SIMONETTA RESTA: A LINGUISTIC APPROACH TO NON-LITERARY TRANSLATION

Problem of translation in general and of the legal translation in particular

1.1 Translation art or science?

What is translation? We will attempt to define it: it is the transformation of a text originally in one language into an equivalent text in a different language; retaining, as far as possible, the content of the message and the formal features and functional roles of the original text.

Most of the past bibliography on translation, speaks of it in terms of art and gives prescriptive rules about it if we examine them closer there are very much like etiquette rules of the pass
time, merely descriptive rules or sound and practical advice for the translator.

TYTLER spelled out the rules of the good translation:

1) Good translation should give a complete transcript and ideas of the original work.
2) Style and manner of writing should be of the same character with that of the original.
3) That the translation should have all the ease of the original composition.

He also said that from these rules the art of the good translation would flow spontaneously.

There is no such thing as a general theory or any universally accepted rules of translation.¹

The previous definition of translation need some further clarifications about the notion of equivalence. HARTMAN and STARK give the following definition of equivalent texts:

"Texts in different languages can be equivalent in different degrees (fully, partially equivalent) in respect of different level of presentation (equivalent in respect of the context, of semantics, of grammar, of lexis, etc.) and at different ranks (word for word, phrase for phrase, sentence for sentence."

Real equivalence does not exist. Languages are different from each other. They have different codes and rules regulating the construction of grammatical stretches of language that have different meanings WIDDOWSON (1979).²

To shift from one language to another is to alter the form. As there is no absolute synonyms in the same language there will not be similar forms in different languages.

Therefore translation can be either faithfull to the original text semantically, or stylistically (word for word or meaning for meaning).

In both cases the translator will face some criticism like the famous saying "traduttore tradittore"; but it is the purpose for which the translation is done and not the characteritsics of the text itself that will make the difference.

In the light of the communicative theories translation and translating can be seen as a process or as product in both cases it needs to be considered in a more scientific way.

From a broader point of view translators are communicators and all communicators are translators as they receive signals in (speech or writing) containing messages encoded in a communication system which is not identical to their own, they have to decode the message.

Language is a code which possesses features: phonological, syntactic, lexical and semantic, texts are created by selecting among this set of code features to communicate meanings.
What does the translator need to know in terms of knowledge and skills to become a competent translator?

Translation theorists have made little systematic use of techniques and insights into contemporary linguistics. Yet the pragmatics of discourse rests on linguistic elements which are likely to present special difficulties for translation, especially if an uncritical, hasty approach is adopted; as is often the case for the translation of non-literary discourse: expositive, argumentative, instructional. We will handle the problem of translating each type of text separately.

1.2 Requirements knowledge and competence to become the ideal translator.

The ideal translator should possess experience and perception of text reading procedures, capability to infer meaning and make assumptions about the text. This is directly connected with domain knowledge which is probably the most important factor as it allows for a higher level of inferences and assumptions about the content of the text to be translated.

There is a perceptive remark by WIDDOWSON about the fact that the conceptual world rarely coincide and therefore there can never be exact congruence of encoders's and decoder's meanings and so communication can only be approximate.

There are in fact two levels of knowledge:
1) The heuristic knowledge, immediate apprehending level, for temporary use.
2) The epistemological, deeper and more articulated knowledge of a specialized subject.

The problem is what kind of knowledge is required to translate well and how approximate the knowledge is allowed to be. It is a question of the purpose and destination of the translation.

With regard to the translator's knowledge:
The professional translator has access to five kind of knowledge; target language knowledge, text type knowledge; source language knowledge; subject area, and contrastive knowledge.

This leads to a redifinition of the translator's communicative competence, as the ability to create communicative acts and discourse which are not only grammatically but socially appropriate and he should possess linguistic competence and communicative competence in both source and target languages BELL (1990).

Moreover BAKER (1986) noted that the two skills that help the non-native translator to understand a specialized text are:

a) An ability to interpret the writer's intention and evaluation as signalled by various organisational and rhetorical items.
b) A sense of style, to perceive the subtechnical vocabulary or the significant lexical items. The nature of these skills involves different levels of linguistic analysis.

1.3 Translation as a process and the need for linguistics.

Now let's consider translation as an abstract concept which encompasses product only or in a more dynamic way to include the process of translating as well.

As we have seen previously, until recently the translation has been seen as a product with a kind of "prescriptive" rules governing it but those rules did not take any account of the process of translating itself and nor did they manage to give a logical explanation to it; therefore the process by which translation is generated is of primary importance and we must try to cast some light on it.

Translating as a process has to do with decoding the message contained in a given text in the source language, to encode it again in the target language.

A complex and sophisticated kind of analysis takes place in the translator's mind during these phases therefore requiring investigation in the framework of psycholinguistics studies.

