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THE NATIONAL AND INTERNATIONAL WITHIN METAPHORICAL TERM-FORMATION IN ANGLO-AMERICAN JURISPRUDENCE

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Abstract

Among linguists there is a growing interest in analyzing mechanisms of term formation in socio-cultural and cognitive aspects. The paper brings forward the study of national and international characteristics of the metaphorical segment of English legal terminology aimed to pinpoint the hallmarks in professional language worldview of jurists in English-speaking countries. The terms were extracted from authoritative legal dictionaries and classified integrating systematic, linguo-cognitive, comparative and etymological analyses. The author singled out common and culture-specific legal metaphorical terms. This allowed to distinguish between general and particular elements in professional language worldview of legal practitioners of the English-speaking ethno-cultural community. Moreover, the research enabled to detect certain nuances in professional language worldview of British and American lawyers and, consequently, talk about its national variants. Most notably, this is manifested in a layer of unique legal metaphors accepted only in one national variant of the English language. The paper emphasizes that terminological metaphors, which demonstrate not only the essence of law concepts, but also their historical and cultural conditionality, often do not have correlates in other languages and form cross-lingual lacunae. Special attention is given to legal terms with precedent and onym components. The proper name is considered as a carrier of a certain linguistic and cultural code and a productive term-forming constituent of legal metaphorical terms due to the precedential nature of the Anglo-American legal system. The obtained data may be relevant in studying other fragments of modern professional language worldview and in intercultural communication while fulfilling work-related tasks.

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Keywords: Professional language worldview, Anglo-Saxon legal family, legal terminology, conceptual metaphor, culture-specific vocabulary, cross-lingual lacunae.



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1. Introduction

In present-day linguistics, studying peculiarities of language worldview of a particular professional group duly remains topical. Professional worldview is traditionally interpreted by researchers as “content-related invariant of scientific knowledge in a certain domain of human activity” (Chernyshova & Chernikova, 2016, p. 32). Expressed by resources of a national language, professional worldview is defined as professional language worldview.

2. Problem Statement

The core of language means that constitute professional language worldview is formed by terminology. An earlier study indicates that “legal term systems, which construct specific legal reality using language units, cannot but reflect the specifics of different legal cultures in their terms” (Maksimenko, 2004, p. 23). Conceptual metaphor involved in term formation recreates the cognitive scheme through which a legal specialist renders facts, phenomena, and objects of the surrounding reality. It carries information about an individual’s concepts, values or thought patterns. Particularities of universal and culture-specific metaphorical terms and their correlation have yet to be delineated in the context of exploring professional language worldview of English-speaking jurists. Addressing this problem will contribute to a more nuanced understanding of other fragments of professional language worldview and creating linguo-cultural legal glossaries for successful cross-cultural professional interaction.

3. Research Questions

The research questions are centered around the language-profession-world relationship. What is the place of metaphorical term formation in legal interaction? What universal and culture-specific elements can be distinguished from the metaphorical corpus of English legal terminology? What unique legal terminological metaphors can be singled out within national variants of professional language worldview?

4. Purpose of the Study

The central aim of this research is to describe universal and culture-specific traits of the metaphorical fragment of Anglo-American legal terminology. It has a clear focus on highlighting the characteristic features of professional language worldview of lawyers in English-speaking countries.

5. Research Methods

Methodological framework for the study encompasses the linguoculturological approach developed by Arutyunova (1991), Radbil (2017), Teliya (1988) and other scholars. Specific methods necessary for conducting the research include systematic, linguo-cognitive, comparative and etymological analyses. They are best for systemizing, interpreting, and gaining in-depth insight into the origin and meaning of legal metaphorical terms with reference to their cultural background. To collect data, authoritative law

dictionaries (Andrianov, Berson, & Nikiforov, 2009; Law, 2018) were employed. A bilingual legal dictionary proved a good source, as comparative analysis of metaphorical terms in the English and Russian languages shed some light on similarities and dissimilarities in conceptual metaphors and their linguistic realisations in the corresponding linguo-cultures.

