

LEGAL TRANSLATION AND INTERPRETING IN PUBLIC SERVICES: DEFINING KEY ISSUES, RE-EXAMINING POLICIES, AND LOCATING THE PUBLIC IN PUBLIC SERVICE INTERPRETING AND TRANSLATION

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Abstract

This monographic section of the *Revista de Llengua i Dret, Journal of Language and Law* presents the findings of six critical perspectives on translation and interpreting policies and practices in modern societies that pose challenges for public institutions. Taking a critical and empirical stance, the papers provide data and reflections on how language access is critical to fulfilling fundamental rights and ensuring the ability of institutions to implement their mandates effectively. The introductory article reviews the role of public services in present-day multilingual societies and of translation and interpreting in relation to the policies governing language access. It goes on to review conflicting implicit theories of translation and interpreting by providing a brief discussion of the roles prescribed and described for translators and interpreters. Finally, it proceeds to present the papers, which are constructed around two axes: (a) an examination of practices capable of providing evidence for policy redesign and reform; and (b) a fundamental review of the role of public service interpreting and translation (PSIT) itself, conducted by means of comparative studies which examine the needs and perceptions of PSIT in various domains, and the challenges of training in the face of emerging realities.


Keywords: legal interpreting and translation; translation policies; language access; social justice; minorities; multilingualism; language rights; migration.


LA TRADUCCIÓ I LA INTERPRETACIÓ JURÍDIQUES EN ELS SERVEIS PÚBLICS: DEFINICIÓ DE QÜESTIONS CLAU, REVISIÓ DE POLÍTIQUES I DELIMITACIÓ DEL PÚBLIC DE LA TRADUCCIÓ I LA INTERPRETACIÓ JURÍDIQUES EN ELS SERVEIS PÚBLICS

Resum

Aquesta secció monogràfica de la Revista de Llengua i Dret, Journal of Language and Law presenta els resultats de sis perspectives crítiques sobre els reptes que plantegen per a les institucions públiques les polítiques i les pràctiques de traducció i interpretació en les societats modernes. Amb una mirada crítica i empírica, els articles que s'hi recullen ofereixen dades i reflexions sobre la importància de la disponibilitat lingüística en el gaudi de drets fonamentals i en possibilitar que les institucions executin el seus mandats amb eficiència. L'article introductorí revisa la funció dels serveis públics en les actuals societats multilingües, i també de la traducció i la interpretació en el marc de les polítiques que regeixen la disponibilitat lingüística. Tot seguit, examina teories més o menys implícites, sovint contradictòries, de la traducció i la interpretació amb un breu debat sobre les funcions que s'atribueixen, de forma prescriptiva o descriptiva, a traductores i intèrprets. Finalment, es presenten els articles de la secció monogràfica, que s'estructuren al voltant de dos eixos: a) una revisió de pràctiques que forneix dades per a la definició i la reforma de les polítiques públiques, i b) una revisió fonamental de la funció mateixa de la traducció i la interpretació en els serveis públics (TISP) a través d'estudis que ofereixen comparatives de les necessitats i de les percepcions de la TISP en àmbits diversos, com també dels reptes que ha d'afrontar la formació davant les realitats emergents.

Paraules clau: traducció i interpretació jurídiques; polítiques de traducció; disponibilitat lingüística; justícia social; minories; multilingüisme; drets lingüístics; migració.

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1 Multilingual policies, practices and protocols: A timely and critical re-examination

In recent decades, linguistic policies have been increasingly formalized and reflected upon due to the ever-increasing acknowledgment of the symbolic power of language in social and cultural as well as personal relations. This increased acknowledgment was only partially a result of events driven by the globalization of conflict, economic relations, production chains and personal relationships. It was also a reaction against a normalized and politically-inclined denial of diversity paired with an increased awareness of the right to the *public sphere*, in Habermas' terms (1962): that is, having a say in political deliberations and decisions. We can no longer ignore the fact that the public sphere is now multilingual, and yet monolingual policies have been favoring the hegemonic pursuit of the most powerful Western languages – and their ideas.

At the same time, the instrumental and essential nature of multilingualism has been silenced, disenfranchising the different (linguistic) minorities. Voices have been raised in opposition to the tacit policies of institutional and individual monolingual practices (see, among many others, Phillipson, 1990; Lippi-Green, 1994; Skutnabb-Kangas, 1999; Blanchet, 2016), calling for measures to alleviate the substantial economic, administrative and ideological obstacles faced by attempts at supporting and maintaining linguistic and cultural diversity (The Study Group on Language at the United Nations, 2018). The pretext of cost-benefit measures maintains the blatantly discriminatory and assimilationist policies of dominant groups, which are eventually exposed by behavioral, cultural, sociological, philosophical and political studies.

