

The Language of Law in Intercultural Context in the Light of British and American English

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The complex processes that determine intercultural legal communication take place in various legal systems using a great variety of languages. It is inevitable to take into consideration the context, the specific demands and the needs of the participants that apply to the intertwining sphere of legal translation. Although the primary aim of legal communication in intercultural settings is explicitly defined, the underlying concept of cultural embeddedness is unavoidable. From the linguistic point of view, the complex nature of intercultural legal procedures and transactions presumes one single governing law based on a special legal system, which includes the linguistic level as opposed to the cultural one. Whether a legal term can be translated or interpreted properly depends on the common features of the legal systems rather than the languages used in the interaction.¹ The paper undertakes to present some features of linguistic and cultural variations related to British and American English in legal communication. Moreover, there are references to the variations based on the differences between British and American English negotiation styles.

Keywords: *legal language, legal terminology, intercultural communication, British and American English, common ground*

Introduction

As Taylor puts it, “the great challenge of this century, both for politics and social science, is that of understanding the other as such. The days are long gone when European and other Westerners could consider their experience and culture as the norm toward which the whole of humanity was headed, so that the other could be understood as an earlier stage on the same

¹ See, for example, the different meanings of the concept of a secret in colloquial and legal language here: ARATÓ, Balázs: A titok fogalma a jogban; in: Balázs, Géza; Minya, Károly; Pölcz, Ádám (ed.): A titok szemiotikája; Budapest; Magyar Szemiotikai Társaság; 2019; p. 367; pp. 29–39, and: BALÁZS, Géza: A titok antropológiája és szemiotikája; in: Balázs, Géza; Minya, Károly; Pölcz, Ádám (ed.): A titok szemiotikája; Budapest; Magyar Szemiotikai Társaság; 2019; p. 367; pp. 15–28.

road that they had trodden.”² Even in terms of translation and interpretation participants can experience a certain kind of ethnocentric approach to make a swift judgement towards the other party, which may influence the quality of the cooperation to a considerable degree.

The current essay aims to investigate specific problems that language users can face in legal interaction in intercultural context.³ The intercultural legal community serves as a meeting point for legal specialists from diverse locations who participate in joint legal procedures. In order to communicate adequately in various language settings where cultural barriers also prevail, participants in the interaction need to use the language of one of them or they may resort to interact with the help of a third language that is neutral for both parties.⁴ The use of a common means of communication makes it possible for participants to use a language as a *lingua franca*.⁵

Principles of Legal Translation

Since there is a constant need for the transmission of precise and exact information, legal translation follows a clearly specified purpose along translation strategies and techniques that produce appropriate translation. Nord’s suggestion involves the establishment of translation commissions that inspires legal professionals to improve the quality of translation on the basis of the intended target-text function, the receivers, the time, place and the motive of production and reception of the text.⁶

2 TAYLOR, Charles. *Understanding the Other: A Gadamerian View on Conceptual Schemes*. Idem, *Dilemmas and Connections. Selected Essays*. Belknap Press, Cambridge, 2011. p. 24.

3 See further approaches here: BALÁZS, Géza: Interkulturális hatások a jelhasználatra; in: Balázs, Géza; H. Varga, Gyula (ed.): *Társadalom és jelek. Társadalomkutatók a szemiotikai perspektívákról*; Semiotica Agriensis 2–3; Budapest; Magyar Szemiotikai Társaság; Eger; Líceum Kiadó; 2006; pp. 75–84.

4 See further details on the specific features on intercultural communication here: BALÁZS, Géza: Magyarok, a magyar nyelv idegen tükörben. Az interkulturális kommunikáció mint a kulturális nyelvészet egyik aspektusa; in: Frantisek Alabán (ed.): *Jazykové aspekty interkulturálnej komunikácie v stredo-európskom kontexte/Az interkulturális kommunikáció nyelvi aspektusai közép-európai közegben*; Univerzita Mateja Bela Fakulta humanitnych vied Katedra hungaristiky; Banská Bystrica; 2009; pp. 7–14.

