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CHALLENGING THE EXISTENCE OF LEGAL TRANSLATION: A COMPREHENSIVE TRANSLATION THEORY

Michele MANNONI
PhD, Court Certified Translator
Researcher in Chinese Language
Department of Literatures and Languages
University of Perugia (Italy)
p.zza G.M. Lavagna, 57125 Livorno, Italy
mi.mannoni@gmail.com

Abstract: This paper focuses on the lack of recognition of comprehensive and text-genre unrelated translation theories, a condition that keeps translators imprisoned in the old and sterile debate on free Vs. literal translation. By challenging two of the most common opinions, that is, the presumed existence of legal texts and legal-translation theories and that of the presumed utility of the notion of free and literal translation, this paper underlines the importance of the adoption of a comprehensive theory absolutely independent from the classification of the texts to be translated. More specifically, Popovič's semiotics approach to translation gives great space to personal interpretation and anisomorphism, hence discarding once and for all the concept of faithfulness and equivalence in translation. As I attempt to prove in this paper, faithful and objective translations cannot exist, as translation is proved to be a subjective act: it is a creative process for which the interpreter is called to give his own interpretation on the signs created within the text.

Key words: legal texts; legal translation theories; literal translation; faithfulness; semiotics; Popovič

SFIDARE IL ESISTENZA DI TRADUZIONE GIURIDICA : UNA TEORIA DELLA TRADUZIONE GLOBALE

Abstract: Il presente studio si focalizza sulla mancanza di riconoscimento di teorie traduttologiche onnicomprensive e indipendenti dal genere testuale, condizione questa che non permette ai traduttori di uscire dall'inutile dibattito su traduzione libera Vs. traduzione letterale. Confutando i luoghi comuni sull'asserita legittimità di testi giuridici e di teorie della traduzione giuridica da un lato, e sulla presunta utilità delle nozioni di traduzione letterale e traduzione fedele dall'altro, il presente paper sottolinea l'importanza di fondamenti teorici del tutto indipendenti dalla classificazione del testo traducendo. Nello specifico, l'approccio traduttologico semiotico di Popovič lascia ampio margine all'interpretazione personale e all'anisomorfismo, abbandonando dunque definitivamente i concetti di fedeltà ed equivalenza. Come dimostra il presente studio, traduzioni fedeli e oggettive non possono esistere, poiché la traduzione stessa è provata essere un atto soggettivo frutto d'un processo creativo in cui il soggetto interpretante è chiamato a dare la propria interpretazione sui segni contenuti nel testo.

Parole chiave: traduzione giuridica; teoria della traduzione giuridica; traduzione letterale; fedeltà; semiotica; Popovič

KWESTIONUJĄC ISTNIENIE PRZEKŁADU PRAWNICZEGO: KU UNIWERSALNEJ TEORII PRZEKŁADU

Abstrakt: Praca dotyczy nieuwzględniania globalnych i nieskoncentrowanych na gatunku tekstu teorii przekładu, co prowadzi do uwięzienia tłumacza w niekończącej się debacie, jaki rodzaj przekładu stosować tj. przekład wolny czy dosłowny. Autor neguje dwie najczęściej wyrażane opinie dotyczące istnienia tekstów prawniczych i teorii przekładu prawniczego, wskazując konieczność stosowania globalnej teorii przekładu niezależnej od klasyfikacji tekstu do jakiegoś konkretnego gatunku. Autor zwraca uwagę, że podejście semiotyczne Popoviča do przekładu pozwala tłumaczowi na dokonywanie indywidualnych interpretacji tekstu i rozwiązywania problemu anizomorfizmu. W ten sposób raz na zawsze można porzucić dywagacje na temat wierności przekładu i ekwiwalencji. W pracy autor stara się udowodnić, że przekład wierny i obiektywny nie istnieje, ponieważ proces przekładu jest zawsze aktem subiektywnej kreatywności tłumacza-interpretatora.

Słowa klucze: tekst prawny; tekst prawniczy; teorie przekładu prawniczego; tłumaczenie literalne; wierność przekładu; semiotyka; Popovič

1. Introduction

Excluding a few experts of the field, the plethora of professional and amateur translators is rarely in the position to follow a solid translation theory, as translators continue to be imprisoned in the old sterile debate on free vs. literal translation.

Even supposing translators manage to follow one theory, this can seldom be consistently used throughout the text: the vast majority of existing translation theories are in fact too often text-genre related (there are theories for poetry translation, literary translation, legal translation, and so on and so forth), which is a far cry from what practitioners need to perform their daily activity. In fact, the identification of a text genre can be very difficult, as it "is not a polarized dichotomy, but a spectrum that admits blending and overlapping" (Cao 2007: 8), as will be later proven in this paper.

Difficulties in defining the genre of a text may be one of the first reasons prompting translators to abandon a particular legal translation theory as soon as they are asked to translate a text which does not perfectly fit the definition of the genre in question (for instance, what text genre does a price breakdown or a medical report belong to? Would the answer be the same if their translations were to be legally certified?). This paper underlines how current definitions of legal texts are detached from the work legal translators do in their daily activity and thus create an immense and inadequate gap between theory and practice. If text genre is not a precise category to found a translation theory, then legal translation theories and text-genre related theories are also inadequate. In this regard, things have not changed much from what Paul Ricoeur wrote in 1998: "la pratique de la traduction reste une operation risquee toujours en quete de sa theorie." (Zaccaria 2000: 9), regardless the large number of translation theories existing nowadays[1]. Proving that the definition of text genres cannot underpin translation theories, this paper firstly challenges one of the most common opinions, that of the presumed existence of legal texts and, consequently, legal translation theories.

