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PREFACE

LAW AND LEGAL LINGUISTICS IN A CONSTANT STATE OF TRANSITION

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Abstract: Legal linguistics or jurilinguistics as it has been called recently, is a relatively new field of research. The first research into the field started with analysing the content of laws (the epistemic stage). Later on, lawyers started being interested in manners of communicating laws (the heuristic stage). This Special Issue of Comparative Legilinguistics contains two texts devoted to the development of legal linguistics, legal languages and legal translation and two papers on an institutional stratification of legal linguistics. It is a continuation of research published in the same journal (Special Issue no. 45 titled "The Evil Twins and Their Silent Otherness in Law and Legal Translation") providing some insights into the problems of communication in legal settings.

Keywords: legal linguistics; jurilinguistic; legal translation; legal language.

> Il s'agit d'une représentation subjective, dont le contenu sera, au plus haut point, influencé, je dirai même déterminé, par nos conceptions morales (idées de la dignité humaine, du devoir individuel ou social), par nos sentiments intimes (sentiment d'humanité, d'équité, etc.), par notre pénétration rationnelle, plus ou moins profonde, du sens de la vie, du but de la société, de ses exigences et des besoins de l'individu (Gény 1922: 53, tome 1)

Introduction

Law is driven by a variety of influences, it incorporates mechanisms and ways of thinking that are generated by a combination of sociology, philosophy, psychology and history, amongst others. Therefore, setting up an inter-relational process of references proves to be unattainable, and the only way to clarify meaning is through a purposeful (teleological) interpretation, in which the mainstream language is applied consistently within the social and cultural context of the country. This is how the mainstream language of a country has become a skillful and intricate combination of both intrinsic and extrinsic influences, originating from cultural practices, operating in space and time and influenced by a perpetual evolution of its external relations.

> "The meaning of a representation can be nothing but a representation. In fact, it is nothing but the representation itself conceived as stripped of irrelevant clothing. But this clothing never can be completely stripped off, it is only changed for something more diaphanous. So, there is an infinite regression here. Finally, the interpretant is nothing

> but another representation to which the torch of truth is handed along; and as representation, it has its interpretant again." (Fisch 1964: 492).

Hence, Law is the result of a constant creative and innovative transformation of its cultural legacy. It is a "place of imbrication of several languages of manifestation" (Barthes 1953: 56), which are intimately bound to each other. Law is a "historical act of solidarity" (Barthes 1953: 95), which may be ambiguous, causing both "alienation from history and the dream of history" (Barthes 1953: 88). But Law is not defined in terms of references to the outside world, since it is not a neutral medium. For this reason, the principle of immanency (Kevelson 1992: 268), whereby the content is interpreted on the basis of its internal dynamics (Pottier 1991: 110); i.e., its "mirror of society" (Kevelson 1990: 125), deserves attention:

> "Le domaine de l'argumentation est celui du vraisemblable, du plausible, du probable, dans la mesure où ce dernier échappe aux certitudes de calcul." [The domain of argumentation is that of the veritable, the plausible, the probable, insofar as the latter escapes the certainties of calculation.] (Borel et al. 1983: 88).

Accordingly, Law creates alternatives in meaning within a constant state of transition, whereby

> "coordinations implicites et d'ailleurs changeantes de la vie profonde et des conceptions cachées […] constituent le ciment véritable des dispositions légales." [implicit and moreover changing coordinations of inner life and hidden conceptions [...] constitute the real cement of legal provisions.] (Ray 1926: 125).

Hence, the phenomenological approach to Law is crucial, since it is organized in two separate but complementary phases. The first stage consists in exploring its meaning through legal linguistics and Law, relying on the legislative and jurisprudential constructions. The second stage entails investigating the conceptual and interpretative interactions of the law, thereby delineating its architecture as an organized product of internal tensions. Rigor dictates that the system of decoding should not be admitted as being intrinsic to the understanding of meanings and signs. Each one has to see it as a pure instrumentalization of Law for the search of signs to be construed, and so any relevant occurrence of legal provisions, of decision-making, is supported by language interpretation. This spatio-temporal situation

determines the production of a sort of "transaction" between reality and the meanings of words under different circumstances. The outcome mostly emerges as an ambient environment and shift within the society. Consequently, this legal historical occurrence provides legal linguists, lawyer-linguists with the core of their research on the interpretation of legal discourse.

Neither is legal communication neutral nor universal. No speaker is likely to generate a language devoid of any distinctive markers. Messages are products of particular speakers and have their idiolectal features. Sometimes, a model can be constructed starting from a series of common rules, but this does not mean that all the geographical differences can be specified. As Malmberg points out:

> "La langue n'est pas une plante sauvage. C'est une plante cultivée et elle l'a toujours été même dans les sociétés sauvages." [The tongue is not a wild plant. It is a cultivated plant and it has always been so even in wild societies.] (Malmberg in Meschonnic 1997: 141).

