
Posudek oponenta disertační práce

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Název práce: “Agency and Empowerment in Translation: The Influence of Josef Winiwarter and his 1866 English Translation of the Austrian Civil Code”

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I. A brief characterization of the thesis / Stručná charakteristika práce

The thesis provides a historiographical account of English translations of the 1811 Austrian Civil Code. The author concentrates on the relatively little known first translation by the Viennese lawyer Josef Winiwarter (1866), and provides a comparison of the translation solutions for a set of legal terms adopted by Winiwarter and later translators, namely Brickdale (1896), Baeck (1972) and the Eschigs (2013). The thesis also briefly comments on the English translation the New Czech Civil Code, which reintroduces some concepts and terms from the 1811 Austrian ABGB code into the Czech legal system. The author adopts a narrative approach to translation history, operating with the concept of ‘microhistory’ and conceptual ‘mapping’ across time and space.

II. A brief overall evaluation / Stručné celkové zhodnocení práce

The thesis is the work of a historian of translation rather than a translation scholar; as such, it contributes to the discipline of history/historiography of translation rather than translation studies proper. Some sections would also be welcome by scholars in library science (cf. the extensive documentation of such features as library markings, stamps and binding, p. 38). The thesis has a documentary nature rather than providing an in-depth analysis and discussion of translated material, although Chapter 4 contains a

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V odpovědi, prosím, uvádějte naše číslo jednací.

comparative section and contrasts selected aspects of the various translations. The thesis manages to document extensive historical materials, drawing together data from libraries, newspapers, and even Lehmann's address book listing the residents of Vienna. Its contribution to the discipline of translation studies, however, remains somewhat underdeveloped.

III. A detailed evaluation of the thesis and its individual aspects / Podrobné zhodnocení práce a jejích jednotlivých aspektů

1. Structure of the argumentation

The thesis has a relatively straightforward, logical structure. The theoretical approach is briefly described in Chapter 2. Chapter 3 details Winiwarter's life and work. Chapter 4 provides the core of the thesis, outlining other translations of the ABGB into English and documenting some terminological similarities and differences. Some relevant findings are found here, despite the rather impressionist and unsystematic treatment. The chapter also includes information provided by the translators of the most recent English version, the Eschigs. The author's efforts to secure such data through the ethnographic method have to be seen as positive and add an important dimension to the thesis. Chapter 5 attempts to provide a synthesis of the findings and seeks to formulate (in my view somewhat over-ambitiously) a series of recommendations about a 'method' of legal translation based on what the author calls 'the Winiwarter tradition'. Chapter 6 consists of the conclusion, which is problematic in some parts (relatively unincorporated citations such as Pym's, many instances of authorial self-praise, inadequate elaboration of the more general significance of the findings for the discipline of translation studies). The visual summarization of the content of the individual chapters on p. 96 seems redundant because it does not add any new information.

A part of the problem of the thesis is that it fails to formulate adequate research questions (cf. their list on p. 94) to enable the author to go beyond mere description; the answers to questions 3 and 4 (how Winiwarter's translations influenced other translations and how that knowledge is important to contemporary legal translators) are not supported with very convincing analysis and lack the necessary academic rigour.

Where the author generalizes his findings in the conclusion (e.g. when calling Winiwarter '*a pioneer of legal translation in the environment of nineteenth-century central Europe*'; p. 95), it is not clear whether the legal translation practice of the given historical period was adequately considered in its whole range, i.e., apart from the single case of Winiwarter. If as many as ten different language translations were officially produced in Austria-Hungary for the purpose of the multi-lingual inhabitants of the empire,

then it may be assumed that some legal translation tradition must have existed there. How Winiwarter fit into the context of legal translation of his time remains to be seen. It would also be nice to discuss how JW fits into legal translation outside central Europe (cf. the 1824 English translation of the French ‘Napoleonic’ Civil Code of 1804 by George Spence).

2. *Formal elements of the thesis / Formální úroveň práce*

The thesis is presented in a coherent manner, using a large number of interesting and unique visuals that attest to the author’s passion in everything related to Josef Winiwarter. When reading Chapter 3, the reader is filled with suspense at the unfolding life story narrated by the author.

