Volume 36/2018

Comparative Legilinguistics

International Journal for Legal Communication

Faculty of Modern Languages and Literatures
Adam Mickiewicz University
Poznań, Poland

FACULTY OF MODERN LANGUAGES AND LITERATURES
KOMITET REDAKCYJNY/EDITORIAL BOARD
Editor-in-chief: Aleksandra Matulewska
Co-editor: Paula Trzaskawka
Sekretarze/Assistants: Karolina Gortych-Michalak, Paulina Kozanecka, Joanna Nowak-Michalska, Paula Trzaskawka, Emilia Wojtasik-Dziekan, Daria Zozula

External Members of the Editorial Board
Łucja Biel (Poland), Christos Bintoudis (Greece/Poland), Susan Blackwell (UK), Onorina Botezat, (Romania), Olga Burukina (Russia), Sheng-Jie Chen (Taiwan), Laura Ervo (Sweden), Ewa Kościałkowska-Okońska (Poland), Larisa Krjukova (Russia), Artur Kubacki (Poland), Lavinia Nadrag (Romania), Natalja Netšunajeva (Estonia), Kiriakos Papoulidis (Greece/Poland), Fernando Prieto Ramos (Switzerland), Judith Rosenhouse (Israel), Juliette Scott (UK), Halina Sierocka (Poland), Ning Ye (China), Cheng Le (China), Anne Wagner (France)

Section and technical editors: Karolina Gortych-Michalak, Paulina Kozanecka, Paulina Nowak-Korcz, Joanna Nowak-Michalska, Paula Trzaskawka, Emilia Wojtasik-Dziekan, Daria Zozula
Linguistic editors: Jamila Oueslati for Arabic and French, Ya Nan Zhang for Chinese, Colin Phillips for English, Karsten Dahlmanns for German, Swietłana Gaś for Russian, Eva María Rufo Sánchez-Román for Spanish

Adres Redakcji/Editorial Office
Wydział Neofilologii
Zakład Legilingwistyki i Języków Specjalistycznych
al. Niepodległości 4, pok. 218B
61-874 Poznań, Poland
lingua.legis@gmail.com

Wydanie publikacji dofinansował Wydział Neofilologii
Czasopismo znajduje się na liście ministerialnej czasopism punktowanych z 2016 roku z liczbą 7 punktów.

The electronic version serves referential purposes. Wersja elektroniczna jest wersją referencyjną czasopisma
Copyright by Faculty of Modern Languages and Literatures
Printed in Poland

ISSN 2080-5926
e-ISSN 2391-4491 (http://pressto.amu.edu.pl/index.php/cl/issue/archive)
Nakład 60 Egz.
Redakcja i skład: Zakład Legilingwistyki i Języków Specjalistycznych
Druk: Zakład Graficzny Uniwersytetu im. A. Mickiewicza

Table of Contents

Preface **5**

ARTICLES

1. Legal translation and interpreting

Margarete FLÖTER-DURR (FRANCE) L'interprétation : un problème épineux pour la traduction juridique **7**

Makiko MIZUNO (JAPAN) Interpreting in Criminal Cases in Japan: Past, Present, and Future Prospects **25**

Ming XU (CHINA) Smart learning models of certified legal translators and interpreters in China **47**

2. Reviews

Marcus GALDIA. Universal and particular features of legal language in Heikki E.S. Mattila's conception of comparative legal linguistics. **65**

Marcus GALDIA. Uniform or Pluricentric Legal Chinese? **71**

Spis treści

Wstęp **5**

ARTYKUŁY

1. Tłumaczenie prawne i prawnicze

Margarete FLÖTER-DURR (FRANCJA) Interpretacja jako nurtujący problem w przekładzie prawniczym **7**

Makiko MIZUNO (JAPONIA) Tłumaczenie prawne spraw karnych w Japonii: przeszłość, teraźniejszość i perspektywy na przyszłość **25**

Ming XU (CHINY) Modele inteligentnego uczenia się certyfikowanych tłumaczy pisemnych i ustnych w Chinach **47**

2. Recenzje

Marcus GALDIA. Recenzja książki Heikki E.S. Mattili *Vertaileva oikeuslingvistiikka*. **65**

Marcus GALDIA. Recenzja książki 《兩岸三地侵權法主要詞彙》(Liangan Sandi Qinquanfa Zhuyao Cihui). Key Terms in Tort Law of Hong Kong, Mainland China and Taiwan oraz 《兩岸三地公司法主要詞彙》(Liangan Sandi Gongsifa Zhuyao Cihui). Key Terms in Company Law of Hong Kong, Mainland China and Taiwan napisanych przez Ho-yan Chan. **71**

Preface

This volume of *Comparative Legilinguistics* contains three articles and two reviews.

The first article in this volume written by Margarete FLÖTER-DURR (France), titled *L'interprétation : un problème épineux pour la traduction juridique* touches upon legal translation and interpretation. This article aims to focus on the role of interpretation and meaning concepts and to place them back at the centre of legal translation concerns. Some of the concepts of relevance and stock of knowledge and their role in translation are highlighted and the outlines of a practical method of translation based on relevance and usage is outlined.

Makiko MIZUNO (Japan) in her article titled: *Interpreting in Criminal Cases in Japan: Past, Present, and Future Prospects* elaborates on the history of legal interpreting with reference to high profile cases, and reviews changes in communication issues in criminal proceedings involving non-Japanese speaking defendants in modern Japan. Also, the author presents prospects regarding the shift in attitude among legal practitioners toward legal interpreting against the backdrop of recent judicial reforms including the introduction of a lay judge system and visualisation of the investigation process.

Ming XU (China) in her article *Smart Learning Models of Certified Legal Translators and Interpreters in China* presents the findings in which the case study method and the data analysis tool voyant to explore smart learning models of certified legal translators and interpreters that they are supposed to grasp were used. She claims that the prerequisites about knowledge of comparative laws, legal languages and forensic linguistics are the external framework of smart learning models; and the legal translational language competence, legal translational knowledge structures, legal translational strategic competence and context of situation are the internal model.

The last texts in this volume are reviews of Heikki E.S. Mattila's book *Vertaileva oikeuslingvistiikka* and Ho-yan Chan's books 《兩岸三地侵權法主要詞彙》(*Liangan Sandi Qinquanfa Zhuyao Cihui*). *Key Terms in Tort Law of Hong Kong, Mainland China and Taiwan* and 《兩岸三地公司法主要詞彙》(*Liangan Sandi Gongsifa Zhuyao Cihui*). *Key Terms in Company Law of Hong Kong, Mainland China and Taiwan* both written by Marcus GALDIA (Monaco).

The editors hope that this volume of our journal will be of interest to its readers.

Comparative Legilinguistics
vol. 36/2018
DOI: http://dx.doi.org/10.14746/cl.2018.36.1

L'INTERPRÉTATION : UN PROBLÈME ÉPINEUX POUR LA TRADUCTION JURIDIQUE

Margarete FLÖTER-DURR, dr
Université de Strasbourg
ED 520, EA 1339 Lilpa
5, Place des Halles, 67000 Strasbourg, France
info@mg-traductions.eu

Résumé : Dans le contexte du tournant quantitatif amorcé dans le domaine de la traduction, tant pragmatique que juridique, le présent article vise à revenir sur le rôle des notions d'interprétation et de sens et à les replacer au centre des préoccupations de la traduction juridique. À partir du constat de la nécessité de l'interprétation, il s'agit de mettre en exergue l'ancrage social de toute traduction en tant qu'acte de communication et le caractère inadéquat du paradigme de l'équivalence (Sandrini, 2017) qui en résulte. À partir de la théorie de Schütz, les notions de pertinence et de stock de connaissances ainsi que leur rôle en traduction seront mises en évidence (Schütz, 2004b). Enfin, les contours d'une méthode pratique de la traduction fondée sur la pertinence et l'usage (Wittgenstein, 2004) seront esquissés.

Mots clés : traduction juridique, interprétation, sens, pertinence, équivalence, heuristique, sémantique, pragmatique, usage linguistique.

INTERPRETACJA JAKO NURTUJĄCY PROBLEM W PRZEKŁADZIE PRAWNICZYM

Abstrakt: W związku ze zjawiskiem przesunięcia ilościowego w dziedzinie tłumaczeń, zarówno w kontekście tłumaczenia pragmatycznego, jak i prawnego, niniejszy artykuł ma na celu powrót do roli takich podstawowych pojęć jak interpretacja i sens oraz umieszczenie ich w centrum rozważań na temat tłumaczenia prawnego. Wychodząc od konieczności interpretacji, w artykule uwypuklono społeczne zakotwiczenie tłumaczenia jako aktu komunikacji i wynikającej z niego niedoskonałości paradygmatu równoważności (Sandrini, 2017). W oparciu o teorię Schütza podkreślono koncepcje dotyczące sensu i zasobu wiedzy, a także ich rolę w tłumaczeniu (Schütz, 2004b). W końcowej części artykułu przedstawiono natomiast zarys praktycznej metody tłumaczenia opartej na pojęciu *sensu* (Schütz) i *użycia* (Wittgenstein, 2004).

Słowa klucze: tłumaczenie prawnicze, interpretacja, heurystyka, interpretacja prawna, semantyka, relewancja, pragmatyka, użycie języka.

INTERPRETATION AS A PERVADING PROBLEM IN LEGAL TRANSLATION

Abstract: In the context of the quantitative shift in the translation field, both pragmatic and legal, this article aims to return to the role of interpretation and meaning concepts and to place them back at the centre of legal translation concerns. Starting from the observation of the necessity of interpretation, it is a question of highlighting the social anchoring of any translation as an act of communication and the inadequacy of the paradigm of equivalence (Sandrini, 2017) which results from it. Based on Schütz's theory, the concepts of relevance and stock of knowledge and their role in translation will be highlighted (Schütz, 2004b). Finally, the outlines of a practical method of translation based on relevance and usage (Wittgenstein, 2004) will be outlined.

Key words: Legal translation, interpretation, heuristics, legal interpretations, semantics, relevance, pragmatics, language use.

1. Observations liminaires

Au cours des dernières décennies, l'essor de la linguistique de corpus et du traitement automatique des langues a contribué à transformer le domaine de la traduction professionnelle en une véritable industrie en entraînant un tournant quantitatif dans ce domaine (Biel & Engberg, 2013 : 40). La possibilité de traiter des volumes de données de plus en plus importants et de réaliser des analyses de plus en plus fines donne l'impression qu'en traduction la qualité est une propriété émergente de la quantité des données linguistiques traitées (Cassin, 2016 : 72). Les présupposés théoriques de ces disciplines s'enracinent dans le postulat logico-positiviste de la détermination du sens et dans une conception instrumentaliste et « terminologiste » du langage (Ost, 2009 : 199). D'où le succès des ontologies numériques en tout genre. Nonobstant la prévalence de cette conception en traduction, il n'en reste pas moins qu'il s'agit d'une conception réductionniste qui – en se faisant l'écho du « fantasme babélien de réduction à la langue unique » (Ost, 2009 : 18) – est inapte à rendre compte des mécanismes de la traduction entendue au sens humboldtien d'*energeia*. L'inaptitude des outils d'aide à la traduction de distinguer les nuances d'usage démontre qu'ils sont basés sur une simple substitution du mot à mot. Par conséquent, il nous semble judicieux de revenir sur ce qui constitue les fondamentaux de la traduction, à savoir les notions de sens et d'interprétation. Cet article vise à mettre en exergue la nécessité, notamment pour la traduction juridique, de se concentrer sur ces deux notions. L'accent sera mis sur la notion d'interprétation en tant qu'opération permettant l'accès au sens et la notion de pertinence en tant que mécanisme créateur de sens. À partir de la théorie de la pertinence d'Alfred Schütz (2004b), il s'agira de caractériser le mécanisme de la constitution du sens et de décrire le rôle des connaissances dans le processus de traduction et au regard du statut épistémologique du traducteur. Enfin, une méthode pratique de traduction fondée sur la notion de pertinence et d'usage sera esquissée.

2. En quoi l'interprétation est-elle une nécessité pour la traduction juridique ?

Aristote définit la nécessité comme : « Ce qui ne peut être autrement, nous affirmons qu'il en est ainsi par nécessité ». L'interprétation est une nécessité, dans la mesure où nous sommes amenés à interpréter chaque fois que « nous ne comprenons pas le sens » (Galdia, 2017 : 236). Cependant, la nécessité de l'interprétation ne résulte pas de la seule absence de compréhension, mais de l'impossibilité de comprendre autrui complètement (Endress, 2006 : 71). L'interprétation fait partie de notre activité quotidienne (Galdia, 2017 : 236), car elle est inscrite dans notre « monde de la vie », défini par Husserl à la fois comme le sol et l'horizon de toute pratique, y compris de la pratique interprétative (Perreau, 2010 : 269). Il en résulte que l'interprétation est toujours déjà là et correspond au « moment de la donation de sens » (Berner, 2007 : 40). C'est la raison pour laquelle « tous les faits sont toujours des faits interprétés » (Schütz, 2010 : 333). L'interprétation joue un rôle majeur, car elle constitue la seule opération permettant l'accès au sens, défini comme le résultat de l'interprétation (Schütz, 2003a : 184). En effet, et contrairement au principe de compositionnalité, le sens d'un texte ne résulte pas de la somme de ses mots (Rastier, 2001), puisque les mots et les phrases n'ont de signification que par « un effet systémique d'ensemble » (Ost, 2009 : 210). Le sens d'un texte se construit à partir des hypothèses interprétatives qui tiennent compte du sens d'un discours concret et des signes d'un texte concret. Dès lors, l'interprétation permet de concrétiser « une signification par nature contextuelle, pragmatique, changeante et floue » (Ost, 2009 : 211). Cependant, « l'être se disant en plusieurs sens » (Aristote, 2014 : 1837) et « le monde continuant à se penser et à s'exprimer en plusieurs langues » (Ost, 2009 : 17), la nécessité de l'interprétation s'impose à tout moment et en tout domaine. Dès lors, le droit et la traduction n'y échappent pas. L'interprétation est une nécessité primordiale, car elle fait émerger le sens qui ne la précède pas. Entre la pratique traductive et l'activité interprétative, un lien complexe et indissociable existe (Ost, 2009 : 111).

S'agissant du droit, la doxa dominante réserve depuis toujours l'interprétation au juriste (Šarcevic, 1997; Schröder, 2012)

en condamnant le traducteur à une « fidélité » au signe, au demeurant irréalisable, et en lui déniant tout droit d'interpréter, et ce nonobstant la caractérisation de l'interprétation comme une opération linguistique (Galdia, 2017 : 243). Ces tentatives d'expurger la traduction juridique de toute interprétation par le traducteur s'expliquent par les rapports complexes qu'entretiennent les juristes avec la traduction. L'interprétation juridique prend pour objet la règle du droit positif et consiste à « déterminer le sens d'un texte de loi et de l'intention du législateur » (Schröder, 2012 : 140) ainsi que des contrats (Staudinger, 2010 : 85). Elle vise à « abolir l'obscurité qui dissimule le véritable sens d'une loi » (Schröder, 2012 : 140). De cette conception de l'interprétation juridique procède la règle « *interpretatio cessat in claris* », fondée sur le postulat d'obscurité d'une loi. Ce postulat ne signifie pas qu'une règle de droit nécessite une interprétation uniquement lorsque son sens est ambigu. En effet, une loi est systématiquement « obscure » dès lors « qu'il existe des motifs pour lui trouver un sens différent » (Schröder, 2012 : 141). Cette règle heuristique méconnaît toutefois le fait qu'une règle de droit étant elle-même le résultat d'une interprétation (Niggli & Amstutz, 2006 : 157), elle nécessite systématiquement une interprétation. Il en résulte par conséquent qu'en droit, l'interprétation est une nécessité primordiale. Il en va de même en ce qui concerne l'activité traductive. Cependant, l'interprétation en droit et en traduction diffère par son objet. Si l'interprétation juridique, c'est-à-dire la qualification juridique, a pour objet la règle de droit, l'interprétation en traduction prend pour objet le sens d'un texte juridique à traduire. S'il s'agit de traduire, par exemple, un arrêt en matière de propriété industrielle, le traducteur est appelé à interpréter ce texte, et non les règles de droit qu'il invoque, pour reconstruire son sens dans la langue d'arrivée. Il nous semble que cette distinction de l'objet d'interprétation est fondamentale et permet de dépasser la doxa frappant le traducteur d'interdiction d'interpréter. Elle constitue la ligne de démarcation entre la qualification juridique et l'interprétation en traduction. Cependant, toute la difficulté qui contribue à la complexité des relations entre le droit et la traduction réside dans le fait que la qualification juridique s'opère dans le médium de l'interprétation sémantique par le traducteur. Le lien intrinsèque entre la traduction et l'interprétation ainsi que le caractère nécessaire et ubiquitaire de l'interprétation exige de placer cette notion au centre des préoccupations de la théorie

de la traduction. Pour le justifier, au moins trois raisons peuvent être invoquées : l'homonymie en langues, l'échec des paradigmes classiques de la traduction, issus de la tradition logico-positiviste, et l'émergence des approches sociologiques de la traduction (Gambier, 2007; Tyulenev, 2014; Wittgenstein, 2004; Wolf & Fukari, 2007).