Because the language information processing, as to produce a translated text, is happening inside the translator's brain and therefore difficult to follow and quite impossible to monitor so (BELL 1990), a linguist who has spent a considerable time in studying translation, is trying to reconstruct it with the help of a model for processing information, borrowed from artificial intelligence (as for the schema theory).

The procedures involved in the model are of a bottom-up and top-down type, which starting from decoding the visual aspect of the text's word recognition system, goes on to analyse at the different levels.

The first a syntactic processor which has two functions:
1) the analysis of the structure -Mood-
2) the assigning of lexical meaning.

The second a semantic processor retrieves content-transitivity and the third for pragmatic analysis which also performs two tasks:
1) to isolate the thematic structure
2) to provide register analysis

When these analyses have to be performed the semantic representation is formed. See fig. 1
At the end of the first process we find an idea organizer which makes inferences on the basis of the information available and a planner for text processing and translating according to the decision previously taken. Here starts the translation process that through three stages of encoding performed in the target language by (pragmatic, semantic and syntactic synthesizer) ends with the translated text.
1.4 Linguistics as an auxiliary science to translation

In translation practice very often the translator is primarily preoccupied with the rendering of the precise meaning (the semantics of discourse), very often disregarding the locutor's intention (pragmatics of the text) and so he produces instances of overtranslation.

The various principles and rules of translating are unfortunately inadequate to provide him with sound directions and sometimes he cannot rely on his expertise and practice.4

As the translation process is increasingly seen as a "text oriented event", the translator, to be able to interpret the writer's intention (the purpose of the message) as it is revealed through the textual features, needs to acquire some more linguistical insights which will enable him to process the text and perform register analysis on the basis of applied linguistics procedures.

This analysis takes place at different levels so as to generate a complex model involving first of all the context of the situation divided into three broad components each representing one of the types of constraint placed on discourse.

They are:

Field The setting in which takes place The topic referred to

Tenor The social and personal relations

Mode The channel of communication
The field or domain of discourse encompasses two situational factors, the place and the topic of the discourse, the relation between topic and setting varying from discourse to discourse, it is sometimes useful to make distinction between immediate setting and wider setting which cannot be perceived by the people. Which is a broader concept including the antefacts of the setting. The knowledge of which allows a higher level of inferences.

The tenor of discourse is the basis for the actual interaction of the speakers, their social roles, statuses, personal attitudes and intention, it can be defined as the "personal atmosphere" in which the conversation take place.

Tenor is particularly important in the translation of fiction, and the wider tenor is important in the case of translation of instructional texts where it is important to establish and understand the speaker who assumes a dominant position and therefore takes control of the direction of discourse, as well as the hierarchic relations among the subjects involved (text producer and text receiver).

The mode of discourse is the medium used as the channel of communication, one of the basic differences between writing and speech is usually that written communication is between people in different settings.

Moving from situation to discourse level we take in account the interactive aspect of it.

The term discourse is equivalent to the word "meaning" also in term of the speech acts performed: persuading, promising, objecting, therefore it is very important for the translator to understand the propositional as well as the thematic structure of a text and the macrofunctions of language directly related to the three Aristotelian categories: Rhethoric, Logic and Grammar: 5

Interpersonal - to interact with other speakers' cluster of grammatical structures and words and intonation to express tenor, roles and emotions.

Ideational - use of the language to represent things, ideas, and relations, it allows us to label and indicate categories and connections i.e. cause and effect and abstract relations.

Textual - use of language which provides meaning and continuity to the text probably the function which carries a wiser impact for the translator to enable him to detect, the logical and rethorical and syntactical organisation of the text. In other words the translator is discovering the non arbitrary sequences forming a text: is helped in decoding its cohesion and coherence mechanism.

Cohesion is a relation between meanings, it can be at sentence level, marked by linkers and connectors or lexical cohesion, when an individual word refers back to other words with related meanings; there is also a third type of cohesion, reference, in
which the speaker refers back in the text. This can be expressed by words like "the" and "he". It might also well be indicated by substitution, or ellipsis.

The sentence, however, is divided into two parts, called in different ways according to different school of opinion Theme-Rheme (Prague school) or Topic and Comments (HALL DyDAY etc.) but they all agree on the bi-partite structure of the clause and on its functions in information ordering, to give them a differing degrees of prominence. This can be based on sender's assumption about what the receiver does already know or does not know. These two types are labelled given and new information, respectively. Any unit of information as the discourse proceeds may change status and become given. But the sender may also decide to structure his information to make certain part of his written message the focus of attention and show in this way the relevance of what he is saying. The first part of the sentence, unless there are grammatical restrictions on word order, will contain the Topic and the second part the Comments.

Thematisation or foregrounding are textual devices to signal relevance, in spoken discourse instead intonation is used.

There are not clear criteria to distinguish what is relevant from what is irrelevant, because it is highly subjective. SPERBER and WILSON (1986) attempted to give a definition of relevance starting from the schema theory: any information capable to alter our assumptions significantly is relevant.

