

COURSES IN COMPARATIVE SPANISH-DANISH LEGAL LANGUAGE: A CULTURAL KINDER EGG?

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Abstract

Learning comparative legal language is not only a question of linguistic competence, but it is also cultural training in which the students achieve culture-related competences as culture is implicitly embedded in many legal terms in the shape of historical, societal and legal knowledge from two different worlds. Students need to understand these legal terms, fixed expressions, metaphors, collocations, etc. in order to be able to translate from one legal language to another. It means also overcoming the typical blindness to one's own culture. The Spanish-Danish Legal Language course introduces Danish language students to a new world of legal knowledge, as they generally have insignificant knowledge of the Danish legal system and no knowledge of the Spanish legal system. Furthermore, they meet many new cultural concepts embedded in both legal languages, some of which do not have any equivalent term in the other language. In this paper I will discuss some of the problems the students meet when translating from one legal language to another, in particular in the case of culture-bound terms with little or no equivalence. The examples in my discussion are taken from my classes of Spanish Legal Communication at Aalborg University, Denmark.

1 Introduction

Law is an intercultural domain, occupying an important place in society and law is in fact an important part of life. The legal institutions and their roles cannot be comprehended if not seen as part of their culture. At the same time, a culture cannot be completely understood if not taking into consideration its legal history and institutions (Pommer, 2008).

When talking about teaching culture together with a different subject, only in a few cases this is possible, as for instance when teaching Comparative Legal Language. Culture is an inherent part of this subject as the roots of law are deeply anchored in history. The various professional languages are often considered as completely culture-free. Financial or Legal languages, for instance are not normally linked up with culture as a concept, even if the latter might be one of the most culture-bound professional languages existing. This professional language is rooted in a legal universe in which law has developed over hundreds of years according to the development of society. In Spain, for instance, legal language is influenced from Roman Law, French Law and Latin, and in Denmark, legal language has been influenced by Germanic and Nordic law.

In this paper, I will discuss the importance of raising the students' awareness of the close relationship between law, culture, and communication in the case of Legal Language where culture is an inherent part. Legal Language represents a professional language in which culture is embedded in a large number of terms, and it is not possible to teach Legal Language

without teaching culture. When translating legal terms, some of these terms can be considered as Kinder Eggs. Here I use the metaphor of the Kinder Egg as something which covers a surprise, something with a content in shape a 'pleasant' surprise. When 'opening' this Kinder Egg, i.e. when translating, you will find a treasure of culture. The Kinder egg, the legal term, contains a cultural richness covered with various layers of history, and when breaking down the layers you finally reach the surprise of a cultural concept which is completely new for the student, as it represents something not existing in the culture of the person in question.

My discussion will be based on some translation examples from my classes of Spanish Legal Communication at Aalborg University, Denmark. Another purpose of this paper is to contribute to the understanding of Legal Language as a cultural Kinder Egg, not only a culture-free Language for Specific Purpose.

2 Law and legal language

The movement, "Law as Culture", originating from United States, understands Legal Studies as Cultural Studies (cf. Leonhard/Ashe, 1995); Naomi Mezey in Sarat/Simon, 2003, p. 37 ff). This movement explains the particularities of a legal system as characteristic patterns of a national legal culture and a legal tradition. Law is integral to culture, and culture to law. Often considered a distinctive domain with strange rules and stranger language, law is actually part of a culture's way of expressing its sense of the order of things (Pommer, 2008). Many have referred to the cultural embeddedness of law. Many attempts of defining "legal culture" have been made and one of them is the "ideas, attitudes, values, beliefs and behaviour patterns about law and the legal system (Cotterell, 2006)".