En premier lieu vient le phénomène d'homonymie qui consiste à attribuer plusieurs significations à un seul nom et participe ainsi de l'instabilité du sens. L'homonymie procède de la plurivocité du sens et appelle l'interprétation. Pour la réduire et pouvoir fixer le sens d'un texte concret, il faut à tout moment opérer un choix, c'est-à-dire interpréter.

En second lieu, la nécessité de l'interprétation met en exergue l'échec des paradigmes classiques de la communication et de la traduction. Il s'agit plus particulièrement du paradigme logico-positiviste de l'immanentisme du sens et du paradigme de l'équivalence. S'agissant du paradigme communicationnel, il se fonde sur l'idée qu'il existerait « un sens littéral, immédiatement identifiable » (Rastier, 2003 : 138) et susceptible d'être transféré « de façon à conserver ce qui reste d'invariant dans l'information » (Stegmaier, 2008 : 174). Mais la langue n'étant pas exclusivement un outil de codage d'informations, mais un médium dans lequel se constitue notre monde de la vie (Taylor, 2017 : 175) et un outil heuristique permettant de l'explorer, le sens ne saurait être réduit à « une entité intermédiaire s'intercalant entre la pensée et la réalité » (Laugier, Plaud, & Chauviré, 2009: 195). Il ne saurait non plus faire l'objet d'un quelconque transfert, car – étant toujours indéterminé – il ne peut être réifié. Dès lors, le sens n'étant ni immanent aux mots ni susceptible de transfert (Hacker, 1997), il doit être nécessairement construit (Galdia, 2017; Rastier, 2001; Schütz, 2004b). En traduction, il faut donc se résoudre à renoncer au « réquisit de la détermination du sens » (TLP 3.23) (Laugier et al., 2009 : 196) pour revenir sur le « sol raboteux » (RP §107) de la langue en tant que phénomène concret (RP § 108), et de l'activité traduisante telle qu'elle se pratique concrètement dans le monde de la vie quotidienne (« die Welt des Alltags ») (Schütz, 2003a : 165). Dans ce monde intersubjectif, le sens se construit dans l'activité interprétative du traducteur *in concreto* pour chaque texte en fonction de ses contingences. S'agissant du paradigme classique de la traduction conçue en termes de recherche des équivalents (Reiss, 1971), il échoue en raison des

résonances toujours présentes de la notion logique d'implication bilatérale. De fait, l'équivalence est inapte à rendre compte des mécanismes à l'œuvre dans la traduction, et notamment du mécanisme de la sélection des unités sémantiques. En outre, l'échec de l'équivalence s'explique par le fait qu'elle ne tient pas compte de la polarité du sens qui oscille entre le sens objectif d'une part, et le sens subjectif et occasionnel, d'autre part (Schütz, 2004a : 272). Or c'est précisément dans ce mouvement oscillatoire que s'ouvre l'espace de l'interprétation.

En troisième lieu, la nécessité de placer l'interprétation au centre des préoccupations de l'activité traductive, affectée d'incertitude comme toute activité pratique, peut s'expliquer par un certain échec du paradigme herméneutique classique, défini par Schleiermacher comme « la compréhension d'un discours étranger ». Cette démarche de l'herméneutique classique semble vouée à l'échec, d'une part, en raison du caractère solipsiste de sa méthode « d'interprétation technique » où l'actualisation du sens s'opère à partir de la subjectivité du sujet interprétant, et d'autre part, en raison de l'impossibilité de comprendre autrui complètement, et ce même dans les conditions optimales d'interprétation, ce qui fait de la notion de compréhension une « notion limite » (Schütz, 2004a : 221).

Compte tenu de l'échec de ces paradigmes, faut-il pour autant conclure à l'impossibilité de traduire nonobstant le caractère ubiquitaire de la pratique traductive, tant interlinguale qu'intralinguale. Nous pensons, en suivant en cela François Ost (2009), qu'il est nécessaire de concevoir la traduction de manière plus globale en termes de processus dynamique (au sens humboldtien d'*energeia*). Cela implique de prendre en considération l'inscription de la traduction et de la pratique traductive dans le monde de la vie, d'une part, et, d'autre part, de rompre avec une approche classique de la traduction d'obédience linguistique et communicationnelle. Cette rupture ouvre la voie à une approche sociologique qui conçoit la traduction en termes de phénomène social. La traduction constitue un phénomène social dès lors qu'elle s'inscrit dans un contexte social et qu'elle est pratiquée par des individus socialisés (Tyulenev, 2014 : 5). Dans l'approche sociologique, la traduction s'analyse comme l'interprétation et comme un phénomène social interactif (Wolf et Fukari, 2007 : 9). Ainsi, les notions d'interprétation et de sens se trouvent placées au centre des préoccupations

de la traduction. Corrélativement, les notions de sélection et de pertinence acquièrent un statut fondamental. Qui plus est, l'approche sociologique met l'accent sur l'inscription de la traduction dans le monde de la vie, à la fois intersubjectif et communicatif a priori. En raison de cet ancrage, la traduction – pour réussir en tant qu'acte de communication interculturelle – doit remplir à minima un certain nombre de conditions. Elle doit en particulier permettre, autant que faire se peut, le partage des systèmes de pertinences d'une communauté linguistique. De fait, la traduction se trouve soumise à la nécessité de validation intersubjective. Ainsi, l'approche sociologique de la traduction permet de dépasser le solipsisme du paradigme herméneutique de Schleiermacher.

C'est dans ce contexte de rupture avec les paradigmes classiques de la traduction que la théorie de la pertinence de Schütz révèle tout son intérêt pour la traduction. Avant d'exposer brièvement les notions pivotales de cette théorie, il convient de s'attarder quelque peu sur la notion de sens pour en préciser la teneur. En linguistique, le sens est réduit à ce qui reste d'invariant dans le transcodage (Rastier, 2001). En théorie de systèmes de Luhman, il est conçu comme « un horizon de possibilités » (Tyulenev, 2012 : 5). En philosophie de l'orientation, le sens est défini comme le résultat d'une sélection : il correspond à l'élément sélectionné comme important ou signifiant dans une situation donnée (Stegmaier, 2008 : 153). Schütz, et à sa suite les auteurs comme Rastier et Siever, définissent le sens comme le résultat de l'interprétation (2001 : 8; 2003a : 184; 2010 : 283). Ces différentes définitions mettent en exergue l'imbrication étroite entre les notions d'interprétation, de sens et de sélection.

3. Intérêt de la théorie de la pertinence de Schütz en traduction et ses notions pivotales

Si l'on considère que les notions d'interprétation, de sens et de pertinence constituent les notions clés de la traduction, le sens ne pouvant se construire par un jeu de substitution de terme à terme (Ost, 2009 : 207), la théorie de Schütz semble particulièrement intéressante, et ce à plusieurs titres. En premier lieu, elle

est intéressante, car elle pose explicitement la question du sens. En règle générale, cette question est rarement problématisée, car le sens est considéré comme une sorte d'évidence. En second lieu, cette théorie permet d'analyser la genèse du sens et les mécanismes de sa constitution. Contrairement à la théorie de la pertinence de Sperber et Wilson (1989), la théorie de Schütz explique le mécanisme de la pertinence en termes de sélection et le caractérise comme le mécanisme heuristique fondamental. En troisième lieu, l'intérêt de la théorie schützéenne réside dans son volet épistémologique qui est de nature à expliquer le rôle des connaissances non seulement dans le processus de traduction proprement dit, mais aussi au regard du statut épistémologique du traducteur. Enfin, la théorie de Schütz est intéressante, dans la mesure où elle définit les conditions de réussite d'une communication.

La théorie de Schütz s'articule autour de trois notions principales, à savoir les notions de sens, de pertinence et de stock des connaissances. S'agissant de la notion de pertinence, Schütz l'a définie comme le phénomène général d'avoir du sens d'une part, et, d'autre part, comme la sélection de certains éléments sémantiques à partir d'un ensemble de possibilités. Ainsi, le sens se constitue dans la sélection de certains éléments, dans une situation concrète, par rapport à un arrière-plan. La pertinence joue un rôle crucial dans la constitution du sens, dans la mesure où elle commande la sélection des éléments sémantiques à retenir pour une interprétation et confère ainsi de la légitimité à l'interprétation.

Schütz distingue trois types de pertinences : la pertinence thématique, la pertinence interprétative et la pertinence motivationnelle. La pertinence thématique constitue le type le plus important de la pertinence en raison du caractère ubiquitaire du thème. C'est la raison pour laquelle la pertinence thématique a également été caractérisée comme la condition *sine qua non* de la pertinence (Greisdorf, 2000). Le thème s'entend au sens large comme un problème concret à résoudre et au sens étroit comme le thème d'un texte. La pertinence interprétative, qui constitue le second type de pertinences, vient à opérer dans l'interprétation d'un thème, c'est-à-dire dans le processus de subsomption « de l'inconnu à un déjà connu » (Schütz, 2004b). Elle permet de dégager les traits caractéristiques du thème par rapport à un type d'interprétation disponible dans le stock de connaissances et de le subsumer ainsi

à un schème d'interprétation. En traduction, la pertinence interprétative joue un rôle majeur, dans la mesure où elle permet la discrimination fine des éléments sémantiques en fonction du contexte d'usage. Enfin, le troisième type de pertinence est constitué par la pertinence motivationnelle. Elle opère en l'absence de schèmes d'interprétation adéquats dans le stock de connaissances permettant d'interpréter un thème ou de choisir entre deux interprétations concurrentes. La pertinence motivationnelle détermine la profondeur d'analyse nécessaire pour résoudre un problème. Elle présente un lien étroit avec la notion de situation et d'importance. Cependant, elle ne suffit pas pour déterminer ce qui est important dans une situation concrète, car les deux autres types de pertinence y contribuent également. C'est pourquoi, pour Schütz, les différents types de pertinences n'existent pas isolément, mais forment des systèmes de pertinences dans lesquels les différents types de pertinences s'influencent de manière réciproque et récursive. La fonction des systèmes de pertinences, qui sont déterminés linguistiquement et culturellement, consiste à fournir un cadre commun et non questionné de l'interprétation, à déterminer les éléments de connaissances à retenir et les méthodes à utiliser pour interpréter (Schütz, 2003a : 191). Ce cadre commun d'interprétation constitue un élément indispensable à toute communication. En effet, selon Schütz, la communication n'est possible qu'à condition pour les protagonistes de partager pour l'essentiel, les systèmes de pertinences. En l'absence de systèmes de pertinences partagés ou de divergences trop importantes, la communication n'est pas possible ou devient difficile.

S'agissant de la notion de stock de connaissances, elle constitue le pivot de l'épistémologie schützéenne. Le stock de connaissances est défini comme la réserve de schèmes d'interprétation. Sa fonction consiste à fournir un cadre commun de référence dans lequel opèrent les différents types de pertinences. Le stock de connaissances, déterminé à la fois linguistiquement, culturellement, historiquement et individuellement, est un corpus de connaissances hétérogènes, en constante évolution. Il est également vecteur de pertinences thématiques et interprétatives et, à ce titre, il permet la compréhension réciproque. En traduction, le stock des connaissances joue un rôle crucial sur un double plan : d'une part sur le plan de la traduction proprement dite et, d'autre part, sur le plan du statut épistémologique du traducteur. Dans le processus

de traduction proprement dite, les connaissances mobilisées par le traducteur contribuent à créer un espace partagé de communication lorsque l'interprétation retenue par le traducteur et les éléments de connaissances sélectionnés permettent d'activer chez l'utilisateur de la traduction les schèmes d'interprétation adéquats. Sur le plan du statut épistémologique, le stock de connaissances permet de stabiliser la position du traducteur dans la communication spécialisée. Force est, en effet, de constater que dans la communication d'expert à expert, la position du traducteur est marquée par une double précarité qui résulte du « différentiel des savoirs » entre le traducteur et l'expert (Froeliger, 2013 : 33), d'une part, et d'autre part, de la position de médiateur qu'occupe le traducteur. Sur le plan des connaissances disciplinaires, le statut du traducteur est toujours celui d'un profane, car – en règle générale – il ne peut prétendre à avoir des connaissances d'expert dans une spécialité donnée. S'agissant de la position du médiateur, elle est intrinsèquement liée au statut du traducteur dans la communication, dans la mesure où celui-ci se tient toujours dans l'intervalle entre deux langues, deux univers sémantiques et deux systèmes juridiques (Cassin, 2016 : 229). Or, toute la médiation ayant vocation à disparaître dès que son objectif est réalisé (Alloa, 2009 : 251), le traducteur-médiateur s'assimile en quelque sorte à l'échelle de Wittgenstein : il permet grâce à sa traduction de réaliser un objectif pragmatique tout en disparaissant derrière le voile de l'invisibilité imposé par la doxa académique. Dans ces conditions, l'acquisition des connaissances disciplinaires permet au traducteur de combler le clivage des connaissances et des pertinences, de s'approprier le registre spécifique d'une discipline scientifique au sens d'un système sémiotique de significations (Halliday, 1975 : 66) ainsi que l'archive au sens de Foucault (1969). Ainsi, le traducteur acquiert la faculté de parler à partir de la même archive que le juriste ce qui stabilise sa position épistémologique à l'égard de celui-ci. L'appropriation des connaissances disciplinaires et la maîtrise du registre et de l'archive font passer le traducteur du statut de profane au statut de professionnel, apte à avoir une « vision synoptique », RP § 122 (Wittgenstein, 2004) d'un domaine des connaissances, c'est-à-dire une vision qui procure la compréhension des « contextes de sens » (Schütz, 2004a : 189).

4. Méthode pratique de la traduction : pertinence et usage

Compte tenu de l'asymétrie des conditions de la constitution de sens d'une langue à l'autre et de la contingence tant de la pratique traductive (Dewey, 2014 : 38) que de la traduction au sens humboldtien de l'*ergon*, la question qui se pose avec acuité au traducteur est la question de la méthode permettant de reconstruire le sens du texte source dans le texte cible. En raison de l'ancrage de la traduction dans le réel (Froeliger, 2013 : 70), il est possible, à notre sens, de proposer une méthode pratique de traduction fondée sur la notion de pertinence de Schütz, associée à celle d'usage de Wittgenstein (RP, § 43).

S'agissant de la notion d'usage, elle apparaît comme « la cause fondamentale d'émergence des formes linguistiques » (Legallois et François, 2011 : 8). L'usage renvoie à l'utilisation et à l'emploi, d'une part, et d'autre part, à l'habitude et à la régularité. Pour être pourvu de sens, l'emploi des expressions lexicales et des structures syntaxiques et phrastiques doit être habituel et régulier. Sur le plan linguistique, l'usage au sens de l'habitude est créateur « d'un ensemble de solidarités lexicales et syntaxiques » (2011 : 10) qui sont révélatrices « des structures de sens » (Schlicht von Rabenau, 2014 : 252).

Pour Wittgenstein, la notion d'usage constitue le fil rouge de sa philosophie. Sa découverte majeure consiste à avoir compris que le langage, et donc toute langue en tant que manifestation particulière du phénomène du langage, « n'a de vie et de vérité que dans ses usages » (Laugier, 2009 : 15). La notion d'usage en tant que vecteur du sens est présente chez Wittgenstein dès le Tractatus logico-philosophique (TLP 3.326). C'est donc très tôt que Wittgenstein associe l'usage au sens, car l'usage pourvu de sens est « la seule donnée que nous ayons du sens » (Laugier, 2009 : 59). Dès lors, ni les états mentaux ni les intentions ne sauraient être constitutifs de sens (Cavell, 2009; Kellerwessel, 2009; Wittgenstein, 2004). Dans les Recherches Philosophiques, qui correspondent à la seconde phase de sa philosophie, la conception de l'usage évolue : désormais, l'usage ou l'emploi détermine les manifestations diversifiées de la logique d'une langue (Schlicht von Rabenau, 2014 : 213). Dès lors, il n'y a plus de sens déterminé en soi, mais

uniquement un sens déterminé dans l'usage (RP, § 43). Par ailleurs, le monde de la vie quotidienne étant régi par l'intérêt pragmatique, la logique, et avec elle le postulat du sens déterminé, n'y occupent que peu de place. Cependant, reconnaître à l'usage – et non à un état mental ou intentionnel – le pouvoir de conférer le sens à un signe n'équivaut pas pour autant à renoncer à la logique. Wittgenstein opère un déplacement du terrain sur lequel se manifeste la logique pour la situer dans l'usage, c'est-à-dire « sur le sol raboteux » de la pratique (RP, § 107). Si la notion d'usage est capitale selon nous, pour la traduction, c'est précisément, dans la mesure où la traduction s'articule toujours dans l'action et opère sur le terrain marqué par les aspérités de la pratique concrète d'une langue singulière. Pour le traducteur, il importe donc avant tout de se poser la question de savoir : « Ce mot est-il effectivement utilisé ainsi dans la langue dans laquelle il puise son origine ? » (RP, § 116). En d'autres termes, pour traduire, nul besoin de savoir ce qu'est la signification ou le sens en soi. Ce qui importe c'est de s'attacher à observer et à apprendre les usages linguistiques dans leur multiplicité (Laugier, 2009 : 160). Bien entendu, il ne s'agit pas de n'importe quel usage, mais seulement de l'usage « pourvu de sens », c'est-à-dire linguistiquement normé. En effet, comme le précise Wittgenstein, l'usage linguistique est structuré par des règles de la grammaire « entendue comme une série des usages d'un mot ou d'une expression » (Laugier, 2009 : 155). Or, les règles grammaticales de l'usage correct ne procèdent pas des principes « appliqués intérieurement ou de manière individuelle » (Moyal-Sharrock, 2012 : 222), mais des normes propres à une communauté linguistique. Chaque communauté linguistique se dote de ses propres normes qui déterminent ce qu'elle considère comme « sa Weltanschauung relative-naturelle socialement approuvée », l'usage normé tant lexical que syntaxique reflétant « le système de pertinences socialement approuvé par une communauté linguistique donnée » (Schütz, 2003b : 189). Ainsi, le système de pertinence permet d'articuler la notion d'usage et celle de pertinence : l'usage pourvu de sens est vecteur des pertinences.

