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LEGAL ENGLISH AND LEGAL SPANISH: THE ROLE OF CULTURE AND KNOWLEDGE IN THE CREATION AND INTERPRETATION OF LEGAL TEXTS

Abstract

The paper is situated against the background of a globalized world, where English as a *lingua franca* tends to neutralize the real character of legal texts in other languages, when transnational application and interpretation are deployed in the course of the establishment of commercial and juridical relationships. The aim of the paper is to demonstrate that cultural and epistemological variances shape legal traditions and, hence, the peculiar traits of their legal texts and their interpretive techniques. Particularly, the Spanish and English-speaking legal cultures spring from different epistemological and cultural contexts which have developed over the centuries. While the former is based upon the French rationalist tradition that supports abstract idealism, deductivism and spiritualism, the latter is modelled on Anglo-Saxon empiricism that promotes pragmatism, philosophical materialism and inductive techniques of reasoning. These differences mark the way in which legal texts are produced and applied in either system, no matter the common purpose they may have. The paper calls for a greater awareness of cross-cultural differences as a necessary tool for the comprehension of the underlying differences in these legal discourses, which may lead to a more accurate application and interpretation of their legal texts.

25

Key words

Anglo-internationalization, legal Spanish, legal English, legal texts, legal interpretation.

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Sažetak

Rad je smešten u kontekst globalizovanog sveta u kome engleski jezik kao *lingua franca* teži da neutrališe pravu prirodu pravnih tekstova na drugim jezicima u slučajevima kada se oni koriste i prevode prilikom uspostavljanja međunarodnih privrednih i pravnih odnosa. Cilj ovog rada je da pokaže da kulturne i epistemološke različitosti oblikuju pravne tradicije, a time i svojstvene osobine pravnih tekstova i prevodilačkih tehnika koji im pripadaju. Na primer, pravne kulture na španskom i engleskom govornom području potiču iz različitih epistemoloških i kulturnih konteksta koji su se razvijali tokom vekova. Dok se prva zasniva na francuskoj racionalističkoj tradiciji koja zagovara apstraktni idealizam, deduktivizam i spiritualizam, potonja je izgrađena po ugledu na anglosaksonski empirizam koji zagovara pragmatizam, filozofski materijalizam i induktivne tehnike razmišljanja. Te razlike obeležavaju stvaranje i primenu pravnih tekstova u ova dva sistema, bez obzira na njihovu istovetnu svrhu. Rad se zalaže za povećanje svesti o međukulturnim razlikama, kao neophodnom instrumentu razumevanja suštinskih različitosti među ovim pravnim diskursima, što može dovesti do preciznije upotrebe i prevođenja pravnih tekstova u ove dve kulture.

Ključne reči

anglointernacionalizacija, pravni španski, pravni engleski, pravni tekstovi, prevođenje pravnih tekstova.

1. INTRODUCTION: ANGLO-INTERNATIONALIZATION OF LAW AND ITS CONSEQUENCES FOR THE IMPLEMENTATION OF LEGAL TEXTS

Communication among professional communities – defined as those that have a high degree of specialization in their lexical and discursive resources (Swales, 1990) – has an undeniable cultural slant, which often constitutes the seed of confusion and misunderstanding between collectivities, even when they speak the same language. This is especially true in the global context, where English is the undisputed *lingua franca* of communication among professionals (Bhatia, Candlin, & Evangelisti Allori, 2008; Breeze, Gotti, & Sancho-Guinda, 2014, among many others). The fact that English is currently the main tool for international communication among the different specialised communities may pose fewer problems in the field of scientific terminology (Cabré, 2004), where words, mostly Latin cognates, have a definite meaning understood by the community at large.

However, in fields such as business, but mainly in legal profession, linguistic phenomena coming from different cultural systems and structures are peculiar to each language and country, thus challenging the ability and skills of the translator, linguist, and/or specialist in the field. Additionally, the nuances of conceptual difference between translated voices from and into English as a source or target language may turn out to be less challenging in multilingual communities such as Puerto Rico or Canada, where code-switching is common and necessary. However, the situation is more critical in the new supranational reality which is the European Union, with twenty-four official languages and three official “procedural languages”: German, French and English. Since the eastern European enlargement in 2004, the use of French has declined in conference meetings, and German is these days an official language on paper only,¹ the professional communities being forced to receive and massively transmit information in English as the main working tool (Tetley, 2000). Specifically in Spain, Anglo-Saxon concepts are inevitably incorporated as foreign words or calques, and they even go unnoticed as false friends, causing the indignation of the country’s intellectual elite due to the overflow of neologisms that has flooded the Spanish language (Alcaraz Varó, 2000; Pizarro, 2010), and also the bewilderment of linguists when literal translations of cognate words are made of major cultural, business or legal phenomena (Orts, 2005a, 2005b, 2007a; Orts & Almela, 2014).

