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Interpreting in a Changing Landscape. Selected papers from Critical Link 6
Edited by Christina Schäffner, Krzysztof Kredens and Yvonne Fowler
Interpreting in a Changing Landscape
Selected papers from Critical Link 6

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public service interpreting community. Academics, interpreting practitioners,
employers, trainers, policy makers, service providers and service recipients will have
the opportunity to participate in a lively and stimulating international exchange
of information, knowledge and skills. The main theme of Critical Link 6 will be
Interpreting in a Changing Landscape, exploring political, legal, human rights,
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Interpreting in a changing landscape
Challenges for research and practice

Christina Schäffner, Krzysztof Kredens and Yvonne Fowler
Aston University

1. Introduction

When, in early 2008, we came up with the theme of the sixth Critical Link conference our aim was merely to respond in a well-meaning inductivist fashion to a reality whose changing nature was certainly bewildering but seemed conceptually manageable. We felt it was time to take stock of what globalization processes, new human migration patterns and the resulting socio-political phenomena meant for research and practice in interpreting. Since then, the reality in which interpreters work has changed so much that our theme could not be more apt. The Critical Link 6 delegates held their discussions in July 2010, with the economic crisis rampant and the events of the Arab Spring just a few months away. Three years later the crisis is claiming ever new ground and political changes in the Arab world (but also elsewhere) seem to be far from over. The changing economic and political landscape has meant budgetary cuts and forced mobility. These in turn translate into a variety of new phenomena of relevance to interpreting, e.g. multilingualism in traditionally monolingual societies, the emergence of rare language pairs, or the need to revisit language solutions for immigration application procedures, social welfare institutions or prisons. Cross-cutting this cascading sequence are relatively old problems which have acquired a new urgency, e.g. the role(s) of the interpreter, emergency interpreting or the (mis)use of technology, to name just a few. In putting this volume together our aim has been both to introduce new, and revisit existing issues in interpreting research.

All papers in this volume were originally presented at the 2010 Critical Link conference and then re-written, refereed, and revised to be selected for inclusion. In this introductory chapter, we address some of the socio-economic and socio-political challenges providing the background to the contributions.
2. The impact of a changing world

A phenomenon with arguably the most far-reaching implications for interpreting practice in its entirety is that of countries, especially European ones, which have not hitherto been immigration destinations (e.g. Italy or Spain) now finding themselves receiving migrants escaping poverty and war. Many of them speak languages of lesser diffusion such as Amharic, Tigrinya and Tamil. Similarly, the enlargement of the European Union has meant new challenges for a number of Western European countries, where diverse and sizeable migrant populations have been arriving from Eastern Europe since 2004. The full implementation of the Human Rights Act (2000) in the UK and the United Nations Convention on the Rights of People with Disabilities (UNCRPD), together with the recent EU Directive (2010/64/EU) on the right to interpreting and translation in criminal proceedings which will come into force in the Autumn of 2013 (see Martin and Herráez, this volume), means that public services need to adapt more than ever before to the needs of a multilingual society.

Coincidentally, all this is taking place at a time of a global financial crisis. All over Europe public services are being affected by significant cuts in expenditure; societies have been experiencing a protracted period of unprecedented financial austerity due to the diminution of the tax revenue base and problems of the world banking system. Large parts of the public sector are in many countries being outsourced to private multinational companies. In the UK, for example, this has had an immediate and disastrous effect upon the quality of court and police interpreting and even upon the very availability of interpreters. Many of the gains which had been made in the UK over a period of twenty years have been set aside by the government (for example, formal qualifications and training for legal interpreters, the establishment of the National Register of Public Service Interpreters and the National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings in the Criminal Justice System, 2007) and the very future of the profession now seems quite bleak. Similar developments are being reported from other countries in the world.

3. Reflecting on the status of interpreting and the role of interpreters

Whilst activists, who are often both academics and practitioners, remain defiant on the political front, there is still no universal agreement on what the role of the interpreter should be, as evidenced by some of the papers in this volume. Should the role differ according to setting? Is the role of the interpreter as a cultural mediator acceptable in some settings but not in others? Does interpreter-mediated
communication always involve cultural mediation? What is the relationship between ethical practice and interpreting?

