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## From Suspicion to Collaboration: Defining New Epistemologies of Reflexive Practice for Legal Translation and Interpreting<sup>1</sup>

M. Rosario Martín Ruano, University of Salamanca

### ABSTRACT

Existing Codes of Ethics for translators and interpreters working in institutional settings repeatedly require their strict adherence to apparently sacrosanct values including Fidelity, Accuracy, Neutrality or Confidentiality. Existing deontology seems to mould invisible beings who are annulled or disappear to unobtrusively give a voice to other persons or texts. Nevertheless, in situations marked by conflict and asymmetry, these seemingly indisputable values prove to be not only scarcely self-explanatory but also paradoxical, and indeed are very often the source of complex ethical dilemmas for professionals who perform an essentially interventionist task. Drawing on various examples, and aided by concepts from recent critical approaches to institutional and legal translation and other related fields, this article will problematise the theoretical discourse underpinning instruments regulating legal translation practice, with emphasis on two recurrent concepts: Accuracy and Neutrality. The ultimate goal of this endeavour will be to contribute to a more nuanced understanding of the role played by institutional translators and the acute practical and ethical complexities they face.

### KEYWORDS

Legal translation and interpreting, codes of practice, ethics, neutrality, intervention.

In Suki Kim's *The Interpreter*, a novel featuring Suzy Park, an interpreter of Korean origin performing her duties in the New York court system, the reader is readily informed of the main character's commitment to the strict requirements of codes of ethics to which she is contractually bound. Aware of, and even relieved by, the fact that "her job is just to show up and translate into English verbatim what the witness testifies in Korean," Suzy "often feels like the buxom communication officer in *Star Trek*, the one who repeats exactly what the computer says" (Kim 2003: 14). Suzy's adhesion to "impartiality" is also made explicit, and indeed this obligation is described as granting her a privileged position: "It is this idiosyncrasy Suzy likes. Both sides need her desperately, but she, in fact, belongs to neither. One of the job requirements was no involvement. Shut up and get the work done. That's fine with her" (Kim 2003: 15).

However, Suzy also acknowledges that "it doesn't go as smoothly as that" (Kim 2003: 15). As Vidal Claramonte (2010: 94–96) also points out, her predicaments are very much the same as those identified by recent research on translation and interpreting in legal settings marked by differences, asymmetries and conflicts of all sorts. Hired by an agency which acts as her immediate client — something which clashes with the expectations linked to court interpreting conceived as a public service (Fowler 2013) — but also aware that "[t]he witness [...] inevitably views

the interpreter as his saviour” (Kim 2003: 14), Suzy Park seems to experience the interpreter’s “identity crisis” as diagnosed by Hale (2005), an ambivalent and uncomfortable feeling of insecurity and split loyalties partly deriving from the contradictory expectations, demands and needs of the various agents in the interpreted encounter. In this regard, just like many flesh and blood professionals in asymmetrical legal settings, Park needs to conciliate pathways for communication between interlocutors with very different cultural backgrounds, frames of reference, literacy levels, ideological stances and power positions. Paradoxically enough, in line with what Baker and Maier (2011: 4) suggest, the maxims in codes of ethics do not seem to help resolve Park’s dilemmas or alleviate her anxiety, but indeed cause or exacerbate her feelings of ‘unease’ and ‘distress’. The rigid requirements pending upon her — Accuracy, Neutrality, etc. — clash with her painful perception of very real conflicts and gaps which cannot be encompassed by such abstract vocabularies: the precariousness of immigrant life, often taken advantage of by aggressive lawyers; the misunderstandings caused by culturally-stereotypical replies, aggravating the already evident power differentials. Thus, the sense of duty which she feels compelled to honour often melts with sentiments of desolation and helplessness, but also of disenfranchisement, vulnerability and guilt: the impression –a growing one in the discipline of translation and interpreting studies (Seeber and Zelger 2007, de Manuel Jerez 2010, Baker and Maier 2011, Baixauli 2012: 106–120) — that deontology in its current form may be at odds with ethics.

In an era which has borne witness to important advances towards the professionalisation of legal translation and interpreting, with milestones including the approval of the European standard EN-15038:2006 for translation services or the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, codes of practice are often invoked, together with other measures including certification and accreditation procedures, and CPD activities, as necessary instruments in order to safeguard quality and ethical performance of translators and interpreters in legal and judicial settings (European Commission 2009, 2012, Valero and Taibi 2004: 4).