6. Findings

6.1. Metaphorical terms in the scope of legal communication

Terminology as an important element of the language of professional interaction reveals the need of professional society for linguistic representation of special information to display the specificity of perceiving objects of the material and ideal worlds, as well as correspondence and relations between them. As far as a legal term is regarded as “a word or phrase denoting a fragment of legal reality that is correlated with the legislative or scientific activities of lawyers” (Maksimenko, 2004, p. 21), a metaphorical legal term is understood as a common word or phrase registered in dictionaries in a special meaning, acting as the name of a law concept and used in official professional communication. In metaphorical terms, due to their semantic transparency and vivid internal form, the structures of special knowledge while understanding and categorizing the professional field are most clearly represented.

There have been some successful attempts to scrutinize the role of metaphorical conceptualization in the process of legal term formation in different languages (Calo, 2016; Gavrilova, 2019; Leskina, 2018; Lykova, 2016; Popova, 2019; Volgina, 2016). According to the literature on the problem, the mechanisms of reinterpretation and metaphorical nomination in the sphere of jurisprudence are often associated with the operation of associative-figurative comparison, which allows to identify internal categorical values, i.e. subjective-semantic context that accompanies the development of knowledge of the surrounding reality. It results in finding analogies between:

- the object and its function, e.g. “ear-witness” (literal translation: свидетель-ухо) – свидетель, подтверждающий лично слышанное; свидетель, лично слышавший, то, о чем он показывает (Andrianov et al., 2009, p. 176);
- the object and the impression produced, e.g. “nuisance patent” (literal translation: досаждающий патент) – патент, не представляющий промышленной ценности, но препятствующий возможному патентованию конкурентом (Andrianov et al., 2009, p. 345);
- the object and its attribute, e.g. “to take silk” (literal translation: взять шелковую мантию) – стать королевским адвокатом (Andrianov et al., 2009, p. 464);
- the two actions, e.g. “the guillotine fell” (literal translation: гильотина упала) – принято решение о времени голосования (Andrianov et al., 2009, p. 224);
- the two features, e.g. “hard proof” (literal translation: твердое, крепкое доказательство) – веское доказательство (Andrianov et al., 2009, p. 380); etc.

The inspection of conceptual metaphors in the selected legal terms has led to distinguishing between nation-identified and nation-unidentified terminological units in accordance with their linguistic and cultural specificity.

6.2. Universal metaphorical terms in Anglo-American legal terminology

Universal legal terminological metaphors are characterized by the similitude of the plane of expression (a body of material resources) in various languages for communicating the plane of content of legal concepts. This observation can be exemplified with the term “prisoner of conscience” (Andrianov et al., 2009, p. 371), introduced into circulation in the early 1960-ies by the British human rights activist Peter Benenson, and its Russian equivalent “узник совести”; together with the English terminological combination “first-hand testimony” and its Russian counterpart “свидетельские показания из первых рук” (Andrianov et al., 2009, p. 471), etc.

The same linguistic manifestation of the metaphorical model “making dirty money clean” can be traced in the English “money laundering” and the Russian “отмывание денег” terms that denote “легализацию денег от организованной или иной преступности путем проведения оплаты по обычным каналам” (Andrianov et al., 2009, p. 313). According to the Online Etymology Dictionary (2020), the legal term “money laundering” was first recorded in 1961 and became widely used during the American Watergate scandal of 1973.

The generalized, culture-overlapping nature of understanding the legal concept “clean, that is, immaculate, unblemished, spotless” can be observed in the metaphorical terms “clean record” and “чистое досье” (without taking into custody or previous convictions, etc.) (Andrianov et al., 2009, p. 397).

Universality of these metaphorical models and of their verbal expression in English and Russian supports the hypothesis about general tendencies of human mind to conceptualize reality and interpenetrating boundaries of professional language worldviews.

6.3. Culture-dependent legal metaphorical terms of English-speaking countries

The empirical material of the chosen lexicographic sources has made it possible to arrange nation-specific legal metaphorical terms into the following groupings.

The first variety includes legal metaphors, the plane of expression of which differs in various languages while maintaining a single plane of content. The discrepancy with the content invariant of the term system reflects the national identity of professional language worldviews of the comparable national languages. For example, the English term “to table a bill” (literal translation: спрятать законопроект в стол) and the Russian “положить законопроект в долгий ящик” (Andrianov et al., 2009, p. 60) objectify the same metaphorical model “to postpone the decision – to remove it from sight” in unlike ways.

