

A Discourse Analysis Approach to Legal Translator Training: More than words

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Legal translation trainees are frequently not experts in the field of Law. This poses considerable problems for legal translator trainers when attempting to introduce their trainees into the legal discourse community, requiring them to translate texts which are completely alien to their prior experience and social practices. In this paper we propose a discourse analysis methodology adapted from Fairclough's model ([1992] 1996) which provides trainees with the tools to develop a structured analytical process when approaching the translation of legal texts. Traditionally translation classes revolve around the text to be translated, and more specifically the terminology which poses problems for the trainees. In this model trainees are guided through a step-by step procedure which firstly situates the text within the social process and social events which surround it. By locating the text within the discursive practice (production, distribution, consumption) the trainees become familiar with the internalized social structures and conventions governing the text, allowing them access to what Fairclough (*ibid.*) calls "members resources". When this information is combined with the social practice in which the text participates, seemingly obscure elements in the text become immediately clearer. The process is then also applied in the Target Language and Target Culture to discover whether parallel discursive and social practices exist, thereby leading to parallel or similar texts. Only then will the translation process proper commence.

Keywords: legal translator training, discourse analysis, discursive practice, social practice, structured analytical process

1 Introduction

This paper will describe the use of a discourse analysis approach to legal translator training. The use of this approach provides trainees with the tools to develop a structured analytical process when facing the translation of legal texts, thereby avoiding many of the problems encountered in legal translator training, particularly for trainees with little or no legal background. The approach has been implemented increasingly at the Faculty of Translating and Interpreting of the University of Granada in Spain over the last ten years in an attempt to overcome the problems typically found in legal translator training. We will first situate the training programme in its educational context, before considering the current situation in legal translator training and finally present the discourse analysis model with examples of its application.

2 The legal translator training context

The inclusion of courses of legal translation in the four-year undergraduate course in Translating and Interpreting in the Faculty of Translating and Interpreting in the University of Granada, Spain, is a reflection of the growing demand for specialised translators in the field of Law and International Commerce. If we consider the ever-expanding field of international business and Spain's entry into the EU in 1986, including the free circulation of EU workers in Spain as of January 1, 1992, then we can grasp the enormous amount of translation work which our graduates may encounter. Furthermore, with the introduction of the EU Directive 2010/64/EU of 20 October 2010 on the right to interpreting and translation in criminal proceedings and of the Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings we can anticipate even more demand for legal translation.

Besides working into their mother-tongue or A language (as they will in international organisations and as free-lancers), we also provide training into their first foreign language or B language, which has often

been described as not necessarily ideal¹, but is, however, is common in the Spanish translation market and increasingly so throughout Europe. The growing flow of international commercial documents provides enormous scope for translation activity, particularly between Spanish and English. We cannot exclude, however, the local and regional peculiarity (partially provoked by the tourist industry) which is reflected by the fact that in some Andalusian coastal resorts in Southern Spain as many as 50% of lawyers' clients and an enormous volume of court cases involve foreign citizens. We must also bear in mind that English is often used as a *lingua franca* and that translators are often dealing with clients from diverse legal cultures (China, India, Russia, etc.).

The peculiar nature of legal translation, which perhaps requires the "bridging of cultures" skills of the translator more than the other fields of specialised translation, is aggravated by several other factors that we will address in section 3. As any legal translator knows, it is not so much the transfer from one language to another as the crossing from one culture to another, from one legal system to another, attempting to overcome conceptual differences, which is one of the fundamental difficulties of legal translation.

The other specialised areas of translation, scientific/technical and to a certain extent economic translation have the advantage of working, in general, with universal concepts. This is not as true of legal translation, with the exception, to some extent, of certain elements of Business Law. The future translator will find that not only must s/he work between two languages and two cultures, but between legal systems which are very different due to the strong socio-cultural and historical influence exerted on them. This is aggravated by the fact that the systems are not even synonymous with countries: Common Law, as the basis of the legal system, may apply in the U.S.A./England and Wales, but not in Scotland, nor entirely in the state of Louisiana which has a mixed legal system due to the French influence there; Mauritius and the Seychelles have mixed

¹ For a detailed review of directionality in translating see "La traducción A-B en el mercado profesional" in Dorothy Kelly, Anne Martín, Marie-Louise Nobs, Dolores Sánchez y Catherine Way (eds) *La direccionalidad en Traducción e Interpretación*. Granada: Atrio (2003: 43-64).

systems too; Australia may use Common Law, but this has developed in accordance with its own sociocultural context. In the U.S.A. the division of Federal (national) law and State Law (in each of the states) also complicates the task in hand: which is translation.

