The Multiplicity of Third Space of Communication in Law

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Abstract

Communication in law provides a space for alternatives, a Third Space, wherein boundaries between various systems are strongly anchored to a country's language, history and societal development. Transfers, modifications, and integrations of such systems into other target languages may result in many effects of distortions and appropriations, reformulations and renewals as well as of misinterpretations in communication. Hence, Third Space is a necessary prerequisite for negotiation, transformation and translation from culture A to culture B, since it operates as a multi-stage dynamic where such mechanisms should be analyzed in a fair and equitable manner.

Keyword Third space · Legal translation · Legal interpretation · Legal communication · Intralingual communication

Le droit, comme les autres matières de la connaissance, a été happé par le maelström moderne de la communication [50, p.95]

1 The Multiplicity of Third Spaces in Translation

The theory of Third Space was developed by Bhabha [1, 2] who addressed issues of communication under colonial contexts. His investigation into the equality of communication reveals that:

it is the space of intervention emerging in the cultural interstices that introduces creative invention into existence. And one last time, there is a return to the performance of identity as iteration, the re-creation of the self in the world of travel, the resettlement of the borderline community of migration. [1, p. 9].

Furthermore, it is worth bearing in mind that:

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The intervention of the Third Space of enunciation, which makes the structure of meaning and reference an ambivalent process, destroys this mirror of representation in which cultural knowledge is customarily revealed as an integrated, open, expanding code. Such an intervention quite properly challenges our sense of the historical identity of culture as a homogenizing, unifying force, authenticated by the originary Past kept alive in the national tradition of the People. [1, p. 37].

As the Third Space of communication simultaneously reflects the culture/knowledge of nations as well as is influenced by other cultures, it becomes heterogeneous and challenging to interpret in an unambiguous way:

Until then, the signs generating the speech and its meaning nested in this place of uncertainty that is the *tertium quid*, where rest, like the ingredients that the Sisters of Destiny (Macbeth) stir in their cauldron, the signs of where meaning will come out, an uncertain and precarious truth deduced by the original interpreter of the instrumental text, the translator, transcribed into the target text [3, p.12].

With the increase of globalization and internationalization, more and more communities' cultures are affected by global products available worldwide. These global products include both tangible and intangible goods. They encompass a wide range of things, from clothing, medicines, and vaccines to Hollywood and Bollywood movies. Never before have humans been exposed to so many cultures simply by sitting before their television or computer screen. This unprecedented exchange of knowledge, information and data has radically altered the working conditions of translators and interpreters. With access to so many people ready to interact with us and answer our questions, we can understand messages through the prism not only of our own knowledge of the world, but also the experience of others, often living in a completely different part of the world. Therefore,

It is only when we understand that all cultural statements and systems are constructed in this contradictory and ambivalent space of enunciation, that we begin to understand why hierarchical claims to the inherent originality or 'purity' of cultures are untenable, even before we resort to empirical historical instances that demonstrate their hybridity. Fanon's vision of revolutionary cultural and political change as a 'fluctuating movement' of occult instability could not be articulated as cultural practice without an acknowledgement of this indeterminate space of the subject(s) of enunciation. It is that Third Space, though unrepresentable in itself, which constitutes the discursive conditions of enunciation that ensure that the meaning and symbols of culture have no primordial unity of fixity; that even the same signs can be appropriated, translated, rehistoricized and read anew. [1, p. 37].

We should also keep in mind that the absorption/integration of Third Space may be much faster today than it was before. However, absorption is a process of mingling one cultural space with another. It is a process of selecting the elements that will be absorbed, replaced by the new content, deleted in some way, or modified

within the process. Exposure to Otherness enriches us but may also make us hybrid. The prestigious and privileged are more likely to survive the absorption process than the discriminated, excluded and disadvantaged. A reason this happens is because:

the historical difference of the present is articulated in the emergence of a third space of representation which is, just as quickly, reabsorbed into the base-superstructure division. The analogon required by the new world system as a way of expressing its interstitial cultural temporality—an indirect and interposed communicational structure—is allowed to embellish, but not to interrupt, the base-superstructure formula. What forms of social difference are privileged in the *Aufhebung*, or the transcendence, of the ‘unrepresentable’? Who are the new historical subjects that remain unrepresented in the vaster invisibility of this transnational totality? [1, p. 221].