Hence, language is the bearer of a hidden dimension (Hall 1971) that requires constant scrutiny. This internalized dimension exposes a complex chain of interactions, linking people to their cultural environment. The result is a linguistic insecurity whenever a cultural notion is to be transferred. This instability is all the more critical in that legal linguists and lawyer-linguists are confronted with diametrically opposed cultural and/or historical dimensions that are in perpetual flux.

In this Special Issue, our contributors have put forward (1) a whole process of socialization of the discourse with particular modes of interactions and (2) an institutional stratification of the legal discourse. Our Special Issue is therefore a multifaceted exploration of legal linguistics. It urges both linguistic and legal analyses. These analyses are inextricably linked, in that they trace legacy of legal linguistics. It also poses issues surrounding the interaction between history, etymology and contemporary legal translation.

Tradition and Modernity facing Legal Linguistics

Translating a legal text involves a significant proficiency in both law and linguistics. Berman believes that:

> "Une forme qui se réfléchit elle-même, thématise sa spécificité et, ainsi, produit sa méthodologie ; une forme qui non seulement produit sa méthodologie, mais cherche à fonder celle-ci sur une théorie explicite de la langue, du texte, et de la traduction." [A form which reflects itself, thematizes its specificity and, thus, produces its methodology; the form that not only produces its methodology, but seeks to base it on an explicit theory of language, text, and translation.] (Berman 1995: 45).

Legal language is seen as the bearer of both a legal legacy and a part of the historical heritage. This twofold aspect is at the core of jurilinguistics, also titled legal linguistics (Galdia 2021) or legilinguistics (Matulewska 2007; 2013). This is demonstrated by an absolute need for a socio-critical analysis, which Toury summarizes so well:

> "Comme toute autre activité comportementale, la traduction est nécessairement sujette à des contraintes de types et de degrés variés. Jouissent d'un statut spécial parmi ces contraintes les normes - ces facteurs intersubjectifs qui sont la « traduction » de valeurs ou d'idées générales partagées par un certain groupe social quant à ce qui est bien et mal, approprié ou inapproprié, en instructions opérationnelles spécifiques qui sont applicables à des situations spécifiques pourvu que ces instructions ne soient pas encore formulées comme des lois." [Like any other behavioral activity, translation is necessarily subject to constraints of various types and degrees. Among these constraints are norms – those intersubjective factors which are the 'translation' of general values or ideas shared by a certain social group as to what is right and wrong, appropriate or inappropriate, into operational instructions that are applicable to specific situations provided that these instructions are not yet formulated as laws.] (Toury in Berman 1995: 51).

The challenge is then to grasp and transfer the concept of the source language into the target language while avoiding dangers of translating tools such as:

> "One of the dangers […] is that they provide the translator with ready-made segments of text in the target language (lifted from earlier documents), making it much easier to stay on the surface of a document. And yet in our hearts we know that what was an adequate translation for the document from which the segment originated is unlikely to be as adequate for the document we have before us now." (Beeth and Fraser 1999: 76)

Inherently, the legal discourse of a country easily associates the tradition of a constantly evolving society with the development of its own legal terminology. Each and every standard formula or concepts is intricately bound to the source language and therefore inadequate for the target language. Consequently, reformulating a source discourse into a target discourse is an unstable phenomenon subject to the vagaries of a pre-determined space-time.

Marcus Galdia in his paper titled "Conceptual Origins of Legal Linguistics" provides a valuable insight into the development of the discipline, starting with its epistemic origins. He turns attention to the fact that at the very beginning the content of law was the focus of scholarly attention. The heuristic shift to the mode of communication followed much later.

> "Following their preliminary methods, the pioneers of legal linguistics such as David Mellinkoff, Gérard Cornu, Edeltraud Bülow, Heikki E.S. Mattila, and Peter M. Tiersma approached the legal language and described its characteristic features. Initially, legal linguists determined the vocabulary of law as the domain of their specific interest." (Galdia 2021).

This new field of research is interdisciplinary and therefore draws upon various methodologies. It operates as an intersection of law, linguistics, legal logic, legal semiotics, and many others. The field has developed into monolingual and multilingual branches. The methodologies of research are complex and interdisciplinary too. The paper focuses on the historical development of the field starting with the very beginnings of the discipline and ending with the modern state-of-the art. Scholars researching into the field should bear in mind that:

> "Legal-linguistic research that initially concerned some selected topics that were deemed as characteristic features of the legal language expanded into an area of knowledge covering today all socially relevant aspects of language use in law. Paradigmatically, the shift from analysing legal vocabulary to discourse analysis enabled the emergence of modern legal linguistics. This modern legal linguistics expanded its domain of research to cover all linguistically relevant operations in law. Therefore, it almost coincides with law and with legal studies. It could be also called a specific theory of law. From the legal-linguistic perspective, legal linguistics features the most relevant theory of law, i.e. the theory of the legal language. It enables description and understanding of law in broadest social contexts. It would be difficult

> to demand more from an area of knowledge." (Galdia 2021).