In the midst of this celebrated wave of change, however, translation policies have been largely neglected. And yet, “there is no *language* policy without a *translation* policy” (Meylaerts, 2011: 744; see especially Diaz Fouces, 2002). Even when silencing the very possibility of translation is the weapon of choice, a society's stance on the availability of translation and interpreting services is indicative of its level of comfort level with difference (Monzó Nebot, 2018). Where protecting the rights of *others* is key, so is translation (see Miller, 2001; Giridhar, 2011; Abel, 2013; Nakane, 2013; Gómez Guzmán, 2018).

Providing access to public services in contemporary societies requires a multilingual policy which includes a translation policy: a guide to real-world decisions and actions governing language access and systematic protocols for processes and interactions in which translation-enabled multilingualism constitutes a daily reality. These policies are bound to vary notably between systems (Ozolins, 2010) according to their different frameworks, among which a country's tradition of rights litigation has been highlighted (Ozolins, 2000: 24). Multilingual encounters in public services provide a rich backdrop against which to scrutinise the hierarchies which structure language and language varieties within societies through the interactions of different linguistic diversities (Blommaert, Collins, & Slembrouck, 2005: 198). This volume is a testament to the tacit policies operating in different systems and confirms that public service interpreting and translation (PSIT) opens windows onto socially situated divisions between the entitled and the disenfranchised within those hierarchies.

2 Situating public service interpreting and translation

Civil and constitutional rights and translation-mediated language access are inextricably linked in the public sphere. However, the role of translation and interpreting in providing access is heavily dependent on what we understand public services should be and do, and for whom. Are public services mechanisms for distribution and organisation, ensuring order and normalcy, or are they the means to cover the needs most intimately related to fundamental rights? And if we choose to use the services of the *res publica* to protect our societies, whose rights will be taken into account? Human rights, residents' rights, or citizens' rights? Changes in countless nodes of our networked global society are giving rise to all these questions. As a result, the empirical world has required both academics and policy makers to acknowledge and react to its growing complexities (see, among many others, Bauböck, 2006; Cuadra & Staaf, 2012; Blommaert, 2013; Strokosch & Osborne, 2016; Spencer, 2017).

While we wait for answers which can garner scientific, social and political consensus and resources, PSIT is enabling multilingualism in a myriad of spaces, following translation and interpreting policies which are either instinctive or strategic, pursuing goals either bureaucratic or enfranchising, and conforming to

definitions of translation and interpreting that vary from the traditional to the innovative. In the wake of such realities, PSIT scholars are indeed exploring and reacting to ever-increasing complexities.

Public service interpreting (and translation) has been presented as an institution-driven field, the result of imaginative cost-effective solutions to meet real and urgent needs (Ozolins, 2000: 32). Apart from highlighting the heteronomous nature of the field and its dependence on public financial resources, this statement stresses the fact that it is *institutions* that require PSIT to enable them to communicate with service users and fulfil their mandates. This has important repercussions for policy makers, since it is the public servant's right to interpreting which should be recognized, as without it they are unable to perform their key functions (see Gustafsson, Norström, & Höglund, this volume). When communication with users fails, rules cannot be made known and complied with, the administration's efficiency cannot be achieved and communicated to taxpayers, and the system as a whole fails to demonstrate that it can and should be trusted (see Strandvik, 2019).

Thus, PSIT has a dual role: it provides the means for civil servants to implement their own right to provide access to basic services; and it guarantees individuals' rights to access those services and fulfil their citizenry (understood in broad terms). Indeed, PSIT has been described as a profession born into a tradition of social justice and equity (Garber, 1997), rooted in social justice (Bancroft, 2015). This role has been idealized at times but, even if it is now naïve to consider translation and interpreting as a means to effectively correct social and personal power imbalances (Angermeyer, 2013), public service interpreters and translators are nevertheless useful agents for showing respect for and recognition of otherness in this world (see Fishman, 1993) and for empowering minorities to claim their rightful place in the public sphere.

The availability of translation and interpreting services has been linked to a migrant community's collective confidence-building process (Çiçek, 2002) and its eventual integration (Hernández Sacristán, 1997), and increased recognition through interpreting of otherwise minoritized languages has been shown to enhance minoritized groups' self-esteem and competence (Tapio & Takkinen, 2012). The practice of translation and interpreting has also shown significant benefits for migrants and been identified as a sign of (Aguilar-Solano, 2015) and a means for (Pena, 2016) their social integration. Practicing interpreting and translating is also, however, a dangerously open door to traumatic experiences for translators and interpreters working in especially sensitive situations (Lipton, Arends, Bastian, Wright, & O'Hara, 2002; Doherty, MacIntyre, & Wyne, 2010; Crezee, Jülich, & Hayward, 2011; Costa & Briggs, 2014; Bancroft, 2017: 209), especially untrained translators and interpreters. Negative emotional consequences and trauma can also be incurred when individuals are 'used' as interpreters without due consent, as is the case for many children—especially migrant children— all over the world every day (Gustafsson et al., this volume).

