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A COMPARATIVE ANALYSIS OF LEGAL VERSUS CULTURAL AND PSYCHOLOGICAL CONNOTATIONS OF THE TERM ‘GUILT’: IMPLICATIONS FOR COGNITIVE LINGUISTICS AND FOR LEGAL SCIENCES

The present article is concerned with the notion of ‘guilt’ as understood by the legal sciences and in the context of psychology and culture studies. Although legal connotations are unavoidable, ‘guilt’ is a term emotionally related to other feelings like ‘shame’, ‘fear’, ‘sadness’ etc. The analysis shall take a closer look at legal definitions of ‘guilt’ and ‘culpability’ at work in the American, Polish and German legal systems and refer the equivalents existing in these languages (*wina*, *Schuld*) to the concept of guilt understood as an emotion. As it turns out, legal definitions do not account for conceptual dimension of meaning and as such, they can only serve as departure points for further analysis to be complemented with cognitive analysis. ‘Guilt’ is a culturally determined and complex emotion that may be ‘dissected’ into several more basic emotional states. The underlying assumption is that there are differences in the understanding of the concept ‘guilt’ across languages which must be taken into account by the translators who deal with translational equivalents.

Keywords: *guilt, cognitive linguistics, legal definition, conceptualization*

1. Introduction: cognitivism, its advantages and limitations with regard to legal sciences

This article is an attempt at comparing legal definitions (as a strictly ‘legal’ point of view) and cultural as well as psychological connotations related to the term ‘guilt’. As far as legal definitions are concerned, they vary depending on the legal system. Hence, the research methods employed in the paper are typical for comparative law since three distinct legal systems are taken into consideration.

Worthy of notice is the fact that while Polish and German legal systems make part of the civil law family, the American legal system is, in turn, based on the common law. The said distinction is crucial insofar as fundamental concepts and terminology differ in some respects. Most importantly, civil law jurisdictions have developed the body of laws and statutes that contain general definitions. These are usually followed by the doctrine created by jurists and law professors that interpret the vague and indeterminate clauses and terms arousing doubts and controversies. In turn, common law definitions are based on the interpretations prepared by the judges who participate to a considerable extent in the process of legislation. However, the above discrepancies contribute to the fact that certain terms may be differently understood depending on the language and the legal system. This ‘flaw’ is something legal translators are aware of. In the light of the above, the goal would be to gain a perspective free from specific properties of particular languages and legal system. Since certain disciplines within linguistics offer a broader perspective and constitute an attempt at creating a universal method of representing various notions across languages, we will avail ourselves of these methods. Cognitivism is one such discipline.

Since its beginnings in the 1970s, cognitivism has made a significant contribution in the way subject matters are approached across various fields, both scientific and social. Although legal specialists are somehow reluctant towards cognitive methods as able to influence the legal and philosophical debates concerning human agency or free will (cf. Załuski 2014), the author claims that they may nevertheless become a research tool for translation sciences. On the one hand, cognitive sciences are considered to constitute a breakthrough in the manner we view human mind and as such, may threaten the status of philosophy which has to date held a monopoly in this respect. On the grounds of linguistics, it was Lakoff and his cognitive metaphor theory that helped to construct the ‘empirical’ approach towards the understanding of the relations between perception on the one hand, and language, on the other. Lakoff and Johnson argue that all cognition is embodied and that other domains are mapped onto our embodied knowledge using a combination of conceptual metaphor, prototypes and image schema (Lakoff, Johnson 1980: 56-60). In other words, we tend to map our understanding of known physical objects, actions and situations, such as containers, to understand more abstract domains, such as relationships or numbers (1980: 56-60). This somewhat controversial tenet has not been accepted unanimously and certain legal scholars, such as Załuski (2014: 175), claim that the methods proposed by cognitivism are formulated in a very vague way and that they can be assigned a variety of meanings. Furthermore, he claims that the above tenets are false insofar as thinking processes do not have to be determined by the body, that not all of the thinking processes are of metaphorical nature and that certain thinking processes are entirely conscious. Likewise, some of the cognitivists themselves are doubtful as to whether our bodies somehow determine the

boundaries of reasoning. Some of the reasoning processes, they claim, occur and are performed independently of the commands of the body (see Beard 2001, O'Donovan Anderson 2000, Sowa 1999). The statement that all types of reasoning processes are anchored in our body has therefore been challenged.