However, the hybridity of modern cultures may create a new Third Space, which may be even more difficult to interpret. The meanings of modified and hybridized concepts can be in flux, which may render them even more difficult to decode for communication participants [4]. Having elements of the old and enriched by elements of the new, they become fuzzy and indeterminate, though at first glance intuitively understandable and familiar [5]. Such concepts can be pitfalls for communicators who have only a seemingly rich consensus, as the content of the source message may differ from that of the target message after the translator/interpreter has incorrectly encoded the source text and re-encoded the message in the target language. Therefore, we are bound to agree with House [6, p 149], who claims that any type of translation “will always be ‘different’, marginal, located in-between, in short, existing in Third Space.” When narrowed down to legal contexts, the Third Space of interlingual communication in legal settings becomes incredibly complex. It may be analyzed from multiple perspectives. For instance, every message may be misinterpreted on multiple planes of expression, as languages have a linguistic structure composed of multiple communication layers [7]. Therefore, errors and mistakes in translation and interpretation can occur at any level of the language structure, i.e.: (1) phonology, (2) morphology, (3) syntax, (4) semantics, and (5) pragmatics. Furthermore, the Third Space is definitely a space between language, culture, history, mentality, ethical systems, politics, power, stereotypes, economies and geography, “which enables other positions to emerge and where all forms of cultures are continually in a process of hybridity, of evolution [8, p. 211].

It is worth remembering that the theory was developed as a kind of aftermath of colonialism and the inequality of communication induced by the colonial and post-colonial world orders [9]. The Third Space of communication is both objective and subjective. The objective space results from the characteristics of languages and the nature of human communication. The subjective space arises from the human intentions and underlying motivations of communicators. Despite global efforts to promote the equality of citizens, peoples and nations, discrimination is present in the daily lives of humans. Divisions between us and them are always exposed and exploited for political, financial or even military reasons.

Third space can be challenging to conceptualize for its fluidity and vagueness. It is shaped by pragmatic meanings, symbolism and mentality. On the one hand, Third space is the embodiment of cultural identity and individualism from nations or even communities from within nations. This space will enrich us with new experiences and interpretative prisms. On the other hand, it represents an obstacle to communication that makes people misunderstand each other and leads to various types of inequalities.

When discussing the Third Space in the context of translation, we can focus on several aspects of it. First, we need to determine whether the existence of Third Space affects the translation process and, if so, to what extent. Second, we need to delineate the enunciations of Third Space in translation by identifying where it occurs most frequently and how it should be addressed. It turns out that Third Space exists and can be very problematic since it entails many risks of miscommunication that require special consideration when translating system- or culture-bound texts [10]

When translating or interpreting legal documents (sometimes also called court interpreting), it is important to know that the professionals.

must possess a wide general knowledge of the world and a graduate-level educational background or commensurate life and reading experiences. Further, the central goal of court interpreting (as distinguished from other forms of interpretation) is to provide “legal equivalence.” [11] “Legal equivalence” can be characterized as interpreting the “original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker.” [11] In order to be an effective interpreter, to understand the degree to which a court relies on the interpreter and to recognize the seriousness of interpreter error, one must understand the linguistic complexities underlying court interpreting. [12, pp. 632–633].

Such knowledge is a prerequisite for professional rendering of texts, but it is not bullet-proof solution to the problem of legal translation and interpretation quality. There are instances where the human factor fails due to a wide variety of circumstances, from headaches to external noise that causes parts of uttered messages to be misheard and misinterpreted. Pantoga [12, p. 645] draws attention to the fact that:

the established practice in federal court is for the interpreter to stand next to the witness box, without blocking the jury’s view and speak in a loud, clear voice. The problem with standing is the fatigue factor that contributes to interpreter error

Scholar point out that court interpreters sometimes have to translate for many hours without any breaks or replacements. The fact that judges are unaware of the problem of fatigue and its impact on translation quality is very serious [12–15]. In general, working conditions also constitute a kind of Third Space of legal translation affecting interlingual communication quality [16].

This Special Issue contains a selection of papers discussing various faces of the Third Space in legal communication.

2 Theoretical Aspects

The first three papers opening the Special Issue on Third Space in translation and legal communication are devoted to both theoretical and practical issues and focus on Bhabha's theory [2, 17]. The first two are explicitly based on the theory while the third one refers to it implicitly by focusing on colonialization and racial differentiation.

Aleksandra Matulewska and Anne Wagner, in their paper titled *Third Space of Legal Translation: Between Protean Meanings, Legal Cultures and Communication Stratification*, focus on some aspects of legal communication where misperceptions and stereotypes can meet and lead to misunderstandings and misrepresentation of the texts produced. The authors emphasize that the role of translators and interpreters, as cultural mediators [18], is to enable efficient communication in legal contexts as this constitutes the main pillar of human rights, especially in criminal proceedings:

The task of the translator is to make the speaker visible to those who do not understand the language he or she uses. As Bhabha [2, p. 47] claims message senders must stop being invisible, they must be seen, heard and understood to avoid political alienation and cultural discrimination [2, p. 60]. The otherness must not only sub-exist but it must be tolerated and accepted as a partner in communication process. The more distant the source and target language cultures are (in respect to a wide array of social, economic, legal, historical, political, racial, linguistic factors), the longer the chain of translation (number of pivot languages between the source language of the message sender and the target native language of the message recipient), the more difficult it is to communicate efficiently. [19]

