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Legal Translation Training – A Way Forward for Aspiring Lawyers in a Clogged Job Market?

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Abstract

In a competitive and congested job market, this paper examines new career opportunities open to linguistically minded young lawyers. Globalization has led to a soaring demand for the translation of legal documents, and we are now at a fork in the road – on the one hand bespoke automated systems are able to handle large volumes for discovery and information purposes translation, whilst on the other expert lawyer-linguists are needed to work on major cases, multilingual legislation and at international courts. Market stimulus and moves to professionalize legal translation have led to lawyer-linguist training being offered jointly by law and language faculties. Examples of innovative education programs will be discussed, as will various interpretations of the role of ‘lawyer-linguist’. Legal translation is the ultimate legal and linguistic challenge – a gauntlet waiting to be picked up by a new generation as part of a fully globalized mature legal services market.

Keywords

legal translation – interdisciplinarity – professionalization – differentiation of services – legal education – career opportunities

1 Introduction

The need for translated legal documents is rising fast worldwide. Performance of this work requires a high level of skill in two (or more) languages, in two (or more) legal systems, and, naturally, expertise in translation. Notwithstanding the robust skill sets called for, the often-high-profile nature of the cases, and

fascinating challenges involved, legal translation is a little known profession that is rarely considered by fledgling lawyers as a potential career path.

Over the last ten years, technology has brought considerable changes to the way in which legal translation is performed. However, far from being a deterrent to a career in the field, this paper will argue that embracing the newest electronic tools and resources can be empowering for legal translators and allow them to focus on the most stimulating tasks.

Within academia, Legal Translation Studies as a standalone field has emerged relatively recently¹ and is often located – sometimes physically – at an uncomfortable intersection between language and law faculties. By extension, training pathways in legal translation are many and varied.

In an era of restricted job openings for newly qualified lawyers set against a fast-growing demand for legal translation professionals, this paper seeks to shed light on career opportunities, the variety of actual work involved, training alternatives, and the diverse working environments. On a subsidiary level, the paper also aims to champion a body of cross-faculty literature that would bring closer the disciplines of law and translation studies,² and aims to provide some indications of what the future holds in store for the legal translation profession.

2 Current Market Trends

2.1 *Opportunities in the Growing Legal Translation Market*

The translation market has been growing at a rate far beyond many other sectors, as illustrated by the findings of a 2012 report commissioned by the Canadian Government and conducted by PricewaterhouseCoopers LLP, according to which the language service provider market worldwide ‘is growing at an annual rate of 7.41%, and is expected to reach US\$38.96 billion in 2014. Most of the revenue generated remains associated with translation services.’³ The US

1 See for example Łucja Biel and Jan Engberg, ‘Research models and methods in legal translation’ (2013) 12 *Linguistica Antverpiensia* 1–11; and Anne Wagner and Jean-Claude Gémard ‘Les enjeux de la jurilinguistique et de la juritraductologie’ (2015) 28 *International Journal for the Semiotics of Law* 1–8.

2 As suggested by Łucja Biel and Jan Engberg, see note 1 above; and Fernando Prieto Ramos ‘Legal translation studies as interdiscipline: Scope and evolution’ (2014) 59(2) *Meta* 260–277, 266.

3 PricewaterhouseCoopers, ‘*Translation Bureau Benchmarking and Comparative Analysis Final Report*’ (2012). This figure is further supported by the findings of the private market research firm Common Sense Advisory which cites USD 38.16 billion in its 2015 report available at

Bureau of Labor Statistics (December 2015) has forecasted that employment opportunities for translators and interpreters in the United States are expected to grow by 29% between 2014 and 2024.⁴

As a largely unregulated market, it is hard to make an accurate estimate of the percentage of translation services that fall specifically into the legal domain, but we may look to the most recently published American Translators Association's *Translation and Interpreting Compensation Survey* which found that law ranked among the most common areas of specialization at 55%. Similarly, a survey in 2014 by the International Standing Conference of University Institutes of Translating and Interpreting revealed that legal documents represented 40–50% of texts translated by those questioned.⁵

Beyond the figures, however, there is a widespread sentiment expressed by both professionals and academics that future careers in translation will involve more and more specialization. Institutions echo this position, and on 29 September 2011, the European Commission's Directorate-General for Translation organized a major symposium on the translator's profile, entitled 'What skills for a changing market?'. In the area of 'future core skills' for translators, the published conclusions noted that 'specialization will play a more significant role'.⁶

The reasons behind the soaring demand for translated legal documents and the consequent healthy growth of this sector include, *inter alia*: the expansion of cross-border trade, the rise of complex financial transactions; international white-collar crime; global litigation strategies; a burgeoning of patent and IP cases with global consequences; multilingual legislative measures, mobility and migration.

<<http://www.common senseadvisory.com/AbstractView.aspx?ArticleID=26590>> accessed 24 March 2016. Other services associated with this revenue include proofreading, editing, localization and related activities.

4 Bureau of Labor Statistics, U.S. Department of Labor, 'Occupational Outlook Handbook, 2016–17 ed, Interpreters and Translators' available at <<http://www.bls.gov/ooh/media-and-communication/interpreters-and-translators.htm>> accessed 24 March 2016.

5 *Translation and Interpreting Compensation Survey* (4th ed), American Translators Association, member access only. Survey by the International Standing Conference of University Institutes of Translating and Interpreting (CIUTI), 2813 respondents, 19 countries, available at <http://www.ciuti.org/wp-content/uploads/2014/01/CIUTI-Survey2014_Schmitt.pdf> accessed 24 March 2016.

6 Directorate-General for Translation of the European Commission, 'Conclusions: Translator Profile: What skills for a changing market?' (2011) available at <http://ec.europa.eu/dgs/translation/programmes/languageindustry/platform/documents/translator_profile_conclusions_en.pdf> accessed 24 March 2016.

2.2 *Translation Technologies as a Driver of Differentiation*

There have been accelerated changes in translation technologies since the start of the millennium.⁷ As far as legal texts are concerned, we may place these into three groups: the first comprises programs that are assistive and for use by *expert legal translators*; the second is formed by automated translation technologies available to the *general public*, for example Google Translate; and the third group is composed of bespoke automated systems aimed, directly or indirectly, at *lawyers*, such as patent translation engines.