By abandoning a scientific theory, translators are often tempted to translate choosing the word indicated as more suitable in

[1]See for instance Alcaraz Varò and Hughes 2002.

the context by a dictionary or, even more frequently, just following their heart with no scientific foundation whatsoever. On the one side, this lack of scientific precision makes translation being perceived as an unworthy, unprofitable artistic activity, on the other side this makes translators being continuously imprisoned in the never-ending debate on free vs. literal translation. When a translator is not able to make up his mind on the word to choose, he might just decide to play it safe and to "stick to the text and translate it literally", a phrase probably sounding as a captivating mantra, a cliché translator can rely on in times of need ("[…] lawyers and linguists tend to tether themselves to the pole of literalism", as Wolff notes 2011: 228).

The second common opinion this paper challenges is the presumed utility of literal translation, which based on the fact that the very notion of literality has no meaning at all, I want to definitely prove to be useless.

In this analysis, it is posited that a more general and comprehensive translation theory can and should hence be used, whilst the old notions of free and literal translation, as well as the text-genre related approach, should be both abandoned. Popovič's theory on translation will be tested and applied to different excerpts of random texts in different languages (e.g. Mandarin, English, Italian) in order to prove the solidity and efficiency of his theoretical framework in the practical act of translation. Such theory not only underlines the scientific value of translation as a creative act, but it also perfectly recreates the interior and cognitive process the translator follows when translating, leading us to abandon the concept of faithfulness and equivalence in translation – surely challenged many times by scholars, but never truly left aside by practitioners.

2. Against common opinions

2.1 Against the presumed existence of legal texts

Misbeliefs are not only typical of non-specialists, but of specialists alike. They dangerously lead experts and non-experts of the field to false assumptions which may interfere with the most practical aspects of the profession. They may also be a far cry from what practitioners need to know to perform their daily activity. If we take a look at what is currently said on legal translation, we realize that there are major differences between existing translation theories and definitions of legal texts provided for by scholars. This clearly prevents practitioners to make use of a solid and single theory, which may be of help in doing their job, regardless of the text they are to translate.

Scholars have not reached an agreement on how to define a "legal text". If we consider most recent works written to this purpose, a first important question should come to our mind: why would we need a definition of "legal text" at all? Wolff (2011: 233) admits that no one has offered a comprehensive and distinctive definition of what constitutes a legal text so far, a premise which would be arguably useful to those in seek of a legal-translation theory. It should be frustrating for these definition-seekers to find out that the anxiety in defining a field of study does not affect exponents of many other fields. Physicians do not keep wondering what is medicine, except when it comes, for instance, to some ethical issue and distinction between medical care and futile medical care is needed.

Perhaps, there is no need to treat legal translation as a specific area[2], in opposition to Garzone's stance that the language of the law has distinctive qualities that "[…] marks it off from ordinary language and makes it a case apart even in the field of special languages" (Garzone 2000: 1; see also: Tiersma 2000: 2). And why would this be? If we take a look at the following random excerpt from a colloquial speech between teenagers of a British TV series, we get an

[2]As noted by Harvey (2002: 177), this may hide a vein of socio-professionalism haughtiness.

idea of how colloquial speech cannot be said to be easy at all, and how it is similarly "marked off" from any other kind of language:

> Homo! - Yeah, because I rule, basically Shit bender./Ah, Kelly, you're stankin'! What about you, you sweaty fuck! Aargh! Get away, you scummer./Later then! What you think of that, then? Tone?/What? Think of what?/The moves. Me, Jonno and Kel worked it out./It's OK./Hey! Nothing to worry about, dude./Yeah?/ Yeah./It's all right./Everything's cool./- Hi, Maxxie./- Hey./Hi./Who's that?/That's Tony./What's up with you?/ I had a traumatic subdural haematoma with motor and perceptional complications./Are you mental?/ Yes./I'd still give you one./Totally./He's well fit./Yeah, Queenie?/ Yeah./He's buff./Hey come on, Tone./See you later, girls./See you Maxxie!/ Bye!/ I wanna give Maxxie one./You can't. He's homosexual./Bummer.//See? I remembered your favourite./Thanks./You've grown, Tony./And there's another two inches in you, easy./How's your Mum? - I don't remember you./Oh, well./We used to have lovely chats when I was cleaning your mum's place./You were such a clever little lad./I'm stupid now./No./Here you go, mate./Thanks, Mum./Oh, we used to giggle./Well, you never did know what your mum was going to say next./Ketchup, Mum? - Yeah, right./Bloody hilarious jokes she told./Filthy./Oh, a right laugh, your mum.//Mum? I need to pee./I can manage it myself usually./Yeah, sorry./Oh, fucking fucking fucking thing! Oh! Ooh./Oooh! Ooh la la! Yee-ha! Oi, look out./Here comes Batty Boy./You wanna watch it, Dale./He'll slip you a big fat cock! No fucking way, man! Cockety-cock-cock! […].

("Skins s02e01 Episode Script | SS" 2015)

Does this mean that we need a colloquial-informal speech theory? One may argue that colloquial language is a case apart, since it may include teenagers' slang, phrasal verbs and other forms of figurative language, which contribute to mark this language off from languages of other fields. However, there is no solid proof for such differentiation, as the same goes for medical language, chemistry language, physics language, astronomy language, and so on and so forth: they are all "marked off" from each other, and they have features and intended meanings different from those we find in "ordinary language" [3].

[3]Also, if "legal language" is said to be marked off from ordinary language, then we need to define "ordinary language" as well. It cannot just be defined as "every day language" or "the language you speak at home", as one may speak of many things at home, and the language used with friends is certainly different with that used with one's spouse, or with acquaintances, or with that used lullabying to our baby or, even more, with that used by a 3-year-old child.

