Legal and institutional translation

Functions, processes, competences

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1.   Introduction: Diversification of themes, contexts and methods

Since the first academic journal issue on legal translation was published in the late 1970s (Gémar 1979), this field of study, now well-established as Legal Translation Studies (LTS), has become one of the most prominent and prolific within Translation Studies (TS) (see, e.g., the Bibliography of Interpreting and Translation [BITRA] statistics on publications).[1] The identity and disciplinary recognition of LTS have been supported by a growing wealth of research on the specific issues and methods of legal translation (Prieto Ramos 2014a; Biel 2017), and by the central position of this specialization in both the public and the private translation sectors. In fact, legal translation constitutes a top segment of the translation industry (see, e.g., Verified Market Research 2020) and a key area for the translation services of multilingual institutions.

LTS deals with the high **variability** of legal communicative conditions and conventions according to the legal orders, settings, branches, genres, and themes involved in translation. This multi-faceted legal dimension explains the marked interdisciplinarity of LTS, as it straddles TS, Law and Legal Linguistics. The multiple variations and intermingling of legal functions and discourses across languages and jurisdictions provide a vast scope for the continued proliferation of LTS.

Legal terminology has been a primary subject of research in the field as "the most visible and striking linguistic feature of legal language" and "one of the major sources of difficulty in translating legal documents" (Cao 2007, 53). Legal terminological issues encapsulate the challenges that derive from incongruities between legal traditions, and call for the distinctive recourse to legal comparative analysis in legal translation methodologies.

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[1]. See the December 2020 report available at: https://dti.ua.es/es/documentos/bitra/informe-bitra-2019.pdf

Beyond this persistent focus on terminology and legal asymmetries, the recent consolidation and expansion of LTS have also stimulated further diversification of **themes and approaches**, including more attention to legal translator competence and training, legal translation processes, quality assurance, and sociological and ethical aspects of the profession. The current special issue, *Target*'s first ever devoted to legal and institutional translation, examines some of these under-researched topics.

The special issue also aims to capitalize on two additional trends. The first is the prominence of **institutional settings** in LTS, as reflected in the commonly used binomial denomination "legal and institutional translation." The search for quality and recognition of institutional practices of legal translation was a critical springboard for both the professionalization and theorization of legal translation. It is no coincidence that studies on legal co-drafting and translation in Canadian and Swiss regional and federal institutions opened new avenues in the field (see, e.g., Gémar 2013; Dullion et al. 2019).

At the international level, the translation of legal instruments at supranational and multilateral institutions, already central in early seminal works such as Susan Šarčević's *New Approach to Legal Translation* (1997), has gained momentum with the expansion of such institutions, particularly in the European Union, and with the improved access to their text repositories and other online resources. The role of institutional translation services in making international and supranational law accessible and reliable in multiple languages entails significant responsibilities and challenges, as well as a potential impact on national legal provisions and discourses.

In local jurisdictions, court proceedings have also emerged as institutional settings of primary interest for the examination of translation and interpreting practices, especially in light of the implications for individual citizens' rights. This interest has been supported by Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, a policy landmark in the field (see, e.g., Ortega Herráez, Giambruno, and Hertog 2013). The distinctive legal communicative role shared by legal translation and legal interpreting, and more specifically court translation and court interpreting, explains their cross-disciplinary association in translation studies on judicial settings, such as the TIPp project ("Traducción e interpretación en los procesos penales")[2] on translation and interpreting in criminal proceedings.

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2. "La calidad de la traducción como factor de garantía del proceso penal: desarrollo de recursos al servicio de los intérpretes judiciales de rumano, árabe, chino, francés e inglés [The quality of translation as an element to safeguard procedural guarantees in criminal proceedings: development of resources to help court interpreters of Spanish into Romanian, Arabic, Chinese, French, and English]": https://pagines.uab.cat/tipp/

Finally, the special issue also attests to the growing **methodological diversity and rigour** found in scholarly work on the above themes and contexts. This goes hand in hand with the increased maturity and empiricism of TS more generally (Snell-Hornby 2006, 114). Apart from the prevailing use of corpus analysis for the scrutiny of discourse features and translation issues, other methods and data-driven approaches have gradually enriched LTS insights into participants and processes, including interviews, observations, surveys, focus groups, and think-aloud protocols.

2.   Legal translation and revision processes and competences

The first part of the special issue focuses on legal translation processes and competences, with a particular emphasis on legal thematic subcompetence and revision practices. The opening article, by **Cornelia Griebel**, reports on a rare cognitive study of the differences between lawyers and translators in dealing with legal translation. The study compares the legal meta-comments made on four French legal texts during the first reading phase by two groups of German speakers: a group of legal translators and legal translation students, and a group of lawyers and law students with no previous training in legal translation. Lawyers made more varied meta-comments and generally elaborated more on the real-life contexts of text contents. By contrast, translators seemed to adopt a more linear approach in their reception of the same contents, and activated translation-oriented transfer processes from the outset. As the author points out, while the broader contextualization approach of the first group would be expected as a vital step for any successful legal translation, the connection between this phase and the overall translation performance would require further analysis of the participants' subcompetences and the quality of their translations (along these lines, see, e.g., Orlando 2017).

In the second article, **Tomáš Duběda** also elaborates on the relevance of legal thematic subcompetence in his analysis of another under-researched topic: legal translation by non-native translators (a practice that is not infrequent in many countries), and the subsequent role of native target language revisers in improving translation quality. For this purpose, the translations of twenty Czech translators into French (including advanced trainees and professional translators) were first revised by two native French revisers without legal expertise, and then by two native revisers specializing in legal translation. Among other aspects, the empirical study reveals that non-expert and expert revisers agreed on a significant proportion of errors, but the second group detected more issues related to legal

meaning, particularly in instances of under-revision by the first group. Target language revision proved very beneficial in all cases.

