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THE ROLE OF LEGAL AND INSTITUTIONAL TRANSLATION IN PROCESSES OF IDENTITY (RE)CONSTRUCTION IN MULTILINGUAL AND MULTICULTURAL CONTEXTSⁱ

Abstract

In the hybrid, multicultural societies of the global age, marked by migration, cultural diversity, social differences and power imbalances, legal and institutional translation takes part in complex processes of identity construction and negotiation. The concept of identity, which has been very productive in other translation fields (Robyns 1994; House, Martín & Baumgarten 2005; Cronin 2006; Vidal 2007, 2010), used as an explanatory variable in legal and institutional translation, helps to shed light on these processes and on some of the challenges that legal and institutional translators face in order to foster intercultural dialogue and symbolic respect for diverse identities in legal and institutional settings.

INTRODUCTION

Legal and institutional translation operates today in ever more diverse societies, radically transformed by the phenomena of migration and globalization, where diversity and cultural differences but also rampant asymmetries, sheer inequalities and constant misunderstandings are common currency. What is more, in our era, diversity is not only a prominent feature of our hybrid societies, as can be easily seen in situations where the legal translator operates today (especially, police stations and courts, NGOs and local institutions, but also in international organizations); it is a value considered to be institutionally protected and promoted.

In this transformed scenario, an increasing body of literature on legal and institutional translation and on public service interpreting and translation seems to be expressing the need to broaden, redefine and fine-tune the normative model on legal translation in institutional settings (i.e., the narratives shaping general ideas on what a legal translation is or should be, but also the academic, institutional, professional and pedagogical discourses underpinning legal translation practices) in order to meet the challenges of our multicultural era (see for example Monzó 2005, Ko 2006, Vidal and Martín Ruano 2003, Vidal 2005 and 2013, Valero and Gauthier 2011, McDonough 2011). Theo Hermans' general call to "foster [...] a more diversified, richer vocabulary" (2007: 8) in translation studies seems most pertinent for legal and institutional translation. In what has been described as a low-status field with many signs of market disorder and underprofessionalization (European Commission 2009, 2012), efforts contributing to the consolidation of a solid and elaborate theoretical base (a prerequisite of every discipline and/or established profession) are seen as a decisive factor in the process towards professionalization and towards an enhanced social recognition of this activity. In addition to this, theory has been recently praised for allowing practicing legal translators to operate better and more self-confidently in new environments where they are routinely confronted with tough ethical dilemmas triggering feelings of unease and vulnerability (Guzmán in Gill and Guzmán 2010: 122); Koskinen (2008) advocates theory as a key and valuable instrument not only for "reflexive" practice but also for professional self-assertion. Indeed, in line with Chesterman's view of conceptual tools as aids both for problem-solving and also for developing the translator's self-image (Chesterman, in Chesterman and Wagner 2001: 7), in a recent publication on legal translation, Simonnæs (2013: 152) suggests that translation theories affect the approaches adopted by translators, i.e. they influence their professional identity.

Precisely in order to contribute to this goal of enlarging our theoretical models to better address the unparalleled challenges of our day and age, in this article I will try to explore the usefulness for legal and institutional translation of a concept that has been very fruitful in other fields of the discipline: that of identity (cf. Robyns 1994; House, Martín Ruano and Baumgarten 2005; Cronin 2006; Vidal 2007, 2010). "Identity" may help us understand (and probably act in) many situations where legal translation is characterized by conflict, understood in its wider sense (see Baker 2006). In a "global" society where differences among globalizing actors and globalized, recessive cultures are increasing, legal translation can be analyzed as part and parcel of broader processes of (professional, social, cultural) identity construction and identity negotiation affected by larger tensions between the global and the local. Given

that equality and sameness (be it at a discursive, textual, terminological or lexical level) have often proved to foster, in a veiled manner, cultural homogenization, ideological imposition, identitarian alienation and social exclusion, the concept of "identity" helps to explore new possibilities of conciliating differences in and through translation in the legal and institutional realms. My contention is that the notion of identity may help us foresee the implications of the intricate workings of legal and institutional translation as an activity conditioned by and involved in complex geopolitical dynamics and may also give practical orientation to professionals who, given the taxing demands of today's heterogeneous, difficult situations where diversity and difference are the norm, suffer professional and ethical disorientation (see for instance Baker and Maier 2011: 3). In short, "identity" as an explanatory variable may help practicing professionals to develop strategies for responding ethically to society's changing scenarios and demands.

1. DEFINITIONS OF IDENTITY: A DYNAMIC CONSTRUCT

In recent times, disciplines as diverse as anthropology, ethnology, sociology, literary studies or cultural studies have embraced a conceptualization of identity as a fluid, open and changing construct. A first characteristic attributed to identities is that, although they tend to crystallize in totalized, stereotypical forms, they are kaleidoscopic, fractured and fragmented constructs marked by significant internal heterogeneity (Hall [1996] 2005). Identities are never static and monolithic, but diverse, often contradictory, and dynamic. For many authors, identities are constructed and reconstructed by discursive practices, including translation (cf. Butler 1990; Hall [1996] 2005; House, Martín Ruano and Baumgarten 2005; Cronin 2006).