Šarčević (1997: 9; quoted by Harvey 2002: 178) defines legal language as the language used by experts of the field, thus unjustifiably ignoring texts between experts and non-experts, and text used in a legal context. These interpretations of the concept of "legal" prevent other kind of texts, including sworn translations in general (e.g. birth certificates, degree certificates, medical reports, price breakdown), texts between lawyers and non-lawyers (e.g. students) and pieces of evidence used in legal proceedings (e.g. suicide notes; Harvey 2002: 178), from being treated with a legal-translation theory, whereas everyone who made an attempt at translating them surely realized they are "as much legal as" a Power of Attorney is.

Classification of texts according to their destination or context of use opened the door to functional theories, whose advocates may assume that legal texts are texts to be used for legal purposes[4], and/or producing legal effects, which is what Koutsivitis and Gémar (both quoted in Harvey 2002: 179) affirm, along with Garzone (2000: 1), who treats texts with no legal validity as non-authentic texts. Again, a textbook relating to corporate law does not produce any legal effects, neither a contract between two parties necessarily does to a third party, but nobody would ever dare to consider them differently from legal texts.

Intuitively, Cao (2007: 8) recognizes the difficulties in defining text genre and states that this "[…] is not a polarized dichotomy, but a spectrum that admits blending and overlapping, a question of quality and intensity, […]". This statement can be easily proved as correct. In my work as a certified translator, I often happen to translate summons/claim forms. Nobody has doubts in saying that a summons is a legal text (if not, then what is?). Italian civil summons ("atti di citazione") are normally divided into eight parts: 1.) an introductory part stating who is the claimant ("attore") and who is/are the lawyer(s) acting on his behalf and on his interest; 2.) a part stating who is the defendant ("convenuto"); 3.) a description of the relevant facts ("in punto di fatto") based on which the claimant is summoning the defendant; 4.) a part in which facts under point 3.) are analysed and considered from a legal perspective ("in punto di diritto") by explaining how these facts constitute an infringement and a violation

[4]This is what I, too, used to believe, and what I affirmed in my paper titled «Anxiety in defining the role of translator: court translators in Italy» I presented at the Translation Talk Conference (23-24 April 2015, London), and which I no longer consider correct.

of the plaintiff's rights; 5.) a section where terms and deadlines for the defendant to file his entry of appearance ("costituzione in giudizio") are indicated; 6.) a part where the plaintiff explains what kind of reliefs are sought; 7.) the economic value of the proceeding; 8.) the Power of Attorney by virtue of which the plaintiff empowered his attorneys at law. In the summons I am referring to, the plaintiff accused the defendant of having sold a counterfeit pair of shoes, whose design was deemed by the plaintiff to be his own property – and thus the alleged imitation would have constituted an infringement of the plaintiff's property right. Of this 20-page summons, part 3.) occupies 10 pages: thus basically 50% of the whole summons is a fact-description telling the prestige of the plaintiff, the design of the shoes in question and that of other similar shoes, point of sales where the shoes were sold, facts and figures on the sale, expert's report on the comparison of the two designs, and so on and so forth. Very rarely do we meet "legal" words in this part – and the same goes for part 3.) of the vast majority of the summons. Nonetheless, the summons in question is "legal" and was used to produce legal effects. Consequently, we must admit that texts are not defined in genre from the number of genre-related words they include, but from the meaning they create by making use of these words. Words are nothing but one of the many devices humankind can use to shape meaning, which is partially created by the author by means of words, and partially reconstructed by the reader's skills and possibility to understand the author's intended meaning according to the purposes for which the text was written. Thus, meaning can be eventually said to be "legal": not texts, nor words. This implies that the reader is at the very core of the meaning, as meaning is not solely within the text, but it has to be created by the reader in his mind: the reader is the interpreter interpreting the meaning within the text and understanding it. And in fact, Harvey (2002: 178) had to admit that "General statements about legal translation are necessarily determined by the writer's definition of a legal document.", clearly introducing the concept of **subjectivity** and giving space to personal interpretation, which is at the core of Popovič's comprehensiv[5] theory supported in this paper. Additionally, words are not the only device creating meaning, other devices also

[5]By comprehensive translation theory I mean a text genre and language unrelated theory, thus a theory that can be used to any text, regardless its function, context of use, and alleged genre categorization.

create it. Font does. Punctuation does. Typographic emphasis does. Context does. And also graphical elements such as tables, seals, fiscal stamps, signatures, they all contribute to construe meaning. Then why do people keep stressing the importance of word-for-word translation?

2.2 The literalists' creed: "I believe in literality, the Father almighty"

An Italian sworn translator needing to certify his own translation can do it by swearing it before a court officer and declaring in an affidavit he had "correctly and faithfully performed his task at the sole aim of revealing the truth"[6]. Similarly, putting it at a more international level, the World Education Services (WES) still requires that translators provide "[…] precise, word-for-word, English translations […][7]."And this is exactly what non-specialists ask for to a translator: a literal, word-for-word, faithful translation objectively revealing the truth of a text.

Even though experts in translation studies can confirm what Steiner (1998: 319) already claimed on the religious concept of fidelity in translation as generating a sterile debate[8], such statements clearly show how most of the people continue to look at translation as a process being accurate and precise only if literally done – as if the concept of "literal translation" meant anything at all. On the contrary, I affirm that the debate between free and literal translation has no implications, as it is totally meaningless, since the concept of "literal" itself is meaningless.