Legal Language differs from other languages for specific purpose in that law is entirely created by humans. Law as a socio-cultural phenomenon is always linked to the culture of a particular society and jurisdiction. Consequently, national systems are deeply rooted in a specific legal tradition and legal culture. Legal terminology is system-bound, tied to the legal system rather than to language. Therefore, multiple legal languages can exist within the boundaries of that same language. However, legal language is a technical language particularly closely tied to the common language, which significantly heightens its culture-specificity. For all these reasons some consider legal texts generally untranslatable, but it can be done when striving for equivalence. Accepting the common cultural foundation of law and language therefore open up new possibilities and potentials of cultural analysis in the field of law (Pommer, 2008).

Legal language is characterized by certain specific features. Unlike language in general use in its most obvious function, it does not merely convey knowledge and information, but it directs, affects and modifies people's behavior through e.g. contracts, court decisions, laws, etc. It contributes to creating and expressing the norms in force in different countries. Furthermore, it has an explicit performative character. No other sphere of language use better renders the idea proposed by J. L. Austin (1962) in his speech acts theory that by speaking, i.e. using language, we achieve effects and generate consequences in society and the surrounding world. The legal language has a strong performative power and it is used to pronounce judgements in court, grant permissions, express prohibition, etc. (Kocbek, 2008).

Cao (2007, p. 23) argues that every legal language has a specific vocabulary, which is marked by its complexity and particularity, as it is bound to a specific legal system. In contrast to other sciences and disciplines there is no universal legal language, describing and expressing universal concepts as for instance in medicine. Every legal language reflects the history, evolution, and culture of the corresponding legal system. Each society has its own legal language, legal concepts, legal norms and ways of applying its laws. According to Šarčević (1997, p. 13) each national law represents an independent system with its own terminological apparatus, the underlying conceptual basis, rules of classification, sources of law, methodological approaches and socio-economic principles (Kocbek, 2008).

3 Legal translation

Inevitably, Legal translation forms part of the courses of Legal Communication, and legal translation seeks strategies to incorporate the fragmented diversity of the two Legal Languages' diversity of influences, experiences, traditions, understandings, environments imposed by the law in question (Pommer, 2008).

Translation as a communicative activity pursues a certain purpose or goal with the German scholar, H. Vermeer term *skopos* (aim or purpose). Translation takes place in concrete definable situations which are limited in time and space and involve members of different cultures. These situations can be said to be embedded in given cultures, which, in turn, condition the situation (Reiß & Vermeer, 1984). According to Christine Nord (1997, p. 34) translation means comparing cultures, i.e. interpreting source-culture phenomena in the light of one's knowledge of that culture.

Vermeer (1987, p. 28) has defined culture saying that "culture is the entire setting of norms and conventions and individual as a member of his society must know in order to be 'like everybody' – or to be able to be different from everybody. Reiß indicates that norms have a stronger prescriptive character and are as such obligatory, whereas the term convention indicates that a rule or a behavior has gradually been established by general consensus and thus indicates the recommended, expected forms of behavior in a society (cf. Reiß and Vermeer 1984, p. 178). Norms on the other hand, are not merely recommended rules, but have a binding character. If their definition is compared to the definition of law from Collins dictionary (2000, p. 877) "a rule or a set of rules, enforceable by the court ... regulating ... the relationship or conduct of subjects towards each other" the norms can easily be seen as reflected in the legal system of a society.

According to de Groot (1998, p. 21 ss) the crucial fact to be taken into consideration when translating legal concepts is that "The language of law is very much a system-bound language, i.e. a language related to a specific legal system. Translators of legal terminology are obliged therefore to practice comparative law". Legal systems defer from one country to another, from one state to another. Every country has developed over time independent legal terminology. When translating from one legal system into another the differences between them have to be considered. Sandrini (1999) points out that the translability of the legal systems depends on the relatedness of the legal systems involved in the translation. Legal systems exist independently from the legal language they use and are created through social and political circumstances. There is no direct correlation between legal language and legal system.

