



## The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century

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The 21st century offers all professions myriad opportunities to face new challenges and redefine their current positions. Legal translation has a long tradition in translation studies and practice; nevertheless, it seems that the moment has come for profound changes in the legal translation profession's position in society and for legal translator training. After a brief overview of legal translation, this article focuses on important challenges and opportunities for legal translators and for legal translator trainers. I revise initial steps already taken to address the challenges and to seize the opportunities of the 21st century and discuss those still requiring attention.

*Keywords: legal translation, decision making, discourse analysis, challenges, legal translator training*

### Introduction

Like it or not, the law pervades every area of our lives, from accepting terms and conditions when downloading an app to withdrawing money from an ATM. We spend much of our lives completing administrative forms and being processed on the basis of preexisting administrative categories, which support and influence the decisions that will be taken and finally affect our personal and professional lives. The law—and, as a consequence, the legal system of any country—is a result of the historical, political, and cultural development of its people. Legal texts are intricately connected to this development and reflect the complexity of the legal, political, administrative, and social systems they represent. Even in one's own language, legal texts can be obscure and incomprehensible, because legal language has a tendency to present even simple ideas in complex, archaic language (Williams, 2011). If we take into account globalization and increased population mobility in the 21st century, legal translators undeniably have a vital role to play.

In this article, after an overview of legal translation throughout history, I discuss the role of legal translation and legal translators today as a crucial nexus for effective communication. The current challenges posed by increasingly complex multicultural situations involving actors from diverse linguistic and cultural backgrounds imply a multiplicity of problems in legal translation. Furthermore, the

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traditionally subservient position of the legal translator in communicative acts has led to poor self-concept and a lack of projection and respect for the profession in general. Although legal translation now holds a consolidated position in translation studies and has attracted considerable academic inquiry and research, legal translator training has not always embraced innovations. Several new approaches based on critical discourse analysis (Way, 2008a, 2012), complexity theory, decision making, and problem-solving (Prieto Ramos, 2014; Way, 2014) push the frontiers of the current translator competence models to new horizons to prepare legal translators for the challenges of professional practice.

### **Explaining Legal Translation**

Legal translators repeatedly have to explain exactly what they do. The widespread confusion between speaking a language and translating professionally is the scourge of a translator's daily life. No, I do not teach English at the university, nor do I magically press a button behind my ear to immediately reproduce what one person is saying in one language into another while listening to the public prosecutor's legal reasoning in a courtroom. Similarly, when I receive a contract for the construction of sports installations (which must reach the client in perfect legal English today) or must burn the midnight oil to provide a frantic mother with the documents proving that she has custody of the children whom her ex-husband has just kidnapped, I still cannot find that marvelous button that all translators are believed to possess.

Unless you have used the services of a legal translator, you are unlikely to know of their existence. As Cao (2014) notes, interpreters are physically present in legal settings and hence visible to the other agents in the communicative situation. Translators, on the other hand, remain largely invisible, posing the question: "Who are the invisible translators and, more importantly, who are the monitors of such translation, ensuring the quality and integrity of the tasks performed? And above all, who may be considered a qualified or competent legal translator?" (p. 313). Court translators and interpreters or those who work in international organizations such as the United Nations have more immediate visibility and have, perhaps, advanced more in terms of recognition and organization of their professional practice. Translators who work as freelancers or for agencies, translating the multitude of documents that citizens require on a daily basis, however, are in a far worse situation. This invisibility and the fragmented nature of the profession are partly to blame for legal translators' current situation. Legal translators do, however, exist and have been practicing their profession for centuries.

According to Hilf (1973, as cited in Soriano Barabino, 2006), the first documented mention of legal translation dates from 1271 B.C. in Egypt, with the translation of the Egyptian-Hittite peace treaty. Initially, because literacy was so rare, translation was often limited to such treaties. Another milestone for legal translation was the translation of the Emperor Justinian's *Corpus Iuris Civilis* into Greek in the 6th century. Between the 7th and 13th centuries, translation activity in the Arabic-speaking world mushroomed as major works (including legal texts) were translated. As empires extended their borders, translation and interpreting became essential to rule the new cultures that were conquered. Nevertheless, scarce research exists tracing the history of legal translation, with the exception of Gémar (1982), Sarcevic (1997), Peñarroja (2000), and, more recently, Cao (2007).

As legal and administrative systems evolved parallel to growing population mobility, the creation of civil registers to record births, deaths, and marriages marked the onset of administrative control of every area of our lives, and, thus, the need for the documents emanating from official institutions to be translated increased. Consider, for example, the European Commission Directorate-General of Translation, which translated more than 2 million pages in 2013 for European Union citizens into the 24 official languages at a cost of about €1 billion per year (European Commission, 2014; One Europe, 2013). Research, however, into the practice of legal translation was relatively uncommon until the end of the 20th century, although it has increased enormously in the 21st century and is now thriving.