Moreover, and as a second characteristic, identities are never monolithic: both individuals and groups have plural and multifaceted identities which are continuously being (re)negotiated. This plurality of identities often represents an asset, but can also be a source of conflict, as adscription to or activation of a salient identity generates expectations to be fulfilled which in their turn may conflict with diverging expectations associated to other co-identities. In the field of legal and institutional translation, this conceptualization is very useful in order to understand conflicting pressures affecting translation both as an activity being performed by individuals with plural identities and as a discursive practice negotiating collective identities. In relation to the first aspect, for instance, Koskinen (2008: 44-47) has identified personal dilemmas faced by EU translators with "split loyalties" derived from the conflicting demands of their many identities (national, intercultural, institutional, professional identity, etc.), which are negotiated in various forms. In relation to the second aspect, with Lambert, Biel (2014:13) highlights that EU-related translation not only has legal implications, but also social, cultural and political implications and is fundamentally related to identity. Her study focused on the Polish case very aptly illustrates how translation raises identitarian issues and how translation has an impact on the (re)construction of identities. This author reports on the criticism and debates triggered by the divergences between non-translated pre-accession Polish legislation and translated EU legislation, which thus initially challenged the recipients' expectancy norms (2014: 72-75). The power relations maintained by the languages involved in the translation event and the institutional translation norms, favouring literal translation strategies, are considered among the factors explaining this variation. In any event, confirming that identity is a changing construct and that translation also plays a role in this change, Biel also proves that EU translation into Polish seems to have fostered changes in the national post-accession legislation, notably at terminological level (2014: 299-305).

A third important feature of the conceptualization of identities which interest us for the purposes of this article is their relational nature. Identities are always fashioned and reshaped by opposition to other identity or identities. Indeed, a particular identity emerges and is asserted only in the confrontation between Self and Other, Us and Them. The perception of one's cultural identity is always dependent on the point of comparison that prompts such identification. In translation studies, many authors emphasize that, to the extent that any translation projects specific visions of the Other, and to the extent that discovering the Other as Other, as an Other in a particular form, necessarily involves coming to terms with the Self, by inversion translation reveals the translating culture self-perception: according to Hermans, translation is a powerful "index of cultural self-definition" (1999:95). This conceptualization may be eye-opening when examining translations in the legal and institutional field, where all versions have been long presumed to have (and expected to search for) the same meaning and intent. Analyzing the behaviour of legal translation (be it at the level of terminology, rhetoric or cultural discourses) as a relational response that reveals a particular image of the translating culture vis-à-vis other culture(s) may give us insights into the influence of the complex and asymmetrical dynamics of globalization in translated legal texts.

At this point it might be convenient to point out the four attitudes towards the Other with which, according to Clem Robyns in a much quoted essay (1994), any identity can face a translation. For Robyns, identities departing from a feeling of power or superiority over the Other may show an "imperialist" behaviour in translation, i.e., the tendency to impose their own terms, models, ideologies or rhetorics in the translated text. On the contrary, identities may adopt a "defective" attitude vis-à-vis the Other and sublimate, import or imitate alien elements in translation. In what Robyns calls "defensive" behaviors, identities accept the alien influence, although this influence may be perceived as a threat to their own identity, as an invasion. Both defective and defensive attitudes are reactive inasmuch as they react to the presence or absence of the alien. Lastly, in situations which seem to be the exception and not the norm, identities can face translation on an equal footing, with "transdiscursive" translations in and through which discourses would circulate freely. This taxonomy, and the idea that our perception of the Other vis-à-vis the Self largely conditions the strategies that are selected for translation and the resulting texts, are very relevant for the field of legal and institutional translation. As a case in point, it sheds light on the reasons why certain renderings are validated and institutionalized as legal equivalents despite their obvious divergence with the original. Examples from the past that will be analyzed in the following sections prove that identity issues and power relations to a great extent condition the wording found in authenticated legal translations showing important shifts regarding the image of the cultures involved in relation to the original texts.

In fact, a fourth characteristic of identities is that, inasmuch as they are relational, identities are influenced by power relations and power differentials, a factor which should not be either understood as static or given, but as changing. Identities are constrained by the hierarchies in the context where they are articulated, but when they are acted out performatively (for instance, in translation) they can also contribute to redefining existing power relations. Along these lines, several authors, also in translation studies, have underlined the importance of understanding identity as "strategic" and "positional" (Hall [1996] 2005; Vidal 2010: 84). In what follows, I shall analyze a number of cases in which accepted equivalences allow for a reading in identitarian terms revealing deep asymmetries behind a seeming sameness at surface-level. "Identity" as an analytical category may help us to diversify the vocabulary we use to assess legal translation and to search for adequate strategies to be applied in contexts where the need for harmonization and/or accuracy often conflicts with target user expectations and with quality perceptions related to the norms, beliefs and values that are dominant in the receiving cultures (see for example Šarčević 2015; Strandvik 2015). If we assume that legal and institutional translation is an activity taking part in larger processes of identity (re)construction, we might approach legal translations validated (or proposed) as equivalent as instances where certain identities are being affirmed and asserted, perhaps to the detriment of other identities; conversely, we might also perceive that, by establishing equivalence, legal translation may be engaging in the negation, alienation or exclusion of particular identities. If we take into account that the respect for identities is a challenge for our multicultural societies, we might build upon this theoretical construct in order to search for translation formulae allowing for the peaceful coexistence, mutual recognition and intercultural dialogue of the various identities which are brought together in the translation event.