At the legal translator's desk, word-processing tools have given way to Computer-Aided Translation (CAT) tools, more recently referred to as Translation Environment Tools (TEnTs). This desktop software, which may also be offered as a cloud-based platform, enables expert multilingual users to import text in a variety of formats and to leverage previous translations and electronic glossaries or term bases, ideally rendering their translation work faster and enabling quality and consistency checks to be applied before re-exporting the finished text.⁸

Automated or machine translation intended for the general public is used, on occasion, in the corporate environment as an 'easy' and very fast solution for translation needs. It brings with it many perils, not least of which relate to confidentiality.⁹ Users are often unaware that by typing a few lines of a contract into the tool they are breaching their non-disclosure obligations. In addition to the latter issues, the egregious errors of these tools are in the nature of an after-dinner story.¹⁰

7 For a comprehensive overview see Michael Cronin, *Translation in the digital age* (Abingdon: Routledge, 2013).

8 Two other electronic tools can be found both on lawyers' desks and on those of legal translators. Voice recognition software such as *Dragon NaturallySpeaking (Legal)* allows users to dictate text to their computer on the fly and has potential benefits for health as well as streamlining document production processes. Optical character recognition (OCR) is increasingly used by lawyers for storage and retrieval purposes, and legal translators mainly for the latter.

9 Matthew Blake, 'Man vs. machine: Google Translate jeopardizes client confidentiality, ediscovery' (2015) available at <<http://abovethelaw.com/2015/01/man-vs-machine-google-translate-jeopardizes-client-confidentiality-ediscovery/>> accessed 24 March 2016.

10 'Google translated Russia to 'Mordor' in 'automated' error' available at <<http://www.bbc.co.uk/news/technology-35251478>> accessed 24 March 2016; « Dr belle ministre vert » : comment Latifa Lakhdar est devenue la risée des réseaux sociaux en Tunisie... available at <<http://www.jeuneafrique.com/266163/politique/dr-belle-ministre-vert-comment-latifa-lakhdar-est-devenue-la-risee-des-reseaux-sociaux-en-tunisie>> accessed 24 March 2016; Maarit Koponen and Leena Salmi 'On the correctness of machine translation: A machine

The third group, bespoke automated systems, are able to handle very large volumes of texts and, as their name infers, they are designed and refined for specific use within certain corporate or institutional environments.¹¹ They are mainly used for information purposes translation. A well-publicized example is Patent Translate, developed for the European Patent Office (EPO) by Google, and sibling tools made available by other patent authorities.¹² The use of machine translation for law library purposes was one of the first applications to be studied,¹³ while far less academic research is available on proprietary systems developed by translation agencies that are marketed as a cost-reduction measure at the discovery/disclosure stage of a case. In comparison to human translation, the accuracy of such systems requires them to be used most judiciously, and the effects of their errors are beginning to be felt.¹⁴

translation post-editing task' (2015) 23 *The Journal of Specialised Translation*, available at <http://www.jostrans.org/issue23/art_koponen.php> accessed 24 March 2016.

- 11 Atefeh Farzindar, 'Automatic translation management system for legal texts' (2009) available at <<http://www.mt-archive.info/MTS-2009-Farzindar.pdf>> accessed 24 March 2016; Georg Artelsmair, 'Recent developments in machine translation policy at the European Patent Office' (2010) available at <http://www.meta-net.eu/events/meta-forum-2010/slides/meta-forum2010_artelsmair.pdf> accessed 24 March 2016; Philipp Koehn, 'Europarl: a parallel corpus for statistical machine translation' (2005) available at <<http://www.mt-archive.info/MTS-2005-Koehn.pdf>> accessed 24 March 2016.
- 12 At the EPO: <<http://www.epo.org/searching-for-patents/helpful-resources/patent-translate.html>>; and also see for example at the World Intellectual Property Organization (WIPO), <http://www.wipo.int/patentscope/en/news/pctdb/2015/news_0010.html> accessed 24 Mar 16, <<https://www3.wipo.int/patentscope/translate/translate.jsf>> accessed 24 March 2016.
- 13 Sarah Yates, 'Scaling the tower of Babel fish: An analysis of the machine translation of legal information' (2006) 98(3) *Law Library Journal* 481–500; Harold Somers, 'The use of machine translation by law librarians – a reply to Yates' (2007) 99(3) *Law Library Journal* 611–619; Chunyu Kit and Tak Ming Wong, 'Comparative evaluation of online machine translation systems with legal texts' (2008) 100(2) *Law Library Journal* 299–321; Michael J Mule and Claudia Johnson, 'How effective is machine translation of legal information?' (2010) 44(32) *Clearinghouse Review Journal of Poverty Law and Policy*.
- 14 In T 1343/12 *Dust adsorbing oil/UNI-CHARM*, European Patent Office decision, 10 October 2014, an ambiguous machine translation "presented the opportunity for two plausible, but completely opposite, conclusions" (emphasis added): an analysis of the case suggests that "If the machine translation is ambiguous at a critical point, the prosecution of an application may run into difficulties. In such a case, regardless of the principle (and cost) of procuring a human translation when it is not the applicant's responsibility" [no requirement to supply translations of prior art documents] "it may be practical to [...] save the inconvenience of appeal by providing a human translation.", Darren Smyth, Robert Barker

In contrast to the opportunities offered by a growing legal translation market discussed in section 2.1, some stakeholders see Google Translate and bespoke automated systems as a threat likely to erode levels of employment and reduce fees that can be charged. First and foremost, it is essential to take the stance of 'horses for courses', and to match the aims and capabilities of electronic tools with the use to which they are put. In addition, another way to approach these technological developments is to regard them as a stimulus to the segmentation of the market, which will be discussed further in section 3.6.