Translation and interpreting reveals both possibilities and inefficiencies of great magnitude. This monograph identifies both in areas of legal translation and interpreting where data are still insufficient to guide the formulation of efficient policies. It focuses on vulnerable populations providing and requiring language access by investigating how interpreting (more accurately termed *language brokering* when children are used as interpreters) has affected now-adult child language brokers (Gustafsson et al., this volume), and exploring how to build rapport with children being interviewed by the police with the aid of an interpreter (Salaets & Balogh, this volume). A counterview is offered with a survey of public service agents, specifically members of security forces, to elicit their perceptions and beliefs with respect to their translation and interpreting needs (Adams & Alonso Rodríguez, this volume).

3 Reimagining interpreting and translation for the public services

Accepting that policy is a guide to action, most particularly collective action, policy design needs to be based on thorough knowledge of the possibilities for and consequences of practical and structural decisions. It goes without saying that knowledge requires a detailed analysis of the empirical world and the instruments, resources, processes and interactions required for directing and improving actions. The analyses, the data gathered and—most importantly—the meaning of “improvement” will be contingent upon our implicit theory or idea of translation and interpreting for the public services. And conversely, the value of our (implicit) theory is dependent on its capacity to guide action within its own framework.

These statements require us first to examine how what we learn from PSIT impacts our ideas on the field, and then to design or adopt a theory according to which the complexities at stake can be described and explained to enable predictions to be made. Only then can we identify the nodes within the system that are in need of improvement, envision corrective actions and assess the risks. This is tantamount to saying that efficient practice requires efficient policy-making as much as efficient policy-making requires quality data-based evidence of what is and what is not efficient. Ultimately, policies are judgments of what is possible and desirable in a particular situation and how this should be attained.

As for interpreting and translation, how we understand what translation and interpreting should accomplish has been constructed around the question of role; that is, the function of translators and interpreters in the drama of the interaction. In any triadic situation, only the interpreter or translator is familiar with the traditions and frames of reference of both speakers. Only the language mediator can perceive how the other participants understand the empirical world, the situation and each other. Given these advantages, should the interpreter or translator take action to advance and resolve relevant differences, or should they act as mere conduits in finding the best linguistic rendering to convey in L2 what was said in L1?

After a first era during which the conduit metaphor (Reddy, 1979) was taken as an inspiration to guide practice and the drafting of codes of conduct (Merlini, 2015: 28), presumably to arrogate authority and garner prestige (Lambert, 2018), an increasing number of studies now show how interpreters engage their own personal ethics (Anderson, 1978; Bot, 2003; Inghilleri, 2008; Valero Garcés, 2016), transgressing the requirements of impartiality by mediating, taking on additional tasks and making decisions as to when omissions and additions are justified (Bancroft, 2017: 205 ff). Studies suggest that interpreters perceive power imbalances and are prompted by this awareness to correct hierarchies, resorting to *unorthodox* practices such as deciding what to omit and what to add (Patel, 2002: 223), voicing and silencing, and thereby deciding which messages and participants access the public sphere and when.

One may wonder whether the coexistence of orthodox and unorthodox practices and prescriptions actually raises an actionable *problem* with the practices or whether it simply testifies to the diversity of contexts, agents, aims and requirements involved in public service interpreting and translating. This second option seems to be garnering growing support as the limits and nature of the translator's and –mostly– the interpreter's roles are defined as situated and negotiated (see, among others, Mason, 2009; Aguirre Fernández Bravo, this volume). This potentially normalized unorthodoxy points to the need to re-examine our theories on PSIT; not only its guiding codes and principles, but most importantly, the way the expectations placed upon translators and interpreters are transmitted to them. The second section of this monograph reviews issues and assumptions in relation to the implicit theories of interpreting for signed (Pérez Senra, this volume) and spoken (Aguirre Fernández Bravo, this volume) languages by examining perceptions of interpreters and interpreter users and proposing a tool for self-assessing perceptions of role (Aguirre Fernández Bravo, this volume). It also offers a critical review of the aims, challenges and successful practices of PSIT training programs by identifying underexplored issues and suggesting further actions (Valero Garcés, this volume).