La structure de l'usage étant déterminée par les normes et par les exigences pragmatiques d'une situation de communication concrète, l'usage ne peut s'acquérir que dans la pratique. En d'autres termes, cela signifie que l'usage s'apprend dans l'interaction sociolinguistique, et donc par acculturation (Moyal-Sharrock, 2012 : 222). Car c'est dans l'imbrication de l'action et de la situation

concrète que le sens prend sa source. L'apprentissage dans la pratique implique le drill (« Abrichtung »), l'entraînement et l'exposition répétée à l'usage, c'est-à-dire « l'exercice à énoncer certains mots dans certaines situations » (Moyal-Sharrock, 2012 : 215). Le drill s'entend au sens d'une méthode fondée sur l'imitation qui implique une interaction dans laquelle un agent « montre comment utiliser un mot » (« vormachen ») et l'autre l'imite (« nachmachen ») ».

L'intérêt majeur de la notion d'usage pour la traduction consiste en premier lieu dans son accessibilité à l'observation et à l'acquisition par l'apprentissage dans la pratique. En second lieu, son intérêt réside dans le fait qu'il soit le révélateur du sens (Laugier, 2009 : 52) de telle sorte que la question de l'intention auctoriale, au demeurant inaccessible au traducteur, devient superfétatoire. En d'autres termes, le dire et le sens étant inextricablement liés, la distinction entre le sens et le vouloir dire n'est pas opératoire.

En opérationnalisant les concepts d'usage et de pertinence, notre méthode permet une sélection adéquate, c'est-à-dire apte à faire émerger le sens, d'une solution de traduction parmi un ensemble de solutions disponibles en tenant compte des connaissances thématiques pertinentes pour le destinataire et des structures de pertinences inhérentes à la langue d'arrivée. Cette méthode permet, par voie de conséquence, d'activer les schèmes d'interprétation et les potentialités de sens qui leur sont inhérentes. La sélection pertinente se révèle dans l'usage d'un appareil conceptuel et terminologique conforme au corpus d'une discipline donnée, d'une part, et, d'autre part, dans le respect des solidarités lexicales et syntaxiques ainsi que des conventions stylistiques qui lui sont propres. De fait, cette méthode participe de la vision synoptique de la problématique abordée par le texte traduit et elle permet à l'utilisateur de la traduction de (mieux) s'orienter (Schlicht von Rabenau, 2014; Schulte, 2016). Qui plus est, la méthode que nous proposons permet au traducteur d'acquérir l'aptitude à écrire de façon naturelle ce qui est considéré comme la plus haute marque de qualité d'un texte traduit (Salkie, 1997).

5. Conclusion

Pour conclure, nous pouvons dire qu'à condition de considérer l'interprétation comme une opération clé, la traduction juridique sera à même de s'affranchir du carcan dans lequel l'a enfermée l'approche logico-positiviste. En effet, si le sens n'est pas prédonné, mais se construit, l'interprétation constitue l'unique opération qui permet d'y accéder (Schütz, 2004b) et acquiert de fait le statut d'une notion centrale.

En l'absence de règle permettant le passage d'un univers sémantique à un autre et faute de méthode de traduction *per se*, la méthode fondée sur l'apprentissage des pertinences thématiques et interprétatives, d'une part, et d'autre part, sur l'observation et l'apprentissage de l'usage semble être un outil pratique adapté pour permettre au traducteur de se libérer par lui-même du « piège à mouches » (RP, § 309), où plutôt « du piège à étiquettes » (Durieux, 2009 : 353). En fournissant au traducteur les outils méthodologiques pour apprendre les règles de l'usage pourvu de sens dans chacune de ses langues de travail, la méthode que nous proposons permet au traducteur d'être à même de « savoir comment continuer, comment aller par-delà le contexte d'apprentissage vers de nouveaux usages dans de nouveaux contextes » (Moyal-Sharrock, 2012 : 229). En mettant l'accent sur les notions d'usage, de pertinence, et donc aussi sur celle d'interprétation qui leur est intrinsèquement liée, cette méthode permet non seulement de produire des traductions pertinentes, mais ouvre aussi le champ à la créativité du traducteur. De fait, elle contribue aussi à améliorer la perception du texte traduit et du traducteur aux yeux des utilisateurs.

Bibliographie

Alloa, Emmanuel. 2009. Metaxu. Figures de médialité chez Aristote. *Revue de Métaphysique et de Morale, 02*(62): ss. 247-262.

Aristote. 2014. Métaphysique. In *Oeuvres complètes*, red. Pierre Pellegrin. Paris: Flammarion.

Berner, Christian. 2007. *Au détour du sens*. Paris: Les Editions du Cerf.

Biel, Lucja, Jan Engberg. 2013. Research models and methods in legal translation. *Linguistica Antverpiensia - New Series - Themes in Translation Studies*(12): ss.1-11.

Cassin, Barbara. 2016. *Éloge de la traduction*. Paris: Fayard.

Cavell, Stanley. 2009. *Dire et vouloir dire*. Paris: Les Editions du Cerf.

Dewey, John. 2014. *La quête de la certitude*. Paris: Gallimard.

Durieux, Christine. 2009. Vers une théorie décisionnelle de la traduction. *Revue LISA / LISA e-Journal [En ligne],), VII*(3): 350-368, (consulté le 5 juin 2017).

Endress, Martin. 2006. *Alfred Schütz*. Konstanz: UVK Verlagsgesellschaft.

Foucault, Michel. 1969. *L'archéologie du savoir*. Paris: Gallimard.

Froeliger, Nicolas. 2013. *Les noces de l'analogique et du numérique*. Paris: Les belles lettres.

Galdia, Marcus. 2017. *Lectures on Legal Linguistics*. Frankfurt am Main: Peter Lang.

Gambier, Yves. 2007. Y-a-il place pour une socio-traductologie. In *Constructing a sociology of translation,* red. Michaela Wolf et Alexandra Fukari, 205-218. Amsterdam, Philadelphia (Pa.): J. Benjamins.

Greisdorf, Howard. 2000. Relevance: An Interdisciplinary and Information Science Perspective. *Informing Science: The International Journal of an Emerging Transdicipline, volum 3, n°*2: 68-71, https://www.informingscience.org/Journals/Informing SciJ/Articles?/volume=3-2000 (consulté le 5 mai 2015).

Hacker, Peter, M. S. 1997. *Wittgenstein im Kontext der analytischen Philosophie*. Frankfurt am Main: Suhrkamp.

Halliday, Michael. 1975. *Learning How to Mean: Explorations in the Developement of Language.* Londres: Edward Arnold.

Kellerwessel, Wulf. 2009. *Wittgensteins Sprachphilosophie in den "Philosophischen Untersuchungen". Eine kommentierende Ersteinführung*. Frankfurt: Ontos Verlag.

Laugier, Sandra. 2009. *Wittgenstein. Le sens de l'usage*. Paris: Vrin.

Laugier, Sandra, Sabine Plaud et Christiane Chauviré. 2009. *Lire les Recherches Philosophiques*. Paris: Vrin.

Legallois, Dominique et François, Jacques. 2011. La linguistique fondée sur l'usage : Parcours critique. *Travaux de linguistique*(62): ss. 7-33.

Moyal-Sharrock, Danièle. 2012. *De la certitude* contre le nativisme. In *Lectures de Wittgenstein,* red. Christiane Chauviré et Sabine Plaud, 209-232. Paris: Ellipses.

Niggli, Marcel, Alexander et Marc Amstutz. 2006. Recht und Wittgenstein IV. Zur sprachtheoretischen Unmöglichkeit der Gewaltenteilung. In *Du monde pénal. Droit pénal, criminologie et politique criminelle, police et exécution de sanctions, procédure pénale. Mélanges en l'honneur de Pierre-Henri Bolle*, red. Piermarco Zen-Ruffinen, 157-171. Bâle.

Ost, François. 2009. *Traduire: Défense et illustration du mulilinguisme*. Paris: Fayard.

Perreau, Laurent. 2010. Le monde de la vie. In *Lectures de Husserl,* red. Jocelyn Benoist et Gérard Vincent, 251-272. Paris: Ellipses.

Rastier, François. 2001. *Art et sciences du texte*. Paris: Presses universitaires de France.

Rastier, François. 2003. Herméneutique et linguistique : dépasser la méconnaissance. *Revue - texto [en ligne]*. http://www.revue-texto.net/Dialogues/Debat_Hermeneutique/Rastier_Herm-et-ling.html (consulté le 4 avril 2016).

Reiss, Katharina. 1971. *Möglichkeiten und Grenzen der Übersetzungskritik: Kategorien und Kriterien für eine sachgerechte Beurteilung von Übersetzungen*. München: Hueber.

Salkie, Raphaël. 1997. Naturalness and Contrastive Linguistics. In *Practical Applications in Language Corpora,* red. Lewandowska-Tomaszczyk Barbara et Patrick James Melia, 297-312. Lodz: Lodz University Press.

Sandrini, Peter. 2017. Der Wert ungleicher Lösungen: Wider ein unangebrachtes Äquivalenzdenken. In *Quo Vadis, Rechtsübersetzung?,* red. Jana Raksanyiova, 77-99. Bratislava: Univerzita Komenského, v Bratislave.

Šarcevic, Susan. 1997. *New Approach to legal translation*. The Hague: Kluwer Law International.

Schlicht von Rabenau, Mathias. 2014. *Der philosophische Begriff des Gebrauchs*. Münster: mentis.

Schröder, Jan. 2012. *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit (1500-1933)*. München: C. H. Beck.

Schulte, Joachim. 2016. *Wittgenstein. Eine Einführung.* Stuttgart: Reclam

Schütz, Alfred. 2003a. *Theorie der Lebenswelt 1. Zur pragmatischen Schichtung der Lebenswelt.* Konstanz: UVK Verlagsgesellschaft.

Schütz, Alfred. 2003b. *Theorie der Lebenswelt 2. Zur kommunikativen Ordnung der Lebenswelt.* Konstanz: UVK Verlagsgesellschaft mbH.

Schütz, Alfred. 2004a. *Der Sinnhafte Aufbau der sozialen Welt.* Konstanz: UVK Verlagsgesellschaft.

Schütz, Alfred. 2004b. *Relevanz und Handeln 1. Zur Phänomenologie des Alltagswissens.* Konstanz: UVK Verlagsgesellschaft mbH.

Schütz, Alfred. 2010. *Zur Methodologie der Sozialwissenschaften.* Konstanz: UVK Verlagsgesellschaft mbH.

Siever, Holger. 2010. *Übersetzen und Interpretation. Die Herausbildung der Übersetzungswissenschaft als eigenständige wissenschaftliche Disziplin im deutschen Sprachraum von 1960 bis 2000*. Frankfurt am Main: Peter Lang.

Sperber, Dan et Deirdre Wilson. 1989. *La pertinence: Communication et cognition*. Paris: Les Editions de Minuit.

Staudinger, J. 2010. *Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz une Nebengesetzen*. Berlin: Sellier – de Gruyter.

Stegmaier, Werner. 2008. *Philosophie der Orientierung*. Berlin: Walter de Gruyter.

Taylor, Charles. 2017. *Das sprachbegabte Tier. Grundsätze des menschlichen Sprachvermögens*. Berlin: Suhrkamp.

Tyulenev, Sergey. 2012. *Applying Luhmann to translation studies*. New York (N.Y.); London: Routledge.

Tyulenev, Sergey. 2014. *Translation and Society. An introduction*. London; New York: Routledge.

Wittgenstein, Ludwig. 2004. *Recherches Philosophiques*. Paris: Gallimard.

Wolf, Michaela et Alexandra Fukari. 2007. *Constructing a sociology of translation.* Amsterdam, Philadelphia (Pa.): J. Benjamins.

Comparative Legilinguistics
vol. 36/2018
DOI: http://dx.doi.org/10.14746/cl.2018.36.2

INTERPRETING IN CRIMINAL CASES IN JAPAN: PAST, PRESENT, AND FUTURE PROSPECTS

Makiko MIZUNO, Professor
Kinjo Gakuin University
Department of English, College of Humanities
15-30, 2-chome, Obata-minami, Moriyama-ku, Nagoya, Japan
m-mizuno@kinjo-u.ac.jp

Abstract: In the extant literature in Japan, the description of criminal cases involving foreigners goes back to around the fifth century; however, detailed depictions of language problems requiring legal interpreters started to appear in the Edo period (1603–1868). The cases of an Italian missionary who entered Japan illegally in 1709 and the robbery of Ainu graves by British consular officers in 1865 presented communication difficulties between the interrogator and accused in criminal procedures. This is common even today. This paper introduces the history of legal interpreting with reference to high profile cases, and reviews changes in communication issues in criminal proceedings involving non-Japanese speaking defendants in modern Japan. It also presents prospects regarding the shift in attitude among legal practitioners toward legal interpreting against the backdrop of recent judicial reforms including the introduction of a lay judge system and visualisation of the investigation process.

Key words: history, criminal procedures, communication difficulty, legal interpreting, fair judicial proceedings

日本における刑事手続きの通訳：過去、現在、今後の展望

Abstract: 日本の歴史において外国人が関わった刑事事件の記録は 5 世紀に遡るが、司法通訳に関する記述が現れるのは江戸時代からである。1709 年のイタリア人宣教師の密入国事件や 1865 年のイギリス領事館員によるアイヌの遺骨盗掘事件における尋問者と被疑者との間のコミュニケーションの難しさは、今日の刑事手続きにも共通するものである。本稿では、いくつかの有名な事件を軸に、日本の司法通訳の歴史を紹介するとともに、現代日本の外国人が関わる刑事手続きにおけるコミュニケーション問題の変化について考察する。さらに、裁判員制度導入や捜査の可視化を含む近年の司法改革を背景に、司法通訳に対する法律実務家の考え方の変化や今後の展望についても論じる。

Key words: 歴史、刑事手続き、コミュニケーションの困難性、司法通訳、公正な司法手続き

TŁUMACZENIE PRAWNE SPRAW KARNYCH W JAPONII: PRZESZŁOŚĆ, TERAŹNIEJSZOŚĆ I PERSPEKTYWY NA PRZYSZŁOŚĆ

Abstrakt: W istniejącej literaturze przedmiotu opis spraw kryminalnych z udziałem cudzoziemców sięga około piątego wieku. Jednak szczegółowe opisy problemów językowych wymagających udziału tłumaczy prawniczych zaczęły pojawiać się w okresie Edo (1603-1868), np. przypadek włoskiego misjonarza, który nielegalnie wjechał do Japonii w 1709 r., a także rabunek grobów Ainu przez brytyjskich urzędników konsularnych w 1865 r., wskazywały na trudności komunikacyjne między śledczym i oskarżonym w postępowaniu karnym. Jest to powszechne nawet dzisiaj. Niniejszy artykuł przedstawia historię tłumaczeń ustnych w odniesieniu do znanych przypadków, a także analizuje zmiany w kwestiach komunikacyjnych w postępowaniu karnym, w którym udział biorą osoby spoza Japonii. Przedstawiono również perspektywy dotyczące zmiany podejścia prawników do interpretacji prawnej na tle niedawnych reform sądownictwa, w tym wprowadzenia ławników i wizualizacji procesu dochodzenia.

Słowa kluczowe: historia, procedury karne, trudności komunikacyjne, tłumaczenie ustne, sprawiedliwe postępowanie sądowe

1. Introduction

In Japan, the issue of legal interpreting began drawing attention during the economic boom period called 'the bubble economy', which occurred between the latter half of the 1980s and early 1990s. During this period, a large number of immigrant workers came to Japan mainly from Asian and South American countries to fill the workforce shortage. Many of these workers did not speak Japanese. With the increasing number of foreign workers, criminal cases involving non-Japanese speaking people also increased, and a communication breakdown in court, police interrogations, and interviews by defending counsellors emerged as a serious problem. In the last three decades, the government has been addressing this language barrier problem and established a system to recruit legal interpreters, who are appointed to all cases involving non-Japanese speaking defendants or witnesses. However, in terms of quality control, much remains to be done. For example, there is no public certification system or systematic training program for interpreters incorporating proper skills training like that for conference interpreters. Without a certification system, there is no way to detect and dismiss poorly performing interpreters, and without a proper training system, there are no opportunities for interpreters to improve their skills. Recently, the attitude of legal practitioners toward this issue has been gradually changing for the better, and while slow, reform of the system of legal interpreting seems to be moving forward.

Examining history, since the time the nation established laws—nationwide or local, primitive or sophisticated—violators thereof have been tried, judged, and punishments executed. Some criminal cases involved people not able to communicate without the help of interpreters. Political or social situations varied depending on the time, as did how to deal with the crimes. Some periods were characterised by active interchanges with people from abroad, while in others, such exchanges were diminished or prohibited. How people dealt with criminal cases involving foreigners and the communication issues in previous eras are interesting topics to pursue. The present situation of legal interpreting, which has not yet fully matured, and its future prospects can be positioned as an extension of past events.