What does "literal" exactly mean, after all? If we are to think of "literal" as intending "letter by letter", thus rescuing its etymology,

[6]Courtesy translation of the Italian version of the affidavit, usually going as follows: "[…] Ammonito il comparente sull'importanza del giuramento, il medesimo ha pronunciato la formula: "giuro di avere bene e fedelmente adempiuto l'incarico affidatomi al solo scopo di far conoscere la verità. […]."

[7]A similar example was used almost 10 years ago by Šarčević (1997: 16), quoted by (Harvey 2002: 181) Unfortunately, it looks like 10 years of research and efforts by scholars of different fields in trying to change this conception didn't alter the common opinion.

[8]Check for instance (Seidman 2010: 73) and (Kasirer 2001: 339).

then the meaning of a word such as "term" would be the meaning resulting from the meaning of its letters, thus t+e+r+m: but "t" has no meaning, and so have "e", "r" and "m". Literal meaning does not exist. But when we read "term", we do intend its meaning. And if we read it in a context, we may understand it as having another meaning. We are used to think of words has having a primary meaning -its literal one- plus other acceptations. But this is only because we are used to it. We are convinced that this is the way words function. Nonetheless, there may be no primary meaning at all (who decides a word primary meaning?), and only acceptations. If we look up the word "term" in a monolingual dictionary, we find a numbered list of equally worthy acceptations. How to establish a word's literal meaning? I cannot think of any other way to establish it but relying on the first explanation listed and generally representing the most common and frequent meaning. If so, then "literal" would not mean "a word's intrinsic meaning", but just "the most frequent meaning according to the vast majority of monolingual dictionaries". Taking it a step forward, we should note that dictionaries are not carved in stone, and that they are all different one from each other: they are in fact written by people, so word choices and consequently the list of acceptations depends on the author(s)' subjective opinion and, again, interpretation.

So, why do people keep stressing the importance of words and word-for-word translation? The straight answer is: because it's easier. Although less profitable, it is obviously easier thinking of a text -being it written or spoken- in terms of countable, tangible words, rather than in terms of abstract, possible, multiple, and often hidden and implied meanings. While smart attorneys usually charge flat rates or hourly rates according to the complexity of the case, and the experience and success they have in the field, translators (with some few remarkable exceptions) charge low rates[9] according to the number of words they translate, thus proving to their clients that their job requires nothing

[9]We should all thank literalists for this great unprofitable choice, which resulted in translators spending their time on social networks or writing blogs (e.g. https://nopeanuts.wordpress.com) to convince their colleague to stop charging incredibly low rates.

but dealing with words and mechanically[10] converting them into another language.

Despite the literalists' creed, literal translation cannot simply exist. Strict literal translation can result only in unintelligible texts, especially when it comes to natural phrases and not to short unnatural sentences. Although this should have been common sense, it can be further proved with some examples. First of all, how to literally translate articles in languages that do not have them? If I say "I don't want *a* book, I want *the* book", how can we translate it into Chinese? Chinese does not have articles: does this mean that the Chinese are incapable of expressing or even understanding the difference between a generic book and a specific one? Let us now consider the following case:

a.) Italian version:

CLAUSOLA PENALE. In caso di esecuzione oltre la Data Termine di Installazione Offshore indicata nel Piano d'Esecuzione per il quale l'Appaltatore è unicamente responsabile, l'Appaltatore è tenuto a corrispondere alla Società una penale pari ad un quarto (0,25%) del prezzo iniziale per ogni giorno di ritardo, fino ad un massimo del 10%.

b.) English very "literal" (and faithful?) translation[11]:

CLAUSE PENAL. In case of execution beyond the Date Term of Installation Offshore indicated in the Plan of Execution of the what the Contractor is exclusively responsible, the Contractor is obligated to reciprocate to the Company a penalty equal to a quarter (0.25%) of the price initial for each day of delay, up to a maximum of 10%.

c.) English less "literal" (and less faithful?) translation[12]:

PENAL CLAUSE. In case of execution beyond the Term Date of Offshore Installation indicated in the Execution Plan for which the Contractor is exclusively responsible, the Contractor is obligated to

[10]Should mechanical translation (MT) be really possible, dictionary-based machine translation would give perfect result; on the contrary, good results are possible when human translation serves as corpora to MT.

[11]According to what I demonstrated in this section of the paper, the literal translation in question was done by choosing the first translation listed in the bilingual dictionary ("Dizionario Di Inglese - Il Vocabolario Di Traduzioni Online - La Repubblica" 2015).

[12]Translation done by maintaining the translation of the words found in the same dictionary as above, but improving -at least partially- the English grammar and syntax.

reciprocate to the Company a penalty equalling to a quarter (0.25%) of the initial price for each day of delay, up to a maximum of 10%.
d.) English "free" (unfaithful?) translation:
LIQUIDATED DAMAGES. In the event of a delay to the Offshore Installation Completion Date as per the Contract Schedule for which Contractor is solely responsible, Contractor shall pay Liquidated Damages to Company at a rate of a quarter of a per cent (0.25%) per day of delay, subject to a maximum of ten per cent (10%) of the Initial Contract Price.

