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Neological Patterns in Spanish Legal Discourse; the Phenomenon of *Mobbing*

Maria Angeles Orts Llopis
University of Murcia
Spain

1. Introduction: the role of English in a changing Spanish

The present paper is aimed at identifying and describing some patterns of incorporation of loan words of English origin into the vocabulary of Spanish business legal language. In doing so, the diverse reasons for the incorporation of neologisms from English will be analyzed, establishing a taxonomy of loan acquisition. My ultimate purpose in doing so will be to study the nature of the different phenomena, and their significance in the terrain of translation. Establishing the reasons for linguistic change in the area of mercantile and professional activity may have an outstanding effect on the difficult task of finding the true equivalence and specific weight of borrowings from the present *lingua franca* of technology and commerce. This task may also unveil the actual relationships between the source language, English, and the target one, Spanish, in the areas under analysis.

Change is one of the most important manifestations of the vitality of a language, mirroring its evolution and peculiarities, and, most importantly, the state of its technical, cultural and even emotional development. One of the most momentous causes of linguistic change is neological acquisition. Neologisms are also the source of most translation problems, as the pace at which cultural, scientific and sociological problems evolve is not met by dictionary editing. Very often the help of dictionaries or publications on a particular subject where the neologism takes place is not enough, and only common sense, stamina and experience may aid translators.

The English language used to be the receiver from at least 135 languages, among them, Old Germanic, Norse, French and Spanish. Today, it is the main linguistic donor worldwide, and Spanish is just one more example of this generosity. The

influence of English on Spanish is profound, and likely to remain so in the future, since there is no question that the *lingua franca* governs the lexicon of international business and economics, of scientific and technical discourse and, in essence, dominates communication in the current world. Just in the context of the EU, where twenty languages have the same official status, English actually is the language of meetings and administrative communiqués, the working linguistic tool of the Union.

Spanish-speakers and scholars have not always been very pleased with this state of affairs. Unlike English, Spanish has an international standard, supplied by the *Real Academia Española*, or *RAE*, an overall legislative body with a remarkable status within the Spanish-speaking world. The *RAE* acts as a linguistic referee for the Spanish language, monitoring and updating standardized words and usages with some degree of regularity. There exist differences between the various regional varieties of Spanish, and these are likely to deepen further with the passing of time. Still, linguistic training of a pan-Hispanic standard is likely to be attained in the countries where Spanish is the mother tongue, and, consequently, it may experiment a lesser degree of fragmentation than English as a lingua franca (Pountain:1999).

The reluctance to change, exercised by the *RAE* as the maximum linguistic authority in Spanish-speaking countries, is also supported by the Spanish academia and public opinion at large (de Miguel 1985, Lazaro Carreter, 1988), hiding the fact that languages do change over time and that indeed change is the subject-matter of language. But despite the efforts of translators to avoid equivalence solutions outside the scope of Spanish as a target language, in the areas of finance and mercantile law most of the coinages are actually in English. To the risk of resorting to bizarre linguistic contortions, the incorporation of new voices through neologism cannot be avoided.

2. The pattern of borrowing in Spanish: loans, false friend, false loans and calques

In the course of this study, I have spotted four main areas in which borrowings from business legal English take place. The way in which neologisms can be classified is diverse, and the paradigmatic perspective depends on the theoretical perspective adopted. The taxonomies used here are based on the seminal theories of Newmark (1988) and Baker (1992), as well as the work of several Spanish translators like Russo (2002) and Martinez de Sousa (2002) and prominent linguists like Lazaro Carreter (*ibid*) and Alcaraz (1994, 1996, 2000, 2002). Still, the reformulation of the paradigm deployed has been developed entirely for the purposes of the present work, as it is the coinage of the "false loan" phenomenon that will be described below.

Prestige and the lack of a cultural element in the target language seem to be the common reasons for the appearance of neologisms. Despite its rejection by an important sector o the Spanish intelligentsia, the truth is that, as Newmark

observes, they usually please and attract the public at large (1988:140). In any case, neologisms are frequently found in technical and scientific language, but also "media" or "product" transferred words are common[1]. In the area of business law, I further classify them as ***necessary neologisms***, and ***luxury neologisms***, with respect to the reasons for their incorporation. The former are installed in the language out of a need for a new word which as yet has no correspondent in the TL, as it is the case of *joint venture* or *dumping*, which would have to be glossed and explained in Spanish, and have no easy translation; the latter are incorporated for prestige reasons, as −just in the area of economics, for example− it is the case of *cash flow, hedge fund* and *call money*, all of which have an equivalent in Spanish (*flujo de caja, fondo de cobertura* and *dividendo pasivo*, respectively), the original being considered more technical or influential.

