Application of Comparative Law Methods in Teaching Legal English to Law Students in Russia

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Abstract
A major challenge inherent in a course of legal English taught to students outside the common law tradition lies in the very fact of the difference between the legal system native to the student and that of common law. This difference, manifested in every aspect – formal and cognitive – of legal language, should be made aware to the students from the start and throughout the course. Comparative method is therefore the best strategy of teaching English to international lawyers. This method will only be effective if the students are able to understand the legal intricacies and implications concealed in vocabulary, grammar, and syntax. For this reason, MGIMO adheres to the policy of introducing its students to the language of profession after they have achieved a high command of language. Teaching legal English in the Russian universities was traditionally confined to the development of specialized vocabulary and the translation of professional texts. Today, however, even a profound knowledge of terminology will not suffice – the employers expect that the graduates arrive prepared to act in a professional environment. The article highlights the idea that a university course of Legal English for English Second language students should be focused on the development of the required competencies, and the choice of teaching methods and techniques must serve this goal.

Keywords: Legal English, Comparative Legal Studies, Legal Translation, Comparative Approach, Teaching Methodology, English as Second Language

Introduction

The idea of basing a course of Legal English on comparative principles is not universal. Legal English programmes are so diverse in subject and purpose that there can be no uniform criterion to judge their composition and methodology. The only test that remains is whether the teaching strategies correspond to the goal of training of a specific type of lawyer – a specialist whose practice will be confined to a particular legal system (national or globalized), a sphere of law, or a branch of the legal profession.

Thus, American universities challenge their ESL students with the specifics of the American law – or International law, if such is the course of choice – regarding as immaterial the fact that their native language is not English and their native law is not common law. In fact, extinguishing the cognitive comparative processes looks as a deliberate policy. Katerina Levinbuk, professor at South Texas College of Law, emphasizes as an absolute requirement the need to 'restrict the students' usage of their native language dictionaries in the classroom," "to get away from word-by-word translation," "to commit to converting the students' law-related thinking and writing into one that is acceptable in the legal community in the United States or another country" [4]. The purpose behind this requirement is not only to reach a "high level of sophistication in the use of language", but to immerse into the target legal system thus cutting away any link with that of the native law. "Successful lawyers cannot think in different languages, if they do, their lawyerly communication will not come out in a clear fashion." [4].

A different approach to educating lawyers is advocated by Nicole Kornet, Faculty of Law at Maastricht University. Emphasizing intrinsic connection between law and language, professor Kornet is concerned about the Europeanisation of legal practice which calls for a special type of lawyer, capable to 'think across jurisdictional boundaries and to become "interpreters" of different legal systems and traditions." [3]. European integration is a permanent challenge to lawyers in the sense that various legal concepts and institutions (expressed through corresponding languages) must be brought to communication, and, at the same time, this alliance is largely affected by means of a language foreign to all member states – moreover, a language representing a different legal culture, that of common law. "The English language cannot express the distinctive style or mode of thinking of a legal system that is conveyed by the original language." [3]. Comparative methodology applied through translation techniques, therefore, becomes essential to teaching at European law schools.

Interestingly, comparative agenda is of relevance even within legal English itself. Professor Antonios Emmaniel Platsas of University of Derby School of Law and Criminology warns foreign students of English law against confusing legal terms that look similar but belong to different spheres of law and so signify different legal concepts: "linguistically equivalent legal notions will frequently have different contents in different jurisdictions." [6, p. 108]. Another problem that ESL students find difficult to realize is that certain words or phrases that mean one thing in the common context have a special meaning in legal discourse: linguistic functional equivalent is not always a legal functional equivalent [6]. He further points out as essential for teachers to realize that legal difference between two terms will all too often escape the minds of their students if the terms look similar in the native legal language and the English legal language. "Comparative law students find it difficult to comprehend that one word in their language being written in the same way in another language has a different meaning altogether." [6, p. 111]. Logically enough, Professor Platsas views legal translation as integral part of training comparative lawyers; although he often uses the word "translation" in the inverted commas – perhaps, as a metaphor of the necessary transition from one legal system

into another, - translation is what actually takes place in the mind of a comparative lawyer, or a foreign student of law.