5 See further thoughts on the anthropological approach towards intercultural communication here: BALÁZS, Géza: Az interkulturális kommunikáció antropológiai meghatározottsága. Gondolatok egy európai kulturális-kommunikációs stratégiához. 103–111. In: Jubileumi kötet Lizanec Péter professzor 90. születésnapjára. Főszerk.: Zékány Krisztina. Ungvári Nemzeti Egyetem, Magyar Filológiai Tanszék, 2020. ISBN 978-617-7796-18-2

6 NORD, Christiane. *Translating as a purposeful activity: Functionalist approaches ex-*

Focussing on the intercultural aspect of legal translation practices Vermeer's approach defines translation as an intercultural transfer.⁷ In his view the source and the target language are both embedded in the cultures concerning the participants' origin. Moreover, he argues that the translator must play the crucial role of an intercultural expert who acquires the ability of what Nord refers to as translating means comparing cultures.⁸ Following his line of thinking his approach anticipates the interpretation of the source culture based on the translator's own knowledge of the source and target culture for the target culture audience. This assumes the shared knowledge of both the translator and the audience. In terms of intercultural pragmatics the common ground of the two parties plays a vital role in the proper interpretation of the target text. Although Kecskes applies the concept of common ground which refers to the sum of all the information that people assume they share in intercultural context, its role can also be analysed along the translating process.⁹

The issue of common ground requires the analysis of culture with the primary focus on translation. Vermeer states that the legal system is an underlying part of a culture, which indicates that the entire setting of norms and conventions an individual as a member of his society must know in order to be like everybody – or to be able to be different from everybody.¹⁰ Vermeer's culture definition reinforces that translators working on legal documents need to be intercultural experts with knowledge of the legal systems in translation. As Ting-Toomey and Oetzel puts it, it is a prerequisite for a translator to be sensitive to personal, situational and cultural factors that can form interactions and they need to develop a certain level of mental flexibility.¹¹

The investigation of legal communication is based on the notion that autonomous legal systems are independent of legal languages. Moreover, these legal systems form a considerable part of specific social and political environments. This independence shows that there is not any direct relationship between legal systems and legal languages. This can be argued as follows:

plained. St. Jerome, Manchester, 1997. p. 137.

7 VERMEER, Hans J. *What does it mean to translate?* Indian Journal of Applied Linguistics 13 (2): 25–33. 1987.

8 NORD, Christiane. *Translating as a purposeful activity: Functionalist approaches explained*. St. Jerome, Manchester, 1997. p. 34.

9 KECSKES, Istvan. *Intercultural pragmatics*. Oxford University Press, Oxford, 2013. p. 151.

10 VERMEER, Hans J. *What does it mean to translate?* Indian Journal of Applied Linguistics 13 (2): 25–33. 1987.

11 TING-TOOMEY, Stella – OETZEL, John G. *Managing Intercultural Conflict Effectively*. Sage Publications, London, 2001. p. 178.

(a) one legal system uses various legal languages (e.g. Canada, Austria, Italy);

(b) one language (with minor differences) can be divided into several legal systems (e.g. the UK or the USA).¹²

House's European common language theory emphasises the distinction between languages for communication and languages for identification. In the first case language is used by speakers for interpersonal communication in daily interaction, whereas in the latter one language is a means of expressing and maintaining one's identity within a community.¹³ House's distinction serves as a continuum along which legal language – for obvious reasons – should be placed closer to the communication side. The legal context offers legal professionals the opportunity to be part of an international or intercultural community in which they use the language to take part in legal discussions, negotiations and interactions.

Features of Legal English

Before elaborating on the distinctive features of legal English, it is worth clarifying the terminology related to this technical language. Some scholars make a careful approach to differentiate between the concept of 'legal language' and 'the language of law'. Busse¹⁴ and Tiersma¹⁵ use 'language of the law' which may also refer to legislative language or the language of legislation. As Mazzaresse puts it, 'legal language' involves the law-maker language and the judicial language as well.¹⁶

12 KOCBEK, Alenka. *Language and culture in international legal communication*. *Managing Global Transitions* 3 (4): 231–47. 2006. p. 239.

13 HOUSE, Juliane. *English as a lingua franca for Europe*. In: Pulverness, Alan (ed.): *IATEFL 2001: Brighton conference selections*; 82–84. Whitstable: IATEFL. 2001.

14 BUSSE, Dietrich. *Die juristische Fachsprache als Institutionensprache am Beispiel von Gesetzen und ihrer Auslegung*. In: HOFFMANN, Lothar – KALVERKÄMPER, Hartwig – WIEGAND, Herbert Ernst (ed.): *Fachsprachen – Languages for Special Purposes. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft – An International Handbook of Special Languages and Terminology Research*. Vol. 2. De Gruyter, Berlin/New York, 1999. 1382–1391.

15 TIERSMA, Peter Meijes. *A History of the Languages of Law*. In: TIERSMA, Peter M. and SOLAN, Lawrence M. (ed.): *The Oxford Handbook of Language and Law*. Oxford University Press, Oxford, 13–26. 2012.

16 MAZZARESE, Tecla. *Legal interpretation as Translation*. In: ZACCARIA, Giuseppe (ed.): *Übersetzung im Recht – Translation in Law (Ars interpretandi, 5)*. LIT, Münster, 161–188. 2000.