The language of the thesis is very intelligible; the author does not get bogged down in any overly complex theoretical discussions or difficult terminology. In some places, the colloquial register could be toned down towards a more academic style (*‘If you have ever translated civil legislation into English, you will most likely will have no difficulty comprehending...’*, p. 75; *‘Chromá hashes over the issue...’*, p. 90; *‘your text will almost always have a past, and if you do a little digging, you might be surprised at all of the practical information you find’*, p. 92). While I appreciate the author’s metaphorical language, it should be noted that such an approach may occasionally lead to imprecision (cf. *‘...the real substance of translators. They are bubbling, flowing forces with the potential to join and interconnect the pieces of the world around them’*, p. 1; or *‘Translators are not solitary creatures scavenging for random bits of information in an isolated environment’*, p. 74). Academic language should be somewhat more restrained.

It would have been beneficial if the author had used footnotes more extensively in order to supply additional information relevant to the thesis. In Chapter 4, for instance, the author cross-references Chromá’s (2014) discussion of a number of terminological issues; however, he never provides any specific information apart from directing the reader outside the text of the thesis (e.g., p. 88: *‘See also the discussion of ‘usufruct’ in the section on Chromá 2014’*).

Given the historiographical nature of the work, it is not surprising that the author does not frequently use mainstream translation concepts; however, it would be good to use them in relevant places. For example, the notions of source language and target language are mentioned only on p. 75 (and in a quote). The absence of adequate theoretical concepts and translation-related terminology is strikingly noticeable in the thesis.

The thesis contains very few mistakes and typos, e.g.: p. 11: *Rumanian*; p. 48: *‘although there are some difference’*; p. 55: *‘how to translation continental terminology’*.

3. Work with sources and/or data / Práce s prameny či s materiálem

In this section, I provide a commentary on some of the issues that I think the author should address in the discussion during the defence.

- p. 6: The thesis contains many unsubstantiated generalizations. E.g. the following formulations on p. 6:
- (a) *'Many researchers, in fact, use case studies a method without further elaboration as two what a case study actually entails or how it is used in their particular research.'* (This should be more specific, perhaps an exemplification of the researchers' failings would help);
 - (b) *'Context-oriented research is grounded in sociology and cultural studies...'*; (The use of the expression 'grounded' appears to be too strong here (though the statement is partly true). Now, since the author submits the thesis in the discipline of translation studies that deals with language, could he provide a more specific definition of 'context' and perhaps outline how that notion (as well as case studies) is used in that discipline (or, more generally, in discourse studies?).
- p. 13: Some methodological formulations in the thesis appear to be somewhat underdeveloped; sometimes the ideas could be expressed with a more extensive reference to the literature (e.g. *'historical research... is initially always a process of trial and error, and eventually the errors become less and less. As research progresses, more specific decisions and conclusions may be made and a more solid foundation established'*, p. 13).
- p. 20: A minor note about Winiwarer's constituency: The author mentions *'District of Boleslawiec (Bunzlau)'*; as long as that is in Bohemia (as the reference to Liberec seems to confirm), then it should probably be Mladá Boleslav, rather than the Polish city of Boleslawiec (which were both known under the same German name of Bunzlau).
- pp. 44-45: the discussion of the motivations of modern publishers for reprints of historical books is only very marginally relevant and, in the absence of any sources offering an explanation of the situation, somewhat simplistic. Should it have a place in the thesis, I would expect to see a well-rounded discussion about modern book publishing (print on demand, falling book sales, republication of non-copyrighted works etc.). Are books such as Winiwarer's translation likely to *'become lucrative merchandise'* (p. 45)? Sure, *'they want to make money'* (p. 44), but what Amazon and others might be doing is something else as well: extending their portfolio into the non-copyrighted area and, maybe, developing into a parallel (?) 'Project Gutenberg', encompassing printed knowledge under their auspices (?). Amazon et al. as print-on-demand archives rather than just book selling?
- p. 56: I like the finding about the inconsistency of use of there- compounds in Baeck's version. However, concerning Section 5, I do not agree with the author that *'Baeck essentially copied the clause from*

Winiwarter with no changes'. The changes concern punctuation – something that is clearly evident in the other sections as well. In fact, Winiwarter is a very bad punctuator in English: is it because he is following the punctuation rules of German (cf. the placement of the comma, particularly in relative clauses)? I also disagree with the author's classification of there- adverbs as 'antiquated' and 'legalese'. What language varieties do (or should) we take as a benchmark here – everyday spoken English or the specific register (or style) or legal English? What is the source of the following statement: '*his education in English took place in a formal, perhaps even old-school, legal environment in the 1930s and 1940s where archaisms unfortunately flourished and were considered to be the norm*'? The statement merges an initial statement of fact with speculation and is coupled with the author's explicit negative evaluative stance; as a result, it appears to be based on one's intuition rather than objective evidence.