Recent studies which have analysed a representative number of existing codes of conduct have identified Confidentiality, Impartiality, Accuracy or Faithfulness, and Competence as recurrent principles in these codes (Ko 2006, Lobato 2007: 159–169, Ortega and Lobato 2008: 551, McDonough 2011: 30–37, Baixauli 2012: 196–200). These studies also agree on the vagueness and under-definition of these key principles, resulting in terminological diversity, conceptual variation, and broad heterogeneity as to the specific norms connected to them despite their powerful, prescriptive grip as maxims. In *The Archaeology of Knowledge*, Foucault (1972: 74–76) defines “discursive formations” as groups of statements revealing the existence of socially-established and to some extent socially-

binding representations which have order and correlation despite their dispersion and discontinuity. An approach to the principles in codes of practice as the most salient elements of a larger “discursive formation” constructing legal translation and interpreting socially and institutionally, as milestones of complex and contradictory discursive constellations establishing orders of truth and regimes of power for legal translation and interpreting as social activities is enlightening, especially if the focus is placed, following Foucault, on the cracks and contradictions in these discourses and on the instances where the principles enter into conflict with each other. Foucault’s concept of “discursive formations” shares commonalities with other theoretical frames used in Translation Studies which see translators and interpreters as subjects and subjectivities also constituted by discursive practices. In this regard, the principles invoked in codes of ethics can be analysed as cornerstone concepts of the dominant “conceptual narrative” (Baker 2006: 39) or the hegemonic “professional ideology” (Angelelli 2004: 3) in the legal field, both activating the powerful “supermeme” of “equivalence” as “sameness” (Chesterman 1997: 9) or inspired by the “‘constitutive’ metaphors” (St. André: 2010: 5) of (legal) translation as a copy or mirror image and of (legal) interpreting as accurate encoding-decoding by a ‘mouthpiece’ (Rycroft 2011: 220). Additionally, for our purposes, it is also worth pointing out that the recurrent principles in codes of ethics — Accuracy, Faithfulness, Impartiality, Confidentiality, and Neutrality —, to a large extent concur with the core elements and essential characteristics of what Presas and Martín de León term “implicit” or “subjective” translation theories: maxims, rules or norms reflecting widely accepted opinions, beliefs, scripts or frames on translation which are, nevertheless, excessively general, scarcely flexible and often mutually excluding (Presas and Martín de León 2011: 95–99). According to these authors, “implicit” theoretical models on translation (mainly based on the metaphor of translation as “transfer” and, as proved empirically, exerting great influence on novice-translator behaviour) may be restructured and transformed into “expert” knowledge through what Shreve calls “explicit” or “deliberate” training: for this scholar, expertise involves the acquisition of more complex cognitive and conceptual models allowing “an increased capacity to recognise and represent the problems of translation and an increased capacity to effectively resolve those problems” (Shreve 2002: 161).

This theoretical approach to the values invoked in most codes of practice is a useful point of departure for, in our opinion, the most urging task of problematising the translation model underlying existing regulatory instruments for legal translators and interpreters and for articulating more comprehensive vocabularies and conceptual tools for professionals working in a field radically transformed by the phenomena of migration and globalisation. This is not to deny the importance and usefulness of codes of conduct *per se*, which may prove to be adequate measures to combat increased “market disorder” (European Commission 2012: 4) in a

sector which needs to address a number of specific problems: pervasive (non)professional intrusion and lack of awareness by social agents of the importance of qualified, experienced professionals (Ostarhild 2003: 2), a combination of factors at the bottom of recently reported scandalous cases including the appointment of individuals with criminal records or of relatives of suspects as *ad hoc* translators or interpreters (Monzó 2005: 416, Martin and Taibi 2010: 215–216); shortage of trained professionals in non-traditional language pairs (Valero 2011: 88–89, European Commission 2012: 32); outsourcing policies threatening to reverse the gains that have brought about greater specialisation in the sector (European Commission 2012: 4); low status and low rates (European Commission 2012: 33), factors directly feeding into a low social perception of translation and interpreting as “basic, unskilled tasks” (Hale 2005: 20). In this context, codes of conduct are perceived as a positive step in the route towards professionalisation, these being a constitutive element of professions (European Commission 2009: 16).