As far as the legal communities in the West are concerned, these follow one of the two major legal traditions: the English-speaking Common Law and the Continental Law. The former emerged in England during the Middle Ages and was applied within British colonies across continents. The latter developed in continental Europe at the same time and was applied in the colonies of the European imperial powers such as Spain and Portugal. Despite the equal predominance of these two traditions in the world, English has also turned into the *lingua franca* for almost every legal practitioner involved in cross-border legal transactions. The globalization of business activities and dispute resolution through arbitration between individuals and institutions has been accompanied by a process of legal internationalization (Klabbers & Sellers, 2008). But such a process requires a common language for legal officials and scholars to understand one another, and such language is, undeniably, English. As language is key to the construction of reality, the adoption of English as a *lingua franca* for law has also entailed the predominance of English logic, worldview and preferences (Focarelli, 2012: 93). Indeed, the increasing global Anglo-internationalization of transactions (Vogt, 2004: 112) has had a huge impact in the last two decades, affecting the way in which legal texts are drafted, applied and translated. One of the consequences of the widespread use of English is that some concepts from the Anglo-Saxon substantive law have become blurred when being transferred to other systems (Audit, 2001). Let’s think, for example, of the phenomenon of ‘tort’, which has been

¹ See <http://www.theguardian.com/world/2013/apr/24/europa-english-official-language-eu>.

made itself known to non-English jurists under a variety of names (*ilícito civil*, *préjudice*, *unerlaubte Handlung*, etc.), none of which covers its full semantic spectrum. Conversely, the Anglo-American perceptions, and the legal concepts attached to them, have crept surreptitiously into the substantive law of the country of reception and sometimes have deep consequences for the way juridical acts take place. The jury system, for example, a product of the English system, has been later adopted by other legal systems, sometimes with the name included (Alcaraz Varó & Hughes, 2002: 17). Some legal experts even state that the prevailing use of the English language as the language of the law has distorted the institutional and conceptual differences among the different legal systems (Vogt, 2004: 113), raising the crucial issue of the so-called non-neutrality of language (Gotti, 2005: 17). This is especially true of the English terms used in contractual law to dispense remedies in the scope of Equity with no exact equivalent in other languages – phenomena such as ‘estoppel’, ‘specific performance’ or ‘rescission’ – which are often mistranslated or misused in the context of international transactions.

It is irrefutable that the international use of English allows for specific common goals to be negotiated, ensuring a global and international dimension of companies and institutions. However, despite its role as a *lingua franca*, English is culturally marked and needs to be adapted by the actors in the communication process in the transnational context. This is especially relevant in the context of Spanish-speaking legal communities, since Spanish is the third most spoken language in the world after Chinese and English, with a strong presence in international bodies: there are twenty-five countries where Spanish is the official tongue, with an overall population of approximately 500 million inhabitants.² All of these Spanish-speaking systems have very strong institutional similarities, springing, as they do, from the same legal origin (Valadés, 2007), but are different in many ways from Common Law systems. Ignoring the cultural differences between legal discourses in English and Spanish may lead to an apparent consensus as to legal meanings, but such ignorance is likely to hide lacks of fit and misconceptions regarding the concepts and discursive practices of two very different legal traditions.

All in all, as trade barriers break and free trade areas and new supranational economic policies are created, new attitudes, new legal rules and new approaches to their drafting and interpretation are required, if the emerging multinational and multicultural legal order is to be made more just and more effective. It is worthwhile emphasising at this point that the discourse of the legal profession is deeply linked to the socio-cultural constraints of the context in which it is used, as demonstrated by Šarčević (1997, 2012), Borja (2007), and Orts (2012), among many others. Therefore, as Engberg (2004, 2014) states, the need is urgent to interpret legislation from a multilingual and multi-cultural approach that provides

² According to the prestigious Spanish periodical *El País*: http://www.elpais.com/especial/35-aniversario/cultura/un_idioma_en_boca_de_500_millones.html.

solutions to commercial and legal conflicts resulting from international transactions with the respect due to culture-bound specificities. According to this author, statutory interpretation in this context becomes a real challenge in which it is essential to achieve mutual understanding and linguistic consensus. Šarčević (2012: 194) also emphasises the case of the EU – which tends to be conceived as a unique legal system, actually still relying upon the national systems of the member states – where in many cases there is a definite impossibility of reconciling voices from different languages, and legal transposition becomes an impossibility. At an international level, and at agencies such as the United Nations (Zhao & Cao, 2014), the need to produce identical versions of the different international treaties poses difficulties to translators because there are often no equivalents that can determine an identical and common sense for all versions.