It is my opinion that, in the specific case of the legal discourse, the incorporation of new words is not as swift or immediate as in other areas like journalism or economy, due to the conservative character of this type of discourse (Mellinkoff, 1963, Tiersma, 1999). Despite this, and due to the phenomenal influence of English as the language of international communication, as well as the exceptional mobility of the language of commerce, we have located four types of neologisms in the area of business law, the result of a loan process from the SL. These types are described below.

On of the best-known loan areas is the phenomenon we refer to as a ***xenism***[2], a term given for those borrowings that are incorporated into the target language by means of no phonological or morphological transformation. This occurrence is explained by Newmark (1988:81) as the translation process of transference, by means of which the target language hosts a source language term, thus becoming a "loan word". According to Newmark, xenisms show the respect of translators towards the SL culture, but in some cases they may become unnecessary or obscure, as the translator's task is to translate and, therefore, to explain.

If, on the other hand, the word is unreadable in Spanish, the user may opt either to adapt the morphology of the word to the target language, or alternatively, translate it literally. Hockett (1964) identifies calques at large as peculiar phenomena of transposition or shift (Catford's term, 1915), by means of which the loan is rejected in its original version in the SL, the materials of the TL being adapted to generate a new term. In the present study both phenomena are regarded as ***calques***. A morphological calque is a very usual phenomenon in the world of business and economics, as for example with the words *suap* for *swap*, *barnaut* for *burnout*, *securitización* for *securitization*. It happens when xenisms are consolidated and made easier to use, an alien graphism being transformed into a pronounceable one. Loan translations or calques, on the other hand, are also referred to by Newmark as

[1] As it is the case with imported foodstuffs like "Nescafe"or "Danone", or clothes such as the "Manolos" and the "Levi's".
[2] As, for example, *broker* or *dealer, barrister* or *solicitor,* the latter in the context of British law.

through-translations (1988:84). Common collocations, names of organizations and the components of compounds like *salto del gato muerto* for *dead cat's bounce*, *FMI* for *IMF*, or *limpieza genera*l for *clean-up requirement* are examples of these.

As a general rule, if the neologism conforms to the morphological standards of Spanish, the user may decide to translate it literally. In this particular case, we are facing the false transposition of a loan word , also known as a ***false friend***. Semi-technical terms in both legal Spanish and English are often cognate terms, with a common Latin origin and, in some cases, with totally different translations in both legal systems. Alcaraz (2003:85) calls paronyms those words which are related because of an identical origin. He distinguishes between ***real cognates***, words like complicity *(complicidad*), jurisdiction (*jurisdicción*) or defamation (*difamación*), with identical meanings in both languages, and ***false cognates***, or false friends, those having the same etymology that have developed differently in both languages. This is the largest and most dangerous area in the translation of legal English into Spanish. The difficulty with these words does not lie in the identification of equivalent legal/linguistic phenomena, but rather in the misidentification of some words with formal similarity but conceptual difference. For such words, their Latin source would certainly convey an erroneous interpretation. In the area of false cognates we have isolated those words which are dangerous for the unwary speaker or translator, terms (*public company*, *private company, consideration, detriment* and numerous others, especially in the area of corporative and contract law) that have a similar form in both languages, but convey different meanings. Such terms pose problems for Spanish speakers with little proficiency in English, or those with knowledge of this language but little training in the specialised discourse at hand. They are Common Law phenomena in their English version, with a linguistically-speaking Latin origin. Perhaps with the exception of some, almost all of them are not movable to the scope of Spanish law, because there is no linguistic equivalent possible as a one-to-one translation.