2. Interpreting in criminal cases in old Japan

2.1 Ancient times

In Japanese history, descriptions of criminal cases involving foreigners date back to around the fifth century. Most cases were political or diplomatic including cases of espionage. There was even an adultery case (429) involving a high-class official of the Japanese royal court and a woman presented to the emperor by the Baekje [百済](ancient Korean kingdom) government (Shigematsu 1986). In those days, many people from China and Korean peninsula played important roles in Japan, which was linguistically international. Thus, many people were likely able to act as interpreters when necessary.

In the official records, interpreting as a profession first appeared in 607. Here, the term 'Osa [日佐]' referred to 'interpreter'. Details of interpreters in the eighth and ninth centuries are clarified in several official documents. In those days, Chinese was regarded the Lingua Franca of East Asia, and was a diplomatic language exclusively used in official scenarios. Furthermore, a national system to train the lowest class court officials as interpreters existed. In addition to China (the then Tang [唐] dynasty), Japan had active exchanges with Balhae[渤海] (a former mixed Korean-Mohe empire that existed from 698 AD to 926 AD in Manchuria) and Silla [新羅](a kingdom located in the southern and central regions of the Korean Peninsula from 57 BC to 935 AD). Interpreters of these regions' languages existed and it is likely that in the scenes other than official diplomatic scenes those interpreters were used. It is interesting to compare two cases of the interrogation of foreigners who arrived on ships that drifted onto the shores of Japan. One was a pirate ship from Silla (811 AD), and the other was from Balhae, on board of which was the nation's official delegates to China (873 AD). For the interrogation of the former, the government branch office located in Dazaifu [大宰府] in the northern part of Kyushu [九州] sent a Silla language interpreter (Yuzawa 2010: 122). However, in the latter case, the same government office sent a Chinese language interpreter, despite that those on board the ship were from Balhae (Yuzawa 2010: 78–81). This was likely because this was an embassy ship taking envoys to China; thus, the Japanese side

may have assumed that some people in the party spoke Chinese. In addition, there was an agreement between Japan and Balhae that Chinese would be used as their official language of communication (Yuzawa 2010: 81–82).

2.2 The middle ages

In the Kamakura [鎌倉] era (1185–1333) and Muromachi [室町] era (1336–1573), exchanges with foreign countries centred on economic and cultural aspects. Chinese was still the Lingua Franca, and intellectuals in the countries surrounding China employed Chinese as an official diplomatic language.

The great Yuan [元] dynasty controlled much of East and North Asia between 1271 and 1368, causing great turmoil in the region. *Genko* ［元寇］, the Mongolian Invasions of Japan, which took place in 1274 and 1281, were the most noteworthy international incidents in medieval Japan. Before the invasion, the Yuan government sent envoys including people from Goryeo [高麗] (kingdom of Korea; 918–1392), which was under the control of Yuan, to Japan with a letter written in Chinese demanding Japan to become their vassal state. They sent envoys six times. The Japanese government ignored the letters, so Yuan sent their battleships in 1274 to Japan to conquer the country, attacking several islands and Hakata [博多] Bay on the mainland. After the fierce fighting between the allied force of Yuan and Goryeo and the samurai warriors of Japan, ships of the allied force had disappeared next morning. According to the common belief, a great storm struck the area, capsizing most of their ships and killing numerous soldiers, ultimately ending the war. However, in 1275, Yuan again sent envoys to Japan, this time with an official letter from China (then Sung [宋] dynasty) telling Japan that even China had already been conquered by Yuan and Japan should become their vassal state. This time, the response of the Japanese government was simple: They immediately executed the envoys. Yuan sent more envoys, which were again immediately executed by the Japanese government. Finally, in 1281, Yuan sent the naval force to Japan, but this was struck by another heavy storm, which sunk the fleet (Tamagawa Gakuen, Tamagawa University and Taga, Kenji). Yuan's envoys included interpreters, who were

involved in the negotiations. However, no legal procedures were followed when the envoys were executed, and they did not have the opportunity to be tried in an interpreter-mediated court, but perhaps faced only interpreter-mediated sentencing.

2.3 The Edo period

The Edo [江戸] period (1603–1868) was characterised by its seclusion policy. Japanese people were not allowed to go abroad, and foreigners were prohibited from entering Japan. During this period, only Chinese and Dutch merchants were allowed entry to Nagasaki [長崎], a town located in the southern part of Japan. However, the Dutch had to stay in Dejima [出島], a small manmade island.

The system of interpreting by professionals had already been established by the Edo period, having been implemented during the preceding era of trading with Portuguese and Spanish merchants. All interpreters were government officials whose positions had been passed between generations in the same family. There were about 25 venerable interpreter families, among which a strict hierarchy existed. Young children of interpreter families, usually the eldest sons, were sent to the Dutch trading house in Dejima, where they were taught the language by native speakers. After finishing the courses, they were expected to pass exams to work as interpreters. As such, a good system to train interpreters was in place. In addition to interpreting and translation, interpreters were also involved in the trading business (Katagiri 1985: 34–35).

Even in the closed area in Nagasaki, many troublesome incidents involving foreigners, including violence and rioting, occurred. Here, the interpreters played an important role in settling such incidences. In some cases, foreigners tried to smuggle goods into Japan or foreign ships drifted onto Japanese shores. Next, interesting criminal cases involving foreigners in the Edo period are briefly outlined.

2.3.1 The Sidocci Case

In 1708, a Christian missionary sent to Japan from the Vatican, Giovanni Batttista Sidocci, was caught in Yaku Island [屋久島], Kumamoto [熊本], trying to enter the country illegally. He dressed like a Japanese person, but his facial features, which were not Japanese, and inability to speak Japanese immediately exposed him as a smuggler. He was arrested and interrogated by Gen-e-mon Imamura [今村源右衛門], a competent Dutch-Japanese interpreter. As a government official, interpreters often played a role of a bilingual investigator. Imamura found it impossible, however, to communicate with Sidocci in Dutch. Thus, they asked Dutch merchants stationed in Dejima for help, but they were also unable to understand his language. According to a record, he spoke a strange language, a blend between Italian, Japanese, and other languages. Finally, they decided to interrogate him in Latin, which five interpreters intensively learned from the Dutch merchants who understood the language. After ten days of intense learning, the interrogation resumed. It was found that he was sent by the Vatican to missionize the Japanese people. In Japan, Christianity was strictly banned; thus, this was considered a serious case, and Sidocci was sent to Edo where the central government engaged in further interrogation, which was conducted by Hakuseki Arai [新井白石], a renowned scholar and influential politician. Painstaking, the interrogation lasted for four days, and communication through the make-do Latin interpreters was likely very difficult. Sidocci was sentenced to lifetime imprisonment, not the death penalty, which was common for cases related to Christianity. It has been said that his sentence was more lenient because Arai liked his personality.] (Katagiri 1995: 89–139).

2.3.2 The case of the robbing of Ainu graves

This case occurred at the end of the Edo period after Japan's seclusion policy was terminated. Some Japanese ports such as Hakodate[函館], Hokkaido [北海道] had opened to foreign countries. In 1865, the Hakodate magistrate, Koide Yamato-no-kami [小出大和守], went to the British Consulate to complain that three consulate officers had

stolen the remains from graves in an Ainu [アイヌ] village (Hori 2011: 263). At the time, anthropological interest in the Ainu aborigines had increased among European scholars, who eagerly wanted to obtain the bones of these people. This is merely one case involving the stealing and secret shipping of Ainu bones.

The magistrate, Koide, took a firm attitude toward the consulate officers who had stolen the remains, although at the time, most Japanese government officials bent to the pressures of advanced Western countries. He tried to conduct a full investigation to clarify the facts. During this period, the extraterritorial rights of foreigners meant that Japan could not bring these suspects to court for trial. Thus, it was important to prepare fairly gathered irrefutable evidence to convince the Consul to incriminate the suspects. Therefore, an excellent interpreter was crucial.

Until Japan opened, Dutch was the primary language for interpreting. After the country opened, other languages became important, especially English. Training English interpreters was an urgent need for Japan. As the northern entrance to Japan, English learning was very active in Hakodate, which housed a group of excellent English interpreters. These well-trained interpreters were all sent to Edo, the political centre of Japan, upon the request of the central government, which had to negotiate with delegates from foreign countries in the surrounding areas, which were characterized by a serious shortage of English-speaking interpreters. To replace those interpreters, the central government sent Tatsunoseke Hori [堀達之助] to Hakodate, a famous Dutch interpreter who was also well versed in English. He compiled the first English-Japanese dictionary in Japan. However, it was revealed during the case investigation that Hori was not good enough as an interpreter, because his English was 'book English'. He had learned English from books and his conversation ability was poor. The magistrate, Koide, petitioned the central government, requesting that one of the English interpreters trained in Hakodate or any other good English interpreter be sent. Koide might have been the first legal officer in Japan who strongly appealed the importance of good interpreting in judicial proceedings.

Fortunately, the government minister of Britain, Parkes, took the case seriously, and decided to dismiss the British consul and punish the three consulate officers. The bones from the Ainu graves had already been shipped to Britain, but through Parkes' efforts, were

retrieved at customs and sent back to Hokkaido. Furthermore, the Ainu people were monetarily compensated (Yoshimura 1991: 256–304, Mizuno 2005: 24–25).

3. Interpreting in criminal cases in the modern era

3.1 Under the old law

After the end of the Edo period (1603–1868), as part of Japan's modernisation and influenced by the laws of Western countries, especially Germany, the criminal justice system was reformed. In the modern legal system, equality under the law was guaranteed to a certain extent. However, interpreting for non-Japanese speakers during criminal proceedings did not seem to be an issue of concern. While this was a matter of procedure, interpreting was not necessarily considered in the context of human rights issues.

For example, in the opium smuggling case in 1906, the Supreme Court decided that the non-Japanese speaking defendant must be made aware of the content of the sentence; thus, an interpreter had to be provided at the time of sentencing. Another example stems from 1936, when a decision by the High Court in colonial Korea found it illegal that an interpreter had not been provided at the sentencing of the non-Japanese speaking defendant at the first trial. However, since the sentence was appealed to a higher court within the period specified by the law, the ruling of the lower court did not need to be overturned (Tanaka 2006: 6). Providing an interpreter for the entire proceedings was not the norm at that time, and the defendant's right to be both physically and mentally present at the proceedings was not a commonly accepted idea.

3.2 Present situation

After World War II, under the occupation policies of the GHQ (General

Headquarters, the Supreme Commander for the Allied Powers), Japan established a new legal system as part of the democratisation of the nation. The Code of Criminal Procedure was based on the adversarial system, and as such was influenced by the law practiced in the US.

Throughout history, the issue of interpreting in criminal cases has evolved around two main points: the presence of an interpreter and the quality of interpreting. As Japan's democratisation has advanced, especially after World War II, the presence of an interpreter has become a norm in the light of human rights of non-Japanese speakers and the main issue has shifted from the presence to the quality of interpreters.

3.2.1 System of appointing interpreters

Although the Japanese Code of Criminal Procedure does not stipulate court interpreting as a defendant's right, based on the International Covenant on Civil and Political Rights, which the Japanese government ratified, and Article 31 of Japan's Constitution, which guarantees the due process of law in criminal proceedings to everybody, the right of the defendant to participate physically and linguistically in criminal proceedings must be fully guaranteed to foreigners in Japan. Over the past three decades, the system of appointing legal interpreters has improved significantly in each judicial branch in Japan. In most cases, the right of non-Japanese speaking suspects to an interpreter of their native language is now guaranteed.

3.2.2 Issues of quality control

Thus far in Japan, no public certification system exists for legal interpreters. For example, candidates for the position of a court interpreter are interviewed by a judge and questioned on their language ability, overseas experience, interpreting experience, and so on. Sometimes, a so-called 'veteran' interpreter works with the judge to check the language ability of the candidates, but there is no test for their interpreting skills. Consequently, even those who have not undergone training are often registered as interpreters.

Three types of training programs for interpreters are provided by district courts countrywide, namely an introductory program for newly registered interpreters, a seminar for interpreters who have some interpreting experience, and a follow-up seminar for very experienced interpreters (General Secretariat, Supreme Court of Japan 2017). The courses are conducted for two days once a year, and are only available to interpreters of certain languages. Furthermore, the courses focus on improving knowledge of legal procedures and legal terms, as well as interpreters' ethics, although scant attention is paid to training in interpreting skills. This is true for other judicial branches as well. Under such circumstances, while abilities vary between interpreters, it is not possible to exclude those who perform poorly. Thus, in several cases, inaccurate interpreting became an issue, and sometimes constituted grounds for an appeal.

3.2.2.1 Pakistani robbery case (1992)

This case involved a robbery and robbery resulting in injury. Two of the three Pakistani suspects were from a Panjabi speaking district; however, the interpreter assigned to the interrogation was an Indian who spoke Urdu mixed with some Hindi. The suspects only understood around a third of what the interpreter said. The case was appealed to a higher court for the reason that using the statements made during the interrogation, in which the suspects did not fully understand what was said, as evidence in court violated the 'linguistic due process' guaranteed by Article 31 of the Japanese Constitution. However, the appeal court upheld the decision of the district court, stating that considering the reality that it is difficult to find interpreters of languages of lesser diffusion in local cities, appointing an Urdu speaking interpreter for the suspects, whose first language was Panjabi, was lawful, because the suspects had some understanding of Urdu (Oda 2014: 77-78).

3.2.2.2 The Dogo case (1996)

The next case is one of a homicide in which the defendant was a Thai woman working as a prostitute in Dogo [道後], Ehime [愛媛]. She killed her manager, another Thai woman. The appointed interpreter was a Japanese woman who had been in Thailand for two years after her husband's transfer. Her Thai language ability was very poor, and she was unable to translate even simple words. Often, she could only simplify difficult Japanese words or point to words in the dictionary. The case was appealed to a higher court, where a Thai interpreter with experience in legal interpreting was appointed. However, this interpreter was also unable to accurately translate the defendant's statements into Japanese, and ultimately, the appeal was dismissed. The court admitted that the quality of interpretation in the first trial was low, but decided that the defendant's Japanese proficiency was sufficient to understand the court proceedings (Fukami 1999). This is a typical case at the time, when it was difficult for the court to find interpreters of less widespread languages such as Thai. In many cases, so-called 'ad hoc interpreters' had to be used.

3.2.2.3 The Nick Baker case (2005)

In this case, a British citizen allegedly smuggled drugs into Japan. He was tried at the Chiba district court, where he was found guilty and sentenced to 14 years of imprisonment with forced labour and fined 5 million yen. However, he appealed to the Tokyo High Court, and his sentence was consequently reduced to 11 years of imprisonment and the fine to 3 million yen. There were several reasons for the appeal, one of which was poor interpreting. The defence submitted the expert opinion paper on the accuracy of the interpreting (written by the author) to the court.

Two main factors caused the interpreter-induced communication failure in this case. One was the defendant's heavy cockney accent, which made it difficult for the court interpreter to fully understand his speech. The other was the unethical behaviour of the court interpreter, who failed to inform the court that she did not fully

understand the defendant and continued interpreting his statements. Consequently, the defendant's long statements were translated into extremely short sentences, and important pieces of information omitted. Furthermore, nuances or the impacts of the original statements were distorted or reduced, and confusion created, which fuelled the negative impression of the defendant that his speech was incoherent. In addition, some mistranslations gravely impacted the case, such as in the example provided below.

During the witness examination, the defendant was asked the following question: 'What did you say when the customs official at the airport asked you if he may X-ray the suitcase?' The defendant answered that he had told the customs official, 'It ain't mine (It is not mine)'. This was translated by the interpreter as 'I do not mind'. One point at issue in this case was whether the suitcase containing the drugs belonged to him or not; thus, this is a serious misinterpretation (Mizuno 2008).

4. Judicial reform and recent trends in criminal proceedings

4.1 Introduction of the lay judge system

In 2009, as part of the judicial reform, Japan introduced the lay judge system. In this system, six citizens are randomly selected from the voter rolls to serve as lay judges, and alongside three professional judges, decide whether a defendant is guilty. In the case of a guilty verdict, the lay judges collaborate with the professional judges in deciding the sentence. In lay judge trials, felonies such as murder, arson, and the smuggling of illegal stimulants, which can involve the death penalty or imprisonment without a fixed term, are adjudicated. The purpose of the system is to make criminal procedures understandable for ordinary people. However, the new system has posed new challenges for court interpreting. Unlike conventional trials that emphasise documentary evidence, testimony is regarded more important in lay judge trials, because that orally presented in court is the only evidence on which to base the judgment, increasing the responsibility of court interpreters.

According to Hotta (2009: 122, 2010: 87), lay judges tend to pay more attention to the mental aspects of a defendant, and base their decision on factors such as character and mental tendencies, and whether the defendant deserves their sympathy. This implies that they are likely to be influenced by the impressions created through testimonies. As such, not only what is spoken, but also how it is spoken is of great importance.

Many studies confirm that the way interpreters interpret (or speak) impacts hearers such as jurors and lay judges, who form an impression and evaluate witnesses or defendants based on the interpreter's delivery (Hale 2004, Berk-Seligson 2000, Nakamura and Mizuno 2010, etc.). To secure a fair trial, interpreters should be highly skilled in translating the nuances and registers of statements provided in court.

