Agency and Empowerment in Translation: The Influence of Josef Winiwarter and His 1866 English Translation of the Austrian Civil Code

Překladatelské jednatelství a zmocnění: Vliv Josefa WINIWARTERA a jeho anglického překladu rakouského občanského zákoníku z roku 1866

Vedoucí práce / supervisor: Doc. PhDr. Marta Chromá, Ph.D.

2019
This PhD dissertation will attempt to map out the agency of Josef Maximilian Winiwarter and the influence his landmark 1866 English translation of the Austrian Civil Code (ABGB) has had on other translators and legal practitioners. It will showcase two additional English translations of the ABGB, one in the mid-twentieth century and the other in the early twenty-first century, in order to substantiate just how influential Winiwarter’s translation was, even a century later. The final part of the dissertation will look towards the future and offer some practical insight and guidance to legal translators based on the research carried out in the dissertation.

The context of Winiwarter’s life and work around the time the translation was produced is discussed in more detail in Chapter 3. This chapter also explores Winiwarter’s motivations and intentions for translating the ABGB into English and introduces the premise that Winiwarter’s text was pivotal in creating a standard for legal terminology and phrasing to be used in future civil-law texts in English.

What influence the translation had on other English-language, civil-law texts at that time and later texts is a central theme in this dissertation and is taken up in Chapter 4. This is illustrated using three case studies. The first study introduces the texts of a UK land registry officer who journeys to Austria-Hungary 30 years after Winiwarter translation was published. The second one explores an adaptation of Winiwarter’s text during the second half of the twentieth century in the United States. The third takes us back to Austria in the early twenty-first century with a new, long-awaited English translation of the ABGB.

Chapter 5 examines future directions for translating civil legislation into English by putting the findings of this dissertation into practice. It takes a look at the recommendations and strategies of Winiwarter and his successors and suggests guidelines based on the Winiwarter tradition. It also makes reference to the Czech Civil Code and the situation at the beginning of the twenty-first century as an example of how to apply these strategies and recommendations for translating civil legislation into English and for bridging the gap between the languages of common law and European civil law.

The key questions of importance that I have tried to answer in this study are

1. Who was Josef Winiwarter and how was he important as a legal translator?
2. Why did Winiwarter translate the ABGB into English?
3. Has his translation influenced other translators or legal practitioners and their texts? And if so, how?
4. How is this knowledge important to contemporary legal translators and to legal translation practices in general?
The answers to these questions, which are developed throughout this dissertation, can be expressed in terms of my academic contribution to translation studies and the field of translation history.

What is the outcome this PhD project and what has it contributed to the field of translation history and legal translation in general?

**Firstly**, it introduces to the public an important legal translator who was practically unknown until now. This, in and of itself, is a significant contribution to the field of legal translation history and translation studies as a whole.

As my research demonstrates, Winiwarter was, in many respects, a pioneer of legal translation in the environment of nineteenth-century central Europe. He was the first person to translate the Austrian Civil Code into English, and as such, established a benchmark for future English translations of continental law.

Chapter 3 answers the first two questions of importance above. This chapter not only provides previously unknown details of Winiwarter’s life and relationships, it creates a rich portrait of a unique legal translator in nineteenth-century Europe who influenced the development of legal translation. Without this research, many detailed aspects of Winiwarter’s life and achievements would have remained unknown.

**Secondly**, my research reveals how the pioneering work of Winiwarter in translating the key civil legislation of a powerful empire has influenced other translators and legal practitioners in central Europe, England, and the United States. It also points to the importance of Winiwarter’s translation in developing and establishing a reliable model for translating the terminology and concepts of civil legislation into English.

The third question of importance above is answered in Chapter 4. This chapter takes us on a journey through the nineteenth and twentieth centuries and shows the different facets of Winiwarter’s influence, from a travelling English registry officer using Winiwarter’s translation to explain the central-European system of registration (Brickdale), various legal scholars in Europe and the United States citing Winiwarter’s translation in legal journals, to an adaptation of Winiwarter’s translation of the ABGB in the United States in the mid-twentieth century (Baeck). We end up in the twenty-first century with the Eschigs’ new translation of the ABGB in Austria and Dr Chromá in the Czech Republic consulting the past translations of civil codes in order to cope with the new terminology and concepts of the Czech Civil Code.

This again is a noteworthy contribution to translation history, demonstrating how a translation travels through time and space and influences other people and texts.

**Thirdly**, my dissertation shows in Chapter 5 how Winiwarter’s text and the texts of his successors can be consulted and used today to translate the complicated terminology and phrasing of continental legislation into English. This chapter ultimately answers the fourth question of importance above. It offers an historical approach to translating important civil legislation into English based on what I refer to as the Winiwarter tradition and provides a framework for applying this approach.
This is undoubtedly an important practical contribution to jurilinguistics and translator training and proficiency in general.