The question is why, if legal translation is so necessary, has it been relegated to the side lines for so long. Legal translation, as it dealt with the law, and especially the word of the law, was often likened to Bible translation. As Sarcevic (1997) points out, initially translators were forced to translate literally, although there was a steady progression to more idiomatic translation and finally to codrafting of legal texts. These early restrictions, when combined with early translation studies debates about faithfulness to the original text, were not conducive to research other than linguistic questions. Translation studies have, thankfully, evolved to consider that loyalty to the communicative function of the original text is paramount (Nord, 1997) and that accuracy concerns the content and communicative intention more than strict adherence to the words in the text.

Translation has long been considered a linguistic activity. It was not generally considered a social activity until the appearance of the polysystem theories (the 1970s), of the *skopos* theories (the 1980s), and of postcolonialism (the end of the 1980s and the 1990s).<sup>1</sup> The agents involved in translation did not occupy an important role in the translation process. Their participation remained outside the debates on equivalence, which, linked to the concept of faithfulness (generally understood as linguistic faithfulness), ignored the needs of the agents involved in social processes. Any form of translation (adaptation, summary) that did not imply the faithful reproduction of linguistic equivalents was often not considered to be true translation. Despite the fact that translation theory proposes strategies to follow, the final decision in any translation depends on the translator, who is a human capable of making decisions, guided by his or her experience and expertise. Research into legal translation also has been scarce for several reasons. One of the most difficult obstacles to overcome is the private nature of a vast amount of legal translation work, making it practically impossible to collect a large corpus of texts for research purposes. Hence, much of the earlier research deals with international legislation that is available to the public.

All translation involves code switching from one language to another, with all the cultural baggage that this entails. In recent years, due to increased population mobility, the presence of languages other than those normally taught at secondary and undergraduate levels, and hence in undergraduate translation degrees, has highlighted the pressing need to address this demand, which is most obvious in the courtroom. Because these languages are usually confined to immigrant populations, the fact that they are often neither voters nor taxpayers tends to relegate any action at the government level to a plethora of good intentions that are rarely implemented. This situation often leads to blatant violation of immigrants' basic rights, as was highlighted by the case reported in a 14-page essay by Erik Camayd-

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<sup>1</sup> For a series of video lectures by translation studies scholars, see Intercultural Studies Group (2015).

Freixas (Preston, 2008). Some attempts have been made to provide training for these languages. For example, the FITISPos research group at Alcalá University in Spain has provided short courses in public service translation and interpreting since 2001.

The EU has recognized this growing problem and has recently passed the Directive 2012/13/EU on the Right to Information in Criminal Proceedings (EUR-Lex, 2012) and the Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings. Although the idea is to create national lists of qualified translators and interpreters—allowing cross-country access to unusual language combinations, promoting continuous training, and facilitating quality services—the final product is often diluted due to economic restraints, particularly in the current crisis in the European Union. Translation costs money, and, despite the fact that the right to a translator or interpreter is imbedded in international treaties and many national legislations, it is still often considered a strain on public finances. Governments have yet to learn that poor translation services are much more costly in the long run, as has been demonstrated recently in the United Kingdom (“Court translation,” 2012).

Legal translation bears the added burden of taking into account legal aspects that are not found in other texts. Legal translators must work not only between two languages and two cultures but between legal systems that are very different due to the strong sociocultural and historical influence exerted on them. This is aggravated by the fact that the systems are not even synonymous with countries: Common law, as the basis of the legal system, may apply in the United States, England, and Wales, but not in Scotland; nor entirely in the state of Louisiana, which has a mixed legal system due to the French influence there; Australia may use common law, but this has developed according to its own sociocultural context. In the United States, the division of federal law and state law also complicates the task. Roman law extended from Spain to much of South America, where it evolved differently within each system and is subject to the linguistic variations of each country. This added complexity is partly to blame for the neglected field of legal terminology.

Other fields, such as the sciences, provide universal concepts that can be managed easily in large databases: *oxygen* is *oxygène* is *oxígeno*. Legal concepts are much more challenging. Marriage, for example, may seem to be an easy term to translate. The conceptual content, however, is not even identical in the United Kingdom, where the legal age for marriage in England and Wales is 18, or 16 with parental consent, and in Scotland, where such consent is not required and citizens may marry at 16. Likewise, the requirements to file for divorce vary enormously from one system to another, or even within the same system—requiring different or no periods of prior separation, for example. These differences in conceptual content pervade legal translation, requiring a quasi-expert understanding of the law and considerable research skills on the part of the translator, who cannot possibly be an expert in all the legal systems, nor all the fields of law, in the texts to be translated.<sup>2</sup> Legal translators are not permitted the luxury of becoming experts in a narrow field, but must be prepared to face myriad areas of not only the law but many other fields in the texts they translate.