Relevance bring us back to GRICE (1975) and his cooperative principles which should be inspiring all communications. As it is well known, they are expressed by maxims: be relevant, be clear, be brief, be true.

There are nevertheless many "floutings" or violations of GRIC'S principles and some of them are deliberate to convey meanings; as in the case of metaphors, hyperbole and other figures of speech like irony and sarcasm, these features, used merely in argumentative writings, are often culture specific and therefore difficult to perceive may create a break down in communication to people of different culture, only the skilled translator almost bilingual, can interpret them and act as a powerful intercultural mediator.

As for the style and for a better perception of the discourse as such it is advisable that the translator can distinguish the different text types in order to be able to predict or to expect a certain structure.

A rather broad and general distinction of text types will provide him with some useful information about distinctive textual characteristics.

**Expositive** Focusing on states and on event
Each type of text will be examined thoroughly to highlight the problem and the difficulties arising from the translation of the different types of texts, and indicating which possible ad hoc strategies to come to terms with: either technical and scientific (descriptive) texts or institutional and legal (instructional) ones or argumentative ones as an economic article. Some examples of translations will be also given.

Some of these distinctions are perhaps too theoretical because often in reality, descriptive and argumentative text types may overlap. Nevertheless they are meant to give general categories.

2.0 The problem of the translation of informational prose.

The problem of translating scientific or technical language is a major one. As developments in all fields of science and technology in the 20th century has created a great demand for a free flow of information. English, being an international language, is the language of the vast majority of scientific and technical publications. This can be explained by the unprecedented technical and industrial revolution which began in England long before in any other country in Europe enabling English to acquire an incredible wealth of technical language so that it became the world's primary technical language. Being language such powerful social indicator. It is not surprising that it reflected the new social reality.

Science has become one of the main sources of international communication. Many linguists have therefore focused their attention on systematically describing the variety of English used for scientific interaction.

First of all the structuralists tried to define the scientific "register" by defining its linguistic characteristics as subcodes of a particular language. They also believe that language samples might be described by carrying out statistical survey on the relative frequency of occurrence of lexical (technical, semi-technical vocabulary) and syntactic unit (passivisation, nominalisation, nominal compound); however, it was soon discovered that this type of analysis was inadequate as it did not provide direction to how to procede from sentence to text.6

A very good example is BARBER (1962) Some Measurable Characteristics of Modern Scientific Prose, which is still considered, although with certain limitations in the field of text selection, one of the most honest, thorough, comprehensive analyses of scientific language. The results of his research is a wealth of
data on sentence length, sentence structure subordinate clauses, ranking order of tenses kind and frequency of modals (interesting observation on the use of may instead of can by Americans) word occurrences, to be included in a select vocabulary; they have constituted the basis for further research.

Later (1972) with the LACKSTROM, SELINKER, and TRIMBLE findings of the Syntax of Scientific English, there is the first attempt to match form and function in technical language, casting new light on the non-arbitrary relations between form and function. They also made some interesting remarks about the inadequacy of the usual chronological explanations for using different tenses (Past, present, perfect, and simple present). See example below. What actually seemed a valid explanation for narrative is not useful for technical expository prose:

A. Smith disagreed with Jones
B. Smith has disagreed with Jones
C. Smith disagrees with Jones.

These forms namely exhibit an increasing generality rather than an increasing contemporaneity. This issue would be taken up by SWALES as an explanation to account for his strong author and weak author and subject oriented approaches for a research article, as we shall see later on.

Moreover linkers and connectors do not merely link sentences grammatically but indicate the logical sequence of different phases of scientific procedures. As modals reveal the epistemic attitude of the writer and give insights about the degree of inferability, displayed.

Some other interesting observations on passivation in an astrophysics Journal are by TARONE E (82).

"Writers of astrophysics journal papers tend to use the first person plural active We form to indicate points in the logical development of the argument where they have made a unique procedural choice, the passive seems to be used when the author is simply following established or standard procedure, as in using accepted equations or describing what logically follows from their procedural choice."

Some of these researchers, although investigating communicative values and rhetorical functions, have brought about some over-generalisation concerning some aspects which are not always characteristic, see TARANTINO (1990).

A more recent research in socio-linguistics (SEARLE, AUSTIN, LABOV, WIDDOWSON, etc.) on speech acts throws some new light upon scientific discourse, indicating some typical functions of scientific written enquiry. They sought at a certain stage to identify the parameters of the conceptual paragraph, in EST see (TRIMBLE and TRIMBLE 1977 and SELINKER.

This is a most interesting attempt to suggest a ranking of different levels of language function in ranking of different
levels of language function in discourse, and give patterns in discourse organisation. Also in this direction is the work of WINTER (1976) and HOEY (1979) which suggested a kind of very simplified four-move part in informational prose. The pattern follow a kind of logic coherence: The writer first sets a Situation, then he poses a problem arising from that situation, then he tries to indicate a possible Solution of it, concluding with a Result or Evaluation.

