese: Blending Semitic, Romance and Germanic” (n. 5), 221.

9 This is one of the questions that Vernon Palmer addressed to respondents from mixed jurisdictions as Generalisation X-1. Vernon Palmer “A Descriptive and Comparative Overview” (n. 6), 51. David Zammit, writing in the early 2010s, responded that Generalisation X-1 did not apply to Malta. Biagio Andò and others, “Malta” (n. 2), 571.

illustrated the primary meaning of *preskrizzjoni* in common parlance (*fil-common parlance*): “*u çjoè il-preskrizzjoni tat-tabib komunement imsejha ‘riçetta’*” (that is, the doctor’s prescription commonly called “riçetta”). Xuereb is more interested in the other two “more legal” meanings of *preskrizzjoni*, and—possibly—a third coming from more elevated, Italianate parlance.<sup>10</sup> The first legal meaning of *preskrizzjoni*, according to Xuereb, is *akkwiżittiva* (acquisitive) as in the acquisitive prescription of usucaption, while the second is *estintiva* (extinguishing) as in the case of limitations (both in civil and criminal cases).<sup>11</sup> The third meaning, which puzzled Xuereb and his colleagues, was more “philosophical” and mirrored the use of the verb in English (and in Italian): “to prescribe” a certain behaviour.<sup>12</sup> Xuereb warns against confusing between a statute of limitations (*it-terminu preskrittiv*) and a provision (*il-preskrizzjoni msemmi/ja fl-Artikolu 52*). More than a false friend, this seems a typical case of polysemy. Perhaps unconsciously, Xuereb is however showing where *preskrizzjoni* is indeed becoming a (false) friend in Maltese; and it is in the first, primary meaning that he attributes to common parlance: *preskrizzjoni* is being used where *prescription* would be used in English, instead of the Maltese (of Italian origin): *riçetta*.<sup>13</sup>

## II. Law and Language in Malta

Despite its long history, Maltese came to be used as the language of court proceedings and notarial deeds in Malta only in 1934.<sup>14</sup> Until then, Italian had been used in courts and public administration for centuries; the Knights of St John, who ruled Malta from 1530 to 1798 and operated according to an ethno-linguistic administrative system,<sup>15</sup> opted for

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- 10 Alan Xuereb, “Tghid il-preskrizzjoni giet preskritta? [Could One Say That the Prescription Has Been Prescribed?]” (2009) 1 *L-aċċent* 4.
- 11 Xuereb cites a court ruling from a Maltese court for each of the two “legal meanings”. Alan Xuereb, “Could One Say That the Prescription Has Been Prescribed?” (n. 10), 5. Unlike the Italian Civil Code, which defines the *prescrizione* at art.2934 as the extinguishment of a right (*ogni diritto si estingue.*), the Maltese Civil Code follows the common law definition of *preskrizzjoni* as a procedural matter (*il-preskrizzjoni hija wkoll mezz sabiex wiehed jehles minn azzjoni meta l-kreditur ma jkunx eżercita l-jedd tiegħu għal żmien li tghid il-ligi or prescription is also a mode of releasing oneself from an action, when the creditor has failed to exercise his right for a time specified by law, art.2107, no 2*).
- 12 Xuereb cites an example of this third, philosophical “legal meaning” both in scholarship and in case law. Alan Xuereb, “Could One Say That the Prescription Has Been Prescribed?” (n. 10), 5.
- 13 In Busuttill’s *Dizionario* of 1900 there is no entry for *preskrizzjoni* (p. 301), but there is an entry for *riçetta*, which is translated as: “recipe; a medical prescription” (p. 316). Vincenzo Busuttill, *Dizionario mill Malti għall Inglis [Maltese-English Dictionary]* (Cortis 1900). The same still holds true for the online database known as *Ġabra* and supported by the University of Malta (available at <https://mlrs.research.um.edu.mt/resources/gabra/>). Neither entry is obviously found in Vassalli’s *Lexicon* of 1796, as it covers only words of Semitic origin.
- 14 Joe Felice-Pace, “Maltese Legal Jargon” (2008) 5 *Symposia Melitensia* 99. At the time, the Constitution was suspended, as David Zammit underlines. Biagio Andò and others, “Malta” (n. 2) 564, 574. The suspension was apparently precipitated by a disagreement between the British colonial authorities and the Nationalist Party on a matter of language, but Geoffrey Hull—citing Henry Frenco’s *Malta’s Quest for Independence* and the correspondence quoted in it—underlines how it was simply a pretext. Geoffrey Hull, *The Malta Language Question: A Case History in Cultural Imperialism* (Said International, 1993), 80.
- 15 On the shift from French to Latin and then to Italian in the Chapters General of the Order of the Knights of St John (the Order’s main legislative body) from the end of the 14th century to the middle of the 15th century (when still based in Rhodes), see Joseph Brincat, “The Languages of the Knights: Legislation, Administration and Diplomacy in a Multilingual State (14th-16th Centuries)” in Jovan Kurbalija and Hannah Slavik (eds),

Italian as the official language of law in the archipelago. Italian was maintained as the language of legislation and litigation, along with English, even under British colonial rule (1813–1964),<sup>16</sup> which followed the brief French occupation (1798–1800) and the British protectorate (1800–1813). In the 1930s, however, growing tensions with Fascist Italy allowed the British colonial authorities to demote the use of Italian in Malta—something that was highly resisted by the Maltese elites earlier.<sup>17</sup>

The “Language Question” had polarised Maltese politics for almost half a century (1878–1926), with continuous attempts by the British colonial authorities to establish English as the language of education and of law.<sup>18</sup> These attempts always met with strong resistance in both areas, but the opposition was particularly fierce in the latter.<sup>19</sup> Linguist Geoffrey Hull draws attention to the class component of the political polarisation around language; just as the defence of the use of Italian in courts was—since the beginning of British rule—a function of the desire to preserve elite interests by the Maltese legal professions, the rise of the Constitutional and Labour parties in the early 1920s allowed for the articulation of positions on the language question that were not tied to elite interests or a romanticised “Italianity”.<sup>20</sup>

The phase that followed, rather dramatically labelled by Hull as “The Destruction of a Cultural Order” (1927–1942),<sup>21</sup> had at its centre the reforms of 1934/1936. Attention is often paid to the establishment of Maltese as a language to be used in the courtroom, but perhaps just as momentous was the decision to establish English as the language of instruction in the law school.<sup>22</sup> One could hardly imagine a less transformative change for the future of a mixed jurisdiction than remove its traditional source language from both legal education (where it was supplanted by the source language of another legal tradition, that of common law) and from the courtroom litigation (where it was replaced by the country’s living language). As a living language for centuries kept out of the courtroom, Maltese had to be equipped to express the technical terminology in use in a court of law.

How to transition from Italian to Maltese in the courtroom became the object of much debate among legal professionals. Two prominent jurists have come to embody the two main positions in the debate: Augustus Bartolo (1883–1937) and Arturo Mercieca (1878–1969). Politically, they were on opposite sides: Bartolo pro-British and founder of the Constitutional Party,<sup>23</sup> and Mercieca pro-Italian and close to the Nationalist Party.

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*Language and Diplomacy* (Diplo, 2001). The author also tracks the shift from the Italo-Venetian of the Chapters General in Rhodes to the “polished” Italo-Tuscan of the Chapters in Malta.

