

Chapter 1

Introduction

This study tackles the problem of communication and the practice of translation, which constantly interfaces with theoretical issues in interpretation and conceptualization arising from the philosophy of law and language. As noted by some authors (Morris 1995; Joseph 1995), no other discipline is so indebted to the philosophical and theoretical debate. It is, however, utterly devoid of power if there is no practical counterpart and meaning is not communicated, negotiated, and translated. Translation can be done on an intra-linguistic, inter-linguistic or inter-semiotic level (Jakobson 1966). Recent multi-modal analysis applied to short video sequences highlighting legal communicative practices may also be a useful tool when audiovisual translation is needed (Taylor 1998).

The globalization of media, the resonance of crime and punishment, law and order, the winds of war and terrorism have now made it mandatory to acquire more refined tools for instant translation. In breaking news, the media must cope with different languages and idioms in order to communicate ‘crimes and punishment.’ Meaning and communication of meaning is the key issue here (Nelken 1996; Van Hoecke 2002; Beke 2014), along with its enactment across different cultures, languages and legal systems (Azar 2007).

The no-longer hegemonic power of the Western world’s legal systems inevitably meet with traditions where identity, values, beliefs and environment are interwoven and differ from culture to culture (Katan 1999). Islamic law and the evolving Chinese world are just two examples. There are also the mixed traditions of India and the constitutional laws of African states. In most cases, the legal system is bilingual or multilingual, usually interfacing with English (Tiersma 2012; Morris 1995; Cao 2007).

Gandhi and Mandela spread their ideas and acquired prominence through the medium of English. They spoke English in addition to their native tongues, as both India and South Africa feature an incredible number of languages and linguistic communities. Mohandas Granchand Gandhi studied law at University College in London (UCL), and Nelson Rolihlahla Mandela studied law at the University of Witwatersrand, and they both practiced as lawyers in South Africa. Their mother

tongue was not English; Gandhi was from Gujarat (Gujarati language) and Mandela from Transkai (Xhosa language), but they were both able to master other languages.¹ This demonstrates the power of language in terms of the spread and diffusion of concepts and ideas related to liberty and civil rights issues.

In this respect Gandhi was very clearly seeing the law and language issue in terms of power when, in 1908, he rejected English on ideological grounds. At the turn of the century, English was not the language of international law, and the upturn in the role and status of English as the global language of law and international rights was yet to come. At the time he found it painful to use before courts of law because, as long as India was still subject to the British crown, it was the language of the colonizer.

To give millions a knowledge of English is to enslave them... Is it not painful thing that, if I want to go to a court of justice, I must employ the English language as a medium: that, when I became a barrister, I may not speak my mother-tongue, and that someone else should have to translate to me from my own language? Is this not absolutely absurd? Is it not a sign of slavery? (Gandhi 1958, p. 5; in Crystal 2012, p. 124)

The question of language and liberty is vital in the many fields of legal study and practice: for the legislator, magistrate, and for the victim and the accused. This importance is widely recognized, as it appears on the Internet and in comments on the importance of language and freedom in a judiciary trial:

Mandela's ability to speak English may well have saved his life. He defended himself in court during the Rivonia Trial in 1963 where many expected the outcome to be the death sentence, yet he received a sentence of imprisonment for life. During the speech, he also comments on his respect for British political institutions and the 'independence and impartiality' of the British Judiciary. Whilst he accepted that English and Afrikaans – both official languages of South Africa were the languages of the oppressors, it is clear that he revered English for its association with education and liberty.²

The initial part of his speech is now history:

"I am the First Accused. I hold a Bachelor's Degree in Arts and practiced as an attorney in Johannesburg for a number of years in partnership with Oliver Tambo. I am a convicted prisoner serving 5 years for leaving the country without a permit and for inciting people to go on strike at the end of May 1961."

It was delivered as a statement from the dock at the opening of the defense case in the infamous Rivonia Trial, Pretoria Supreme Court, 20 April 1964.

¹ Ismail Ayob is another Indian man of law in South Africa who had an active role in human rights cases during the anti-apartheid regime, defending and representing South African political prisoners. On account of his Indian heritage, he could not attend university and had to move to London (London School of Economics). He returned to South Africa to practice as an attorney. He was also connected to Nelson Mandela.

² Xhosa was Mandela's mother tongue. He learnt English while attending a religious Methodist school. Afrikaans came at a later stage, during his 20 years imprisonment. The first Bible translation into Xhosa was in 1859. Today Xhosa is used with English to teach in primary schools (<https://lingos.co/blog/nelson-mandela-the-importance-of-language-and-freedom/>. Access July 23, 2014).

Mandela was found guilty on four charges of sabotage and was sentenced to life imprisonment. Material now available online, and the widespread use of international legal English mean that there is now a level of comprehension and communication that at the time was impossible.³

From a linguistic point of view, the use of the term ‘dock’ may be ambiguous to non-native speakers of English. In a non-specialized context, ‘dock’ is an international term meaning waterfront or wharf. However, in this context, it is the place where the accused stands. In Italian it corresponds to ‘banco degli imputati,’ as opposed to ‘witness box,’ ‘banco dei testimony.’ Not all legal dictionaries consulted recorded these terms (BLD,⁴ FDG, PEG et al.). Maybe they were deemed too obvious. The term ‘docket’ or ‘judicial record,’ an informal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case, is, however, entered in some dictionaries: for example it is entered in the ‘old,’ but not the ‘modern,’ American *Black’s Law Dictionary* (BLD) and it is not entered in the British Oxford Dictionary of Law (OXML).

To conclude this introduction and link the framework of research to a cross-thematic approach, recent events offer examples of the use of English as a legal weapon and as a tool in terrorism. The posting of a video of American freelance photographer, James Foley’s assassination is an example of the use of English in the context of mock justice. From a linguistic perspective, the appalling sequence emphasizes the use of English for legal or criminal purposes to instantly communicate the message to a global audience on the Internet. English forensic linguistics is used to determine the identity of the speaker, and the use of multicultural London English tends to produce ambiguity, as can be seen in this excerpt from the online news:

Language experts say the masked killer sounds like a man in his 20s who was raised or educated in Britain. John O’Regan, a linguist at the University of London’s Institute of Education, said the militant spoke with a ‘multicultural London English’ accent but with more formal standard English pronunciation, suggesting that his words denouncing American actions in the Middle East had been carefully scripted.⁵

³ See also African National Congress (<http://www.anc.org.za/show/>). (Access 8 August 2014).

⁴ See abbreviations for dictionaries used. BLD refers to *Black’s Law Dictionary*. Henry Campbell Black (1860–1927) first published his magnum opus in 1891. The dictionary has evolved over its six unabridged editions and was compiled using modern lexicographic principles, based on previous dictionaries. Ours is the 1998 edition. It contains the Constitution of the United States. The Editor-in-Chief of the new edition is Bryan A. Garner, author of *A Dictionary of Modern Legal Usage* (2d ed. 1995), *The Elements of Legal Style* (1991), *Guidelines for Drafting and Editing Court Rules* (1996), all areas which indicate an increasing concern with the legal writing and usage. West’s Law Dictionary (WLCD) is based on BLD.

⁵ <http://news.nationalpost.com/2014/08/21/> Access August 23, 2014.

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