Yet, there are authors who, though agreeing with the idea of the need of a comparative approach "for better understanding of the differences and similarities of the two legal systems and for a correct interpretation of the legal texts," [5, p. 5476] still take translation out of ESP curriculum and separate the training of legal practitioners in legal English and the training of legal translators. Medrea Nicoleta Aurelia from Petru Maior University discusses legal translation only in the narrow sense of professional occupation. It is not quite clear, therefore, from her article what she means by "comparative approach". Perhaps, the law specialists involved in the teaching process will be expected to interpret the terms (i.e., institutions, concepts) of the target legal culture to ESL students. Professor Medrea sees the goal of legal translator in establishing "an effective communication between two cultures" by "identifying connections between the two cultures in order to render a completely functional translation" [5, p. 5479]. In our honest opinion, it is not so much the connections, but the differences that should be identified in the source legal language and articulated in the target legal language – which constitutes legal translation and is, in fact, the comparative legal analysis.

Discussion

Legal English v. Legal Translation

This article proceeds from the understanding of the distinction between the broad meaning of the term 'translation' in which it is used to denote a method of teaching a foreign language as described above, and its narrow, professional, use. It is this second meaning which makes legal translation part of intercultural professional communication and, effectively, a tool for comparative legal studies.

Distinguishing between the profession of a lawyer and that of a lawyer-linguist, the article will set aside translation as a separate professional trade with its specific rules and requirements. The primary focus here is on translation as a form of comparative legal research which is a natural and indispensable part of mastering a foreign legal system.

In fact, broadly available legal English textbooks and courses contain no recommendation to practice translation – leaving, perhaps, the decision to opt for translation to a particular teacher, should circumstances require. Even where a basic legal English textbook is expanded to include certain translation assignments to meet the requirements of a specific group of students, these assignments usually serve the purpose of controlling the understanding of terminology and of the ability to express the ideas contained in the unit. Sometimes, the overall rendering of a text is offered as a summing-up activity, its goal being, again, to make sure that the material of the unit has been made own to the student.

Legal Translation as Essential Teaching Methodology

Law expresses itself in and through language. In a sense, law *is* language [1, 2], which means that every piece of legislation, every rule or practice must be put into words of a language. Therefore, the study of law requires the study of its language. In the context of teaching legal English to law students, this also means that by studying the English language of their profession, they necessarily study the law of the community that originally laid its regulations in English.

The idea that by approaching legal English they are in fact approaching the study of Anglo-American law, is not at all clear to the students. At the early stage, they do not even question the possibility to use a Russian legal term or any handy word to express or explain original legal language, or to use Russian legislation in a particular sphere as a source of corresponding terminology. Sometimes it is quite safe – is cases where the two legal systems come close together *('contract', 'specific performance', 'agency', 'patent', 'board of directors'*) or where the sphere of law in question is internationally made and regulated *('negotiable instrument', 'letter of credit', 'bill of lading'*).

Where the system of the student's native law and that of Great Britain, the USA, or the European Union (to the extent that English acts as lingua franca) are so different that few legal institutions are in fact comparable or are applied in a similar way, it is the duty of the teacher to make the students understand that there are no corresponding terms or broader legal formulae in their own language. All too often will the students be tempted to use a native term which sounds similar or appears parallel to an English legal term or phrase, but which in fact is specific to the English law. This may result in a legal error or, in less serious cases, in a misunderstanding. (E.g., the term *'novation'* is not the same as the Russian *'новация'*, although the words sound similar: the first means the substitution of a party to a contract, while the second means the change of obligation.) The requirement to put the term – or the whole clause – into Russian is essential in such cases. Otherwise, the error will stay. A typical classroom situation can be illustrated by the following very demonstrative example. The students are challenged with a task to comment on a provision in a contract stating:

"This principle is found in statute, law, constitution, and this Agreement."

While the terms *'statute'* and *'agreement'* are easily understood because they fully correspond to the Russian legal understanding of these notions and the term *'constitution'* will be familiar to those acquainted with company law, the term 'law' invariably perplexes the students. For a student educated in the culture of the Russian (i.e., codified) law, this term is synonymous to *'legislation'*, *'statute'*, or *'regulation'*. Therefore, they will see no difference between the first and the second element in the enumeration. But with the awareness of the fact that the English legal language is the language of the English (i.e., judge-made) law, they would easily realize that the term speaks of precedent and the statement actually draws attention to the fact that the principle in question is reflected in all applicable legal sources.

This very simple example shows the importance of legal translation as a means of developing the awareness of the difference between the legal systems. It is essential that the students should be able to find proper resources in their native language to emphasize this difference, particularly so as there are much subtler cases where nothing in the composition or context of the text will point at a catch.