The authors investigate the evolution of concepts and terms in divergent legal cultures. The selected examples of marriage and sex-related terminology illustrate the problems of communicating across languages and understanding messages through the lens of the national legal system, leading to stereotyping in situations where the legal realities differ or where one has been recently reshaped while the other remains unchanged [20]. The next issue addressed in the paper is related to cultural codes and communication stereotypes. Cultural codes are perceptions fossilized in our brains that are responsible for creating stereotypes.

When it comes to translation, we need to consider the so-called cross-cultural codes, because transfers in meaning have to take into account the transfer of the source language cultural code into the target language cultural code. Thus, the meaning modelled by cultural codes may be perceived as parts of subconsciously conveyed pragmatic meaning. Accordingly, cultural codes inevitably shape our perception of the surrounding world [19]

Finally, Matulewska and Wagner [19] address communication problems stemming from the stratification of communication in legal settings. The concept of stratification is broadly discussed in sociological research but it is not often

touched upon in translation studies. Its impact on the communication process is undeniable and therefore cannot be ignored as it may lead to the conscious and unconscious discrimination of some participants in the proceedings.

To recapitulate, it must be agreed that “The process of legal translation is very susceptible to the Third Space as metaphorically described by Bhabha [2], and may be subject to a wide array of manipulations. [19]

The second paper in this Special Issue is authored by Margaret Flöter-Durr and Paulina Nowak-Korcz (*La notion de tiers-espace et la traduction juridique: quelle articulation?*) [21]. The authors refer to the concept of hybridity and Third Space developed by Bhabha [2] from the translators’ perspectives. Having analyzed the theory in question, they come to the conclusion that.

from the methodological point of view other approaches seem to allow for a better understanding of the translation aspects raised by Bhabha in his theory. We therefore provide an interesting analysis of the “Third Space” based on the concept of interval by Cassin [22] which is defined as a complex zone of interactions and interferences. This analysis is completed by examining the concept of frontiers by Moréteau [23] which is implicitly present in the concept of interval. In order to analyse the concept of hybridity, the methodological framework of transdifference developed by Srubar [24] can also be used. [21]

The authors explain why the application of the Third Space theory can be challenging in the translation process. There is no denying the fact that many theories focusing on culture-bound translation due to numerous constraints are not consciously applied by translation practitioners. At the same time, the concepts of hybridity and Third Space conceptualized by Bhabha in the field of translation provides theoreticians with valuable insight into the complexity of interlingual communication. It must be acknowledged that translation studies developed in the second half of the twentieth century and twenty-first century have provided translators with tools for transferring a concept from one language to another through various methods of reconceptualization and incongruence adjustment. The key elements of such transfers are always the determination of meaning and its conveyance through the resources of the target language. The authors conclude by stating that:

Qui plus est, ces outils semblent mieux à même de rendre compte de ces processus, car ils permettent de mettre un terme à la différenciation du sens à l’infini et d’appréhender ces processus à partir d’une perspective plus large que la perspective d’un individu en marge d’une société. [What is more, these tools seem better able to account for these processes, because they make it possible to put an end to the differentiation of meaning ad infinitum and to apprehend these processes from a perspective larger than the perspective of an individual on the fringes of society.] [21]

Joel Wainwright in his paper *How Does the Law Obtain Its Space? Justice and Racial difference in Colonial Law: British Honduras, 1821*, analyzes criminal

trail records. The case under scrutiny involved an enslaved black man accused of murdering an indigenous Maya woman in contemporary Belize. The results of the analysis reveal that the trial was significantly affected by racism. The evaluation of evidence, interrogation and sentencing were heavily dependent on racial categories imposed by British colonialism. The case can be read literally to prove that when the British colonizers took over the territory, the indigenous Maya people were still living there. Therefore, it can be used to rebut the misperception that persists because.

the 1821 case should put to rest the myth—cultivated by some British colonial agents in the late nineteenth century, dutifully carried to the present day by some Belizeans—that there were no indigenous people in southern Belize. We can now complete the rebuttal of the British colonial narrative which remains, with slight modification, the narrative of the state in the colonial present. [25]