These differences in legal systems and legal concepts are particularly problematic for certain languages covering a plethora of legal systems and countries, such as English, Spanish, and Arabic. As if this

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<sup>2</sup> Legal translators must comprehend legal concepts sufficiently to handle them in the texts they translate. They are not, nor do they purport to be, legal experts.

complexity were not enough, consider the use of English as a lingua franca in legal translation. International business often resorts to English as the common language; hence, commercial documents from Portugal for China will often be in English. Here, translations are needed that embrace the correct use of legal English (which legal English?) and simultaneously consider the legal differences between the two systems involved but that are represented by the language of another legal system. This is not always an easy task. The EU is acutely aware of the problems of the interconnections of law, language, and culture as the EU countries include Roman and common law systems. Recent developments in the EU, partly due to the problems created by translating from English as a lingua franca, have prompted a move toward the creation of a neutralized EU legal culture and EU legal language with uniform concepts that will not be constricted to concepts from either Roman or common law (Sarcevic, 2015).

Legal translation is the label given to the translation of not only legislative texts and international treaties but court documents and administrative, commercial, and financial texts. Because the law affects almost every part of people's lives, legal documents have a universal nature with content that may involve almost any field, from treaties on environmental issues to a love letter or suicide note in a court case. Although greater attention has been paid to the translation of legislation in the past, much of legal translators' work is concerned with the much more mundane world of administrative documents. The growing demand for the translation of administrative documents for different authorities is, in part, due to increased population mobility in the 21st century. The authorities process citizens on the basis of the information they receive in these documents, and the subsequent decisions taken on this basis will affect citizens' personal and professional lives.

Administrative documents are based on procedures that commence with the petition for and collection of information, which is then processed in different ways depending on the authorities involved, labeling citizens as clients/students/applicants and the information as a case to be solved. Information is processed on the basis of administrative categories that support and influence the decisions taken in each case. These categories do not always coincide in different cultures. The author of the text is an authority, and often also its receiver, whose perception of the translation will depend on the information being processed. Traditionally in translation studies, administrative documents have been forgotten or included nominally in the classification of legal texts. Generally considered to be the documentary evidence of an administrative act, they are the documents that are issued or received by the authorities, intervening in people's daily lives to describe and define social identity. The structure of these documents is a reflection of the institutional role they play (Charrow, 1982).

The superficial similarity of administrative documents disguises completely different ways of conceiving society, different degrees of importance given to the information contained in them, masking different social realities and different receiver expectations when reading them.<sup>3</sup> If, as critical discourse analysis has shown (Sarangi & Slembrouck, 1996), imbalances often exist between the administrative construct of the citizen and the reality of the citizens' situation, we can imagine the difficulties that arise on crossing linguistic and cultural frontiers when translating these documents. The cultural specificity of

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<sup>3</sup> A detailed study of the translation of academic degrees is available at Way (2003); or see Way (1997, 2005b).

administrative documents, closely tied to administrative structures and produced for receivers of the same culture, creates multiple translation problems.

Translators have long been considered third parties outside the direct communication between the original text author and the target text receiver. As such, communication between all the parties in the communicative act has excluded the role of translators for centuries. This has changed considerably in recent decades, and translators now form an integral part of the communication process. Translators are central figures who work in a social context, where the importance of their role may vary according to their interaction with the other agents involved (author, initiator/client, receiver). The position of translators is, in fact, a privileged one, as they are familiar with the possible obstacles in the communication process due to cultural and linguistic differences between the agents involved. Therefore, if translators intervene and participate on an equal footing with the other agents, they will assume a more active and more visible role in society. This type of visible activity increases the translator's social capital within the social practice in question.<sup>4</sup> Translators are obviously preoccupied by their field of action, but they also depend on relations with other social agents. To achieve legitimacy for translators as social agents, it is important to not only translate (and translate well) but engage with the other agents involved in the social process.

Translators offer a service and have long been considered a secondary profession, particularly when dealing with members of the well-established legal profession. As Schöffner (1998) noted, "It is widely felt in many places that there is a lack of respect for translators" (p. 4). Despite the fact that translation is one of the oldest professions in the world, it has existed as an academic discipline for a relatively short time and is still struggling to be accepted by other disciplines, which tend to confuse it with language learning.