- p. 61: When discussing the concepts of 'decedent' and 'deceased' among the different translators, it would be helpful to pin them specifically to the German expressions used in the ABGB.
- p. 62: Concerning the note that the Eschigs' translation is '*quite unique due to its dual-language format*', has the author considered translations of legislation from other contexts and countries? It is hard to believe that such mirror editions should be so exceptional. The dual-language format is quite commonly found in international business law contexts, e.g. in various contracts and deeds. It might also be worth investigating whether any of the 10 language versions of the ABGB ever had this format or not.
- p. 64: I think the author makes too much of the fact that the Eschigs consulted Baeck's 1972 translation; wouldn't that, after all, be the basic requirement for doing any translation work of this kind? By implication, if they did consult the latest available translation, wouldn't it then be reasonable to expect that they did not work with the very first, and dated, translation from 150 years ago? As the author rightly points out on p. 67, the text of the ABGB has been substantially amended throughout the years (it would help if the German versions valid in 1866, 1972 and 2013 were included in the table on p. 67 for the sake of illustration; the thesis does not indicate the extent of the transformation of the German language version of the ABGB).
- p. 69: Concerning the speculation about whether the translation of 'liability/liable' was borrowed from the earlier versions or a case of 'translational coincidence', it may also be the case that the term is such a basic, well-established concept that there can be hardly any other alternative (the synonyms available, such as 'responsibility' and 'answerability', have either non-legal or much more specific meanings). The same holds, in my view, for 'minor/Minderjährige' – it seems little wonder that Peter Eschig was puzzled about the questions – what else could they have chosen as an equivalent here?

pp. 70-71: Here the author is belabouring a hypothesis that adds little to the scientific value of the work. The extensive discussion (an almost detective-story quest) appears to be based on the author's intention to interpret the Eschigs' acknowledgment of using the earlier version as a proof of the continued tradition linking them to Baeck and ultimately Winiwarter, despite the Eschigs' claim having been influenced only minimally.

pp. 76-78: In this section, the author over-elaborates, rather uncritically in my opinion, on the influence of Winiwarter (cf. *'the trailblazing work of Josef Winiwarter'*, p. 76). The statement that JW's translation *'is still a viable source of civil-law terminology and phrasing for English translations'* seems to go counter to what the Eschigs mention. What exactly is meant by *'his general sentence structure and phrasing of the provisions in English'* (p. 76)? There is tautology in suggesting that *'his use of language helped create a style that was distinctly his'* (p. 77). The *'typical examples of his distinctive legal style'* are not described in any way, neither is there any suggestion about how different they are from legal English. Statements such as *'it is difficult to ignore Winiwarter's legal clarity and eloquence of style'* are not substantiated with data; and neither is the claim that *'even today, translators can still gain practical knowledge from consulting his sentence structure and overall phrasing'*. Unless demonstrated with actual data, such statements are hardly tenable. Under (c), the author seems to imply that the use of Latin terms in translation is Winiwarter's strategy – is that so?

p. 88: The author claims that *'the Eschigs, in essence, have created a new word in English ('usufructor'), which has most likely been inspired by the German original Fruchtmissser'*. While the word does not appear in the *Oxford English Dictionary* (though the related concepts of 'usufruct' and 'usufructuary' are attested from the mid-17th century), it does occur in English texts before the Eschigs, e.g. in the 1983 OECD publication on *Model Double Taxation Convention on Estates and Inheritances and on Gifts* (available online, p. 43). How does the author explain this discrepancy?