2.3 *A Future Less Rosy for Young Lawyers in Traditional Careers?*

The job market for newly qualified lawyers is highly competitive. It is common currency that, at the time of writing, in many countries the number of students graduating from law school is far greater than the number of jobs available. In the United States evidence has been reported by the Government's Bureau of Labor Statistics, in Australia by the Law Society of New South Wales, and in the UK even by the mainstream financial press.¹⁵ Furthermore, clients are cutting back on legal expenses, and partly as a result of globalization, law firms face fierce competition, including via the outsourcing of legal work to other countries where costs are far lower.¹⁶ There are shifts in work processes: document review and discovery may be assigned to paralegals or contract attorneys; and instead of employing permanent staff, corporations may make use of lawyer-on-demand schemes.¹⁷ Reductions in legal aid funding, and advances

and Timothy Belcher, 'Rage against the (translation) machine' (2015) 10(3) *Journal of Intellectual Property Law & Practice* 153–154.

- 15 Bureau of Labor Statistics, U.S. Department of Labor, 'Occupational Outlook Handbook, 2016–17 ed, Lawyers' available at <<http://www.bls.gov/ooh/legal/lawyers.htm>> accessed 17 May 2017; in Australia: The Law Society of New South Wales, 'Future prospects of law graduates, Report and Recommendations' (2015) available at <<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/980877.pdf>> accessed 24 March 2016; and in the UK, see Jane Croft, 'Law students think twice as competition rises' (2015) available at <<http://www.ft.com/cms/s/2/30b17d0e-7e37-11e5-98fb-5a6d4728f74e.html#axzz43uhvz400>> accessed 17 March 2017.
- 16 See Alexandra Hanson, 'Legal process outsourcing to India: So hot right now!' (2009) 62 *SMU Law Review* 1889–1914; K Romagnino, 'Nearshore alternative: Latin America's potential in the offshore legal process outsourcing marketplace' (2011) 42(2) *Inter-American Law Review* 367–413; Aaron Harmon, 'The ethics of legal process outsourcing to India – Is the practice of law a 'Noble Profession' or is it just another business?' (2008) 13 *Journal of Technology Law & Policy* 41–83.
- 17 See regarding contract attorneys Anna Persky, 'Under Contract: Temporary Attorneys Encounter No-Frills Assignments, Workspaces' (2014) available at <<https://www.dcbbar.org/>

in technology such as contract drafting software, web-based advice, and artificial intelligence applied to case research such as the ROSS project at the University of Toronto¹⁸ may make the future still more somber. Whilst lawyers are not yet as hungry as ‘a horde of locusts’,¹⁹ we can certainly say that the law as a profession no longer provides the security of yesteryear.²⁰

3 Legal Translation as a Profession

3.1 *Preconceptions and Low Visibility*

Preconceived ideas of the lawyer as presented in the media and popular culture may include ‘hero’ and/or defender of human rights,²¹ ‘liar’,²² or

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- bar-resources/publications/washington-lawyer/articles/january-2014-contract-lawyers.cfm> accessed 24 March 2016; regarding lawyer-on-demand schemes see <<http://www.blplaw.com/lawyers-on-demand>> and <https://www.dlapiper.com/en/uk/focus/flexible-lawyers/>> accessed 24 March 2016.
- 18 See Kathleen O'Brien, ‘U of T team takes second place in IBM Watson challenge’ (2015) available at <<http://news.utoronto.ca/u-t-team-takes-second-place-ibm-watson-challenge>> accessed 24 March 2016.
- 19 Chief Justice Warren Burger prophesied in 1954 that “we may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated” at p. 199 in M Ethan Katsh, *Electronic media and the Transformation of Law* (Oxford: OUP, 1989).
- 20 For further discussion see Daniel Thies, ‘Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market’ (2010) 59(4) *Journal of Legal Education* 598–622; and for a comprehensive view see Hilary Sommerlad et al (eds), *The Futures of Legal Education and the Legal Profession* (Oxford and Portland, Oregon: Hart, 2015).
- 21 Robert Mulligan ‘*To Kill a Mockingbird*’ (1962) [Motion picture], Universal International Pictures; W Shakespeare, *The Merchant of Venice* (Cambridge: CUP, 2003); Steven Soderbergh ‘*Erin Brockovich*’ (2000) [Motion picture], Colombia Pictures; and the American Bar Association *ABA Journal* <http://www.abajournal.com/magazine/article/100_years_of_law_at_the_movies/> accessed 24 March 2016.
- 22 A 2006 survey found that 84% of respondents rated nurses’ honesty as “high” or “very high”, whereas only 18% thought this of lawyers, see Lawrence M Solan, ‘Lawyers as insincere (but truthful) actors’ (2011) Brooklyn Law School, Legal Studies Paper No. 238, available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1873359> accessed 24 March 2016; and as an example Tom Shadyac, ‘*Liar Liar*’ (1997) [Motion picture], Universal Pictures.

'money-oriented'.²³ The role of the legal translator, on the other hand, is predominantly little known and misconstrued. The limited visibility that does occur often involves interpreters – who work with the spoken word – rather than translators – who work with the written word.²⁴ The confidential nature of legal documents, particularly when they are corporate or private texts rather than publicly available legislation or issued by international organizations, contributes further to 'invisibility' of the work and those who perform it. For many outside observers, legal translators work only in international organizations such as the United Nations or the bodies of the European Union. In fact, the vast majority work as self-employed practitioners either directly for clients or through intermediaries such as translation agencies.²⁵ In terms of its credentials, legal translation has a history stretching back to Ancient Egypt, Ancient Rome, through the Byzantine Empire and, of course beyond, although this is largely unknown to the general public.²⁶

Despite the above professional branding issues,²⁷ the last decade has seen a blossoming of initiatives aimed at bringing the professions of law and translation closer, to foster mutual understanding and cross-fertilization, as well as increased visibility. Spain provides a shining example at the University of Granada, where a collaboration between law and translation faculties involving a practical case in international private law led to a recognition on the part of the law students of translators' valuable skills in the task of translating law, whereas prior to the project they had all been of the opinion that only lawyers

23 Paul F Teich, 'Are Lawyers Truly Greedy? An Analysis of Relevant Empirical Evidence' (2013) available at <<http://ssrn.com/abstract=2338550>> accessed 24 Mar 16; and Sydney Pollack *The Firm* (1993) [Motion picture], Paramount Pictures.