Questions about the role of interpreters are linked to the question of what interpreting is nowadays. Within the discipline of Translation and Interpreting Studies definitions of interpreting have been changing. The same applies to definitions of translation, and, in fact, interpreting has often been subsumed under the label of Translation (Studies). The issue has been debated repeatedly whether Interpreting Studies could constitute a research area in its own right, separate to Translation Studies. Translation and Interpreting Studies has become the widely accepted label (see, for example, Pöchhacker and Shlesinger 2002).

When translation and interpreting became objects of more systematic research in the 1950s, both were initially defined in the narrow sense of transfer. The focus of research was the comparison of linguistic systems in order to identify the potential equivalent units (at lexical and also syntactic level) which would be readily available for transcoding a message faithfully into the target language. This view of translation and interpreting as a mechanical process was linked to a communication model which described meaning transfer from a source to a target via some channel (speech or written text), assuming no loss during transfer. The communicative partners involved were labelled sender and receiver, with the translator or interpreter in the middle as a conduit transferring the message.

In the development of interpreting research specifically, the initially dominant conduit model has been challenged by researchers focusing on the triadic nature of interpreting as interaction (Wadensjö 1998; Mason 2001). Investigating interpreting (and also translation) as interaction automatically means including in the analysis the socio-cultural, institutional and situational context as well as actual people in their respective roles and power positions. As a consequence, translators and interpreters have been featuring much more prominently in the literature and new research questions have been asked. In Interpreting Studies, this focus on the role of the interpreter has been much more prominent for Public Service Interpreting (PSI) compared to Conference Interpreting, since the variety and unique nature of public service settings pose more challenges for interpreters. The conduit model, although still seen by a large number of PSI users as the only one valid, has in Interpreting Studies research been either replaced or complemented by models with the interpreter as an intercultural mediator, a culture broker, or a co-therapist (see especially the papers in Part I of this volume). This shift in theoretical reflection is largely motivated by the changing landscape of PSI practice. With countries becoming more and more multilingual and multicultural, PSI needs are growing, and the complexity of contexts and settings (police interviews, probation meetings, asylum hearings, healthcare, education etc.) as well as individual life stories and social profiles (refugees, prisoners, disabled people)
suggests that the traditional view of interpreters as neutral language mediators (which is also still the dominant view in most professional codes of conduct) does not fit reality anymore. It therefore comes as no surprise that a large proportion of papers in this volume are devoted to exploring the role of interpreters in various PSI settings. Indeed, we see this as only natural and timely.

4. Making sense of a changing landscape: The contributions

The topics of the papers are certainly also a reflection of the sociological turn in Translation and Interpreting Studies whereby focus on settings and people in increasingly multilingual societies is deemed more important, or at least more pressing, than focus on language per se. This shift is evident also in the research methods; the authors have used (semi-structured) audio- and/or video-recorded interviews with interpreters, PSI users and other stakeholders, questionnaires and transcripts of audio- and/or video-recorded interpreter-mediated interactions, reports and documents related to the interpreter-mediated event, text-based material (e.g. reflective reports), and observations.

We have grouped the papers into four sections designed to help make sense of the socio-political and socio-cultural issues in their relevance for interpreting practice and training. The papers explore how social and institutional conditions impact actual interpreting behaviour and what consequences this has for the perception of interpreting and interpreters by professional groups and by society more generally.

4.1 Part I

The papers in Part I of this volume address the impact of political and economic changes on interpreting roles, communication strategies, ethics and practice.

Erik Camayd-Freixas provides an account of his own work as an interpreter during the now infamous 2008 Postville immigration raid. He explains his own conflict between the assumed professional role as an interpreter, an officer of the court, and as a citizen. These respective roles are linked to divergent ethical duties. He gives an overview of the development of codes of ethics in relation to main traditions in ethical theory (deontology, consequentialism, moral sentiments, and virtue ethics) and examines their intrinsic and interpretive limitations. He argues that the changing landscape caused by immigration has led to an erosion of democratic principles, which makes an in-depth revision of interpreter codes
Interpreting in a changing landscape

necessary. The Interpreter Code of Ethics of the Massachusetts Trial Courts is recommended as a model.