- 16 After several failed attempts at establishing English, in 1833 King William IV confirmed “that Italian would continue as the official language of all legal documents in present and future use in the colony”: Geoffrey Hull, *The Malta Language Question* (n. 14), 8–9, citing Ettore Rossi, *Lingua italiana, dialetto maltese e politica britannica a Malta* (Giusti, 1929), 24.
- 17 Hull traces the origins of the “Malta language question” to the defence of Italian by the legal professions in the first half of the 19th century. He goes on further to draw a parallel with the spread Risorgimento movements where the use of Italian suddenly became “idealized and transformed in a quasi-religious cult”. *Ibid.*, 12.
- 18 In particular, with the Order-in-Council of Joseph Chamberlain in 1899 (intended to phase out Italian in 15 years), and the Royal Commission of 1911. Geoffrey Hull, *The Malta Language Question* (n. 14), 42, 47.
- 19 Linguistic grievances also contributed to the anti-colonial riots of Sette Giugno (7 June 1919). Geoffrey Hull, *The Malta Language Question* (n. 14), 50–54.
- 20 Geoffrey Hull, *The Malta Language Question* (n. 14), 54–55.
- 21 *Ibid.*, 65–93.
- 22 *Ibid.*, 81, citing Harrison Smith and Adrianus Koster, *Lord Strickland: Servant of the Crown* (Koster, 1983) 548–549 (vol II).
- 23 The Chamber of Advocates in their 1931 Memorandum to the Malta Royal Commission emphasise that the distinction between a pro-Italian and a pro-British party is a distortion of reality crafted by Gerald Strickland for his own

When it came to (legal) Maltese, Bartolo advocated for the canonisation of a “puristic form of the language” (also known as *Malti safi*), whereas Mercieca advocated for the use of a vernacular Maltese “supplemented with Italian terms wherever necessary”.<sup>24</sup> Mercieca, who at the time was Malta’s Chief Justice (1924–1940), was appointed by the Governor to head a committee formed to regulate the use of Maltese in the courtroom, and convinced the other members that this “pure Maltese” (ie, a purely Semitic Maltese, deprived of Romance elements) would be an “improper juridical medium” because of its “inadequacies, crudities, and essential artificiality”.<sup>25</sup>

Mercieca’s “pragmatic” solution seems to have prevailed not only in the courtroom,<sup>26</sup> but also in Malta’s living language, which—by and large—maintained Italian or Sicilian loanwords into an Arabic syntactical structure. A revision of the orthography, on the other hand, emphasised the Semitic elements of the language and marked the distance between the Italian or Sicilian loanwords and their source. The revision—which was compiled and published in 1924 by L-Għaqda tal-Kittieba tal-Malti [Association of Writers of Maltese] as *Tagħrif fuq il-kitba Maltija* [Information on Maltese Writing]<sup>27</sup>—was adopted 10 years later, in 1934, at the height of the clash over the “Language Question”.<sup>28</sup>

As such, proposals to return to the linguistic richness, expressive prowess and versatility of Arabic never really encroached upon the legal sector, and the matter was never revisited after the very L-Għaqda tal-Kittieba tal-Malti, which had proposed the revision of the orthography, 10 years later issued a recommendation to the Government to maintain a pragmatic approach to legal terminology. The Memorandum discouraged, in particular, the exclusion of foreign loanwords incorporated into Maltese, the creation of neologisms and the inclusion of loanwords from Arabic (I suspect that what was meant here was the formal Arabic in use by jurisdictions on the Southern shore of the Mediterranean).<sup>29</sup>

To return to the terminology of mixed jurisdiction scholarship, what happened in Malta in the 1930s is a rather exceptional phenomenon as the living language (Maltese)

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personal political gains. Throughout the memorandum, the Chamber repeatedly cite (on this matter and on others connected to the state of Maltese) writings of Augustus Bartolo as evidence that even someone on the opposite side of the debate from them would have to concede that their assessment was factual and reliable. The Chamber of Advocates, *Memorandum on the Language Question in Education and in the Courts* (Mercurius, 1932), 10.

24 Geoffrey Hull, *The Malta Language Question* (n. 14), 81.

25 *Ibid.*, 81, citing the Malta Royal Commission Report (1931) (His Majesty’s Stationery Office, 1934), 251–252.

26 See, for instance: *Marianna Casha v Carmelo Casha*, Civil Court (First Hall), 29 October 1935.

27 L-Għaqda tal-Kittieba tal-Malti, later known as L-Akkademja tal-Malti [The Academy of Maltese], was the prime regulatory body for the Maltese language until the foundation in 2005 of II-Kunsill Nazzjonali tal-Ilsien Malti [The National Council for the Maltese Language] after Malta’s Accession to EU membership. The 1924 *Tagħrif fuq il-kitba Maltija* was repeatedly amended, with the last *Aggornament* [Update] published in 1992. Two *Deċiżjonijiet* [Decisions] followed in 2008 and in 2018, when L-Akkademja was no longer the prime regulatory body.

28 Geoffrey Hull, *The Malta Language Question* (n. 14), 81.

29 Felice-Pace quotes the entire section of the 1943 Memorandum: “The use of a pure (sic) terminology in the writing of legal documents is nothing else but the fossilization of the Maltese language. It is against the nature both of the language and of style, a) to exclude every foreign word that has crept into Maltese, both as a popular or as a technical term, and substitute it by another that has not the exact meaning specified by the writer and is consequently inadequate for the legal sense; b) to coin words which are neither found in common use nor answer the grammatical forms of Maltese; or c) to use Maltese obsolete words or borrow from Arabic words that have not been admitted into the Maltese language when we do not possess the equivalent Semitic word”. Joe Felice-Pace, “Maltese Legal Jargon” (n. 14), 100.

in a way incorporated the traditional source language (Italian), which officially “disappeared” from the Maltese legal system. In the same year(s), however, legal education started being imparted in the source language of another legal tradition (English). Access to the legal sources of the civil law tradition, which was guaranteed by the use of Italian as the source language in both the courtroom and the classroom until 1934, was after that secured by Maltese as the living language.

### III. Linguistic Practices

After the 1930s, no substantial shift to the official status of languages in Malta has been recorded. At Independence, both Maltese and English were confirmed as official languages, and legislation is enacted in both languages. The 1964 Constitution stipulates that Maltese prevails in case of conflict between the two versions (art.74).<sup>30</sup> Besides legislation, which is fully bilingual, other areas of the Maltese legal system function in one of the two official languages. Court rulings and notarial deeds, for instance, are drafted in Maltese, while law courses are taught in English.<sup>31</sup>

If the official status of languages in Malta has by and large remained unchanged since the 1930s, their use has remarkably transformed ever since. The official policy of bilingualism and a strong exposure to English have been identified by linguists as factors that are impacting Maltese. Linguist Joseph Brincat is concerned with how the practice of code-switching allows for English words to creep into Maltese.<sup>32</sup> The same practice can also allow for idiomatic expressions in Maltese to be “translated” into English.<sup>33</sup> When it comes to the high register, Brincat observes how the influence of English is now stronger than that of Italian, which translates into words of Latin or French origin in English to be given Italianate or Sicilianate forms into Maltese. As examples, he uses the English *prosecutor*, *evaluation*, *industrial action*, and *chemical armament* which are expressed in Maltese in the Italianate form *prosekutur*, *evalwazzjoni*, *azzjoni industrjali* and *armamenti kemikali*, while in Italian would be expressed as *pubblico ministero*, *valutazione*, *vertenza sindacale* and *armi chimiche*.<sup>34</sup> A cognate phenomenon to the one described by

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30 Retrospectively, the English version prevails for legislation enacted before Independence (1964), and Maltese for any amendment made thereafter, as per a 1974 decision of the Court of Appeal cited by David Zammit, who also mentions a couple of exceptions of specific enactments (as the Electronic Commerce Act 2002 (Malta) and (the now repealed) Data Protection Act 2002 (Malta)) where the English version is said to prevail. Biagio Andò and others, “Malta” (n. 2), 571–572. The Court of Appeals’ solution in the *Diss v Agius Ferrante* case of 1974 was confirmed by the Constitutional Court in the *Joseph Gauci* case a year later, in 1975. In his provocative work, Giovanni Bonello (1936–; a lawyer and former judge who served for 10 years also on the European Court of Human Rights), citing also the ruling on the 1980 *Dunkin* case, argues that courts decide on which text prevails based on what benefits the government. Giovanni Bonello, *Misunderstanding the Constitution: How the Maltese Judiciary Undermines Human Rights* (BDL, 2019), 125–126.

31 Biagio Andò and others, “Malta” (n. 2), 572.

32 Joseph Brincat, “Maltese: Blending Semitic, Romance and Germanic” (n. 5), 220–222.

33 Brincat gives the humorous examples of the Maltese expressions: “I’m going to cut” in a telephone conversation (instead of “I’m going to hang up”), or “did you cut the tickets?” (instead of “did you buy the tickets?”), or “I’m going to buy” (instead of “I’m going shopping”). Joseph Brincat, *Maltese and Other Languages: A Linguistic History of Malta* (Midsea Books, 2011), 419–432.