In any event, support for codes of conduct should not prevent discussion about their implicit theoretical underpinnings and their actual requirements: translation and interpreting face today unprecedented challenges in the new legal settings of our multicultural societies, where long-held conceptualisations of equivalence as/in sameness may need to be revised. In these contexts, depending on the discourses activated by them, the regulatory instruments for enhancing professionalisation may turn out to be double-edged swords: in situations marked by differences and asymmetries where *intervention*, as defined by critical approaches, is unavoidable (Maier 2007), Faithfulness, Neutrality and other related values often claimed for as the encrypted security key behind which the rights of individuals needing translation and interpreting are preserved may reveal themselves in a very different manner, as a latch further confining translators and interpreters to mechanistic and servile tasks, restricting the already limited room for manoeuvre granted to these key agents in communication whose role is, nevertheless, often downplayed and curtailed — as is evident in the usual expectation or obligation for professionals to “merely” translate or interpret (Hale 2005: 20–21). As Inghilleri (2009: 207) points out, translators and interpreters are held in a dual consideration: they are “objects of both necessary trust and yet at the same time deep suspicion”. Our contention is that, if codes of practice are outdated in their vocabulary, uncritical in their exigencies or unable to account for what is at stake in translation and interpretation-mediated legal situations, they could contribute to turn these professionals often seen with suspicion into trespassers constantly exceeding their legitimate (non)space and (non)authority.

Calls to overcome the dominant paradigm in legal translation and interpreting, based on an “ethics of sameness,” to use Venuti’s term (1998: 82), have become ever more frequent in the specialised literature. In particular, critical approaches to legal translation have pointed out a

number of shortcomings in the values traditionally inspiring codes of ethics. The vague, general, and ill-defined character of the notions traditionally invoked as normative has been seen as a frequent source of conflict and divergence. Indeed, recent studies have shown that, in contradiction to the apparent social consensus about values to be honoured, coincidence in the particular requirements expressly set out in different codes of practice is limited (McDonough 2011). Specific norms to be followed by translators and interpreters in fact differ widely from country to country and even at national level (Ko 2006). More importantly, despite the existence of codes of ethics, practising professionals have very different understandings of their role (Hale 2005: 14). Indeed, the values they might be endorsing in the name of concepts such as “fidelity” can be different (McDonough 2011: 34); the wider socio-professional narratives to which professionals cling are varied (Boéri 2013: 157-158).

The values in regulatory instruments have thus been seen as scarcely explanatory, and their usefulness for training and continuing professional development has been brought into question; more critical approaches have even expressed doubts as to which is the true mission of these instruments — i.e., to regulate the profession or to give an impression of regulation — and their ultimate addressees — i.e., the professional group or final users — (Koskinen 2000:82, Wolf 2010: 37). For this reason, more nuanced understandings of key principles have been called for. For instance, drawing on real examples of translation commissions in the legal field, Mayoral (1999) and Prieto Ramos (2002) define Fidelity and Accuracy as problematic requirements demanding complex balancing acts among many conflicting variables and expectations differing from context to context, including adequacy to the source or to the allegedly intended meaning *and* compliance with acceptability parameters in the receiving culture; respect for the original content *and* form (as legal translated texts are often subject to linear comparison) *but* also for the established parameters of formal elaboration in the receiving system; conformity with the expectations of the various interlocutors *and* detachment from them to guarantee normative impartiality, etc. Similarly, Rycroft (2011: 220) contends that Neutrality, often conceptualised as a “non-negotiable concept”, obscures the complex interventions and decisions which translators *need* to make at many levels, from the linguistic and the interpersonal dimension to the social or the moral. Other scholars have stressed that this demand is but a “myth” (Metzger 1999), a concept in need of further problematisation (Martín Ruano 2009), with important effects that, nevertheless, should not be overlooked. Baker and Maier (2011: 3) emphasise that the uncritical acceptance of the “ethos of neutrality” might be “blinding” translator trainees and professionals “to the consequences of their actions.”

Another criticism that has been levelled against codes of ethics by critical approaches concerns the “universality” of its demands. Angelelli (2006:

187) explicitly raises the issue of cultural bias and/or imposition when pointing out that “they [the *standards*] seem to expect interpreters to abide exclusively by ‘American’ ways”. More generally, Vidal Claramonte (2013) questions the feasibility of applying a common set of apparently monolithic maxims or a limited range of translation strategies to the wide spectrum of scenarios where legal translators and interpreters operate today. Additionally, the epistemological basis informing these maxims and strategies (in line with ideals including equivalence, sameness, uniformity, coherence or non-involvement) has also been the object of criticism, inasmuch as it is seen to be at odds not only with the post-positivist epistemic climate which pervades all disciplines (Baker 2001), notably Translation Studies and Law (Vidal Claramonte 2013), but also with the features of ever more diverse societies, and, more importantly, with the core values recently promoted by institutions and society at large (with the struggle towards “recognition” of legitimate differences replacing the redistributive model inspired by the former ideal of “equality”). The danger that the dominant translation model at institutional settings might be proving to be counterproductive for effective institutional communication has been alerted to (Koskinen 2008, Martín Ruano 2009, 2012). Moreover, the risk that excessive prescriptivism and insistence on strict observance of inherited norms in an age of fast-paced changes might lead to the sclerosis of the profession has also been expressed (Mayoral 2003a: 112).