Notwithstanding the above criticisms, the present article aims to determine which of methods, the cognitive or legal, offers better tools to identify the most accurate equivalent in a given language and demonstrate that legal definitions (as firm and enshrined in the statutes and not flexible enough) are not sufficient tools for translation purposes unless complemented by cognitive analysis (dynamic meaning as occurring in various contexts).

2. Guilt as an emotion: possible applications in linguistics

2.1. Introductory remarks

At the beginning of this section let us stress that the issue at hand is not treated exhaustively from the psychological point of view due to the necessity of combining the 'psychological' approach with the 'legal' approach. Hence, the present section focuses solely on the most important aspects and possible understandings of the term 'guilt' as appearing in various studies and analyses other than the criminal codes and statutes.

According to etymology dictionary, the term 'guilt' originates in the Old English word *gylt* understood as 'crime, sin, moral defect, failure of duty'. The early 14th century definition construes guilt as 'that state of a moral agent which results from his commission of a crime or an offense willfully or by consent'.¹ Thus, the usage of the term was strictly confined to the domain of law and it was not until the end of the 17th century that the first recorded use of "guilt" in its psychological sense is documented. As was the case with the 'semantic extensions' of similar nature, the purists considered this new usage to be erroneous.² Hence, in the course of evolution, 'guilt' acquired a new meaning.

2.2. Cognitive and psychological understanding of the term 'guilt'

For the purposes of the present paper, guilt shall be understood as either cognitive or emotional (affective) state. On the cognitive level, guilt occurs as an expression of an internal conflict or since a person is aware of his or her

¹ Source: Online Etymology Dictionary: <https://www.etymonline.com/word/guilt> [last accessed on 17th April 2020].

² Ibid.

wrongdoings towards the other or society in general. The internal conflicts, as assumed by Freud in his theory of psychoanalysis, result from traumas and deprivations experienced during one's childhood and affect the unconscious component of the human mind. On the emotional level, guilt evokes other emotional states like shame, fear, anger. Equally closely related to guilt is the feeling of remorse.

What seems common, however, in the majority of operative definitions of guilt is that a person experiences some sort of conflict due to having transgressed certain norms or conventions considered binding or due to not having done something one was supposed to do. Freud believed that the primary sources of guilt were fear of authority and fear of loss of parental love, which eventually become one's conscience (ibid.). The sense of guilt is central to Freud's theory of the Ego and the Id and arises when the conscience, or the superego, condemns the ego (Westerink 2009). Hence, it transpires that the formation of the superego, synonymous with morality, accounts for the pathological types like moral masochism, hysteria, obsessive neurosis or melancholia. Buber (1958), in turn, emphasizes the difference between Freudian guilt based on the internal conflict of an individual on the one hand, and existential guilt, based on actual harm done to others.

2.3. Neurological approach to feelings and emotions; differences between feelings and emotions

As far as neurological approach to emotions is concerned, psychologists have elaborated specific questionnaires employed to measure the degree of guilt such as the Dutch Guilt Measurement Instrument or the Differential Emotions Scale (Izard's DES). In addition, attempts have been made by various researchers to localize the basis of human emotions, guilt amongst others, with brain imaging studies. In particular, emotional states of fear, shame and guilt have been investigated as depending to some extent upon the activities of amygdala, a paired structure of the brain known as 'the center of fear', located medially within the temporal lobes. As such, amygdala plays a key role in the consolidation of a subconscious type of memory where emotions originate. However, correspondence between brain basis and emotions other than fear, shame and guilt has not been well illustrated (Michl, Meindl 2014).

Let us also point to the difference between emotions and feelings as these two terms are often used interchangeably. Whilst emotions are defined as lower responses occurring in the subcortical region of the brain, feelings originate in the neocortical, or conscious, part of the brain (Bechara, Damasio, Damasio 2000). Hence, while emotions are universal, feelings are more personal and subjective and depend upon a person's experiences and memories. Summarizing

the distinction outlined above, one may venture a claim that emotions are primary and instinctual while feelings, are secondary and arise as a result of assigning specific meanings to emotions (ibid.).