24 See <<http://blog.oxforddictionaries.com/2015/04/difference-interpreting-translation/>> accessed 24 March 2016.

25 Precise figures are hard to obtain, but several surveys give percentages of self-employed translation professionals of around 75%. See Elina Lagoudaki, *Translation Memories Survey* (London: Imperial College, 2006); Fernando Ferreira-Alves 'Translation companies in Portugal' in Anthony Pym and Alexandra Assis Rosa (eds), *New Directions in Translation Studies: Special Issue of Anglo Saxonica* 3.3 (Lisbon: ULICES-CEAUL, 2012) 233–263; and also Anthony Pym et al, *The status of the translation profession in the European Union* (Luxembourg: European Commission, 2012).

26 See Deborah Cao, *Translating law* (Clevedon, UK: Multilingual Matters, 2007); Jean-Claude G  mar (ed.), *The language of the law and translation: Essays on jurilinguistics* (Montreal:   diteur Officiel du Qu  bec, 1982); Susan Sarcevic, *New approach to legal translation*. (The Hague: Kluwer Law, 1997).

27 See Karen Lee Ashcraft et al, 'Professionalization as a Branding Activity: Occupational Identity and the Dialectic of Inclusivity-Exclusivity' (2012) 19(5) *Gender, Work and Organization* 467–488.

with language skills would be suited.²⁸ One might add that the most important outcome was the close collaboration itself.²⁹

3.2 Professionalization

Along with the major changes caused by market growth, rapid technological developments, globalization, mobility and migration have come initiatives to professionalize legal translation. Translators' somewhat 'invisible' status has been cause for concern – to the point that a report was contracted by the European Commission in 2010 to a team of eminent scholars. Their findings noted market disorder, and ineffective signaling of expertise. The team identified a number of policy options, and made recommendations on rectifying problem areas, offering a strong plea for strengthened certification systems.³⁰ A major issue and further contributing factor reported regularly in academic research is the fragmentation of the market.³¹

Here too, initiatives to improve the situation are not lacking. In 2009, a European Union project founded the European Legal Interpreters and Translators Association (EULITA). It promotes legal translation and interpreting by organizing conferences, participating in EU projects, and through exchanges with other European associations of judicial stakeholders. In particular, EULITA has brought to the fore the fact that lawyers, judges, prosecutors and police officers need guidance in order to optimize their work with legal translators and interpreters. EULITA has liaison status with the International Organization for Standardization (ISO), and has an ongoing interest in the development of

28 A comparison of approaches to translation by recently qualified law graduates and translation graduates, both inexperienced in professional legal translation practice found that the lawyer cohort produced more “critical errors” whereas the errors of the translator cohort related rather to “textual fit” and phraseology: D Orlando, ‘The problem of legal phraseology. A case of translators vs lawyers’ in Stanislaw Gozdz-Roszkowski and Gianluca Pontrandolfo (eds), *Phraseology in Legal and Institutional Settings* (Abingdon: Routledge, forthcoming).

29 Catherine Way, ‘The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century’ (2006) 10 *International Journal of Communication* 1009–1029.

30 Original report, covering all areas of translation and not specifically legal, although several sections were devoted to translators of official documents and working for the courts: Anthony Pym et al, *The status of the translation profession in the European Union* (Luxembourg: European Commission, 2012); subsequently published with updates as Anthony Pym et al, *The status of the translation profession in the European Union* (London: Anthem, 2013).

31 Maeve Olohan, ‘Economic Trends and Developments in the Translation Industry: What Relevance for Translator Training?’ (2007) 1(1) *The Interpreter and Translator Trainer* 37–63.

international standards in the field of translation and interpreting. Unfortunately, at the present time, full membership of EULITA is open only to professional bodies and associations, and not directly to individual translation practitioners.

One of the major factors hampering the professionalization of legal translators is, somewhat paradoxically, the multifarious collection of professional bodies and associations. Only rarely do they act as gatekeepers to the profession, often several compete for members in the same national territory (e.g. UK, Italy, Poland to name but a few): they may have widely varying dimensions and backgrounds, and, as a rule, do not represent specialist fields such as the legal domain. The number of translation associations – one might even hesitate to refer to them as ‘professional bodies’ as that term is understood by lawyers, doctors, surveyors and architects – is in excess of 200 worldwide.³² Despite some of them possessing ‘chartered’ status or similar, no tangible progress has yet been made in rectifying the lack of visibility which is not suffered by, for example, doctors, architects or lawyers despite the analogous and often higher levels of qualification required to enter legal translation as compared with those professions.

Initiatives to achieve greater professionalization are not limited to institutions, however, and some stem from the private sector. An annual virtual lawyer-linguist conference has been held since 2012,³³ organized through a for-profit online platform whose main activity is to act as an intermediary between translators and translation clients across all sectors. There are also a number of high-profile translators promoting translator professionalization, self-styled ‘super-professionals’ who speak regularly at international events, on radio programs and podcasts, through blogs, journal columns, and book publications.³⁴ Most of these initiatives seem cloistered mainly within the community of translators and generally do not relate specifically to the legal specialism. Finally, within academia there are a number of particularly

32 For a comprehensive analysis of translator associations, see Pym et al (n 29).

33 <<http://wordstodeeds.com/2012/11/22/proz-lawyer-linguist-virtual-event/>> accessed 24 March 2016.