34 Joseph Brincat, “Maltese: Blending Semitic, Romance and Germanic” (n. 5), 221.

Brincat is that of Maltese words of Romance origin which are now acquiring a new meaning because of the exposure to English, as in the case that puzzled EU translator Alan Xuereb and discussed in the introduction. This latter phenomenon is the one of English-Italian false friends covertly becoming friends in Maltese use.

How are these linguistic practices affecting the access to legal sources in Malta? And what are the linguistic practices that are driving these transformations in the country? I will try and address these questions through the available literature and the findings of some fieldwork that I conducted in Malta in late 2022, while kindly and generously hosted at the Law School.<sup>35</sup> Literature on the subjects will therefore be supplemented with personal interviews with law students, faculty members, legal professionals, legal translators, as well as participant observations in the various contexts of legal education, litigation, and public administration.

### A. Legal Education

When in 1934 Maltese became the language of courtroom litigation, English became the language of legal education. Adjusting to the change was paradoxically more difficult for legal education than for courtroom litigation. While Maltese Italian used in the courtroom was easily incorporated into Maltese, switching from Maltese Italian to English in the classroom proved much more complex. Ten years later, in 1944, the Editorial of the first issue of the *Law Journal* lamented that class notes were still in Maltese Italian while lectures and examinations were held in English.<sup>36</sup> The Law Society—which later took up a Maltese name: Għaqda Studenti tal-Liġi [GħSL or Law Students' Society]<sup>37</sup>—proposed to get the notes translated into English and printed in a book form, and acknowledged that they learnt that translator's fees had already been budgeted for that purpose. Nearly 90 years later, the issue of textbooks in English on Maltese Law for use in the classroom is still an open issue. The most notorious case is the one of a Maltese criminal law textbook. Notes on Maltese criminal law were compiled in English by Professor Anthony Mamo<sup>38</sup> with Maltese Italian technical terms often in brackets, and often citing large extracts of Italian textbooks in Italian.<sup>39</sup> The GħSL has taken the situation in their own hands and typed and published the Mamo Notes in 2020.<sup>40</sup>

35 This footnote does not do any justice to the sense of indebtedness that I feel towards my marvellous host, David Zammit; our friendship goes back in time but it was a true gift to be able to spend such an extended period of time together, and I would not have been able to have such a fruitful fieldwork were it not for the engaged conversations with him and his generous introductions. I am very grateful to the Dean of the Faculty of Laws, Ivan Mifsud, and all its staff for all their support, and to the other colleagues and friends in the faculty.

36 Law Society (Unsigned), "Editorial" (1944) 1 *Law Journal* 1, 3–4.

37 An important figure in the group was Joseph Ganado (1925–2016), who later became a faculty member as professor of civil law on top of turning the family's legal practice into one of the largest law firms in the country. Because of his drafting notes in English on Maltese civil law, David Zammit characterises Anthony Mamo—last Governor-General and first President of Malta—as a typical "pragmatist" in line with Vernon Palmer's use of the term. Biagio Andò and others, "Malta" (n. 2), 567.

39 In particular, Eugenio Florian's textbook. Eugenio Florian, *Trattato di diritto penale*, (Dei reati e delle pene in generale) (Vallardi, 1902) vol I.

40 Anthony Mamo, *First Year Criminal Law* (GħSL Publications, 2020), typed and "revamped" by Law Student Christopher Aquilina.

In the same 1944 Editorial, law students also vehemently protested<sup>41</sup> against a proposed amendment to the civil procedure legislation aimed at requiring prospective lawyers to have attended a series of lectures on “Maltese legal terminology” and passed an examination on them.<sup>42</sup> The authors of the Editorial saw no merit in one such series of lectures, since they quickly dismissed Maltese legal terminology as of no importance “since it did not appear that there could be any theories underlying the law’s terminology which required explanation”.<sup>43</sup> They were even more hostile to the idea of attending a series of lectures on the subject taught at the University while a Commission was about to produce a new terminology for the purposes of legal reforms—and which they considered “the only *legal* terminology”.<sup>44</sup> This attitude was probably a response to the normative approach that they detected in the classes of their professor of Maltese legal terminology, Joseph Aquilina (appointed in 1942). Joseph Aquilina himself confided to Joe Felice-Pace that his was “a thankless job”, and Felice-Pace was under the impression that Aquilina’s displeasure was due to his inability to “exert any influence on the language of the courts”.<sup>45</sup>

In the early 1970s, when a new group of law students revived the Law Society, they embraced the use of Maltese, both in the group’s own name (which became *Għaqda Studenti tal-Liġi*) and in the name of its main publication (which became *Id-dritt*). The use of the Siculo-Italianate *liġi* for the law school mirrored the common, popular use in Italy to refer to the law school as *legge* (opposed to the formal name of *Facoltà di Giurisprudenza*); the name of the journal is also strongly associated to Maltese Italian derived from the Italian *diritto*. A few issues into its rebranding as *Id-dritt*, the Law Journal started publishing in Maltese a collection of summaries of Income Tax Board decisions compiled by GhSL members,<sup>46</sup> which was followed by letters to the editors two years later,<sup>47</sup> themselves followed a year later by a journal article just as the editorial started to appear in Maltese (with a translation in English).<sup>48</sup>

The very name of the law school—Malta’s only law school—seems to be meant as a constant reminder of Malta’s mixity; it is the Faculty of Laws, in the plural. The law school’s name is thus in English, but the university’s name is in Maltese (with the prominent Italian loanword *università*): it is thus the Faculty of Laws of L-Università ta’ Malta. The University was given a Maltese name by the Nationalist Party government of Edward Fenech Adami in 1988, almost a quarter of a century after Independence. Previously, the university was known as the Royal University of Malta and it operated on the basis of a

41 On most matters the Editorial used quite strong (and at times even sexist) language. See, for instance, their opposition to trial by jury or the need for a new commercial code: Law Society (Unsigned) (n. 36), 3.

42 Law Society (Unsigned) (n. 36), 3.

43 *Ibid.*

44 Italicised in the original. Law Society (Unsigned) (n. 36), 3.

45 Joe Felice-Pace, “Maltese Legal Jargon” (n. 14), 100.

46 Għaqda Studenti tal-Liġi (Unsigned), “Taqsir tas-sentenzi tal-Bord tat-Taxxa ta’ l-Income (1955) [Summary of Income Tax Board Decisions (1955)]” (1973) 3 *Id-dritt* 30.

47 In reality a contributor to the journal and member of the GhSL who wanted to promote the World Peace Through Law Center, of which he was the country’s chairman. Michael Frendo, “Korrispondenza [Letters to the Editor]” (1975) 4 *Id-dritt* 101.

48 J Soler, “Delinkwenza taz-zgħazagh [Youth Delinquency]” (1975) 5 *Id-dritt* 77.

royal charter granted under British colonial rule. The change in name of the institution did not affect, however, the provision of legal education in the law school being imparted in English.

The law school's name is thus in English and all its courses are listed in English. Joseph Aquilina's course on Maltese legal terminology, so vehemently resisted by students in the 1940s, is no longer offered. The university is now offering, however, a non-credit course titled: "L-Uzu tal-Malti fil-Qasam Legali" [The Use of Maltese in the Legal Sector].<sup>49</sup> It is aimed at law students, but open to all students. It runs for a couple of months over the lunch break and is convened by a notary public, Mariella Mizzi. It is intended to help students who wish to improve their use of Maltese, "especially in the writing of legal documents so as to be ready for their profession" (*speċjalment fil-kitba ta' strumenti legali, biex ihejju ruħhom aħjar għax-xogħol fil-professjoni tagħhom*). The emphasis is on orthography and style, and, while acknowledging that legal documents are increasingly being drafted in English, the course intends to "foster in students the idea that, wherever possible, a legal document can be drafted in Maltese, and in good Maltese" (*titrawwem fl-istudenti l-idea li kull fejn huwa possibbli, dokument għandu jinkiteb bil-Malti, u b'Malti tajjeb*). Among its objectives, the course finally lists the desire "to encourage students to appreciate how valuable a tool the Maltese language is in their work and to be proud to use it and present it well in speech and in writing in their profession" (*Li thegħeġ lill-istudenti japprezzaw kemm hi għodda siewja l-lingwa Maltija fix-xogħol tagħhom u jkunu kburin li jużawha u jipprezentawha b'mod verbali u miktub tajjeb fil-professjoni tagħhom*).