Awareness of this situation has led to attempts to remedy it. In an intrauniversity collaborative authentic project between translation and law undergraduates (Way, 2002, 2004, in press), we discovered that, before the project, when translation students worked with law students who had to resolve a practical case of international private law by providing research, summaries, and translations, the law students had the preconceived idea that such tasks were better performed by lawyers with language skills than by translators. On completion of the project, however, the law students had completely changed their opinion and considered the translation students to have been invaluable in completing their task. This problem has much to do with the image of the translation profession and the self-concepts of the translators themselves. When the translation students were asked before the project about the image that the legal profession has of translators, 10% considered that they had a positive image, 63% no definite image, 21% a negative image, and 6% a very negative image. This is possibly due to the fact that the translation students believe that they are considered as a services profession, secondary to other, more prestigious professions. After completing the project, 95% believed that the image of the translation profession had improved, and only 5% believed that the project had not helped to improve the image of

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<sup>4</sup> Social capital is defined by the Organisation for Economic Co-operation and Development (2007) as "networks together with shared norms, values and understandings that facilitate co-operation within or among groups" (Keeley, 2007, p. 103).

translators held by the legal profession. A similar project is planned with comparative law students for 2015–2016. Despite the poor image generally held of translation by other disciplines, after years of close collaboration with the law faculty, the tide is turning, and discussions have begun recently to design undergraduate and postgraduate degrees combining translation and law.

### **Challenges and Opportunities for Legal Translation**

A great deal of discussion has surrounded the future of translation in the 21st century, including the TAUS webinars and debates (TAUS Videos, n.d.). Many of the questions raised and challenges suggested are common to all fields of translation. Legal translators, however, do face some unique problems in their field.

#### ***Legal Translation and Technology***

Although most major translation businesses are moving from a project-oriented approach to face the reality of real-time translation required in this digital, globalized age, this new approach may be valid only for legal translators in international institutions and businesses handling large translation projects. Translators who still work mainly with original texts delivered on paper, signed and sealed by the authorities, are unlikely to receive these texts in digital format and hence, find will find less use for translation memories and computer-aided translation tools. Nevertheless, these tools are a vital part of communication today, and legal translators need to embrace their use, when pertinent, and overcome their trepidation toward IT while also recognizing its limitations. It is clear that machine translation will never replace human translators, as was rumored in the 20th century, and thus IT tools are not to be feared but rather used to translators' advantage.<sup>5</sup> When used properly and efficiently, IT tools make translators' jobs much easier. Consider, for example, translating a legal document from Nigeria before the Internet, online dictionaries, and databases existed.

#### ***Legal Translation and the Profession***

The 20th and 21st centuries have seen a shift from knowledge being prized to information mining and information management achieving prominence. How much a translator knows is no longer as important as knowing how to find reliable information and filter, select, and use it correctly. Translators are at an advantage in this new world, where professionals from any field are expected to not only handle their own field of specialization but move easily between different fields in different languages and cultures. Translators, and particularly legal translators, have been doing this for centuries. The challenge now facing legal translators is the metamorphosis from producing a product (the legal translation) to providing a much wider service that draws on all the competences used in translation.

Recently TAUS founder, Jaap van der Meer (2014), in a talk titled "The Convergence Era: Translation as a Utility," highlighted the fact that translation will soon be embedded in people's everyday lives—particularly in digital lives, where real-time communication becomes paramount, often sacrificing

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<sup>5</sup> For e-resources for legal translators, see Salinas and Torres-Hostench (2011).

accuracy and linguistic perfection. This is plausible for gist translation, in which the receiver requires only an idea of what is in the text and which may be ideal for many fields. In legal translation, however, this is rarely the case. These services are sometimes required when a legal professional needs to know the basic content of a sentence or lawsuit, and legal translators must make their clients aware that they can provide such a service. Although it is true that in non-English-speaking countries the passive level of English among professionals in most fields has evolved sufficiently for most of them to consider reading texts in English without a translator's help, rarely are they proficient enough to produce a text in English. Even if they do, revision, proofreading, and editing skills, which legal translators can also provide, are usually necessary. For non-English A language translators,<sup>6</sup> this poses the question of translating into their B language, a practice previously frowned upon but now an increasingly important part of legal translators' workloads.<sup>7</sup>

Translators are intercultural mediators, and legal translators are ideally positioned to collaborate with their clients and demonstrate that they can provide solutions rather than representing a problem in the communication flow. This requires serious changes in legal translators' mind-set. Translators have traditionally awaited their clients' call rather than actively building up a client base and marketing their services. The translation profession seems to have spiraled into a paradoxical situation in which the translators themselves have a negative self-concept in relation to other professions (Way, 2002, 2004, in press).<sup>8</sup> This negative self-concept has been reinforced by the traditional isolation caused by being excluded as a social agent in communicative situations requiring translation.

