A Cultural Approach To Legal Translation: Contemporary Perspectives And Challenges

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The preliminary part of the paper aims to set the context by highlighting the binding and enduring connection between law and culture, particularly by informed understanding of different legal systems accompanied by harmonization of legal terminology endorsed by mutual awareness of cultural diversity. Furthermore, the main section of the presentation will provide a thorough and in-depth analysis of linguistic challenges and cultural barriers in the process of translating legal texts, exemplified by recent misuse of English loan words, which requires a high level of proficiency in the target and source languages in addition to a wise ability to adapt to the socio-cultural context and ultimately render a message that facilitates communication and endorses an accurate conveyance of legal terminology. To conclude, the challenges to legal translation are far beyond the linguistic area, as the field is imbued with different cultural contexts, shaped by socio-political and historical evolution, in addition to the wealth of legal terminology applications.

Keywords: cultural translation, law, legal terminology, multilingualism, plurilingualism

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Current relevance of continuous professional training in the context of internationalization

According to the *Report on Internationalization of Higher Education in Romania* (2013) "internationalization is the process of integrating an international, intercultural or global dimension into the purpose, functions and delivery of post-secondary education."[1] Furthermore, "internationalization is not merely an end in itself, but an important resource in the development of higher education towards a system in line with international system as well as open and responsive to its global environment." The same *Report* points out to some of the strengths of the Romanian national academic system in attempt to foster and enhance internationalization[2] such as: the role of Cultural Centres set up nationwide - British Council, Goethe Institute, Confucius Institutes, Fulbright Commission - acting as a gateway for collaboration between universities; active participation in the Erasmus+ programme: short-term mobility providing academics and researchers the appropriate forum for the exchange of best practices, inviting new faculty as guest professors for long-term cooperation; in addition to student-centred learning approach: e.g. developing new programs for international students, to meet their demands; attracting faculty members with international experience; requiring students

to be proficient in at least one foreign language for graduation compulsory; development of multi-lingual teaching centres in higher education institutions.

The major dimensions of internationalization include: integration of internationalization in the university strategy enabled by student and staff exchange; internationalization of curriculum by updating study programs and harmonization of syllabus in keeping with the most recent research, academic standards and labor market requirements; as well as promoting the study language skills as core competence: for both employability and empowerment.

The mission of universities nowadays is to create, convey and make full use of knowledge, running parallel to their proactive role in foreseeing the dynamic changes with an impact on all levels of society as well as keeping abreast of the latest scientific discoveries and academic standards. Higher education institutions should evince a twofold development strategy: responsive, i.e. receptive to society and labour market expectations, and responsible, i.e. undertake the ambitious role of guiding strategic thinking and policy-making. Some of the most demanding challenges to contemporary higher education can be highlighted as follows: the strength, prosperity and welfare of any nation in a global knowledge economy will educated as well as highly qualified professionals; secondly, universities have to face the challenges triggered by the powerful forces characterizing global economy: hypercompetitive markets, demographic change, increasing cultural diversity, ethnic migration and the latest information and communication technologies.

Whether academics or practicing professionals in the legal area, continuous professional development is a prerequisite in a dynamic, unpredictable global world affecting both personal and professional lives. A recent article published in *The Guardian* pleads the case for the study of foreign languages with particular reference and applicability to aspiring lawyers, though the case might well be extended to all professionals in law. "The globalization of legal practice means that many international law firms will not hire lawyers without language skills. 'In our profession, language skills are critical because, as international lawyers, we apply our trade with words.' (Patricio Grane Labat – partner of a public international law firm, fluent in English, French, Spanish) Moreover, dr. Martina Kunnecke, lecturer in comparative public law and EU law states that 'students need a global mindset and language skills are a part of that' encouraging students to learn a foreign language and even study law abroad."[3]

Another situation is represented by the particularly challenging employment opportunity as an English-language lawyer-linguist at the European Court of Justice, whose responsibilities include: translating and revising legal texts, providing advice on legal terminology and legal analysis, whereas the qualifications of the eligible candidate include: perfect command of two foreign languages, besides mother tongue, plus an academic degree in law, in addition to the ability to integrate effectively into an intercultural and multilingual context.[4] Mmention should be made of the opportunities and requirements set forth by the European Commission Directorate General for Translation in "Interpreting and Translating for Europe": "… in addition to an excellent knowledge of the languages from which you translate and of the related cultures…"[5]

The relevance of the ***European Charter for Plurilingualism*** for the present society highlights the key significance of plurilingualism in intercultural contexts and functional situations: a means of getting to know and understand other people and their culture, facilitating international relations, shaping identity, enhancing cultural diversity improving mutual intercultural awareness and understanding, promoting scientific development, education and contributing to economic efficiency, right to work; as well as widened access to and representation in the media.