For all the reasons explained above, the call for developing alternative analytical tools and larger theoretical models that might encompass all the factors, demands and challenges conditioning translation and interpreting as socially-situated practices seems most pertinent in the legal domain. In comparative terms, this subfield of translation studies appears to be anchored in conceptual frames that have long been superseded in other areas of the discipline. In this regard, the importance of theory as a catalyst for reflexive practice has been emphasised in relation to institutional translation (Koskinen 2008: 152ff) and legal interpreting (Fowler 2012/13). Theory has also been praised as a tool for enhancing the social recognition of our task: a knowledge base is a prerequisite for the consideration of a profession as such (Monzó 2005: 418). Formal training in that base not only provides individual professionals with conceptual aids for making informed decisions, but, more generally, it contributes to the development of a more confident self-concept and improves the image and the credibility of practitioners vis-à-vis other agents in the field (Hale 2005). Efforts in further theorisation are thus crucial.

In the following pages, drawing on various examples that will be analysed from critical perspectives, and aided by concepts from recent deconstructionist and critical approaches to institutional and legal translation and other related fields, I will try to contribute to this metatheoretical endeavour committed to revisiting the discourse

regulating the profession, which imposes abstract, categorical demands on translators and interpreters to the point of delegitimising decisions which, in context, may be justified. My aim will be to discover its flaws and limitations and to offer alternative conceptual aids that might help professionals to make decisions in the complex practical and ethical dilemmas they face. Focusing specifically on two key concepts currently being invoked in legal translation and interpreting practice — Accuracy and Neutrality —, I will try to contribute to a more nuanced understanding of the role played by legal translators and interpreters working in institutional settings.

### **1. Problematising Faithfulness, or Combating Accurately Inaccurate Renderings**

There can be little doubt that the concept of “Faithfulness” permeates existing expectations towards legal translation and interpreting. As shown by studies which have analysed a representative number of codes of conduct (Lobato 2007, McDonough 2011), translation and interpretation are often requested explicitly to offer “true” and “faithful” renditions, even though the definition or explanation of what these controversial terms do actually imply or should be taken to mean is harder to find (McDonough 2011: 32). The actual occurrence of the word reveals the existence of a larger constellation of normative expectations, which also takes shape in (and which is in turn reinforced by) the usual metaphors or images in relation to legal translation and/or interpreting: that of faithful copyists or servile scribes transcribing documents which, once validated or authenticated (as in the case of international treaties), assume absolute identity of meaning and even the same authority as the source, provided that they lose their “translated” status (Hermans 2001); that of “conduits”, “ghosts” or “robots” automatically converting codes (Rycroft 2011). Despite the broad and contradictory nature of terms such as “faithfulness” or “fidelity”, their use crystallises in the preference for certain normative strategies as a side-demand: the “verbatim requirement” identified by Mikkelsen (1998) as usual in court interpreting operationalises the “word-for-word transfer” expected of interpreters at large (Diriker 2011); literalism emerges in legal translation as *the* strategy par excellence, the absence of which causes perplexity (Mayoral 2000: 326). Thus, the polysemy of the requirement to be true and faithful is merely theoretical. The association of faithfulness with repetition, wholesale reproduction is the norm, and can even be detected in subtle lexical choices surfacing in the wording of rules in codes of ethics. The understanding of faithfulness as “preservation” (as if translation was not a radically *transformative* activity adapting the text into a *different* language, for a *different* readership in a *different* system with a *different* background and *different* expectations, to mention just the obvious changes) is evident in the paragraph for “Accuracy” as explained in the Code of Professional Ethics recently issued by the European Legal Interpreters and Translators Association (EULITA):

The source-language message shall be faithfully rendered in the target language by *conserving all elements* of the original message while accommodating the syntactic and semantic patterns in the target language. The register, style and tone of the source language shall be *conserved*. Errors, hesitations and repetitions should be conveyed (EULITA 2013, emphasis mine).