Tiersma's approach to his concept of legal language is expressed as follows: Our law is a law of words. Words are also a lawyer's most essential tools.¹⁷ This quote exemplifies how important the study of language is either in intra- or intercultural communication. Understanding passages of law and comprehending its core content is essential not only for lawyers and other legal professionals, but also for translators cooperating in legal processes.

Given the specific features of legal English, it does not only convey information but also it affects and modifies an individual's attitude and behaviour. The multitude of statutes, regulations, court decisions and legal and business contracts create a diversity of norms in different countries. Based on Austin's Speech Act Theory legal language use passes judgements, grants permission, expresses prohibition and imposes obligations. These utterances show performative power of legal language.

The vocabulary of legal English, which is also worth investigating, shows unique features because of its complex system. Cao's approach clearly describes the unparalleled state of legal language: its inner system displays the history, development and culture of a specific legal system.¹⁸ The choice of words depends on independent legal terminology referring to particular patterns of legal thinking. These patterns developed along one of the eight legal families that Zweigert and Kötz specify as follows: the Germanic, Romanistic, Nordic, Common Law, Socialist, Far Eastern Law, Hindu and Islamic Laws.¹⁹ The two major legal families that prevail in most countries are the Civil Law (e.g. France, Switzerland) and the Common Law (e.g. the UK, the USA). The legal families influence the degree of the translatability of legal concepts according to which de Groot establishes four fundamental categories:

(a) the legal systems and the languages involved are closely related (e.g. France and Switzerland);

(b) the legal systems are closely related, but the languages are not (e.g. the law in the Netherlands and in France);

(c) the legal systems are different, but the languages are related (e.g. Germany and the Netherlands);

(d) both the legal system and the languages are unrelated (e.g. laws in English and in Slovene).²⁰

17 TIERSMA, Peter Meijes. *Legal Language*. The University of Chicago Press, Chicago. 2000. p. 1.

18 CAO, Deborah. *Translating law*. Multilingual Matters, Clevedon. 2007.

19 ZWIEGERT, Konrad – KÖTZ, Hein. *An introduction to comparative law*. Oxford, Clarendon. 1992.

20 GROOT de, Gerard-René. *Recht, Rechtssprache und Rechtssystem: Betrachtungen über die Problematik der Übersetzung juristischer Texte*. Terminologie et Traduction (3): 279–316. 1992.

Whether legal systems are related or not, during the translation process there are other factors that influence the quality of translation. Most frequently the syntax, the pragmatics and the style of a specific language need to be considered: the most distinctive features of legal language are the formal and impersonal style and the relatively complex sentences. Bathia lists the extensive use of conditions and exceptions that may serve as a barrier to preparing perfect translation samples.²¹ Besides these universal features that affects the quality of translation in the English language the use of complex structures, multiple negations, prepositional phrases and passive voices compels the translator to select the best possible alternatives from the source language to the target language.

The particular features of legal English involve clarity, consistency and effectiveness. In order to make legal text clear, careful attention should be paid to avoid expressions such as *modus operandi* (method) or *soi disant* (so-called). Another requirement to help non-legal persons follow legal discussions or read legal text is to avoid inconsistent terms. A few examples may shed light to terms such as *assign* (in relation to intangible property) and *transfer* (in relation to tangible property). Other examples include *contract* (in relation to a specific written contract with legal effect) and *agreement* (in a more general sense to refer to loose understandings or oral agreements), *obligation* (a specific duty under a legal contract) and *liability* (legal consequences). In terms of effectiveness users of legal English should select the adequate adjective or adverb as their meaning can vary greatly according to the context and the user's intention.²² Instead of using *forthwith* or *promptly* it is worth specifying the exact time limits. These are only a few examples that show minor issues that may contribute to better translating or interpreting practices.

The impersonal style of legal English is predominantly inductive, which excludes diverse interpretation in specific cases. Taking into account the style of British and American English, the legal language involves extremely long and extended sentences and the complex system of doublets and triplets. Phrases such as *touch and concern*, *uphold and support* (doublets) or *hold, possess and enjoy* and *pay, satisfy and discharge* (triplets) may pose problems for the translator and make him select single terms in the target language. Other significant examples include *as the case may be*, *they shall cause it to be made*, *otherwise alter or fail to comply with*.

21 BHATIA, Vijay. *Translating legal genres*. In: TROSBORG, Anna (ed.): *Text typology and translation*. Benajmins, Amsterdam, 1997, 147–62.

22 For a typical example of contextualisation in general, regardless of the language used, see: Arató, Balázs: *A végrendeletek értelmezésének egyes kérdései*; in: *Magyar Nyelvőr* 147; 2023; pp. 78–92.; DOI: 10.38143/Nyr.2023.1.78.