34 Albert Lynd, ‘The Super-Professionals’ (1950) 55(10) *Time*, at 57; Chris Durban, *The Prosperous Translator* (*Sine loco*: FA & WB Press, 2010); Judy Jenner and Dagmar Jenner, *The Entrepreneurial Linguist: The Business-School Approach to Freelance Translation* (*Sine loco*: EL Press/Lulu, 2010); Corinne McKay, *How to succeed as a Freelance Translator* (Boulder, CO: Two Rat Press, 2011).

interesting projects studying professional status and professionalization with implications for education.³⁵

3.3 *Job Titles*

An intrinsic factor in ‘occupational branding’³⁶ is the very name of the occupation in question. In view of the issues set out in the foregoing sections on the visibility and status of ‘translators’, some alternatives are emerging.³⁷

The first of these is the term ‘lawyer(-)linguist’. It is not an officially defined term and it arises in a number of contexts, with a number of different meanings. The Court of Justice of the European Union (CJEU) uses ‘lawyer linguist’ for persons whose duties comprise: translate legal texts into [English]; revise such texts; serve as ‘pivot’ translators from [Czech, Danish, Lithuanian and Swedish], for the benefit of the other translation units; provide advice on English legal terminology within the Directorate-General; and provide legal analysis in cooperation with the Registries and other departments of the Court.³⁸ We also find the term used (with a hyphen) for persons employed at the European Central Bank, with similar duties to those at the CJEU. On the other hand, at the European Parliament and the Council of the European Union, the duties of a ‘lawyer-linguist’ are to revise legal/legislative texts into one’s main language

35 Helle V Dam and Kaisa Koskinen ‘The translation profession: centres and peripheries, Introduction’ (2016) 25 *The Journal of Specialised Translation* 2–14; Helle V Dam and Karen Korning Zethsen ‘Translator status: Helpers and opponents in the ongoing battle of an emerging profession’ (2010) 22(2) *Target* 194–211; Rakefet Sela-Sheffy, ‘Introduction’ in Rakefet Sela-Sheffy and Miriam Schlesinger (eds), *Identity and status in the translational professions* (Amsterdam: Benjamins, 2011) 1–9.

36 See Ashcraft et al (n 27).

37 Academic research activities go beyond the question of job titles, debating by what name the discipline itself should be known. A conference has been organised, to take place on 27–28 October 2016 at the Universidad Pablo de Olavide, Seville, Spain, entitled ‘*From Legal Translation to Jurilinguistics: Interdisciplinary Approaches to the Study of Language and Law*’. See F Prieto Ramos, ‘Legal translation studies as interdiscipline: Scope and evolution’ (2014) 59(2) *Meta* 260–277. Similar predicaments arise in other languages – as an indication, in French: *linguistique juridique, jurilinguistique, juritraductologie, traductologie juridique, traduction juridique*. See also Anne Wagner and Jean-Claude Gémard, ‘Les enjeux de la jurilinguistique et de la juritraductologie’ (2015) 28 *International Journal for the Semiotics of Law* 1–8.

38 ‘Working as an English-language lawyer linguist at the Court of Justice of the European Union, Luxembourg’, publication reference D-31-10-603-EN-C, available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/brochure_en.pdf> accessed 24 March 2016.

and to provide advice on legislative drafting.³⁹ A cursory Google search shows that the term has also been adopted on a unilateral basis by a number of boutique service providers and individual practitioners.

The second alternative is prevalently found in Canada, where the term 'jurilinguist' has been used for many years at Federal Government offices. It has been described as follows:

A jurilinguist provides advice related to the terminology, syntax, phraseology, organization of ideas and style that are appropriate to legal language and, specifically, to legislative language and to the subjects dealt with, and also, within the context of bilingual co-drafted Bills and regulations, comparison services to ensure equivalency of the English and French versions.⁴⁰

Outside the civil service, a limited number of academics and self-employed practitioners use the term, but seemingly only those having connections with Canada.

The third and last alternative I shall identify is 'legal linguist', which is much less frequently used, and apparently related to the academic discipline of legal linguistics. The latter discipline is relatively well established as compared with Legal Translation Studies. Although the term is not as widespread as the first two, it was the primary focus of a most interesting and unique study which sought to correlate the understanding by participants of the terms 'legal linguist', 'legal translator' and 'lawyer-linguist' on the basis of identifiable skills, the recognizability of the profession, their inclusion in professional classification(s), the work involved, and cross-cultural differences in understanding of the profession.⁴¹

3.4 *The Performance of Legal Translation*

As a preface to a discussion of training in section 4, it is worth outlining what legal translation work actually entails from a technical point of view, albeit in the briefest terms owing to space constraints and the scope of this paper.

39 See job description issued by the European Personnel Selection Office, available at <http://europa.eu/epso/apply/jobs/perm/2015/lawyer_linguists_ep_c/index_en.htm> accessed 24 March 2016.

40 Lise Poirier, 'Whose law is it? A jurilinguistic view from the trenches' (2009) available at <https://www.opc.gov.au/calc/docs/Loophole_papers/Poirier_Jan2010.pdf> accessed 24 March 2016. See also G mar (n 26).

41 Christopher Goddard, 'Legal linguists: As (In)substantial as Ghosts and True Love?' in Davide S Giannoni and Celina Frade (eds), *Researching Language and the Law: Textual Features and Translation Issues* (Bern: Peter Lang, 2010).

It may be helpful to refer here to a model I have developed which seeks to communicate the complexity of the task in all its facets to stakeholders in the professions and to trainers in academia.⁴²

At a first level, that of source and target *language*, the legal translator's task is analogous to that of translators in other domains, although situated within a specific segment of general language: legal discourse. At a second level, legal translators' work becomes even more complex, as they 'negotiate' solutions between source and target *legal system(s)* – entering the domain of comparative law.⁴³ Third, the legal translator must ensure that the given *genre* or