2. IDENTITY AS NEGOTIATION OF SYMBOLIC POWER: SOME LESSONS FROM THE PAST

Legal translation often takes for granted, as if they were "natural" or "inescapable", certain renderings which, once authenticated as equivalent, are considered to be binding, in the guise of translations "engraved in stone" (Šarčević 1997: 117), "blocked" for the future. However, any equivalence (including that in legal texts) is also a snapshot of a (perhaps asymmetrical) intercultural relation at a given moment in time, an image or reflection of an on-going dialogical process in which cultures decide at the level of words and texts on their mutual intelligibilities, their cultural specificities and their intercultural divergences. In this light, translated legal texts can be studied as instances where differences need to be negotiated in a particular form, inevitably influenced by larger macro textual factors, including a (legal) culture self-perception as against other identities.

An example from the past may give us insights into the complex factors determining equivalence in legal and institutional translation, which is always largely conditioned by the preexisting identity dynamics and power relations among the cultures involved *and* by the particular purpose which that particular translation is made to serve in order to perpetuate or alter the terms governing intercultural relations. In a PhD dissertation analyzing the translations of the foundational legal texts of Puerto Rico, Álvarez Nieves (2013) perceives that translation behaviour in these texts is far from straightforward and cumulatively consistent, but is deeply affected by the changes in the political relation between the participating

cultures and clearly embedded in identity politics. His analysis of the shifts in the translation of the *Carta Autonómica de 1897/Charter of Autonomy, 1897*, an originally Spanish document prior to the change of political status in 1898 and included with its English translation in *Leyes de Puerto Rico Anotadas/Laws of Puerto Rico: Annotated*, concludes that the translation systematically deprives Puerto Rican identity of its autonomy or capacity for self-government by means of “imperialist” translation strategiesⁱⁱ. Proving that power relations can be transformed through translation, this same study shows that the rendering of the *Proclama: Fundación del Estado Libre Asociado – Proclamation: Establishing the Commonwealth of Puerto Rico* adopts strategies that could be considered to be “reactive”, “defensive” translations, for instance with the selection as equivalent for “Commonwealth” of “Estado Libre Asociado”ⁱⁱⁱ. In later texts such as the *Ley Pública 600, 1 L.P.R.A.* reverse strategies in the Spanish text show that legal translation may play an important role in the development of “national” or “collective” identities^{iv}. Consistently, the features linked to American citizenship suffer a subtle depersonalization in the translation of the *Preámbulo/Preamble, Constitución del Estado Libre Asociado de Puerto Rico* (‘Constitution of the Commonwealth of Puerto Rico’)^v. Similarly, the bold, terminologically-inconsistent but contextually justified and ideologically-loaden translation of the term “Commonwealth” merely as “*Estado Puertorriqueño*” in this *Preámbulo/Preamble*^{vi} evidences that legal translation may serve other purposes in addition to establishing equivalence in specific hallmarks of political negotiation: it is sometimes used as a powerful mechanism in broad processes of identity development and a vehicle for given social discourses to transform the established formulae of social or political coexistence.

In these officially equivalent versions, equivalence emerges not as the realization of sameness, but as an iconic representation and an instrument in the intercultural negotiation of diversity between different worldviews during a process of identity (re)construction. As many different identities legitimately seek today to be fairly represented in the dominant cultural and institutional discourses in our multicultural and multilingual societies, these lessons from the past can be enlightening in order both to understand and to face the deals of our present and our future.

3. LEGAL TRANSLATION AND IDENTITY (RE)CONSTRUCTION IN CONTEMPORARY MULTICULTURAL SOCIETIES: PURPOSES AND IMPLICATIONS

Bringing the concept of identity into play as an analytical category in legal translation may promote an approach to certain practices in the institutional realm in a critical frame of mind. Theorizing legal and institutional translation as an instrument involved in identity negotiation – a mechanism whereby identities assert themselves or can be asserted, by which certain identities deliberately or involuntarily deny or alienate other identities, or one in which identity exclusion can be seen as a intended goal or a side-effect – contributes to an enlarged understanding of the implications of this activity, as it shifts focus away from terms, words or sentences and even meaning or legal intent to broader macro-structural, symbolic and geopolitical factors which allow for the effects of ideal and expected correspondence (or non-correspondence) between source and target texts to be appraised in another light.

As against the “unnecessarily narrow interpretation of equivalence” equating equivalence to linguistic correspondence or literal renderings that Koskinen (2000: 85) perceives in certain practices in the legal and institutional domain, in some cases larger factors need to be taken into account in order to discover the “‘meaningful relation’ between two texts in different languages” that, for this author, defines equivalence in translation (Koskinen 2000: 54-55). This author coins a name for a special type of equivalence, “existential equivalence” (2000a: 51), in order to describe translations which respond to powerful identitarian needs. In the opinion of this author, in these cases, the actual existence of the translations is more relevant than the way in which the translation is done, the concrete strategies chosen or the final result. In a report on the 2013 translation and interpreting volumes in the court system in the Basque Country, where texts are translated both from the Basque language into Spanish and vice versa, the Basque Government expressly states that “with this Service, the Basque Government guarantees the citizens’ right to use both official languages in the courts” and announces further support to guarantee “the citizens’ right to interact in Euskera” in the justice system (Justizia.net 2014; our translation). In the case of translations from Spanish into Euskera, identity claims outweigh informative purposes.