The conceptualisation of legal translation and interpreting as exact reproduction, as in a duplicate or a replica, puts professionals in extremely awkward positions. As becomes evident in cases as varied as the notes full of slips and mistakes often used as written evidence in court (see Mayoral 1999 for real examples) but also, as confirmed by Wagner *et al.* (2002: 71–72) from their experience as translators in European institutions, in badly-written texts drafted by non-native educated speakers at international organisations in a kind of hybrid English riddled with errors, false friends and inconsistencies, strict compliance with the expectation of reproduction compromises the professional image of translators and interpreters as language experts. Similarly, research on interpretation has also shown that the demand for interpreters to replicate the behaviour or speech of the individuals they interpret completely neglects credibility issues (Rycroft 2011: 219): specifically, mimicking the features that constitute “powerless testimony style” in the name of accuracy (Berk-Seligson 2002: 131) could have a parodic and grotesque effect which might be more readily construed as professional incompetence rather than as faithfulness and neutrality.

In general terms, what seems to be missing in the conceptualisation of translation and interpreting as reproduction is the ability to assume the participatory role of these professionals in the (re)construction of meanings and of broader elements such as identities, power positions or symbolic capital, which can be accounted for when translation and interpreting are conceived as socially-situated practices. With their insistence on the need for translators and interpreters to stick to the text or the message, codes of ethics seem to reinforce a fallacy as an ideal: that of non decision-making, non-negotiation, non-intervention –indeed, it is not surprising that practical recommendations in these regulatory instruments are only generally included to stress what these professionals cannot do, namely, that they must abstain from interfering.

Post-structuralist approaches to legal translation and interpreting, taking as their point of departure the assumption that “reality does not exist beyond representation,” thus questioning the “referential illusion” of “intrinsically stable meaning” (Vidal Claramonte 2013) and accepting its radical “indeterminacy” and “negotiability” (Mason 2005: 32), foster an interrogation of these abstract demands. By insisting on the view that ethics, far from being “just reserved for special occasions” (Koskinen 2000: 15) is present in every translator decision (Baker and Maier 2011: 3), by recalling that the presence of the ‘Other’ voice, the translator’s

voice, is ubiquitous (Hermans 1996), these approaches urge us to consider legal translators and interpreters as fully-fledged agents co-participating in the mediated encounter, in their capacity as “authors” of messages (Diriker 2011) subject to distinct expectations, and as “intervenient beings” (Maier 2007: 2) who inevitably deploy necessarily transformative strategies.

These theoretical arguments shed another light on the normative strategy in legal translation and interpreting — literalness. Legal translation and interpreting practiced as a literal type of translation fulfilling a “documentary” mission (Nord 1997: 50–52) have traditionally been justified as pathways granting direct access to two other long-standing ideals in this field — i.e., “equivalence” and “neutrality”. However, once these concepts are challenged in their totalised forms, literalness emerges as *one* translation strategy *selected* from a variety of existing options. True, literalness is certainly the translation formula generally applied in the legal domain, but, as Mayoral (2003b: 20) warns, not necessarily because professionals perceive it as the best one available: inasmuch as it converges with existing expectations, it often proves to be an efficient “survival” or “defensive” strategy in conflictual scenarios and in the face of an institutional framework which is traditionally suspicious of translation. In any event, the widespread use of literal formulae cannot be attributed directly to a conscious, deliberate adoption of this translation procedure: it can also be read as the poor outcome of uncritical, unqualified or inexperienced practitioners (as indeed demonstrated by Taibi and Valero 2005); or as an undesired side-effect of the translation norm internalised as natural in institutional settings (Koskinen 2008: 21) — be it the “sameness format” perceived as a compulsory obligation in international organisations (Sosoni 2011: 85–86) or the “verbatim interpretation” requirement (Mikkelsen 1998) which acts as deterrence to explanation of cultural differences. Holly Mikkelsen (2000: 45–46) points out the risks involved in:

“provid[ing] information about a certain practice, concept, or expression when you are familiar with the subject and you want to help people communicate. There is a danger [...] that you may be perceived as favouring one side or the other by speaking for them or explaining their attitudes.”

As against this view, literalness can be judged, not as being ‘neutral’, but as privileging particular sides or interests. In purely abstract terms, literalness, a source-oriented strategy, prioritises ‘adequacy’ over ‘acceptability’, namely, the formal adhesion to the original pole to the detriment of acclimatisation to the standards, expectations or reference frames of the receiving culture. Certainly, in the literary realm, and especially when translating into “major languages” (Venuti 1998: 10, 26), literal renderings have been supported, following Berman or Lewis, for the aim of opening up receiving cultures to the trials of the foreign, as a way of letting the original culture be heard in its own terms, and therefore as

“abusive” or “minoritising” moves resisting dominant naturalising tendencies. However, many are the scholars who have recently alerted to the danger that, in the legal field, literalness might act as an excluding, alienating mechanism (Koskinen 2008: 145) or as an instrument at the service of (neo)colonial forces — for instance, those suffocating long-standing patterns and elements of minoritarian legal traditions under the influence of English as lingua franca at international organisations (Baumgarten *et al.* 2004). At textual level, cross-cultural differences as regards conventional codification of prototypical text-types may result in literalness acting as an accomplice of cultural misunderstandings.