The last area that we aim to identify, which incidentally is the object of the most relevant part of this study, is that of ***false loans*** or ***false xenisms***[3], The term *false loan* or *false xenism* has been coined specifically for the purposes of the present study, as a phenomenon that happens occasionally, but relevantly, in legal Spanish, and needs to be identified as such by both linguists and translators that move within the boundaries of legal discourse in Spanish-English. In the previous section, xenisms were identified as loan words from the source language, including words like *broker* for the Spanish *comisionista*, or *dealer* for *agente por cuenta propia*, where a minimum adaptation of graphetics and/or pronunciation takes place. Contrary to these cases, false loans or false xenisms are *not* really borrowings, in the sheerest of senses. False loans are a consequence of the status and prestige of an international language such as English. They consist of an erroneous assimilation in the TL of a term that does not exist a such in the SL, but has its morphological and phonetic origins in it as a lingua franca. Dissimilarly from xenisms and calques,

[3] The term *false loan* or *false xenism* has been coined specifically for the purposes of the present study, as a phenomenon that happens occasionally, but relevantly, in legal Spanish.

false loans are words commonly well settled in the target language, as their original or translation in Spanish has long been forgotten. In opposition to false friends, the false xenism does not come from a paronym, or common root, of both languages, but its etymology belongs entirely to the SL. Indeed, terms like *leasing, trust* or *mobbing,* are used in the English version both in oral and written Spanish, both by specialists and laypeople. Nevertheless, all of these terms have a common feature: the fact that, as a sample of the lack of control that surrounds neologisms, they seldom reflect what they meant primarily in the source language.

3. When *xenisms* are false: the cases of *leasing*, *trust* and *mobbing*

Sometimes the pattern of term-borrowing runs out of control. The high amount of non-specialised translators and the quick spreading of new loans through the mass media, together with the need for economy and precision that surrounds everyday living, lead to the swift and effective incorporation of Anglo terminology. Perhaps with the exception of *dumping*, a term that describes an economic phenomenon, difficult to paraphrase[4], it is true that there exists a certain amount of snobbery in the use of prestige words or luxury neologisms, which we think could be explained as the proverbial search of detachment or specialisation that generally characterises professional registers or genres. Hence, this need for professional distinction results in the frequent usage of English words that already have their equivalent in Spanish, or, what is worse, in giving new meanings, even adapted forms, to words already existing in the language.

If we analyse the word *leasing*, we will find a clear example of the above. In this first case, we find that the word comes from the verb to lease or "*give or take the use of land on a lease*", being *lease* as a noun "*a written legal agreement by which the use of a building or piece of land is given to someone in return for rent*", according to the Longman Dictionary of English Language and Culture. Similarly, Black's Legal Dictionary defines the verb as "*to grant the possession and use of (land, buildings, goods, movable property) to another in return for rent or other consideration*". However, the general –and, indeed, Spanish- usage of the word is that of an "*arrendamiento con opción de compra*", better recognised as "hire-purchase" by British law. Likewise, the phenomenon is defined by Black's Dictionary as a *lease-purchase agreement*, namely

> *a "rent-to-own" purchase plan under which the buyer takes possession of the goods with the first payment and takes ownership with the final payment; a lease of property (especially equipment) by which ownership of the property is transferred to the lessee at the end of the lease term.*

As we will see further on, just as in the word *mobbing* (and the more so, as the term *leasing* is older in time), the corrupted version of the term is now familiar even in

[4] Normally done as "inundación del mercado con productos cuyo precio está muy por debajo de dicho mercado" or "competencia desleal", which results clearly either too long or insufficient.

Anglosaxon systems, though still not fully typified as such by English Common Law.

If we turn to the to the British word *trust*, we find a term generally and insufficiently translated into Spanish as *fideicomis*o. According to Capellas-Espuny (1999), the word trust is:

> *an example of legal realities conceived as the result of legal discourse which creates its own reality from different or shared historic traditions, in one or several languages, and which cannot coincide in the concepts of analysis or can only coincide partially when they focus on a common international phenomenon.*

Deferrari (2001) defends that this, like other legal problems, does not admit a simple or direct substantive solution and should be preserved as a xenism or loan with its graphetic characteristics, being as it is a recently incorporated word in our language and not sufficiently elaborated in Spanish as yet. The term poses several problems in the legal-economic sphere, as trusts are not considered contracts in the Anglo-American systems of law, whereas they are interpreted as such in the context of civil systems. Meanwhile, in the general jargon, the word is commonly mistaken for its meaning as "*a group of firms that have combined to reduce competition and control prices to their own advantage*" (Longman Dictionary of English Language and Culture).