In the pursuance of or struggle for recognition and legitimacy, legal translation is one important tool used by certain identities to claim for and substantiate their specificity as against other identities. Indeed, international organizations, where identity struggles at national level become diluted and where the expression of diversity may be better tolerated, are often chosen by identities as a peaceful battleground

to advance their positions and gain symbolic ground. This was evidenced by the five language versions of the Treaty establishing a European Constitution in 2004 presented to the European Union by the Spanish authorities (in Spanish, Basque, Galician, Catalan and Valencian, the latter two involved in a fierce language controversy in relation to the separate entity of Valencian). Legal and institutional translation is a powerful weapon that can be brandished by emerging identities in politicized scenarios in the search for larger shares of power, be it real or symbolic. Although perhaps unnecessary from a communicative point of view, from a representational perspective translation might be essential, as its absence is a marker of unequal presence and institutional neglect.

In some instances legal translation is a weapon deliberately deployed at the service of identity (re)assertion, as in the case of the act which came to be known as the *1867 Loi Constitutionnelle*, originally *Acte de l'Amérique du Nord Britannique* (Gunnoo 2005). In this text, the rendering of "one dominion under the name of Canada" as "une seule et même Puissance sous le nom de Canada" is considered to be a major milestone in the nation-building process. In any event, for the purposes of this article, it is extremely important to bear in mind that the reinforcement or affirmation of a given identity often sometimes comes as an involuntary side-effect of embracing dominant narratives or ideologies. In "Interpreted Ideologies in Institutional Discourse", Morven Beaton (2007) finds that, by extensive use of conventional conceptual metaphors linked to the European construction process to render metaphor strings uttered by European delegates, simultaneous interpreters intensify the institutional pro-European imaginary. In a later study, Beaton (2010: 117) proves "the tendency of SI to strengthen the dominant institutional presence, ideology and identity and weaken or fail to represent the full complexity of the 'traffic in voices' [...] and heteroglot identities present at such an institution". Koskinen also observes that translators in European institutions use strategies tending to institutionalized discourse (2008: 145). Ian Mason (2003) and María Calzada (2001, 2007) detect similar trends by analyzing transitivity shifts in translations in institutional contexts. Rather than being agents of change and transformation, legal translators tend to work as active actors in the assertion of the hegemonic institutional identity (Koskinen 2008: 142). Indeed, as Koskinen argues, institutions do not just translate, but translate themselves in the process: "since they are textually produced and reproduced in their everyday text flow, the translating institutions are largely produced and reproduced in and by translations" (Koskinen 2008: 6). In other words, institutions performatively (re)shape their identity daily in and by their texts, including legal translations. Against this backdrop, if promoting intercultural dialogue is recently being embraced as an ideal by many institutions^{vii}, it seems important to ponder over the risks inherent to frequent calls for standardization (enlarged by increased automation) and to invest efforts in developing strategies to resist the effects of what Bakhtin termed "monologism", the temptation to stick to a recurrent self-referential and self-contained discourse with universal vocation combined with a scarce interest for discovering the uniqueness of the terms of the Other.

Just as institutional translation practices may result in involuntarily identity affirmation, it may also be true that, conversely, legal and institutional translation can inadvertently be a tool for or an instance of denial of identities. The sequel to the European Constitutional Treaty presented by Spanish authorities proves that, when an identity feels irritated, threatened, challenged or endangered by another identity reasserting its identity, translation (or even non-translation) can also be used as a delegitimizing mechanism. After the announcement that a separate Valencian rendition of the text would be submitted, Catalan authorities awaited and finally assumed as their own the texts prepared by the Valencian government. Although, formally, two separate versions were presented, the texts only differed in the identification of the language they were allegedly drafted in. The memorandum submitted by Spain included an explanatory introduction and a proposal for a reform of the 1958 European regulation establishing the EU language regime (López 2007: 87) in which the co-official languages in Spain were vaguely listed as "Basque, Galician and the language known as Catalan in the Autonomous Community of Catalonia and in the Balearic Islands and known as Valencian in the Valencian Community". This example shows that, in order to become consolidated, an identity requires external recognition and agreement for its specificity to be acknowledged as legitimate. Alternatively, specificity may be neutralized, co-opted or, ultimately, negated. For the development of a socially salient identity frequently involves the occupation or vacation of symbolic spaces for new differentiations to be expressed.

In this regard, comparing institutional policies of different plural and plurilingual societies is enlightening. Whereas the Spanish Ministry of Justice^{viii} welcomes visitors in co-official languages in their autochthonous spelling (Castellano, Català, Euskara, Galego, Valencià) and in ubiquitous English, in the Government of Gibraltar site^{ix} there is no trace of the Spanish language, despite the fact that Gibraltar is a bilingual community. Non-translation policies in hybrid and polylingual societies are as telling as translation themselves.