Another instance where translation comes into teaching legal English to Russian students arises with the need to coin a term. There are areas of Anglo-American law so completely special in regulation, court practice, place within the overall legal system, that the legal language through which they 'speak' has no terminological equivalent in the Russian legal discourse. Examples are real property law or the law of trusts, with such terms as *'fee simple', 'quiet possession', 'equitable interests'*. Even within more similar legal areas, such as contract law, there are specific categories, like *'consideration', 'parol evidence'*, or *'promissory estoppel'* that require a very careful choice of words for students to be able to arrange a legally accurate discussion in their native language. Here, the students are introduced to the field of professional consensus,

where legal scholars, practitioners, and translators have agreed about a particular wording or a common algorithm of approaching a translational challenge. The result of such a consensus usually lies very far from what the students have become used to in their studies of the Russian law:
rule against perpetuities – правило, запрещающее бессрочное владение
consideration – встречное удовлетворение
deed – документ за печатью

These examples help the students to understand, that the professionally correct and safe way of solving such intercultural problems will be either to provide a brief explanation or to produce an agreed-upon formula. The first concern is to avoid the Russian legal terminology so as not to confuse oneself, as well as the audience, into thinking that the named institution is similar of the Russian law and, consequently, is governed by the same principles. The second is to find a good enough word or phrase to explain, as far as possible, the meaning of the original term.

Apart from the many inconsistencies arising from the differences between the common law and the civil law systems, there is still another complication. Each system has developed its own way of expressing similar phenomena and procedures, which makes literal approach to translation highly inadvisable and urges the students to look deeper into various sources in both languages. A good illustration of such research and its outcome may be found in the comparative analysis of three published English translations of the Russian Civil Code. In the specific instance of treating the term *'исполнение'* as pertaining to the payment order, one author chose the term *'performance'*, the second preferred *'execution'*, while the third used both terms. (The terminological phrase in question was '*принять к исполнению платежное поручение*,' literally, *'to accept a payment order for performance/execution'*.) On analysis, it turned out that the first author treated the term 'исполнение' in the sense that the bank performs its obligation by accepting the client's payment order, thus placing the article of the Civil Code purely into the context of contract law; the second author saw the transaction in the light of Chapter 9 UCC, as the execution (making out) of a new, internal payment order drafted by the bank in response to the document accepted from its client, while the third author applied both terms in the contextually accurate way. But for all this useful research, the true conclusion will be paradoxically different and unexpected: The English equivalent of the Russian terminological phrase will not require either *'performance'* or *'execution'*: the client *presents* a payment order – the bank *accepts* it. Nothing further.

Legal terms and terminological phrases are only one element of the intricate and complicated system of legal English – and its most visible stratum. They stand for the substantive part of the law they denote, they form a framework of the language of law, and it is usually the terms (words used to describe legal concepts and categories) that typically fill the glossary banks for the students to learn. And yet, legal English, being the language of precedent law, is far more intricate and cunning. It is abundant in 'terms of art', phrases, that not being terms in the narrow sense, are nevertheless integral part of the legal discourse. The Russian students of Anglo-American law should be made aware of, basically, two things. First, with terms of art, the legal meaning not always coincides with the lay meaning, and, second, the words that are presented in dictionaries as source and translation may not be completely identical in meaning.

The first case may be illustrated by the phrase 'from time to time'. A general dictionary will offer '*иногда'* or '*по мере необходимости'* ('sometimes' or 'as required'), while for a lawyer the meaning will be '*актуальный на момент возникновения вопроса'* ('as relevant or applicable at the time of the event'). The students of legal English are advised to develop the

awareness of such phenomena, tread carefully, and never take for granted anything that even remotely resembles an idiom.

Typical of the second group will be the phrase *'included but not limited to'*. Unfortunately, the literal translation of this term of art ('включая, но не ограничиваясь') has become so deeply incorporated into the language of the Russian legal practitioners that there is little hope left for any rectification. The reason why it sounds so un-Russian is that the English word *'included'* does not indicate with certainty whether the list is open or complete, while its Russian equivalent *'включать'* positively means an open catalogue.

The existence of such inaccuracies further dramatizes the need to practice translation with the students of law, because it is in the process of shaping common law ideas and concepts in the language accustomed to reflecting the Russian law ideas and concepts that the proper understanding and good mastering of both legal languages (and hence systems) may be achieved.

Conclusion

Law schools are expected to develop in students – in fact, in lawyers – professionalism, clarity and responsibility. Persistent inaccuracies in the interpretation and application of legal language of a system foreign to students highlight the urgent need to practice translation. This will not only help to eliminate the issue at hand, but to develop the students' analytical thinking. All teachers of law and legal language agree that successful communication is key when working between international legal systems. Accurate translation of common law ideas requires not only a clear understanding of the legal mechanics, but a good grasp of the linguistic and cultural differences. A translational error, a misinterpreted term, a misstated condition, a lost legal link may cost not only very big money, but also a career a reputation.

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