Uldis Ozolins argues that although basic ethical rules have been set down in various codes, there is hardly any recognition of how ethical issues are being played out in practice. His paper explores how thinking about ethics can be fostered in interpreter training, using as an example a training course in Australia. Role plays are undertaken between interpreting students and students of other faculties (from areas such as law, health, physiotherapy and social work). This has the additional benefit that also students from the other faculties are trained in working with interpreters. The interpreting students keep a journal of their experience of these role plays and also submit a reflective report. Ozolins analyses entries from the students’ journals and reflective reports and illustrates how issues of ethics and role are illuminated by situations which challenge standard codes of ethics. These entries also illustrate a wider appreciation of the complexity of the interpreter’s role, an awareness of crossing role boundaries, and the importance of a reciprocal understanding of roles. He concludes that for pedagogic purposes, the key to discussion of ethics must be understanding of not only the interpreter’s role in certain settings, but also their role relationships with other professionals.

Lluís Baixauli-Olmos looks at the so far unexplored area of prison interpreting. On the basis of data collected through observation, questionnaires and interviews with interpreters and other stakeholders, he has identified specific contextual elements that condition public service interpreting in prison facilities, the main difficulties faced by interpreters, and the effect of these factors on the interpreter’s ethics. Ethical dilemmas can be caused by primary participants expecting interpreters to carry out tasks beyond their duty, and also by interpreters themselves being uncertain about the course of action to take, which may happen when professional duties, ethical principles or personal and professional values seem to collide.

Michal Schuster’s paper on language access in public services presents a sociological model for analyzing the development of language access and the factors underlying the public sector’s inclusion of professional interpreting among the services rendered. Factors and forces which can facilitate the process can be an awareness of language-access solutions in other countries (for example as a result of professional contacts), community activism, political pressure, and media coverage. In applying her model, Schuster uses processes in the Israeli society since the 1990s as a case study, arguing that most of the services in Israel in 2011 are either in chaos or emerging awareness stages, with only a few institutions pilot- ing professional interpreting services. She concludes that her model, which adds a sociological perspective to community interpreting research, can help action
researchers to “identify processes, actors, and forces involved and actively push the stakeholders to progress to the next stages.”

Christopher Stone reminds us of legislation which is relevant to the provision of sign language interpreting. His focus is on legislation in the United Kingdom, such as the 1995 Disability Discrimination Act and the 2010 Equality Act, both linked to the supra-national Human Rights Act and the United Nations Convention on the Rights of People with Disabilities. It is due to such legislation that interpreting provision is gradually becoming part of the socio-political agenda (a development which, incidentally, ties in with Schuster’s stages of emerging awareness and piloting professional interpreting services). Stone presents the results of a survey conducted in the United Kingdom, exploring interpreters’ and agencies’ awareness of the legislative documents and their understanding of requirements specified in them concerning who should work as an interpreter. He concludes that in order for sign language interpreting provision to improve further, the gains made in recent years need to be codified in domestic legislation, and local and national policies.

Anne Martin and Juan Miguel Ortega Herráez investigate how the role of interpreters and their performance during the Madrid train bomb trials was perceived by the legal professionals involved. Simultaneous interpreting was used at the trial, which is uncommon in Spanish courts, and the authors show that the legal professionals needed time to adjust to it. They perceived interpreters primarily as machines, in line with the conduit model, whether they performed in their role as interpreter or expert witness. Martin and Ortega Herráez conclude that closer cooperation between legal professionals and interpreters is needed in order to avoid problems of the kind that occurred during the trial.

4.2 Part II

As pointed out in the introductory comments above, the role of the interpreter has been a hotly debated issue in interpreting research of late. The papers in Part II of this volume address this issue explicitly, exploring the tension between interpreting and mediating/culture brokering.