Most importantly, identity denial might be a result, not of an explicit, deliberate policy, but merely of applying the dominant norm in (legal and institutional) translation. Karpinski perceives the force of “unitary, centripetal tendencies” and the importance of translation in processes of “linguistic homogenization” in contexts like the EU, where, in her opinion, translation “plays a double and dubious role of facilitating quick communication and levelling difference”. For this author, “the multilingualism of the EU may increasingly conform to the model identified by Yaseem Noorani as ‘soft’ multilingualism that resembles monolingualism”. In this model that fosters “similar communicative templates”, “what disappears are the ‘hard’ edges of difference, exteriorities, and cultural and linguistic incommensurability” (Karpinski 2014: 31). According to several authors, “monolingual, monolithic language ideologies” are also clearly at work in public service interpreting and courtroom interpreting (Eades 2010: 251-256; Määttä 2014:59). Exemplifying this monoglot, monocultural inclination, the site of a regional government in Spain^x offered information in English for obtaining a “burning permit” (“permiso de quema”) which instructed the user to contact the “Service Chief of the Planning and Management of Woodlands of the Regional Ministry of Rural Environment and Fisheries”. If the goal of translation in multilingual societies is increased accessibility, it is doubtful whether the translation strategy adopted helps English-speaking citizens to find their way through the labyrinth of public institutions to the “Jefe de Servicio de planificación y gestión de montes de Consejería de Medio Rural y Pesca”. Given that in today’s hybrid, multicultural societies legal and institutional translation needs to cater for the identitarian and communicative needs of individuals with prototypical diglossic or polylingual identities living in constant translanguaging, new questions and challenges emerge for legal translation from these situations. Authors like Vidal (2013: 188) argue for legal translation practices attuned to a “global society [which] has gone beyond monolingualism”. As against the translation practices exemplified above informed by linguistic purism, the information provided by the British Embassy in Madrid for those interested in obtaining a “Town Hall Registration Certificate”, “Certificado de Empadronamiento” or “Padrón certificate” in a site where visitors are also instructed what to do “if you have not been ‘empadronado’ (registered at an address with the local Spanish town hall)”^{xi} seem to embody the value of “hospitality” which Vidal (2013: 193), inspired by Derrida and Ricoeur, urges legal and institutional translators to encompass in global, cross-cultural societies.

What is more, extrapolating Derrida’s distinction between “hospitality” and “hostipitality” (cf. Vidal 2014) to the legal and institutional domain, it could be argued that legal translation shows how subtle the dividing line is between both concepts. Although initiated with the goal of enhancing representation, legal translation may turn out to be an alienating factor for cultural identities. The broader language policies in which translated texts are enmeshed certainly have a crucial impact on the users’ perception of the translators’ activity and even of the translated products. Karpinski (2014: 22) reminds us that “[i]n multilingual contexts, languages are deployed not just horizontally, that is, in synchronic contiguity, or next to each other, but also vertically, one above another, reflecting stratified hierarchies of agency and symbolic power”. Authors like Christina Schäffner (2007:136) insist on the relevance of incorporating the socio-political contexts and environments where (legal) translation is embedded in order to get deeper insights into (legal) translations as political facts. The asymmetrical legal translation flows between different languages in international organizations clearly reveal the “unequal vectors of cultural and economic exchange” that, for Karpinski (2014), operate in any language transaction. When analyzed within the uneven geopolitical dynamics of languages, translation can be viewed as having the paradoxical effect of fostering feelings of domination and subjugation.

Obviously, a larger focus on geopolitical issues should not make us forget the importance of textual products as such in relation to identity recognition or assertion. Indeed, specific translation strategies may also be a factor causing identity alienation. Focusing on Finnish in the EU, Koskinen (2000b: 86) perceived that, whereas original Finnish legal texts, in line with a legal culture close to the citizen, privileges readability and clarity, EU Finnish texts are perceived as pompously solemn, abstract and distant by their intended recipients. This fact partly derives from the usual application of lineal translation strategies when rendering texts drafted according to the conventions of a different legal culture in which Law is considered to be above citizens, even in its wording. Different authors suggest that if Law should aim at achieving citizens’ support to the social contract established in them, literalist translation might be not an aid but a barrier in cases of cross-cultural disparity, heightening citizens’ sense of disaffection and estrangement. In this regard, new effective and affective forms of communication attuned to participatory models of governance are recently being advocated (see Koskinen 2010). In the context of the EU, aware of the existence of “conflicting norms and working routines that can obstruct the desired communicative outcomes”, Strandvik (2015) also argues for translation practices making extra efforts to the end of producing clear texts, understandable both to legal operators and to citizens.