2.4. Cultural connotations of the term ‘guilt’

As far as cultural connotations are concerned, it is the social and objective interpretation of the term ‘guilt’ that is inextricably linked to the term ‘punishment’. Lewis classifies guilt as the primary self-conscious emotion along shame, embarrassment and pride (Lewis 2010). The collocation ‘guilt and punishment’ has a very strong cultural connotation in the culture of the West which we, born and bred in the Western cultural area, take for granted. However, for those born outside of the Western culture, this connotation is not so obvious. One of the classifications allowing to better understand the mode of thinking and moral impulses which determine behavior patterns in various cultures is a simple distinction into the culture of guilt and the culture of shame discussed, inter alia, by Andrzej Flis (2001: 31-36). The said distinction is based on the decisive factor which influences individuals’ moral choices: guilt in the case the West and shame in the case of the East. Both the Western and Middle East cultures are permeated with the faith in one God. Despite an enormous contribution that philosophy brought to the Western system of values, it is mostly religion which has remained the fundamental pillar of Western morality throughout centuries. The conviction that God constitutes the very source of morality is deeply entrenched and numerous writers as well as philosophers, such as Dostoyevsky or Kołakowski (2019), are inclined to share this view. It is one’s internal negative self-assessment based on the concept of sin that leads to the feeling of guilt. Originally, it was the omniscient God who assumed the role of the strict judge. However, no ‘external’ blaming is necessary today since everything takes place within one’s own conscience and all emotions are experienced by an individual alone (ibid.).

Morality in the cultures of the Far East are not to be attributed to God but have been formulated in the secular code of Confucius. No one and nothing has here access to the human conscience nor is the concept of sin so common as in the Western cultural sphere. The only liability humans bear is towards one another, within the community one makes part of. Therefore, the presence of witnesses exacerbates and intensifies the feeling of shame impending over one’s conscience. Hence the fear of the loss of face so common for the cultures of the Far East. Inter-cultural understanding of the motives and impulses is thus considerably hindered when one takes into consideration the above paradigms. The distinction into right and wrong is determined by one’s internal conscience as far as Western civilization is concerned. On the other hand, it will be

determined by the community fulfilling the role of the judge issuing moral verdicts. Apart from guilt and shame, Benedict distinguishes fear as a factor determining control of individuals (especially children) and maintaining social order (Benedict 1989). The differences apply to the methods of governing one's behavior patterns with respect to government laws, business rules, or social etiquette. When viewed from such a perspective, societies can be divided into:

- guilt societies,
- shame societies,
- fear societies (ibid).

Summarizing the definitions outlined above, we may describe the main difference between shame and guilt as lying in the very source of the emotion itself: whilst shame comes from a real or imagined negative assessment of others, guilt arises from negative self-assessment.

2.5. Attempts at classifying the emotions

In 1972 Ekman, an American psychologist focused on identifying the most basic set of emotions that can be expressed distinctly in the form of a facial expression. He devised a list of basic emotions following a research conducted across different cultures. The said list contains such emotions as: anger, disgust, fear, happiness, sadness and surprise. Parrot (2001), in turn, organized emotions in a three-level hierarchical structure which included emotions such as love, joy, surprise, anger, sadness and fear as primary. The first two layers of Parrot's classification are shown in a figure below.

Guilt as an emotional state is also present in Plutchik's wheel of emotions proposed as a method of categorization in 1980. The author distinguishes eight primary emotions that are classified into four groups understood as polar opposites:

- joy and sadness,
- trust and disgust,
- fear and anger,
- surprise and anticipation (ibid.)

Adding up of these primary emotions will yield new, more complex ones, constituting either dyads (emotions composed of two basic feelings) or triads (emotions composed of three basic feelings). For instance, love is defined as a combination of joy and trust and counts as a primary dyad, meaning the most often felt. In contrast, there are also secondary and tertiary dyads, depending on how often we experience them. In total, the author claims there are 24 dyads and



Figure 1: First two layers of Parrot's emotion classification

32 tryads. Guilt is defined as a secondary dyad, a human feeling composed of joy and fear whose opposite feeling is envy. A feeling which remains in close affinity to guilt is remorse, described as a primary dyad and a combination of sadness and disgust. There is also an intensity scale, depending on the degree of intensity of a given emotion. For instance, joy is characterized as ranging from serenity (the most neutral and toned down as far as intensity is concerned) to ecstasy (the most intense) and fear ranges from apprehension to terror. Looking at guilt as a 'synthesis' of joy and fear might not seem convincing for everyone. Hence, Plutchik's wheel of emotions has been criticized for being too superficial, not giving sufficient account of feelings such as pride and shame. Therefore, other attempts have been made to account for such subtleties. An example is Geneva emotional wheel (GEW), a theoretically derived tool designed to measure emotional reactions. GEW has been discussed in works such as Scherer (2005) and Sacharin, Schlegel and Scherer (2012). Figure 1 demonstrates how the tool operates in practice. Emotions are grouped into a shape resembling a wheel with the 'axes' being described with the aid of two major parameters, i.e. high/low control or positive/negative valence. Guilt is understood as related to remorse, defined by the low control and negative valence as illustrated by the figure below.

