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The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation

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Abstract
The aim of this short essay is to highlight and concisely explore—but not address in depth—some cultural aspects related to legal languages, legal interpretation and legal translation. We would like to consider briefly the following questions: How can elements of legal language, as exemplified by proper names and euphemisms, be connected with cultural (extra-linguistic) factors influencing language units' formation? How can judicial discourse reflect the culture of a given justice system? How can the legal interpretation affect the degree of legal culture? Are theories of legal interpretation universal or applicable to specific legal cultures? What is the impact of culture on the context of legal translation? How can the cultural background affect the decision to use terms in translation? How does cyberculture impact legal translation?

Keywords Legal language · Legal discourse · Legal terminology · Legal interpretation · Legal translation · Culture · Legal culture

1 Introduction

Culture can be seen as the common denominator of the papers brought together in this issue, even if it is not explicitly referred to in some of them. Interest in the relationship between language and culture has mushroomed in the past couple of decades [1–5]. It is argued that language is no longer just about grammar, lexicon and semantics: language now includes different kinds of semiotic structures, and understanding texts requires a multi-disciplinary range of methods of analysis: linguistics, semiotics, social, historical, critical and cultural [6, pp. 3ff; 7]. Languages operate in different social networks for different purposes as parts of different human activities.

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This has also become increasingly important within the analysis of legal discourse and legal languages.

The importance of the cultural context of law and legal language is clearly noticeable amongst other fields of research regarding the law in context, such as law and politics, law and society, as well as law and economics [8, p. 15]. Legal language depends on the culture. Also, it is argued that the concept of legal culture depends on language [9, pp. 91–96]. In a nutshell, the latter is a part of general culture and refers to "those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law and in particular ways" [10, p. 15; 11, pp. 97–98]. As such, the term implies a sense of shaping attitudes about law.

With that in mind, our main ambition in this short essay is to highlight and concisely explore—but not address in depth—certain cultural aspects (shown to a certain extent also in the following contributions) related to legal languages, legal translation and legal interpretation. More specifically, we intend to reflect briefly on the following questions: How can elements of legal language, as exemplified by proper names and euphemisms, be connected with cultural (extra-linguistic) factors influencing language units' formation? How can judicial discourse reflect the culture of a given justice system? How can the legal interpretation affect the degree of legal culture? Are theories of legal interpretation universal or applicable to specific legal cultures? What is the impact of culture on the context of legal translation? How can the cultural background affect the decision as to the techniques used in translation? How does cyberculture impact legal translation?

2 Legal Languages

Legal discourse may be interpreted broadly and include (but is not limited to): legislative discourse, courtroom discourse (or court discourse), and judicial discourse. Bearing this in mind, we contend that any legal language (legal English, legal Polish etc.) should be thought of as both the language of law and the language of lawyers.

This part of this essay begins with a reflection on the question of how elements of legal language can be connected with cultural (extra-linguistic) factors influencing language units' formation. Proper names and euphemisms[1] have been chosen to exemplify this.

The implementation of new legal terminology may be a natural consequence of the development of national legal languages in line with the "model" set out by the language of documents published by the international organisations of a given state. Roughly speaking, the processes of the implementation of EU legislation by member states set a good example. EU legislation frequently refers to milestones in the Court of Justice of the European Union jurisprudence. That being said, the question arises whether the practice regarding linguistic units with proper names at an EU level is mirrored by national states. Khizhnyak and Zaraiskiy observe that various terminological systems may have characteristic subsystems of terms and nomenclature signs

[1] On euphemisms see [22, pp. 175–176].