Indeed, in an era of diversity and asymmetry, it might be doubtful whether the prevailing “ethics of sameness” might be the appropriate vehicle of transdiscursivity as defined by Robyns, the free flow of

cultural discourses among identities interacting on an equal footing. Many are the scholars in the legal field who have recently alerted to the danger that literalness might be acting as an instrument at the service of (neo)colonial forces –for instance, those suffocating long-standing patterns and core elements of minoritarian legal traditions under the influence of English as the lingua franca at international organizations (Baumgarten, House & Provost 2004). In any event, as authors including Šarčević (2015) have noted, acculturation and standardization processes potentially conflicting with traditional conventions do not merely affect minority languages, but also the decultured, non-native variety of English used as the main drafting language in the legislative process of many institutions. For Felici (2015), English as a lingua franca is both an advantage and a disadvantage for EU legal translation which, at least at the level of terminology, needs to progress from a “bilateral” to a “circular” logic (Pozzo 2015: 85). The “universality” of translated legal texts showing surface-level concordance and consistency has also been questioned recently. Marianne Garre (1999) for example has analyzed the allegedly global discourse of Human Rights and has perceived that, despite terminological uniformity, local interpretation of core concepts is diverse and contradictory. For instance, albeit the expression “right to a free trial” has equivalents in all language versions of the Convention, its meanings in contexts as varied as the USA, Spain or China might differ drastically. Moreover, as Mirza (2013) suggests in the field of disability, the worldwide promotion of a uniform language by international organizations – in fact articulating mainstream discourses in the North – in conjunction with funding campaigns by foreign donors, might be marginalizing and excluding many and diverse cultural experiences of disability and preventing other views from being heard in their own terms. Moreover, the reification of those institutionalized discourses as “expert knowledge” seems to reinforce Western superiority and assumptions about the incompetence and inability of non-hegemonic cultures to participate in the decision-making process (Mirza 2013: 13-15).

It could also be the case that, when operating among distant cultures, literal or minimalist translation practices refusing to cross the cultural divide of disparate mentalities might fuel strangeness, astonishment or even intercultural suspicion and reinforce stereotypical and ideologised images of the other. For instance, when translating texts such as the Pakistani certificates of single status provided by Mayoral (1995), cross-cultural asymmetries in the definition of the legal genre(s), blatant anisomorphism in the conventional codification of these official documents or in the legal concepts prototypically used in these texts in the cultures involved are factors potentially causing cultural misunderstandings if faithfulness is reductively understood as literalness. Alkhalifa (1999: 237) also analyzes the particular problems faced by professionals translating official documents in Arabic, the drafting of which reflects a mentality and worldview which may cause surprise or cross-cultural misunderstandings in other cultures, for instance due to the differing standards as to the data and details that might be considered to be relevant or even culturally acceptable as to be included in official documents (such as references to living parents or to virgin sisters of individuals in birth certificates or military service cards). Legal (and institutional) translation, often conceptualized as an intercultural activity bridging cultural gaps, may instead boost intolerance by projecting prejudiced images of the other culture as radically different or as reduced to a biased cliché. In this regard, the impact of pre-existing stereotypical images of the Other affecting the reconstruction of alien identities through translated texts should not be underestimated in the legal and institutional realm. Emma Wagner reflects on the reactions in the target English-speaking audience of an institutional information campaign sponsored by *Électricité de France* (EDF) in prestigious media including *The Financial Times*, *The Economist* and *Wall Street Journal* after the liberalization of the electricity market in France. The translated text, which implemented lineal and literalist strategies, quickly prompted the usual stereotypical association of the French culture with chauvinism, as is obvious in this comment quoted by the author: “EDF sound BIG, to be sure [...] But also arrogant, and anything but international. The text suggests that if you do contact them, you’re likely to talk to French speakers with rudimentary English” (in Chesterman and Wagner 2002: 39). This example shows that literalness, far from guaranteeing the accurate and unmistakable conveyance of the original message, in some cases results in “foreignising” or “exotic” wordings potentially fuelling wariness and mistrust, and thus endangering intercultural tolerance and the peaceful coexistence of identities.

As the examples examined suggest, incorporating the notion of identity in the analysis of translations in the legal and institutional field reveals new challenges for translation practices in these realms which need to conciliate the tensions between “the hegemony of English on the one hand, and the revival of ethno-linguistic particularity on the other” (Karpinski 2015: 21). In turn, the conceptualization of identity adopted in this article may also serve as a basis on which to ground alternative strategies attuned to the respect for diversity widely promoted today at institutional level.

4. NEW AVENUES FOR LEGAL TRANSLATION THROUGH THE PRISM OF IDENTITIES: CHALLENGES AND POTENTIALITIES

In new contexts transformed by the phenomena of globalization and migration and rich both in differences and in asymmetries and disadvantages, multilingualism takes on new forms. Karpinski (2015: 29) emphasizes that "it is probably more accurate to speak of multilingualisms in the plural, of different kinds of multilingualism that are produced at intersections of such historical, political, and economic forces as nationalism, colonialism, capitalism, migration, globalization, and postmodernity". The complexity of our times calls for parallel complex and diversified solutions, which may cater for the specific demands of divergent contexts.