Awareness and understanding by specialists and translators of the fact that language is, indeed, a cultural phenomenon sensitive to pragmatic interpretations and delicate semantic nuances become very relevant in the context of the law. In fact, the purpose of the present paper is to point out the existence of certain specific cultural and epistemological phenomena in the context of legal communication, which cannot be ignored in the translation of Spanish legal texts into English and vice versa.

2. LEGAL ENGLISH AND LEGAL SPANISH IN CONTEXT

The present article deals with cross-cultural comparison of the legal cultures originating in England and Spain, in an attempt to give the historical context of the noted differences and similarities. In fact, the greatest challenge that not only comparative lawyers, but also ESP linguists and legal translators face, is that law systems – as culturally-bound sets of tacit constructs – are not uniform and constant for each and every civilization, but different from one another (Gotti, 2005). In Šarčević's words (1997: 13), "despite fundamental similarities among its constituent legal systems, a legal family does not correspond to a biological reality". Certainly, just as there is not one, but numerous languages, legal models also change in time from culture to culture, through political and economic changes and depend on a whole array of conditions whereupon they evolve and that frame them as unique and peculiar to each legal tradition. Being, like language, the product of local convention, law develops and roots in a specific community throughout history, through the usage that its members make of it (Tetley, 2000: 6). In Mezey's (2001: 35) words:

If we are to make headway in understanding legal studies as cultural studies and legal practice as cultural practice, then a contingent clarification of the vague concept of culture is an important threshold question. The goal [...] is to understand law not in relationship to culture, as if they were two discrete

realms of action and discourse, but to make sense of law as culture and culture as law, and to begin to think about how to talk about and interpret law in cultural terms.

Of all the specialized languages, legal language may be the one that pragmatically and semantically differs the most from culture to culture (Bhatia, 1993; Bhatia, Candlin, & Engberg, 2008, among many others). Comparative law specialists like Merryman (1985) and Tetley (2000) consider the existence of very different legal cultures and traditions and, specifically, legal translators like Duro (2005) and Orts (2006) describe the deep gap existing between the legal tradition of Spanish law and that of the Anglo-Saxon law. Ostensibly, discrepancies between legal cultures are due to the fact that language is a cultural product, and so is law. Law is an ideological artifact: it is the most important social accord in democratic societies, and governs with the highest directive force every society worldwide. An institution such as marriage is created “by the social agreement that counts as that condition” (D’Andrade, 1984: 91), and its existence is solely supported by the adherence to the rules that constitute it. Therefore, the rule of law is a convention developed through the tides of time, thus establishing the social norms and behaviours of a given community. Cultural schemas in the legal area like the above-mentioned marriage, or like contract, for example, constitute artificial constructs by means of which the human world organizes the coexistence and conviviality of its members, and, as such, they have a certain directive force and ideological hue (Searle, 1976 as cited in Blom & Trosborg, 1992 and Trosborg, 1995). Therefore, these institutions constitute predetermined cultural concepts in each culture, similar in essence, but arranged differently in each legal tradition.

As was remarked above, the family of Western law includes both the Continental – or Civil – tradition (this is where Spanish law belongs, as well as all the Spanish-speaking systems of South and Central America), and the English-speaking Common Law tradition. This Western family stands in opposition to other legal traditions such as the Islamic, Hindu, and Jewish ones, and also much in contrast to the African legal tradition and to the legal systems of Eastern Asia (Merryman, 1978: 123). Nevertheless, the two systems under scrutiny here spring from very different evolutions of Roman law, to some extent. Continental Law stems from the Justinian Code or *Corpus Juris*, which was adapted and newly codified in the 19th century by Napoleon and named the Napoleonic Code by express wish of the French Emperor. Contrarily, the influence of Roman law in the Anglo-Saxon tradition harks further back, since the array of sources and procedures known today as the Common Law was developed after the eleventh century. Actually, Holdsworth (1995: 189) states that it was in the latter half of the twelfth and in the first half of the thirteenth century, the age of Glanvil and Bracton, that the glossators incorporated several developments of medieval Roman law into English law; only in the second half of the thirteenth century did the system take its place as an independent entity.

