

# A new rule of law?

**Karen Rückert** *questions whether the native speaker principle is essential for a perfect translation*

The native speaker principle is a norm that has been adopted by the translation industry primarily in English-speaking countries. It prescribes that translators should translate only into their native language. This is underpinned by traditional translation theory, which insists that only a native speaker of the target language can produce a flawless translation in terms of fluency. This has become the golden rule and seems to be accepted unquestioningly by translators and translation associations throughout the UK.

Although it is true that, with regard to traditional forms of translation, such as literary, fluency of the target text is of utmost importance (as it is concerned with the aesthetic effect of the text on the reader), this norm has been automatically extended to all types of translation, including technical and legal. In the English-speaking translation industry, it is regarded as the embodiment of professionalism. This is not the case elsewhere.

## Two-way translation as standard

In the case of languages of limited diffusion, translation into and out of the native language is a necessity, because there are not enough native-speaking translators to meet demand. However, this is certainly not the case with German, yet in Germany two-way translation is standard practice. The Federal Association of Interpreters and Translators (BDÜ) does not impose any requirements to translate into one's native language only.

Furthermore, court certified translator status is only granted to translators able to translate in both directions. There is no option of applying to be certified for one language direction only. This automatically excludes many native-speaking English

*Errors were made by both native and non-native speakers – most due to insufficient subject knowledge*

translators who abide by the native speaker principle and have no wish to translate out of English. This, in turn, gives rise to a demand for translators working into English as a non-native language.

In view of these two opposing but co-functioning practices, the question arises as to whether there are areas of translation to which the native speaker principle might not necessarily apply. In order to answer this question it is necessary to look more closely at the assumptions inherent in the native speaker principle.

## Assumptions in doubt

As it stands, the native speaker principle makes two assumptions:

- 1 Non-native speakers of the target language should not be translating into that language because they are unable to do so to a satisfactory standard.
- 2 A native speaker of the target language will produce an adequate translation.

Both assumptions are primarily concerned with the fluency aspect. In an ideal world, every translation in every field would be both perfectly fluent and accurate. However, in highly specialised fields, such as legal

translation, which requires translation not only between two languages but also two legal systems, accuracy has to take priority over fluency. The vast majority of legal translations are for reference and information purposes, and, as such, communication of the source text message is the prime concern.

Arguably, for very complex subject matter, the ideal translator might actually be a native-speaking expert of the source language (ie, a foreign lawyer) who is able to explain the peculiarities of the legal issue concerned. Ideally all translators would be subject matter experts but, in practice, this is not always the case, with most translators having a linguistic rather than a specialist background.

In the legal field it is unusual for a translator to have extensive in-depth knowledge of both the source and the target language legal systems. A translation by a native speaker of the target language may be perfectly fluent but misleading if they do not understand the nuances of the source text sufficiently. More seriously, this may go undetected.

If a native speaker of the target language is the key to a fluent translation where fluency is the primary requirement, perhaps the key to a translation that accurately communicates the details of a highly specialised source text is a native speaker of the source language.

## A case in point

In order to examine this issue, I conducted a case study with professional legal translators, which sought to answer two questions:

- 1 Can a professional legal translator who is a non-native speaker of the target language produce an adequate legal translation?
- 2 Does a professional legal translator who is a native speaker of the target language



### MAKING THE CASE

*Could it be more important for a legal translator (left) to have the source language as a mother tongue, with any fluency errors corrected by a proofreader (below)?*

automatically produce an adequate legal translation?

I asked seven native English translators and six native German translators to translate a short informative legal text, explaining the principles of the court appeal system in Germany, from German into English. The translations were then assessed in terms of their adequacy. For the purpose of the translation in question, 'adequacy' required the translation to communicate the source text message accurately.

The translations were therefore regarded as inadequate where they contained semantic errors or errors of fluency serious enough to distort the source text message (for details of the model used for translation quality assessment, see [www.legal-translations-rueckert.com/bilder/Dissertation.pdf](http://www.legal-translations-rueckert.com/bilder/Dissertation.pdf)). The results indicate that the native language of the translator is not directly linked to adequacy. The study found that both native speakers and non-native speakers of the target language can produce adequate translations (4/7 and 2/6 respectively), but also inadequate translations (3/7 and 4/6 respectively).

Semantic errors were the only type of error which led to target text inadequacy and, surprisingly, these were made by both native and non-native speakers of the target language. The majority of the semantic errors resulted from insufficient subject matter knowledge: the incorrect interpretation of polysemous terms (*Recht*, eg, can mean both 'law/legislation' and 'an individual's right or rights'), failure to recognise and correctly translate technical terms, and confusion of target language terms (such as 'jurisdiction' and 'jurisprudence').

As presumed by the native speaker principle, some of the non-native speakers of the target language did make errors of fluency. But, unexpectedly, so did some of the native speakers of the target language. None of the errors of fluency made by native or non-native speakers was serious enough to render a translation inadequate, however. The errors of fluency were more frequent in the translations produced by non-native English speakers, while those made by native speakers seemed to result from translationese, where the translator had allowed the source text to influence the translation.

It is also possible that, for translators who do not live in a country where their native language is spoken, the language of their environment influences their native language. These findings suggest that it might be wise to rethink the assumption that the native speaker principle is a guarantee for target text fluency, let alone for a perfect translation.

Five out of the six translations deemed adequate were produced by translators who had some form of legal training, suggesting that it is, in fact, subject matter knowledge that is key to an adequate legal translation.

### Reconsidering the principle

I am not suggesting that we, as translators, should disregard the native speaker principle. Rather that we should carefully consider what we mean when we refer to it, when we use it in our advertising and, even more importantly, when we disregard others who are not abiding by it. Even within highly specialised fields there will be times when only a translation by a native speaker of the target language will do because, for example, the target text hinges on slight shades of meaning. However, in

order to do justice to a translation of this type the native speaker must also have the required subject matter knowledge.

There will be cases where the purpose of the translation does not require perfect fluency but does require perfect accuracy. Ideally both elements will be present but, where this is not possible, a translation that accurately communicates the source text message with a few errors of fluency (which can be corrected by a proofreader) is preferable to a translation that is perfectly fluent and grammatically accurate but which distorts or misinterprets the source text message. These kinds of errors cannot be detected in a final target text if the reader is not able to refer to the source text. If business and legal decisions are made on the basis of such translations, litigation somewhere down the line becomes more likely.

With so many people today quite happy to rely on machine translation, and many businesspeople successfully communicating in 'global English', it seems unfair to disregard adequate translations by non-native speakers, particularly when, in doing so, we might be favouring incorrect translations by native speakers.



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