Our students receive a grounding in translation theory and courses in general translation in their first two years, designed to illustrate the use of translation strategies and procedures. How then do we apply this knowledge to legal translation, given the difficulties posed by the problems of: initial rejection of a field considered to be inaccessible to non-specialists; of comprehension of the Source Language (SL) text and reformulation in the Target Language (TL), given their basic grounding in Law and the fact that they are working into their B language; of working between legal systems which may share some basic concepts, but which have many more differences than similarities when searching for equivalents.

In their third year students are introduced to legal and economic translation, whilst at the same time they follow courses in Terminology, Law, Economics and related fields over two fifteen week semesters. It is in their fourth and final year that they are faced with the translation of legal, administrative and commercial documents from a wide variety of fields: Administrative Law, Property Law, Criminal Law, Contract Law, Succession, and so on. In just fifteen weeks (one semester) they must reach a level of translator competence which will allow them to enter the professional market as novice translators. Graduates who complete certain courses, including the legal translation courses are named as sworn/certified translators by the Spanish Ministry of Foreign Affairs.

3 Legal translator training

Until the 1990's very little had been written about legal translator training. Since G emar (1979) defended the fact that legal translators can be trained a great deal more has been written. Sparer (1988) defended the fact that legal translators can be trained without necessarily being legal experts, whilst in the 1990's, Hickey (1996) proposed legal translator training which established a series of rules

applicable to a variety of situations or circumstances based on his experience in both Law and Translation.

The enormous growth in the number of translation faculties in Spain and the demand for legal translation has led to a boom in research in this field. At the University of Granada Mayoral (for example: 1991, 1999a, 1999b, 2003) has written extensively on legal translation, Gallardo and Way (1996) have described the structure of legal translator training and since then Way (1996, 1997, 1999, 2000,) has presented research on structuring introductory courses in legal translation, exercises prior to legal translation, an interdisciplinary project with Law students to improve thematic, instrumental, psychophysiological and interpersonal competences² (2002, 2003), assessing legal translator competence (2008), bringing professional practices into the classroom (2009) and creating a framework for decision making in legal translator training courses (2012, forthcoming a). Legal translator training has also been addressed by Borja (1996, 1997, 2000), who suggest a variety of training techniques by requiring trainees to become familiar with the field of Law, the specialised language and the text genres.

3.1 Student profiles and problems

Bearing in mind that most of students have a background in Humanities in their secondary education we strongly advise that they follow courses in Law offered as electives in the Faculty. As students now design their own itineraries to a great extent, we find ourselves faced with heterogeneous groups with some or no legal training at all. Despite this, since research, IT and terminology skills have improved tremendously thanks to the courses introduced in the curriculum, it is still surprising to find that the trainees find a considerable degree of difficulty when faced with the translations (Deeds of Sale, Contracts, sentences, etc.).

After over twenty years training legal translators and, in recent years, careful observation of the development of the necessary translator competence by using the Achille's Heel self-analysis of

² Our training is based on Kelly's translator competence model (2002, 2005, 2007).

individual student competences (Way, 2008) we have found that there are three main reasons for the continuing difficulties:

1. The trainees' prior pedagogical translation experience in language learning tends to lead to
2. an obsession with words or, in later stages of their training, terminology and
3. their lack of vital experience.

Few students have been involved in a court case, bought a house or signed a contract. These processes are completely alien to them. As a certain lack of confidence is inevitable when translating legal texts in fields with which they are unfamiliar, trainees tend to rely on the resources they feel capable of using well by immediately searching for the unfamiliar terminology in an attempt to understand their source texts (ST).

However, as legal and, particularly, administrative texts are pregnant with suppositions and references to social practices that they have never experienced, the searches are often not successful and they experience great difficulty choosing between the possible solutions they encounter. Recent process research by Dam-Jensen (2012, p. 160) discusses decision-making and dictionary use by MA students in Denmark, highlighting the fact that in many cases students make unjustified decisions with which they are not particularly convinced. This led us to adopt a new approach in order to overcome these difficulties and to provide them with a tool they will be able to use in the future when faced with new fields and texts.