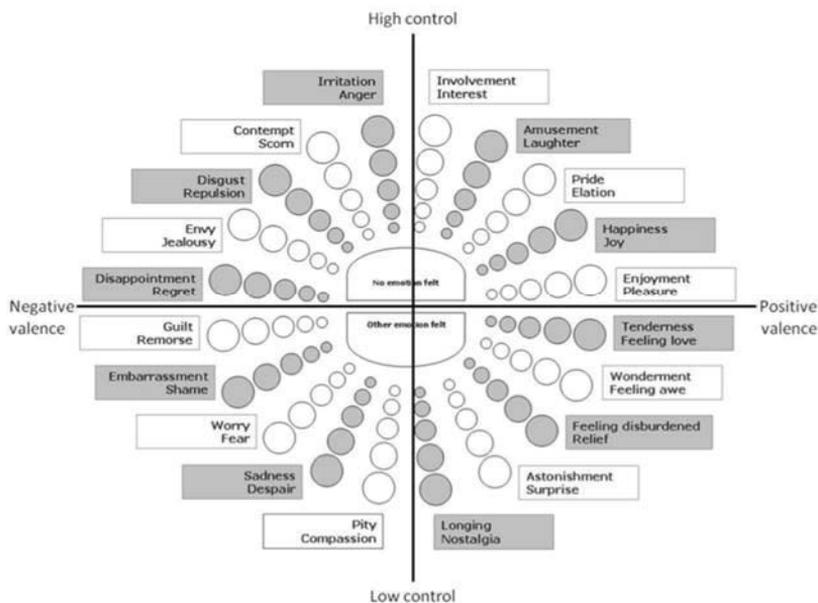


Figure 2: Geneva Emotion Wheel (GEW)

The question arises whether it is possible to apply the above definitions and connotations when working with particular texts or during translation. The answer would probably depend upon the type of text one is dealing with. The more a text is ‘culturally’ tainted, the more it becomes necessary to familiarize oneself with the cultural background of the source culture.

3. The ‘legal’ perspective

Numerous authors drew on cognitivism in their research on legal language and legal translation. They include, inter alia: Biel (2009), Caterina (2004), Jeanpierre (2011), Kischel (2009) and Kjær (2000, 2004, 2011). Biel, for instance, examines the role of cognitive sciences in the comprehensibility and organizing knowledge structures and stresses that further research is required as far as the process of mapping concepts during the translation process is concerned (Biel 2009: 176-189). The psychological perspective elaborated on in the previous section is also at work in one of the definitions commonly accepted by the legal sciences. The definition is referred to as psychological since it sees guilt as a mental attitude of the perpetrator towards the act; the issue at stake here is whether he/she intended to commit the crime and whether he/she approved of it. Legal scholars refer to the above as the psychological theory of guilt (see

Świecki 2009). Since it is too ‘psychologically’ tainted, another, more objective definition of guilt has been construed in order to counterbalance it.

The normative theory of guilt, as it is called, concentrates on the possibility of filing a charge against the perpetrator in case he/she violates the laws currently in force (Świecki 2009). The doctrine regarded as most neutral combines the two hitherto mentioned definitions: the psychological one and the normative one. Could we employ both definitions in producing a cognitive ‘dissection’ of the term ‘guilt’ in the way we have seen operating for the ‘remorse’? Typically, we would have to distinguish between the objective and the subjective kind of guilt. The former one would relate to the violation of laws or social norms by an individual, regardless of whether he/she considers himself/herself blameworthy. The latter concerns contravening one’s own set of values and principles regardless of what the society views as moral and lawful. In many cases, the two may concur insofar as what the individual considers wrong is also viewed as such by the society (ibid.).