with proper names in their structure. "It is likely that not only the ways of coining of such terminological units, but also their semantic characteristics and systematic relations with other units in languages for specific purposes belonging to one national language or its variants, may vary. One can find even more differences in using such units in the variety of languages due to linguistic and extra-linguistic (cultural) factors influencing their development" [12]. They stress that linguistic units with proper names possess a cultural specificity in legal English as compared to terminology of the Russian[2] system of law. However, the same point as for legal Russian could be made for legal Polish in that regard. Both nomenclature signs and terms coined with the use of proper names can be found in the English legal terminology (in the Anglo-Saxon law, and also EU English/Euro-language legal terminology). Nomenclature signs with proper names sometimes can generate terms. Some examples are *Rewe-Zentralfinanz eG et Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland* and *Comet BV v. Produktschap voor Siergewassen*. These contributed to the emergence of terms with the meanings of rules (*Rewe/Comet* doctrine, *Rewe/Comet* formula or *Rewe/Comet* rule). The structure of the constructed terms depends not only on intra-linguistic factors but also on the extra-linguistic situation, mainly the need to denote the phenomena that emerged after consideration of cases in courts with the help of structurally and semantically uniform constructions [12]. A proper name in the structure of a nomenclature sign, as well as in the structure of a term, is a means of reference to a conceptual sphere and to the extra-linguistic factor, which generated the emergence of such units [12]. These units in English legal terminology seem culture-bound. Interestingly, in Poland, an EU member state since 2004, this type of terminological units have not emerged with regard to Polish court cases. We assume that this is due to rigorous anonymisation of judgments that prevents someone seeing the parties' names on the judgment. In Poland, absent publication of such names, nomenclature signs of the above-mentioned type would look like *R.-Z. S.A.* They would not provide any meaningful content. Thus, they and any derivative terms would not perform their function. Additionally, we should emphasise that in Poland, in contrast to common law systems, courts have no power to create precedents in law, whereas a multitude of English linguistic units with proper names are the names of precedents.

In response to the question regarding cultural (extra-linguistic) factors influencing the formation of language units with euphemisms, the key is the effect of a culture of political correctness on legal language, but only to a certain extent. With the passage of time, sensitivity towards language, including legal language, has increased. As Nowak-Michalska argues with regard to legal language used in relation to people with disabilities, some terms perceived as offensive or stigmatising have been rejected in favour of more neutral and inclusive ones; the former cease to serve their purpose and new ones need to be proposed to refer to a given concept (euphemism treadmill) [13]. The development of the culture of political correctness led to changing attitudes towards people with disabilities and changing language used to refer to them [14, chapter 6 under "Disability"]. The social model of the perception of

[2] Thus, outside the European Union.

people with disabilities, criticised for focusing too much on external barriers and underestimating personal experience, gave way to the affirmation model [15], conceived of as one which appears along with the former, develops and complements it. Interestingly, while political correctness is an important factor in the discussion in English-speaking countries, its impact on the Polish and Spanish linguistic realities does not seem direct or obvious [13]. It is rather language used in reference to disability in the international settings (UN Convention on the Rights of Persons with Disabilities) that had an impact on them. Unquestionably, certain pejorative terms continue to exist in the Polish legal system and should be eliminated [13].

Lastly, in this part of this essay, it is necessary to dedicate some space to the question of how judicial discourse can reflect the culture of a given justice system. According to Gozdz-Roszkowski, it can be argued that legal justifications understood as the reasons and rationale given by courts in rendering their decisions reflect "the disciplinary and organizational culture of a given justice system" [16]. Their actual linguistic manifestations may differ radically. Judges rely on their individual writing style, various argumentation and reasoning skills to justify the outcome of cases, which seems to be particularly true for constitutional court judgments where judges set out to scrutinize the constitutionality of a wide range of legislative instruments [16]. In the common law tradition of judicial writing, puns, humour, metaphoric expressions and literary flourishes can be found across justifications of judgments handed down [16]. The civil law tradition favours a collective judgment cast in stylized, impersonal language [17]. However, even within the civil law tradition, one might expect a varying degree of latitude judges can exercise when drafting their legal justifications [16]. In the case of Polish Constitutional Tribunal justifications, the way of drafting is subject to very concrete constraints, and there is a common core of rhetorical structure realized by means of recurrent functional segments of text [16]. By way of digression, it is interesting to note that, due to their persuasiveness (convincing the reader that a given decision was rational and correct) and educational functions, legal justifications can be capable of raising the legal culture and legal awareness of a society.