Finally, let's consider a false loan with a high emotional component, which may be missing in the other two terms under analysis: the word *mobbing*. The word *mobbing* has become common knowledge for the general Spanish public, but started to be used by psychologists, psychiatrists, lawyers and judges to define a wrongful, harassing conduct exerted towards an individual in the labour environment, usually by employers and fellow workmen.

The first researcher to identify and use the word *mobbing* was the Austrian etiologist Konrad Lorenz, Nobel Laureate in Medicine in 1973, who as early as 1958 observed the behaviour of certain herd animal species, detecting that in some cases weaker individuals coalesce to attack a stronger newer one. Nevertheless, the current European usage of this as a psychological phenomenon applied to humans springs from the work of Dr Peter-Paul Heinemann in the seventies, who studied the exclusionary strategies of children in schoolyards. Later on, Heinz Leymann, a German industrial psychologist with an MD in Psychiatry working in Sweden, pioneered a series of studies about this phenomenon, to him very much linked to the new patterns of work organization where individuals are faced to increasingly sophisticate interpersonal relationships. He defines *mobbing* as the situation in which a person or persons exert an extreme psychological violence upon another in the workplace, in a systematic and recurrent way, with the aim to destroy the communication networks of the victim, demolish her reputation, interfere in the accomplishment of her labour tasks, and ultimately force her to abandon the

position she holds at work. Women are inordinately affected by the phenomenon, but it is important to stress out that, as Friedman and Whitman point out (2003), this kind of harassment is a problem for everybody, not just women and, consequently, studies are inconclusive as to the gender issue. Hence, it is important to stress out that we are dealing with workplace, moral, not sexual, harassment[5].

In Spain, like in Germany and France, jurisprudence is already bountiful in the area[6], and the term has been embraced with hearty enthusiasm[7], being used with increasing confidence not only by specialists, but by laypeople as well. The attempt to find a Spanish equivalent for the term has been thwarted, as the words *acoso* or *hostigamiento*, the closest equivalences, do not really convey the idea that *mobbing* wants to send through. In fact, the concept that the word *mobbing* aims to transmit in Spanish is that of an unprecedented risk for the health of workers. Actually, it describes those situations in which a subject becomes the target of the group she belongs to, being submitted by that group or one of its members -with the acquiescence of the rest- to a pursuit likely to produce subsequent disorders in her health, both physical and psychological[8].

The behaviour the victim and the tortfeasor are also well defined by specialists in Law and Psychology alike. This is a very subtle and perverse type of aggression in which the aggressor tries purposefully to isolate the victim socially by restricting her communication channels, avoiding direct contact or address with her and preventing others to get in touch with her by means of the usual media (fax, telephone, and e-mailing). As impotence grows in the victim, who wonders why she is being isolated and denied any kind of problem-solving dialogue. Her work is systematically hindered and changes in the organization are established so as to make it impossible for such a worker to meet deadlines or fulfil her tasks, through the manipulation of data and the misuse of information by the aggressor.

If the term is to be analysed from the linguistic standpoint, we find out that it has its origins in the English noun *mob* (derogatory word for *large, noisy crowd*, according to the Longman Dictionary of English Language and Culture) and its verb *to mob* or *crowd around someone either because of interest or admiration* (as defined by the same Dictionary). No lexicographical identification of *mobbing* as an English word has been made to date[9], however, and to my current knowledge,

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[5] According to these researchers two in three victims are women, but these are not cases of sexual approach, but of women being prevented from becoming successful in male-dominated workplaces (2003:264).

[6] In the case of Germany the subject has been treated by legal scholarship; in France statutes have even been passed on the subject (Friedman and Whitman, 2003:253, 260).

[7] As well as its *calqued* fellow labour disorders, *barnaut* (*burnout*) and *estres* (*stress*).

[8] In words of Dr Pinuel y Zabala (http://www.ugt.es/mobbing/pinuel.htm), the most frequent symptoms are related to sleep disorders, anxiety, stress, personality alterations, irritability, depression and sexual ailments.