### ***Charging for Legal Translation***

How legal translators charge for their services is a major challenge for the future, because it involves a minor revolution in the perception of legal translation as a service by shifting the focus away from the product (i.e., the legal translation itself). For centuries, the modus operandi has been to charge per word translated—or per line, in the case of German, for example. In some cases, translators also charge a single fee for a document that has only one page. This system has much to do with the fact that scribes or scribes, who painstakingly copied texts before printing became widely available, were often paid per word for their labor. More recently, translators have introduced payment per hour—thereby including the time for their research, translation, revision, editing, and other tasks involved in the translation process—or per service—charging for each task separately.<sup>9</sup> The pressures of professional practice, which normally involve tight deadlines and added stress when attempting to provide a quality translation (despite the fact that many translations are requested at the last moment and often as an afterthought in the communication process)<sup>10</sup> have helped to sustain the subservient self-concept among translators, who must combat the widely held opinion that translation is a necessary and expensive evil.

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<sup>6</sup> In translation studies, languages are coded as: A language—native proficiency, B language—near native proficiency used actively, C language—passive use of the language.

<sup>7</sup> For a detailed review of directionality in translating, see Kelly, Martin, Nobs, Sanchez, and Way (2003).

<sup>8</sup> See Fox (2012) for an example of how this dilemma is discussed by the profession.

<sup>9</sup> See McKay (2008) for thoughts on this debate.

<sup>10</sup> As illustrated in the song "5000 Words" by Sharon Neeman (2009).



Translation agencies have advanced more rapidly in this sense, disassembling the whole translation process into separate service packages that are priced according to their complexity and the quality required by the client. Freelancers, and especially legal translation freelancers, still face a major battle in training their clients to accept this adjustment in their pricing practices.

### ***Quality in Legal Translation***

*Quality* and *excellence* are buzzwords that pervade businesses and professions today. Obviously, poor or inadequate legal translations will have drastic consequences for clients, because translated texts affect their lives directly. The poor general perception of legal translators is, in part, due to elevated expectations for quality, which hinge on the fact that legal translation demands enormous expertise in all the elements of translator competence, particularly in thematic or field competence (law), but also in intercultural and communicative competence given the complexity of the legal systems and cultures and the legal languages involved. Much debate is under way concerning quality in the translation market, with particular attention being paid to defining exactly what a quality legal translation is and, more importantly, how quality is to be assured and who is qualified to assess such quality (TRANSIUS Conference 2015).

Once more, the standards that may be applied to translation in general are not necessarily adequate for legal translation. Some measures have been adopted, such as the EN 15038:2006 standard for translation service providers (European Committee for Standardization 2006), although they do not envisage vital parameters ruling decision making in legal translation, where adequacy or accuracy are far more than linguistic questions, governed more by the legal context surrounding the text. The legal translation profession faces the challenges of establishing quality benchmarks that contemplate the specificity of the communicative situation surrounding legal translation and how such benchmarks can be incorporated into legal translators' working methodology and legal translator training.

### ***Legal Translators and Society***

What challenges exist, then, for legal translators as active agents in society? As Tymoczko (2000) stated: "In fact it can be argued that most translators undertake the work they do because they believe the texts they produce will benefit humanity or impact positively upon the receptor culture in ways that are broadly ideological" (p. 26). Legal translation is one field where translators' work may have an immediate impact, affecting people's lives directly (cf. Molina Gutiérrez, 2002).

Professional associations have attempted to remedy the traditional situation of exclusion from the social processes in which translators intervene by actively participating with legislative bodies and other social agents to induce changes, detected from the privileged position held by translators observing the whole communication process. One such example is the EULITA project (<http://www.eulita.eu/>) in the European Union. In the project, legal and translation professionals and academics work closely with the EU to improve the translation and interpreting services, which in turn facilitate the legal process and, more importantly for politicians, improve cost effectiveness. A spin-off is the QUALETRA project (<http://www.eulita.eu/qualettra>), which aims to ensure quality in translation in legal proceedings by combining input from academics and professionals to guarantee adequate training, efficiency, and quality

control. These projects are excellent examples of the road to follow in underlining the role legal translators may play in social processes by exploiting their expertise.

Other examples include Way (2003, 2005b), who discusses the translation of academic degrees and the effects that translators may have on the social process of recognition of foreign qualifications. In the case described, interaction with the Spanish Education Ministry, by offering suggestions concerning the difficulties posed in the recognition process that translators had observed from their privileged position, led to a modification in Spanish legislation which simplified the procedure for all concerned.

Molina Gutiérrez (2002) offers an example of how multilingual institutional texts (EU Schengen visa applications) can lead to applicants being treated unequally because of decisions on whether to translate parts of the texts containing key information for the success of their applications. Research in translation studies is often accused of being removed from the reality of professional practice. We contend that translation studies research may be undertaken that will have an impact on not only translation practices but the society in which we live and where we act as intercultural communicators, and thus as social agents. These examples illustrate how results of research involving the legal translation profession have provided the opportunity for translators to perform as mediators, actively participating in society, by modifying the social processes under scrutiny.