The answer to the question "why study legal English?" is twofold: as a prerequisite for legal professionals to master the art of public speaking and effective communication in English in addition to enhanced legal knowledge and expertise. The right mix of skills, both professional and transversal competencies, is essential for the contemporary expert, since the global world demands knowledge of a particular area of study or research, endorsed by accuracy and fluency in a foreign language. Secondly, particular attention and thorough study should be given to the differences between Anglo-American and Continental legal systems emerging from differences in culture, history, socio-political development.

Martha Nussbaum, influential contemporary philosopher and Professor of Law at the University of Chicago, actively promotes the role of humanities nowadays for an all-round education, and advocates the need of training students with the "skills for life" and shifting the focus on acquiring competencies rather than degrees, such as: entrepreneurship, cultural awareness and interaction, public speaking and the art of argumentation, learning to learn, information literacy, soft skills. "Citizens cannot relate well to the complex world around them by factual knowledge and logic alone. The third ability of the citizen, closely related to those two, is what we can call the narrative imagination."[6]

A trans-disciplinary approach to law

Law and culture

Menachem Mautner, Professor of Comparative Civil Law and Jurisprudence, identified *Three Approaches to Law and Culture:*

The first approach arose in German jurisprudence and it views law as a product of a nation`s culture and as embedded in the daily practices of its people. According to the historical school, statutes are not meant to create law; rather, their function is to reflect existing social practices. The second approach, the constitutive approach, developed in American jurisprudence in the 1980s, views law as participating in the constitution of culture and thereby in the constitution of people`s minds, practices, and social relations. Law is an inseparable dimension of social relations. The third approach, found in 20th century American jurisprudence, views the law that the courts create and apply as a distinct cultural system. Law practitioners internalize this culture in the course of their studies and professional activity, and this internalization comes to constitute, direct and delimit the way these practitioners think, argue, resolve cases and provide justifications." [p. 84] Besides these three approaches thoroughly analyzed throughout the essay, the scholar added a few more approaches concerning legal studies, namely: law and anthropology, legal culture, legal consciousness, law and popular culture, law and the production of cultural artifacts (intellectual property law), law and multiculturalism. [7]

In this respect, mention should be made of the influential theory set forth by Harold Innis concerning *space-biased* and *time-biased* societies and civilizations, subsequently reflected in contemporary media and communication. [8] This reminds us of the *monochronic vs polychronic time theory* in understanding cross-cultural communication; equally relevant in this context is the distinction *high-context and low-context culture***,** highlighted by the anthropologist Edward Hall in his seminal book, "Beyond Culture", in view of making culture a vector for facilitating effective and creative communication rather than approaching cultural differences as a source of misunderstandings. [9]

In today`s inter- and hyper-connected world careful consideration given to the *tangible cultural patrimony and intangible cultural heritage,* regulated by a series of documents, thus highlighting the relevance of law and legal instruments for the the enduring, inextinguishable and invaluable area of law: the Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 17-21 Nov. 1972) occasioned by the General Conference on the UN Educational, Scientific and Cultural Organization; the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression (Paris, 20 Oct. 2005) highlighting: the importance of culture for social cohesion; linguistic diversity is a fundamental element of cultural diversity; the vital role of cultural interaction and creativity; the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 2003), as a fundamental dimension of cultural diversity in contemporary world, and the 1961 Vienna Convention on Diplomatic Relations.

Any discussion of cultural diversity, either in former times or nowadays, should include an informed reference to *cultural diplomacy* – or "diplomacy between cultures" – as the theory and practice of facilitating cultural exchanges. Whereas the scholarly term or academic discipline may be more recent, the practice itself is century-old, testified by the numberless explorers, missionaries, diplomats, envoys, scholars, etc. who travelled the world and disseminated their own culture, but more significantly collected a detailed and informed insight into the culture of their host country. A distinction should be made between diplomacy as practice and – boasting a long history of international relations – and diplomacy as an organization and institution.