3 Legal Interpretation

As Dworkin correctly pointed out, the law is not mechanically self-applying but instead predominantly relies on interpretation [18, pp. 45ff].[3] As for the expected impact of the latter on the legal culture, one interesting example can be seen in Poland, where the legal provisions regulating the legal clarifications of business law were introduced in 2018. This concept is meant as an "explanation" (interpretation) of legal provisions that govern undertaking, conducting and terminating economic activity with regard to the practical application of those provisions. This new interpretation tool in the form of soft law guidance is dedicated to competent ministers

[3] The term "legal interpretation" in the widest sense refers to any ascription of a normative meaning to a norm-formulation [19, p. 405].

and some other authorities. The concept of legal clarifications seems quite unique and capable of playing an important role in practice, as it fills a gap in the toolbox regarding the interpretation of business law [20]. They, indeed, may increase the level of stability of the application of law (its uniformity in the territory of Poland), transparency of administrative activities and legal certainty of entrepreneurs, thus increasing the degree of legal awareness and legal culture of entrepreneurs as a social group [20, 21, p. 17]. The Polish government has embraced the principle that legal clarifications should be written in understandable, accessible and simple language. However, the language of legal clarifications published so far can, indeed, be seen as very complex[4] [20]. If this continues to happen, then the chance of expanding their role as "legal culture spreaders" among entrepreneurs will decrease.

Turning to the question of whether theories of legal interpretation are universal or applicable to specific legal cultures, again we give an example from Poland. The so-called "derivational" theory of legal interpretation, a normative theory offering holistic interpretive procedure (set of interpretive directives), developed by Maciej Zieliński[5] [22, pp. 79ff] was designed for the Polish legal system and legal culture. It takes into account the features of Polish legal texts and features of the Polish legal system, the way laws are made in Poland, the principles of law and Polish judicial practice as well as assumptions about good state and society adapted to Polish legal culture; therefore, the theory applied to the fullest extent cannot be simply and directly applied to any other legal system or legal culture [23]. However, we can say as Bogucki has said [23] that there is also the "hard core", universal content of the derivational theory containing some basic features and assumptions that can be the foundation for different derivational theories for different legal cultures and systems.

4 Legal Translation

Translators may use various techniques to compensate their deficiencies in the legal terminology in a particular legal system; however, these compensations would not be possible at all if they were not equipped with the knowledge, not only of special legal terminology but also of cultural and social contexts. Despite the intention for precision and accuracy, legal discourse is oftentimes archaic, complex, and ambiguous. As many scholars [24–28] highlight, this complexity and ambiguity are strongly affected by history, religion, ethics, philosophy and the culture of a particular nation. Duranti [24, p. 277] argues that"if we want to understand what people mean with, through and sometimes despite their words, one must look beyond linguistic means … meanings are seen as located not only in language, but in social values, beliefs, social relationships, and larger exchange and support systems, including family structure and the social organisation of the community". In that vein it is worth mentioning the research conducted by Więcławska [27] in which the concept of context on the ground of legal communication is discussed along with a corpus-based

[4] Not simpler than that of the interpreted legal provisions.

[5] He died on 8 May 2020.

description of the context categories which are relevant for such communication. The study is carried out from the perspective of the sociocultural approach and the notion of context is examined on the grounds of English/Polish translation of corporate documentation processed in company registration proceedings, taking into consideration factors that are presumed pertinent in legal communication i.e. country of origin of the text, legal form determining the normative environment for the source text, the length of the source text, status of the translation in terms of the distinction into certified and non-certified translation and the sex of the translator. The findings indicate that legal communication context is not a heterogeneous phenomenon; however, it could be defined by a limited set of values, which again could be a good starting point for sociolinguistic research on discourse variantivity. Another example how the cultural background affects the translator's decisions as to the equivalents used in translation is provided by Wojtasik-Dziekan [28], who in her article conducts an analysis of the semantic fields of two Korean terms in areas of a specialised judicial terminology i.e. *court* and *tribunal*. As Wojtasik-Dziekan [28] underscores, the diversity and history of creating Korean lexicon, due to the specificity of the language, should be taken into consideration. The translator should always bear in mind that the lexicon was linguistically affected by two external countries i.e. China and Korea and the fact that it is difficult to define and assess the nature of the borrowings. The analysis of these two notions showed that there are specific semantic differences levelled by contextual embedding and affected by the usage and language decisions which, together with a specific context, suggest using the appropriate equivalent in the target language. Consequently, it can be stated that in the legal translation process the awareness and/or the knowledge of historical, cultural and social contexts of both source and target language play a significant role and affect the quality of the translation.