4.2 Visualisation of interrogation

To avoid false charges, the system for the visualisation of investigation has been introduced as part of the judicial reform. One major change was introducing video recordings of the interrogation process of all lay judge trials. To pilot this change, partial video recordings of a small number of cases were initiated in 2006 at the prosecutors' offices and in 2008 at police stations. The number of cases now recorded has increased since then. In 2014, cases involving defendants that were mentally retarded or had developmental or mental disorders were added as subject cases. From October 2016, it has been mandatory in principle to video record the interrogation of all lay judge cases.

4.3 Problematic cases tried in the lay judge court

4.3.1 The Bernice case (2010)

The Bernice case involved charges of smuggling stimulant drugs. The

defendant, a German national from South Africa whose mother tongue was English, attempted to smuggle drugs into Japan, but was caught at Kansai airport. She claimed she had been asked by her acquaintances to take the ‘stuff’ to someone in Japan and bring money back to South Africa without knowing what the ‘stuff’ was. She was sentenced to nine years imprisonment with labour and was fined 3.5 million yen. She appealed the case to a higher court, claiming that because of the poor quality of interpreting in the first trial, her right to a fair trial had not been guaranteed. To prove the inadequacy of the interpretation in the lower court, the defence lawyer commissioned four linguists including the author to write expert opinions based on the audio recordings of the first trial, which were submitted to the higher court. The expert opinion reports pointed out many mistranslations and pragmatic alterations to the original statements, some of which may have seriously impacted lay judges’ impressions and decision making.

However, the prosecutor refused to accept the expert opinions, maintaining that the quality of the interpretation was acceptable. The appeal court held that the expert opinions were irrelevant and dismissed the appeal. According to the judge, the experts only highlighted minor elements, the impacts of which on the lay judges could not have been significant, assuming that completely accurate interpretation is impossible and minor errors are acceptable. The judge did not consider the linguistic analysis of the court interpretation important, and disregarded the ‘power of language’ (Watanabe 2012, Nakamura 2013).

4.3.2 The Jakarta case (2016)

This is a case involving a defendant, a former member of the Japanese Red Army, who bombed the Japanese and US embassies in Jakarta in 1986. He was arrested in 1996 in Nepal where his hiding place was and sent first to the US for trial. After serving his sentence in the US, he was rearrested by the Japanese police in 2015 and tried in the Tokyo district court. One of the two interpreters assigned to the case demonstrated poor interpreting skills, making many mistakes based on not understanding even basic Indonesian words such as refrigerator and paper. There were also many incorrect translations, for example, 1000 lupia was translated as 100, and 83 years as 85 years. Expert

examinations on the accuracy of the interpreting were conducted on the request of the presiding judge, revealing around 200 mistakes (Ikeda and Misawa 2016). This case is noteworthy, because it was the first time a judge had ordered expert examinations on court interpreting during the first trial.

4.3.3 The Osaka murder case (2017)

In this case, a Chinese man killed his wife in Osaka [大阪]. The presiding judge of the first trial noticed a discrepancy between the contents of the written statement taken at the police interrogation and the defendant's statements during the trial concerning the most important point: Whether the defendant had murderous intent or not. The judge doubted the accuracy of the interpreting during the investigation, and ordered that an expert analysis be conducted of the DVD recordings of the interrogation to confirm. The analysis revealed approximately 100 omissions and 20 misinterpretations (Yomiuri Newspaper 2017). The introduction of video recording of interrogations has now made it possible to verify the accuracy of interpreting in the investigation stage. This is an important step toward fair criminal proceedings. Thus, it is desirable to expand the scope of visualisation to include all cases other than lay judge cases.

5. Changes in attitude among legal practitioners

In recent years, legal practitioners' understanding of the importance of quality legal interpreting has increased. For example, the Japan Federation of Bar Associations prepared its 'Opinion Concerning the Proposal for Legislation Regarding Court Interpreters' dated July 18, 2013, and submitted it to the Chief Justice of the Supreme Court, Minister of Justice, and Prosecutor General. The contents thereof are summarised below.

1. Regarding court interpreters at criminal trials, etc., the following matters should be stipulated by law:

(1) The establishment of a system that lists the names of interpreters based on their qualifications, in order to ensure the quality and abilities of interpreters.
(2) The establishment of a system that provides continual training for interpreters, so as to maintain and improve their abilities.
2. Regarding court interpreters at criminal trials, etc., the following matters should be stipulated in the Rules of the Supreme Court (Rules of Criminal Procedure), etc.:
(1) The establishment of a remuneration system that guarantees secure income for interpreters.
(2) Regulation of the following matters, so as to ensure the quality of interpreters in open court:
a) Selection of multiple interpreters, as a general rule, in order to prevent the occurrence of incorrect interpretations.
b) Mandatory provision of opportunities allowing interpreters to have advance preparation for trials.
c) Stipulation on such issues as audio recording, objections, and expert examination for after-the-fact verification.
d) Obligation of consideration by case-related persons in general and in making efforts to provide the case-related documents in advance.
e) Obligation of consideration by courts in general and when the sentence is handed down at court.

(The Japan Federation of Bar Associations)

Against this background, the Japan Federation of Bar Associations has held several events to enlighten lawyers and legal interpreters about the mechanism of interpreting. For example, they have held a symposium on collaboration between interpreters and legal practitioners in lay judge trials (September 2014), a training session to improve the skills needed for court interpreting and court questioning (December 2015), and a training session on court interpreting focusing on note-taking and memory mechanisms (August 2017). In March 2017, the Japan Federation of Bar Associations also produced 60-minute content for e-learning purposes to improve member lawyers' questioning skills in interpreter-mediated trials. In addition to these activities, linguistic analysis research on the accuracy of court interpreting was conducted in collaboration with lawyers, experienced

legal interpreters, and linguists including the author. Various problems generated from the ways lawyers speak during the questioning sessions in court were discussed, a guidebook on practices in interpreter-mediated court questioning issued (KAKENHI [Grants-in-Aid for Scientific Research], Grant number: 26370514, Title: Research on the language use of lawyers in court and interpreter-induced alterations and their impact on court room communication), and research papers based on the above published (Mizuno 2015, Mizuno 2016, Mizuno, Terada and Ma 2016)

April 2017 witnessed a noteworthy development in terms of government-academia collaboration. The Tokyo District Public Prosecutors Office Public Security Bureau and Center for Multilingual Multicultural Education and Research at Tokyo University of Foreign Studies signed a memorandum of understanding for cooperation to promote smooth communication in a multilingual and multicultural society and foster quality interpreters. As part of the collaboration, they hold several events such as students' visits to the Tokyo District Public Prosecutors Office and Tokyo District Court, and a mock interpreter-mediated trial at the open campus of Tokyo University of Foreign Studies (Tokyo University of Foreign Studies). This collaboration seems effective in fostering good human resources in the younger generations.

6. Conclusion

A review of the history of legal interpreting in Japan clarified that at any time—ancient, feudal, or modern—linguistic communication has been essential in criminal procedures. While human beings have systems in place to try and punish violators of their rules, language will remain an integral part of the process. The extent to which those who are tried and judged can have their case heard is a barometer of the maturity of society. The system of and attitude toward legal interpreting constitute part of this barometer.

Currently, the idea of due process and equality under the law is deeply rooted in most advanced nations worldwide, which have been addressing the issue of communication in criminal proceedings involving those who do not speak or understand the language used to

ensure a fair process.

Providing quality interpreting and translation services has been a major challenge in this context. Now, Japan is one such nation. Despite that Japan has no certification system for legal interpreters yet, efforts have been made to improve the situation. Awareness of the importance of accurate interpreting has risen among legal practitioners, as reflected in the various recent actions mentioned in the previous section. To advance, it will be necessary to consider implementing a system to train and certify legal interpreters and conduct further research on the linguistic analysis of interpreting. Furthermore, a training method for interpreters and ways to enhance lawyer-interpreter collaboration will be needed. Such efforts will help create a brighter future for legal interpreting.

Bibliography

Books and articles

Berk-Seligson, Susan. 2002. *The bilingual courtroom: Court interpreters in the judicial process*. Chicago: University of Chicago Press.

Fukami, F. 1999. *Tsūyaku no hitsuyō wa arimasen: Dōgo tai josei satsujin jiken saiban no kiroku [There is no need for interpreting: Record of a Thai woman's murder trial in Dōgo].* Matsuyama: Sōfūsha.

General Secretariat, Supreme Court of Japan. 2017. *Gozonji desu ka hōtei tsūyaku [Do you know court interpreting?]* (pamphlet)

Hale, Sandra. 2004. *The discourse of court interpreting*. Amsterdam/Philadelphia: John Benjamins.

Hori, Takahiko. 2011. *Kaikoku to ēwa jiten [Opening of the country and English-Japanese dictionary].* Kamakura: Minato no-hito.

Hotta, Shugo. 2009. *Saiban to kotoba no chikara [Trials and the power of language].*Tokyo: HituziShobō.

Hotta, Shugo. 2010. *Hō kontekisuto no gengo riron [Linguistic theory in the legal context].*Tokyo: HituziShobō.

Katagiri, Kazuo. 1985. *Oranda tsūji no kenkyū [Study on interpreters*

*between the Dutch and Japanese].*Tokyo: Yoshikawa Kobun kan.
Katagiri, Kazuo. 1995. *Oranda tsūji Imamura Gen-emon Eisei [Dutch-Japanese interpreter, Gen-emon Imamura Eisei].* Tokyo: Maruzen Library.
Mizuno, Makiko. 2005. Historical review of criminal cases involving foreigners and legal interpreting. The Journal of Senri Kinran University 2: 21–29.
Mizuno, Makiko. 2008. Nick Baker case: The challenges encountered in improving the quality control of legal interpretation in Japan. *Kinjo Gakjuin Daigku Ronshu Studies in Social Science* 5, 1: 34–41.
Mizuno, Makiko. 2015. The sentence-ending particle Ne used by lawyers in cross-examination and its English interpretation. Language and Law 2: 85–105.
Mizuno, Makiko. 2016. Double negative questions used at witness examinations and their interpretation. *Kinjo Gakjuin Daigku Ronshu Studies in Social Science* 12: 1–6.
Mizuno, Makiko, Yumiko Terada and Xiaufei Ma. 2016. The issue of court interpreting: Roundabout expressions and ambiguous wording used by lawyers in court. *Language and Law* 3: 61–80.
Nakamura, S. 2013. Issues of interpreting in the Bernice case. *Language and Law* 1: 27–37.
Nakamura, Sachiko, and Makiko Mizuno. 2010. Court experiment: Impact of interpreting on impressions of mock lay judges. A statistical study of language use in trials under the lay judge system. *The Institute of Statistical Mathematics Cooperative Report* 237: 53–66.
Oda, Itaru. 2014. A study on legal interpretation and selection of source language: Based on cases with Chinese dialects. *The Bulletin of Chuo University Institute of Cultural Science* 79: 63–116.
Shigematsu, Kazuyoshi. 1986. Gaikokujin keiji hōsei taikeika e no shiteki shiron: shijitsu, bunken no shōshū to taishō ryōiki no tansaku [Historical essay on the systematization of the criminal legal system involving foreigners: Collection of historical events and literature and exploration of the object domain]. *The Bulletin of Chuo Gakuin University Sogo Kagaku Kenkyuj*o (research material) 3: 29–57.
Tanaka, Yasuha. 2005. Gaikokujin jiken to keiji shihōu: tsūyaku wo

ukeru kenri to shihō tsūyakunin ni kansuru ichikousatsu [Cases involving foreign nationals and criminal justice: Discussion on the right to interpreters and legal interpreter]). *Hokkaido University Graduate School of Law, Junior Research Journal* 12: 1–41.

Yoshimura, Akira. 1991. *Kurofune [Black ships].* Tokyo: Chūō kōron sha.

Yuzawa, Tadayuki. 2010. *Kodai nihonjin to gaikokugo [Ancient Japanese people and foreign languages]*. Tokyo: Bensei shuppan.

Watanabe, Osamu. 2012. Saiban-in saiban to "goyaku enzai": Garusupaha Benīsu jiken [Lay judge trial and "wrongful conviction due to misinterpretation": Bernice Gerspacher Case]. In *Mitsui Makoto Sensei Koki Shukuga Ronbunshū [Essays to celebrate Professor Makoto Mitsui's 70th Birthday]*, ed. M. Inoue and T. Sakamaki, 725–750. Tokyo: Yūhikaku.

Newspapers

Ikeda, Teiichi and Noritake Misawa. 2016. Hotei tsūyaku, mondai darake [Court interpreting, so many mistakes]. *Tokyo Newspaper*, October 18.

Yomiuri Newspaper. 2017. Torishirabe tsūyaku misu 120 ken cho [Over 120 interpretation errors at interrogation]. May 24.

Websites

Tamagawa Gakuen, Tamagawa University and Taga, Kenji. Genko wa naze okita ka, nihon wa dō kawatta ka [Why Mongolian invasion occurred and how Japan changed]. http://www.tamagawa.ac.jp/sisetu/kyouken/kamakura/genkou/index.html (accessed April 15, 2018).

The Japan Federation of Bar Associations. Opinion Concerning Proposal for Legislation Regarding Court Interpreters. https://www.nichibenren.or.jp/en/document/opinionpapers/20130718.html (accessed May 5, 2018).

Tokyo University of Foreign Studies. Center for Multilingual

Multicultural Education and Research http://www.tufs.ac.jp/blog/ts/g/cemmer/news/post-23.html (accessed June 14, 2018).

Comparative Legilinguistics
vol. 36/2018
DOI: http://dx.doi.org/10.14746/cl.2018.36.3

SMART LEARNING MODELS OF CERTIFIED LEGAL TRANSLATORS AND INTERPRETERS IN CHINA

Ming XU, Master of English Language and Literature
School of Foreign Languages, China University of Political Science and Law
No. 25, Xitucheng Road, Haidian District, Beijing, China
290020833@qq.com

Abstract: Legal translation has played an important part in the contact between different people and countries in the history, and it is playing an even more significant role in the increasingly globalized world nowadays. This study uses case study method and the data analysis tool voyant to explore smart learning models of certified legal translators and interpreters that they are supposed to grasp. Through the analysis of the guiding case No. 75 of The Supreme People's Court of The People's Republic of China, the graphs show that the legal translator possesses some good competences, though there are some defects in the translation that fail to exhibit the integration of all the presupposed legal translational competences completely. The results find that the prerequisites about knowledge of comparative laws, legal languages and forensic linguistics are the external framework of smart learning models; and the legal translational language competence, legal translational knowledge structures, legal translational strategic competence and context of situation are the internal model. The whole model is multi-componential, interactive, dynamic and developed.

Key words: smart learning model; legal translation; language competence; knowledge structures; strategic competence; context of situation

ZHŌNGGUÓ SHÌGÉ FĂLǛ FĀNYÌZHĚ DE ZHÌHUÌ XUÉXÍ MÓSHÌ.

Zhāiyào: Lìshǐ shàng, fǎlǜ fānyì zài wéixì bùtóng mínzú hé guójiā de jiāowǎng zhōng bàn yǎn zhuó zhòngyào juésè, zài dāngjīn rìyì quánqiú huà de shìjiè zhōng gèng fā huī zhuó zhòngyào zuòyòng. Běn yánjiū cǎiyòng ànlì yánjiū fāngfǎ hé shùjù fēnxī gōngjù, tànsuǒ shì gé fǎlǜ yì zhě yīnggāi zhǎngwò de fǎlǜ fānyì nénglì de zhìhuì xuéxí móshì. Tōngguò duì zhōnghuá rénmín gònghéguó zuìgāo rénmín fǎyuàn dì 75 hào zhǐdǎo xìng ànlì de fēnxī, túbiǎo xiǎnshì cǐ fǎlǜ yì zhě jùyǒu yīdìng de nénglì, dàn fānyì zhōng cúnzài yīxiē quēxiàn, wèi néng zhǎnxiàn chū yù shè de quánbù fǎlǜ fānyì nénglì. Jiéguǒ fāxiàn, zhǎngwò bǐjiào fǎ zhīshì, fǎlǜ yǔyán zhīshì hé fǎlǜ yǔyán xué zhīshì shì xiānjué tiáojiàn, jí wàibù kuàngjià; fǎlǜ fānyì yǔyán nénglì, fǎlǜ fānyì zhīshì jiégòu, fǎlǜ fānyì cèlüè nénglì jí qíngjǐng yǔ jìng shì qí nèibù móshì. Zhěnggè móshì chéngfèn fùhé, xiānghù jiāohù, dòngtài fāzhǎn.