("Example Clause – Liquidated Damages" 2015)

For no good reason, translation under point d.) can be proved to be incorrect or imprecise. Apart from being more natural and grammatically correct, that translation also better represents the legal **meaning** expressed by text under point a.). Among the many differences we can note between the two, the striking difference resides in the name of the clause – "clausola penale" in the Italian version, "penal clause" in the half-way-literal translation, and "liquidated damages" in the "free" translation. "Clausola penale" in the Italian legal context is regulated by paragraphs 1382-1384 of the Italian Civil Code. Whoever has some knowledge in the field would recognize the great difference between a "penalty clause" (of which "penal clause" may lead us to think) and a "liquidated damages clause". They are in fact two completely different concepts, which are treated differently both in Common Law countries and in Civil Law countries. A "penalty clause" is «A provision in a contract that stipulates an excessive pecuniary charge against a defaulting party.» and «Courts do not generally enforce such a clause […].» ("Yourdictionary.com" 2015). This is not what "clausola penale" means, but what a "clausola vessatoria" may eventually imply. Henceforth, being a "clausola penale" generally established by mutual agreement of the parties, and being it equitable, it is better translated by the "liquidated damages clause" phrase.

While literalists may believe that literal translation does exist, I can further prove this statement to be wrong by adding an example relating to a language that does not make use of Latin alphabet: Chinese. If literalists may affirm that "clausola penale" can be literally translated as "penal clause" or "penalty clause", just because the two words are etymologically related and/or because "penalty" is the first choice they come up with when looking up "penale" in a bilingual

dictionary, what can they say about the literal translation of a word such as <*dangshiren* 当事人>? If we are looking at this word graphically, we will obviously not find anything similar in languages using an alphabet. If we consider it from its pronunciation, and provided that we use its *pinyin* transcription, we end up reading it *dang shi ren*, which again does not help us in finding its allegedly existing literal translation. So, what are we to do to find it? If the answer is "checking up a dictionary", then this equals to say that we are asking a person or a group of people (i.e. the dictionary's author(s)) how *they* interpret that word. Such authors are hence other translators who created a glossary (i.e. the dictionary we are checking up) based on the experience they have of that word, or of other translations of the same word done by other translators. There is no literal meaning within a word. Meaning is created in the mind of the interpreter who reads/hears the word. In the example analysed above, "penale" does not mean "penal" or "penalty", and not even "criminal" (as it could be the case with "Codice Penale", being it "Criminal Code"), not because of the letters it contains, but because of its intended meaning in such a context. Studying the context to decide how to translate a word -or a group of words- should not be the exception, but the rule.

From what has been analysed above, we can first conclude that words do not have an intrinsic and literal meaning, but rather than the meaning is always implied.

3. A comprehensive translation theory

Faithfulness goes hand in hand with the concept of equivalence, which for obvious reasons has been at the very core of religious and legal text, and consequently legally-oriented translation studies. As pointed out by Harvey (2002: 180), «The debate over fidelity to the "letter" or the "spirit" in legal translation is a long-standing one, dating back to the days of the Roman empire when it was decreed that formal correspondence between source and target text was essential to preserve the meaning of both Biblical and legal documents (Gémar 1995a: 26-30, Šarčević 1997: 23-48).»

Some scholars, notably those from East-Europe, affirmed that there is no such thing as faithful translation: there are, in fact, only imprecise and non-perfect translations (Lûdskanov 1967; Popovič 1975; Torop 1995), a concept which elegantly tosses aside the problem of faithfulness. To this purpose, Popovič created two new words replacing Catford's "source text" and "target text", thus sweeping away the idea of translation as a voyage and, speaking more properly, the concept of translation as replacement of words of one code with those of another. Popovič's ideas of "prototext" and "metatext" came hence to life, thus revealing that translation is not a journey: it is in fact a communication process involving signs and creating a brand new text (i.e. a secondary text, a meta-text)[13], of which the translator is the sole creative author.

Lûdskanov's great merit consists in having clearly affirmed what Jakobson vaguely implied in his studies, and that is that translation must be studied from the *semiotics* perspective (1967: 26). He defines a sign as an "object indicating another object" (*ibidem*; translation mine). More precisely, Lûdskanov uses Shaff's words to explain this process: "any real object (its real aspect and its characteristics) becomes a sign when it is used in the communication process to convey information relating to facts, thoughts, emotions or will." (quoted in *ibidem*; translation mine). Combining Lûdskanov and Sharff's notions of "sign", and how meaning is shaped, we note that a sign can be created by a word or a sound[14], or by anything we can hear or see (or both hear and see at the same time): the same goes for group of words or sounds to which we attribute meaning.

All the images and possible meanings arising in our mind when we see/hear that sign are what Sausurre and Peirce call the interpretant; what is in fact meant by that sign in that specific context

[13]This was similarly and more recently stated, in other words, by House (2009: 3), who defines translation as "the replacement of an original text with *another* text" (emphasis added.)

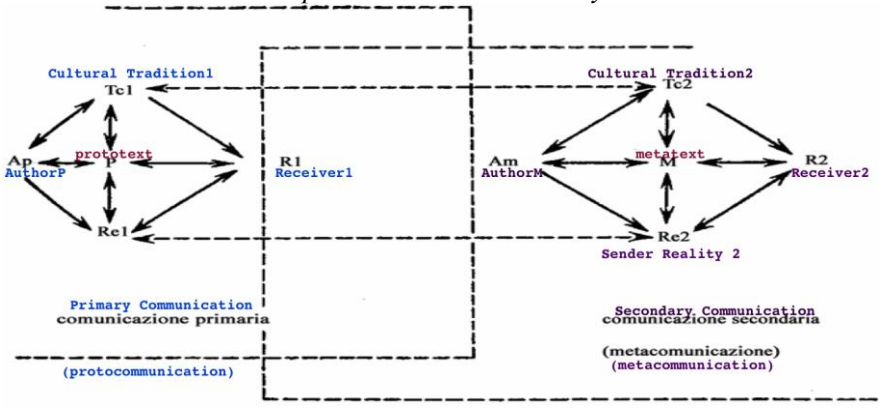
[14]Languages/cultures have sounds, symbols or gestures which similarly to written and oral texts may be translated. For example, Italians make use of sounds which generally are not listed in the IPA symbols used to transcribe Italian phonemes, nor are they reported in dictionaries: they consists in an affricate click sound which may means "no" (if lips are in their neutral position) or it may be a sound use to catch the attention of a cat. Another example of sound not listed in dictionaries is car horn: it does have a meaning -or even multiple meanings- (e.g. "Hi mate!", if you want to say hello to a friend of yours, or "Attention!" if you want to catch another's driver attention to let him brake.)