Beyond the historical truth preserved in the archives, the case can be read as follows:

allegorically as an interpretive code for grasping the structure of racial-spatial difference. This structure of difference was both presupposed and realized through colonialism. The Prince trial shows how the law works to normalize and naturalize this ‘just being there’ of socio-spatial difference. The trial record never states this directly. Semiotic analysis brings it out. There was more at stake in Prince’s trial than winning justice for the unnamed ‘Indian woman’. Prince’s life was at stake: he was found guilty, but his life spared. Bowen fought the charge because, for him, a slave was at stake. For the colonial system that brought these slave owners and enslaved people together, what was at stake was the means to adequate violence and justice amidst social relations that were—and remain—profoundly unequal, set against Belizeans of indigenous and African descent. By the murder of one unnamed “Indian woman”, the movement of one slave into her household was facilitated; by the conditions of possibility of her murder, the passage of gangs of enslaved workers onto her lands was enabled; but by the prospect of her justice by the law, the development of her lands by British capital was assured. The stabilization of the truth to the origin of the law in southern Belize was wrought by the plunder of lands and lives. [25]

The author concludes with a saddening remark that justice is far from being just as people are far from being equal before the law. Racial differentiation continues in the twenty-first century despite efforts to promote equality and enact non-discriminatory laws. The struggle for true justice is still ongoing and will certainly last for a long time as the impact of colonialism and colonial laws is undeniable and deeply ingrained in social consciousness of the inhabitants of colonized territories. The stratification of nations, also discussed by Matulewska and Wagner [19] is also revealed in Wainwright’s research findings [25] and its omnipresence or pervasiveness, though scary and inhuman, is a fact.

3 Third Space of Explicit and Implicit EU Communication

The next part of the Special Issue is devoted to communication in the European Union and its multifaceted aspects.

Juliette Scott and John O'Shea [26] (*How Legal Documents Translated Outside Institutions Affect Lives, Businesses and the Economy*) fill in the research gap investigating.

the ways in which translated legal documents may be challenged, contested or discredited at the various stages of their 'lives', and the repercussions of such challenges on trade and the economy, law enforcement, rights, and legal security. [26]

It should be remembered that research on the quality of institutionalized translation and their impact on social life is much easier because these texts are frequently stored by the institution (e.g. the European Union, NATO, etc.) and can be accessed free of charge and without delay. However, non-institutionalized translations are scattered, frequently stored in court files or private document collections. Gathering a sufficient corpus of such texts (source and target ones) is a laborious and time-consuming task, especially because of data protection laws and privacy rights. As a result, assessing the quality and risk of these texts is an extremely understudied area in translation studies.

The theoretical framework selected to provide insights in this study is Engberg's [27], in which complex cross-border and/or multilingual communicative interaction in legal settings is segmented into micro-, meso- and macro levels. The nexus of national and international political, legal and quasi-legal practices among stakeholders [28, pp. 154–158] is thereby viewed here as follows: a micro level comprising individuals and businesses, a meso level comprising national judiciaries; and a macro level comprising international authorities as well as legal systemic interaction. [26]

The authors provide a surprising selection of examples of erroneous translations that illustrate the consequences of not resorting to the services of professional translators. Some of the problems are due to the use of machine-translated texts. But there are many other sources of miscommunication, some of which are objective and stem from the lack of isomorphism between languages and legal systems. The incongruence of concepts, also known as system-bound or culture-bound concepts and the need to relativize translation cannot be forgotten here [19, 29–31]. Furthermore, it is often hard to predict the consequences of translations that have not been done with due diligence:

the repercussions of translation errors or challenges may include, as examples: financial loss at individual, business, State and European levels; costs to businesses and national economies; loss of opportunity; failed transactions; reputational damage; infringed or denied rights; financial or professional liability; perverting the course of justice; failed or hampered enforcement whether in civil or criminal matters, including serious and organised crime; hindrances to

cross-border mutual assistance in criminal matters; failed government initiatives; and the impairment of legal security and certainty. [26]

The authors also address the issue of “weaponisation of translation and/or the use of translation as a procedural ploy” [26], which deserves special attention and requires further investigation, as it is a risk about which we know little. Such exploitation of translations can also serve political agendas.

Michele Mannoni, in his paper *Rights Metaphors Across Hybrid Legal Languages, Such as Euro English and Legal Chinese*, focuses on the specific feature of legal languages that have been found both amusing and scary. The occurrence of metaphors in law has been described by Cardozo [32], Mellinkoff [33], Tiersma [34], Alcaraz Varó and Hughes [35], and many others. The reasons for their use have also been investigated. Despite its focus on a relatively well-known phenomenon, the paper fills the gap by describing the mental representations of metaphors of a single concept, viz *rights*, in the legal English developed by the European Union institutions (Euro English) and the legal Chinese of Mainland China. Mannoni argues that.