Guānjiàn cí: Zhìhuì xuéxí móshì; fǎlǜ fānyì; yǔyán nénglì; zhīshì jiégòu; cèlüè nénglì; yǔ jìng

MODELE INTELIGENTNEGO UCZENIA SIĘ CERTYFIKOWNYCH TŁUMACZY PISEMNYCH I USTNYCH W CHINACH

Abstrakt: Tłumaczenie prawnicze odegrało ważną rolę w kontaktach między różnymi ludźmi i krajami w przeszłości, a obecnie odgrywa jeszcze większą rolę w coraz bardziej zglobalizowanym świecie. W badaniu wykorzystano studium przypadku oraz narzędzie do analizy danych inteligentnych modeli kształcenia certyfikowanych tłumaczy prawnych. Dzięki przeprowadzonej analizie sprawy nr 75 Najwyższego Sądu Ludowego Chińskiej Republiki Ludowej, wykresy pokazują, że tłumacz prawniczy posiada pewne kompetencje, chociaż istnieją pewne wady w tłumaczeniu, które nie wykazują integracji wszystkich kompetencji translacyjnych. Wyniki pokazują, że wstępne wymagania dotyczące znajomości prawa w aspekcie porównawczym, języków prawnych i językoznawstwa sądowego stanowią zewnętrzną strukturę modeli inteligentnego uczenia się, a wewnętrznym modelem są kompetencje językowe w zakresie tłumaczeń ustnych, prawne struktury translacyjne, kompetencje strategiczne w zakresie tłumaczenia prawnego oraz kontekst sytuacyjny. Cały model jest wieloelementowy, interaktywny, dynamiczny i rozbudowany.

Słowa kluczowe: inteligentny model uczenia się; tłumaczenie prawne; kompetencje językowe; struktury wiedzy; kompetencje strategiczne; kontekst sytuacyjny

Introduction

Recently, law has become the guarantee for countries in the globalized world with so many bilateral documents to sign. Due to different languages between different countries, legal translation has also played a significant role in the bilateral communication. However, the problems about what legal translation competences the legal translators are supposed to grasp, and how they explore and obtain legal translation competences, are still waiting to be discussed and solved. Obviously, based on the phenomenon, the research question is that what legal translation competences a translator or interpreter should process. The research will use case study method, or actually take an example to exhibit Chinese-English translation in a legal text, aiming to explore and discuss the smart learning models of certified legal translators and interpreters. Therefore, the smart learning models of translation and interpretation are regarded as the research object. The guiding case No. 75 of The Supreme People's Court of The People's Republic of China is China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Science and Technology Co., Ltd. (Case about public interest litigation against environmental pollution). The text is issued on December 28, 2016 as deliberated and adopted by the Judicial Committee of The Supreme People's Court. This case is selected according to the topic of environmental protection and its social effects, but its content was not read by the author of this paper before truly studying. In other words, the author of this paper knows nothing about the legal translational factors in this text before the following study.

In China, many scholars have made some researches on the legal translation. For instance, Xiong Demi (2011: 128) in his article *On the Special Principles of Legal Translation* holds that abiding by the general principle of translation, legal translation shows particularities mainly displaced from four perspectives, namely, professionalization, rigorousness, accuracy and equivalency. Du Jinbang (2005: 11) holds that legal exchange comprises a series of components, one of which is legal translation that is of great importance. There are a number of basic principles of legal exchange, among which the linguistic ones have direct implications for legal translation. Besides, appropriateness is one of the objectives always pursued by translators and interpreters. The combination of legal exchange principles and the ap-

propriateness of legal translation can enable translators and interpreters to manage the translation process from both macro and micro points of view.

One of the creative and innovative points of this paper is the present research gap in this field that there is seldom study combining the theories with specific cases. Therefore, the first innovative point in this paper is the case study method. The specific case provides legal translators and interpreters with an example to translate and interpret. Secondly, there are a few uses of tool to analyze data in the present researches about legal translation and interpretation. Thus, the second creative point is the use of data analysis tool voyant.

Legal translation competence, performance and proficiency

Legal translation competence and performance

In general linguistics, the *Aspects of the Theory of Syntax* written by Chomsky discussed two concepts: competence and performance. A language user's underlying knowledge about the system of rule is called his linguistic competence (Chomsky, 1965: 3). In other words, competence refers to the ideal user's knowledge of the rules of his language. According to the general linguistic theory, from the literal interpretation, legal translation competence refers to the ideal legal translator's knowledge of the rules of legal translation. More specifically, legal translation competence is an ability to transcript different legal languages by an ideal legal translator. In contrast with competence, performance refers to the actual use of language in concrete situations (Chomsky, 1965: 3). Legal translation performance refers to the actual realization of the ideal legal translator's knowledge of the rules of legal translation in some context.

Legal translation proficiency

In contrast with competence and performance, language proficiency has been used in the context of language testing to knowledge, competence or ability in the use of language, irrespective of how, where or under what conditions it has been acquired. Legal translation proficiency refers to the ability to use legal translation competence to perform legal translation tasks in a specified context for intercultural and inter-lingual communication. Roughly speaking, legal translation proficiency concerns more on the context than competence and performance. Similar to the perlocutionary comparing with locutionary and illocutionary, legal translation proficiency integrate the competence, act and result of legal translation.

Smart learning models of legal translation and interpretation

External framework of legal translation competence

It is certainly that a proper legal translator must grasp some knowledge and skills. Knowledge about law is of the superior position. It is worth noting that here the law is not only the law in one county, but also the law in at least two countries, that is, the comparative law. However, mastering the bilateral laws is just the first step to become a proper legal translator. Today, as in general translation, greater attention is devoted to the cultural aspects of legal translation, which is now regarded as a "transcultural venture" (Varady 2006: 4) in which the translator's task is to achieve cross-cultural transfer (Sandrini 1999: 9-43).

During the past three decades or so, many linguists and social scientists have turned their attention to legal language. There is no doubt that legal language is decidedly peculiar and often hard to understand, especially from the perspective of the lay public. Because legal language differs from ordinary language, it is also interpreted differently (Tiersma 1999: 1-3). Firstly, legal translation and interpre-

tation is based on the semantic meaning of technical terms, which have a number of dimensions of meanings, that is, denotation and connotation. These ranges are from what concept or concepts the word denotes and what class of entities it can refer to through the connotations and other kinds of personal association (Durant & Leung 2016: 27). Secondly, legal translation and interpretation attaches great importance on the pragmatic meanings of phrases and sentences. Some pragmatic knowledge is necessary for translators and interpreters to translate and interpret the meaning of texts, as pragmatic theories (e.g. relevance theory) show how discourse interpretation proceeds in part through contextual inference. When the translators and interpreters stand in pragmatic contexts, the pragmatic factors include: the other words around them (co-text); previous instances of the same word elsewhere in the same discourse; the situation in which they are used; and background knowledge likely to be drawn on by a translator or an interpreter. Therefore, as for the translators and interpreters, they are supposed to seek the intended meaning of discourse. Thirdly, legal translation and interpretation places less importance on the speaker's actual meaning when there would have to be more than one plausible sentence meaning. One reason is plain meaning rule, and another is collective authorship. Although the plain meaning rule has been stated that if a document is plain or unambiguous, as determined sole from the language contained in the "four corners" of the document, a judge cannot refer to any outside ("extrinsic") evidence to decide what it means (Tiersma, 1999: 126). The rule has the practical effect of focusing on court's attention on the meaning of words and sentences, rather than on the speaker's intention, even though that intention is legally what should decide the issue. Recently, Justice Scalia of the United States Supreme Court has championed an approach called textualism, which is actually the renew of the plain meaning rule. However, there is an extensive debate in American courts on when, and to what extent, judges should consider legislative intention (the speaker's meaning) when translating and interpreting statutes.

Since legal translation is about language, it is related to linguistics. One cannot make legal translation in any setting or system without first understanding significant and sufficient aspects of phonetics, phonology, morphology, syntax, semantics, pragmatics and then without being willing to apply forensic linguistics. The term forensic linguistics is hotly debated. For some, it denotes only the work of those who provide expert evidence on language for police investi-

gations or court hearings. For others, the term has a wider meaning which extends to examining courtrooms, particularly criminal ones, by analyzing talk from lawyers and witness. Finally, increasingly the term is coming to have a wider application to denote research on all areas of legal activity from the language of legislation through police stations and even into prisons and out into the worlds of consumers, families and corporations (Rock 2011: 139).

It is can be seen that comparative law, legal language and forensic linguistics are the three prerequisites for legal translation. The competence of these three prerequisites can be regarded as the external framework of smart learning models.

Internal model of legal translation competence

Internal model of legal translation competence has several characteristics. Firstly, any kind of model is composed of some elements in various ways, whether they are simple or complex, coordinated or hierarchical. The internal model of legal translation competence, based on legal translation proficiency, consists of several components. Secondly, due to different characteristics of different legal translators, the proportion that internal components occupy changes flexibly according to different situation. In other words, internal proportions interact with each other. Thirdly, the interactivity of components initiate a dynamic process of the whole model. In a nutshell, the internal model is multi-componential, interactive and dynamic.

Translation proficiency is thus further described as consisting of three sets of variables interacting with one another in the context of situation (Cao 2007: 40): (1) translational language competence; (2) translational knowledge structures; and (3) translational strategic competence.

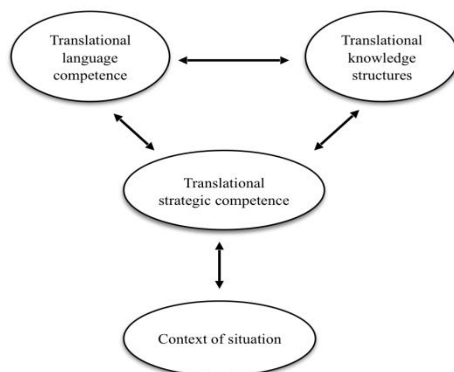


Figure 1: A Model of Translation Competence
source: Cao 1996

Translation can be divided into general, specialist and literary translation. Here, Deborah Cao (1996: 78) is mainly based on general translation. Legal translation can be regarded as the specialist translation area or technical translation area, as it possesses numerous technical terms, complex sentence structure, peculiar legal rhetoric and stylistics, formal and ritualistic language. Generally speaking, legal translation is supposed to be in a special and separated field. Herein, the writer have revised the original model translational language competence by adding the "legal" context or situation. The new model of legal translation competence is the following:

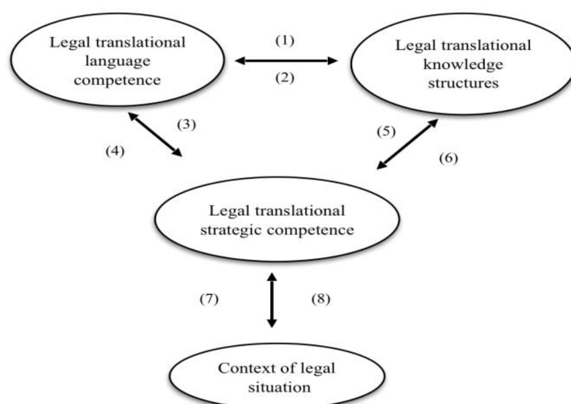


Figure 2: A Model of Legal Translation Competence
(revised model)

In the whole internal interactivity, each component interacts with its adjacent one. Herein, the writer apply a set of antonyms "excellent" and "terrible" to illustrate the two opposite states. In the process (1) and (2), the "excellent" legal translational language competence can promote the grasp of legal translational knowledge structures, and the "terrible" legal translational language competence may impede it, and vice versa. In process (3) and (4), the "excellent" legal translational language competence can promote a better choice about legal translational strategies, and the "terrible" legal translational language competence may lead to a wrong choice about it, and vice versa. In process (5) and (6), "excellently" grasping legal translational knowledge structures is propitious to the choice of legal translational strategies, and "terribly" grasping legal translational knowledge structures goes against the choice of it, and vice versa. In the process (7) and (8), the "excellent" legal translational strategic competence can make the context of legal situation towards a better direction, and "terrible" legal translational strategic competence counts against for the context.

The exploration of internal framework of legal translation competence

The exploration of legal translational language competence

Legal translational language competence relates to the ability of dealing with source language (SL) and target language (TL) during the process of legal communication. There is no doubt that language competence is the prerequisite of the whole legal translation competence. In the current model, translational language competence comprises a set of specific components in both the SL and TL that are activated and utilized in the translation act of intercultural and interlingual communication (Cao 2007: 42). Based on
Bachman's account of monolingual communicative language use, translational language competence is defined as including: (1) organizational competence; (2) pragmatic competence. The specific components are as followed.

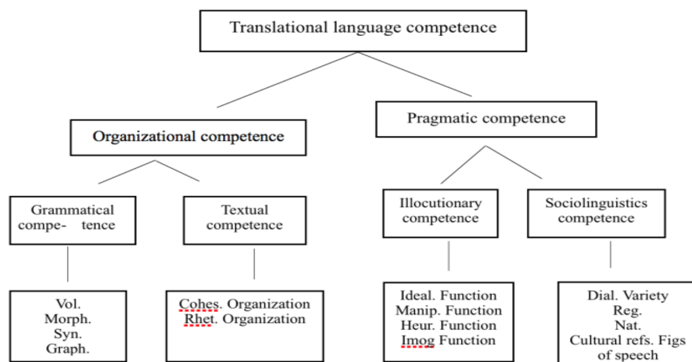


Figure 3: A Model of Translational Language Competence
source: Cao 1996

The relationships between elements are as above. What is worthy to mention is that there are three related concepts: locutionary, illocutionary and perlocutionary in general linguistics. Saying something is to do something, and the act performed is known as an illocutionary act. Illocutionary competence herein is related to the illocutionary force of target language produced by legal translator, which requires them to produce target languages that are of meaningful functions. Sociolinguistics as a field is extremely wide-ranging and includes a multitude of models, methods and theoretical framework. Briefly, it studies the relation between language and society, that is, how social factors influence the structure and use of language. Dealing, as it does, with language use in social contexts, research in the area of sociolinguistics concerns itself primarily with how language is actually used by speakers: how it varies, how it changes, how meaning is signaled and interpreted in social interaction (Llamas 2011: 501).

Based on the original components, the author of this paper has revised and added some new components to the model. Set the context in the legal situation, and then add the "discourse analysis competence" and "intercultural communication competence". Discourse analysis can be defined as the use and development of theories and methods, which elicits how this meaning and coherence is achieved. Legal translator or interpreter is expected to have a correct discourse analysis in order to produce accurate target language. Legal culture is the essence of a country that has been condensed and precipitated in the long river of history. Legal culture is conveyed through translation and translation is the embodiment of legal culture. Since ancient

times, historical traditions, value orientation, ways of thinking and customs have determined the legal terms, documents and systems in the process of exchanges, conflicts and integrations, which in turn has significant influences on legal translation. Therefore, intercultural communication competence is of vital importance for legal translators and interpreters. The revised model is as followed.

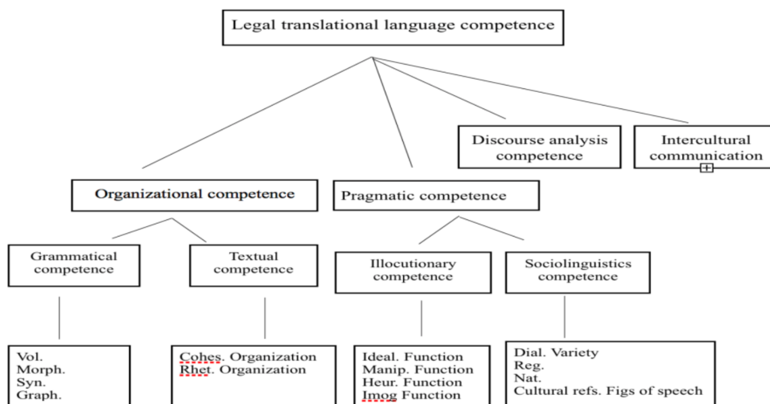


Figure 4: A Model of Legal Translational Language Competence (revised model)

The exploration of legal translational knowledge structure

Within the present model, translational knowledge structures are defined as the knowledge that is essential to achieve inter-lingual and intercultural communication in translation (Cao 2007: 44). Just as the point that translation can be divided into general, specialist and literary translation, translational knowledge structures are also divided into general, specialist and literary knowledge. General knowledge refers to the knowledge about the world. Literary knowledge includes knowledge in such fields: the film, lyric works, cultural history and literary studies. Specialist knowledge is the subject knowledge that includes technical knowledge in a specialist field. Just as legal translation belongs to the specialist translation, legal translational knowledge structure belongs to the specialist knowledge structure. Legal translational knowledge structure is the knowledge of propositions of law in a narrow sense and the knowledge of legal culture in a broad sense,

including legal system, legal order, legal institutions, history and practices and practitioners (Tolonen 2004: 1180-1181). The basic legal knowledge about numerous technical terms, complex sentence structure, peculiar legal rhetoric and stylistics, formal and ritualistic language belongs to the narrow sense.

Legal translational structure knowledge is composed of extensive sub-structures, which is dimensional, interactive and dynamic. These sub-structures have two dimensions from the macro and micro points of view, such as technical terms, legal rhetoric or legal history and legal systems. Legal translational structure knowledge is available and acquired by oneself and/ or with the help of others by education and/ or experience.