If the legal systems are analyzed as to their sources, their historical background, the extent of codification and the specific legal institutes applied within them, some legal families show a greater relatedness than others. The legal systems pertaining to the so-called civil (i.e. continental) law, which includes the Romanic, the German and the Nordic legal systems, are relatively related as they have common foundations in the Roman legal tradition and are characterized by codification which means that the most important rules and regulations are set out in written sources of law. A considerable closeness with respect to the legal concepts applied can be expected within the civil law systems. On the other hand, the legal systems of other countries and cultures, derived from different traditions are difficult to compare, e.g. the Islamic, the Anglo-American legal family, based on common law, equity and statute law (Kochbek, 2006).

According to de Groot, the first stage in translating legal concepts involves studying the meaning of the source legal term to be translated. Then, after having compared the legal system involved, a term with the same content must be sought in the target-language legal system, i.e. equivalents for the source-language legal terms have to be found in the target-legal language. If no acceptable equivalents can be found due to the non-relatedness of the legal systems, one of the following solutions can be applied: using the source-language term in its original or transcribed version, using a paraphrase or creating a neologism, i.e. using a term in the target-language that does not form part of the existing target-language terminology, if necessary with an explanatory footnote (cf. de Groot 1998, p. 25). In this context Weisflog (1987) speaks about the ‘system gap’ existing between legal systems, which in turn results in the gap dividing legal languages. The wider the system gap, the higher the degree of translational difficulty. The existing gaps between different legal systems certainly affect the lexical aspect of translation, i.e. the translability of terms from /into different legal languages, as due to the differences between legal systems there might be no equivalence between legal concepts.

The level of equivalence of the terms depend on the extent of relatedness of the legal systems and not the languages involved. The relatedness of the legal systems may, in some cases, even create so-called false friends. When deciding what solution to be used, the context of the translation, its purpose (*skopos*) and the character of the text play an important role.

4 Spanish legal communication at a Danish university

The teaching and learning of comparative Legal Language Spanish-Danish covers various serious challenges, as with its many Latin terms, Spanish law is rooted in ancient Roman law, whereas Danish Law has its roots in Germanic and Nordic Law. The problem is not that language embeds culture, but that legal language embeds ancient (legal) culture in both Danish and Spanish Legal Languages and introduces the students to hitherto unknown and complex concepts. Furthermore, our own culture is often hardly visible to us as since childhood we have been exposed to a national culture which to us represents ‘normality’. Danish students do not see their own culture until confronted with a culture which is completely different. Maria José Aguilar gives a possible explanation to this ‘blindness’ to one’s own culture:

We are so familiar to our own culture that we don’t even realize it is there and, inevitably, it influences our expectations when we establish contact with people belonging to a different culture. [...] Driven by ethnocentrism, we tend to take as ‘normal’ what we

know, what we are familiar with, and when confronted with new situations we may lose footing. (Aguilar, 2008, p. 62)

According to Lakoff & Johnson (1980), languages are built around conceptualisations in the shape of conceptual metaphors. These metaphors play a considerable role in the construction of language by culture and in the transmission of culture as language. In this way, languages transmit the modes of thought that have evolved in ancient and lost cultures. In their capacity of colonial powers, languages such as Latin, Spanish and English may carry their inherited modes of thought across to their colonies while bending to new expressive needs, remodeling the metaphors they inherit or changing them in new ways.

During history, several of the present European countries and nations were exposed to conquests and immigration from many different peoples. Once, England was also conquered by several peoples, for instance the Romans; as a consequence, English Law draws upon a legal framework that is one of the legacies of the ancient Roman civilization, whose language was the classical Latin language. Wherever the Romans conquered or exerted their influence, their culture was gradually extended to and accepted by the local people. Two enduring heritages have been the impact of Latin on the native languages of the conquered areas, and the influence of Roman law on the subsequent legal system (Tiersma, 1999). In Denmark, Canonical Law played an important role in the development of Danish Law in the Middle Ages. Many Latin terms and expressions were introduced by this Canon Law from the Roman-Catholic Church, and still many Latin expressions remain in Danish legal language. Spanish legal language contains a considerable number of metaphors, according to Cuadrado, (2003, p. 74). In the past, many Spanish words and expressions were metaphors, but later they passed onto the legal language without being considered as such. Still, many of them can be identified, and therefore several conceptual metaphors exist in current Spanish legal language. An example is the expression *cadena perpetua* which literally means ‘unceasing chain’, but it is the Spanish legal term for ‘life imprisonment’. Spanish legal metaphors have also invaded common language as it is possible to say *Ha hipotecado su porvenir con ese trabajo que ha aceptado*, which means that a person is exposing his future to danger because of his new job. *Hipotecar* as a legal term means to ‘pledge’ something.