The concept of identity adopted in this article reveals new challenges for legal and institutional translation practices that, in different settings, need to strike a difficult balance between unity and diversity, to search common meanings while respecting the conventions of different languages, cultures and traditions. In line with an understanding of identities as fluid, changing, and forced to coexist with other identities in multicultural societies, legal translation would not necessarily need to limit its scope to the essentialist preservation of the dominant crystallized identity of a given community, but act out of the conviction that identities move forward and develop, also in and through translations. Indeed, as Biel (2014) has proved studying the Polish case by comparing EU pre-accession and post-accession national legislation, renderings causing alienation feelings may ultimately foster a productive hybridization in the national legal systems. Despite initial rejection, legal translation can be a powerful mechanism for cultural and identitarian transformation. A "strategic" and "positional" understanding of identities (Hall 1996; Vidal 2010: 84) of the cultures involved and also of translators themselves, might be a good point of departure for a conscious translation practice that is wary of the implications of translation decisions in relation to larger dynamics of identity construction. In this regard, being cognizant about the fact that legal translations are sites for recognition, self-legitimation, and empowerment, but can also be, perhaps involuntarily, conflictual *loci* for the disavowal, exclusion, and delegitimation of others may spur a professional praxis finding the way to conciliate fidelity to the source text and to the expectations and/or identity claims of the receivers.

In the last few decades, a considerable amount of research within the field of legal, institutional, and public service interpreting and translation has advocated for new theorizations and practices in which legal translation might be recognized as intercultural mediation. When faced with diversity and cross-cultural unintelligibilities, legal translators may decide to act as *pontifex*, as bridge-builders, and to straddle over the cultural gaps in order to link and interconnect the differing backgrounds and expectations of distant cultural identities. In addition to reproducing the original message, guided by this conciliatory professional identity, legal translators may also be careful when uncovering the nuances and differences in seeming equivalents, paying attention to differing acceptability standards and anticipating the potential reception of the message by a different readership so as to prevent confusion or negative responses.

In the context of international organizations, calls for renderings going beyond uniformity and uniformisation have intensified recently. Along these lines, for example, Koskinen (2010) requests "localized translations" and translation methods in tune with communications patterns in society 2.0 closer to the citizenry. A similar logic makes Strandvik (2002: 460) emphasize, in the context of the EU, that "for most purposes, there is no such thing as a European Public" and argue for functional, target-oriented translations. A "TT reorientation" is underway in legal translation according to Biel (2010:6), with naturalness as a goal being highlighted and called for, be it by oblique translation methods fostering rhetorical conciliation (Alcaraz and Hughes 2002), by capitalising on the results on corpus-based translation studies applied to legal translation (Biel 2010) or by harnessing "creativity" (cf. Šarčević 1997), either at the level of terminology – for instance when dealing with new legal concepts (as advocated by Simonnæs 2013:154) – or at textual and discourse level. The "creative" forms of equivalence resulting from co-drafting methods in Canada, boldly challenging the expectation of visual and formal correspondence, are inspiring inasmuch as they evidence and underscore that legal translation may push its traditional boundaries and go beyond time-honored literalness in the search for symbolic equality:

| | |
|--|--|
| <p>(6) Within one hundred and twenty days after the rules have been submitted, the Minister shall decide whether to approve them and shall notify the operator of the decision in writing and, if the Minister approves the rules</p> <p>(a) the Minister may make the approval subject to any conditions the Minister considers appropriate;</p> <p>(b) the operator shall notify the persons who were consulted that the rules have been approved; and</p> <p>(c) the operator shall carry out the rules and any conditions of their approval until the approval is revoked. [...]</p> | <p>(6) Le ministre fait connaître sa décision par écrit dans les cent vingt jours. En cas d’approbation, il peut assortir les règles de sûreté des conditions, qu’il juge utiles et l’exploitant est tenu, d’une part, d’aviser les personnes consultées de leur approbation et, d’autre part, de mettre en œuvre les règles de sûreté et leurs conditions jusqu’à révocation, de l’approbation. [...]</p> |
| <p>(9) The Minister may revoke the approval of security rules, either at the request of the operator or otherwise.</p> | <p>(9) L’approbation est révocable.</p> <p>(cited in Šarčević 2010:28)</p> |

The call for legal translation to adopt mediation and bridge-building roles is even more intense in the field of public services, where asymmetries, cultural gulfs and misapprehension among participants in the communication event are common currency and where cultural conflict looms as a recognizable risk. In these contexts, many authors encourage legal translators to adopt a wider and more visible role enabling effective and empowering communication: in addition to conveying information and messages, legal translation is considered to play a decisive role in processes of social integration (Valero 2005). The strategies used by proactive professionals accommodating the expectations of various identities in their translations include “thick”, explanatory translation strategies (cf. Hermans 2007), which may be employed with goals as varied as bringing out culturally-implicit information, mirroring variation and plurality, or conciliating cross-cultural differences. What is more important, these strategies might adopt some of the new (and at first sight non-standard) communicative practices which, according to Karpinski (2014: 28), are emerging in super-diverse environments characterized by language “impurity”. This author refers to a taxonomy by Bloomaert including “languaging”, “polylanguaging”, “crossing” techniques, “metrolingualism” and “transidiomatic practices”. The equivalence found in the Spanish page of the City Clerk of New York^{xii}, translating “Certificate of Non-Impediment” as “Certificado de Soltería (o de No-impedimento)” – a rendering which flexibly blends language conventions and which reverses the concepts of “the foreign” and “the familiar” in accordance with the logic of a transnational space – may serve as an illustration of hybrid translation strategies favouring broader identity-related goals and communicative efficiency between coexisting cultural identities over linguistic normativity.