It is good that the author also talks about the local situation in the Czech Republic. There is a number of questions that could be asked concerning the English translation of the New Czech Civil Code and that could have been mentioned, for the sake of completeness, in the thesis. For instance: Who were its translators? Did they (and to what extent) work with the existing translations of the Austrian Civil Code (ABGB) into English? What other sources did they use? How was the work organized? What other points of departure were used when translating, e.g. in those areas of law that are clearly motivated by civil-law instruments found in the Anglo-American legal systems (cf. the regulation of trusts and endowment funds which is, partly, a legal transplant from the law of Quebec)? While the author provides a discussion of the NCCC in reference to Chromá's academic treatment of the matter (2014), the discussion does not mention anything about her possible relationship to the translation (was she involved/consulted? Are there any aspects of the Czech translation that she possibly does not agree with?).

4. *Contribution to knowledge / Vlastní přínos*

The theoretical contribution of the thesis to the discipline of translation theory is – in my view – relatively negligible (or at least not convincingly argued). On the other hand, I can and do appreciate the painstaking historiographical approach adopted by the author, which makes me see the thesis as a meaningful endeavour documenting some of the transformations of the English versions of the ABGB over time, and, thus, as having its place in the field of history of legal translation.

Nevertheless, I wish the author had refrained from some rather extreme evaluative comments in the thesis (e.g. *'Academic exclusivity is an ailment that has affected a vast majority of academic writing produced in schools and universities around the world. It does not benefit anyone and prevents unique and new ideas from reaching people by creating a linguistic and cultural barrier between academic and the real world'*, p. 4). Statements like these are not only inappropriate in an academic work but they also degrade the author's own work. I accept and applaud the author's decision to approach the writing of the thesis as a way of 'narrating a story', but the audience of a doctoral thesis is, first and foremost, academic: hence the decision *'to keep complicated language and terminology to a minimum'* (p. 4) sounds, rather, as the author's excuse to avoid doing what he is supposed to do in an academic text. It is hard to assess the academic expertise of a scholar who explicitly decides to go counter to the standards and expectations of the academic world. Another problem occurs when the simplification of language leads to a simplification of thought, potentially bordering on banality (cf. *'Winiwarter chose to mirror the structure of the original German version as much as possible. And understandably, such an important document as the laws of an empire must be altered as little as possible, even when being translated into another language'*, p. 36).

It is also inappropriate for an author to provide explicit positive evaluation of one's own work (*'This [introducing Winiwarter], in and of itself, is a significant contribution to the field of legal translation history and translation studies as a whole.'*; *'It creates a rich portrait of a unique legal translator'*; *'This again is a noteworthy contribution to translation history...'*; all on p. 95; *'This project has gradually uncovered and made sense of all the connections...'*; *'It clearly demonstrates...'*; p. 97). Academic texts should strive for objectivity, presenting the facts, carrying out analyses, providing explanations and offering interpretations but not telling the reader what to think (leave that to a book blurb).

The author introduces the 'airport metaphor' to describe translation work on the ABGB in a diachronic perspective. Combined with the notion of 'network mapping' (taken from Pym, cf. p. 8), he then demonstrates the diachronic and temporal relations between various texts and people using such mind-maps. This is an interesting feature of the thesis that helps to visualize complex inter-relationships.

The thesis mentions many interesting facts, e.g. related to the multi-lingual nature of the Austria-Hungary (p. 11) and early publications by Czech scholars in English. There is definitely some potential for further research in this area, e.g. concerning how scholars such as Emanuel Tilsch wrote about German-language legal issues in English.

IV. Questions for the defence / Dotazy k obhajobě

1. On p. 11, the situation with translations of the ABGB into the ten languages of the Austro-Hungarian empire is mentioned (based on Šarčević 2000). This is very interesting and prompts a number of questions: How was the multi-lingual situation in the area of law managed in Central Europe at that time? How can the fact that the language versions were ‘downgraded’ to merely official translations be interpreted – this seems to imply that there were some official aspirations for language management and multi-lingual language policies, which probably turned out to be idealistic when put into real practice? Does the multi-lingual and multi-national situation around the ABGB in the 19th-century Austria-Hungary have any modern parallels, e.g. in the EU? Is there any lesson that can be learnt from the past?
2. In relation to the same issue, a few more general questions: To what extent can the English translation of the ABGB be treated separately from the other translations? When were the other translations produced, by whom and how? One would expect some kind of institutional support for that work (unlike the translation into English, which was essentially Winiwarter’s personal initiative and enthusiasm). And more specifically: since Winiwarter was based in the capital city of Vienna, was he (or could he have been) in contact with any of the other translators? Could he have had any of the translations at his disposal? Could his English translation have been influenced, e.g. by the Latin version? What does that tell us about the organization of legal translation work in the 19th century? (On p. 36, the author quotes Winiwarter’s preface that refers to his use of the official Latin translation, but there is no elaboration, explanation or discussion of this issue. I would expect the author, for instance, to look at those instances where Latin terms are taken over and see what Winiwarter does with them – produce a literal translation? Gloss them over? Attempt some Anglicized version?)
3. On p. 13, context-oriented research is mentioned. Does our understanding have any limits? Is our understanding of the past more complete, more correct or do we have to incorporate some relativity