Despite this similar onset, the Continental and the Common Law traditions are actually very different in nature. Broadly speaking, and in tune with the epistemological context in which they operate (as we shall see later on), the former is supported by legal principles, whereas the latter is based upon facts. During the Enlightenment, the Justinian legal legacy developed in the continent into several comprehensive, systematic legal codes – shaped by the Roman tradition – that embodied the ambition of rulers to rationalize the law. The result was a compact normative body where “there is scarce life beyond codes” (Duro, 2005: 620); a body of rules mainly made up of written norms, case law and custom having a subsidiary role. Additionally, the Continental systems of law are inquisitorial, “where judges play a very active role in getting to the truth about what happened in a case” (Tiersma & Solan, 2005: 37), as a relic from the time when priests led causes in medieval Canon Law. In this atmosphere, the cognitive mechanism for hermeneutics is deductive: from the general rule, particular cases are decided.

On the other hand, the Common Law of English-speaking systems (including e.g. the law of England and Wales, that of 49 States in the American system and those of Canada, Australia and New Zealand) was also partially modelled on the Roman law at its inception, but had an earlier birth and evolution than the Continental Law, even if it materialized in the twelfth century after the conquest of England by the Normans, who systematized it and started to codify it (Tiersma, 1999). Regardless of its origin, the most salient trait of the Common Law is, without doubt, the absence of codes and the relatively lesser importance of written law. It is indeed a law based upon precedents, as favoured by the doctrine of *stare decisis*, for the sake of which the law must be applied in line with previous court decisions, the role of judges thus becoming crucial. Judges’ decisions not only affect the case in hand, but play a rule-making role as well, since the essential part of their decisions, the *ratio decidendi*, constitutes the core of other subsequent judgments (Cross & Harris, 1991). Therefore, the cognitive system for the application of law is mainly inductive, since there is not one law previously created and applicable to specific cases, but an ontological process by means of which the rule is embedded in a whole network of specific cases related to the reality which is aimed at normalizing or resolving. This manner of applying the law may seem somewhat ‘claustrophobic’ to the continental eyes, since – as we shall further develop below – legal language, in all its accuracy and flexibility, is the basis for the judge to apply the law and for the lawyer to interpret it (Solan, 2005, 2010). Nothing but language – the basic tool for the Common Law – seems relevant in order to discover the meaning of the legal norm, which is enclosed in its peculiar linguistic cosmos.

The advantages and disadvantages of either set of systems have been highlighted throughout the times. One aspect in favour of the English, judge-made, case law is the fact that it is supposed to be more flexible than the Continental or Civil Law, since it can adapt to new situations. A code, once enacted, can only be altered through a difficult legislative process and may become obsolete and

subsequently unfair with the passing of time. On the other hand, the Continental Law systems may be considered to be less accurate in their word-to-word application than the English-speaking systems, departing as they do from a more general interpretation of the law. In addition, precedent-based systems are supposed to have a more realistic and practical approach to life than codified systems, from the moment they are based on real problems presented in court and not upon legal assumptions. However, respect for precedent may well lead to confusion and uncertainty, as it involves waiting for a case to be tried in court to take legal perspective on a particular issue: only a code can legislate in advance. Finally, case law is bountiful in details and rules, but this fact can also turn into a shortcoming, given the massive amount of case law included in both English and American law reports.

3. THE EPISTEMOLOGICAL ORIGINS OF SPANISH AND ENGLISH LEGAL TEXTS

The present paper rests on the assumption that cultural trends and epistemology have a decisive influence on the way in which legal interpretation is considered and applied in each legal system – the Spanish and the English-speaking ones, in this case – and consequently on the way in which legal texts are elaborated in the said systems. Particularly, the fact that Spanish law springs as it does from the European stream of civil law implies – as I have pointed out above – that we are speaking about a tradition inherited from Roman law in its Justinian version, improved and revised throughout the legal changes that occurred in the eighteenth and nineteenth centuries, as a result of Napoleon’s ambition to establish a unique type of law for all the European countries (Gómez & Bruera, 1995). It is also a law system mainly characterized by being totally codified, by its general and open texture, and by its reliance upon the written law. In the Spanish legal system, which has much in common with all the Spanish-speaking systems (Valadés, 2007), precedent and case law have a minor role, in contrast to codes and parliamentary laws which play a key role in the regulatory functioning of the system. Likewise, legal reasoning in Spanish-speaking systems is teleological and deductive, because written law is the fundamental source of inspiration for the implementation of justice, and it must be applied to every individual case with a relatively literal perspective (Iturralde Sesma, 1989).