### ***Legal Translators and Ethics***

Legal translators are confronted with communicative situations from their dual perspective as intercultural communicators and as members of society. Traditionally, translators have been trained to be a mere channel for the transmission of information from one language or culture to another, to be invisible or unobtrusive when they complete their tasks. This stance has, however, begun to change in the 21st century. For Tymoczko (2007), "It has become increasingly clear since World War II that translation can no longer be conceived as an objective activity, independent of interpretation. There is a responsibility to be aware of our own frameworks as we ourselves translate" (p. 204).

A serious conflict may arise when translating legal texts: the dilemma of what to do when one encounters practices that lead to social injustice. It is the translator's job to reflect the author's intentions and to deliver the best possible rendering of the original text. Nevertheless, translators are social agents who participate not only in the communication process but in society as a whole. The fact that translators hold a particularly privileged vantage point to discover anomalies in translated texts, or to observe the difficulties posed when citizens of different countries are faced with legal and administrative obstacles, often as immigrants, has been a source of debate and uncertainty among legal translators. Although codes of ethics do exist for legal (especially court) interpreters, this thorny subject has remained largely untouched by translators. The legal translation profession has, surely, advanced sufficiently to come of age, as Cao (2014) reminds us:

Ethics is integral to the job of the legal translator and interpreter, not infrequently challenging us as a moral person and a professional, impacting on the quality of our work as well as our moral

stance. A standardized code of ethical principles is a sign of maturity and professionalism of a profession, and translation and interpreting is no exception. Adhering to such a code of moral principles is required, although not legally, but ethically, of every practising translator and interpreter. (p. 314)

Reaching a consensus on ethics in translation—and particularly in legal translation—remains a major challenge for the legal translation profession and legal translator training.

### **Legal Translator Training in the 21st Century**

One of the greatest challenges for legal translation in the 21st century is to train qualified, highly proficient legal translators.<sup>11</sup> Translation studies, as a discipline, has seen enormous progress over the last 30 years, with particular attention having been paid to translator training in the last decade (Baer & Koby, 2003; González Davies, 2004; Kelly, 2005; Kiraly, 2000). Researchers have investigated new paths and new technologies in the search for the key to improving translator training, many of them using the different models of translator competence<sup>12</sup> as their starting point. Until the 1990s, little had been written about legal translator training. Since Gémar (1979) defended the fact that legal translators can actually be trained, Sparer (1988) noted that legal translators can be trained without necessarily being legal experts, and Hickey (1996) proposed legal translator training that established a series of rules applicable to various situations or circumstances based on his experience in both law and translation, a considerable amount of literature has been written.

Legal translator training must obviously face all the challenges mentioned above, and it does, in fact, integrate them into training programs. Here, nevertheless, I will describe the fundamentals of how to approach a legal translation and the ever-present concerns that haunt all trainees: decision making and uncertainty.

In an endeavor to encourage trainees to integrate all their competences in the later stages of legal translator training, two approaches have been proposed: a critical discourse analysis approach (Way, 2003, 2005a, 2005b, 2012) combined with a decision-making approach (Way, 2014). The combined approach is used in a student-centered (Kiraly, 1995, 2000), project management-based methodology that monitors the trainees' individual translator competence development (Way, 2008a, 2009).

Legal translation students frequently have little or no grounding in the field of law. This poses considerable problems for legal translator trainers when attempting to introduce students to the legal discourse community, requiring them to translate texts that are completely alien to their prior experience and social practices (see Prieto Ramos, 2014) The peculiar nature of legal translation, which perhaps requires the culture-bridging skills of the translator more so than other fields of specialized translation, is

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<sup>11</sup> See ProZ.com (2011) for a debate on whether higher education courses prepare translators sufficiently for life in the industry.

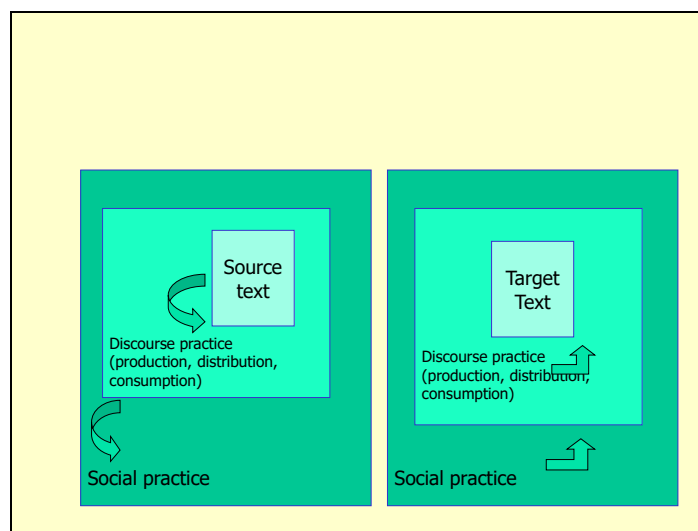
<sup>12</sup> For a comparison of translator competence models, see Hague, Melby, and Zheng (2011).

aggravated by several factors that have been detected over 25 years of training legal translators. There are three main reasons for the continuing difficulties encountered by legal translator trainees:

1. an obsession with words due to their prior pedagogical translation experience in language learning or
2. an obsession with terminology in later stages of their training and
3. lack of vital experience.