While conducting my fieldwork in the Autumn semester of 2022, I had the opportunity to attend a number of classes. On a couple of occasions, the lecture was delivered in Maltese. In my experience it was guest lecturers who delivered the lecture in Maltese, but speaking with Erasmus students, they informed me that also some faculty members deliver lectures in Maltese. In the lectures delivered in English that I attended, I observed a certain propensity for code-switching by faculty, while students would ask questions in either language, and code-switching was quite prominent in that context as well.

Speaking with students, I was told that the language that their peers use, both in the classroom and outside of the classroom is generally read as a marker of social status. Speaking a broken Maltese is almost worn as a badge of honour to show a more cosmopolitan upbringing, associated to higher social status. This was understood as the strategy of "first-generation" law students, ie those who were the first in their families to pursue a degree in law. One student said that their attitude and expectations seem to be inspired by the fictional character of US television drama Harvey Specter, the highly successful NYC corporate lawyer of the series *Suits* [2011–2019].<sup>50</sup>

On the other hand, a more polished Maltese can also be worn as a badge of honour by those who want others to know that their families have been in the legal professions for

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49 The course description cited in the text is the one for the course offered in Autumn 2022 (when I was conducting my fieldwork, but I understand that it had been on offer for—at least—a few years) and can be accessed at <https://t.ly/OJwyn> (Last Accessed 21 September 2023).

50 Interview with student on campus on 10 November 2022.

generations. Such a “more polished” version would include more Italianate expressions, typical of high-register Maltese, and thus used by the “generational” law students. The distinction between “first-generation” and “generational” law students was articulated in one particular interview,<sup>51</sup> but does not seem to be a necessarily established expression; I chose to report it because it captures quite expressively the distinction the students I spoke with wanted to make. Incidentally, this appreciation of students’ posturing through their linguistic practices seems to be shared also by a number of faculty members.

The law school also runs a law clinic. Students receive sustained training before assisting real clients in the law clinic, and are tested on various elements of the training. I had the opportunity to observe some of the testing for the training on advocacy and professional ethics. The testing was a (fictional) real-life situation in which someone acting as a client would meet for the first time a couple of students acting as lawyers. Two faculty members would be sitting on the panel observing the interactions, which were recorded, and would provide feedback (along with the person acting as a client) to the students after the meeting ended. In all the interactions I witnessed, a preliminary question about what language the client wanted to use, Maltese or English, was always asked right after a preliminary greeting. Students would immediately switch to the language that the client chose. I was also asked to act as a client, but I was not asked which language I preferred; the students who were acting as lawyers probably assumed from my name or my appearance that I would not be able to speak Maltese, and so the meeting was conducted in English. Those acting as clients do so to support the law clinic and often have some sort of relation to the law school, I have seen from former students all the way to the dean. I detected a rather elevated use of both Maltese and English (possibly a function of their education?), but also noticed attempts to use a lower register to mimic a real-life conversation with a client. Being a preliminary meeting, the emphasis was not on discussing points of law in the case presented by the clients, but rather gathering elements of the case, and clearing out any possible conflicts of interests. The emphasis on the conflict of interests, I was told, is due to the overall size of the population, and the interwoven networks of the legal profession.

I had no way to measure how the code-switching in these (fictional) meetings compared to real-life situations. I had, however, the impression that code-switching was slightly more prominent than in every-day conversations one overhears in the street, but that it also significantly depended on the (fictional) case. Among the meetings I attended, cases in Maltese involving family law or construction regulations seemed to be discussed almost entirely in Maltese with nearly no code-switching. I did not know the students acting as lawyers enough to exactly know to what demographics they belonged, but there did seem to be a noticeable difference between those who were fully at ease with conducting the meeting in Maltese (and, incidentally, tended to wear more conventional formal attire), and those who were showing (off) a more idiomatic English (and, incidentally, tended to wear either a casual or more urban formal attire). This reminded me of the student who had told me about the “first-generation” and the “generational” law students.

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51 *Ibid.*

Before going into the legal profession (if they ever do), law students' encounter with (legal) Maltese is rather sparse, at least from an institutional level. In this case as well, it has been the Law Students Association (GhSL) who have taken the initiative to compile and publish a list of legal expressions in English and in Maltese to facilitate fellow students' navigation both during their years in the law school, and their transition into the legal professions after graduating.<sup>52</sup> As such, the list is effectively conceived as a dictionary with Maltese-to-English and English-to-Maltese sections. The list was published in mid-2022 under the title: *Legal Translator/ Traduttur legali*, along with another publication, *A Guide to Latin Terms in Law*, with context of various Latin legal expressions used in Malta provided in English.<sup>53</sup>

### B. Courtroom Litigation

Historically, the legal professions were the most hostile to any pressure to promote English and demote Italian; a pressure which was exerted by the British colonial authorities since the early 1800s. The legal professions were particularly keen to keep English out of the courtroom. Historian Bianca Fiorentini highlights how “the hostile attitude of the Maltese judiciary towards English was due principally to economic motives”.<sup>54</sup> An appreciation echoed by linguist Geoffrey Hull who further contends that the defence of Italian as the language of courts in Malta “stemmed not so much from nationalistic idealism as from the struggle for survival of an embattled class used to enjoying social pre-eminence and economic superiority”.<sup>55</sup> The economic motives underlying the stance of the legal professions on the use of Italian in Maltese courts seem to have become part of the national imaginary and even extended to the broader population.<sup>56</sup> Hull cites Herbert Ganado (1906–1989), a prominent Maltese lawyer, politician and writer, who in his memoirs claimed that “the Maltese [...] had understood that if English were to take the place of Italian, the British would continue to take the best positions in our country and exercise the better professions”.<sup>57</sup> Ganado himself was a prominent writer in Maltese and a passionate and vocal promoter of the language.

The legal professions maintained their position on the use of Italian in the courtroom well into the 20th century. Even before 1934, Maltese was used in the courtroom when examining witnesses, but Italian was then used for the oral discussion and in the ruling. One of the early challenges that the British colonial authorities expressed on the use of

52 Għaqda Studenti tal-Liġi, *Legal Translator/Traduttur legali: Maltese to English, English to Maltese* (GhSL Publications, 2022).

53 Għaqda Studenti tal-Liġi, *A Guide to Latin Terms in Law* (GhSL Publications, 2022).

54 Bianca Fiorentini, *Malta rifugio di esuli e focolare ardente di cospirazione durante il Risorgimento italiano* (Casa San Giuseppe, 1966), 52.

55 Geoffrey Hull, *The Malta Language Question* (n. 14), 11.

56 Dominic Fenech, *Responsibility and Power in Inter-War Malta. Vol. I: Endemic Democracy (1919-1930)* (Enterprising Group, 2005), 4, cited in Ivan Sammut, “Legal Translations: The Translation of EU Law into the Maltese Language—Quo Vadis?” in Ivan Sammut and Jelena Agranovska (eds), *The Implementation and Enforcement of European Union Law in Small Member States: A Case Study of Malta* (Palgrave Macmillan, 2021).

57 Herbert Ganado, *Rajt Malta tinbidel* [I Saw Malta Change] (Lux, 1977) 101 (vol. 1), cited in Geoffrey Hull, *The Malta Language Question* (n. 14), 11.