The above-mentioned factors indicate that when learning comparative legal language, Spanish-Danish students are exposed to severe challenges of different kinds. The BA-students start a new academic discipline with a considerable amount of culture-bound content at their third semester. They do not know much about Danish Law, the Danish legal system or Danish legal language. Concerning Spanish Legal Language, Spanish Law and the Spanish legal system, the same conditions are applicable, as students do not have any knowledge of this field. Furthermore, students’ competencies in Spanish are scarce after only two semesters of Spanish studies at university. When starting the course of Spanish Legal Communication, students are introduced to various new universes, i.e. the legal world and the legal languages used in Denmark and Spain. In nine weeks, with two lessons every week, with exercises in the shape of translations from Danish to Spanish and vice-versa, students are expected to be able to pass an exam documenting their knowledge of both the legal systems and the legal languages in the two countries. This constitutes a challenge to both students and teacher. Evidently, the problems arise particularly in connection with Spanish and Danish legal terms which have no equivalent terms- the gap - in the other language because of the cultural (historical) differences between the two legal systems and the two countries. In the following

sections, some examples will be given of the degree of complexity which exists in connection with the translation of the Spanish legal terms.

5 How to translate Juez de Paz?

One of the recurring problems for the students is the court system in Spain compared to the Danish system where several gaps between the two legal systems are revealed. In Spain, there is, for instance, a judge called Juez de Paz (Judge of the Peace) placed at los Juzgados de Paz (The Justice of the Peace). This judge sits in small communities with no First Instance and Instruction Courts. They hear minor civil cases, among their functions, and they sometimes work as a Civil Registry Body. The Provincial Court appoints these Judges for a period of four years. Furthermore, the Juez de Paz has no legal degree from a university.

It is necessary for the students to understand how the situation is dealt with in their own language. They have to learn how the first legal system operates and to achieve awareness of their own cultural boundaries. Subsequently they move to the Spanish legal system, which means that they need to understand how the situation is dealt with in the target language and the target culture. Here they must reflect on the similarities and differences between the two legal systems. First, the students will need to familiarize themselves with the Danish Courts System. In Denmark a judge can sit in the District Court, the High Court and the Supreme Court, according to the general system. In order for them to acquire an overview of the Danish system, the students are then introduced in class to a chart showing the Danish Court Hierarchy; the lowest step in this is the District Court. After this introduction, the students need to become accustomed to the Spanish Court System; this is much more complicated than the Danish system due to the number of instances. The Justice of the Peace in Spain originates in the Civil Procedure Act 1855 and the Decree of 22 October the same year. The Justice of the Peace (*Juzgados de Paz*) is the lowest step in the Spanish Court System. They hear minor civil cases, and among their functions, they sometimes work as a Civil Registry Body. The Provincial Court appoints the Judges for a period of 4 years. Here the students are also given an overview of the legal system in Spain in the form of a chart showing the position of the Juez de Paz in the hierarchy. Following this, it should be possible to introduce a new concept into Danish legal language, a neologism, a concept which does not exist in Denmark and in the Danish legal system. This new concept is the term *Fredsdommer* (which is the literal translation of Juez de Paz). This concept does not exist in the Danish Court Hierarchy and in Danish legal system.