In any event, it must be emphasized that for legal translators who adopt criticality as an attitude and understand that identities negotiate their ways, as said before, strategically and positionally the range of potential strategies needs not to be limited to mediation and reconciliation. Indeed, in certain contexts, resistance to hegemonic imposition and affirmation of local patterns might be convenient both in communicative and identitarian terms. By the same token, whereas in certain contexts expressing difference might emerge as a priority goal in identity-informed legal translations, in other contexts the standardizing of diversity in the interest of a common language might prove to be the best option.

What is clear from the above is that, when identity is brought to the forefront, legal translation emerges as a complex, multilayered decision-making activity with implications far exceeding the linguistic and even the legal level. Legal translation emerges as a highly political and politicized activity with a strong ethical component and thus as an unavoidably “interventionist” task. Translating legal texts in our era implies giving voice and granting recognition or denying visibility; it entails projecting or reshaping images of social identities. Far from the long-held view that translating legal texts requires finding the right equivalents, today’s legal translators negotiate potentially comparable terms between distinct individuals, cultures, societies or identities at particular space-time and socio-political coordinates. In this regard, it is important to bear in mind that, in every translation decision, they shape their own culture’s identity vis-à-vis other (legal) culture(s). It should be remembered that neither identities nor legal cultures are static: they change over time, and they do so in dialogue with other cultures and identities. The notion of identity contributes to a dynamic understanding of cultural exchanges in legal and

institutional settings and offers interesting insights into the role of translation in the shaping of images of legal cultures. It also emphasizes the heavy responsibility that translators have in these never-ending and fascinating processes of identity (re)construction and uncovers a number of unprecedented challenges for translators who consciously embrace their role as identity-builders when operating in increasingly diverse scenarios.

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ⁱⁱ These strategies include the consistent shift of capitalized institutions into acculturated renditions in small letters ("Ministerio de Gracia y Justicia" → "departments of justice"), the use of ideologized lexical selections ("Ministro de Ultramar" → "minister of the colonies") and the strategic use of the passive voice disempowering the identity occupying the subject position ("El Gobierno de la Isla se compondrá de un Parlamento Insular" → "The island shall be governed by an insular parliament") (cf. Álvarez Nieves 2013: 379-411).

ⁱⁱⁱ As Álvarez explains (2013:430), this Spanish term is said to be a translation itself inspired by the "Free State of Ireland" and in turn serving as inspiration for the "Compact of Free Association" signed by the Federated States of Micronesia, Palau and the Marshall Islands with the USA in 1986.

^{iv} For instance, the use of the active voice highlighting the agency of Puerto Rico is significant in this fragment quoted in Álvarez (2013: 424):

Whereas the Congress of the United States by a series of enactments has progressively recognized the right of self-government of the people of Puerto Rico (Public Law 600, 1 L.P.R.A. [EN]: 130)

Por cuanto, bajo los términos de esta legislación congresional, Puerto Rico ha ido obteniendo una cantidad cada vez mayor de autogobierno... (Ley Pública 600, 1 L.P.R.A [ES]: 139).

^v For instance, the possessives in “We consider as determining factors in *our* life *our* citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges [...]” are unsystematically rendered in Spanish: “Que consideramos factores determinantes en *nuestras* vidas *la* ciudadanía de los Estados Unidos de América y *la* aspiración a continuamente enriquecer nuestro acervo democrático en el disfrute individual y colectivo de sus derechos y prerrogativas [...]” (fragments quoted in Álvarez 2013: 440).

^{vi} The whole fragment (quoted in Álvarez 2013: 434) reads as follows:

Nothing can surpass in political dignity the principle of mutual consent and of compacts freely agreed upon. The spirit of the people of Puerto Rico is free for great undertakings now and in the future. Having full political dignity the *Commonwealth of Puerto Rico* may develop into other ways by modifications of the Compact through mutual consent. (1 L.P.R.A. [EN]: 136); Álvarez’ emphasis)

Nada puede sobrepasar en dignidad política los principios de mutuo consentimiento y de convenio libremente acordado. El espíritu del pueblo de Puerto Rico ha de sentirse libre para sus grandes empresas del presente y del futuro. Sobre su plena dignidad política pueden desarrollarse otras modalidades del *Estado Puertorriqueño* al variarse el Convenio por mutuo acuerdo. (1 L.P.R.A. [ES]: 145; Álvarez’ emphasis)

^{vii} Cf., for instance, the EU links http://ec.europa.eu/culture/policy/strategic-framework/intercultural-dialogue_en.htm or <http://www.intercultural-europe.org/site/> (consulted 01.02.2015).

^{viii} <http://www.mjusticia.gob.es/cs/Satellite/es/1200666550194/DetalleInicio.html>; consulted 01.02.2015.

^{ix} <https://www.gibraltar.gov.gi/law-a-justice>; consulted 01.02. 2015.

^x www.asturias.es; consulted 01.02.2010.

^{xi} <http://ukinspain.fco.gov.uk/en/help-for-british-nationals/living-in-spain/births-deaths-marriages/marriage/certificates/town-hall>; consulted 01.02.2010.

^{xii} <http://www.cityclerk.nyc.gov/sp/html/marriage/non-impedment.shtml>; consulted 01.02.2015.