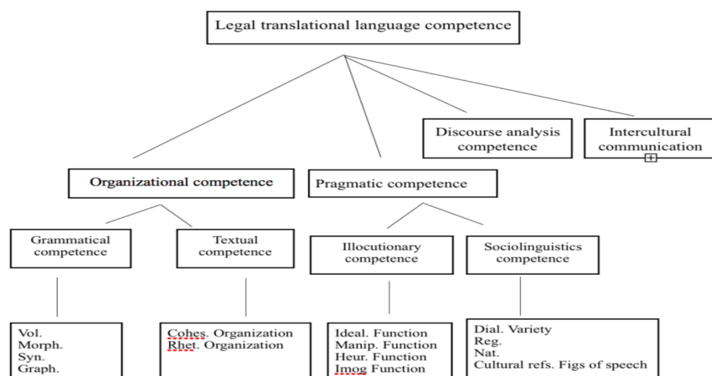


Figure 4: A Model of Legal Translational Language Competence (revised model)

The exploration of legal translational strategic competence

Translational strategic competence is used to describe the inherent mental ability in the translation task when a translator carries out an operation on a text and enacts language and knowledge competence for communicative purposes in translation (Cao 2007: 48). Legal translational strategic competence is used to describe the inherent mental ability of legal translators applied in legal translation tasks to achieve successful legal communication. It comprises some skills that are demanded during legal translation process. Written translation and

interpretation are hereby supposed to be distinguished due to the different skills they possess separately. Written translation skills, such as repetition, amplification, omission, conversion, inversion, division, negation, change of the voices (Guo 2010: 78). Interpretation skills includes ear-voice span (EVS), syntactic linearity skills.

Translational strategic competence also includes psychological mechanism that is related to the cognitive linguistics. Cognitive linguistics is based on human experiences of the world and the way they perceive and conceptualize the world. Translational strategic competence concerns on the process when the legal translator receives source languages and how he/ she makes a mental activity to create target language. In a nutshell, it is a complex mental and psychological process.

The example of the smart learning models in the guiding case No. 75

The translation phenomenon in terminological level

The Chinese-English translation in this judicial document illustrates the external framework and internal framework of legal translation and interpretation. In the Guiding Case No. 75: China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Science and Technology Co., Ltd. (Case about public interest litigation against environmental pollution), according to the data analysis of Voyant, the key words of this judicial document are as followed:

⊞	☐	1	environmental	71
⊞	☐	2	public	48
⊞	☐	3	protection	44
⊞	☐	4	cbcgdf	30
⊞	☐	5	social	27
⊞	☐	6	organization	26
⊞	☐	7	activities	24
⊞	☐	8	people's	22
⊞	☐	9	ecological	21
⊞	☐	10	court	20
⊞	☐	11	business	18
⊞	☐	12	civil	18

Obviously, the key words show the main contents of this judicial document, respectively corresponding to the Chinese texts, as well as the Keywords list in the English texts.

In the Guiding Case No. 75 of The Supreme People's Court of The People's Republic of China, the highest frequency of legal archaisms is *hereinafter*, reaching to 4 times, according to the data analysis tool Voyant.

	Document	Left	Term	Right
⊞	1) Labo…	Environmental Civil Public Interest Litigati…	he…	referred to as the "Interpretation
⊞	1) Labo…	Conservation and Green Development Fo…	he…	referred to as the "CBCGDF
⊞	1) Labo…	Science and Technology Co., Ltd. (	he…	referred to as "Ruitai Company
⊞	1) Labo…	the People's Republic of China (	he…	referred to as the "Environmental

hereinafter ? 4 context expand

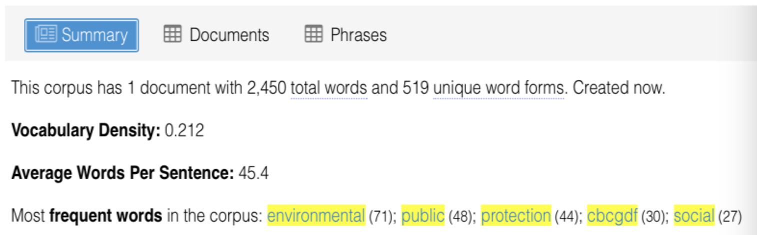
However, in this judicial document, the result finds that only the word *hereinafter* is used in high frequency while no other legal archaism is used. The choice of vocabularies can exhibit the legal language competence and legal knowledge structure of legal translators or interpreters.

The translation phenomenon in phrasal level

The legal language has the function of persuasion, argumentation or demonstration. It is necessary to use complex technical terms to make difference from daily language. The legal language competence, legal knowledge structure and legal strategic competence of translation or interpretation can be integrated and showed on the phrasal level. Some phrases consist of short and easy-understanding words while transmitting technical meanings, such as, *the trial of first instance, trial of second instance, In the effective* in this judicial document. Some expressions combine several technical terms together to achieve an accurate effect, such as *dismiss the appeal, affirm the original ruling*.

The translation phenomenon in syntax level

Generally speaking, the length of legal sentence is longer than common sentence. Just as the data analysis on this translational judicial document showed, average words per sentence reaches to 45.4, much longer than that of other fields. The main reason is that legal sentence consists of different sentence patterns and be embedded with participles, adverbial modifiers, clauses. The different sentence patterns require translators and interpreters of outstanding legal strategic competence, besides the translational language competence and legal knowledge structural competence, as well as acquainting the context of situation.



Therefore, on the one hand, the transformation of legal language is based on the knowledge of different legal systems, comparative laws and forensic linguistics from the external framework. On the other hand, it contains the legal translational language competence,

legal translational knowledge structures, legal translational strategic competence and context of situation from the internal framework, especially the organizational competence and pragmatic competence

Conclusion

In the globalized world, legal translation has attracted great attention and become an increasingly focus on the study of law and language. The study has taken the guiding case No. 75 of The Supreme People's Court of The People's Republic of China (China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Science and Technology Co., Ltd. (Case about public interest litigation against environmental pollution)) as an example, applied the data analysis tool voyant to carry out case study. The research graphs exhibit the transformation results of language, showing the good competences of legal translator in a way, though there are some defects in the translation that fail to exhibit the integration of all the presupposed legal translational competences completely, maybe due to the complex technical vocabularies, conjoining vocabularies, and sentence patterns. Even so, this paper has explored and illustrated smart learning models of legal translation competence: the external framework and the internal model. The prerequisites about knowledge of comparative laws, legal languages and forensic linguistics consist of the external framework and the legal translational language competence, legal translational knowledge structures, legal translational strategic competence and context of situation consist of the internal model. The components in each level possess their own components and characteristics. The whole model is multi-componential, interactive, dynamic and developed. In a nutshell, translation is a total act.

Through the concrete analysis on the smart learning models of certified translators and interpreters in a case, this paper provides translators and interpreters with directions and train of thoughts to learn and improve their competences. At the same time, it proposes several defects in this translation, and it hopes to produce a few enlightenments on the translation of similar texts. Researches on translation and interpretation of legal language are of significant meanings for promoting the accuracy of legal language, strengthening legal thinking and promoting fairness and justice and improving the juris-

prudence to the politics of legal language. The smart leaning models of certified legal translators and interpreters are still to be further studied and developed, and some problems that some components are overlapped with each other and that some components may be lost are remained to be discussed in the future.

Bibliography

Alan, Durant, and Janny HC Leung. 2016. *Language and Law*. London and. New York: Routledge.

Avram Noam, Chomsky. 1965. *Aspects of the Theory of Syntax.* Cambridge: MIT Press.

Carmen, Llamas. 2011. Sociolinguistics. In *The Routledge Handbook of Applied Linguistics, ed.* James Simpson, 501. London and New York: Taylor & Francis Group.

Deborah, Cao. 2007. *Translating Law*. Clevedon: Multilingual Matters.

Du, Jinbang. 2005. Legal Exchange Principles and Legal Translation. *Journal of Guangdong University of Foreign Studies* 4: 11.

Frances, Rock. 2011. Forensic Linguistics. In *The Routledge Handbook of Applied Linguistics,* ed. James Simpson, 139. London and New York: Taylor & Francis Group.

Guo, Zhuzhang. 2010. *A Practical Course in Translation Between English and Chinese.* Wu Han: Wu Han University Press.

Peter M. Tiersma. 1999. *Legal language.* Chicago and London: The University of Chicago Press.

Salmi, Tolonen. 2004. *Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments.* America: Brooklyn Journal of International Law.

Sandrini, Peter. 1999. Translation between Culture and Communication: The Special Case Right. In *Translation of Legal Texts,* ed. Peter Sandrini, 9-43. Tubingen: Gunter Narr.

Xiong, Demi. 2011. On the Special Principles of Legal Translation. *Journal of Southwest University of Political Science and Law* 2: 128.

Varady, Tibor. 2006. *Language and Translation in International Commercial Arbitration from the Constitution of the Tribunal through Recognition and Enforcement Proceedings.* The Hague: T.M.C. Asser Press; West Nyack, NY: Cambridge University Press.

The Judicial Committee of the Supreme People's Court. Guiding Case No. 75: China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Science and Technology Co., Ltd. (Case about public interest litigation against environmental pollution). en.pkulaw.cn. http://en.pkulaw.cn/display.aspx?id=cd0b7b48ac186936bdfb&lib=case&SearchKeyword=&SearchCKeyword= (accessed Dec 28, 2016).

Comparative Legilinguistics
vol. 36/2018
DOI: http://dx.doi.org/10.14746/cl.2018.36.4

UNIVERSAL AND PARTICULAR FEATURES OF LEGAL LANGUAGE IN HEIKKI E.S. MATTILA'S CONCEPTION OF COMPARATIVE LEGAL LINGUISTICS

by Marcus GALDIA
International University of Monaco
mgaldia@monaco.edu

Review of Heikki E.S. Mattila's *Vertaileva oikeuslingvistiikka*. Juridinen kielenkäyttö, lakimieslatina, kansainväliset oikeuskielet, 2nd updated edition, 2017, Helsinki: Alma Talent, pp. 702.

Professor Heikki E.S. Mattila became internationally known as a legal linguist mainly due to pioneering editions of his *Comparative Legal Linguistics* that are studied in the international academia in their English and French language versions (cf. Mattila 2012 and 2013). Meanwhile, the editions in English and French go back to the Finnish original of his book *Vertaileva oikeuslingvistiikka* that appeared in print for the first time 2002 in Helsinki. Over the years, Mattila expanded and updated his account of the legal language and refined the theoretical foundations of his conception of comparative legal linguistics. The author himself remarks that all versions of his *Comparative Legal Linguistics* bear witness to the development of one and the same work (cf. Mattila 2017:

xi). When the recent book is seen in this perspective, then it represents the fifth expanded and updated version of his conception.

The second Finnish edition appears now in print largely expanded and updated. The initial part has been reworded and reedited. In comparison with the international editions, its special topics include a detailed account of the development of Scandinavian legal languages in an own chapter C VI *Pohjoismainen oikeuskieliyhteisö* (Scandinavian legal-linguistic community). Next to it, legal Finnish is elucidated in the book on many places and in many respects. In the legal-linguistic research, Mattila's chapter on the Scandinavian legal-linguistic community and his numerous analyses of Finnish linguistic samples as well as the developments in Finland are particularly valuable both to legal linguists and to specialists in Scandinavian languages as updated research accounts in this area are rare (cf. Mattila 2005, Mattila/Piehl/Pajula 2010, Mattila 2010, Tyynilä 2010). Those existing concentrate as a rule upon one Scandinavian language. This approach contains the risk that commonalities in the Scandinavian development pass unmarked. Therefore, Mattila's chapter on Scandinavian legal languages balances many deficits in the research.

Mattila divides his book in four parts: A (General), B (Legal Language as Language for Special Purposes), C (Great Legal Languages), and D (Conclusions). Most of these chapters have been reviewed in numerous publications. In the edition discussed here they include updated references to many research materials that appeared recently in print. In addition, Mattila's views are regularly clarified in all chapters. Especially, the interplay between universal structural features and particularities of legal languages is very clearly demonstrated in the book. For Mattila's regular readers, the most interesting part of the book concerns Scandinavian languages. In part C entitled Great Legal Languages the chapter VI deals with the Scandinavian legal-linguistic community (pp. 253 – 292). The methodical matrix for the chapter is prepared in the paragraph on Scandinavian languages (pp. 46 – 47). In his preliminary remarks Mattila stresses the Scandinavian cooperation in the area of law that has long historical roots reaching beyond the institutionalized dialogue within the Nordic Council and the European Union (cf. also Ylikangas 1983 117-125, 164-180). In the main chapter on the Scandinavian legal-linguistic community he shows how the modern, largely harmonized Scandinavian legal and legal-linguistic landscape emerged towards the background of terminological particularities that are present in

Scandinavian legal languages to this day (cf. for instance Swedish *laglott* and Finnish *lakiosa*, Norwegian *pliktdel* and Danish *tvangsarv* for *statutory share* (p. 288). In the legal terminology of the European North the historical divide into two blocks comprising Denmark, Norway, and Island on the one side as well as Sweden and Finland on the other side is still visible (p. 253). As the political unification of the North was never fully achieved, the legal harmonization that dominates the developments in the legislation of Scandinavian countries did not lead to complete terminological uniformization. Due to socio-political and cultural commonalities the common heritage prevails however over legal-linguistic particularities. Meanwhile, when different Scandinavian languages are used in administrative contacts or academic conferences in Scandinavia terminological particularities may also lead to misunderstandings (p. 258). Overall, the chapter on Scandinavian legal languages makes plain the interrelationship of universals and particularities in the development of the legal language. This is due to the approach that is comparative, while other chapters include also contrastive elements in the analysis of linguistic samples. Also at this point the interdependence between comparative law and comparative legal linguistics in Mattila's conception becomes particularly transparent.

In Mattila's conception of comparative legal linguistics that I analysed more systematically in my *Lectures on Legal Linguistics* (Galdia 2017: 84 - 85) the most salient characteristic feature is the approach to legal language that oscillates between the analysis of its general structural patterns and particularities of legal languages such as English, French, German, and many others. The choice of the comparative approach paves the way towards generalization of data that refers to particular legal languages. The anchorage of the conception of comparative legal linguistics in comparative law enabled its reception in many works authored by legal comparatists (cf. Lundmark 2012, Husa 2015). This circumstance is not surprising because Mattila's conception of comparative legal linguistics was mainly structured around legal-comparative paradigms. In fact, comparative approaches in law are more productive than are purely contrastive approaches (for contrastive approaches in linguistics cf. Fisiak, J. et al. 1978: 9 - 19). When comparing, it is necessary to determine what is actually compared (e.g. linguistic structures or language use) and to determine the perspective upon the object of studies. One can compare terminology in the contrastive perspective to show terminological incongruences

(cf. Husa 2015: 72 who speaks about ‘contradictive research interest’ in this context) or to stress conceptual affinities or ‘integrative research interest’ in Husa’s methodological taxonomy (cf. Husa 2015: 71). For comparative law, Jaakko Husa stressed also another difference that is relevant to the methodology of legal linguistics consisting in the choice between comparison and parallel description of legal phenomena. In the area of comparative law the researcher’s interest determines the particular comparative method as there is no one method of legal comparison (cf. Husa 2015: 71). In Mattila’s book comparative perspectives dominate over contrastive views mainly due to the underlying rigorous conception that he set up for describing particular legal languages.

There is also reason to acknowledge that this Journal is specifically mentioned by Mattila as being particularly relevant to legal-linguistic research (p. 20). As many fundamental legal-linguistic achievements originate in Poland Mattila lists on p. 29 also the most important Polish classics of legal linguistics and legal theory. He mentions Tomasz Gizbert-Studnicki, Maria Teresa Lizisowa, Andrzej Malinowski, Kazimierz Opałek (1918 – 1995), Jerzy Pieńkos (1932 – 2003), Jerzy Wróblewski (1926 – 1990), Sławomira Wronkowska-Jaśkiewicz, and Zygmunt Ziembiński (1920 – 1996). Mattila also frequently points to works by Aleksandra Matulewska for reference, especially in matters regarding legal translatology. Overall, the Polish legal-linguistic research is particularly well represented in the book and regular reference is made there to works by: E. Betańska, P. Borek, A. Choduń, K. Gałuskina, J. Sycz, K. Gortych – Michalak, J. Grzybek, B. Hałas, A. Jopek – Bosiacka, K. Kredens, S. Goźdź –Roszkowski, M. Wasilewska, A. Niewiadomski, M. Pawelec, A. Mróz, J. Nowak – Michalska, A.Pawłowska, A. Plisecka, E. Rusak, H. Sierocka, H Święczkowska, A. Stępkowski, I. Szczepankowska, A. Tarwacka, W. Wołodkiewicz, J. Krzynówek, M. Zabłocka, and B. Żmigrodzka. This regular reference to Polish legal-linguistic research in Mattila’s book makes his generally high opinion of Polish contributions to the development of this area of knowledge particularly convincing.

Mattila’s book is very well structured and thoroughly researched. My suggestions would concern two points: The subtitle of the second Finnish version stresses the use of the legal language, legal Latin and international languages following closely the subtitles of the English and the French editions. As the Finnish version includes Scandinavian languages and Finnish as a special ongoing topic, it might

have been useful to mention this specific value of the Finnish edition in the subtitle of the second edition. I would also welcome a more pronounced last word of the author at the end of the final chapter on perspectives of the legal-linguistic research.

Professor Heikki E.S. Mattila achieved in the second edition of his *Vertaileva oikeuslingvistiikka* a synthesis of most important points in his analysis of the universal legal language and numerous particular legal languages that he researched. Readers of the newest version of the book will definitely benefit from his views that are expressed in a particularly clear and precise language.

Bibliographical references

Fisiak, Jacek, Lipińska – Grzegorek, Maria, Zabrocki, Tadeusz 1978 *An Introductory English – Polish Contrastive Grammar*. Warszawa: Państwowe Wydawnictwo Naukowe.

Galdia, Marcus 2017 *Lectures on Legal Linguistics*. Frankfurt a.M.: P. Lang.