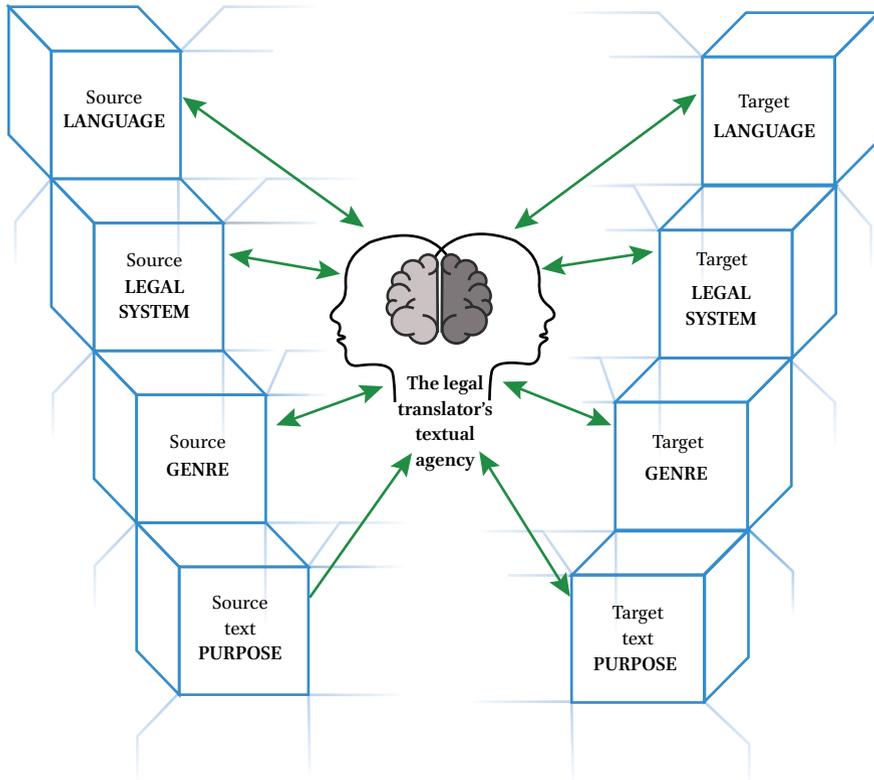


FIGURE 1 *The multiple aspects of legal translation performance (Scott 2016)*

42 Juliette R Scott, *Legal Translation Outsourced* (Oxford: Oxford University Press, summer 2018).

43 On some occasions, despite being translated into a different language, texts may not traverse legal families – for example certain texts translated from French to Italian may both be located in code-based, civil law systems, whereas in other contexts the source and target systems may be widely divergent: e.g. English and Chinese.

subgenre is appropriately transposed into the target genre, e.g., by using the relevant sublanguage and where necessary, macrostructure and/or layout. The fourth and final layer to the legal translator's work is to ensure that, according to the client's instructions, the *purpose* of the target text is addressed, whether it is a reflection of the source text purpose or a new and different purpose.

In this highly complex negotiation or 'juggling' of what is effectively eight multifaceted aspects by the legal translator – four on the source side and four on the target side – as they progress through their work, the legal translator does not negotiate the various elements in a linear manner. They are handled quasi-simultaneously and time is a non-excludable factor: I have therefore adopted a concept from mathematics – that of the tesseract. The tesseract is the four-dimensional analogue of the cube – in other words the tesseract is to the cube as the cube is to the square. If we accept that time is one of the dimensions, a static geometrical representation (even if it were three-dimensional) is thoroughly inadequate to model the figure. Readers are encouraged to view an animated model, e.g.: <https://commons.wikimedia.org/wiki/File:8-cell.gif#/media/File:8-cell-orig.gif>. The non-stationary projections, as they are unwrapped and wrapped, constantly interacting with and mapping on to one another, are a convenient way to view the legal translator's mental processes and the indissociable and synchronous nature of the fields of their textual agency. It is important to stress that I use the tesseract purely to model complex cognitive activity and take no account of the mathematical arguments involved.

3.5 *The Need for Professionals*

The consequences of translation errors in the legal domain, and the corporate and financial domain in which many legal translators practice, can be far-reaching. It is worth noting in passing that the construction of ambiguous legal texts can be fraught with perils even without crossing language borders. The need for professional legal translators who are well versed in the law becomes self-evident in such cases. For reasons of space, I will provide just two examples.⁴⁴

The oft-cited case *Frigalimint Importing Co. v B.N.S. International Sales Corp.*⁴⁵ clearly illustrates the need for professional translators to be involved and the costs that can be incurred in a 'DIY' approach to translation. The

44 For an interesting discussion of translation quality issues, and the legal consequences of translation errors for companies and citizens, see *Quantifying Quality Costs and the Cost of Poor Quality in Translation* (Luxembourg: Publications Office of the European Union, 2012).

45 *Frigalimint Importing Co. v B.N.S. International Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960).

purchaser, a Swiss company, ordered a number of frozen chickens for roasting and frying from a New York poultry wholesaler. Having received delivery, part of which were second-class quality stewing birds, the buyer brought action for breach of contract. Ambiguity had arisen regarding the definition of 'chicken' – which the parties had construed differently. The plaintiff intended for the term 'chicken' to refer to birds no larger than broilers or fryers, and the defendant believed that chicken included stewing fowl. Preliminary communications were all in German, a language known to both parties. The plaintiff claimed to have used the English word 'chicken' intentionally within its German correspondence, understanding that the English word meant 'young chicken'. Plaintiff abstained from using the German word 'Huhn', which includes both stewing chickens ('Suppenhuhn') and broilers ('Brathuhn'). The defendant held that 'chicken' was any bird of the genus that met contractual specifications on weight and quality, including 'stewing chicken'. The intervention of a professional translation practitioner could have highlighted the potential risk and clarified the terminological issue at an early stage.⁴⁶

My second example illustrates just how far translation errors can lead. On 9 May 1994, the Commodity News Service issued a report referring to rumors that had been circulating regarding a Japanese bank taking over an American bank, Continental Illinois. When the report was translated into Japanese, 'rumors' was translated as 'disclosure' – i.e. a certainty rather than conjecture. This precipitated a run on foreign deposits. Despite several attempts to restore confidence in the bank, and fearing knock-on effects throughout the banking system, the Federal Reserve decided on a bailout. The cost of the rescue amounted to USD 8 billion. We can see here how texts whose translation is deemed 'unimportant' or 'insignificant' when someone decides how – and by whom – they will be translated can have repercussions that vastly outstrip the cost of a professional translation by an expert in the field in question.⁴⁷

3.6 *Differentiation of Legal Translation Services*

As already noted in section 2.2, developments in translation technologies may be seen as an opportunity for legal translation, in particular as a way of segmenting the market according to service provider – whether human or machine. This is not the only way of differentiating legal translation services, however. One might rather differentiate by level of service depending on

46 For further details see Sanford Schane, *Language and the law* (London: Continuum, 2006).

47 For further details see Andrew Fight, *Understanding International Bank Risk* (Chichester: John Wiley, 2004).

the status of the translated text;⁴⁸ or by type of text – also known as ‘textual genre’;⁴⁹ and/or by area of law.⁵⁰ I will now examine these alternatives in turn.