Hanneke Bot and Hans Verrept investigate interpreting in mental healthcare. Their main argument is that due to their physical presence, interpreters can have a considerable influence on the course of the meeting between healthcare worker and patient. They present a model of the interpreter as a co-therapist as an alternative to the conduit and intercultural mediator models. Interpreting in this setting is seen as interactive, with the role of the interpreter being to ensure that the patient and the healthcare worker notice and act upon their mutual differences.
**Jules Dickinson** looks at perceptions and the actual role of sign language interpreters in the workplace. Her starting point is a change in the employment profile of deaf people in the United Kingdom, from traditional manual trades to, increasingly, office-based employment. Based on ethnographic data (transcribed excerpts of video-recorded interactions between deaf and hearing employees), she demonstrates the complexities of the sign language interpreter’s position in workplace discourse, showing that even within a single interpreted interaction the role can switch between, among others, interpreter, assistant and co-worker. Such shifts can also mean that personal and professional boundaries are crossed and reflect the variety of power differentials in the relationship between the sign language interpreter and the deaf employee. Dickinson concludes that the pervasive perception of the interpreter’s role as an invisible translating machine is insufficient for the situations in which they find themselves.

**Letizia Cirillo** and **Ira Torresi** explore child language brokering as a new practice in Italy. Italy has changed from an “emigration” to an “immigration” country, which means that the communicative needs of non-native populations with limited proficiency in Italian need to be met. The role of interpreters, or language brokers, is often performed by children. Using findings from semi-structured interviews with healthcare providers and general practitioners, the authors talk about the commissioning of interpreting services and institutional perceptions of child language brokering. They argue that research into such practices can also raise awareness of immigration-related issues, such as the inadequacy of available resources to meet the needs and ethical aspects involved in child language brokering.

**Raquel Lázaro Gutiérrez** investigates the performance of healthcare staff and untrained “natural interpreters” in Spain, where the provision of interpreters in hospitals and healthcare centres is not yet regulated. As a result, interpreting is very often performed by patients’ relatives and other companions. Lázaro Gutiérrez reports on her study of doctor-patient conversations in situations where the non-Spanish-speaking patient communicates with or without the assistance of an interpreter. Based on her empirical analyses, she illustrates strategies used by doctors (e.g. using simple vocabulary, repetition, explanation, rewording) and concludes that the assistance of a natural interpreter reduces the asymmetry between healthcare staff and patients.

**Ingrid Fioretos**, **Kristina Gustafsson** and **Eva Norström** present a more general discussion of the role of the interpreter with a particular focus on the term “cultural broker”, often used with reference to persons who have cross-cultural competences to explain and bridge cultural differences in multicultural contexts. Since professional ethics in interpreting practice precludes negotiation or trying to influence a certain outcome in an encounter, it seems that being an interpreter
Christina Schäffner, Krzysztof Kredens and Yvonne Fowler

and being a cultural broker are two different things. The authors approach the concepts of culture, cultural competence and cultural broker from the perspective of interpreters working in Sweden, whom they interviewed about actual events that had occurred during interpreted encounters. The interviews revealed that the interpreter actually cannot avoid the role of cultural broker and that it is intrinsic to interpreting itself.

Ana Isabel Foulquié Rubio and Isabel Abril Martí investigate the role of interpreters in educational settings in Spain. Like Italy, Spain too has seen an increase in linguistically disadvantaged immigrants, who should be guaranteed their right to education. The paper presents the results of a questionnaire-based pilot study designed to explore the perceptions teachers have of the communicative needs of immigrant children and their families, the current solutions being applied to address those needs, and ones the teachers would actually prefer. Since intercultural mediation is a new phenomenon in Spain, and as yet not recognized as a profession, the respondents’ answers indicate that their expectations about what mediators can and should do are unclear and sometimes unrealistic. The authors argue that both intercultural mediators and community interpreters have an essential role to play in Spanish society but that a proper distinction between the two roles is essential.