We might also differentiate between ‘guilt’ and ‘culpability’ or ‘punishability’. Whereas the former one is more concerned with the subjective aspect and person’s attitude, the latter would rather be associated with social approach as involving civil responsibility/liability for one’s wrongdoing and the necessity to undergo punishment or trial in order to compensate for the harm done. The problem encountered in many studies (be it from the domain of natural or social sciences) is that they employ an Anglo-centric (or, as a matter of fact, a language specific) perspective that does not account for conceptual differences. ‘Guilt’ is a culturally determined and complex emotion that may be ‘dissected’ into several more basic emotional states.

The main advantage that cognitive sciences offer is the universal and ‘global’ approach towards the subject matter. In the case of law, juristic notions are necessarily tainted with the legal systems the history of particular countries where they have evolved and are rooted in the understanding of the speakers of those countries’ native tongues³. According to Charnock (2006):

Where the meaning of a statute has not been authoritatively decided, judges refer to the meaning clauses, which form an integral part of English statutes. However, these clauses do not usually supply detailed definitions. On the contrary, they tend to refer only to prototypical cases (...) thus permitting the elimination of certain improbable, peripheral interpretations. (...) Typical examples of such phrases are: ‘unless the contrary intention appears’ or ‘except insofar as the context otherwise requires’. In cases of linguistic indeterminacy, meanings clauses are rarely useful as an aid to adjudication.

³ cf. Hilary Putnam’s proposal that the meaning of particular terms is to be understood as changing in the course of time and in accordance with the evolution of speech communities using those terms.

Some criminal law definitions leave ‘fringe areas’ (a term borrowed from cognitivism) as to their meaning and scope. In the view of ‘terminological policy’ it is sometimes preferable to leave some degree of interpretational freedom in determining the verdict. The initiative is, depending upon a situation, either to be taken by the Parliament, or by the court.

In the case of common law, definitions have been ‘forged’ on the basis of ‘folk knowledge’. However, as applied in the common law and Anglo-Saxon legal culture (and fulfilling the criteria of the ‘common sense’ definitions), they do not remain stagnant nor fixed due to constant evolution in the course of history. Changing legal and political systems affect the content and not only the peripheral but also the prototypical or core elements of meaning. This would be more clearly visible in the case of Polish legal system which underwent transformations resulting from a shift from the communist and socialist mode of economy to the capitalist economy and free market system. As such, definition would be a temporary point of departure to be applied in the interpretation of a given text. As emphasized, however, one needs to take account of the temporary nature of many concepts.

Legal definitions are contained at the beginning of particular normative acts. Such a definition bindingly establishes the meaning of a given term. The legal definition proves useful insofar as the term is considered ambiguous or even polysemous. In the Polish legal system the mode of use of legal definitions is included in The Principles Of Legislative Technique.⁴ Pursuant to these principles, legal definitions should be included whenever:

- A given term or phrase is ambiguous;
- A given term or phrase is vague and narrowing its vagueness is necessary;
- The meaning of a given term or phrase is not commonly understood;
- Due to the nature of the discipline where regulation takes place, a necessity arises to establish a new meaning of a given term or phrase.⁵

4. The notion of guilt and culpability in the Polish, American and German legal systems: comparative analysis

Let us now take a closer look at the understanding of the term ‘guilt’ in particular legal systems. The point of departure for our analysis is the English term ‘guilt’ (‘Polish *wina*) and ‘culpability’ (Polish *zawinienie*). From a legal perspective, culpability describes the degree of one's blameworthiness (Polish

⁴ Annex to the regulation of the Prime Minister as of 20th June 2002 on ‘Principles of Legislative Technique’ (Journal of Laws, No 100, item 908).

⁵ Ibid.

karygodność) in perpetrating a crime or a misdemeanor. The degree of culpability will usually be the determining factor in deciding upon the punishment. According to Arnone (2014):

‘Culpability means, first and foremost, direct involvement in the wrongdoing, such as through participation or instruction’, as compared with responsibility merely arising from ‘failure to supervise or to maintain adequate controls or ethical culture’.

In order to have a broader perspective, the author has decided to choose three legal systems where guilt is defined either by the doctrine (as in the case of Polish and German) or by the proposed legislation, the so called Model Penal Law (as is the case with the American legal system).