In the next contribution, **Silvia Parra Galiano** delves into revision needs in a wider range of legal translation scenarios by building on holistic approaches to quality assurance in the field. Based on the assumption that specialist knowledge and legal translation competence entail lower risks for quality, she explores the revision priorities or foci (including content, functional, and linguistic revision) that can be associated with various translator profiles in six prototypical scenarios. She accordingly proposes a hierarchy of translators' and revisers' competences aimed at averting quality deficiencies. The scenarios range from the ideal situation in which both the translator and the reviser are 'jurilinguist translators', to a much riskier one in which the translation is conducted by a linguist with no expertise in translation or law, and thus calls for revision by a legal translation expert. This comprehensive proposal is particularly relevant from a project management perspective.

3.   Functions and implications of institutional legal translation

The second part of the special issue encompasses two pairs of highly complementary studies that connect contextual, procedural and sociological aspects of legal translation in institutional settings. The article by this **guest editor with Diego Guzmán** presents the results of a three-year mapping of all multilingual text production in the four main institutions of the EU (the European Commission, the Council of the EU, the European Parliament and the Court of Justice of the EU) and two representative intergovernmental organizations: the United Nations (and its International Court of Justice) and the World Trade Organization. All texts and their genres were categorized according to their primary and secondary (i.e., preparatory, instrumental or derived) functions of law- and policy-making, compliance monitoring and adjudication, as well as other administrative functions. The findings provide sorely-needed empirical data to better understand the nature and variations of translation in international organizations, and the crucial role of legal translation in particular. This corpus-driven study, which is part of the largest-scale research project ever funded in TS in Europe, thus also corroborates the relevance of applying the interdisciplinary paradigms of LTS to the analysis of translation practices in the contexts under examination.

These translation practices are generally characterized by normativity and standardization (see, e.g., Koskinen 2000; Prieto Ramos 2014b; Šarčević 2018), as high precision, interlinguistic concordance and intertextual consistency are translation priorities in ensuring the reliability of international and supranational law.

Overall, "a high degree of normative subordination is expected of legal translators" in these settings (Šarčević 2018, 9). In her paper, **Esther Monzó Nebot** examines the ways in which a group of seventeen legal translators embrace or challenge the expected normative behaviour in an international organization, and how their subservient or subversive habitus (in line with Simeoni 1998) relates to their social practices, professional perceptions, and career decisions. The case study uses in-depth interviews to shed light on instances of comformity and dissent with the institutional norms. Episodes of competing *doxas* (e.g., with regard to translation decisions and workflow issues) are discussed in light of socialization indicators, with particular attention to cases of field desertion. The nuance elicited through this unique investigation critically enriches our understanding of how in-house translators cope with constraining conventions and structures in institutional contexts, and how these strategies permeate their professional identity and interactions.

The last two articles bring us to national settings of legal communication. Both highlight the responsibilities of legal translators and interpreters in ensuring the effective protection of procedural rights. In the first one, **Alex Bowen** analyzes two sets of recorded audio translations of the right to silence in two Aboriginal languages (Kriol and Djambarrpuyngu) in police interviews, which are intended for illiterate suspects in the Northern Territory of Australia. To contextualize and underpin his analysis, the author also draws on the applicable legal texts, 'front-translations' (English texts used to facilitate the translation process into the Aboriginal languages) and transcripts from police interviews. The study reveals that the audio translations are more explicit and informative than the (vague) legal texts and the oral explanations on the right to silence caution. It is ultimately argued that, considering the communicative complexity of this kind of intermodal and intercultural mediation, Aboriginal translators are better placed than the non-Aboriginal legislator or authorities to get the legal message across to the target audiences.

In the last article, **Biyu (Jade) Du** concentrates on the intricacies of conveying the closing statements of foreign defendants in Chinese criminal trials, and the implications of deficient court interpreting in this context. These quality issues, which are the subject of regular scrutiny in the field (see, e.g., Jacobsen 2004; Berk-Seligson 2017; Biernacka 2019), have, however, been insufficiently explored in many court systems, including the Chinese, most often due to accessibility constraints. In this case, the author draws on pragmatic theories and discourse analysis of seven authentic trial recordings to illustrate the challenges of inter-systemic legal incongruity, the nature of inadequate renditions, and their impact on the defendants' legal rights. This evidence is related to gaps in specialized competence and the lack of professional accreditation and guidelines. In the context examined,

these issues seem to be compounded by the use of English as a lingua franca when there are no available interpreters who can speak the defendants' first language.

4.   Closing remarks

This selection of papers, most of them based on research presented at the 2018 Transius Conference on Legal and Institutional Translation, captures some of the latest developments in LTS in terms of thematic and methodological diversity and sophistication. In line with *Target*'s fostering of multi-dimensional approaches, this special issue expands beyond the traditional focus on textual and terminological aspects of legal and institutional translation. It places the translators' expertise centre stage to provide cutting-edge insights into the broader contextual, functional, and social dimensions of their competences and decision-making processes. This may prove especially enlightening, and even empowering, in re-situating and advancing legal translation expertise in a landscape of machine-aided mutations, not only in the translation industry and TS, but also in the legal professions and further afield.

The special issue is completed with two book reviews contributed by renowned specialists in the field of LTS: **Jan Engberg**'s review of Simonnæs and Kristiansen (2019) and **Catherine Way**'s review of Biel et al. (2019). These recent volumes have been selected for their comprehensive scope and their complementary nature in showcasing the state of research in LTS. It is hoped that the combination of approaches and evidence outlined in the above papers and reviews will inspire further innovation and refinement in this area of investigation.

Acknowledgements

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