2.1 Scientific enquiry and specific texts

The language of scientific enquiry reflects the principles of GALILEO who established a universal scientific method of procedure and verification of observable phenomena and defined the quantitative and visual aspects of scientific discourse as well.

Following GALILEO's Principles, scientists must understand, describe, explain, and classify the real world. Basing their enquiry on experience, mathematical knowledge and experimentation. Accordingly scientists starting from observed facts must formulate hypothesis about real phenomena, then reproduce and interpret them. In this process they must record and verify. This has to be done in a very precise, clear complete and objective way. The result should be made public to be open to comment by other scientists researching on the same field, as is clearly stated in one of TARANTINO's work on scientific language (1989).

GRICE's principles (1975) of relevance, brevity, (the maxim of quantity), clarity (the maxim of manner) and truth (the maxim of quality) should inspire all pieces of scientific writing which must also encourage fair criticism and comment in order to make any contributions to scientific progress. Although in reality legal and scientific discourse often sacrifice the maxim of quantity to the maxim of quality.

As for translating scientific articles, it is of vital importance therefore with what the degree of content knowledge the translator is equipped to be able to produce an acceptable translation; it is advisable for the translator to have some basic knowledge of the field to avoid producing a semantically correct but pragmatically unacceptable translation.

When translating a highly specialised matter, in case he lacks specific competence in the subject area, the translator should be assisted by a subject specialist, acting as an informant, whose expertise, together with the skill of the translator will produce satisfying results, as it was suggested by L. SELINKER (1979).

SWALES (1986) is attempting to elaborate the information structure of a research article in four sequences. This model could have a certain impact in making the translator more content sensitive and so discover the style and overall logic content patterns of the scientific text to be translated.

Move one: Establishing the field
A) Showing centrality
   i) by interest
   ii) by importance
   iii) by topic prominence
   iv) by standard procedure
B) Stating Current Knowledge
C) Ascribing Key characteristics

Move Two: Summarizing previous Research
   A) Strong Author orientation 1)
   B) Weak Author Orientation 2)
   C) Subject orientation

Move Three: Preparing for Present research
   A) Indicating a Gap
   B) Question raising
   C) Extending a Finding

Move Four: Introducing Present Research
   A) Giving a purpose
   B) Describing Present Research
      i) By this/the present signals
      ii) By Move 3 Take up
      iii) by switching to the first person pronoun.

This provides a clear framework of motivation, of linguistic choice. This is obviously good material for a language course to train translators, working inductively toward textual knowledge.

Also some descriptions of text typology of instructional science can be very useful.

We can try to describe the overall structure of Technical manuals: Servicing manuals, cookery books, leaflets of instructions accompanying household or technical appliances, technical specifications, computer manuals etc.

Their characteristics can be described in terms of setting, structure and language.

As for setting, technical manuals are action-oriented pieces of writing which require specialized skills. The best result one can get is succeeding to correctly perform the instructions they contain.

Regarding the structure, technical manuals contain both information and instructions, but often their rhetorical functions are not clearly separated. They may add occasionally some warning and precautions.

The operational functions described in the manuals mainly concern these three types:
   a) Physical descriptions of the various parts
   b) Function performed by each part or by the whole
   c) Process description of the operations of the parts
Most of them are provided with sketches or figures or diagrams illustrating parts and their functions, those extra-textual elements can greatly help the translators who have to look at them pretty carefully before embarking on a translation.

There is a tendency in English to use ellipsis omitting articles which creates problems of understanding e.g. from a recipe book: Boil the egg, cool by standing in cool water.

Technical manuals in English also display a great number of instructional verbs, for which equivalent forms are not always to be found in other languages.

As it is shown by this network of English verbs taken by the Longman Dictionary of Scientific Usage. See fig. 2

Another linguistically interesting type of technical texts is Patents. The author of the patent has to duly describe the content and the scope of his invention at length, but at the same time he tries to protect it from the possibility that the new procedures or new technology presented are copied and exploited. He does this by giving details and information in a rather ambiguous way. That is why this text can display difficulties at a textual level in the effort to correctly interpret this interplay between saying and not saying.

2.2 Problem of translation of an argumentative text
As has already been mentioned, the ability to interpret the writer's intention is one of the major problems for the translator especially when dealing with a non-literary text. This might create some difficulties especially if he is unfamiliar with the kind of reasoning involved in the text.

The consequences of disregarding the writer's intention may affect the global coherence of the discourse and so create some gaps in comprehension and alter the meaning.