4.1. ‘Guilt’ and ‘culpability’ in the American legal system

Modern criminal codes in the United States usually distinguish between four degrees of culpability depending upon the attitude of the perpetrator towards the prohibited act:

- when it is the perpetrator’s conscious and purposeful intention to engage in the conduct of criminal nature or to cause a given result.
- when the perpetrator is aware and knows that his/her conduct is of criminal nature.
- When the perpetrator acts recklessly with respect to a material element of an offense when he/she consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct.
- When the perpetrator acts negligently with respect to a material element of an offense where he/she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his/her conduct.⁶

The above definitions have been taken from the Pennsylvania Crimes Code. That in turn derives from the American Law Institute's Model Penal Code, which is the basis for large portions of the criminal codes in most states.⁷ The key element of those definitions is usually an adjective or a verb that determine the degree of culpability. In the order of gravity one would have to distinguish: purposeful (criminal) conduct, knowing conduct, reckless conduct and negligent conduct. Guilt, which whose semantics overlap to a considerable extent with

⁶ 2010 Pennsylvania Crimes Code: <https://law.justia.com/codes/pennsylvania/2010/title-18/>

⁷ Model Penal Code (Proposed Official Draft dated 1962).

culpability, always has to be accompanied by some sort of attribute. Otherwise it will be difficult to define (and thus, translate) due to the inherent vagueness of the term itself.

4.2. ‘Wina’ and ‘zawinienie’ in the Polish legal system

The notion of guilt can be characterized through indeterminacy and vagueness. Under criminal law, it almost always occurs in the context of crime, being one of its elements next to the statutory hallmarks of a prohibited act (or the statutory definition), the unlawfulness and guilt itself. Despite the distinctions elaborated by the legislator (Polish Criminal Code and Polish Code of Criminal Procedure) and the doctrine, each particular case usually necessitates interpretation by the judge determining the verdict. Legal definitions do not give sufficient grounds for ‘the proper’ interpretation. The so called statutory hallmarks (in Polish: *ustawowe znamiona*) of a prohibited act or the characteristic features refer to four aspects:

- the value protected by the law (the object),
- the perpetrator (the subject),
- his/her act (the objective element) and
- the psychic attitude of the perpetrator to the committed act (the subjective element).

Unlawfulness, in turn, is usually defined as the fact of there being a discrepancy between the actual behaviour and the sphere of obligation; generally unlawfulness cannot be considered separately from human behaviour; we rather look at unlawful behaviour and unlawful acts not at an unlawfulness per se (Sójka-Zielińska 2011). The third constitutive element of the crime, ‘guilt’, does occur in the Polish material and procedural law but it has various meanings. The legislator has not defined it leaving it to the doctrine and the judge to determine its significance (Świecki 2009). In the historical perspective, ‘guilt’ has evolved and has shifted on the objectivity-subjectivity continuum. Whereas it was formerly the objective liability (the visible marks of the crime) that constituted guilt, it is nowadays the subjective and personal liability that determines whether one is guilty or not. In the penal code guilt is one of the elements of the crime: the inflicted punishment depends upon the grade of guilt and constitutes a premise for the conditional discontinuation of legal proceedings. In the code of criminal procedure the term ‘guilt’ is polysemous and occurs as:

- an evidence for determining the guilt of a perpetrator,
- as an evidential statement of the defendant pleading guilty,

– as an indicator of ‘borders’ of persecution in case where the appellant challenges his/her guilt before courts of higher instances.

4.3. ‘Schuld’, ‘Sträflichkeit’ or the notion of guilt in German legal system⁸

Although the notion of guilt is not clearly defined in the German criminal system, one may, following Gropp (2003), distinguish between three meanings of the term. The first one approaches guilt as a departure point for determining the punishment (*Grundlage für die Zumessung der Strafe*). Guilt is here understood not qualitatively but quantitatively: as a degree rather than something stable. The greater the degree, the more severe the punishment. Guilt of the perpetrator is therefore tantamount to committing a criminal act violating the law but will be approached differently depending on the circumstances. Hence, an act of murdering one human being will differ from an attack on World Trade Center as a result of which 3,000 people were killed.

The second understanding of the term ‘guilt’ is based on the person rather than the act itself. In order to ascribe guilt to someone, it would be necessary that this person acts knowingly and with awareness that law is being breached. Otherwise speaking, this person is capable of anticipating the consequences of his/her wrongdoings and has full control over his/her behavior (*Einsichtsfähigkeit* and *Steuerungsfähigkeit*).

