

## THE METHOD OF DOUBLE CONTEXT IN TRANSLATION

BARBARA Z. KIELAR

*University of Warsaw*

Owing to the ever-increasing exchange of information, national legal problems have become objects of accruing interest. All the more so since with more and more ramified international relations, lawyers, officials, and politicians face the need of having a more intimate insight into the functioning of the state institutions of their partners. This refers in particular to constitutions which express principles according to which states are organized and governed. For instance, we have found four different English versions of the Polish Constitution of 1952. The crucial problem involved in translation is that of equivalent terms in the source and target languages.

As languages are culturally and historically conditioned social phenomena, no absolute correspondence can exist between any two languages, although — curiously enough — we have endeavoured repeatedly to achieve such a one-to-one correspondence. Assuming that no fully exact translation is attainable, we must, therefore, seek to find the closest possible equivalents.

According to the two basic orientations in translation described by E. A. Nida, we find an English legal term to be equivalent to a Polish legal term if the institutions they designate are similar either formally or functionally. With dynamic equivalence 'the relationship between receptor and message should be substantially the same as that which existed between the original receptors and the message' (Nida 1964 : 159). In other words, dynamic equivalence retains the link between a given term (and its referent) and the associations which they evoke in the receiver.

A legal (or — broadly speaking — social) institution is more complex than what its name signifies to the receptor, as the name does not cover incidental features of the referents which it designates. It is due to this 'schematic' linguistic presentation that we can find equivalent expressions guided by similarity and analogy. On the other hand, functional or formal similarity, which justifies the application of the same name, does not necessarily mean that the legal institutions as such — though denoted by the same name — are comparable, because being shaped by the will of the legislator, their nature is finally determined by the socio-economic base which they serve. Obviously no legal



institution exists in isolation, 'for itself', but it necessarily constitutes a part of the whole system and evolves from social relations linking it with other institutions. It has been noticed that the evolution of lexical elements designating social institutions does not automatically accompany the evolution of their respective referents. Lexical elements are characterized by a certain inertia because of which they are frequently applied to some referents long after significant changes have occurred in the relevant institutions. This phenomenon is observable within any language with regard to synonymous expressions. The problem becomes all the more complex when dealing with two languages in their socio-economic and cultural co-situations such as looking for equivalent Polish and English terms in the field of law, which we have investigated. Before deciding whether two terms — English and Polish — can be considered equivalent, we have to examine various pertinent factors in their socio-cultural background.

Linguists usually distinguish the following factors which throw light upon the meaning of a given textual element:

- (1) context, i.e. parts of a written or spoken passage preceding or following a particular word and intimately associated with it;
- (2) co-situation, i.e. extra-lingual phenomena connected with the referent.

By further developing and modifying this approach we have arrived at a new method applicable when looking for equivalents of the social terminology in another language. We call it the method of double context. It comprises:

(1a) linguistic context corresponding to the above-quoted (1) context. This context, varying in size, provides the receptor with a number of clues as to the meaning of a given textual element, e.g. in the case of homonyms — which of the senses is involved; the degree of abstraction of the term in question; what is the sense — not only the verbal form — of the message; emotional aspects of the message.

(2a) historico-cultural context, i.e. intricate interrelated conditions — past and present — in which the designated object has been set, irrespective of the actual linguistic context.

While basically not opposite to the method currently in use, the method we advance differs from the conventional procedure in that it requires a thorough examination of the substantial functions played by both the terms presumed to be equivalent in their respective social reality as a result of their historical development. Thus the translator has to perform a double operation: first, intralingually in the source language to get at the true sense of the term in question by freeing it from accidental (and sometimes persistent) impurities, and secondly, to confront it with the supposed equivalent (in the target language) which has been processed in a similar way.

The proposed method of double context is exemplified below.

### *Rzeczpospolita*

The Preamble to the Constitution of 1952 defines *Polska Rzeczpospolita Ludowa* as a republic of the working people. The term *rzeczpospolita* and *republika* both mean a form of government in which supreme power rests with the people and their temporarily elected representatives. The Polish term *republika* covers a wider semantic field, because the term *rzeczpospolita* is used almost exclusively with regard to the Polish state.