due to our existence in a different context (historical, economic, social, legal)? These are essentially hermeneutical issues – how do they affect our understanding of Winiwarter?

4. Rather than a question, this is a suggestion for further research: Since Winiwarter worked as a legal advisor to the British Embassy in Vienna, maybe there is some documentary trail of him in British diplomatic correspondence that could throw more light on the motivations for his work (the author might want to consult Foreign Office and Foreign and Commonwealth Office records in the National Archives).
5. Concerning the review of Winiwarter's translation in the Law Magazine and Law Review (p. 28), are we justified in reading it as a criticism of the literalness of the translation?
6. When the author mentions the absence of Winiwarter's justifications for translating the ABGB into English by mentioning 'the code's 'superiority'', this prompts the question about the then status of the ABGB in Europe: what other civil-code laws were there? What was the situation, e.g., in France (cf. the 1804 Napoleonic code which served as a model in many countries) or in Germany (which was still much fragmented politically at that time)? Is Winiwarter's reference to 'superiority' just an Austro-centric claim (a subjective view) or a justified assessment of the then situation in Europe (an objective view)?
7. There is an interesting finding about the Imperial Patent: fully present in Winiwarter, shortened in Baeck and absent from the Eschigs. Is it still a part of the currently valid version of the ABGB? Who is the author of the quote 'due to the lack of practical relevance' in this context – the Eschigs? (An explicit source is not provided in this place.)
8. In-text glosses in the library copy (p. 39). This section is rather speculative. Do libraries remove notes made by pencil by readers? Why should they? How does the author imagine a forensic analysis (p. 39) should be carried out? Is there enough material to carry out authorship analysis? If yes, why not approach a handwriting expert for an opinion?
9. When the author says that '*many 'freer' and more dynamic strategies have been offered and used*' (p. 74), what strategies are meant? Have they been proposed specifically in relation to legal translation? How are those strategies treated in the field of legal translation, are there perhaps any differences from general translation theory and other (fictional as well as non-fictional) domains? What is the dominant/prevalent paradigm in the field of modern legal translation theory, how has the thinking developed historically?

10. Concerning the network map (p. 101), I wonder about the place of the 2012 Czech Civil Code: does it really link to the 1937 draft of Czechoslovak Civil Code (or, rather, directly back to ABGB 1811)? And, more importantly, why is the ‘Czech branch’ on the map (the 1937 Draft, and then the 2012 NCCC) linked to the 1866 English translation of Austrian Civil Code? This might wrongly imply some connection that is (most likely) not there.

V. Conclusion / Závěr

The author has chosen an interesting topic and his work shows a lot of enthusiasm and dedication to historiographical research in general and the intellectual heritage of Winiwarter in particular. However, assessing the academic qualities of the work, it cannot be denied that the thesis is rather mediocre in terms of the strength of its academic argument and persuasiveness. The descriptive nature of the thesis and its failure to interpret the findings on a more theoretical level make this, in my view, only a borderline case for passing. Nevertheless, taking into account that the thesis is classified as ‘history of translation’, I do see the merits of the author’s fact-collecting approach, despite the somewhat unconventional and less than adequate academic presentation of the material. As a result, I would like to see how the candidate performs during the oral defence of his thesis – for that reason, I recommend the thesis for defence, though with some reservations.

The dissertation thesis meets the basic requirements placed on academic dissertations; thus, I recommend it for defence, giving it the preliminary grade of ‘passed’.

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