The use of legal terminology in both British English and American English varies to a considerable extent. Further examples also prove that there are differences that exist in the mentality and cultural values of the two varieties of English. The choice of words and expressions is reflected in the use of words as they are used in legal texts and interactions. The individual negotiation style of the speakers of both varieties determines the choice of words. American businessmen and especially legal experts have a reputation of being the world's toughest and most aggressive negotiators since success is a key factor for them. Success and setback are essential measure for them, and this type of goal orientation can be traced in several expressions such as *take a look at* or *take a bath* as opposed to the British English *have a look at* or *have a bath*. Kövecses explains the use of the verb *take* instead of *have* with the fact that for Americans these and other activities happen in a speedy manner.²³ The same attitude can also be witnessed in legal processes and in the courtroom. Experience also shows that Americans are frequently consistent, though they are sometimes naïve about the values and cultures of other countries. British legal professionals act as diplomatic amateurs, though they can show a certain degree of ruthlessness when it is needed. Table 1 shows the primary negotiation features of British and American legal professionals.

British (British English)	American (American English)
indirect language	direct language
use of understatement	use of exaggeration
avoiding open disagreement	disagreeing openly
use of humour as a tactic	use of humour to break the ice
interested in long-term relationships	interested in getting the deal

Table 1 British and American attitudes of negotiation

Translating legal texts

The intercultural feature of translation is reflected in the translatability of complex words and phrases, which affects the purposes of texts to be translated. Translation is divided into two types by Nord who distinguishes documentary translation from instrumental translation. In the first case the type of translation refers to a document in the target language of a communicative interaction where the source culture sender communicates with the source culture receiver via the source text. In the latter case the type of translation involves the target language as an instrument for the interaction

23 KÖVECSES, Zoltán. *Az amerikai angol*. ELTE Eötvös kiadó, Budapest, 1996. p. 275.

between the source culture sender and the target language receiver.²⁴

The exact direction of translation is refined by Cao who offers three categories: (a) translation for normative purposes deals with one source text that is translated into another language or several other languages resulting in texts as authentic legal instruments; (b) translation for informative purposes provide legal texts to provide information with more informative value and less legal force; (c) translation for general legal of judicial purposes involves texts that are used in court proceedings to help those clients who do not speak the language used in court.²⁵ The multi-layered methods and types of the translating process offer alternatives for translators of whom the more experienced experts have the skill to decide which method and type to use in a special legal setting.

Conclusion

The interference of legal system and legal languages challenges the translators' competence since legal language is a system-bound language, i.e. a language related to a specific legal system.²⁶ As it is highlighted in the paper a specific system of legal terminology is created and generated for a particular legal system. Moreover, it is inevitably related to the culture, values and law traditions of the nation. It is widely accepted that besides a good command of languages, one also need a thorough knowledge of the nations, their values, norms and customs.²⁷

The intercultural nature of any specific or technical communication, in this case legal interaction, requires an interdisciplinary approach that merges the characteristic features of legal systems and legal languages. Balázs calls our attention to the complex system of the use of the Internet for the purposes of general and specialised communication.²⁸ The increasing demand for legal translation indicates that more and more legal and business professional should be able to handle the complex network of translation strategies and

24 NORD, Christiane. *Translating as a purposeful activity: Functionalist approaches explained*. St. Jerome, Manchester. 1997.

25 CAO, Deborah. *Translating law*. Multilingual Matters, Clevedon. 2007.

26 de GROOT, Gerard-René – van LAER, Conrad J. P. *The Dubious Quality of Legal Dictionaries, Translation and Meaning* 7. 2007. available from the Internet: <http://arno.unimaas.nl/show.cgi?fid=9112> [accessed 10 August 2023]

27 See the distinctive approaches towards the complex phenomena of technology and interculturality here: BALÁZS, Géza. Hibriditás: kulturális sokk. A techno- és interkulturális világ feszültségekkel teli jelenségei, és ezek kezelésének lehetséges módjai. Vasi Szemle 2019/3. pp. 262–268. ISSN 0505-0332

28 BALÁZS, Géza. *Az internet népe*. Ludovika Egyetemi Kiadó, Budapest, 2023. pp. 281–288.

techniques parallel to the language and the cultural background of a nation as outlined above.

The features of legal English (both British and American) and the general behaviour and negotiation style of native English-speaking legal experts emphasise the role of legal translation in intercultural communication. The translator himself forms the future direction of legal communication by analysing the peculiarities of any legal systems in order to achieve a higher level of success in intercultural technical communication.