The same is spotted in the English-Russian pairs of terms “right of hot pursuit” (literal translation: право горячей погони) – “право преследования по горячим следам” (Andrianov et al., 2009, p. 418); “to sink a debt” (literal translation: утопить долг) – “погасить долг” (Andrianov et al., 2009, p. 442) and others. Krasnykh (2003) shares that:

Codes of culture as a phenomenon are universal in nature, peculiar to man as homo sapiens. However, their manifestations, the specific weight of each of them in a particular culture, as well as

metaphors in which they are realized, are always nationally determined and conditioned by a certain culture (p. 298).

The second type is represented by the terms in which metaphoricity is exposed only in English, and therefore having a pronounced culture-specific character, e.g. “naked trust” (literal translation: обнаженная доверительная собственность) – пассивная доверительная собственность (закрывающаяся лишь в выплате денег или передаче имущества бенефициарию) (Andrianov et al., 2009, p. 482–483); “bare boat charter” (literal translation: фрахтование голой лодки) – договор фрахтования судна без экипажа (Andrianov et al., 2009, p. 87).

Legal terminological metaphors of this type may not have a material embodiment in the form of corresponding terms in other national language systems. Such cross-lingual lacunae are usually registered in dictionaries in a descriptive way. For example, the term “Rules against perpetuities” (literal translation: Правила против вечных распоряжений) as a nation-specific element of Anglo-American legal culture, that has no counterpart in Russian juridical practice, is represented by an extended definition “Правила о недействительности сделок, устанавливающих вещные права со сроком возникновения более чем через 21 год после смерти лица или лиц, названных в сделке” (Andrianov et al., 2009, p. 424).

A niche in the corpus of culture-dependent legal terms is occupied by metaphorical units with onym components, the understanding of which depends largely on the degree of awareness of legal discourse participants about denotations designated by proper names and related non-linguistic factors. The proper name carries information about the historical, philosophical, political, economic, religious and cultural heritage of the society (Kosonogova, 2016, p. 11). It accumulates legal traditions and beliefs that the society has created throughout the history of its development. Oftentimes, toponyms and anthroponyms are engaged in forming terminological metaphors.

A toponymic unit conjures up semantic associations, or connotations, which reflect cultural trends and customs, that prevailed in the community at one time or another and are associated with the proper name. For instance, in order to understand an authentic metaphor in the English legal term “to enter at Stationers’ Hall” (literal translation: войти в зал компании Stationers) – зарегистрировать авторское право (Великобритания) (Andrianov et al., 2009, p. 184), a non-native English speaker should get familiar with the history and geography of the UK. Prior to 1924, individuals and legal entities had to apply for copyright protection at Stationers’ Hall, the home of the Worshipful Company of Stationers.

Another case in point is the legal notion “Gretna-Green marriage”. Similarly, if a specialist, not knowing the meaning of the term, encounters it in professional discourse, he will have to find out extralinguistic information about a quaint village located in the southern part of Scotland, where many English lovers tried to get to after 1753. In Gretna Green men and women entered into marriages according to Scottish law, which did not require, unlike English, compliance with other formalities except the consent of the intending spouses. This explains “wedding runaway” from England to Scotland (Andrianov et al., 2009, p. 302–303).

Toponyms such as “Stationers’ Hall” and “Gretna Green”, which build up terminological units, play an all-important role in the formation of professional language worldview that images the national mentality of British lawyers.

Anthroponyms also actively participate in term-formation processes in the legal lexicon of countries with a case-law system and easily create professional metaphors that indicate core cultural values of their ethnic group, e.g. “McKenzie friend” (literal translation: друг Маккензи) – человек, необязательно имеющий юридическую квалификацию, но наделенный правом помогать истцу в суде, действующем по нормам общего права (Law, 2018, p. 135). This terminological metaphor is derived from the name of the claimant in the case of McKenzie and McKenzie (1971), who, due to financial difficulties and inability to pay for the services of an attorney, involved a friend into his divorce proceedings.

Historical anthroponyms, which are reckoned by Krasnykh (2003) among the category of national-precedent phenomena, after passing into the category of terms, act as a manifestation of the national linguo-cultural component of professional language worldview. Let us illustrate it with the word “Hansard” (Law, 2018, p. 99). This is an official shorthand account of parliamentary debates, named after the Hansard family, whose printing house has been considered the official parliamentary printing house in Great Britain since the 19th century.