The next question addresses how cyberculture impacts legal translation. Understanding and using words and expressions appropriately in the context is of particular significance as far as subject matter specialisms are concerned [29, 30]. Relations between terms and concepts are multifaceted, and they are constantly changing which reflect the new realities entering societies and real communication between subject specialists, which may not only vary geographically and historically but have different cultures, customs or traditions. Therefore, as Cabré et al. [31] underscores the notion of univocity (the approach which treats concepts as ahistorical and language independent entities with a one-to-one correspondence with particular terms in different languages) is difficult to support. The research conducted by Rackevičienė and Mockienė [32] serves as a good example. The aforementioned scholars undertook the studies within cyber law, one of the newest and most rapidly developing and dynamic areas of law. Easy and cheap access to the Internet and a wide array of new technologies available online, which are constantly being developed, created the need to regulate the use of the internet and activities performed over the internet and other networks due to the fact that cyber criminals take advantage of its speed, convenience and particularly anonymity to commit new types of crimes worldwide. This, again, resulted in new concepts being created in various documents and issues related to translation and the necessity of developing new terminological denotations

which in turn need their counterparts in other languages. Rackevičienė and Mockienė's bilingual case study of cyber law aimed to extract the English terms which include the lexical item *cyber* and determine which of them are dominant. Also, they endeavoured to establish their Lithuanian equivalents and conduct semantic, structural and lexical analysis of the terms. The research reveals some major features of this new lexical area of legal like the fact that cyber law terms constitute a separate field which covers three main categories of terms i.e. notions relating to the global computer network, concepts which refer to criminal activities against the global computer network and perpetrators of these activities and finally the terms concerning protection of the global computer network and professionals in this field. Also, it is worth noting that the study shows that most English terms are translated by numerous Lithuanian synonyms, which indicates the transitional state of the development of terminology in this particular area and that the equivalents mostly differ by the attribute used to translate the English lexical item *cyber*. Undoubtedly, such corpus analysis may serve as a useful tool to establish equivalents of the terms in other languages and to identify synonymous counterparts and analyse the dynamics of synonyms in different time periods.

Moreover, as the modern world keeps offering new technologies and gadgets which are supposed to facilitate the work of translators and interpreters and undoubtedly accelerate the process of translation significantly, but do they improve its quality? Do they make the work of translators more effective? Do they provide new knowledge or create new opportunities to expand it? In that vein, the growing interest of researchers [33–44] and translators in the potential of these new technologies for legal translation is a natural consequence. For example, the research carried out by Trzaskawka [44] to assess the quality of translation of some clauses in Polish and English copyright agreements by a computer-assisted tool—Google Translate proved that despite numerous translation mistakes the abovementioned application can be considered a useful device to facilitate the work of translators. According to Trzaskawka [44], this tool can undoubtedly accelerate the process as translations are generated by the machine in a few seconds, and the translator in fact plays the role of the post-editor rather than the translator. Many sentences can be accepted unchanged or after minor adjustments, which is definitely a clear advantage. Nevertheless, there is a huge misconception that the process is much quicker. In fact, it does not need to be so, particularly in the context of specialist texts like copyright agreements grounded in two different legal systems, where without the experience, linguistic skills and knowledge of the translator the process is in fact more complex and time-consuming. Also, due to modern technology, as some scholars have highlighted [39], it is possible to put corpora in a digital form, which as a result, has enabled terminologists to work with a massive number of documents, examine particular features of terminology, gather information about real usage of terms and their evolution or conduct contrastive analysis of data of numerous languages, which allows for better understanding and using words and expressions appropriately in various, culture-depended contexts.

5 Concluding Remarks

Summing up, this paper illustrates the complexity of problems related to cultural aspects related to legal languages, legal interpretation and legal translation. As Sierocka [45] points out, legal systems reflect culture and in societies with different cultural histories; therefore, translation and interpretation of particular phrases or expressions may be a thorny dilemma as some notions, concepts and institutions may exist in the source language but not in the target one. Moreover, the development of modern technologies, intensified by the coronavirus pandemic, has also had a profound impact on the translation, interpretation and application of law. New concepts that are constantly developed, as Rackevičienė and Mockienė [32] have remarked, need new terminological denotations and consequently new counterparts in other languages. It is a hard task as it oftentimes means translating legal systems and legal culture, not only legal terms.

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