is the object. All this process is everything but unique and objective: in fact, it varies dramatically under two factors: a.) *subjectivity*; b.) *anisomorphism*. The interpretant varies according to the person (i.e. *the interpreter*) who is actually processing the sign in his mind, because his culture, his own experiences, his own view of the world, are different than those of any other person[15]. This is very much culturally-influenced, which is why one may also look at this phenomena in terms of anisomorphism, being it the property of different languages using different signs to refer to same thing (which was also proved by Sapir and Whorf in their famous hypothesis.) When one reads "tree" or hear the sound /tri:/, the ideas coming to our minds are not the same for all of us. The tree one may be used to see or to play with when s/he was a kid might be completely different than the one other people used to see, because different countries have different trees, or because even within the same country trees vary according to where they grow. So **a tree is not just a tree**. According to the idea a speaker of one language can have of a tree, the translator may in fact be in need of finding a new sign in the other language he is translating into, a sign that is not usually translated with the word "tree".

What happens when it comes to legal words? Is a *hetong* 合同 a contract, or is it an agreement? Or is it a pact? And is *dangshi ren* 当事人a party, two parties, or the parties to a contract? And what about *zeren* 责任? Is it responsibility or liability? Popovič and Lûdskanov answer to all these questions and the one I discussed in the previous sections by proposing a general translation theory illustrated as follows:

[15]Creativity in legal translation has been discussed, among the others, by Šarčević (2000).

Picture No. 1: Popovič's translation theory



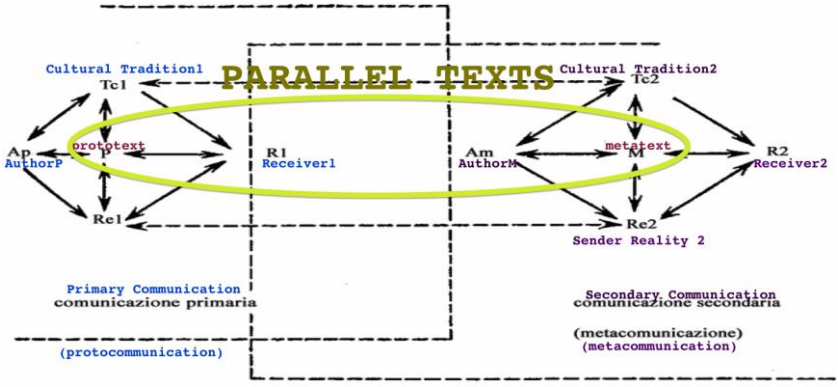
(Popovič 1975: 37)

The prototext (P) is the primary text: P is created in a cultural tradition (Tc1) to which it belongs to by its author (Ap), who had in mind a Receiver (R1), and it is divulgated and shaped by a sender reality (Re1). Besides the possible model reader, R1 can be any other reader who happens to read/listen P. All this creates what Popovič refers to as the primary communication, that is to say, the protocommunication. R1 is just *one* of the possible readers who is going to decode the signs within P and recode them (Lûdskanov 1967: 50-52) by using devices (not necessarily consisting in words) of another code/language. When M is the translation of P, R1 = Am.

So, how to translate P into M? Somewhere else, in the reality (Re2) of another cultural tradition (Tc2), where another language is spoken, the translator is to find a text as similar as possible to P (hence another metatext created by a different Am), to which the translated text (the metatext *sensu stricto*) must be compared to. The most similar text(s) to P one can find in the Re2 are what Osimo (2004: 126) defines as "parallel texts"[16]:

[16]Despite Sin-Wai Chang (2014: 509), among the many others, has recently used the term "comparable texts" as a wider category than "parallel texts", by "parallel text" I intend the Osimo's old acceptation, that is to say "two texts relating to the same field/genre". "Comparable texts" turns out to be an imprecise term, as any text can be said to be comparable -at least to some extent- to another.

Picture No. 2: Parallel texts



(Popovič 1975, 37)

3.1 Practical applications of Popovič's translation theory

Some preliminary conclusions can be drawn. It is now easy to understand that faithful and objective translations cannot exist, as translation is a subjective act: it is a very creative process for which the interpreter is called to give his own personal interpretation on the signs created within the text so to decode and recode them into another language. The M cannot be thought to be the same text as P, since M is *a brand new text* assuming -in the best scenario- just *almost* the same meaning (Eco 2003) Translation is hence a *non-repeatable* process, which is why back translation never brings to light the same P from which its M was created, and the reason why two identical translations do not and will never exist (not even if done by the same author). What Harvey (2002: 180) affirms by using Hammond's words is true: a translator is not a bilingual typist; he is a text producer. Translators *combine artistic creativity with scientific research and the study of at least two cultures* (including in this term not only the so called "human sciences", but also the "technical-scientific sciences").