Knowledge of a translated text’s status, purpose or function is of prime importance to a translator and is fundamental in determining the multiplicity of decisions they make in transferring the text from one language to another and one legal culture to another.⁵¹ Furthermore, quality is seen by many in terms of ‘fitness-for-purpose’.⁵² I posit three levels of service according to a translated legal text’s status or purpose: translations for gist or information purposes only; translations that are not to be legally binding; and translations where the target text will be legally binding. These categories were offered to translation clients in a global survey of legal translation commissioning and received an encouraging response.⁵³ In parallel, an examination of market initiatives has shown that translation agencies have begun within the last two or three years to offer graded levels of service.⁵⁴ One may thus envisage selecting a translator – lawyer-linguist, junior translator, or machine – according to the

48 On the differentiation of general translation services, see A Chesterman and E Wagner, *Can theory help translators?: A dialogue between the ivory tower and the wordface* (Manchester: St Jerome, 2002).

49 The textual genre can be seen as a pragmatic way of collecting together groups of texts in the light of their communicative purpose and provides insights for translators into their linguistic characteristics, structure and conventions. See in this regard V Bhatia, *Worlds of written discourse: A genre-based view* (London: Bloomsbury, 2014); A Trosborg, ‘Text typology: Register, genre and text type’ in A. Trosborg (ed), *Text, typology and translation* (Amsterdam: Benjamins, 1997) 3–24; and M Gotti, ‘Text and genre’ in P. Tiersma and L Solan (eds), *The Oxford Handbook of Language and the Law* (Oxford: Oxford, 2012) 52–66.

50 H Mattila, *Comparative legal linguistics* (Aldershot: Ashgate, 2006), at 5.

51 As noted by Obenaus: “the translation process should begin with a ‘purpose interview’ with the client. When you walk into a lawyer’s office to sue somebody for breach of contract, a good lawyer will first give you advice and inform you of any other options that may be available to you before initiating legal proceedings. By the same token, a good translator should not just take the source text and translate away but determine the function of the translation first. (...) The translator’s ability to identify key issues and ask the right questions before performing the actual translation is vital for the quality of the translation”, Gerhard Obenaus, ‘The legal translator as information broker’ in Marshall Morris (ed), *Translation and the Law* (Amsterdam: John Benjamins, 1995) 247–259, at 253.

52 “According to ISO Standard 8402, ‘quality’ is defined as the ‘totality of characteristics of an entity that bear on its ability to satisfy stated or implied needs’”, and “quality is measured against customer satisfaction” (at 4); the Directorate-General Translation “aims to provide ‘fit-for-purpose’ quality” (at 11), *Quantifying Quality Costs and the Cost of Poor Quality in Translation* (n 44).

53 Scott (n 42).

54 Scott (n 42) 147.

level of service required, once the status of the translation to be commissioned has been defined.

A differentiation by type of text or 'genre' would be another way of enabling specialization and segmentation to take place in the legal translation market. I have developed a number of ad hoc categories based both on the literature⁵⁵ and on the areas of specialization commonly used by practitioners in their marketing activities. These were trialed as part of the global commissioning survey already cited.⁵⁶ The categories were as follows: Corporate (e.g., contracts, terms & conditions, calls for tender, articles of association); Financial-legal (e.g., auditors reports, fund prospectuses, offering circulars); Notarial (e.g., deeds, wills, creation of servitudes, power of attorney); Court-related documents (e.g., pleadings, judgments, orders, notices of appeal); Insurance documents; Legislation (e.g., articles, parts of laws, whole laws, regulations, standards, treaties, whether national or international); Certificates (e.g., birth, death, marriage, diplomas, ID papers) for official purposes; Patents. These categories largely correspond to areas of practice for the legal profession.

The inseparable relationship between legal translation and comparative law also makes a differentiation by areas of law an interesting proposition, on the basis of the specialist terminology of each branch – criminal law, tax law, property law, estates law and trusts, employment law, company law, litigation, and intellectual property are areas with high levels of cross-border activity giving rise to heavy demand for translation.

There are thus several ways in which differentiation and market segmentation might be implemented. In fact, there is no reason why one or another method should be chosen. Rather, it would be propitious to combine all of these considerations – when training would-be legal translators, when professionals market themselves, as well as for the purposes of academic study, and when acting in the role of translation buyer or commissioner. The correct matching of skills to translation work can only be positive for all concerned: at one end of the spectrum automated systems should be matched with information purposes translation, and junior translators matched with certificates, standard contracts or basic notarial work, and at the other end, senior practitioners paired with complex pleadings or legislation.

55 See Łucja Biel, 'Professional realism in the legal translation classroom: Translation competence and translator competence' (2011) 56(1) *Meta* 162–178; and Vijay Bhatia 'Legal genres' in Keith Brown (ed), *Encyclopedia of Language & Linguistics Volume 7* (Boston: Elsevier, 2006) 1–7.

56 Scott (n 42).

4 Training Pathways

The first and perhaps obvious observation that needs to be made is that training *is* required in order to perform translation work. It is not sufficient to have a grasp of two or more languages and knowledge of law in the corresponding legal systems. Translation is a discipline, and its techniques need to be acquired.

The second point is far more contentious. It concerns whether a budding legal translator should first be a lawyer, or a linguist. There is considerable academic debate in this regard that I shall not reproduce here.⁵⁷ Instead I posit that the entry points to the profession are many and varied, and that it is the accumulation of a number of essential and indispensable skills, in any chronological order, which constructs a competent legal translation practitioner.⁵⁸

In practice, for example, a would-be legal translator may thus choose to attend law school and obtain their law degree, subsequently acquire language skills by living and working abroad, and finally obtain a Masters degree in Translation Studies with a specialization in the legal field; or they may take a first degree in languages, with accompanying periods spent abroad, followed by an LLM in their preferred area of law. There are of course several other scenarios, such as for those fortunate enough to grow up in a multilingual context who can dispense with language acquisition, and there exist certain degrees that combine translation techniques and legal training in one and the same course – these tend to be a second degree or postgraduate qualification.⁵⁹ In the guise of mini case studies, I shall now describe three trailblazing projects of the latter kind.