To sum up "… an adequate understanding of legal ideas … is impossible without adopting a *sociological perspective* … Like social theory, law generalizes and conceptualizes social relations, actions, circumstances and institutions in abstract terms so that they can be considered systematically."[10]

Law and society

Since social forces produce law, therefore different legal systems will emerge according to the specificity of each culture also subject to the powerful forces of geography, history and politics.

According to William Hurst, in his quintessential outline of "The Law in the United States History", an adequate definition of the attributes of American legal order suggests that the study of law in these terms, i.e. the significance of legal process in society, should contribute more to the understanding of the society.

> *Law offers peculiarly important evidence of the values which give this society coherence and vitality. Thus, the study of legal history can make special contribution to the general history of ideas. The study of a people`s values has basic importance to understanding a society, for it is the sharing of values that provides the bond of lasting human relations, even where the shared values may express themselves in secondary conflict.*[11]

This theory is further explained and sagely summed up by Lawrence Friedman in his "Notes Towards the History of American Justice":

It is commonplace that social forces produce law, directly and indirectly. It follows that different cultures will make law in different ways. In every society there are the rulers and the ruled: some individuals, groups and strata have more power or influence than others; the law that any society makes will reflect the interests of those on top to the extent of their superior might. But power and influence do not directly act on law. Law – statutes, doctrines, legal behavior in general - comes about only when individuals and groups make demands on the system. Demands then rather than interests are the proximate causes of law. The structure of demands is a cultural factor; no doubt its shape always reveals the powerful pull of long-term pressures, deriving from those with influence and power.[12]

To conclude this brief section about the indelible and powerful connection between law and social order for continuous development, let us mention merely a few landmark documents of perennial relevance and fundamental influence for the history of humankind and endorsement of the rule of law: The Universal Declaration of Human Rights; Declaration of the Rights of Man and of the Citizen; US Bill of Rights; Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Law and rhetoric

Communication has always played a key role in the evolution of humanity and the course of history; now, more than ever, in today`s changing and challenging world, communication has also become the subject of academic study and research underscored by interdisciplinary and intercultural perspectives to the world.

Communication represents an essential component of individual and/or institutional interaction, key ability in the field of intercultural mediation and public diplomacy, powerful connector in a multi-polar, multicultural and multilingual world, vector of preserving and promoting national identity, cultural innovation and artistic creativity, as well as a top-ranking criterion for employers in recruitment and assessment processes. Contemporary international cooperation is substantiated by informed knowledge of other cultures and civilizations, mediated by intercultural communication.

Communication is neither an isolated nor a one-way process; on the contrary, effective communication relies heavily on the ability to build bridges, to connect individuals, groups or masses of people instead of emphasizing and deepening the divide. Communication is a powerful connector – of individuals, institutions, cultural communities, business entities, etc. Communication competence enables an individual or a group of people to provide, maintain and ensure smooth and successful interaction, both in intra- and inter-cultural contexts.[13]

The concepts of rhetoric and law are tightly and inherently connected and any understanding of their interdependence requires a historical approach with special reference to Aristotle`s *Rhetoric* – a landmark study of high impact and crucial influence to the present day, a fundamental systematic treatise on oratory and particularly the threefold means of persuasion in view of endorsing one`s argumentation, i.e. appealing to human intellect, enabled by substantive evidence; morality, testified by credibility; and emotion. Let us sum up this brief section about rhetoric with reference to Cicero – outstanding statesman, philosopher, politician, gifted orator and great theoretician of the art of oratory – who successfully epitomized the most important skills of an excellent orator: „ ...the art of eloquence is something greater, and collected from more sciences and studies than people imagine ... A knowledge of a vast number of things is necessary, without which volubility of words is empty and ridiculous."[14]

Challenges in teaching legal English and translating legal documents

This section aims to highlight the connection between law, language and culture in balancing the power relations worldwide as it is widely acknowledged that language is imbued with cultural connotations in both communication and translation, highlighting the binding and enduring connection between law and culture, particularly by informed understanding of different legal systems accompanied by harmonization of legal terminology endorsed by mutual awareness of cultural diversity.