As has been discussed above, it is their historical origin that divides Common Law from Continental Law, but there are also philosophical and epistemological reasons for differences in the systems, and if the Spanish legal tradition is of French origin, so is its gnoseological evolution. Indeed, the deductive character of Spanish-spoken law when applying and interpreting norms was inherited from the Cartesian tradition of knowledge and science which have their origin in Descartes’ thinking in the seventeenth century. Specifically, Spinoza and Leibniz were the

ones who later developed the epistemological trend pervading Europe throughout the eighteenth century (Woolhouse, 2002). Cartesian rationalism, of an expository and abstract nature, states that the pursuit of reason falls on knowledge and reasoning, granting theory and concepts an essential and organizational nature, and giving ideas a crucial role. The research of knowledge dwells upon the confirmation of previous theories, and not upon innovation. Within this epistemological context, legal rationalism requires and relies on a total, universal and coherent system of rules, from which all possible solutions can be deduced. Legal sources arise from a single authority, a written code, and, therefore, the only role of judges is to decide, through a deductive procedure, whether reality is inside or outside the norm.

Accordingly, and in harmony with other Continental systems, the Spanish legal system comes from a Cartesian epistemological current of thought that prevailed in European thinking during the Enlightenment, when a deductive and more abstract thinking style gave priority to concepts and symbolic knowledge, therefore favouring the theoretical and ideological world (Bristow, 2011). Thinkers from this epistemological tradition tend to rely more on principles and ideas than on the raw data obtained from empirical observation. According to Yankova (2005: 19), the law-creating centres in this European legal tradition were universities, and not courts. In this context, academics were much more interested in legal doctrines and in the essential aspects of the administration of justice, rather than in technical issues. Thus, as a Continental Law system, the Spanish one is closely linked to the general principles of justice and morality, with a special accent on the private law principles that govern the relationships between individuals (Lundmark, 2012). Its interpretation, as we shall see, is liberal and slightly restricted, using the intent or purpose of the legal norm and allowing the use of external agents such as preparatory works, contextual circumstances and analogies (Tetley, 2004).

On the contrary, knowledge in the English-speaking traditions has a predominant empirical nature. *Ockham's Razor* was already a fundamental premise in the Middle Ages, when philosopher William of Ockham denied the existence of universals and stated that there was neither knowledge beyond nominalization or the designation of things, nor any reality beyond what language could define (Orts, 2007b). Later, over the seventeenth and eighteenth centuries, Bacon, Newton, Locke and Hume would develop a purely empiricist theory of knowledge, by which knowledge could only be grasped through objective realities and their analysis (cf. Bristow, 2011). Epistemology is, in this context, inductive and analytical, purely pragmatic and operational, having been obtained through measurable results. This inductive approach to knowledge also pervades legal reasoning: knowledge in Common Law relates to the reality of a dynamic world where rules are as rare and as uncertain as universals, thus divesting written norms of impartiality (Hale, 1820). The legal system is not strictly codified but is made up of specific cases the main legal source of which is the precedent. These

features give the system a flexible nature, where potential contingencies are part of the everyday panorama of legal interpretation, and where judges feel uncomfortable with conceptual issues of broad generality, going instead from precedent to precedent, solving problems (Lauterwein, 2013).

Hence, under the umbrella of Ockham's medieval nominalism, and later, with the theories of Bacon, Newton, Locke and Hume, empirical data are essential to gain knowledge, and the possibility of inferring the existence of individual universals from the existence of single entities is out of the question. Empiricism rejects the search of logic and adopts models of inductive and operational thinking, where the world of ideas and universal knowledge is not of such prominence as in Continental systems, and where rational thinking is based on objective realities from which measurable results can be achieved. The Anglo-Saxon legal tradition, as Yankova states (2005: 20), did not suffer from continental influences, but was basically created in the courts, thus giving more relevance to procedure, evidence and the application of court decisions than to substantive rules. Because the origin of Common Law is to be found in local English customs later shaped by the central power of the monarchy, it developed as a law of a public character and was not taught at universities; it is not a law of universal principles but consists of procedures learnt by custom and practice. Since their inception, English statutes had much less force than the case law, which had been developed by judges through precedents over the centuries (Zweigert & Kötz, 1992: 273-274 as cited in Cao, 2007), consisting of exceptional, *ad hoc* norms to be applied to specific issues in a sporadic and very restrictive way.