Argumentative texts are probably the more articulated textual genre. Their pragmatic function is to persuade the receiver about some issue contained in the message therefore to accomplish their purpose they display complex syntactic structures rhetoric tools like the argumentum, exemplum and speech figures like metaphor and synedoche, hyperbole etc. They also consistently draw on the receiver encyclopedia and metacognitive abilities to predict, to infer meaning, make associations, according to schema theory. In interpreting the text two types of schema are involved: one for content the other and pertaining to form. The work of the translator is greatly enhanced by the recognition of the appropriate intralingual intracultural schema.

We will give examples of some passages of an argumentative economic text and we will propose a translation indicating mistakes and problems arising from this.

TADROS A. A. (1977, 1982) and more extensively MERLINI BARBARESI (1983, 85, 86) have studied the pragmatic functions of an argumentative economic text and have found that some specific speech acts appear to characterize economic discourse. They are analysis, prediction and proposal.

Prediction appeared to both researchers to bear a more dramatic impact on discourse.

MERLINI BARBARESI (1986) gives an exhaustive definition of prediction: "any assertion relative to a non actual state of affairs which is anticipated by the economist on the basis of his personal evaluation of phenomena and their causal relations". She continues, making a distinction between prediction and analysis. Prediction anticipates possible evolutions or expansion of an observable phenomenon which need not be actual, but merely hypothesized, whereas in analysis the phenomenon observed is actual and is a matter of experience.

Obviously these two phases will have to be kept separately in translation.

The epistemic position the writer adopts towards some of his assertions is very important and is expressed and modulated by modals together with adverbs (disjuncts) like obviously, inevitably, presumably. These contribute in different way to the argumentative force of the discourse.
We will use an example to show how difficult a task it is for the translator to interpret the prediction and the modal in the correct way. On the contrary, a lack of interpretation of the meaning of the modal will result in a total distortion of the message itself as will be demonstrated by the following example:

In modern times nearly all of our experience with excess demand has been the result of military spending. However there are two other possibilities of importance. One is a matter of experience.\(^8\) One could be...
In the autumn of 1950 there was an upsurge of demand. The cause was the sudden rush to the consumers to buy goods and of the business to acquire inventories... The upsurge came about because of a radical change in expectations, from peaceful plenty to wartime scarcity....
There could be a similar though also somewhat more gradual result from a change in long run expectations concerning prosperity and depression (A.C. p. 201-2)

Translation:

Di recente quasi tutta la nostra esperienza di eccesso di domanda ha avuto origine nelle spese militari. Vi sono due altre possibilità importanti. Una si è verificata e l'altra potrebbe verificarsi......
Si poteva avere un risultato simile, sebbene più graduale, in seguito ad un cambiamento nelle aspettative a lunga scadenza circa la prosperità e la depressione.

The Italian translation, concerned as it is with conveying meaning produced a good translation of the first two sentences. The translation of could be by poteva as an alternative to the form si sarebbe potuto, is inconsistent, because it contradicts the first enunciation which was factual in English the possibility is still open whereas in the Italian version it is precluded.\(^9\)

2.3 Legal Discourse varieties and characteristics.

Attention will be now focused on the problems of the translation of an institutional text which is likely to bring about many complex problems.

Some linguists define legal language as a sublanguage used by lawyers and only understandable by them.\(^10\) DANET B. (1985) do not agree on the notion of legal language as sublanguage and prefer to speak about legal register.

A number of sociologists, scientist, and linguists from different countries debated the need to reform legal and bureaucratic language to make it plain and more intelligible to layperson. Among them is a Swedish linguist Britt Louise GUNNARSON who has already made an outstanding contribution to this filed. (1984)
A number of historical, sociological, jurisprudential and political factors account for the evolution of legal language which has become a unique variety of English.

Language and Common law do not follow the same lines. The changes happening in ordinary language through use were not taking place in legal language which underwent a slow and gradual process of evolution and growth. This difference in evolution is due to the fact that ordinary language develops new meanings and drops archaic forms through use. It also evolves grammatically and syntactically to encompass new forms and functions, whereas legal language develops only through legal practice.

It is the courts, legislatures, and government agencies which decide the legal meaning of terms and not ordinary usage and historical change. Some legal terms developed their meaning through litigation. The meaning being later refined through appellate court decisions. As for example with (negligence) the legal concept of which is now:

"Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under a given set of circumstances."

We will come back to this very interesting point later.

The majority of studies on legal language are focused almost exclusively at the lexical level, MELLIKOFF (63, 84) describes the language of the law largely in terms of vocabulary:

1- Frequent use of common words with uncommon meanings (action, consideration, assignment).
2- Use of Old and Middle English words now rare (afore-said, whereas, said and such, therein).
3- Use of Latin words and phrases, like (mens rea, affidavit, subpoena).
4- Use of French words (lien, easement, tort, etc.)
5- Use of jargon- (month to month, tenancy, negotiable instrument, void, estoppel, etc.)
6- Use of "professional language" in lawyer communication (due care, due course, rule of law).
7- Expressions with dubious meaning- (the reasonable man, undue influence, negligence).
8- Use of binomials, like (null and void, will and testament, leave, bequeath and devise).