Husa, Jaakko 2015 *A New Introduction to Comparative Law*. Oxford/Portland: Hart.

Lundmark, Thomas 2012 *Charting the Divide between Common and Civil Law*. Oxford: Oxford University Press.

Mattila, Heikki E.S. 2005 Språket och den nordiska rättsfamiljen, in: *Tidskrift, utgiven av Juridiska Föreningen i Finland*, vol. 161, pp. 43 –57.

Mattila, Heikki E.S., Piehl, Aino, Pajula, Sari (eds.) 2010 *Oikeuskieli ja säädöstieto. Suomenkielinen lakikirja 250 vuotta. Rättsspråk och författningsinformation. Den finskspråkiga lagboken 250 år.* Helsinki: Suomalainen Lakimiesyhdistys.

Mattila, Heikki E.S. 2010 *Suomalaisen oikeuskielen ominaispiirteet*, in: Mattila, H.E.S., Piehl, A., Pajula, S. (eds.) 2010 *Oikeuskieli ja säädöstieto. Suomenkielinen lakikirja 250 vuotta. Rättsspråk och författningsinformation. Den finskspråkiga lagboken 250 år.* Helsinki: Suomalainen Lakimiesyhdistys, pp. 181 – 213.

Mattila, Heikki E.S. 2012 *Jurilinguistique comparée. Langage du droit, latin et langues modernes.* Cowansville: Éditions Yvon Blais.

Mattila, Heikki E.S. 2013 *Comparative Legal Linguistics. Language of Law, Latin and Modern Lingua Francas*, 2nd ed. Farnham/Burlington: Ashgate.

Pajula, Paavo 1960 *Suomalaisen lakikielen historia pääpiirteittäin*. Porvoo: WSOY.

Tyynilä, Markku 2010 Suomen kielen nousu oikeuskieleksi, in: Mattila, H.E.S., Piehl, A., Pajula, S. (eds.) 2010 *Oikeuskieli ja säädöstieto. Suomenkielinen lakikirja 250 vuotta. Rättsspråk och författningsinformation. Den finskspråkiga lagboken 250 år.* Helsinki: Suomalainen Lakimiesyhdistys, pp. 131 –146.

Ylikangas, Heikki 1983 *Varför förändras rätten. Lag och rätt såsom en del av den historiska utvecklingen*. Porvoo: WSOY.

Comparative Legilinguistics
vol. 36/2018
DOI: http://dx.doi.org/10.14746/cl.2018.36.5

UNIFORM OR PLURICENTRIC LEGAL CHINESE?

by Marcus GALDIA
International University of Monaco
mgaldia@monaco.edu

A review of 《兩岸三地侵權法主要詞彙》(Liangan Sandi Qinquanfa Zhuyao Cihui). Key Terms in Tort Law of Hong Kong, Mainland China and Taiwan (City University of Hong Kong Press, 2015) 310 pages

and

《兩岸三地公司法主要詞彙》(Liangan Sandi Gongsifa Zhuyao Cihui). Key Terms in Company Law of Hong Kong, Mainland China and Taiwan (City University of Hong Kong Press, 2017) 357 pages, both by Ho-yan Chan.

In *Comparative Legilinguistics* vol. 25 / 2015, pp. 59 – 63, I reviewed the first volume in the project of legal-linguistic terminological compendia 《兩岸三地》(*Liang An San Di*) on Key Terms in Contract Law of Hong Kong, Mainland China and Taiwan by Dr. Ho-yan Chan from the Chinese University of Hong Kong in Shenzhen. In

this note I will deal with two follower volumes that appeared recently in the series《法律翻譯系列》(*Falü Fanyi Xilie*), both edited by City University of Hong Kong Press. As also the reference to the first volume appears to me meaningful I will refer in the following to contract terminology as vol. I, to tort terminology as vol. II and to company law terminology as vol. III.

The two follower volumes in the series are structured like the first book on contract terms around high frequency terminology called *key terms*. For torts, as for contracts, the task of key terms selection clarifies in the use of terms in the century-old legal doctrine. Meanwhile, for company law key terms are more difficult to identify as borders of this area of law are less clearly determined. Company law may include aspects of corporate governance and corporate finance depending on the scope of the underlying legal doctrine. The author adopts a broad and an integrative approach to the subject and delimits it by practical needs of translators rather than by doctrinal determinations and she includes also areas such as insolvency and corporate social responsibility. Therefore, the volume of corporate law covers as key terms *company* yet also *listed issuer's obligations to disclose* (上市發行人披露責任).

As in vol. I, a key term in legal English is introduced and related to three Chinese language equivalent groups of Hong Kong, Mainland China and Taiwan also in the here reviewed vol. II and III. For instance, *tort* in vol. II is rendered as a key English language term as *qinquan* (侵權) for all three groups, *negligence* as key term is rendered for Hong Kong as *shuhu* (疏忽) and for the two other groups as *guoshi* (**過失**). Main reference is made to Hong Kong terms as they directly match the English common law terms being their absolute equivalents (cf. Chan 2015: 336). After every key term the English terminology relating to it is analysed, described, and provided with Chinese functional equivalents, again in three groups of Hong Kong, Mainland China, and Taiwan terms. For instance, *negligence* as key term constitutes a semantic field comprising *duty of care*, *causation*, *reasonable care*, *foreseeability, the thing speaks for itself*, *presumption or inference of negligence* or *due to a cause not involving negligence on his part* etc. At this point, the choice of terminology in broader context is steered by translation problems into Chinese and the method is very efficient in this respect. In the second part of every volume, English language legal terms are contrasted with corresponding Chinese language terms, again divided into three

groups, for instance the English key term *third party* is rendered for Hong Kong as *disanfang* (第三方) and *disanzhe* (第三者), for Mainland China as *disanren* (第三人), and for Taiwan as *disanren* (第三人). After every entry a quote from the respective legislation is provided as a lexicological basis for the existence of the term and a justification of its choice.

As already mentioned in the previous review, legal Chinese embraces a polycentric / pluricentric terminology. Due to historically determined discontinued development in the Chinese language area uniformity in legal terminology cannot be expected. Main centres of the development of the Chinese legal terminology are: Mainland China that is comitted to the civil law tradition, Hong Kong that follows the common law, and Taiwan that regularly reflects Chinese legislation and its legal language as well as the language and legal acts of the first Chinese republic. Terminological pluricentrism may be treated in different ways. It can be taken for granted and be marked in specialized dictionaries accordingly. This is the case with legal German in German speaking countries and with legal English in the English speaking world (cf. Kubacki 2015). It may also be portrayed in isolation from other varieties as is the case for Hong Kong legal terminology in the dictionary prepared by the Hong Kong judge Patrick Chan (2005). Meanwhile, pluricentric legal language may also give rise to attempts at uniformization. The first approach is linguistic, the other is the domain of legal linguists and legal comparatists who not only research but also shape the legal language. All three lexicographic undertakings that are reflected upon in this review belong to the legal-linguistic approach to pluricentric legal terminology. They also pave the way to the uniformization of legal Chinese terminology.

For the purposes of legal linguistics it is decisive to acknowledge that linguistic pluricentrism can encompass the standard language as well as the specialized language (Galdia 1999, Kubacki 2014: 172). Chinese legal terminology definitely developed in at least three largely independent centers, if the developemnt in Singapore is set apart.When the legal language as a language for special purposes is concerned, its pluricentric nature is made plain by all three works by Dr. Chan. Linguistic pluricentrism can be researched also in relation to lexicographic works (Kubacki 2015: 33). The focus of the linguist is centered on the tasks of identifying terminological varieties and marking them appropriately in dictionaries. Yet, the legal-linguistic

concern in this area may go further and this step is illustrated by the works of Dr. Chan. Unlike the strictly linguistic approach, the legal-linguistic approach may comprise beyond codifying and quantifying terminology also aspects of linguistic policy. They encompass, yet are not limited to, creative measures and attempts at shaping a more uniform terminology. Streamlining terminology is one of such possible methods of uniformization. Special terminology always emerged towards the background of lexical diversity. When shaping the basic terminology of an area of law there will always be plenty of choices for instance between *company*, *corporation*, as well as the more general terms such as *enterprise* and *undertaking*. Terminology emerges in processes where choices are exercised to the benefit of certain terms, which also means that these choices are made to the disadvantage of other terms that are abandoned (cf. Grzybek/Fu 2017: 101 – 130). As Hong Kong law is developed in close application of the English common law the English terminological tradition is stressed in it. For instance, the term *company* is listed as key term, but *corporation* (a term used predominantly in the US law) appears only in derivative forms such as *corporate finance* (vol. III, p. 214) or *corporate governance* (vol. III, p. 215). In the Chinese equivalents of both last terms (公司 *gongsi*) is proposed as a notional counterpart of both legal terms. The dilemma at the bottom of the problem is that linguists are reluctant to shape language as their professional ethics obliges them to record and to analyse rather then to create language. This self imposed limitation might be also the reason of a relatively weak social impact of linguistics as a subject upon society at large. A more courageous approach that is documented in the three volumes in respect of the Chinese legal language can only be supported.

As mentioned, normalization and uniformization of legal terminology make part of legal-linguistic activities as this variety of language rarely develops spontaneously and it needs some institutional support to function efficiently in processes of professional legal communication. Sometimes such processes may be strictly institutional and supervised in terminological commissions, sometimes they may become effective as individual initiatives, as is the case with the three volumes reviewed here. This activity can be exercised by recommendations, for instance concerning the Chinese equivalents for *tort*. The legal linguist could recommend *guoshi* (過失) to become a general term as *shuhu* (疏忽) has a somehow colloquial connotation of daily carelessness as in *Zhe ren tai shuhu le*

(這人太疏忽了) *This man is too careless* or to make other, even contrary recommendations as *guoshi* (過失) may also be used in some colloquial contexts. This proceeding also marks distinctively the descriptive activity of a linguist and the normative activity of a legal linguist.

Some key terms in torts, for instance *tort* / *delict* that is called *qinquan* (侵權) are surprisingly unproblematic in all three groups. Of course, this terminological equality masks the difference in the structure of concepts behind the term in common law and in civil law. This difference is essential to legal-lexicographic undertakings (Mattila 2017: 36), yet it does not always manifest itself visibly in dictionaries. This principle is particularly important for the structure of the three analysed volumes because it predetermines the structure of semantic fields emerging around the key terms. As the legal terminology of English common law was chosen as terminological basis for the whole project, terms accompanying the key term depend strictly on this choice. For instance, *battery* and *assault* (vol. II, p.161), *false imprisonment* (vol. II, p. 171) or *nuisance* (vol. II, p. 115) owe their presence in the semantic field due to the mentioned choice. This structural challenge is somehow balanced by occasionally presented terms having their origin in the civil law such as the German *unerlaubte Handlung* (vol. II, p.11), *Gefährdungshaftung* (vol. II, p. 45), or the Russian *moralnyi vred* (vol. II, p.12). The common law term *Act of God* (vol. II, p. 41) rendered as *tien zai* (天災) must by ideological necessity be split in two terms in Chinese and is then (vol. II, p. 187-188) referred to as *buke likang* (不可抗力) for Mainland China and *tien zai* (天災) for Hong Kong and Taiwan.

Legal terms do not represent the totality of the legal language. Even more, they actually make only a skeleton of the legal language; they are scaffolds upon which the legal language can be set. Therefore, the volumes include, especially in the book on Company law also broader syntagmas and other phraseologisms such as *Contracts made before Company's Incorporation* (公司成立為法團前訂立的合約) as key terms. Such terms easily develop to phraseologisms, cf. *piercing corporate veil* (揭開公司面紗, vol. III, p. 31).

The process of globalization of law engenders universal legal language. In all three terminological areas covered by the discussed volumes the emergence of globalized language of law is visible, for instance in vol. III p. 17 (*yi ren gong si* 一人公司) *one-man company*.

Unlike in some other countries no attempt is made in Chinese speaking countries to develop originally coined terminology based on conceptual borrowings only. It is also interesting to note that in the legal Chinese there is no tendency towards developing phonetic borrowings from other languages as is the case in the terminology of natural sciences.

In streamlining the Chinese terminology the author is committed to the plain language drafting style. This approach reflects the risk of emergence of Anglicized Chinese as *shadow director* (影子董事, vol. III, p. 54) or *zero transaction costs* (零交易成本, vol. III, p. 14), and the risk of linguistic arbitrariness, i.e. everyone writes his own legal Chinese as well as the risk of terminological diversity, including double or triple legal Chinese terms.

As all three volumes are printed in traditional Chinese characters, also Mainland China's terminology is rendered in them in the traditional script. For the daily needs of translators and linguists from outside the Chinese speaking region it might however be helpful to supply the simplified characters to the traditional ones at least once when they appear for the first time in the entry bar of the headline of each main chapter of the volume. Some Chinese – foreign legal language dictionaries are very formalistic in this respect (cf. Köbler 2002) and indicate all entry words in both simplified and traditional characters even in those multiple cases when there is no difference in writing. This rigid method overburdens the dictionary and is not helpful for the users. It seems however that reducing the demand to providing the other writing variety at least once in the text would be of practical importance. Understandably, also, the reviewed volumes do not include *pinyin* transcriptions of the key terms as they are construed for users with native or native-like competence in Chinese. Meanwhile, as they also might be used outside the Chinese speaking region occasional application of *pinyin* for key terms could facilitate the use of all three works for non-native speakers of Chinese.

A volume on Property Key Terms would be in my view a meaningful follow up in the series as some researchers in translation studies signal particular terminological problems in this area (cf. Kozanecka 2016: 23). I can warmly recommend all three volumes for practitioners and theoreticians of law and its language wherever there is interest and readiness to deal with the intricacies of the Chinese legal language.

Bibliography

Chan, Ho-yan. 2015. English-Chinese Translation of Financial Terminology in Mainland China and Hong Kong, in: *Babel*, vol. 63 (3), pp. 335 – 360.

Chan, Patrick. 2005. *The Concise Hong Kong English – Chinese Legal Dictionary*. Hong Kong: Lexis Nexis.

Galdia, Marcus. 1999. Lakisaksa, in: *Encyclopaedia Iuridica Fennica*, vol. VII, pp. 550 – 555.

Galdia, Marcus. 2017. *Lectures on Legal Linguistics*. Frankfurt am Main: P. Lang.

Grzybek, Joanna, Fu, Xin. 2017. *Contrastive Parametric Study of Legal Terminology in Polish and Chinese. Application of Parametric Approach to Comparison of Legal Terminology between Polish and Chinese for Translation Purposes*. Poznań: Contact.

Köbler, Gerhard, Duan, Xijun, Li, Xun. 2002. *Deutsch-chinesisches und chinesisch-deutsches Rechtswörterbuch für jedermann* (München: Vahlen).

Kubacki, Artur Dariusz. 2014. Pluricentryzm w niemieckim języku standardowym i specialistycznym, in: *Comparative Legilinguistics*, vol. 17, pp. 163 – 181.

Kubacki, Artur Dariusz. 2015. Pluricentryzm w niemiecko – polskich słownikach ogólnych i specialistycznych, in: *Lingwistyka Stosowana*, vol. 15 (4), pp. 33 – 46.

Kozanecka, Paulina. 2016. Chińska terminologia prawna z zakresu prawa własności, in: *Comparative Legilinguistics*, vol. 25, pp. 7 – 25.

Mattila, Heikki E.S. 2017. *Vertaileva oikeuslingvistiikka. Juridinen kielenkäyttö, lakimieslatina, kansainväliset oikeuskielet*, 2nd ed. Helsinki: Alma Talent.

List of reviewers 2018

1. Alex Kasonde, Africa University, College of Social Sciences Theology Humanities & Education, Zimbabwe
2. Artur D. Kubacki, Pedagogical University of Cracow, Poland
3. Dan Ophir, Ariel University, Computer Science and Mathematics Department, Ariel, Israel
4. Edyta Więcławska, University of Rzeszów, Poland
5. Elsa Skenderi, University of Tirana, Albania
6. Emilia Wojtasik-Dziekan, Adam Mickiewicz University, Poznań, Poland
7. Ewa Betańska, University of Warsaw, Poland
8. Joanna Grzybek, Jagiellonian University in Kraków, Poland
9. Joanna Rydzewska-Siemiątkowska, University of Warsaw, Poland
10. Judith Rosenhouse, Technion I.I.T., Deptartment of Humanities and Arts, Haifa, Israel
11. Karolina Paluszek, Jan Dlugosz University in Czestochowa, Poland
12. Katarzyna Siewert-Kowalkowska, Kazimierz Wielki University, Bydgoszcz, Poland
13. Ksenia Gałuskina, University of Silesia in Katowice, Poland
14. Lavinia Nădrag, Ovidius University of Constanta, Romania
15. Mami Hiraike Okawara, Takasaki City University of Economics, Japan
16. Maria Teresa Lizisowa, Pedagogical University of Cracow, Poland
17. Marta Andruszkiewicz, University of Bialystok, Poland
18. Mateusz Stępień, Jagiellonian University in Kraków, Poland
19. Onorina Botezat, Universitea Spiru Haret, Romania
20. Paulina Nowak-Korcz, University of Lodz, Poland
21. Stanislaw Goźdź-Roszkowski, University of Lodz, Poland
22. Szymon Machowski, The University of Commerce and Services (WSHIU) in Poznań, Poland