Few students have participated in a court case, bought a house, or signed a contract. These social practices are completely alien to them. This generates a lack of confidence when translating legal texts in fields with which they are unfamiliar, leading the students to rely heavily on resources that are more familiar to them and with which they feel confident, by immediately searching for any unfamiliar terminology in an attempt to understand their original texts. As legal, and particularly administrative, texts are rife with suppositions and references to social practices that students have never experienced, their searches are often unsuccessful and they experience enormous difficulty discriminating between the possible solutions they encounter. Recent process research by Dam-Jensen (2012), for example, discusses decision making and dictionary use by MA students in Denmark, highlighting the fact that students often make unjustified decisions with which they are not particularly convinced. This led us to the adoption of a new approach to overcome these difficulties during training and to provide students with a methodology they will be able to use in the future when faced with new fields and texts.

Applying discourse analysis is not new in translation studies, where the analysis of texts through discourse, used as a means of structuring social practices or fields of knowledge, has been applied to different fields of translation. Critical discourse analysis, however, has not been used as widely in translation studies research. During my PhD research (Way 2003, 2005a, 2005b, 2008b), I used the perspective of critical discourse analysis for the study of the problems posed in a social practice that requires the intervention of a certified/sworn translator. I adopted the three-dimensional model suggested by Fairclough (1992, 1995), suggesting the description of a text, the interpretation of the discursive practice (production, distribution, and reception of the text), and the explanation of how the discursive practice is related to the social process. I also examined how the three elements relate to one another by adding translation as a new element in the process. The model can be represented as shown in Figure 1.



**Figure 1. A discourse analysis approach to translation (Way, 2012).**

This model provides students with the tools to develop a structured analytical process when approaching the translation of legal texts. Traditionally, translation classes revolve around the text to be translated—and, more specifically, the terminology that poses problems for the students. In this model, students are guided through a step-by-step procedure that first situates the text within social processes and social events. By locating the text within the discursive practice (production, distribution, consumption), students become familiar with the internalized social structures and conventions governing the text, allowing them access to what Fairclough (1995) calls “members resources.” When this information is combined with the social practice in which the text participates, seemingly obscure elements in the text become immediately clearer. The process is then applied in the target language and target culture to discover whether parallel discursive and social practices exist, thereby leading to parallel or similar texts. Only then does the translation process proper begin.

The three-stage discourse analysis approach pries students gently away from the three main difficulties mentioned earlier. Familiarity with the discursive and social practices surrounding the original text and the parallel process in the target culture dissipates many of the initial potential problems that students detect in the original text. As a result, the hurdle of lack of vital experience is overcome; the complete approach eliminates, to a great extent, the need to search for unfamiliar terms because their research attenuates this lack of familiarity with the terminology and the discourse required. Finally, the habit of immediately delving into a dictionary becomes a thing of the past quite effortlessly.

The second approach involves the complex question of decision making as a pillar of the translation process. This troublesome issue has been visited by other researchers (Darwish, 1995, 1999; Holmes, 1972/1988; Jumpelt, 1961; Levy, 1967; Séguinot, 1991; Toury, 1985, 1995; Wilss, 1994) from different perspectives. More recently, emphasis has turned to a combination of these two approaches by

reflecting upon the construction of a framework for decision making in the translation classroom, based upon translator competence, which students may then tailor to their own competences and refine during their translation programs and, later, in their professional practice. Legal translator trainers often encounter recurring difficulties when attempting to enable trainees to establish an overarching framework for decision making rather than specific decision-making processes for individual translation problems. Such a framework of decision making draws upon different subcompetences to solve different problems, and hence provides strategies central to the translation process. Decision making plays a vital role in the translator's performance (process) and the end translation (product). In fact, the assessment methods measure the success or failure of trainees' decisions. The move from product-oriented to process-oriented approaches means that, at different stages of training, more emphasis is placed on assessing the process than on the final product itself, but both still rely heavily on the trainees' decision making. Decision making and problem solving are obviously intertwined (Wilss 1998), thereby bringing into play both declarative/theoretical and operative/practical knowledge, as suggested by González Davies and Scott-Tennent (2005). To solve a problem, we must make a decision.