These are only some of the reasons that make legal discourse, quite impervious to the layman, but there is more to legal language than a specialized vocabulary.

In a study in the comprehensibility of standard jury instructions carried out by CHARROW and CHARROW (77, 78) to determine the cause of misunderstanding. Some grammatical features were isolated for example: Deletion of "Whiz", passives that appear in past participial phrases. "..... To decide all question of fact submitted to you..";" You must not consider... any statement of the counsel made during the trial.."; "any insinuation suggested
by the question.... a witness... asked"; nominalisation such as "assumption of risks..." and "failure of recollection.

The Syntax of legal English is a very complex one left branching12 subordinate clause embedding, in the attempt to cover all possible contingencies; for example:

"The defendant, if dissatisfied with place of trial as fixed by Magistrates' Court, or by the Crown Court, may apply to the Crown Court".

and

"A witness who has special knowledge, skill and education, experience, training or education".

At discourse level, legal discourse lacks cohesive devices in the effort to achieve precision and to avoid ambiguity. It avoids pronoun, uses repetition and "said" and "such" and involves the use of a subtechnical vocabulary. Moreover words are often used in their legal acception, but sometimes they are used in their original meaning.

The concept of technical vocabulary is also very unlike that of scientific language. It is very much self-referential in the sense that it refers back either to legal procedure structure words, or to words concerning remedies.

Moreover each word does not have a meaning in isolation but acquires it in context and in association with other legal words: consideration, collocates with words like right, duty, breach

Very often words are redefined through legal procedure. Also legal definitions can differ in form and function from scientific ones as has been pointed out very acutely by SWALES J (1986). In science usually they carry the reader from the known to the unknown, either by explaining new terms or by re-defining old ones. An instance of the first would be:

"Metaproteins are the group of substances which are produced by the action of acids on alkalis or proteins".

In such a definition, metaproteins is "new" whereas the meanings of other terms such as "action" or "alkali" are given or have already been acquired. Now let's turn to legal definitions. Very few and those are mostly found in legal textbooks have a form simila1 to the following:

A will is a disposition or declaration by which the person making it provides for the distribution or administration of propriety after his death.

This definition already reflects a feature which is common to other instructional legal texts, such as contracts or statutes or insurance policy: that is the attempt to cover all possible contingencies. It is also interesting to point out the high occurrence of words like:
administration, disposition, distribution; clear examples of nominalisation, which also takes place in scientific English but not with the same frequency.

However, there are also a great number of definitions in law that have quite a different function. As they do not help students to come to terms with legal vocabulary they are just expressions of the law: As it is very acutely pointed out by SWALES (1986).

"A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be constructed accordingly". (Section 1 of Theft Act, Basic definition of Theft).
The Act goes on to consider the exact interpretation of most of the key words such as dishonestly, property, permanently.

There are some legal definitions in which also the meaning of commonly used word changes accordingly. A case in point is fresh fish, the legal meaning of which does not coincide with the ordinary meaning of the term but is defined as "fish which has never been frozen before".13

2.4 Legal translation and linguistics

As has already been said, linguistics has very often been regarded by translators as a purely theoretical science but it will prove an invaluable help "a science auxiliaire" as George MOUNIN affirms (1979) in his article in a publication entirely dedicated to legal translation.

The famous linguist examined all possible contributions offered by semantics, stylistics, diachronic linguistics, etc. to the study of legal language. He dealt with areas as field studies, special lexis, or research to discover the performative structure of legal language14. One study addressed itself to seeing whether there were any discrepancies between the legal concept (usage) of the term property, and its use in legal practice, or if and how it varied during a given period of time.

It is not by chance that this first very interesting contribution to legal translation was published in a Canadian translators' journal, where due to bilinguism French/English the problem of double drafting and translating has been a crucial one.

As is well known, this is not only a problem of translating a text of the same meaning, into a target language but also carefully preserving the spirit of the two legal systems involved (French civil law/British Common law). This obviously requires both an enormous skill and quite an insight into legal knowledge.

As is well known, legal concepts like most of socio-political language and vocabulary, are rarely isomorphic so that it is difficult to find the exact equivalent.

Quite revealing for this purpose, the dispute between two linguistic associations in East and West Germany prior to the
fall of the Berlin wall on the meaning of freedom and democracy. They accused each other of having no freedom and no democracy. Both signs, when analysed within a given sign system, showed utterly different semantic contents.

These subtle differences of meaning more than syntactic complexity and arcaic forms, which may, at the first impact, disorient an unexperienced reader are likely to create problems to the translator who needs to be an expert and be able to understand and perceive nuances of meaning about the legal systems involved. He might need, however, to interpret correctly the legal wording a subject specialist a lawyer acting as an informant.