4.3 Part III

The papers in Part III address interpreting strategies in different interactional contexts, exploring the impact of setting on both global and local strategies as reflected in linguistic features. The settings in which PSI occurs and participants’ perceptions of the role of interpreters are factors that determine the progression of the interaction, including coherence between the turns, but also the actual linguistic features of interpreted utterances. The papers which address these features do so on the basis of a descriptive analysis. They are not concerned with a detailed comparison of the original utterance and its interpreted output in order to evaluate interpreting quality, but their main aim is to investigate systematic links between the linguistic features of the interpreted utterances and the institutional conditions in which they are produced.

Part III opens with Yvonne Fowler’s paper. She illustrates how new technologies can have an impact on interpreter-mediated interaction in multilingual Magistrates Court hearings. She specifically analyses the observable effects of prison video link upon court actors’ (verbal and non-verbal) behaviour and comments on proxemics, behavioural adjustments, and interpreter strategies. One of her main findings is that prison video link interpreting reduces the choice of interpreting
strategies compared to face-to-face hearings and makes interpreters highly visible and audible and their performance much more transparent. She also identifies several problems related to sightlines, sound, and defendant back-channelling.

Eva Ng is also interested in courtroom settings. She has found that interpreters often use reported speech when they interpret utterances of legal professionals from English into Cantonese but use the first person ‘I’ in interpreting from Cantonese into English during trials in Hong Kong. Ng argues that this strategy has to do with power asymmetry in the hierarchical setting of the adversarial courtroom. Interpreters seem to be conscious of the power differential between the legal professionals and the lay participants in the judicial process. She also illustrates how a shift from first to third-person interpreting can have an impact on the speech act, for example rendering a direct accusation less confrontational.

Raffaela Merlini investigates politeness and face-work in the settings of health care, education, and the social services. Her starting point is that interpreters act as fully-fledged social agents, which also means that their image of self is at stake during the mediated communicative event. Face-work performed by the participants (both face-threatening and face-enhancing acts) is determined by the status, power and knowledge differential between the communicative partners, with the presence of an interpreter adding to the complexity of face-work dynamics. Merlini’s main aim is to identify shared behavioural patterns as well as distinctive variations which may be accounted for in terms of distance and power.

4.4 Part IV

The final part of this volume deals with the consequences of the changing socio-political landscape for interpreter training. PSI trainers are more frequently faced with new challenges: course participants are often immigrants themselves, they may have very different levels of education (ranging from basic education to doctoral degrees in specific fields), and their own economic status may differ (which is a problem if participants have to pay tuition fees). Nevertheless, it seems that research and practice in interpreter education have kept up with the changing reality.

Miranda Lai and Sedat Mulayim start by referring to changes in humanitarian intake patterns in Australia, which has seen increasing numbers of refugees. This development has resulted in an increasing need for interpreters and translators in a number of rare and emerging languages for government and community services, and thus also an increasing need for interpreter training. The authors present a programme offered at the Royal Melbourne Institute of Technology and leading to a Diploma of Interpreting in selected rare and emerging languages.
Since the students are drawn from the very refugee communities that they are going to serve, they face the same resettlement challenges as other members of their own ethnic communities. The authors argue that the students have a dual role as agents and subjects of social inclusion, and that in their role as interpreters they will facilitate integration upon which social capital is built.

Natacha S. A. Niemants explores role-playing activities in interpreter training at an Italian university. Her starting point is the “ideal template” of dialogue interpreting in which there is a clear pattern of turns (A-I-B-I-A). She investigates to what extent, when and why participants depart from this pattern. Her interest is also in identifying differences in such departures in medical-themed role-plays compared to real data in interpreter-mediated doctor-patient interactions. Combining notions from Conversation Analysis and Interpreting Studies, Niemants illustrates various ways in which departures from the “ideal” pattern are interactionally negotiated by participants during role-play performances, and generally initiated by the examiner. She asks whether role-playing is a good way of introducing students to actually taking on new mediating roles in multicultural healthcare settings and concludes that if interpreting trainees learn by doing, they also need to learn what they are doing and why.