4 The discourse analysis approach

Using Discourse Analysis (DA) is not new in Translation Studies (TS), where the idea of analyzing texts through discourse, used as a means of structuring social practices or fields of knowledge (see for example Sánchez, 2007) has been applied to different fields of translation. Critical Discourse Analysis (CDA), however, has not been used as frequently in TS research. During my Ph.D. research (Way, 2003,

2005a, 2005b, 2005c) I used the perspective of CDA for the study of the problems posed in a social practice which requires the intervention of a certified/sworn translator. As a basis I adopted the tridimensional model suggested by Fairclough (1992), suggesting the description of a text, the interpretation of the discursive practice (production, distribution, and reception of the text) and the explanation of how the discursive practice is related to the social process, besides how the three elements relate to each other.

Any discursive ‘event’ (i.e. any instance of discourse) is seen as being simultaneously a piece of text, an instance of discursive practice and an instance of social practice. The ‘text’ dimension attends to language analysis of texts. The ‘discursive practice’ dimension, like ‘interaction’ in the ‘text-and-interaction’ view of discourse, specifies the nature of the processes of text production and interpretation, for example which types of discourse (including ‘discourses’ in the more social-theoretical sense) are drawn upon and how are they combined. The ‘social practice dimension’ attends to issues of concern in social analysis such as the institutional and organizational circumstances of the discursive event and how that shapes the nature of the discursive practice and the constitutive/constructive effects of discourse referred to above. (Fairclough, 1992, p. 3)

Discourse is understood, then, as a form of practice and of social action as it organises our interpretation of society and of what happens in society. For translators this has often been a useful tool in textual analysis, as Fairclough underlines, however, this textual analysis cannot only be at a linguistic level:

...textual analysis demands diversity of focus not only with respect to functions but also with respect to levels of analysis... My view is that ‘discourse’ is use of language seen as a form of social practice, and discourse analysis is analysis of how texts work within sociocultural practice. (1995, p. 7)

Fairclough's model can be represented as:

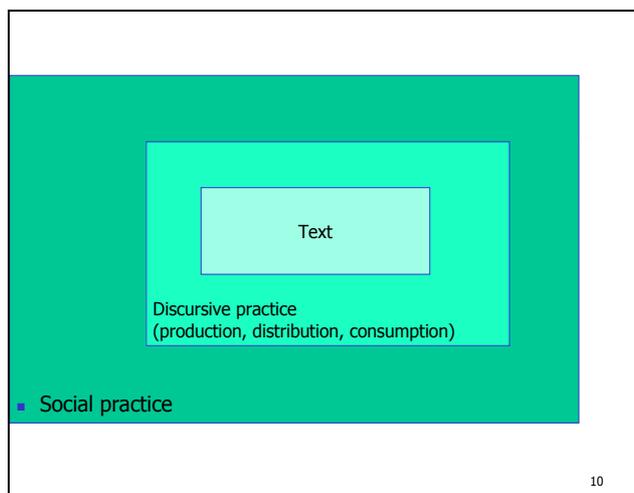


Figure 1: Fairclough's tridimensional conception of discourse (1992: 73)

In TS Neubert (1985, p. 74) defined a communicative situation as a context where information transfer occurs. He also underlined the importance of language use not only as a channel of communication, but also as a reflection of social reality:

...neither the speech chain nor a piece of continuous text are ever just neutral vessels filled with information. They always fulfill a communicative purpose. And any communicative event carries with it a segment of the world-view of the language users (ibid., p. 15)

Bearing this in mind, I adapted this model for the purpose of my doctoral study by adding the element of translation and the translator as an agent participating in the process, thus extending the study to texts which must move between two languages and cultures. From this perspective I performed a study of the social context and of the translation context surrounding a discursive act (translating and

recognizing degrees) in its entirety, thereby forcing us to traverse the borders of several disciplines involved in the social process in question. In order to move from the text to the social context and to the translation context, I designed a research model which allowed me to analyse the discursive act from the perspective of the agents involved, particularly that of the sworn/certified translator.

The study arose from the need to verify the reality of professional practice and daily working of sworn/certified translators in Spain and, particularly, of what occurs in the translation of academic degree certificates between Spain and the United Kingdom. It also arose from the need to verify whether what we propound to be current practices to out translator trainees (possibly future certified/sworn translators), based on our own personal experience or on the shared experience of colleagues, truly reflects the common practices in the whole profession. The impetus for the study also arose from a need to discover and analyse the role that official sworn translators play in the social process surrounding the translation of these documents and the effects that their translation decisions may have on the outcome of the process in which they participate. The research model is represented as:

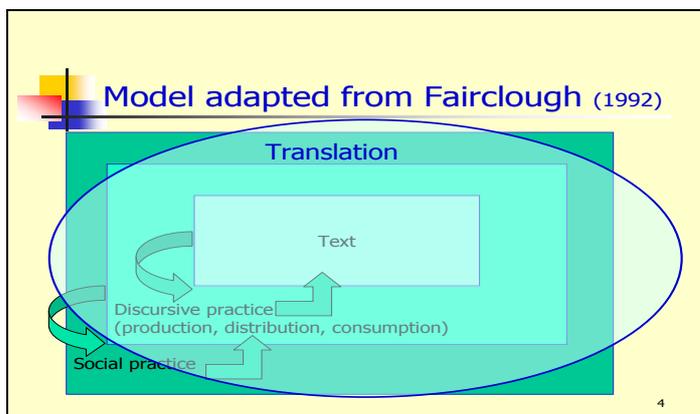


Figure 2: Model adapted from Fairclough (1992)

The research implied several phases, a descriptive study of the social context surrounding the translation act, an analysis of the

macrostructure of the degree certificates from the UK and Spain and the translation of one Spanish and one English text by professional translators (53), and an empirical study with questionnaires addressed to practicing sworn/certified translators on their experience in translating these documents.

It was from this research that we extracted part of the research model to create the discourse analysis approach we now use in our training to palliate the student problems mentioned in section 2. The parts which have proved to be significantly useful in modifying the way students approach their translation tasks were:

Level One: Description and analysis

1. The study of the social context surrounding the production of a given text type between two cultures and languages (the university degree certificate).
2. The study of the social context in which the text will be received in the Target Culture (TC) (recognition of university degrees).
3. The study of the context which surrounds and governs their translation in Spain (official sworn translation).
4. The compilation of a corpus of complete authentic texts in each of the two languages and from each of the two cultures.

Level Two: empirical study

Having outlined the background to the movement of these texts, we then proposed:

5. The analysis of the macrostructures of the texts comprising the corpus compiled.

The research model obviously continued on other levels with the collection of quantitative and qualitative data, but this is not pertinent for the training purposes addressed here.

In an attempt to draw students away from their frequent obsession with words or unfamiliar terminology, it became clear that they needed to be guided step-by-step through a process which would become a tool that they could then use themselves in the future in their professional practice. The approach can be visualised as follows:

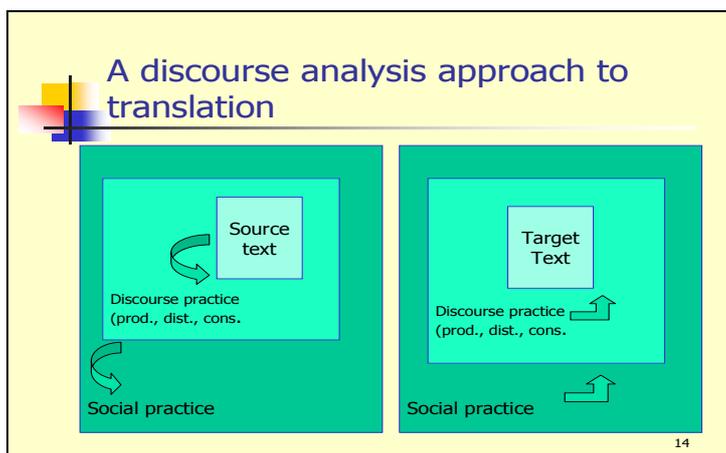


Figure 3: A discourse analysis approach to translation

5 Applying the discourse analysis approach

The final year legal translation course presents students with an array of legal, commercial and administrative texts. Students are provided with all materials: bibliography, translation briefs and texts, some complementary material in initial stages and a calendar of deadlines. The texts to be translated have been selected to provide an array of translation decisions which become progressively more complicated. At the same time certain decision-making tasks are repeated to allow students to interiorize their decision-making and gain confidence (Way, 2012 and forthcoming a). After introductory sessions which reinforce

the legal translation theory seen in their third year introductory course and sessions on translation revision, which is a key element in their final year course, groups are formed and students prepare their translation commissions according to the brief provided. One group will upload their translation to a virtual platform so that another group can present a revision of the translation too.