4 This monographic section

As advanced in the previous sections, issue 71 of the *Revista de Llengua i Dret, Journal of Language and Law* presents the findings of six critical perspectives on translation and interpreting needs in modern societies that pose relatively new challenges for public institutions. Our aim is to shed light on a series of situations in which professional and non-professional interpreters and translators share social spaces, identify issues and challenges which act as obstacles to justice or to professionalization and, eventually, suggest measures that can bring public institutions closer to an effective management of their purposes and of translation and interpreting needs.

The authors hereof take a critical look at the challenges faced by vulnerable populations (asylum petitioners, minors, survivors of sexual violence, etc.) when confronted with interactions in public service settings which are characterized by a lack of institutional planning, insufficient or unenforced language access policies, or insufficient political will. Most saliently, the authors of this monographic section advance the field by defining key issues affecting policies and performance, such as the needs of especially vulnerable populations; the

effects of interpreting on personal development; the perceptions, expectations and experiences of all those involved in interpreted and translated situations; and training and research needs in public service interpreting and translation. In doing so, they re-examine critical public service communication and language access policies in a variety of public service settings in areas of legal translation and interpreting, some of which entail considerable access difficulties for academics. In concrete terms, this volume focuses specifically on the empirical bases required to design policies and protocols, complemented by critical assessments of key issues in training, practice, research and policy making. Each subsection features three contributions by authors from a diverse array of settings, language pairs and user populations. From Swedish health care centers to law enforcement corps in the Canary Islands, the editors of this section celebrate and interrogate the local and the global in this incision into new challenges in public service interpreting and translation.

4.1 Examining policies and practices

Volume 71 of the *Revista de Llengua i Dret, Journal of Language and Law* offers three visions of domains in which policies and protocols for the translation-mediated management of multilingualism invite scrutiny.

Contributors Kristina Gustafsson, Petra Höglund and Eva Norström (“Language interpreting and brokering in Swedish public service institutions: the use of children for multilingual communication”) investigate Swedish policies and practices, and the discrepancies between them, in relation to the use of children as language brokers in public service settings. Their study exposes a disconnect between established best practices of using professional interpreters and the documented reality of children being employed regularly and frequently as language mediators in a wide variety of situations. In addition to approaching the problem from a policy perspective, the authors go one step further by lending due consideration to the psychosocial burden placed on children used as interpreters (or, more accurately, *language brokers*) and analyzing a valuable corpus of interviews with now-adult migrant children. Conclusions as to the possible violation of the rights of the child, discrimination against their families, and lack of legal certainty offer insightful food for thought for policy makers.

Heidi Salaets and Katalin Balogh (“Interpreter-mediated Questioning of Minors (ImQM): The voice of children and their rapport with interpreters”) focus on the questioning of minors in forensic interviews. Their approach looks at the questioning team as a whole and explores the complexities of the interactions, placing particular emphasis on the expectations and possibilities of the role of the interpreter. Based on an experimental observation with Flemish children, interview teams and interpreters (Hungarian-Dutch, Italian-Dutch, Flemish Sign Language-Dutch), their findings offer insightful perspectives on the minors’ perceptions of the interpreter’s role as one that can be central to rapport building. In questioning the neutrality and invisibility prescribed by most interpreters’ codes of ethics, the authors build a case for the urgent need to completely rethink these codes and take into account the complexities and requirements of interactions with minors.

In the domain of law enforcement, Heather Adams and Paula Alonso Rodríguez (“The linguistic and interpreting needs of security forces in Gran Canaria: a preliminary study”) examine how members of three different security forces in Spain perceived their interpreting needs and how they assessed their experience with interpreters. Both academics and policy makers can use these perceptions to fine-tune their investigations and proposals. The multilingual needs of security forces have a serious impact on the advancement and control of security threats, and their complexities are coming to the fore in academic work as well as policy making, as Adams and Alonso Rodríguez show. This is still an underexplored area, which makes the contribution a valuable source of data for future analyses.

4.2 Defining translation and interpreting for the public services: Perceptions and expectations

This subsection includes three studies that invite us to reconsider our notions on translation and interpreting by offering tools and empirical data on real practices and perceptions and examining the underlying assumptions and key issues in public service interpreter and translator training.

The first contribution in this section is authored by Elena Aguirre Fernández Bravo (“Interpreter role (self-)perception: A model and an assessment tool”), who delivers a research-driven, flexible, multilayered model for the description of interpreter roles, ranging from the most neutral and machine-like to the most

interventionist. She offers a continuum of nine flexible, non-prescriptive categories that can be adapted as a tool to aid the practitioner, the end-user and the emerging interpreter in developing the awareness needed to critically assess their expectations in any situation involving interpreting. In a similar vein, her nuanced model offers its users access to the metalanguage necessary for articulating such reflections. As the author suggests, the tool can make a considerable contribution to aligning the expectations of all stakeholders, users, interpreters, recruiters and even policy makers.