2.5 The problem of legal meaning and the process by which its generated.

The following example will explain the problem: "If the servant took a longer road it's a question of degree as how far the deviation should be considered a separate journey. Such consideration is not applicable in the present case". Here the word consideration has the everyday meaning but in the economy of the text it is an illocutionary noun because it expresses proposition through language. Other names of this kind are accusation, argument, concession and verbal activity nouns like account and expression. They all are, according to Francis, anaphoric nouns.

Anaphoric nouns are metadiscoursive items that comment on the discourse and tell us what is going on. The criteria established for them are:

i) They must be functioning as pro-forms
   ii) They must facing forward - the item must presented as "given" information in terms of which the new propositional content of the clause or sentence is formulated.

Going back to the example of consideration we see that the real problem of legal language is the conceptual density and the width of association.

These sorts of problem will colour any study of significant legal lexis.

Each type of written legal text, either frozen texts like contracts, deeds, wills, order of the court, ready-printed forms or formal like case reports, statute, jury instructions or appellate court opinion and casebooks, has a distinctive discourse structure worth analysing because this will increase the knowledge and awareness of the text the translator will have to deal with and have been already studied at length by outstanding linguists.

Let's now examine Case reports. They usually display this discourse structure:

Facts, description of them, Rules of law derivable from earlier authorities, the judge's Assessment of their relevance, application to instant fact decision. But this straightforward
structure is only an outer shell hiding more complex and difficult aspects, such as finding the "ratio decidendi" in the maze of "obiter dicta" and not only that but also the ambiguity and the polisemy of sub-technical vocabulary. Therefore the translator can be often "baffled" by the clarity, and ambivalence of the legal wording. Moreover the rules that they frame, unlike statute law, are not in fixed verbal form. They vary and change according to the judge and the style used. This makes the reading and also the translation much harder than that of casebooks.

The figures of legal speech are those of other forms of argument: assertion, repetition, analogy, social justice and common sense or reasonableness.

In the legal argument we may distinguish oral argument ruled by the law of evidence whereas in written case law, the doctrine of precedent establishes the boundaries. The skilled translator will identify the vocabulary which acts as a label or a direction in the task of shifting, matching and categorizing facts and precedents, which constitute the "relevant legal context".19

Most of the sub-technical vocabulary is redifined through the procedure of acquiring new and more precise meaning.

Reading and understanding a case involves a briefing activity which gives an exact idea of the case structure. Case means in this context opinion the opinions of the appellate Court.

Here is a suggested outline.20

- **Parties** their names and profession and role in the headnote. In the beginning there is the history of the case.
- **Cause of action**, this explains why the appellant is in court, what he seeks to obtain by his suit, the relief requested usually in form of money sometimes both sides present a case of action.
- **Facts**, summary of the relevant information, called key facts, which cannot be omitted without changing the opinion of the court.
- **Legal theories relied upon**, are the relevant rules of law which are cited by the appellant as legal bases for his request, sometime the defendant contrasts the plaintiff cause of action by a counterclaim.
- **Issues**, are the precise legal question that must be resolved by the court in order to reach a decision, by the application of the rule of law to the key facts.
- **Holding and disposition** is stated as a negative or affirmative response to an issue. Depends upon rule of law applied.
- **Reasoning** in it, the court justifies its Holding on each issue. When the case present more than one issue, the court may intermingle the reasoning behind its holding. In this case you have to separate the court statement as to apply its reasoning to each issue (this may be a very difficult task).
- **Resulting legal rule**, the legal rule is a board statement of principle developed by or applied in this decision. The rule may become precedent for analogous cases in future decision, few
cases enunciate a new legal rule, many cite a rule previously developed which apply to the present case.

- *Dicta* is official but incidental and gratuitous language unnecessary to the decision of the case under consideration. Therefore not binding.

This outline does not help to solve linguistic problems connected with the translation of case reports but could supply the translator with a kind of logical thread to follow through the case.

It is probably easier to do it with case books than with law reports where the style and the structure varies so much according to the judge. The language of the cases only makes sense when there is a store of legally relevant context in which to locate it.

But law is a delicate balance between two opposing demands: clarity and ambivalence. This tension is embodied in the features of specificity and negotiability. Namely the concepts behind words like *Analysis, Approach, Line of Reasoning*, all referring to the rationale underlying a legal rule, are manipulated in the judicial room and after the procedure are re-labelled.

Their meaning is negotiable just as their use is dictated by the need for specificity. Both are the reflection of the constraints and flexibility resulting from the system of judicial precedent. As an illustration of what has been said consider this extract. 2

"In LEP Air Services v Rolloswin Investment (1973) .... my noble and learned friends, LORD DIPLOCK, drew a distinction (relevant for the case), between primary obligation under a contract, and secondary obligation which may then arise. My noble and learned friend has developed this line of reasoning in an enlightening manner in his opinion which I had now the benefit of reading".