To avoid the common practice of simply starting to translate, which many students have acquired in language learning, they are asked to present their translation using a Project Management Sheet (for a more detailed description of this process see Way, 2009) which compels them to perform their task in a structured way by breaking down the translation task into different phases and introducing them to the workflow they will find in the translation market. It is also used as a tool to increase efficiency and encourage peer learning. The presentation requires the Project Manager to describe the whole organizational process, the Researcher(s) to describe the sources used and the materials they have prepared for the rest of the group. The Terminologist(s) explain their terminological choices with reasoned argument supported by sources and present the terminology given to the Translator(s). Initially heavy dependence on dictionaries is apparent, although as the course progresses they are rarely used. The translators describe the translation process and finally the Editor and Revisor any amendments made to the translators' text. As they describe their difficulties and keep careful record of the time invested lively debate ensues about how to improve their competence in each of the areas and how to improve their efficiency. Enormous emphasis is placed on externalizing the problem-solving and decision-making process by requiring the students to justify their choices and at the same time guiding them to acquire the necessary metalanguage to do so. Interestingly, Dam-Jensen (2012, p. 160) discovered in her research that the inability to do this was a major problem in her subjects, concluding that:

Furthermore, it can be assumed that translators who have the ability to communicate about problems, decisions and solutions are also capable of making choices which they can justify; that

they 'know why they act as they do'. A consequence of this is that the ability to communicate has to do with the level of competence.

Finally the group who has revised the translation presents the revised translation, including alternative sources, solutions and any queries which are debated by the whole class.

Despite having instituted this system some years ago, it was evident from the student presentations that they often revert to old habits and continue to dive headfirst into terminological searches before performing preliminary research on the text and the social practice surrounding it. Hence the need to make this approach more explicit in the introductory sessions, so that the students can appreciate how much simpler all the tasks become once they fully understand the three dimensions (text, discursive practice and social practice) involved in their task.

The first texts are normally administrative documents from the authorities, a birth certificate for example. Whilst the actual text may be relatively short and the information often schematic, presenting personal data, these texts are an excellent way of easing the students gently into the approach.

Administrative documents are part of our daily lives and describe parts of them. They are, nevertheless, not a trivial matter as they reflect and conform the social reality in which we live and a poor translation may have far reaching, serious consequences for our clients. Data is presented differently in different cultures, however, and as the authorities frequently mistrust the information provided by citizens, this is even truer when it comes from a different culture or is presented in an unfamiliar way (Iedema, 1998; Iedema and Wodak, 1999). Thus, when a translator makes a decision about a particular translation strategy or terminological choice, rejecting other alternatives, s/he is not always aware of the real consequences this may have on someone's life. These choices, nevertheless, are not only taken at a purely individual level, but are influenced by the social and cultural processes with which the translator is familiar. This is particularly important for the translator as a text receiver and producer as s/he must be capable of

approaching the translation task from the perspective of both cultures, assimilating and acquiring sufficient knowledge of the practices in force in the Target Culture (TC). The interaction between discourse and society rests, therefore, on the socially acquired and shared mental representations that define cultures and the groups that administer or organise and supervise their beliefs (or worldview as represented in the documents), social practices and discourses (van Dijk, 1997a). Administrative texts perform a role within a social process which is governed by and replicates the rules, relations and institutional resources in play. The social agents involved use language resources to construct forms of interaction between the text producer and the receiver, thereby constructing a social reality within the text based on common practices and terminology. An enormous amount of this information, however, relies on what Gutt (2000) called *communicative cues* which the translator must detect and resolve for the TC reader (Munday, 2012, p. 36).

6 Practical examples

As our graduates will be faced with a myriad of legal and, particularly, administrative texts in their professional practice, texts are selected and sequenced to pose problems that they will frequently find. The complexity of the problems is gradually increased and, through repetition, interiorised by the trainees (see Way, 2012 and forthcoming a).

Example 1

One of the first texts students approach is a Spanish birth certificate. Whilst less schematic than most English birth certificates, they provide an excellent initial exercise for students to put into practice their research, terminology and thematic skills.

Spanish birth certificates bear the information
Ministerio de Justicia
Registros civiles

in the top left hand corner to indicate the issuing authority.

As students have already seen the translation of cultural references, such as institutional names, in earlier courses they often consider this to be a simple element in the translation. If they use their prior knowledge and basic word/dictionary approach they inevitably present the solution of:

Ministry of Justice
Civil Registries/Registry Offices

before moving on to endless terminological searches for other problematic elements in the text.