Italian was the inability of the Maltese prisoner to follow the oral discussion and therefore to appreciate if they had a fair trial. This was raised in the 1911 Report of the Royal Commissioner. When the point was revisited by the Malta Royal Commission in the early 1930s, the Chamber of Advocates submitted a Memorandum in which they articulated their opposition to a further advancement of English in education and the substitution of Italian with Maltese in the courtroom. In their *Memorandum on the Language Question in Education and the Courts* to the Malta Royal Commission 1931 the Chambers dismissed the point by drawing on comparative cases: “the alleged hardship [...] is not more serious than that of an uneducated Welshman, who is tried in Great Britain, or of an uneducated Sicilian or Sardinian who is tried in Italy, or of a Basque who is tried in Spain”.<sup>58</sup> During the discussion of the *Memorandum*, the Commission’s Chairman pressed the representative of the Chambers on the point, but the Chambers’ Vice-President, EC Vassallo, further dismissed the challenge: “whenever an accused person tries to say anything or to interfere with the proceedings, in ninety-nine cases out of a hundred he prejudices his case. That is what lawyers all over the world will, I think, endorse. That happens everywhere”.<sup>59</sup>

As for the use of Maltese in the courts for oral discussions and rulings, the Chambers argued that Maltese was “manifestly inadequate to be the medium of expression in discussions which are necessarily elaborate and technical”, and that adopting Maltese as the language of the courts would result in a “reproduction of the same Italian words with Maltese endings”. The *Memorandum* further predicted failure and foresaw three consequences of such an adoption. The first would be to “jeopardise the dignity of the Courts, and [...] very greatly detract from the solemnity and the decorum that distinguish proceedings in Court”. The second would be to “lower the stand of education of all persons engaged in professions connected with the administration of justice”, and—as a further consequence—to “throw us back in the road of civilization”.<sup>60</sup> The Chambers could hardly have made their point less clear, but they did foresee Maltese standing in for Italian as a source language for Malta’s civil law heritage.

Maltese did indeed become the language of oral discussions and rulings in 1934. As discussed above, the solution on the adjustments required to equip Maltese for judicial needs was to retain as many words and concepts in Maltese Italian as possible, the Arturo Mercieca solution.<sup>61</sup> Since then, have the legal professions maintained the attachment to Maltese Italian that they upheld for generations? Their linguistic practices offer a number of interesting insights into social dynamics, functions of legalese and changing patterns of linguistic prestige.

Analysing a series of 15 court rulings of the mid-2000s, Joe Felice-Pace compiled a list of (odd) legalese words and expressions that he found in them. The result was a 10-page-strong list of 136 entries, which Felice-Pace emphasised being absent from the main Maltese dictionaries (Joseph Aquilina’s *Maltese-English Dictionary* and Erin

58 The Chamber of Advocates, *Memorandum on the Language Question in Education and in the Courts* (n. 23), 14.

59 *Ibid.*, 27.

60 *Ibid.*, 13.

61 *Ibid.*, section II. Law and Language in Malta.

Serracino-Ingloft's *Il-Miklem Malti*). Felice-Pace also insisted that in his experience the language spoken in the courts' corridors (possibly a more every-day Maltese) was different from the one spoken in the "aulae" (sic!) (possibly a higher register Maltese, with more Italianate words and expressions), which was in turn different from the one found in rulings (possibly the even higher register replete with Italianate expressions that he decided to compile).

Felice-Pace's assumption is that Italian survived its demotion in 1934 and lives on in Maltese legalese, and this is what he is intent on showing through his list.<sup>62</sup> His list, however, paints a way more complex picture of the linguistic practices in Maltese courts. Felice-Pace's list, as mentioned above, is based on court rulings alone; as such, it speaks primarily to the writing practices of the judiciary. The list contains a number of illustrations of the importance of legalese, and the (obvious) development of a Maltese Italianate legalese, which includes curious Maltese-Italian false friends, and even of English-Italian false friends. This latter point is particularly interesting for the present study as it shows that some of the traction of English over Italianate Maltese expressions had already penetrated the judges' writing in the mid-2000s.

What immediately strikes the reader of Felice-Pace's list is the use of Italianate expressions when there would be perfectly functional ones in Maltese; this is probably what the author set out to do and the effect that he desired to elicit in readers. *Kontestwalment* (concurrently), for instance, is a calque of the Italian *contestualmente*, and could easily be expressed in ordinary Maltese as: *fl-istess ħin*.<sup>63</sup> In the same group one could include: *aċċertabbli*, *altament*, *errata*, *eżawrjentement*, *in vendita*, *odjern*, *portata*, *preċedentement*, *suffragat*, *superjorment*,<sup>64</sup> or *tramite*. There are also entries that suggest a preference for Italianate legalese over Italianate expressions available in Maltese. *Limitatament* (partially), for instance, which is a calque of the Italian (perceived) legalese *limitatamente*, could easily be expressed in ordinary Maltese as: *parżjalment*, which is a calque of the ordinary Italian *parzialmente*.<sup>65</sup> In other cases, the use of an Italianate expression seems intended to convey the idea of complying with specific formal requirements. *Preżentata* (submission), for instance, which is a calque of the Italian *presentata*, could easily be omitted in Maltese. In the example that Felice-Pace mentions: *mid-data tal-preżentata tal-avviżi*, the sense would not be affected by the omission of *tal-preżentata*; its inclusion emphasises the formality of the submission (from the date [of the filing] of the notice).<sup>66</sup> The same could be said of *sollevata* in the example: *[it-tribunal] ra r-risposta sollevata bil-lingwa Inġliża mill-konvenuta ...* (the court considered the response [raised/submitted] in English by the defendant ...).

62 Joe Felice-Pace, "Maltese Legal Jargon" (n. 14), 99.

63 *Ibid.*, 105.

64 "Aforementioned" can be expressed in Maltese as *fuq imsemmija*, and it appears as such in rulings by the very judges whose rulings Felice-Pace drew from for his list (see, for instance, a ruling issued on the very day from one of the very judges: Raymond Pace, 28 June 2007, in the case: *Camilleri v Fenech Adami*). However, Felice-Pace lists at least five Italianate expressions conveying the same meaning: *preċedentement*, *preċitat*, *predetti*, *suespost*, and *superjorment*.

65 Joe Felice-Pace, "Maltese Legal Jargon" (n. 14), 105.

66 *Ibid.*, 107.

This first bloc of entries—probably the largest in the list—suggests a preference for legalese which does not provide any practical support in accessing legal sources. Nevertheless, there is a second bloc of entries which even if they have an Italianate form they may have (1) no counterpart in Italian—these are Maltese creations which could be considered Maltese-Italian false friends; or (2) have a counterpart in English—these can in turn be considered English-Italian false friends because their Italianate form hides in reality an English meaning.

Within group (a), the group of Maltese-Italian false friends, the most prominent example is probably: *liberazzjoni*, which Felice-Pace mysteriously translates as “purchase”.<sup>67</sup> The closest counterpart in legal Italian could be *liberatoria* (waiver), whereas the ordinary Italian *liberazione* (liberation) has no special legal meaning in this context; none of the two has any relation with the Maltese Italianate *liberazzjoni*. The Maltese Code of Organization and Civil Procedure consistently translates it as “adjudication”, in the context of judicial sales by auction (Sub-Title IV, arts.313–357A). There thus seems to be no relation whatsoever between *liberazzjoni* and *liberazione*, unless one were to assume that it is a figure of speech, metonymy, where the result (the adjudication) has come to represent its legal premise (the liberation of the property subjected to an auction from the limitations that led to the auction itself). But even in this latter sense, it would not be related with an Italian expression, it would simply be one of the many Italianate Maltese legal expressions.

Within group (b), the group of English-Italian false friends, one could mention: *evidenzjata* (evidenced).<sup>68</sup> Apparently a calque of the Italian *evidenziata* (which the Treccani dictionary relates to *evidenza* and consequently defines as “messo in evidenza, rilevato”, highlighted or detected), its use in Maltese in reality suggests a connection with the English “evidence”. In other words, if the Italian *evidenziata* refers to something that is “evident”, the Maltese *evidenzjata* refers to something that is “evidenced”, i.e. that there is evidence in support of it. Another example could be: *lanjanza* (complaint). Apparently a calque of the Italian *lagnanza* (complaint), which is an ordinary language reference to a complaint, without any specific legal relevance. On the contrary, the Maltese *lanjanza* is used in the rulings analysed by Felice-Pace in the technical sense of claim (or complaint), as in the expression: *il-lanjanzi tal-intimata* (the defendant’s claims).<sup>69</sup>

In Felice-Pace’s list there are also two gems that in a way illustrate the transition from an Italian to an English reference because of their “mixed” lexical form. It is the case of *konguntivament*<sup>70</sup> and *preliminarjament*.<sup>71</sup> The first, *konguntivament*, combines the Italian form of *congiuntamente* and the English form of (*con*)jointly. In this case there seems to be no major discrepancy in the use of *congiuntamente* in legal Italian and *jointly* in legal English. The lexical form of the Maltese *konguntivament*, however, suggest a

67 *Ibid.*, 105.