Furthermore, in her world-renowned translation study, Susan Bassnett acknowledged that language is "the heart within the body of culture, and that it is the interaction between the two that results in the continuation of life-energy"[15] Her argument emerges from the theses of Edward Sapir, Benjamin Lee Whorf and Juri Lotman that "no language can exist unless it is steeped in the context of culture; and no culture can exist which does not have at its center, the structure of natural language." (qtd in Bassnett, 22). This theory is also endorsed by Umberto Eco, in his *Experiences in Translation,* who raises our awareness about translation as a "shift, not only between two languages, but between two cultures – or two encyclopedias." (Eco, 17) Language and culture are inherently connected, unhesitatingly evinced by the process of translating which is "not only connected with linguistic

competence, but with intertextual, psychological and narrative competence." [16]

The concluding remark reinforces the need to promote foreign language learning for professional development, as the best means of connecting culture to their specific study or research area, in addition to teaching English across the curriculum as a means to improve linguistic competence and to promote plurilingualism.

Notes:

1. Jane Knight, *Higher Education in Turmoil. The Changing World of Internationalization*, Sense Publishers: 2008, p. 6.
2. Report on Internationalization of Higher Education in Romania (2013) p. 49.
3. https://www.theguardian.com/law/2015/jul/07/the-case-for-foreign-languages-as-an-aspiring-lawyer July 7th 2015.
4. https://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/brochure_en.pdf.
5. http://cdt.europa.eu/sites/default/files/documentation/pdf/qd0117611en.pdf.
6. Martha Nussbaum, "Skills for Life" *Times Literary Supplement*, April 30th 2010, p.5.
7. https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3206&context=clr.
8. Harold Innis, *The Bias of Communication,* University of Toronto Press, 2008.
9. Edward Hall, *Beyond Culture,* Anchor Books, 1976.
10. Roger Cotterrell, *Law, Culture and Society. Legal Ideas in the Mirror of Social Theory,* Routledge: 2006, pp. 1-2
11. William Hurst, "The Law in the United States History" in A*merican Law and the Constitutional Order. Historical Perspectives,* eds Lawrence Friedman & Harry Scheiber, Harvard University Press, 1988.
12. Lawrence Friedman, "Notes Towards the History of American Justice" in A*merican Law and the Constitutional Order. Historical Perspectives,* eds Lawrence Friedman & Harry Scheiber, Harvard University Press, 1988.
13. Mitchell R. Hammer, „Intercultural Communication Competence" in *Handbook of International and Intercultural Communication ,* eds. Molefi Kete Asante and William B. Gudykunst, Sage Publications, pp. 247-256.
14. Cicero, „On Oratory and Orators" *„forța unei idei și să o comunice publicului prin argumente bazate pe cunoaștere și înțelepciune ... Un orator trebuie să fie capabil să aleagă limbajul potrivit și să-și aranjeze cu grijă cuvintele. De asemenea, oratorul trebuie să înțeleagă toată aria de emoții cu care ne-a înzestrat natura ... Totodată, oratorul trebuie să fie înzestrat cu duh și șarm aparte, să fie cultivat în spiritul înaltei societăți, dar să aibă și abilitatea de a lovi dur atunci când își atacă adversarul. În plus, trebuie să dea dovadă de o grație subtilă și rafinament. În fine, oratorul trebuie să aibă o minte ageră ca să-și poată aminti momentele și exemplele relevante din istorie și trebuie să aibă noțiuni temeinice de drept ... Cred că nimeni nu poate deveni cu adevarаă un orator desăvârșit decât dacă are o cultură solidă ... Desigur, nu susțin că un orator trebuie să fie atotcunoscător, mai ales în tumultul societății moderne, dar sunt convins că oricine își spune orator trebuie să jongleze cu indemânare cu orice subiect, astfel încât discursurile sale să aibă atât formă, cât și conținut de calitate."* Philip Freeeman, M.T. Cicero, *Cum se conduce o țară. Ghid antic pentru liderii moderni,* Editura RAO, 2014, p. 49-52].
15. Bassnett, Susan, *Translation Studies,* London: Rutledge, 1998, p 22.
16. Eco, Umberto, *Experiences in Translation,* translated by Alastair McEwan, Toronto, Buffalo, London: University of Toronto Press, 2001, p 13.

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