Lack of either of the two elements specified above equals no punishment (the judge cannot issue the verdict of guilty since there are no grounds for a sentence). A similar situation arises when the so called error with regard to the unlawfulness of the act occurs (*unvermeidbarer Verbotsirrtum*). In § 17 dStGB one can find a statement regarding actions performed without an intention of committing a crime. Such a state of affairs makes punishing impossible since a perpetrator cannot be ascribed guilt. An error with regard to the unlawfulness of the act is therefore tantamount to the impossibility of avoiding the wrongdoing or a criminal act.⁹

The third understanding of the term ‘guilt’ refers to the notion of *entschuldigender Notstand* which may be described as ‘the state of necessity justifying the offence’. As pointed by Gropp (2003), one may see it as a sort of external pressure and a relatively lesser degree of unlawfulness. Similarly to the Polish and American legal system, the German legal system distinguishes between degrees of guilt. When certain statutorily specified circumstances occur,

⁸ Source: <http://www.juridicainternational.eu/?id=12513>:

⁹ Strafgesetzbuch, Allgemeiner Teil (§§ 1 - 79b), Abschnitt - Die Tat (§§ 13 - 37), Titel - Grundlagen der Strafbarkeit (§§ 13 - 21): ‘Fehlt dem Täter bei Begehung der Tat die Einsicht, Unrecht zu tun, so handelt er ohne Schuld, wenn er diesen Irrtum nicht vermeiden konnte. Konnte der Täter den Irrtum vermeiden, so kann die Strafe nach § 49 Abs. 1 gemildert werden.’

assigning a lesser degree of guilt may be equal to a less severe sentence. However, as in two other legal systems, it is not always clear how ‘guilt’ should be interpreted and what degree it should be ascribed. A judge is therefore left with considerable interpretational freedom.

5. Conclusions: implications for linguistics

As far as legal sciences are concerned, guilt is usually understood in the context of the crime committed by the perpetrator and serves as evidence for determining the verdict during the proceedings. In the course of evolution of the term, there has been a significant shift towards a more subjective understanding. Additionally, more complex notions have emerged as a result of a more interdisciplinary approach towards the issue. Psychological as well as cognitive sciences have also contributed to the development of the ‘default’ legal definition. As far as linguistics is concerned, psychology and culture can be of invaluable help insofar as they allow us to ‘separate’ ourselves from the text and particular lexical units and refer these units to the reality beyond. In the words of Newmark (1988: 22-23) this process sometimes involves deverbalizing the concepts. As Panek (2008) points out:

Each culture categorizes phenomena in a slightly different way, even if phenomena like Roman law can work as the common denominator (...) Terminologies differ, taxonomy fields or various radial categories are different. Consequently, the receiver’s prerequisite knowledge must be different. The way a receiver perceives a foreign legal term will in turn depend on his or her prerequisite knowledge, ways of conceptualization, mental by nature and objective by convention.

To refer to the above from the translator’s point of view, terms become concepts once they undergo interpretation in the speakers’ minds and are afterwards rendered into another language with the intention to retain as much of the term’s denotation and connotations (i.e. the central as well as the peripheral categories) as is practically possible. Conceptualization might be thus considered an intermediate stage between the interpretative reception of a translator and producing or coming up with the closest possible equivalent. Such (legal) equivalent can afterwards be defined and disambiguated in the target language and (legal) culture. In the course of the translation, particular terms need to undergo ‘conceptualization’ in the translator’s mind and thus, they are ‘detached’ from the language’s specific lexicon.

To sum up, the cognitive method might prove useful insofar as it aspires to be universal, not tainted by the individual (in our case – cultural) perception. The

example of the term ‘guilt’ and its renditions across various languages provides us with an insight of how a term should be analyzed not only verbally but also conceptually. The latter aspect involves psychological and cultural connotations which must be taken into consideration, in particular when translating between distant cultures. Let us emphasize here once more that inter-cultural understanding of the motives and impulses can be considerably hindered if one is not familiar with the cultural background. Hence, between criminology and cognitivism there exists a co-relation whose potential should also be explored by legal translators. Therefore, the author maintains that cognitivism might become a useful tool for translation studies despite certain claims that discard its significance as a method appropriate for the legal sciences. Naturally, the problem outlined in the present paper requires further investigation since analysis of renditions of legal terms employed in European legal systems into languages such as Japanese or Chinese and vice versa could also contribute to a better understanding of how conceptualization operates in practice.

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