68 *Ibid.*, 102.

69 *Ibid.*, 106. In their rulings, the judges of the Italian Court of Cassation do at times refer to the grounds for appeal in cassation (the *motivi di ricorso* of art.360 of the Code of Civil Procedure) as *lagnanze*.

70 Joe Felice-Pace, “Maltese Legal Jargon” (n. 14), 105.

71 *Ibid.*, 107.

transition from the Italian to the English form. The same can be said for the second, *preliminarjament*, which combines the Italian form of *preliminarmente* and the English form of *preliminarily*. In this case as well, there seems to be no major discrepancy in their use.

One of the entries in Felice-Pace's list that probably illustrates more eloquently the transformations of Maltese legalese is: *kontro-talba* (counterclaim). In *kontro-talba* the structure and sense of word is that of the English counterclaim, all the while being a composition of the Italian *contro* (counter) and the Semitic Maltese *talba* (claim). *Kontro-talba* also gives us a perspective on the ossification of Maltese Italian and its progressive disconnection from Continental Italian; since the introduction of the Italian Code of Civil Procedure in 1940, the Italian expression for counterclaim is *domanda riconvenzionale*. A Maltese legal professional interested in the regulation of counterclaims in continental law (namely, continental Italian law) would not be helped by the Maltese expression *kontro-talba* or possibly *controdomanda*.

During my fieldwork in Malta in late 2022, I spoke with a variety of actors within and without the legal professions. Along with some of the stereotypes that populate the imaginary of the legal professions globally, in Malta there seemed to be a rooted belief that they are a more "Italianised" elite, which they seem to proudly display with their "overuse" of Italianate expressions when speaking Maltese. Delegates to the 5th World Congress of the World Society of Mixed Jurisdictions Jurists held in Valletta in 2023 were welcomed with an emphatic "Buonasera!" when visiting one of the largest law offices in the archipelago. When observing lawyers or judges socialising, one could easily be excused to be under the impression that the "use" of Italian or the "overuse" of Italianate expressions when speaking Maltese is not just a figment of the imagination of respondents. However, there seems to be more profound shift at play below the surface—a shift already (involuntarily) captured in Felice-Pace's list. Below Italianate forms lie changes in meaning that are heavily anglicised. As such, Italianate Maltese words and expressions that used to be false friends with English (because of their closeness to continental Italian) are progressively becoming false friends with continental Italian (because of the traction of the English meaning on their usage). In a way, the Maltese legal professions seem to be keen on maintaining legalese as one of their many elite preservation tactics, while the cessation of the threat to their status posed by Britons seems to have left them more open to the use of English.

### C. Public Administration

Just as accession to the European Union is in many respects a turning point for any jurisdiction, large or small, its impact on the national language may significantly vary. In the case of Malta, which acceded to the European Union in 2004, the impact on its language was quite remarkable, partly because with Malta's accession Maltese became an official language of the European Union.<sup>72</sup>

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72 Maltese becoming an official EU language was not an inescapable consequence of Malta's accession. In the negotiation phase, in the early 1990s, the EU Commission seemed keen to save on the costs of an additional official language by banking on the official status of English in Malta. Mark Harwood, "Europeanization and Language: The Impact of EU Language Status on Maltese" (2022) 30 *Journal of Contemporary European Studies* 405, 411.

Political scientist Mark Harwood tracked the impact on Maltese of its new status as an official EU language along three main lines: status, corpus and resources.<sup>73</sup> In terms of status, Harwood mentions an increased willingness by the public administration in Malta to use Maltese in writing,<sup>74</sup> but takes as his primary measurable indicator the exponential growth in the number of students specialising in Maltese at university. The impact on the Maltese corpus and the resources invested into Maltese are in a way intertwined. Harwood emphasises how the creation of a team of Maltese translators in Luxembourg and Brussels was both a function of investments precipitated by its EU language status,<sup>75</sup> and in turn generated a large practice impacting the Maltese corpus. Harwood even cites the Italianist and translation studies scholar Sergio Portelli<sup>76</sup> who 10 years after EU accession saw in the work of Maltese translators in the European Union “the most systematic and scientific terminological work in Maltese”, thanks mainly to their “term-building methodology based on internationally recognised practice and [their] producing lists of terms that are included in the IATE TermBase”.<sup>77</sup> Besides their methodology, it was also a matter of sheer numbers: in a few years, the people working on Maltese in the EU institutions outnumbered four-fold those working on Maltese in Malta.<sup>78</sup> Maltese translators in Luxembourg and Brussels were also instrumental in contributing to the development or the adjustment of various linguistic databases and tools, all the way to machine translation and AI technology, along the specific needs of Maltese.

Zooming in onto the question of the corpus, there seem to be good reasons to consider the impact of “Brussels Maltese” onto the language used in the archipelago, from the practice of transposing EU directives into national legislation following the linguistic choices of the EU Maltese translators<sup>79</sup> all the way to “Brussels Maltese” practices that precede (or perhaps precipitate) policy decision by language institutions in Malta.<sup>80</sup> Of

73 Mark Harwood, “Europeanization and Language” (n. 72), 412–415.

74 *Ibid.*, 412, citing Sergio Portelli, “Terminology, Bilingualism and Language Planning (or Lack Thereof): The Case of Maltese” in Paola Faini (ed), *Terminological Approaches in European Context* (Cambridge Scholars Publishing, 2017), 101.

75 Sergio Portelli describes the trajectory of translation (and translation studies) in Malta before and after the accession to the European Union. Sergio Portelli, “Una ‘piccola’ lingua alle prese con la grande Europa: Un decennio di traduzione maltese (2003-2013)” (2014) 61 *Kwartalnik Neofilologiczny* 89.

76 Before joining the University of Malta, Portelli had also worked as a translator at the European Parliament in Luxembourg.

77 The IATE (InterActive Terminology for Europe) TermBase is a multilingual terminology database and translation tool used by the European Union institutions for translation and terminology management. See Sergio Portelli, “Terminology, Bilingualism and Language Planning” (n. 74), 102, cited in Mark Harwood, “Europeanization and Language” (n. 72), 413.

78 Mark Harwood offers numbers for the late 2000s and the late 2010s, a decade later. In both cases the ratio is four-to-one. He includes all those working in various roles in the EU institutions (“translators, terminologists, managers, and assistants”) in the first group, and faculty members in the Department of Maltese at the University of Malta and members of the National Council for the Maltese Language in the second group. *Ibid.*, 413.

79 Harwood cites here the account of the visit of an EU Maltese translator (Ian Zammit) to the Office of the Attorney General (l-Uffiċċju tal-Avukat Generali) in Malta, responsible for all legal translations. The account proudly confirms that “*x-xogħol tagħna spiss jispiċċa wkoll jagħmel parti mil-Liġijiet ta’ Malta*” (often our work [i.e. the work of EU Maltese translators] ends up becoming part of the Laws of Malta). Ian Zammit, “Il-VTS: mod kif nitgħallmu minn xulxin” [The VTS (Visiting Translators Scheme): A Way to Learn from Each Other], *L-accēt* 7, no. 7 (December 2011) 23, mentioned in Mark Harwood, “Europeanization and Language” (n. 72), 413.

80 A good example would be the 2018 Decision of il-Kunsill Nazzjonali on the orthography of English loanwords into Maltese. See *Deċiżjonijiet-2* of the National Council for the Maltese Language of 2018.

no secondary significance is the publication of the Maltese language magazine *L-aċċent*, published by the Department of Maltese of the DG Translations of the EU Commission. Along with its considerable readership, the magazine discusses many topical issues related to the Maltese language and has become—according to Harwood—“an important resource which helps in standardising the language”.<sup>81</sup>

The initial recruitment of Maltese translators for EU institutions proved exceptionally challenging.<sup>82</sup> Just as the process was beginning to stabilise, in the late 2000s, Peter Aġius published a guide for aspiring (and current) Maltese translators for EU institutions: *It-traduzzjoni tal-liġi Ewropea* [The Translation of European Law].<sup>83</sup> Aġius, a Malta University Law School graduate, had been working since 2002 with the Legal Services of the EU Council and reviewed the translations into Maltese of EU Treaties. The book, published in 2010 by the University Press, captures some of the early practices of the first decade of operation of Maltese (legal) translation in Luxembourg and Brussels. As such, it offers valuable insights into the practices and the working of an extremely influential group of people for the development of post-accession (legal) Maltese. Since Aġius has also been teaching in the Masters programme on translation at the University of Malta, the book also provides some access to what aspiring translators (for European Union or in Malta) were taught.