By using the discourse approach, if they first research the text producer (the Spanish Ministry of Justice) and its organisation, they may access the Ministry's web page, which offers an English version, thereby resolving doubts as to the institutionally accepted translation of the proper name or even prompting them to consider proposing *Spanish Ministry of Justice* to situate the Target Text (TT) reader. Furthermore, by examining which part of the Ministry is responsible for issuing birth certificates they will find that there is a Department named *Dirección General de Registros y Notariado* which is the national office dealing with civil registries. The fact that the members of the discursive group producing the text refer commonly to this office as *Registros civiles*, even in documents meant for the public, is impossible for them to imagine without this research process as it forms part of the 'members resources' mentioned earlier. This practice is found in most administrative texts in Spain and may thus be reinforced in later texts issued by other areas of the Spanish administration.

Example 2

Besides an identification number for each birth certificate, the information of exactly where the birth is registered will follow:

Sección 1ª Tomo XXX Página YY Folio: Z.

The continued discourse approach which requires them to delve deeper into the information concerning the text producer will lead them to

discover how civil registries are organised in Spain and how information is recorded. Thus they will find that *Sección 1ª* refers to one of four divisions within the civil registries. The first division deals with births and other general matters; the second with marriages; the third with deaths; and the fourth with legal representation and wards of court. Furthermore they discover that civil registries have a set of rules which explain how the processes involved should be performed. For example Article 105 explains the use of the registers, on stamped sheets and exactly how this information will be stated on each certificate:

Los libros estarán formados por hojas fijas o por hojas móviles, foliadas y selladas y en las que se expresará la Sección y tomo del Registro. Se encabezarán con diligencia de apertura, en la que se indicará el Registro, la Sección o clase de libro, el número correlativo que le corresponde entre los de su Sección o clase, y el de páginas destinadas a asientos.

Familiarity with the whole process of text production not only clarifies problematic areas of the translation that dictionary or terminological searches will rarely resolve, but also reinforces their confidence when approaching the translation task and later justifying their decision-making process and solution.

Example 3

Birth certificates in Spain are frequently issued by the Judge in charge of the Civil Registry (*Juez Encargado del Registro Civil*) and the Court clerk (*El Secretario*). A lack of familiarity with the organisation of the civil registry will often disconcert them at this point. If they are aware of the rules and regulations concerning the social process the differing signatures and posts are no longer a problem.

At this point, a parallel research process of the issuing authorities for birth certificates and organisation of civil registries in English speaking systems allows them to draw parallels and suggest solutions such as *Registrar* and *Deputy Registrar* which will be more familiar to their ST readers and eliminates the need to explain why a Judge is signing this document, an unfamiliar occurrence in the TC.

These are just three simple examples which will be repeated to reinforce this approach in later texts and which will be escalated to more complex elements in later texts (see Way, 2012). As the course progresses texts become longer and more complicated, repeating problems requiring decision-making before and introducing others gradually.

7 Conclusion

The rationale behind this discourse analysis approach to legal translator training stems from observation of the difficulties students find when faced with decision-making at all levels of translator competence. The introduction of the presentation of translations by fragmenting the task into different roles, requiring different areas of expertise or translator competence, was only the first step towards making students conscious of exactly what they are doing, and more importantly, how they arrive at their solutions.

The second stage of the development of the approach has been guiding the students towards the three stage discourse analysis approach, levering them gently away from the three main difficulties mentioned in section 2. Familiarity with the discursive and social practices surrounding the ST and the parallel process in the TC dissipates many of the initially potential problems that students detect in the ST. As a result, the hurdle of lack of vital experience is overcome; the complete approach eliminates, to a great extent, the need to search for unfamiliar terms as the prior research attenuates this lack of familiarity with the terms and the discourse required; finally, the old habit of immediately delving into a dictionary becomes a thing of the past quite painlessly.

As we are all aware, a translator's working day is made up of a multitude of choices: Which is the best term or equivalent? Which is the most appropriate register? What are the TC reader's expectations? By using the discourse analysis approach to legal translator training students find that after only 6-7 weeks they are capable of moving from one legal field to another, from one text type to another, with increasing confidence and efficiency. Easing the students away from the initial

idea that they expect to be given absolute solutions for translation problems, particularly terminological problems, which they will then replicate in their professional practice is not an easy task. Nevertheless, this approach has proven, over the last ten years with some 1,000 graduates, that it is possible to tackle legal translator training from another angle and hence, provide the students with a tool that will be applicable to any translation they may face in the future. Recent research on graduate satisfaction with their legal translator training (Vigier, 2010) has confirmed this fact. By reducing the number of decisions to be taken each day as they interiorize the ‘how to solve a problem’ rather than simply seeking ‘what is the solution to this problem?’ reduces their level of uncertainty and boosts their confidence and self-concept as translators which can only be beneficial for the professional status and recognition of legal translators.

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