Ambiguity is not the exception: it is the rule. And translators cannot be asked to maintain it in translation, since -as I underlined

before- the work of a translator necessary implies -willing or not- *interpreting* signs to rescue the intrinsic meaning of a text (thus choosing one meaning among the possible ones intended.) Also, the number of meanings is not language-related, but it varies according to the language on which the act of translation is performed (1967: 28). It is quite impossible to find out if "*hetong* 合同" intends a contract (≈ "contratto")[17], an agreement (≈ "accordo"), or a deed (≈ "atto pubblico") in a Chinese dictionary, whether these acceptations/meanings of the word "*hetong*" must be taken into account if translating from Mandarin Chinese into Italian.

A few practical examples can be further used to prove what I have been affirming so far. It is worth underlining at this point that what follows are not specific examples created *ad hoc* to prove my thesis right. On the contrary, Popovič's translation model can be seen in every translation process (even in wrong translation, where the translator chose the wrong parallel text).

I affirmed in paragraph 2.1 that signs in a text are created not only by means of words, but by any other visual element added to it. A formal document may have many graphical elements; it can, for instance, look like this:

Picture No. 3: Agreement

(http://www.sunderlandcitycouncil.com/friendship/images/agreement2.jpg; retrieved on 15/06/2015)

When translating the last lines of such a page we can choose what we want our M to look like: if we are not stating in our translation that the P was signed by the parties and that there are two emblems, we are

[17] ≈ means "is approximately equal to".

creating an imprecise translation. A "precise, word-for-word, faithful translation" would thus neglect the emblems, and provided that the two signatures above are basically illegible, would ignore them. But if we go look for the meaning of this document and its legal value, we must admit that a written agreement is legally valid if an agreements is reached at least by two parties and hence if they sign the written document. Henceforth, we cannot but recognize the importance of the two signatures and the two emblems relating to the parties: I would hence translate them "*[signed: illegible signature] [emblem]"* (using italics and squared brackets to let my reader understand that this is not something found in brackets in the P, but a device I used to recode into the M what I have found in the P). This shows how meaning is not only provided by words, but by any other sign existing in a text (including, as I said before, signs created via graphic elements).

Another interesting example can be excerpted from Section VII of the Chinese Contract Law (*Hetong Fa* **合同法** hereinafter "HTF")[18], titled *weiyue zeren* 违约责**任** To know how to translate *zeren*, what the interpreter does is generally checking up a bilingual dictionary (which equals asking another person how he generally translates the word, as said above), and then picking up one of the translations listed there, assuming that the first is the most literal, whilst the last is the freest and usually most relating to idiomatic expressions. On the contrary, a good interpreter investigates all the elements creating the Primary Communication: the HTF is a P written by one (or more) author(s) experts in laws (probably lawyers), who can be reasonably thought to be the most expert practitioners in such field. Do they choose the phrase *weiyue zeren* according to a Tc1 or did they intentionally use a new phrase? To check this, I would google the phrase and see how many and what kind of hits I obtain: I obtained 755,000 hits, and the phrase is listed in most common websites and digital encyclopaedia. I proved my hypothesis by googling the phrase in Google Books, and obtained 143,000 hits: the phrase was not invented by the Ap to convey something exceptional to their intended recipient (R1), nor is it a rare phrase. From the theoretical perspective, this kind of research means applying Popovič's translation theory by studying the Tc1 and entering the author's mind to interpret the sign

[18]I consulted the bilingual version by (Formichella and Toti 2014), so to compare my translation with theirs (to read a specific study on such a comparison, please refer to (Mannoni 2015))

they intended to create. The best explanation of a sign is its explanation in the same language used to create it[19]: «违约责任也称为违反合同的民事责任，是指合同当事人因不履行合同义务或者履行合同义务不符合约定，而向对方承担的民事责任» ("[*weiyue zeren*], also referred to as "*weifan hetong*", indicates the "*zeren*" a party has toward the other party in case of defective performance of an obligation or breach of contractual terms."; translation mine) (http://baike.baidu.com/view/299861.htm; retrieved on 16/06/2015).

The excerpts make us understand that the kind of *zeren* in question (generally translated as responsibility) relates to the *wei* 违 ("violation") of a *yue* 约 ("contract/agreement"). This *zeren* is called in English "liability for breach of contract", from which we can infer the most accurate translation of *wei* ("breach") and *yue* ("contract") in this case. Parallel texts in this example were P and all the hits having the same intended meaning as P I found on Google for the Chinese on the one side, and -in absence of a Civil Code for most of the English speaking countries- tort laws and similar hits.

Identifying a good parallel text to the P to translate it into Italian is even easier, since Italy is a civil law country and does have a Civil Code containing -among the other things- provisions relating to contracts and agreements. We just need to check art. 789 and art. 1218 to understand Italian makes use of the word "responsabilità" both to refer to liability and responsibility. By looking for other parallel texts in Google Books we can find many studies on the "responsabilità per inadempimento" also called "responsabilità contrattuale", which can then be deemed as correct translations/interpretations of the phrase in P.