4. LEGAL SPANISH AND LEGAL ENGLISH: THEIR CONFIGURATION AND INTERPRETATION

Crystal and Davy (1969) state that whatever the role played by the rules of interpretation in semantic theories of linguistic orientation,³ the fact they are tacitly accepted by all lawyers entails that a comprehensive study of legal texts should take them into account, and should also identify the effects they have on the meaning of legal documents. This statement is consequential, if we bear in mind that – as was emphasised at the beginning of this paper – international legal relationships are being established worldwide, and that legal texts must be interpreted from multiple legal and cultural perspectives. Legal discourse is more likely to show strong cultural variations than other types of discourse, and cultural aspects are an essential element in its interpretation and implementation (Bhatia, 1993; Gémar, 2006; Bhatia et al., 2008, among many others).

³ They specifically refer to the semantic principles that govern the way (to be mentioned later on) in which English legal texts are interpreted, but this statement could, in our view, also be extended to the peculiar legal hermeneutics of Continental Law.

As noted above, in the Spanish legal discourse, which embraces Spain and the Spanish-speaking Continental systems of South and Central America, the purpose is to frame the activity of human co-existence through the assignment of rights and duties and the appraisal of social behaviours as right or wrong, in accordance with a set of general principles. In tune with the hermeneutics of the rest of systems within the Continental tradition (Mazeaud, 1983: 144-171; Mignault, 1935: 124), legal interpretation in Spanish law has a contextual and purposive orientation: to be properly construed texts must be considered a whole, taking into account their overall meaning, so as to accommodate easily and elastically to the legal purposes they intend to achieve. Specifically, Section 3.1 of the Spanish Civil Code states that rules are to be interpreted according to the proper meaning of the words, but also in relation to the context, historical and legislative history, and social reality of the time of their implementation, as well as according to their spirit and purpose (Pombo, 1998; Alcaraz Varó & Hughes, 2001: 52;). Accordingly, legal discourse in Spanish is characterized by its freedom of form and may even be interpreted as vague or ambiguous. Nevertheless, vagueness and ambiguity are to be defined here as textual features granting discourse as much pliability and flexibility as necessary for it to adapt to the varied cases of legal reality.

Consequently, language is a tool of the trade in Spanish-speaking legal systems, but it does not constitute its basic substance as much as it does in Common Law systems (Orts, 2007b). The text is merely the starting point for the interpretation of the norm – the basis to scrutinize specific samples of legal application – and legal statements are formulated as generally and as openly as possible. In this discursive context, trying to cover every contingency and detail of the real world is out of the question since, in order to apply the law, not only the word of the text itself counts, but also the intention of the legislator.

According to various authors (Alcaraz Varó & Hughes, 2002; Cao, 2007; Ruiz Moneva, 2013), the most salient features of Legal Spanish are those presented in Table 1:

LEXIS AND SEMANTICS	SYNTAX AND MORPHOLOGY
Preference for high-flown and archaic words from Latin, Old Greek, Arabic and French	Archaic use of the imperfect future of the subjunctive
Extensive use of stereotyped formulae and relational words	Use of the absolute clause, also known as 'ablative absolute'
Monosemy and univocity of technical terms	Excessive use of the gerund, which may result in ungrammatical constructions
Expressive lexical redundancy	Use of long noun phrases
Tendency to nominalisations and relexicalisation	Use of passive constructions, especially the so-called <i>pasiva refleja</i> , or reflexive passive

Table 1. General characteristics of Legal Spanish

As may be seen in Table 1, because of their teleological inspiration, Spanish enactments begin with general legal principles, but lack definition and interpretation sections; the style is natural and statements are concise, flowing in logical sequences. They contain long sentences, but the subordinate complexity of English legal qualifications is absent. As far as the lexical side is concerned, polysyllabic words and words of ancient origin (mostly from Greek, Arabic and French) are used, and there is a distinct presence of paronyms (words like *jurisprudencia* or *jurisdicción*, which share the same etymological origin with French or English but have different meanings in these languages) and homonyms (words like the verb *sancionar*, which in the legal context may mean to ‘punish’ and ‘to endorse’). No matter these peculiar traits, semantic flexibility is an advantage in a legal system governed by codes, and the ordinary meaning of legal texts is just the point of departure for the hermeneutical process.