In fact, inasmuch as translation entails a refracted reception of alien idiosyncrasies, and to the extent that the ensuing relocation of meaning is inevitably influenced by the dominant ideologies, established identity constructions, and accepted social discourses and narratives prevailing in the target context, the renderings resulting from literal translation, due to their lack of convergence with reigning expectations or values, might be perceived as blunt, weird or exotic, and thus reinforce negative perceptions of the foreign culture as radically Other. For instance, due to cross-cultural differences in institutional language, literal transfer of formal register might be perceived as intimidating (as suggested, in the field of court interpreting, by authors such as Berk-Seligson 2002). Conversely, literal rendering of texts written in plain language might be interpreted as lacking authority if they are far removed from the degree of correction and elaboration expected in the target language (as pointed out by Roser Nebot 2003 in reference to legal translations into Arabic). In addition to this, the impact of biased, stereotypical images of the Other and of contextually-exacerbated narratives should not be underestimated. For example, a word-for-word rendering such as “Central Register of Convicted Persons and Rebels” by the Spanish authorities (INE 2008), in addition to being conceptually incorrect, perpetuates the association of the country’s image with its former authoritarian regime. On larger levels, as demonstrated by Martin and Taibi (2010) in their analysis of legal translations carried out in the politicised context of the “War on Terror”, powerful narratives such as those traversing post-11S Western societies can be aided and abetted by literal translation, with the result of blatant manipulation which, in the cases examined, could have had incriminating consequences.

It could even be argued that literal translation as an expectation might not merely feed suspicion against those needing translation or interpretation, but also against translators themselves. In a court session reconstructed by Agencias (2007), a Spanish judge requests the translator to give a *literal* rendering in order to clarify the associative network of meanings reminiscent of radical Islamism triggered, precisely, by a rendering which does not replace the ideologised image of “paradise” as a “reward” (thus initially translating as “May God reward them with paradise” [our translation] a fixed Arabic expression, the conventional meaning of which

could be “May they rest in peace”). This *paradoxical* request proves that the strict call for literalness when this strategy is known to be profoundly problematic puts professional translators against the ropes. If translators and interpreters are prevented from using their knowledge and abilities to explain differences where equivalence is not an outright transaction, they are somehow forced into a clandestine status of involuntary offenders, obliged to operate on the knife-edge of (un)lawfulness.

Not surprisingly, in recent times, proposals to diversify the strategies which can be legitimately used by translators (from explanatory translation techniques, to larger conciliatory practices, such as rhetorical and stylistic adaptation, cross-cultural mediation, etc.) have increased significantly, both from the field of community translation and interpreting and in the sphere of national or supranational organisations. The contrast between two diametrically opposed strategies found in real texts may exemplify this shift towards explanatory, hybrid translation formulae. Whereas in the English translation found in 2010 in the webpage of a Spanish regional authority ([www.asturias.es](http://www.asturias.es)), users interested in achieving a “burning permit” were advised to submit their application to the “Service Chief of the Planning and Management of Woodlands of the Regional Ministry of Rural Environment and Fisheries” (a literal rendering which does not make it easy to arrive to the “*Jefe de Servicio de planificación y gestión de montes de Consejería de Medio Rural y Pesca*”), in the Spanish translation offered in relation to “Non-Impediment Certificates” by the Office of the City Clerk in New York users were offered the hybrid, probably non-standard, but certainly effective in communicative terms equivalent “*Certificado de soltería (o de 'No-impedimento')*” (<http://www.cityclerk.nyc.gov/sp/html/marriage/non-impediment.shtml>). These examples show, to use the concepts in Tymoczko’s (2007) work, that attempts committed to ‘enlarging’ legal translation and interpreting in order to remedy the shortcomings of dominant translation formulae entail parallel efforts towards ‘empowering’ legal translators and interpreters. The search for alternatives to “faithful” renditions as traditionally expected implies and requires an analogous problematisation of the concept “neutrality” widely understood as “invisibility”.