Translation studies, has, however, tended to dwell on decision making for isolated translation problems (institutional names, metaphor, etc.) rather than on establishing an overarching framework. Dissatisfied with the results of research to date, I turned my attention to other fields where decision making is vital. In decision theory, I discovered a possible solution: organizing the presentation of translation problems to students by categorizing decision-making situations. The Cynefin framework for leaders developed by Snowden and Boone (2007) has been instrumental in this organization of translation problems.<sup>13</sup> This framework proposes five contexts for decision making defined by the nature of the relationship between cause and effect: simple, complicated, complex, chaotic, and disorder. Leaders are expected to diagnose situations and to act in contextually appropriate ways in the first four contexts. In the fifth context, disorder, it is difficult to decide which of the first four contexts predominates.

If we apply these categories to translation, we find that simple contexts involve stable problems where clear cause-and-effect relationships are evident—in other words, situations in which translation norms or accepted behavior could be used. In this context, the decision maker must consider or identify the problem, categorize it, and then resolve it by using established translation practices. Simple contexts, nevertheless, may still be more complex than expected: If the problem is not identified correctly or if the decision maker falls into what the authors call "entrained thinking"—by implementing a conditioned response acquired through previous experience or training and success—or she or he may become complacent when facing apparently familiar problems (see Robinson's [1997] example of an alarm system). In complicated contexts, on the other hand, multiple right answers may exist to the problem, requiring the decision maker to analyze the diverse possible solutions before implementing them, which will often be time-consuming, because more than one right answer may be viable. These problems should be introduced gradually in translation courses, because they require greater diagnostic skills and expertise. Complex contexts involve problems with a wide array of interacting elements, which are

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<sup>13</sup> "Cynefin is a Welsh word that signifies the multiple factors in our environment and our experience that influences us in ways we can never understand" (Snowden & Boone, 2007, p. 2).

dynamic and nonlinear, and imply that minor changes may produce disproportionately serious consequences, often impeding predictions of the outcome. They are unpredictable and often require creativity and innovative approaches. These problems are less common in translation than in interpreting, but they are found occasionally. Chaotic contexts are full of unknowns because of constantly changing circumstances. These contexts involve high tension and multiple decisions and are characterized by a lack of time, as, for example, in interpreting. Contexts with disorder are extreme—likened by Snowden and Boone (2007) to the events of 9/11—and unpredictable.

Using this classification to select translation problems in training allows the trainer to progressively increase the complexity of the problems posed. With careful structuring, the trainer can also exemplify the dangers of decision making based only on past patterns of success and failure rather than on a clearly defined framework of decision making. For example, it is not uncommon for students in introductory legal translation courses to rely heavily upon glossaries, understood as lists of static equivalences without contextualization. If the student does not reflect carefully upon the original text and *skopos*, a term that was used successfully and appropriately in another context will be misused. Building a framework for guided decision making, especially in the initial stages of legal translator training, must, then, be central to teaching. Legal translation courses are often structured according to the degree of abstraction of legal terms and concepts used to identify a text as being more or less specialized. The framework suggested here, however, provides a sequencing pattern of increasing difficulty dependent on the activation of all the subcompetences and not just subject area/thematic competence. Translator trainers, then, may help students to create a decision-making framework that will gradually enable them to internalize problem-solving strategies through structured, controlled training. These processes will then become automatic to a certain extent, facilitating their translation work and increasing their efficiency and confidence. We attempt to convey these initially controlled processes to students so that they can internalize certain mechanisms to provide solutions as reflex actions or habits and reduce their decision-making load, and thus their uncertainty and lack of confidence.

### Conclusion

Despite the somewhat fraught and stony path of legal translation throughout history, submitting the practice of the profession, due to the legal context, to more external pressure than other fields, the 21st century provides a tremendous opportunity for legal translators. Translators are increasingly perceived as expert intercultural communicators; the question is how to improve this perception of the role of the translator to achieve a balance that is acceptable to all the agents intervening in the social processes that require the translation of legal documents. Translating has long been seen as a secondary service and the translator as a subordinate; perhaps in the 21st century, we can improve the perception of the role of the translator, intervening more actively in social processes involving two or more cultures and languages. To achieve this, legal translator training must keep its finger on the pulse of the profession and anticipate future challenges to consolidate training as the foundation upon which quality, ethical legal translation practice will be constructed. Legal translation is a fascinating profession, and the privileged position held by legal translators at the heart of international legal communication provides an opportunity for legal translators to intervene in social processes as expert intercultural mediators by assuming an active communicative role between cultures. If legal translators are to facilitate communication, it is time

to face the new challenges posed in the 21st century and seize the opportunities within our grasp by revising outdated translation practices and assuming the social role required of legal translators today.

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