Since Popovič's translation theory needs parallel texts to be brought about, when texts whose function is most similar to the P do not contain any useful term or phrase expressing the intended meaning we want to convey, this may be because the very concept we are at does not exist in the M culture. This is often the case when texts have

[19]This is true for at least 2 consequent reasons: (1) we think in a language which Lûdskanov defines "internal language" (hereinafter: L_0), hence when we speak and we use our mother tongue (L_1) we are basically performing a translation from L_0 to L_1 (Lûdskanov 1967, XIII-XV); (2) since as Popovič affirms translation is a kind of communication process, and since every communication implies a residual of meaning which gets lost in the verbalisation process, translating from L_0 to L_1 implies loosing some part of the meaning. Consequently, the same goes for bilingual dictionaries.

to be translated from a P culture with a certain legal system into a M culture with a different one (e.g.: civil law to common law) – but the same goes for many other words typical of the so-called "everyday" language (e.g. tofu is just tofu, and its Sino-Japanese pronunciation was imported as such into European languages because there is nothing one can compare it to in Western M-cultures). If we take for instance a legal document such as the Italian "Atto di Precetto", it does not have a precise word or phrase in Mandarin to translate it with, since the very functioning of the lawsuit process is different in the two countries. What is an "Atto di Precetto"? Let us see first how the phrase is structured so to understand what is the *sign* created by the words. "Atto" is etymologically related to the word "azione" (action) and thus the verb "agire" (to act). Its past participle "atto" ("acted") is used as a name in legal jargon both to refer to formal documents used in a lawsuit (hence "Atto" can be sometimes translated into English as "document", "legal document" or "instrument"), and -from a legal doctrine perspective- to refer to actions having legal value. In Mandarin, each of these acceptations would imply different translations. A document can be a *wenjian* 文件, but documents in lawsuits (such as a Power of Attorney, or a Summons) are generally referred to as *shu* 书 and *zhuang* 状 (e.g.: a POA is *shouquan shu* 授权书, whilst a summons is a *qisu zhuang* 起诉状). "Precetto" -out of the lawsuit process- means a religious precept, a maxim or teaching, and hence *order*, which is the acceptation the word has in "Atto di Precetto". Let us now turn to the function of such document in the Italian culture so to fully understand the semiotic value of the phrase in the P culture. When at the last stage of debt recovery an Italian judge has already ruled that debtor has to repay his debt to creditor and sentenced debtor to promptly perform his obligations[20], but debtor is still unwilling to do so, creditor's lawyer can write a formal document (i.e. the Atto di Precetto) to *order* for the last time the debtor to 'spontaneously' repay the debt within 10 days (art. 480, par. I, Italian Code of Civil Procedure). Failure to perform will result in the attachment of debtor's property. Henceforth, the Atto di Precetto is the final invitation to debtor to perform by virtue of a instrument -being it judicial or extrajudicial- creating an executable right (art. 474, par. I, Italian Code of Civil Procedure). One

[20]As well as under other circumstances provided for by law under art. 474, par. II of the Italian Code of Civil Procedure.

of the best parallel text that can be of help when translating Italian judicial documents -that are regulated by the Italian Code of Civil Procedure- is certainly the Law of Civil Procedure of PRC (*Zhonghua Renmin Gongheguo Minshi Susong Fa* 中华人民共和国民事诉讼法; hereinafter LCP). According to art. 224 LCP, creditor's attorney can request the Court to execute the judgment, and there is no way for the attorney to directly order the debtor to pay the debt bypassing the Court itself. Henceforth, since PRC makes no use of documents similar to the "Atto di Precetto" or "Atto di Precetto su Sentenza" (Order to Perform by virtue of Judgement), one can invent a brand new phrase explicating the meaning/functioning of the P (e.g.: *panjue zhixing shu* 判决执行书: document to execute a judgement)[21].

4. Conclusions

Text-genre related translation theories have long influenced amateur and professional translators, leading them to support false assumptions. This paper made an attempt at dismantling two interrelated common opinions and introducing Popovič's comprehensive theory as a solid alternative for translators throughout the world. Firstly, the paper made an attempt at dismantling the presumed existence of legal texts, showing that the reason why scholars have not reached an agreement on what "legal texts" can be defined as relies on the fact that the definition of legal texts itself is based on the personal definition of "legal" (Harvey 2002: 178), and text-genre is not a polarized dichotomy at all (Cao 2007: 8). Wolff (2011: 233) admits that no one has offered a comprehensive and distinctive definition of what constitutes a legal text so far, and however, the definition is solely useful to create legal-translation theories, which can seldom be applied by practitioners in consideration of the fact that many texts a "legal-translator" translates and certifies (e.g.: descriptive part of a summons, degree certificates, medical reports, …) do not fit current definitions of legal texts.

[21]For a more in-depth analysis of the translation into Mandarin of documents used in the Italian lawsuit, please refer to D'Attoma and Mannoni 2016.

Translators who do not find the relief on a more comprehensive and encompassing theory cannot but fall into the captivating light of the literalists' creed: stuck in the old debate on free Vs. literal translation, when in doubt, they would choose the allegedly most faithful, precise, word-for-word (as the WES put it), literal translation. The second common opinion this paper challenged is the presumed utility of literal translation, which considering the fact that the very notion of literality has no meaning at all, I proved to be useless and with no scientific foundation whatsoever. This was demonstrated by examples showing that "literal" cannot intend the meaning resulting from the meaning of a word's letters, nor can intend etymologically-related words in L_2 (otherwise Mandarin Chinese could not be translated into English, as a word such as *dangshiren* does not have any etymologically-related word in the target language). So "literal" just means "the most common translation and interpretation other people give to a word".

By abandoning the old cliché on free Vs. literal translation and all the text-genre related theories, a more comprehensive theory should be used. In this paper, I introduced and supported Popovič's semiotics translation theory, which gives great space to personal interpretation and anisomorphism, and makes us definitely abandon the concept of faithfulness and equivalence in translation. Faithful and objective translations cannot exist, as translation is proved to be a subjective act: it is a creative process for which the interpreter is called to give his own interpretation on the signs created within the text. The metatext cannot be thought to be the same text as prototext, since the metatext is a brand new text assuming just almost the same meaning (Eco 2003) Translation is hence a non-repeatable process. What Harvey (2002: 180) affirms by quoting Hammond's words is true: a translator is not a bilingual typist; he is a text producer, combining artistic creativity with scientific research.

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