## **2. Towards the Conquest of the Space of the Neutral, Intervenient Translator**

Together with faithfulness, the obligation to remain neutral often appears in codes of ethics as an explicit requirement. Nevertheless, just like faithfulness, in post-positivist approaches neutrality reveals itself to be epistemologically impossible. Certainly, scepticism about the concept does not do away with the powerful force of the social definition of the role attributed to legal translators and interpreters. In fact, the regulatory discourse in codes of ethics encapsulates deeply entrenched expectations which ideally depict legal interpreters as mechanic “non-presences” or

“conduits” (Diriker 2011: 27). Similarly, those expectations conceptualise legal translators as powerless transcoders merely providing raw material for further processing by the “real” experts (Snell-Hornby 2001: 114) or as anonymous professionals giving voice to their institution by performing “an activity perceived as a form of mechanical code-switching” (Koskinen 2008: 67). The image of translators or interpreters as ghost figures acting in the shadow (Koskinen 2008: 1), as individuals necessarily deprived of all subjectivity and who “do not demand any space of their own”, according to Helge Niska (1995: 305), seems almost impossible to challenge or replace in the institutional realm. Nevertheless, a search for a more elaborate conceptualisation of neutrality seems crucial, both at a theoretical level and at an operational level.

A major criticism towards conventional expectations around neutrality concerns its restrictive association to the linguistic dimension. Indeed, attempts to extrapolate this concept as socially articulated to politically sensitive situations, to conflict or violence-ridden settings or war zones have demonstrated the limited significance of its conventional, decontextualised association with impartial transfer of meanings (Inghilleri 2010: 192, Kahane 2007, Boéri 2013). Additionally, even though codes of conduct actually often regulate on issues related to a larger concept of neutrality — confidentiality being the most common requirement (McDonough 2011: 30-31)—, often for the purpose of requiring translators or interpreters to refuse a project or commission if they are involved in evident conflict of interests (Lobato 2007), they do not address important problems derived from the view of translation professionals as “non-persons”. These include the highly vulnerable positions in which many locals working as translators or interpreters for international peace-keeping forces have been left in post-conflict societies after the retreat of those troops, as recently denounced in the media (González 2013), or the clash between the requirement of confidentiality for translators and interpreters and other obligations they might have in other capacities, like the duty to disclose certain illegal acts as required of citizens at large (Ko 2006: 49).

In an attempt to encompass the complex, often context-specific demands pending upon “neutral” translators and interpreters, recent research on legal translation and interpreting has explored a series of concepts contributing to a better understanding of this principle and helping to own up to the acrobatic skills required to strike adequate balances among conflicting loyalties in legal translation and interpreting. For instance, Bourdieu’s notion of *habitus* as applied to the legal realm (Vidal Claramonte 2005, Valero and Gauthier 2010) enables us to better grasp the broader, overlapping planes where legal translators and interpreters have to act out their role strategically and contingently so as to make the most of, accumulate or preserve symbolic capital. Insights into the concept of *identity* have brought about a wider perception of legal translation and interpreting as instances influenced by larger processes of

identity construction and as particular stages whereby social, cultural or professional identities are renegotiated (Martín Ruano 2012, Vidal Claramonte 2013). Empirical research focused on the dynamics of identity negotiation not just in relation to, but also throughout, the interpreting-mediated event has revealed to what extent interpreters, far from staging out monolithic professional identities, re-negotiate and co-construct in various ways, contextually, tactically and/or sequentially, the identities they project throughout their performance (Mason 2005) — a finding that may also be relevant for the study of legal translation. The consideration of *power* at least in a threefold way — firstly, as a relational category turning every translation or interpretation into an inherently *political act* also in the legal domain; secondly, as a *constraint* significantly conditioning the potential behaviour of legal translators and interpreters; and thirdly, as *agency* allowing innovative approaches and practices — has fostered a better understanding of legal translation and interpreting as activities in which context-specific factors and hierarchies may limit the binding character of general translation and interpreting norms (Ko 2006), while revealing at the same time that new context-specific avenues for legal translation and interpreting can be explored.

By combining theoretical tools such as *habitus*, *identity* and *power*, “neutrality” appears as an attitude which needs to be *contextually* built and maintained. As a long-term multifaceted challenge that requires complex responses interconnecting many levels, it cannot be determined in Manichean assessments of accuracy/inaccuracy, involvement/non-involvement, impartiality/partiality. In fact, once absolute detachment is declared epistemologically unfeasible, contextual formulae of “neutrality” need to be searched for as the effects of complex alchemy processes where ingredients including *habitus*, *identity* and *power* need to be combined satisfactorily by the impartial translator *intervening* in a given situation. Let us remember that, in this paradigm, neutrality does not prevent intervention, but assumes it as a precondition. As warned by Mossop (1990), in the present era “there is no neutral, self-effacing strategy available to the translator, who must select from among many options in order to meet institutional goals.” Invisibility — the behaviour traditionally construed as neutral — is not neutral either: Koskinen (2000: 99) defines it as “a strategic illusionary effect, as occulted visibility”. From this viewpoint, many strategies which in an isolated or decontextualised manner could be judged as errors betraying the also sacrosanct ideals of Faithfulness or Accuracy could indeed be serving the goal of neutrality as a complex social role which needs to be performatively acted out: standardisation of non-conventional wordings, institutionalisation of the resulting translated message, strategies creating distance vis-à-vis the text or the interlocutors, language correction and correct behaviour at large, etc. could be procedures systematically applied by legal translators and interpreters who need to comply with the dominant *habitus* of the translator or interpreter as a discreet, cautious, low-profile, nearly inconspicuous professional. True, other positions for translators and