[9]According to British case law, *mobbing* is associated to the term *rioting* and refers essentially to a combination of persons sharing a common purpose which proceeds to carry out that purpose by violence or by intimidation, by sheer force of numbers (Vid.R v Henry and others, Common Court

the term remains restricted to some areas of usage in most English-speaking countries, and in the United States specifically is applied synonymously to moral harassment, bullying and sometimes, racking[10]. In contrast to the Continental law countries, America has been comparatively insensitive to this linguistic phenomenon, perhaps because of the higher work mobility, the concern for racial discrimination and the shorter hierarchical distances, together with, as Friedman and Whitman point out (2003:267), the higher *tolerance for psychic pain.* In Europe, as they put it "*it hurts to be shunned, it hurts so much that the law must come in*".

All in all, the paradoxical situation with this term is that of an English loan with a meaning not so well defined in English as yet, which makes the word a genuine specimen of false loan, according to our specification above. Such a term has settled in Spain in the wider framework of European legal usage, where, with the exception of the United Kingdom, the voice is easily recognised either by case law, or statute, or legal doctrine.

4. Conclusion: linguistic change as a necessary factor

There is an ever-increasing number of Spanish speakers who either have been trained in the States, or have gone through English-speaking academic institutions, or alternatively, are used to handling written texts in English. Many of these develop their professional, specialised activity in international business and economic organisms worldwide. As Russo states (2002:4), there is a reverse correlation between the specialist's age and her usage of loan words: the younger the specialist, the higher is the frequency of English word usage. These facts make the tendency to use "pure" loans or borrowings (that we have labelled as xenisms), as well as calques, as a plainer and cheaper solution.

Apart from these considerations about the wide spreading of English in the sociological and economic spectra and the prestige that its usage may carry in the labour scope, the situation is made more complex because of the high number of nations that communicate in Spanish, which enriches the language but creates some paranoiac reactions in the public at large, especially in the context of the Iberian Peninsula; solutions given by translators to new economic or business terms in a specific Spanish-speaking context may be rejected in others because of their excessively either local or colonialist hue.

In the present paper some ideological and even emotional patterns in the acquisition of English new words have been detected, in the hope to have been able to show that these patterns do really exist and cannot be rejected as mere exhibitions of snobbery or conceit but correspond to a changing reality in the legal

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of Ireland, CARE 2732; Coleman and others v Her Majesty's Advocate, High Court of Justiciary 1999 SCCR 87).

[10] Vid. Talanda v. KFC Nacional Management Company 19 Cal. 4th 142;960 p. 2d 1094;77 Cal 1998; Della Penna v. Toyota Motor Sales, USA, INC, 11 Cal. 4th 376;902 P.2d 740 1995 Cal; and The People v Scott Breverman, 19 Cal. 4th 142; 960 p. 2d 1094;77 Cal 1998.

world that must not be denied. Rather, the approach to these phenomena should be sympathetic and a deeper training of Spanish legal and economic specialists and translators in the area of neologisms should be attained. New voices like leasing, trust and, especially, mobbing are to be seen as a contribution to linguistic wealth in terms of convergence and expressive enhancement. Indeed, the veritable existence of pure loans or xenisms, calques and false loans from English in the scope of Spanish economic and legal structures calls for more flexible and lenient attitudes towards change. Neologisms at large are patterns of linguistic behaviour that reflect the evolution of the economic, social, legal and political history of countries and, as such, they must have its own place in those countries' *koine*.

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ABSTRACT

Neological Patterns in Spanish Legal Discourse; the Phenomenon of *Mobbing*

Maria Angeles Orts Llopis
University of Murcia
Spain

Many of the lexical terms handled every day, within the scope of Spanish Business law, are in English, due to the consequential role of this language as the *lingua franca* of international commerce. The Spanish discourse of economics and business transactions adapts borrowings to its needs, usage and communicative purposes, and a naive or uninformed translation could have disastrous consequences in some cases, or be unintelligible in others. In the course of my work, the diverse reasons for the incorporation of neologisms from English will be analyzed, establishing a taxonomy of loan acquisition. My ultimate purpose in doing so will be to study the nature of the different phenomena, and their significance in the terrain of translation, with special emphasis on the phenomenon described in Continental Europe as *mobbing,* of a enormous consequence in the Spanish environment of business and employer-employee legal relationships.

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