The new Czech Civil Code is used as an example for illustrating this framework. By using this example, the study focuses on putting translation strategies into practice – taking advantage of Winiwarter’s translation, the texts of his successors, and other past translations when dealing with the problematic terms and concepts in the Czech Civil Code. The insight and work of Chromá (2014) has been instrumental in this area. Although her book consults a wide variety of civil legislation from several jurisdictions, she has also looked to Winiwarter’s translation as a source of potential knowledge for translating the terms and concepts in the Czech Civil Code.

Organization of the main chapters in relation to the questions of importance and contribution:

<table>
<thead>
<tr>
<th>Chapter 3</th>
<th>Question of importance 1</th>
<th>Outcome/contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Winiwarter’s life)</td>
<td>Who is Winiwarter?</td>
<td>Introducing an important legal translator of 19th century central Europe</td>
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<td></td>
<td>Question of importance 2</td>
<td>Why did he translate the ABGB?</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Question of importance 3</td>
<td>Outcome/contribution</td>
</tr>
<tr>
<td>(Winiwarter’s influence)</td>
<td>Did Winiwarter influence other translators and texts? And how?</td>
<td>Winiwarter influenced legal translators and experts in Europe, England, and U.S. and helped create a model for translating civil law into English</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>Question of importance 4</td>
<td>Outcome/contribution</td>
</tr>
<tr>
<td>(Practical translation framework)</td>
<td>How is this knowledge important to legal translators and legal translation practices?</td>
<td>Winiwarter’s text and successor texts can be consulted to translate the terms and phrasing of civil law into English</td>
</tr>
</tbody>
</table>
References and Bibliography

Primary sources – English translations of legislation; original legislation in German and Czech

*General Civil Code for All the German Hereditary Provinces of the Austrian Monarchy. First Part.* (1865). Joseph M. Chevalier de Winiwarter (translator). Vienna: Rudolph Lechner, Bookseller to the University. (original copy from Österreichische Nationalbibliothek).

*General Civil Code for All the German Hereditary Provinces of the Austrian Monarchy* (1866). Joseph M. Chevalier de Winiwarter (translator). Vienna: Rudolph Lechner, Bookseller to the University. (original copy from Österreichische Nationalbibliothek).


*The General Civil Code of Austria* (1972). Paul L. Baeck (translator) [Translated from the German edition of August 1, 1966 (Kapfer) with the assistance of the 1866 translation by Prof. Dr. Joseph Ritter von Winiwarter. Revised and brought up to date and annotated by Paul L. Baeck]. Dobbs Ferry, N.Y.: Oceana Publ.


*2012 Czech Civil Code* [English translation, as amended – amended as at 18 January 2013 up to Chapter 7/2013 Sb. and 4/2013 Sb. m. s. – RA345 89/2012 Sb. – last amendment of the text] (retrieved from ASPI).


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Pym, Anthony (2005). Text written following the conference Translation, the History of Political Thought, and the History of Concepts (*Begriffsgeschichte*), City University of New York, 29 September to 1 October 2005.


Sturge, Kate (2004). “The Alien Within”: Translation into German during the Nazi Regime. Munich: Iudicum Verlag GmbH.


**Publikační, akademická či pedagogická činnost**  
*Publication, academic, and pedagogical activities*

**Education**

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- **Ohio University, Athens, Ohio**  
  M.A.  
  Linguistics and TEFL (Teaching English as a Foreign Language)

- **Université François-Rabelais, Tours, France**  
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  Coursework: French Language, Literature, Translation, Journalism, History, and Phonetics

- **Université Paris – Sorbonne, Paris IV, France**  
  Cours Accélérés de Langue, Littérature, et Phonétique

- **Xavier University, Cincinnati, Ohio**  
  B.A. (Cum Laude, Dean’s List)  
  French  
  Minor: Liberal Arts – Philosophy/Theology concentration

**Research and conferences**

- **University of Vienna, Faculty of Law, Vienna, Austria**, 2015/2016  
  Legal translation history research on the 1866 English translation of the Austrian Civil Code with Prof. Gerald Kohl

- **Transius Conference on Law, Translation, and Culture**, 24 to 27 June 2015  
  University of Geneva, Geneva, Switzerland  
  Presentation: An historical framework for translating the new Czech Civil Code into English: The case of the 1866 English translation of the Austrian Civil Code

- **PhD Erasmus Exchange Programme, Rovira i Virgili University, Tarragona, Spain**, 2011  
  Translation history research with Professor Anthony Pym

- **1st International Conference in LSP and Translation Studies-Oriented Textual Analysis**  
  27–28 May 2008  
  Chouaib Doukkali University, El Jadida, Morocco
• 5th European Society for Translation Studies Conference: Why Translation Studies Matters
  3–5 September 2007
  University of Ljubljana, Ljubljana, Slovenia

• Istituto San Pellegrino, Misano Adriatico, Italy, September 2006
  CETRA Summer Session, Translation studies research, organized by the Catholic University of Leuven, Belgium and Rovira i Virgili University, Tarragona, Spain

  Translation Research Summer School in cooperation with the University of Manchester and the University of Edinburgh

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Translation and Teaching Experience