There are two elements that stand out in Aġius’s *It-traduzzjoni tal-liġi Ewropea* in relation with the question of source languages and Malta’s civil law tradition. The first is that the default text to which Aġius assumes that Maltese translators turn to for their translation into Maltese is the text in English. As such, the author discusses problems of translation from English into Maltese, even if he acknowledges that most EU texts are actually drafted in French. This first element seems to clash with the conclusions of Italianist and sociolinguist Sandro Caruana’s study on the terminology of Italian origin in EU Maltese and its trickle-down effect onto the Maltese of the archipelago.<sup>84</sup> Reflecting on the linguistic patterns of EU Maltese a few years after Malta’s accession to the European Union, Caruana noted how a large number of the “technical” terms were of Italian origin. Their (Italian) “origin”, however, should not be confused with their “meaning”. In other words, the Italian morphology should not be assumed to carry an Italian meaning. It would actually be safer to assume the opposite, ie that Italianate elements in EU Maltese do not carry the same meaning as in EU Italian. Caruana did not draw this conclusion, even if he provided several examples of how EU English terms had entered EU Maltese according to Italianate morphological patterns, as in the case of “*formola*” for “*form*” (on the official form/*fuq il-formola ufficjali*).<sup>85</sup> He even suggested that the *-joni*, *-ment*, and *-ar* suffixes are the preferred Italianate morphological patterns to accommodate EU English terms into EU Maltese, as in the case of evaluation/*evalwazzjoni* (*valutazione* in Italian),

81 Mark Harwood, “Europeanization and Language” (n. 72), 414.

82 *Ibid.*, 411.

83 Peter Aġius, *It-traduzzjoni tal-liġi Ewropea: Gwida għall-prattikant, noti u materiali* [The Translation of European Law: Practitioners’ Guide, Notes and Materials] (Malta University Publishing, 2010).

84 Sandro Caruana, “Terminology of Italian Origin Used in EU Maltese. A Case of Linguistic ‘Europeanisation’?” in Bernard Comrie and others (eds), *Introducing Maltese linguistics* (John Benjamins, 2009).

85 *Ibid.*, 359.

involvement/*involvement* (*coinvolgimento* in Italian), or manage/*immanigġjar* (*gestire* in Italian, because *maneggiare* has an altogether different meaning).<sup>86</sup>

If translating from English is an essential premise in Aġius's guide, the second element that stands out in his guide for EU Maltese translators is that they seem to constantly be facing a choice between two alternatives: Arabicise or Europeanise. On the section on terminology, Aġius devotes a sub-paragraph to linguistic preferences. Assuming that EU Maltese translators may carry linguistic preferences that would lead them to either Arabicise or Europeanise when translating into Maltese, Aġius prescribes a certain "detachment" from one's preferences in order to serve the "EU mission",<sup>87</sup> and suggests that the choice be made according only to the criteria of precision and conciseness.<sup>88</sup> Excluding one of the two options that Maltese allows (Arabicisation or Europeanisation) would be, in his view, unacceptable.<sup>89</sup> [A choice against Arabicisation of legal terminology, however, seems to still be part of the (un)official linguistic policies in Maltese since the 1930s and 1940s].<sup>90</sup>

Aġius does not use the term "Europeanise" but treats terminology "of Romance or Anglo-Saxon origin" as one. A lack of appreciation of the semantic variance beneath a similar morphology of expressions in Italian, French or English, however, leads to an inability to identify (and avoid) false friends; which in turn generates (new) friends and turns older friends into false friends. In other words, Maltese EU translation employs Italianate morphology to accommodate any (morphologically) similar expression in English (or French), regardless of any difference in meaning. This can lead observers to wrong assumptions about the presence of Italian terminology in EU Maltese, just as it deprives Maltese speakers an access to civil law sources because Maltese is slowly losing its character as a source language for the civil law tradition as its terminology is being re-semanticised to mirror terminology in the English EU texts. In order to appreciate the size of the phenomenon of false friends in legal English and Italian, one could look at the studies co-ordinated by comparative lawyer Silvia Ferreri at the University of Turin;<sup>91</sup> her

86 *Ibid.*, 372.

87 "*It-traduttur li jkun qed jipparteċipa fil-missjoni tal-Unjoni Ewropea jehtieg li jaqdi din l-istess missjoni b'ċerta distakkament mill-preferenzi lingwistiċi tiegħu. Dan isib referenza partikolari fil-lingwa Maltija u l-ghazla li toffri bejn terminoloġija ta' oriġini Rumanza jew Anglo-Sassona u terminoloġija b'oriġini Semitika*" (The translator who is participating in the mission of the European Union needs to serve this same mission with a certain detachment from their linguistic preferences. This finds particular reference in the Maltese language and the choice it offers between terminology of Romance or Anglo-Saxon origin and terminology of Semitic origin). Peter Aġius, *It-traduzzjoni tal-liġi Ewropea* (n. 83), 83.

88 "*L-ghazla [...] iżda għandha tkun dettata esklussivament mill-htigijiet tat-test u l-prinċipij li għandhom jigg-widaw it-traduzzjoni, b' mod partikolari l-htieġa ta' preċiżjoni sempliċi u l-htigijiet ta' test konċiż li jinftiehem faċilment minn min ikun maħsub li jużah*" (The choice [...] should however be dictated exclusively by the needs of the text and the principles that should guide the translation, in particular the need for simple precision and the needs of a concise text, easily comprehensible by whoever intends to use it). Peter Aġius, *It-traduzzjoni tal-liġi Ewropea* (n. 83), 83.

89 "*L-esklużjoni a priori ta' wiehed jew l-iehor miż-żewġ elementi fundamentali tal-lingwa Maltija hija limitazzjoni inaċċettabbli li tirrestringi inutilment l-ghodda f'idejn it-traduttur biex iwassal il-messaġġ tal-Unjoni bil-Malti*" (The a priori exclusion of one or the other of the two fundamental elements of the Maltese language is an unacceptable limitation that unnecessarily restricts the tools in the hands of the translator to convey the message of the Union in Maltese). Peter Aġius, *It-traduzzjoni tal-liġi Ewropea* (n. 83), 83.

90 *Ibid.*, Section II. Law and Language in Malta.

91 Silvia Ferreri (ed), *Falsi amici e trappole linguistiche: termini contrattuali anglofoni e difficoltà di traduzione* (Giappichelli 2010); Silvia Ferreri (ed), *Falsi amici nelle corti. Leggere le sentenze di Common Law evitando le trappole linguistiche* (Giappichelli, 2nd edn, 2019).

volumes are an excellent starting point to identify where Maltese has had its major shifts towards a common law terminology.

Aġius is aware of the risks of translation (from English) into Maltese, and even devotes a section to false friends. His examples confirm the two main elements that characterise his reflection on translation into Maltese at the EU level: the reference text is the English version, and that the alternative is to Arabicise or Europeanise. He thus focuses on cases of false friends between English and (Semitic) Maltese, probably under the assumption that terminology of Romance or Anglo-Saxon origin is interchangeable. In his first example (“the reporter is required to submit an application”), the emphasis is on “is required”. Aġius tells readers that translating “is required” with “*jigi mitlub*” (ie, literally translating the two elements) is wrong because it suggests that the application is not mandatory (“*ħazina għax tindika li l-ħtieġa tal-applikazzjoni mhix obligatorja*”).<sup>92</sup> He suggest to use “*jeħtieġ*” instead. If it were “is requested”, on the contrary, Aġius would consider a translation as “*jeħtieġ*” wrong and recommend: “*jigi mitlub*”. In his second example (“the address of the consignee”), the emphasis is on the “consignee”. Aġius warns readers against translating “consignee” as “*ta’ min jikkonsenja*”, because it would indicate the sender instead of the receiver (“*ħazina għax tindika min jibgħat (consignor) flok min jirċievi*”). Here Aġius seems to point to a lack of sensibility to variations (consignee/consignor) where the morphologically similar expression in Maltese does not accommodate the active/passive alternatives.