interpreters acting impartially can be occupied in the continuum of (in)visibility where translators and interpreters negotiate their identities; other innovative forms of professional *habitus* can be explored.

Perhaps one of the challenges for future research is to further investigate new formulae of legitimate translational neutrality which do not necessarily entail confining translators and interpreters to the ritualised but restrictive space of invisibility and non-interference. The exploration of new *intersectional* relations among such overlapping but non-excluding concepts such as (in)visibility or (non)involvement might prove fruitful in this regard (cf. Brufau 2009 for a discussion of the concept of intersectionality). If neutrality is impossible but expected, the delimitation, both theoretically and through situated practice, of the legitimate space where intervenient translators may operate without compromising the impartiality requested of them seems to be an urgent need. In fact, to the extent that “an effective communication process is a shared responsibility” (Toledano 2010: 21), the importance of working *together with* legal agents in this process of role (re)definition cannot be overemphasised. The strict, but ultimately insufficiently detailed discourse of regulatory instruments such as codes of ethics, focusing mainly on what translators and interpreters cannot do, can be replaced by or completed with more comprehensive explanations of what translators and interpreters *need to* do, and even of what *e/else* they could legitimately do, in the interest of intercultural communication broadly understood as a guiding principle of our multicultural age. A study published by the European Commission in 2009 explicitly praised the role of “guidelines to good practice” as a way “to support the practical implementation of the professional code of conduct” (2009: 5). Guides such as the one drafted by Bischoff *et al.* to help in interpreter-mediated encounters in the health sector, which explicitly claims to “promote a climate of mutual trust and empathy” (2009: 15) in triadic exchanges, are very revealing of the paths which can be further explored in the legal domain.

Going beyond established dichotomies might also be a challenge that needs to be addressed in future research *and* praxis. Certainly, in the wish to remedy the current underestimation of those ghost figures expected to operate in the shadow, calls for pro-active translators playing a larger and more visible role are increasingly frequent. Nevertheless, the option of moving into the gaze of those outside the profession in order to claim the right to legitimately interfere when non-involvement is still an explicit request is rather risky. Although in the future they might be highly praised for it, like Velázquez, the painter who boldly decides to depict himself in *Las Meninas* accompanying the maids of honour, in their immediate context painters/translators drawing unexpected attention to themselves might be perceived as revolutionary and, perhaps, as potentially dangerous. By becoming openly visible, translators also become exposed to the risk of being targeted, suspected and handcuffed once again.

In this regard, in the above-mentioned climate of suspicion currently surrounding legal translators and interpreters, one of Imre Kertész' self-portrait photographs reveals itself as particularly inspiring. In that self-portrait, the image of Kertész' wife occupies half of the picture. Kertész' self-portrayed hand, the only part of his body that can actually be seen, rests on her shoulder. This *intervening* translator/photographer, actually the one who shoots the picture or who enacts intercultural communication, is clearly present, but that presence is not felt to be offensively obtrusive. Still, although drawn back, *there s/he is*, instantly available and ready to help, reassuringly, should misunderstanding hamper communication or should there be an extra need for neutrally intervening in order to make it possible.

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## Biography

Dr. **M. Rosario Martín Ruano** teaches translation at the University of Salamanca. Her research interests include legal and institutional translation, translation theory, gender studies and post-colonial critique. She has published several books, anthologies and essays on these issues, including *El (des)orden de los discursos: la traducción de lo políticamente correcto* (Granada, Comares, 2003), *Translation and the Construction of Identity* (Seoul: IATIS, 2005, coedited with Juliane House and Nicole Baumgarten) and *Traducción, política(s), conflictos: legados y retos para la era del multiculturalismo* (Granada, Comares, 2013, coedited with María Carmen África Vidal Claramonte). She is also a practising translator.

E-mail: [mrmr@usal.es](mailto:mrmr@usal.es)



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## Notes

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