The conceptualisation of right in the English developed by the European Union institutions and legal Chinese as represented in my data is different, and there is scarce cognitive equivalence between the two, either in terms of conceptual metaphors or in terms of embodied schemas. As a consequence, the embodied simulation of right in the two languaculture is also likely to be different. With the intervention of the Third Space we realise that the very notions of source culture and source language on the one hand, and target culture and target language on the other are simplifications that may readily fit in the translation market, but poorly reflect the complexity and the hybridity of every languaculture. Concepts, including legal concepts, are often manipulated and read anew, showing their primordial unstableness. In this sense, each language variety is a Third Space of its own. While it is somewhat straightforward to conceive of Euro English as a hybrid language, owing to its supranational role in a multi-lingual context, the Chinese legal language, too, is revealed to be a hybrid and a Third Space. [36]

The leitmotif of the papers in this Special Issue, namely the differences in conceptualization of terms in legal cultures, is highlighted and the risks of misunderstanding are fully exposed. The notion of languaculture [37, p.60] and communication shock [38] are sometimes forgotten in interlingual communication in legal settings. The consequences of misunderstandings may be disastrous, which has also been pointed out by Scott and O’Shea [26]. It turns out that the history, culture, mentality of the nation affects the mapping and conceptualization of metaphors in quantitative and qualitative terms. The question that can be posed here is strictly related to the feasibility of translation in such cases and the limits of the translator’s responsibility and liability in case of inaccurate understanding of these concepts [26]. Often, such metaphors are linked to a country and a pragmatic context such that they are difficult to grasp for foreigners.

Halina Sierocka, author of the paper titled *How Vague is the Third Space for Legal Professions in the European Union?* also stresses this issue:

legal concepts and notions are deeply affected by religions, ethics, philosophy and the culture of a particular nation. As Friedman [39, p. 34] highlights, understanding legal culture (i.e. expectations, attitudes, values and ideas towards law and legal institutions) is a crucial factor as it both affects their translation and interpretation and consequently has an impact on the application of law. This increases in importance, for example, in the context of the principle of mutual trust and recognition of judgments assumed by the European Union as the cornerstone of judicial co-operation in the European Union, which would not be possible without the trust in each other's justice system and the respect for the different legal systems and traditions of the Member States." [40].

Sierocka [40], similarly to Mannoni [36], focuses on the conceptualization of a single notion, that is to say *lawyer*. The differences between legal systems and cultures affect not only the process of translation or interpretation, but also the application of law, especially in globalized and internationalized spaces. The author draws attention to the fact that the European Union is an organization of member states with different legal systems, i.e. common law and civil law countries, which makes the search for equivalents incredibly difficult and strenuous.

Third Space for the profession of lawyer in the EU settings is relatively vague. It is chiefly due to various contexts present in a specific EU member state which are rooted in the history, politics, religion or culture in particular. ... It is not surprising then that legal terms are complex and ambiguous, which consequently may lead to contentious interpretation. Moreover, the lack of uniformity in supplying information on legal professions by particular EU countries or inconsistencies in translation of legal professions provided by one (sic!) body i.e. the European Commission translation services contributes to this vagueness as well. [40].

The risk of meaning distortions in translation cannot be eliminated, which is also caused by the existence of *faux-amis* [41], which are seemingly similar terms, usually having the same etymology (another aspect of etymology and Third Space has been described by Mannoni [36]) but different meanings resulting from the development of legal systems and the evolution of legal concepts [42] to mention only the terms *notary* and *prosecutor* in the EU legal systems. Legal translators need to navigate the maze of legal concepts and conceptualizations through the prism of history, culture, politics, mentality and many other factors affecting the development of languages and legal systems.

The paper by Elżbieta Kuźelewska titled *Quo Vadis English? The Post-Brexit Position of English as a Working Language of the EU*.

aims to analyse the legal status and the practical dimension of the European Union working languages and to explore the position of the English language among them—both presently and with possible scenarios in the future Union, without the United Kingdom as the biggest English-speaking Member State. [43]

The 20th and early twenty-first centuries are definitely characterized by the omnipresence of English as the *lingua franca* of communication. After having defeated French, the language of international communication and diplomacy for a few centuries, the Englishes of the world actually dominate human communication worldwide. Therefore, not surprisingly, with the beginnings of the League of Nations – a great project announced in 14 points of Wilson – English gradually gained importance in global human interactions, with the European Union becoming probably the largest employer of translators and interpreters, having English as one of their working languages. Kuźelewska [43] analyzes the possible future of English in the European Union in light of the Brexit that became a fact on 1st February 2020 and concludes that:

There are many indications that in the new European Union (one without the United Kingdom), the geopolitical importance of the English language will be lower than in the past. English will likely cease to be an official EU language of any Member State. It will be used as a mother tongue by five million Irish and 460,000 Maltese (a total of 1% of the EU inhabitants). Even if Ireland and Malta choose English as an official language, it will have fewer native speakers than Hungarian or Slovak. Both Ireland and Malta are small and not influential states in the EU compared to France or Germany. Certainly, France and Germany will use Brexit to strengthen their languages in EU institutions. It would be a surprise if Germany and Austria or France and French-speaking Belgium were to support the status quo of the current dominance of the English language. [43]

However, the advantages of keeping Euro-English cannot be overlooked. The Eurolect is the most investigated language in the European Union, including its legal lect. English will not lose its importance as the *lingua franca* of commercial communication overnight, especially since it is spoken in about 70 countries around the world as a result of colonization. Therefore, despite the multilingualism promoted by the European Union and the importance of linguistic diversity, there are important reasons to keep English and change the rules.