Legal scholar Ivan Sammut, Head of the European and Comparative Law Department at the University of Malta, is acutely aware of the impact of the use of Maltese in the European Union on Maltese and how it accelerated a process of adjustment of the language to various needs beyond its conventional everyday uses. Sammut, who has also been teaching a Jean Monnet module on EU legal drafting and translation at the law school for a decade, and has published some of his reflections on EU Maltese, emphasises three aspects, when it comes to terminology: a certain openness to loanwords, a preference for “Maltese-sounding neologisms” (ie, following Italianate morphology patterns), and the absence of “fixed” translations.<sup>93</sup>

Expanding beyond matters of language, legal scholar David Zammit, Head of the Civil Law Department at the University of Malta, considers that the influence of EU Law is so deeply felt in Malta that it may easily overtake both the common law and the civil law heritage in the near future.<sup>94</sup>

## IV. Conclusions

Absorbing the Italianate legal vocabulary, Maltese became in the 1930s the new source language for the civil law element of the Maltese legal system. The dramatic changes of

92 Peter Aġius, *It-traduzzjoni tal-liġi Ewropea* (n. 83), 58.

93 Ivan Sammut and Jelena Agranovska (eds), *The Implementation and Enforcement of European Union Law in Small Member States: A Case Study of Malta* (Palgrave Macmillan, 2021).

94 Biagio Andò and others, “Malta” (n. 2), 564.

the 1930s in the official status of the languages (of law) in Malta—which could have precipitated significant changes in the mixity of the country’s legal system by (1) establishing the source language of the common law element as the language of legal education and (2) severing the ties with the source language of the civil law element and thus preventing access to this element’s legal sources—were in fact partly offset by the pragmatic solution of transforming Maltese into the new source language of the civil law element.<sup>95</sup> Almost a century later, a rigorous inspection of the linguistic practices in legal education, courtroom litigation and public administration offers an opportunity to appreciate how the official arrangement has changed and keeps changing, and what it reveals about the system’s mixity.

One of the most influential works on the Language Question in Malta points in its conclusions to the irony that “decolonisation and independence should have been accompanied by the permanent enthronement of the ultimate symbol of British domination: the English language”.<sup>96</sup> Would the same apply to the legal system? Most observers note how the common law element in the Maltese legal system has gained enormous traction in the second half of the 20th century; some even draw attention to the paradox of the inverse relationship or negative correlation between the British presence and the common law element. Would considering more closely the impact of the change in the language of legal education make the paradox look slightly less paradoxical? The impact of the language of instruction in the law school has often been underappreciated, with the emphasis always lying in the language of legislation or adjudication.

If the broader traction that English has been exercising for a few decades on Maltese in ordinary conversations can be observed also in the linguistic practices in the classroom, the courtroom, and public administration, then one can expect to find the same process of approximation to meanings most commonly used in English even when using lexemes with an Italianate morphology. Practices in legal education, courtroom litigation and public administration (especially at the EU level) seem to be particularly conducive to this phenomenon of “becoming (false) friends” and are already bearing the first traces of these shifts in meaning.

Louisiana legal scholar Alain Levasseur strenuously warned against false friends when engaging in legal translation, particularly in mixed jurisdictions,<sup>97</sup> and used the case of the French/English false friend *bonne foi* / “good faith” to illustrate the consequences of

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95 David Zammit speaks of the “survival” of Italian after its demotion only insofar as (1) “a substantial proportion of law students and lawyers continue[d] to read Italian doctrine and jurisprudence and to refer to it in order to interpret the Maltese law codes” and (2) “the legal jargon used in the courts and in notarial deeds is replete with Italian words and expressions”. Biagio Andò and others, “Malta” (n. 2), 574.

96 Geoffrey Hull, *The Malta Language Question* (n. 14), 367. The parallel with law seems to be evident to observers. David Zammit considers “generally agreed” that “the civilian heritage was further diluted following Independence in 1964”. In a footnote, he also cites a comment by Ugo Mifsud Bonnici, fifth President of Malta (1994–1999), but also a lawyer and a former Nationalist politician. Biagio Andò and others, “Malta” (n. 2), 569, fn 55.

97 Legal Scholar John Trahan, writing in the *Liber Amicorum* of Alain Levasseur, dedicates a sub-chapter to false friends to capture Levasseur’s appreciation of the threat they pose to a proper legal translation (from French into English for the correct functioning of a civil law tradition originally expressed in French). John Trahan, “Levasseur, Legal Linguist” (2016) 76 *Louisiana Law Review* 1025, 1043–1046.

using them interchangeably.<sup>98</sup> Translation and retranslation, and the role of false friends in it has obviously been a key concern for a number of other Louisiana legal scholars like Olivier Moréteau;<sup>99</sup> and it should come to no surprise that the same holds true for Canadian legal scholars like Jean-Claude Gémar. In the case of Malta, the process has witnessed a dramatic acceleration with accession to the European Union, with its massive translations of legal terminology (often later imported into domestic law) based on the English versions of EU legislation. But the traction of English in the classroom and the courtroom are quite evident as well, when law professors and students switch to Maltese or when court rulings employ English expressions. Maintaining an Italianate morphology in nearly all cases obscures the rapid unfolding of the process.

If the contexts in which law operates are conducive to the process of redefinition of legal terminology, the ultimate question for the mixity of Malta's legal system is how this process will affect access to the sources of the civil law element in Malta's tradition. The Maltese case thus offers an illuminating case study for mixed jurisdictions insofar as it shows how a source language can (progressively) cease to be a source language for one legal tradition under apparently unchanged conditions.

Back to the *preskrizzjoni* of the first issue of *L-aċċent*, the magazine of the Department of Maltese of the DG Translations of the EU Commission.<sup>100</sup> The Maltese *ricetta* is clearly related to the Italian *ricetta* (which, incidentally, is still retained in other parts of the Mediterranean as in the colloquial Egyptian *rūšitta*). *Ricetta* is the word used in Italian for a doctor's prescription; a *ricetta* usually contains la *prescrizione*, ie what the doctor "prescribes" to the patient (a medicine, a treatment, even a test). But whereas in English common parlance one can hear "doctors send prescriptions directly to the pharmacy or dispenser", in Italian in one such case one would not use *prescrizione* but would have to use *ricetta*: "la ricetta ha validità di trenta giorni e viene ritirata dal farmacista all'atto della dispensazione" (the prescription is valid for 30 days and is collected by the pharmacist upon dispensing).<sup>101</sup> The Maltese *preskrizzjoni* (with its Siculo-Italian double "z" and final "i") is clearly related to the Italian *prescrizione*, but it has become a false friend insofar as it has moved away from the meaning in Italian to acquire the meaning of "prescription" in English.

98 Alain Levasseur, "Les maux des mots en droit comparé - L'avant projet de réforme du droit des obligations en anglais" (2008) 60 *Revue internationale de droit comparé* 819, 848–851.

99 Olivier Moréteau, "The Louisiana Civil Code in French: Translation and Retranslation" (2016) 9 *Journal of Civil Law Studies* 223.

100 Alan Xuereb "Could One Say That the Prescription Has Been Prescribed?" (n. 10).

101 This is the case of the "ricetta non ripetibile" of art.89, para 1, no 3, of Decreto legislativo 24 Aprile 2006, fn 219. The entire section of the Decree differentiates between *prescrizione* and *ricetta* (Titolo VI, art.87-98bis). It is however curious that the very Decree, in the definitions of art.1, establishes that a *prescrizione medica* (medical prescription) is "ogni ricetta medica rilasciata da un professionista autorizzato a prescrivere medicinali" (any medical prescription (*ricetta*) issued by a professional authorised to prescribe medicines, art.1, para 1, lett. u, of Decreto legislativo 24 Aprile 2006, n. 219).