The English language has also a term being a free translation of the Latin original *res publica*, i.e. *commonwealth*, but it refers to the republican government in England 1649 — 60. Today, *commonwealth* means chiefly a loose political association of autonomous states (former colonies) with the former colonial power, e.g. the British Commonwealth of Nations. For these considerations, the only equivalent of both the terms *republika* and *rzeczpospolita* in the context cited is *republic*.

### *Sejm*

The English language easily adopts local names of national representative bodies, particularly when their Germanic etymon enables the English receptor to understand them without any additional comments. Thus, in English newspapers, we can find such words as Riksdag, Reichstag, Storting, Folketting. No such familiar lexical element is present, however for Polish translators trying to 'transplant' into the English language the word *Sejm* (or — for phonetic considerations — *Seym*) as an untranslatable technical term. They do so not unsuccessfully; for instance, in *The Concise Oxford Dictionary* (fourth edition 1951), p. 1145, we read: 'Seym — the Polish parliament (Pol.)'. Yet this entry has been omitted in the fifth edition (reprinted 1967). We can also find some built-in comments, like 'the Sejm (Parliament)' (Nagórski 1958: 9).

However, the English language has long traditions with the term *diet* which originated with the Imperial Diet (Reichstag) in the Middle Ages, and since the 16th century has been used to designate national representations in Poland, Hungary, Denmark, Germany.

### *Prawo łaski*

According to the Polish Constitution, one of the functions vested with the Council of State is the exercise of *prawo łaski* consisting of pardon, commutation, or remission of a sentence in individual cases. The institution is regulated procedurally, but not, for obvious reasons, widely used. In exceptional cases this extra-ordinary remedy aims to correct the course of justice. The Council of State, as a representative organ of the people, exercises this right prompted by principles of humanity, forbearance, and public interest.

A similar institution in the English law is the *prerogative of mercy* adhering to the Crown. There are some procedural differences, e.g. the royal prerogative



of mercy is applicable also before the conviction. The essence of the institutions remains the same: they consist in pardoning or commuting a sentence (impending v. passed). Yet for historical considerations these two terms are not equivalent.

A. V. Dicey (1938 : 424) defines royal prerogatives as 'the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown'.

The corresponding right exercised by the Council of State in Poland cannot be called a prerogative. It has not resulted from some historically determined balance of power — as in the case of King and Parliament, but it is vested with the Council of State, one of the supreme organs of the State, by the Constitution.

The word 'mercy' connotes an act of compassion, a private act of benignancy on the part of the monarch. We think that in the context quoted above *laska*=*pardon*, and the institution of *prawo łaski*=*right of pardon*, or *right to grant pardon*.

#### *Roki sądów*

According to the Organization of the Courts Act (1928) a court can execute its official duties outside its regular seat, if advisable for the sake of promoting the administration of justice, or of considerably reducing the costs. The Minister of Justice has powers to issue orders establishing permanent *roki sądów* in districts and provinces.

The word *roki* is old and refers to the medieval Polish institution of local high officials (*starosta*) being authorized by the King to exercise jurisdiction at *roki sądów*.

The English term *assizes* seems to be a good equivalent of *roki sądów*. English *assizes* evolved for similar reasons. In the feudal system the King, as the highest suzerain, interfered with the judicial competences of his vassals towards their sub-vassals and subjects. Itinerant royal justices were objective and consequently very popular. The institution dates back to the reign of Henry II and has been modified ever since. Today England and Wales are divided into a number of Assize Circuits comprising a group of Assize towns, and the court for the particular circuit visits Assize towns three or four times a year.

*Roki sądów*=*assizes* is an example of equivalent terms designating an institution which arose in the medieval times and has been retained till today. Differences resulting from specific socio-political co-situations are here of minor importance. The terms are equivalent because both the institutions — Polish and English — have similar origin, purposes and formal aspects.

The present note aims to show that we generally find English terms to

designate Polish legal institutions by applying analogy, but only by a historical analysis of relevant institutions can false identifications be avoided.

#### REFERENCES

- Dicey, Albert Venn. 1938. *Introduction to the study of the law of the constitution*. 9th ed. London: Macmillan.
- Nagórski, Zygmunt. 1958. "The legislation of the Polish People's Republic 1945 - 1957". *Law in Eastern Europe*, vol. 2, 6 - 53. Leiden: University of Leiden.
- Nida, Eugene A. 1964. *Towards a science of translating*. Leiden: Brill.