• Translator, Proofreader, Language Consultant, 2017–present
  Charles University – Faculty of Arts (FFUK) and University Rectorate (RUK)
  Providing legal and technical translation, proofreading, and language services to the administrative units of the Faculty of Arts and the University Rectorate

• Translator, 2018
  Palacky University Olomouc – Faculty of Arts and Department of Art History
  Providing translations of academic texts for the Czech and Slovak Journal of Humanities and various academic and technical texts for the Department of Art History

• Freelance Translator, Proofreader, Legal English Instructor, Consultant, 2010–present
  Linklaters, Raiffeisenbank, Kinstellar, KempHoogstad, CPI Group, Central Bohemian Gallery, Czech Radio, Supraphon Record Company, Common Law Review, Czech Academy of Sciences, University of Vienna, University of Jena Germany
  Providing comprehensive language, proofreading, and translation services to various organizations, businesses, and law firms in central Europe

• Legal Translator, Proofreader, English Language Consultant, Oct. 2012–Sep. 2017
  Havel Holásek & Partners (law firm), Prague, Czech Republic
  Successfully managed legal translation and proofreading projects for clients involving contracts, due diligence, document templates, and language advice

• English Instructor, Jan.–July 2011
  Rovira i Virgili University, Tarragona, Spain
  Instructed Spanish university students in academic reading and writing skills

  Linklaters, Prague, Czech Republic
  Provided English-language proofreading, editing, and translation services to the firm’s lawyers and secretarial staff
<table>
<thead>
<tr>
<th>Position</th>
<th>Years</th>
<th>Organization</th>
<th>Location</th>
<th>Responsibilities</th>
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<tr>
<td><strong>Translation Instructor</strong></td>
<td>2008/2009</td>
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<td>Prague, Czech Republic</td>
<td>Trained Czech university students in translating texts from Czech to English</td>
</tr>
<tr>
<td><strong>Translator</strong></td>
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<td>Prague, Czech Republic</td>
<td>Translated Annual Economic Yearbook</td>
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<tr>
<td><strong>Legal Translator and Editor</strong></td>
<td>2008</td>
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<td>Provided legal translation and editing services to the Marketing Department and the firm’s Real Estate Practice</td>
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<tr>
<td><strong>Translator – Czech Government Projects</strong></td>
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<td>Government of the Czech Republic – Pension System Reform, July–September 2005</td>
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<td>Czech Ministry of Finance – Institutional Structure for Introducing the Euro in the Czech Republic, January 2006</td>
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<td><strong>Translator, Editor, Language Consultant</strong></td>
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<td>Translated and proofread financial, banking, and accounting texts; coordinated, edited, and published the bank’s English web pages</td>
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<td><strong>English Instructor</strong></td>
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<td>Getronics (IT Support Company for Dell Computers)</td>
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<td><strong>English Instructor, Translator, Pronunciation Consultant</strong></td>
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<td>Divadlo Na zábradlí (Theatre on the Balustrade)</td>
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<td>Instructed and consulted the actors</td>
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</tbody>
</table>
AESOP, The American English School of Prague, Prague, Czech Republic

- Worked with director in managing the school and developing English-language curricula

Český rozhlas (Czech Radio), Prague, Czech Republic

- Trained Ondřej Havelka a jeho Melody Makers in pronunciation and intonation for the recording of songs

U.S. Embassy, U.S.A.I.D. Section, Prague, Czech Republic

- Teaching Phonetics, Writing, and Conversation to Czech Employees

**Assistant to Director of Studies/Pedagogy**, Summer 1991 & June–September 1992
SPUSA Education Center Prague, Czechoslovakia

- Assisted the director of studies in developing English-language curricula

**English Instructor**, Rychnov nad Kněžnou, Czechoslovakia

- Společenské centrum 1991–1992 (Elementary, Intermediate, and Advanced Adults)
- Five Regional Pre-schools 1991–1992 (Pre-school Children, 4–5 years old)
- Regional Council 1992 (Phonetics and Pronunciation)

**Initiator and Developer of the Regional Library’s English Collection**, 1992
Regional Council, Rychnov nad Kněžnou, Czechoslovakia

- Established an English collection of books donated from the United States and the U.S. Embassy

Ohio University, Department of Linguistics, Athens, Ohio

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**French Instructor**, 1989
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Mairie de St. Cyr s/Loire (Town Hall), St. Cyr s/Loire, France

- Instructed elementary level French adults

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Published Translations

- *Equipment for Recreational, Technical, Wreck, and Cave Diving*
  Restart Project s.r.o. (forthcoming 2019/2020)

- *The Travels of the Puppeteer Family Brát through Europe in the Eighteenth and Nineteenth Centuries*
  Czech Academy of Performing Arts Press, 2012

- *The History of Czech Theatre: A Survey* (volume 1 + glossary)
  Czech Academy of Performing Arts Press, 2010

- Special Advisor for publication and translation of *The International Monetary System: Towards Convertibility, Stability and Liquidity*, by Dr. Eduard Němeček
  Karolinum Press, Charles University, Prague 2000