The prevalence of proper name-based metaphorical terms is predetermined by the precedential nature of the Anglo-American law system.

6.4. Unique legal terminological metaphors in national variants of professional language worldview

The Anglo-Saxon legal family traditionally distinguishes between groups of English law (this includes the United Kingdom of Great Britain and Northern Ireland, Australia, New Zealand, Canada, and some former English colonies) and American law (the United States of America).

As a tool for expressing legal traditions of a particular society, legal English has its own specific features in different countries of the Anglo-American legal system. This is most clearly manifested in the presence of special legal realia, which are not typical for another nation, and are reflected in the conceptual construct of jurisprudence. At the lexicographic level, these discrepancies were recorded by Andrianov, Berson, and Nikiforov (2009) with the help of the following lexicographic marks: “англ.” (English), “англ. ист.” (English historical), and “амер.” (American).

Culture specificity of professional language worldview should be sought precisely in the specifics of activities practiced by a certain ethnic group living in a particular territory. Genesis and evolution of common law system in Great Britain are linked with functioning of Crown courts and regal power; there is no written Constitution as a separate act, but a set of constitutional acts and statutes. This distinctive feature affected the development of a private national linguistic experience of British legal fraternity, recorded in such terminological metaphors as “King’s keys” (англ.) (literal translation: ключи короля) – инструменты, при помощи которых взламывается дверь в квартиру лица, подлежащего аресту (Andrianov et al., 2009, p. 271) or “peace of the King [Queen]” (англ.) (literal translation: покой короля [королевы]) – общественный порядок и безопасность, гарантируемые короной всем подданным и находящимся под ее защитой лицам (Andrianov et al., 2009, p. 347).

The lexicographic mark “англ. ист.” (English historical) singles out those terms that have fallen out of use in modern legal practice in the United Kingdom, but show the elaboration of the language of

law in a diachronic aspect. Of certain research interest is term-production in such an ever-relevant and evolving area of relationship between the state and individual, as taxation and its place in the historical progress of law and freedom, e.g. “ale-silver” (англ. ист.) – “серебряный с пива” (налог, взимающийся в Лондоне с торговцев пивом) (Andrianov et al., 2009, p. 29) or “Peter’s pence” (англ. ист.) – “пенс в пользу Св. Петра” (налог с жилых домов и церквей в пользу Папы Римского) (Andrianov et al., 2009, p. 348).

In the United States, the functioning of common law institutions is inextricably linked to the republican power and the existence of a whole system of written constitutions: the more than two hundred-year-old and playing a significant role federal constitution and state constitutions that differ in age. This could not but affect the appearance of nation-specific legal metaphorical terms, e.g. “the fathers of the Constitution”, “founding fathers” (амер.) (literal translation: отцы Конституции) – творцы Конституции США (Andrianov et al., 2009, p. 206) or “alter ego doctrine” (амер.) (literal translation: доктрина “другого я”) – доктрина юридического статуса сотрудников личного штата президента как “продолжение президентства” (Andrianov et al., 2009, p. 169).

These examples confirm that there exist national variations in professional language worldview of jurists in English-speaking countries. However, the data of the analyzed dictionaries do not allow us to consider the specifics of metaphorical term formation in the field of law in other than British and American national variants of the English language, which opens up prospects for further research developments.

7. Conclusion

The presented systematization of English legal metaphorical terms from the perspective of “universality versus specificity” reflects the identity of the world perception, cultural wealth, unique professional experience and some national and cultural features of the speech behavior of native-speaking jurists.

Nation-specific terminological metaphors often do not have equivalent names in other languages, thus forming cross-lingual lacunae. The representation of precedent phenomena and proper names as part of metaphorical terms is motivated by the peculiarities of the Anglo-Saxon precedential linguo-legal culture. Such terminological units function as socio-cultural and national-legal markers in professional language worldview. The presence of metaphorical nominations with the lexicographic marks “англ.” (English), “англ. ист.” (English historical), and “амер.” (American) in the corpus of terminological vocabulary of Anglo-American jurisprudence allows us to conclude about the existence of national variants of professional language worldview of English-speaking lawyers and outlines the ways of future scientific research.

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