The paper of Tomáš Duběda titled "Direction-Asymmetric Equivalence in Legal Translation" deals with one of the most important issues in specialized (including legal) translation, that is to say the problem of providing equivalents conveying the maximum amount of meaning. The author claims that:

> "direction-asymmetric equivalence in legal translation, i.e. equivalence that does not obey the "one-to-one" principle, and which usually implies that the translator's decision-making is more difficult in one direction than in the other. This asymmetry may be triggered by intrinsic semantic characteristics of legal terms (synonymy and polysemy), by differences between legal systems (system-specific terms, the procedures used for their translation and their handling in lexicographic sources, competing legal systems, tension between cultural boundedness and neutrality), or by social factors (L1 vs. L2 translation)." (Duběda 2021).

It is impossible to disagree with the author, since the impossibility of achieving 1:1 equivalence in legal translation has long been a concern of researchers and translators. The best that can be hoped for and aimed at in interlingual communication in a legal context is the so-called sufficient degree of equivalence that, in a particular communication situation, satisfies the needs of the senders and receivers of the message and does not lead to negative legal consequences.

An Institutional Stratification of Legal Linguistics

The focal point of our reflection lies in the interconnection of meaning between the sentence construction and its institutionalization, a value carrier that is intrinsic to language. In this second part, we try to shed light on the institutionalization process by a thorough analysis of the specialized phraseology. This step enables us to define the theoretical force of common language. However, demonstrating this identity construction may lead to misinterpretations or subjective interpretations. So, in this Special Issue, the two contributors to this debate (Qing Zhang and Patrizia Giampieri) offer us a highly accurate

analytical perspective. The system under investigation can only be understood if the other components that form the message are analyzed: vocabulary, wording, meaning and deviance of the terms. These four elements form a whole system whose functional value generates a specialized language. Their enunciation articulation is not a mere random play of positioning. Their interconnectedness produces a consistent socialized unit of discourse.

The paper by Qing Zhang titled "A Comparative Study of the Rhetorical Functions and Features of Personal Pronouns in English and Chinese Legal News" focuses on the distribution of personal pronouns in newspaper articles and the function they play in texts devoted to various aspects of law. The author focuses on two types of newspaper texts that have narrative and semi-dialogic features. The author finds out the similarities and differences in the distribution of pronouns in two languages under scrutiny and finds out that:

> "there are three reasons for the uneven distribution: first, the differences between the dialogic style and the narrative style; second, the legal narrative being a story narrative; third, the specific restrictions on the use of legal rhetoric" (Zhang 2021).

The results of the research may be valuable to English-Chinese translators of such texts and to linguists who analyze the characteristics of various legal and semi-legal texts.

Patrizia Giampieri ("An Analysis of the "Right of Termination", "Right of Cancellation" and "Right of Withdrawal" in Off-Premises and Distance Contracts According to EU Directives") analyses three terms listed in the title of her paper. The author focuses on the use of these terms over several decades in the European Union communication contexts. The findings reveal that that the meaning of the terms under scrutiny are frequently blurred and their use inconsistent. The reasons for the inconsistency probably stem from the differences between the legal systems of the European Union Member States. The question arises at the institutional level as to whether it is possible and feasible to achieve any uniformity of usage in EU legal communication while respecting the national identity and heritage of the legal systems of the Member States.

Conclusion

To sum, the present Special Issue focuses on the interdisciplinary nature of legal linguistics and its various sub-fields. It provides some insight into the intricacies of the development of the field, focusing on legal communication and communication in legal settings. Nowadays, scholars more and more frequently research into the modes of efficient communication in legal contexts as the importance of precision and comprehension cannot be ignored, not only in monolingual but also multilingual contexts. The contemporary researchers investigate terminology, collocations and grammar of texts formulated in legal communication processes as all those components play some role in meaning construction. One cannot ignore the influence of semiotic factors which include the origins of legal languages, history of a given nation, geographical location of a country. Legal communication process is also significantly affected by mentality of people communicating law, thus finds reflection in sociology, philosophy, psychology and even theology. Legal language is one of the most powerful tools of communication as legislators and other law-makers are the most omnipotent language users. The norms set by them shape lives of individuals and societies. Badly formulated laws may be uncomprehensive and hard to follow. Well written laws will be more widely observed and accepted. Therefore, research into general and comparative legal linguistics has an important role to play in modern societies as it may contribute significantly to observing principles of democracy and equality of all citizens before the law.

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