Martina Bajčić [44] in her paper entitled *Linguistic Comparison within CJEU's Decision-Making: A Debunking Exercise* investigates the role of interpretation of multilingual versions of EU legal texts. The issue is fascinating, not least because, on the one hand, “the Court of Justice of the European Union (hereinafter: CJEU) openly acknowledges it, by stating that no legal consequences can be based on the terminology used” [44], but, on the other hand, the CJEU conducts linguistic constructions of these texts to discover the meaning that prevails throughout the European Union [45]. The paper implicitly touches upon the theory of Third Space in interlingual communication. Nevertheless, it stresses very important aspects. For instance:

the duty of conducting linguistic comparison poses many risks, most notably to legal certainty. Enabling the addressees of the law to ascertain their rights and duties in their own language, equal authenticity clashes with the need to compare language versions, affecting thereby legal certainty. Settled case law

demonstrates that this tension is resolved by choosing the respect for uniform interpretation over the right of the individual to trust the text in his own language [46]. In consequence, this undermines the principle of effectiveness of EU law which requires effective protection of EU rights and effective enforcement of EU law in national courts, as national courts are required to ensure that full effect is given to EU law. Given the fact that discrepancies between language versions will not go away as they are inherent to translation and multilingual nature of EU law, future research should explore alternatives to the duty of linguistic comparison, first and foremost with respect to national courts. [44].

This interpretation has both advantages and disadvantages. To a certain extent, it reduces legal certainty. However, with so many official EU languages that belong to different language families, different legal systems and are characterized by varying degrees of isomorphism, the elimination of interpretation is unfeasible. Bajčić [44] draws readers' attention to the fact that the interpretation process can be advantageous for national court judges, as it ensures "more clarity when faced with potential language discrepancies or ambiguities, and in turn, more uniform interpretation and application of EU law". Therefore, although fewer and fewer such comparisons are carried out by the CJEU, their complete elimination would be to the detriment of EU citizens and judges. The Third Space of translation is omnipresent in the process of elaboration of so many language versions of EU legislation and, for the time being, the theory of translation studies has not come up with any reasonable solution that could guarantee the uniformity of meanings, free of interpretative doubts.

4 Third Space of Terminology Transfer

The last two papers included in the Special Issue devoted to the Third Space of legal communication touch upon the issue by explicitly focusing on the transfer of meaning in the process of legal translation, the first paper dealing with strictly legal terminology and the second with non-legal terminology remodeled by legislation.

Jan Gościński and Artur Dariusz Kubacki [47] focus on land registration concepts in translation considering the third space of legal communication. Given the fact that we live in the globalized world with the increasing number of international marriages, investments and migration, we have to accept the growing importance of land registers that store information about ownership of land and related data, including, but not limited to, encumbrances and third party's rights on these lands:

As we have observed, a third space plays a pivotal role in pinning down the most suitable equivalents. Relying on insights gained through it allows translators to avoid transgressions and ensure the aptness of renderings. A third space is a place where legal concepts coming from various jurisdictions intersect, revealing either their solitary nature within the systems being compared or the extent to which they overlap. It is where high and low connectivity is discovered, where traumatic treatment of terms is dis-

cerned, and where expressions that preserved (inherited) their “original significances [48, p. 185] are clearly seen. [47]

Having compared terminology used in three languages, viz English, German and Polish, but due to the variants of English and German in nine legal systems (namely legal systems of (1) Poland, (2) England and Wales, (3) Scotland, (4) Northern Ireland, (5) Ireland, (6) the USA, (7) Austria, (8) Germany, and finally (9) Switzerland), the authors accurately conclude that:

Any third space is characterized by its intense hybridization, which results from an influx of concepts and ideas from various cultures. In stark contrast to the sources of incoming elements, no homogeneity, unity, or consistency can be found there. However, the emergent alien landscape provides translators with a unique opportunity of making informed observations as to the nature of relationships between the terms filling up a third space. As they can be found in one place, it is thus possible to juxtapose them with each other in order to see to what extent they are related, whether their function is identical, similar or markedly dissimilar, and what kind of connectivity exists between them. [47]

Therefore, the translator’s task of ensuring effective interlingual communication is to be aware of this aspect of Third Space. In addition, the authors draw readers’ attention to the legacy of Latin in law, which can be both a blessing and a curse. This occurs as the law evolves and changes over time, constantly reformulating the understanding of terms and remodeling them.