In the realm of sign language interpreting in court settings, Belén Pérez Senra (“La interpretación judicial en lengua de signos: una cuestión de rol. La percepción de las intérpretes de lengua de signos de la Comunidad Valenciana de su rol ante el tribunal” [Sign language court interpreting: a question of role. The perception of the sign language interpreters of the Valencian Community of their role before the court]) conducts an empirical study that reveals a lack of mutual understanding and awareness between agents in the courtroom. As the author argues, discrepancies in perceptions complicate the negotiation of footing and roles, leading to misunderstandings between stakeholders in the interpreter-mediated court hearing. She argues that sign language interpreting and perspectives on the role of public service interpreters are ideologically loaded concepts entrenched in social hierarchies of languages and agents and that these concepts need to be defined collectively and flexibly for interpreters to be able to adapt to different situation-driven demands.

Carmen Valero Garcés’s contribution (“Training public service interpreters and translators: Facing challenges”) constitutes a comprehensive vision of training possibilities at the tertiary level, including positive and negative aspects which reveal gaps between training and social needs, gaps which ultimately have an impact on professionalization. By taking stock of the experiences of PSIT researchers, practitioners and trainers, several specific underexplored areas are brought to the fore, including research conducted by students, the lack of attention to translation in public service interpreting and translation studies, and the need to widen the scope of training to include what students of translation and interpreting need to prepare them for their future careers. Models of successful initiatives in educational protocols are offered from a variety of geographical settings. The paper is successful in identifying best practices and in exploring systematizations of concerns that are shared across cultures and can therefore guide future reflections on designing training and implementing programs of reform.

5 Conclusion

We have long been aware that language is never innocent (Barthes, 1953), that it is a political instrument and an institution. Language is power and hierarchy (Bourdieu, 1978) as much as enforced silence is pain (Berman, 2013). Institutions act as competent operators in our diverse societies when they provide solutions for all individuals to be heard and to experience effective communication with the administration. Present-day societies include ever-increasing populations of speakers of languages other than the system’s major language. When public services fail to offer solutions, otherness is silenced. Whether due to lack of awareness, lack of planning, or lack of political will, negligence implies liability. The silence being enforced by such negligence is an act of institutional (institutionalized) violence. The relevance of translation and interpreting in the legal public services of modern democratic societies is indisputable.

Decisions on the distribution of resources need to take a myriad of factors, interdependencies, risks and possible outcomes into account. Policy makers have experienced severe difficulties in recent times. Beyond mere time constraints, resources have been decimated while complexities have become more and more visible against a background of ever-more diverse societies with demands for increasingly participatory and representative practices. By providing critical views of current practices and suggesting plausible data-driven solutions, the contributions in this monograph claim that the examination of practices should also be a shared responsibility. The contributing authors invite us to take part in the public sphere, where we can all share in the production and circulation of discourses. The papers in this monographic section, then, as well as our ensuing discussions, can be seen as a basis for benchmarking and the contemplation of alternatives for policy design.

Contributions such as those presented here are representative of the type of rigorously collected data that is sorely needed to develop the field of PSIT and the policies that govern it. Reaching policy makers is

not always easy, but, when we do, it becomes useless if unsupported by hard evidence. Within the area covered by PSIT scholars, court interpreting has received relatively close attention. Other aspects of legal interpreting and translation in the public services have raised insufficient curiosity, however. Bancroft, Bendana, Bruggeman and Feuerle's "gray zone" of legal interpreting (2013: 96) identifies areas where public service and legal interpreters intersect and collide. This monograph on Legal Interpreting and Translation in Public Services examines the grey areas of law enforcement (Adams & Alonso Rodríguez; Salaets & Balogh) and social services (Gustafsson et al.), as well as other key intersections: where court interpreting meets languages of lesser diffusion (Pérez Senra), where role meets training (Aguirre Fernández Bravo), where research needs meet (or clash with) recruitment planning (Valero Garcés), where codes of ethics meet neglected realities (Salaets & Balogh), where disciplinary axioms meet social needs (Valero Garcés), where different interpreting policies meet actual practices (Gustafsson et al.), where translation meets language ideologies (Pérez Senra), and where perceptions meet reality (Adams & Alonso Rodríguez; Pérez Senra). These intersections require careful stewardship and rigorous examination, and should lie at the core of any systematic attempt to advance research in PSIT.

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