6 Spanish DNI versus Danish CPR-number/Sundhedsbevis (Healths Insurance Card)

When translating it can as well be necessary to use a paraphrase in order to translate a legal term. Identity documentation is an important means for defining the members of a nation. Significant differences exist between the Spanish and Danish legal systems. All Spaniards are entitled to a DNI, *Documento Nacional de Identidad*, national identity card, and this is mandatory for everyone over 14 years living in Spain. The DNI dates to the times of the deceased Spanish dictator, General Franco, and the first card was issued in 1944 as a result of the chaos left by the Spanish Civil War with many citizens missing. The DNI is a plastic card issued by the Spanish Home Ministry which includes a photo, a signature and a microchip with personal information and the Spanish text in all the four Spanish national languages. Every Spanish citizen must present their DNI on request in order to identify themselves, and

the DNI constitutes sufficient identity documentation when travelling in the EU and many other countries. The DNI Electronic is replacing the traditional DNI and more new applications are received for this. Once more the students learn about their native *legal system*. Denmark does not have any official identity card equivalent to the Spanish DNI. The closest we get to the DNI in a Danish context is the Danish *sundhedsbevis* (Health Insurance Certificate), a plastic card showing a *CPR-nummer* (Personal Identification Number) which includes a person's date and year of birth plus four additional digits. All Danish Personal Identification numbers are kept in a central register managed by the Danish State. The current Danish national health insurance system dates back to 1971, and it ensures all Danish citizens free medical treatment. The certificate is issued by the local authorities to all citizens (including all children), and the card must be presented at the doctor's and in hospitals. The *sundhedsbevis* is becoming increasingly important as the amount of data in the chip is increasing

Now students have to become accustomed to the Spanish identification system and to the very important role played by the DNI in Spain which satisfies other needs and cannot be compared to the Danish *sundhedsbevis*. The latter is not an official ID card as it does not contain a photo, and it cannot be used in the same official situations as the Spanish DNI. For identification, Danish citizens can use their driver's licence as it contains a photo of its owner, but since not all citizens have a driver's licence, this does not correspond to the DNI either. Finally, the most official Danish identification document (with both photo and signature) is the passport, but it is not required of Danish citizens that they have a passport unless they want to travel outside the Schengen-countries. Consequently, Denmark does not have an equivalent to the Spanish DNI. However, the *sundhedsbevis* is the closest we get to a national identity card as all Danish citizens hold this card. Now, the students have achieved new knowledge about their own and the Spanish legal systems, and they have met a new concept, the *legitimationskort*, which is the Danish interpretation of the Spanish DNI, a concept which does not exist in Danish legal language.

The above-mentioned examples show clearly that teaching Legal Language is also the teaching of culture and, for that matter, of knowledge of society. The students can achieve many intercultural skills through these courses in which they are inevitably confronted with not only culture belonging to the field of law but also to culture in general. Here, culture is embedded in the legal terms, the legal collocations, the judicial hierarchy, in linguistic terms, in real terms and phrases, in legal stereotypes etc. By learning legal language the students also are presented to cultural Kinder Eggs in the shape of complicated legal terms by which they also achieve intercultural competences, but they are not aware of this because the concept of culture almost always remains an isolated subject and is not normally seen to be related to a professional language.

7 Conclusion

The comparative Legal Language course introduces students to a new world in which they must achieve knowledge of the legal systems in Spain and Denmark. Students need to understand legal terms from two different cultures and overcome the typical blindness to their own culture. The examples used in the paper illustrate some fundamental problems when translating terms from one legal system into another.

Generally, when translation from one legal language to another, the use of specialized textbooks and bilingual dictionaries is not adequate to ensure the understanding of cultural phenomena, in particular in the case where system gaps occur. As culture is embedded in law, Legal Language is also cultural training in which the students achieve intercultural competences and cultural knowledge. Furthermore, as culture is not normally seen as part of a LSP, it could show the students that this LSP serves more than one purpose and that they, if looking, can find several cultural Kinder Eggs. The examples used in the paper illustrate some fundamental problems when translating (terms) from one legal system into another.

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