Paula Trzaskawka and Joanna Kic-Drgas [49], in their paper titled: *Culturally Immersed Legal Terminology on the Example of Forest Regulations in Poland, The United Kingdom, The United States of America and Germany*, study the language of forestry and its perception through the prism of law. The authors compare selected terms in three languages (English – American and British varieties, German and Polish) whose meaning has been modelled by legislation. The theory of the Third Space by Bhabha [2, 50] enables them to focus on the semantic aspect of communication in the domain in question and to conclude that, although we are able to communicate fluently in these languages, we often misunderstand each other in professional communication contexts.

It can be observed that the third space plays a crucial role in finding proper equivalents. Knowing that there is something like a “third space” allows a translator to manoeuvre between languages and, when it is needed, render as near equivalence as possible. The third space is the place where different legal concepts from several jurisdictions cross. It is the place where high or low connectivity is discovered, and so near, partial or non-equivalence occur. The analysis has revealed that there is a third space between the terms. High connectivity can be seen in terminology which is considered to be near equivalent, e.g. gospodarka leśna—Waldbewirtschaftung—forest management. There are terms of no connectivity between concepts in legal settings, like park narodowy—national park (American)—geschützte

Waldgebiete/Naturschutzgebiete, and no real national parks in British English and in British law. There are also terms of partial equivalence such as *służba leśna*—*Forstdienst*—Forest Service. [49].

The conceptual differences between terms used in different realities and shaped by differing legal systems may be irrelevant, average or huge. The task of the translator is to remember the similarities and differences. The constant need to draw terminological comparisons from a synchronic and diachronic perspectives actually turns the translator into a kind of detective conducting continuous investigations, because the law must be treated as a living organism. Legal systems evolve along with nations, social perceptions and technological advancements. Perpetual pendulum of law is undeniable and cannot be ignored either by lawyers or translators [42]. The consequences of miscommunication can be dire and very often unpredictable. The recent actions of Greta Thunberg, widely covered by the world media, show that the approach to environment differs from country to country, but as climate change, pollution and nature conservation become increasingly important to many people and nations, the accuracy of interlingual communication in this field is necessary.

5 Conclusions

No matter whether we are supporters or opponents of the Third Space in interlingual communication, there is no denying the fact that it exists. It is identified explicitly and implicitly by various scholars. If it is described implicitly, then the term Third Space is not used. The authors usually write about cultural differences, differences between legal, political, social systems, etc. The Third Space of legal translation is also known under a variety of names. Scholars, who focus on terminology, write about culture-bound terms [51–53], system-bound terms [31, 54–56], non-equivalent terms [19, 55, 57], untranslatability [58]. For some purposes, other tools of analysis and nomenclature may be more convenient and easier in application than the theory of Third Space. But on many other occasions, it may be a great tool through which we can better understand the complexity of interlingual communication, especially legal communication. Regardless of the terminology used, the common view is that this intermediate space represents a danger to interlingual communication. From the translators' viewpoint, translation of the Third space requires constant linguistic vigilance, agility, and creativity. The constant need to transplant concepts from the source legal language into the target language text requires skills and a thorough understanding of both the source and target legal cultures and systems. First, the translator must identify the troublesome terms, then determine their meanings and translate them. The meaning of terms is not always precise and easily decipherable. Some meanings change over time and space, resulting in *faux-amis* [41, 59]. Some meanings cross the boundaries of common sense and become metaphors or euphemisms, the literal transposition of which into another language can lead to unimaginable miscommunication.

But the third space is not limited to non-equivalent or partially equivalent terminology that may be hard to translate into some languages. It is a much broader

concept that encompasses the entire communication process, including the behavior of people raised in low- and high-context cultures. This factor affects the willingness to interact and the strategy of communication in a certain hierarchical situation. People from low-context cultures behave differently than those from high-context cultures [19]. Their willingness to actively search for information varies, and therefore the data available to them is not the same.

Failure to recognize the Third Space in legal translation can result in huge losses with various repercussions on the participants in legal communication. In many countries, there is financial (or even criminal) liability for mistranslations and moral responsibility for translations done without due diligence and impartiality. There may be individual losses experienced by (1) the translator who may lose his/her reputation and consequently no longer employed and (2) the foreigner who may not have received sufficient information to act properly and reasonably. This type of loss is called micro-level and is summarized succinctly by Scott and O'Shea [26] in the paper included in this Special Issue.