2.6 Epistemological principles of legal translation.

The very specific task of becoming a legal translator can be based on five epistemological principles 22:

1) The obligatory nature of the legal text, everybody has to abide by the law, this creates a particular challenge and responsibility for the translator. Because the legal text is not only an action oriented text but is one meant to rule behaviour, enforced by a sanction, for not compliance with the law.

2) The specificity of legal language combining clarity and ambiguity. To come to terms with one needs practice and insight into the two legal systems involved.

3) The differences of socio-political systems. The Common law is a merely procedural kind of law, according to the saying the remedies precede the law. The rule of law stated in the precedent cases, is applied to solve case by case. Civil law on the other hand, is based on precodified rules. This opens a variety of
questions connected with legal, political and administrative institutions and the language they use in both systems.

4) The need of legal documentation, is a major problem. The translator have to have access to sources of legal documentation such as law libraries for Case reports and Statutes collections, as well as for other publication which help to define and clarify legal meaning like Words and Phrases, drafting manuals, and Dictionaries.\(^{23}\)

From what has already been said derives for the translator:

5) The need of a kind of multidisciplinary approach to legal translation. As the knowledge required for translating a legal text is a very delicate question for the translator, and calls for a multidisciplinary approach as it involves not only the knowledge of the law and its different branches of legal specialisation (Criminal law, Commercial and International law, etc.) but of a variety of connected subjects as well, from Psychology to Economics, and from Sociology to History.

What has been said should not discourage anyone from becoming a translator; this only focuses on an important and delicate problem, too often overlooked and which is a crucial one the professional translator formation and training.

Conclusions

This kind of observations enables us to draw the profile of the translator: a highly educated and specialized professional person with linguistic competence as well as socio-cultural knowledge.

This brings also about the problem of training and forming such a specialized professional, taking the view that translation is a cognitive activity involving skills that can be taught and monitored.

"a multidisciplinary, cognitively-based science of texts can provide guidelines for the observation and training of translation skills by focusing on mapping the cognitive structures which are set in the very process of translating. This process is, in a more dynamic view, envisaged to be highly interactive and consists of a set of complex sub-process: Source text reception, cultural mediation and Target text production."

These sub-processes activate a kind of metacognitive- and cognitive strategies in an non-linear way which should be constantly revised.\(^{24}\) These strategies have to be activated modulated and adapted to the text to be translated. Therefore the translator needs to be not only a linguist but a textual linguist as well to be able to analyse the source text to trace the meaning and the intentions and make this meaning comprehensible cross-culturally.
This we have tried to show in the present paper, by reviewing all the current literature, ideas and experience which could serve to translation and translating purposes.

References:

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5) These are the macro function according to HALLIDAY, 1978.
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7) SWALES, J., "Seameo occasional paper", 1986
8)...
9) BARBERESI, MERLINI, L., "Translation and The pragmatic of discourse, Atti del convegno AtA, Pescara 1986
11) See DANET, B. 1984 "The magic flute". A prosodic analysis of binomial expressions in legal hebrew. TEXT 4 The author speaks about the thickening in the legal register, used to create a sense or an illusion of certainty and solemnity, in preliterate times when elaborated verbal formulae were considered a kind of word magic. We do not entirely agree with this view, because at it is clearly indicated by the wording of a testament, where the word "devise" is used to refer to a gift of land or a house and bequeat is preferred for other items like a car, money, jewels etc. See also GUSTAFSSON, M., "Syntactic Features of binomial expressions in legal English. Text Vol 4, 1984.
12) See: HILTUNEN, Risto, "The type and Structure of Clausal embedding in legal English". TEXT 4 As for the left branching FRIEDLAND, Dean, suggests that lawyers' overuse of left branching in legal prose is historically rooted in the antiquated rules of good legislative styel by COODE, George, of 1843, he stated that good legislative style requires that the conditions to be stated before the thing that the conditions apply to.
13) CHARRROW, Crandall, "Characteristic and function of the legal language"
14) See KURZON, D., About the performative character of Legal language which requires felicity conditions (Austin Speech acts theory) sometimes expressed and contained in the text and relevant for the thematic structure of the text.
16) FRANCIS, G., Anaphoric Nouns, Discourse Analysis Monographs 11 Birmingham University.


20) This outline taken from BLOCK, G., EFFECTIVE LEGAL WRITING, FOUNDATION PRESS, 1983. ENHANCES CASE COMPREHENSION.

21) Lord Wilberforce P. 845, PHOTO PRODUCTION LTD SECURIOR.

22) Those principles are a kind of a priori for the legal translator, and imply linguistic knowledge, capability of analysing texts, metacognitive activities, unlike the general rules given by the translation theory of the past.

23) Legal dictionaries are very scarce and good ones are even less for Italian - English translations there are no dictionaries the only reliable and exhaustive one is the English - Italian dictionary by De FRANCHIS, GOUFFRE, with a very good cross-referencing system.