57 For arguments deeming that only lawyers can translate see, for example, Peter W Schroth 'Legal translation' (1986) 34 *American Journal of Comparative Law* 47–65; and Ioannis Manganaras, 'The Qualified Legal Translator is a Lawyer Trained in Translation' (1996) 4 *Lingua Legis* 62–71. For arguments according to which linguistic and translation training is indispensable and might even outweigh legal training, see Judith Lavoie, 'Faut-il être juriste ou traducteur pour traduire le droit?' J. (2003) 48(3) *Meta* 393–401; and Jean-Claude Gémard, 'La traduction juridique: art ou technique d'interprétation?' (1988) 33(2) *Meta* 305–319.

58 Juliette R Scott, 'Training is all around you all of the time' (2013), keynote address, European Commission Representation, London, UK.

59 'Hybrid' LLMs are now becoming more and more common – e.g. in law and technology <<http://www.legaltechnology.com/legal-it-jobs/a-new-generation-of-lawyers-cornell-tech-launches-llm-as-demand-for-hybrid-lawyers-and-technologists-grows/>> accessed 24 March 2016.

The University of Poitiers, in France, offers a Master's program leading to a lawyer-linguist qualification that has been in place for several years and was originally aimed at employment within the bodies of the European Union. The languages and arts faculty and the law and social sciences faculty run the course jointly – a key point. Admission is open to those with a lower degree in law and 'good linguistic training' such as that obtained through an ERASMUS program, or to those with a lower degree in languages with specializations in the legal field. The course consists of modules in law, in English, German or Spanish with French, and includes an obligatory work placement of a minimum of 2 months in an international undertaking.⁶⁰

In Italy, a mixed faculty (a rarity), the Department of Legal Sciences, Language, Interpreting and Translation Studies at the University of Trieste, offers a Masters in Legal Translation. One particularity of this degree is that it enables working translators to follow the course, as sessions are concentrated into full days and are scheduled to include weekends. Languages available are English (compulsory), and one among Spanish, German, Croatian and French, and applicants must have Italian as their main language. It comprises modules in private, constitutional, criminal, European, commercial and comparative law, and also includes a work placement.⁶¹

An interdisciplinary program was created at the Riga Graduate School of Law in Latvia in 2009 as a result of State intervention – a professional Master's degree in legal linguistics, to develop comparative legal and linguistic analysis skills in national, multilingual and international contexts, also covering legal translation and legal terminology. The program was formulated for the Latvian market and the multilingual legal environment of the European Union. Since its inception, both lawyers and translators have attended the course. According to its director, this was the result of insufficient numbers of lawyer applicants, with translator candidates enabling the course to be viable.⁶²

60 University of Poitiers, *Master professionnel juriste linguiste* <www.univ-poitiers.fr/formation/nos-formations/par-diplome/les-masters/mention-droit-des-affaires/master-professionnel-et-recherche-droit-economie-gestion-mention-droit-des-affaires-specialite-juriste-linguiste-24744.kjsp?RH=1352756972875> accessed 24 March 2016.

61 A new bachelor's degree program in interlingual communication applied to legal professions is to be launched at Trieste in 2017–2018.

62 Christopher Goddard, 'Legal linguistics as an academic and professional discipline: Identifying clients, customers, stakeholders' (2010) in Carmen Heine and Jan Engberg (eds), *Reconceptualizing LSP. Proceedings of the XVII European LSP Symposium* (Aarhus: Aarhus, 2009). This programme has been suspended for the academic year 2015–2016;

The above three courses have been chosen to illustrate the range of innovative approaches in terms of faculty organization and collaboration, content, objectives, and student profiles.

5 Career Prospects

Once fully qualified, opportunities to use legal translation skills may arise in a number of loci. The first is the most familiar to those outside the field – international courts and international organizations, some of which have already been cited in this paper.⁶³ These can present the advantage of considerable support structures that may include peer mentoring, consultation with drafters, reference tools and materials for internal use only, and bespoke technological aids.⁶⁴

Permanent legal translation positions exist within international corporations, banking and other financial institutions, and the larger law firms. Working in-house should provide privileged access to drafters and team support from other linguists/translators as well as, in some cases, lawyers. It may also involve recruiting and leading teams of freelance workers when internal resources are insufficient to deal with fluctuating volumes of work, as well as language pairs or legal specialisms that are not covered.

Alternatively, one may decide to join or create a boutique practice. The latter will require entrepreneurial skills and a considerable and sustained effort to obtain and maintain clients, which, although highly rewarding, should not be underestimated.

Finally, those wishing to pursue a career in academia may either decide to teach legal translation – where those with professional experience are generally most welcome – or to join one of the considerable number of disciplines and interdisciplines adjoining legal translation studies, such as comparative law, transnational law, legal linguistics, applied linguistics, legal hermeneutics, forensic linguistics, and legal corpus linguistics.

<<http://www.rgsl.edu.lv/en/study-at-rgsl/masters-programmes/legal-linguistics/>> accessed 24 March 2016.

63 such as: Council of Europe, European Parliament, European Central Bank, International Criminal Court, INTERPOL, United Nations, WIPO, World Trade Organization.

64 Anabel Borja Albi and Fernando Prieto Ramos (eds), *Legal translation in context* (Bern: Peter Lang, 2013).

6 Conclusions

Conscious of a narrowing in the traditional avenues open to those considering law school or having recently graduated, this paper has sketched out the considerable opportunities offered by a growing legal translation market, which, despite some drawbacks such as a lack of regulation and a certain disorder, appears to have a very healthy future supported by professionalization initiatives from many quarters. I have argued that technological advances, far from being a threat, can be an enabler for the differentiation of service levels and the emergence of the high-end legal translation practitioner.

However, beyond commercial concerns, I must leave the reader with some additional thoughts – that legal translation is an intensely satisfying profession in terms of intellectual challenges, which also facilitates access to justice, supports the protection of products and businesses, and can be pivotal in the prosecution of war crimes, and of organized or white-collar crime.

Legal educators have now joined forces with language and translation faculties to provide groundbreaking programs, which are going from strength to strength. The demand and need for expert mediators of law and language to be positioned at the core of global business and international relations is a clear and present reality. To take up this gauntlet with alacrity is a privilege that cannot disappoint.