At micro level, potential negative implications for individual businesses take the form of financial loss, damage to image and reputation, and exposure to litigation. For individuals, however, impacts at micro level can have consequences at macro level—examples include the right to a fair trial being denied, and ensuing extradition and/or conviction; freedom of movement being denied, such as where immigrant status is refused; the right against exploitation being denied, such as when workers do not have access to information translated into their own language; and the general exacerbation of inequalities for migrants as a result of language origin and/or limited translation resources. [26]

If the miscarriage of justice is the results of mistakes and errors in translation, the community loses out. The system of justice is seen as inefficient and flawed. In order to avoid such losses of authority and reputation, the error must be spotted in the first place. But it is difficult to identify such problems in legal communication, especially when it comes to interpretation. As a rule, the error is not recorded because the court records are drafted in one language only – the language of the court.

It is an impossibility to show error in translation with only one language available for review unless a bilingual attorney is present who objects each and every time a perceived error is made. It is also unlikely that any criticism of the interpreter's function will occur. Most players in the courtroom are unaware of the proper role of the interpreter, as well as how to detect error. Furthermore, it is difficult to prove any error has occurred because there is no record in the foreign language to show error. Even if the defendant has a bilingual attorney, the attorney must perform his function as an attorney, not that of the interpreter. Attorneys cannot perform to the best of their ability if they must monitor translations while thinking about the next question they must ask as attorneys. [12, p. 622].

When it comes to legal translation or interpretation from a language of limited diffusion, there is virtually no chance of finding someone, apart from the

foreigner concerned and the language intermediary (the translator or interpreter), who actually knows the language. So, the only person who knows both languages (to some extent) is the translator or interpreter. Who is responsible for checking the quality of the services of this translator or interpreter? Neither the judge sitting at the bar nor any lawyer present in the courtroom. The spoken statement, when not recorded in its audio form, instantly disappears. At least the translation is saved on a support, either a sheet of paper or an electronic document. There may be no way to prove that a mistake was ever committed. However, the real concern is not about catching the interpreter or translator in error. The key issue is that the principle of justice may be violated. If this happens, the whole community loses confidence in the justice system and in its infallibility. Judges lose confidence in the translators' and interpreters' skills. Scott and O'Shea [26] call these losses meso-level losses:

At meso level, the impacts of challenged translated legal documents can be felt at the courts themselves: as wasted time and/or budget, in the shape of unreliable findings, failed enforcement, miscarriage of justice, failed cases, and failures to comply with cross-border rules and obligations. Equally, there are judiciary-mediated consequences at this level—the court's action in respect of a translation. At criminal courts this can involve criminals not being brought to justice, and more generally avoidance of the law. In civil cases, we see failed transactions, insurance claims denied, infringements of intellectual property, and financial liability. In family matters, denials of custody or compensatory payments may ensue, while we see invalidation or rejection of patents/trademark applications by judicial or quasi-judicial bodies dealing with intellectual property disputes. [26]

Participants in a legal proceeding are afraid of potential communication failures. At times, the miscarriage of justice can be embodied in an unfair judgment. If the judgment is too lenient, national losses occur as the criminal is released early and society may be exposed to further crimes perpetrated by him. In addition, the nation may lose face. The example of the translation of Mexico's tourism website [26] can serve as an example here:

At the macro level, translation challenges can call into question international conventions and treaties and/or supranational law. Communication among national authorities and enforcement agencies may be hampered or disrupted. Inequalities among legal systems may be enhanced, and the distortion of legal concepts instigated or speeded up as part of their cross-border collision and evolution. As for trade implications, these involve the impaired free movement of capital, the handling of conflicts of law, and impediments to cross-border business transactions. [26]

Whatever type of loss is involved, it is undeniable that the third space of interlingual communication is a challenging phenomenon. Violation of justice and equality can occur if legal translators and interpreters are unaware and fail to recognize the hidden traps that await them. Therefore,

legal translators have to fix the semantic source, adjust it for the target language and—if necessary—build meta-linguistic devices to fill the conceptual gap for the target language: “translators are aware of the decisive part they have always played, without leaving the shadows themselves, to enable others to overcome the barriers of language and culture by way of the translators’ skills as writers. [48, p. 178].

Furthermore, the struggle for power is also observable when we analyze the phenomenon of the Third space in legal communication. Third space can be exploited for the intentional recontextualization of political and individual objectives [60]. Language is a very powerful communication tool. It can be used to declare war, to secure peace, to condemn, to ostracize... The power of language is undeniable and absolute. Third space is the intermediate space, a space in between, that can result in the success or failure of any communication. It can turn the participants in legal communication into big winners or real losers, they can be privileged or disadvantaged, even discriminated. In some communication contexts, it may be the translator or interpreter who is responsible for granting or denying rights to a person.

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