These characteristics of Spanish legal texts separate them from those written in common parlance, and make them very different from those of other specialised discourses. Still, clarity in legal language is important (Alcaraz Varó & Hughes, 2002: 17), and this is monitored and its usage is regularly updated by the *Real Academia*, an international standard and legislative body which has achieved a remarkable status of influence within the Spanish-speaking world. Still, the *Real Academia* does not control the particular discursive style of lawyers and judges and, according to some authors (Alvarez, 2008; Taranilla, 2009, 2012; Polanco & Yúfera, 2013), and most probably due to the looser scope of freedom in legal interpretation in the Spanish law, Legal Spanish is badly in need of reform for simplification and communicative effectiveness.

On the other hand, as we stated above, the Common Law is founded mainly upon judicial decisions. One of the consequences of this is the centrality of the judiciary within the system, which invests judges with the role of transmitters and interpreters of the law. Indeed, the judiciary must carry out an act of law-making when they reproduce the origin of the text – the precedent – each time they have to interpret the law and adjudicate, in harmony with the previously-mentioned doctrine of *stare decisis*: the opinions of previous judges constitute the law itself; a judicial decision, which in Continental Law has a persuasive effect, has a binding or coercive effect in the English legal system. Stating, then, that in the English-speaking systems the judiciary absorbs some of the functions of the legislative power illustrates the machinery of the system and puts the hierarchy of the courts and the interpretation of the law – legislation or precedent – in a prominent place.

The power and independence of judges in the system also explains the fact that judicial interpretation is unregulated by Parliament (Parliament ostensibly drafting Acts in such a way as to minimise the amount of interpretation that is necessary). While the law is a simple starting point leading to a global explanation in Continental systems, in the Common Law systems it must be exhaustively interpreted through specific semantic principles that judges follow implicitly and which constitute ‘intrinsic’ – i.e. merely textual – aids for interpretation (Crystal &

Davy, 1969; Riley, 1996): those of *eiusdem generis*, *noscitur a sociis*, *expressio unius et exclusio alterius*, and the so-called Golden Rule. Hence, due to the restrictive nature of these techniques of construction (Cao, 2007: 114), Common Law statutes lack significant propositions of law, but abound in definition provisions, since it is precisely the constricting nature of the legal text which favours the use of a specialised terminology that may require explanation. This taste of statutes in English for legislative definitions, normally long and syntactically dense, reflects the eagerness of the text to avoid ambiguity and approach the utmost accuracy and precision of reference.

The text to be interpreted in a literal or non-contextual way (Tiersma, 2004) started with the Plain Meaning Rule being developed along the eighteenth and nineteenth centuries, which commands that legal texts should be interpreted in the light of their literal meaning, ignoring other contextual or external aspects surrounding them. According to Tiersma, this interpretive process began to change in the twentieth century, when some contextual exegesis started to be exercised, in order to avoid contradictory and ambiguous results or conflicts of meaning. In any case, the interpretation process carried out by Common Law judges is complex, constituting an exercise of purely linguistic analysis in the search of precision (Solan, 1993: 40); a purely ontological – i.e. non-purposive, concentrated upon the text itself – process of deverbilization, where every word counts. It is exactly this tension between expressive accuracy and symbolic flexibility which makes this language so difficult and abstruse. However, after a period in which contextual interpretation was marginally deployed to decipher the sender's intention (Parliament or the legal drafter, in the case of Private Law), present-day lawyers have gone back to exercising textualism, with the literal rule as the main tool (Tiersma, 1999). Literal interpretation, as Maley remarks (1994: 31), will choose the plain meaning of the words in the section and will take into account previous decisions, "no matter how socially uncomfortable the effects of this decision may be". It is the bare meaning of words and sentences that counts, on the tacit assumption that the issuer of the text must try to include everything necessary in it for its comprehension, making it as autonomous as possible. We must not forget that the main trait of legal texts as speech acts is not their cooperative character in the Gricean sense, but their performativity (Kurzon, 1986).

The rigid and hackneyed nature of English legal language is, in particular, attributed to its peculiar lexicon, its phraseology, its schematicity and the repetitiveness of certain textual elements, which necessarily separates legal language from ordinary language for the sake of precision and accuracy of meaning. The most remarkable traits of Legal English have been discussed extensively by numerous authors (Mellinkoff, 1963; Bhatia, 1993; Tiersma, 1999; Alcaraz Varó & Hughes, 2002; Cao, 2007), but we will summarize them below:

LEXIS AND SEMANTICS	SYNTAX AND MORPHOLOGY
Archaisms from Latin, Old English, Old French and Norman	Long and complex sentence structures
Formalism and ritual words and expressions	Passive structures
Semantic redundancy: lexical doubles and triplets	Provisos and other limiting clauses: syntactic qualification
Univocity (technical words) and equivocity (common words with uncommon meanings)	Nominal character of sentences
Unusual prepositional phrases and polysyllabic words	Complex prepositional phrases
Vagueness: paronyms, hyperonyms, hyponyms, false friends, metaphors	Syntactic discontinuities

Table 2. General characteristics of Legal English

From the lexical point of view, the obscure terminology of Legal English reflects the need for lawyers to justify the profession's monopoly (Tiersma, 1999: 103-109). Hence, archaisms (formulaic subjunctives, adverbial compounds), ritualistic language (lexical doublets and unusual words from Latin), terms of art, paronyms and legal homonyms (or common words with uncommon meanings⁴) are conceived as hurdles that the interpreter has to acknowledge as an integral part of the terminology of English-speaking systems. Syntactically, English texts are fairly dense in construction, partly because of the customary practice to formulate subsections, and sometimes even entire sections, as a single complex sentence "built up from a dizzying number of subordinate and interpolated clauses and phrases, which are distributed over the paragraphs and subparagraphs" (Alcaraz Varó & Hughes, 2001: 107). Overall, the lexicon is more opaque and the sentences are longer and more complex than in the discourse of Continental systems, showing a greater deal of explanation, qualification and limitation in language, and a much more profuse use of legalese (Cao, 2007: 97). No doubt, the acontextual character of interpretation is one of the main reasons for this complexity.

In any case, it is evident how concerns about vagueness and ambiguity are much higher in the English-speaking legal scope, which defends the text and its autonomy. These concerns do not appear in the Spanish-speaking environment, where uncertainty is assumed, given the open nature and semantic generality that characterize this discourse, where intention is a powerful interpretative weapon. None of these mechanisms hides, in our opinion, hermeneutical perfection, but

⁴ Tiersma (1999: 111) defines legal homonyms as those words that look like ordinary language but have a very distinct meaning in the legal area; they are words like 'action', 'motion', 'brief' or 'notice'.

they are tools that the translator, linguist or specialist should be aware of, if s/he settles her/his operating field in legal transactions between these countries.

In summary, as rule-making documents, legal texts in the Spanish and in the English-speaking systems may have as a major commonality their similarity of function, namely to confer citizens a right, privilege or power, abridge a right, privilege or power, or oblige a person to act or not to act (Dickerson, 1986). Nevertheless, the basic traits of legislative texts in Spanish and in English are as dissimilar as might be expected from two systems springing from different legal traditions with their own epistemological origin and their specific interpretive techniques.

5. CONCLUSION: THE IMPORTANCE OF EPISTEMOLOGY AND HERMENEUTICS IN LEGAL DISCOURSE

As we have already established, legislative texts in English have to resort, ideally, to self-sufficiency of interpretation, the text being supposed to supply all the data for its own clarification and subsequent application. Contrarily, legal texts in Spanish are characterized for the sake of their freedom of form and are, hence, constructed with lesser prolixity, using common words with known meanings. However, this, together with the considerations established above on the cultural and interpretive differences of the legal traditions and discourses under study, cannot lead us to simplistic conclusions, such as asserting that legal Spanish is simpler than English legal discourse. Actually, legal discourse in Spanish has been described by some distinguished linguists as full of beautiful metaphorical pages, but also as an opaque, obscure and awkward language, overflowing with formulaic sentences and stylistically devoid of elegance (Alcaraz Varó & Hughes, 2001: 15-22). All in all, any legal system is, according to the critically-minded observers, an exercise of elitist and exclusionary discourse practices (Goodrich, 1987), and every legal text is not devoid of its own complexity. The intricacy of the legal discourse in either language is not under discussion here, but the importance that such an intricacy receives in the context of each legal tradition.

The rationale underlying the present work being that legal culture is firmly established upon legal knowledge, and that both conform the way in which legal texts are drafted and interpreted, the objective of our study has been to prove that, no matter how global English as a *lingua franca* may be, there are phenomena in the Spanish-speaking systems that prevent the possibility of one-to-one interpretations into English, and vice versa. The application of legal texts in multilingual contexts has to allow for the comprehension of, and the sensitivity towards, their epistemological genesis. Let the ultimate goal of our work be the essential role played by the awareness of legal culture and epistemology in the pursuit of the establishment of legal and commercial relationships between these

two very different linguistic collectivities. Only in this way will it be possible to build the bridges for the equal implementation of laws in the context of their transnational relations.

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