Finally, Danielle D’Hayer makes a plea for the profession of public service interpreting to be fully recognised and states that professional qualifications only carry a value if they are combined with appropriate education. She argues that PSI training courses in the UK mainly offer a skills-based approach but show little awareness of pedagogical principles. Her paper is thus an attempt to define a PSI education pedagogy. The main issues she addresses are changes in the younger generation’s approach to learning and accessing knowledge, changes in student profiles, situated learning which involves engagement in a community of practice, new technologies and learning environments, as well as remote teaching and learning. Similarly to some other papers in this section, D’Hayer argues that curricula need to be flexible and reflective in order to integrate changes in the continuously evolving profession. She also insists that educational philosophies and teaching approaches should be evaluated as to their effectiveness for new generations of learners, stakeholders should be consulted for curriculum design, and teaching institutions should lead the way towards the professionalization of public service interpreting.
5. Conclusion

As is evident, the papers in this volume address the changing landscape of community interpreting in its diversity. They deal with political, social, cultural, institutional, ethical, technological, professional, and educational aspects of the field. As community interpreting is becoming more widespread and socially relevant in practice, it is important to increase awareness of the field in its complexity. We hope this volume can achieve just that.

References

PART I

Political and economic changes
Their impact on interpreting roles, communication strategies, ethics and practice
Court interpreter ethics and the role of professional organizations

Erik Camayd-Freixas
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The changing landscape in interpreting includes a recent trend toward criminalizing unauthorized immigration, giving rise to a procedurally and ethically ambiguous area of the law: “crimmigration.” Its contradictions in terms of constitutional, civil, and human rights came to the fore in the 2008 Postville, Iowa immigration raid and mass felony prosecutions, a landmark case that challenged interpreter codes of ethics and the role of professional organizations in responding to such challenges. This paper examines both the intrinsic and interpretive limitations of existing ethical codes through a historical analysis of their development in relation to the main traditions in ethical theory – deontology, consequentialism, moral sentiments, and virtue ethics – and using Postville as a practical case study. Recommendations are made for an in-depth revision of interpreter codes and the proactive leadership role of professional organizations, proposing as model the interpreter code of ethics of the Massachusetts Trial Courts.

“I was just following orders.”
(Peter von Hagenbach, beheaded in 1474)

1. Introduction

The post-9/11 national security agenda has changed the political landscape in the United States and globally. A sense of expediency has come to reign over public policy, marked by the enactment of laws and the application of measures that often erode constitutional and democratic principles, civil liberties, and human rights (Camayd-Freixas 2013).

The field of immigration has been particularly impacted by this policy shift toward growing restrictionism that runs against the grain of globalization, as evidenced by an estimated 214 million international migrants worldwide, some 30 million of them unauthorized and evenly distributed among Asia, Europe, and
North America (IOM 2008). The expansion of immigration repression, with ever-
harsher enforcement, arbitrary imprisonment, and indiscriminate deportations,
has resulted in a global human rights crisis that profoundly undermines modern
democracies (Amnesty International 2008). In 1990, the U.N. General Assem-
ably adopted the International Convention on the Protection of the Rights of All
Migrant Workers and Members of Their Families. Two decades later, none of the
world’s major receiving countries had signed up, and the problem has become
progressively worse.

At the base of this changing political landscape is the perpetuation of war-
time governance structures in immigration policy, which typically fail to distin-
guish labour migration from criminality and national security. The evolving legal
framework that is supposed to address security concerns thus becomes suscepti-
ble of political manipulation for the purpose of labour, racial, ethnic, and demo-
graphic control. The result is a growing trend towards criminalizing immigration,
so prevalent in recent years in the United States that jurists have identified it as a
new hybrid and highly unstable area of the law they ironically term “crimmigra-
tion” (NNIRR 2010; Chacón 2009; Moyers 2009). And while immigration policy
is supposed to be the exclusive province of federal law, a series of agreements
authorized since 1996 between U.S. federal agencies and local police precincts to
conduct immigration enforcement has resulted in a policy tug of war between lo-
cal states and the federal government, which parallels that between the European
Union and its member states (Camayd-Freixas 2010).

Thus, at all levels, court interpreters formerly used to working in the neatly
delineated and well regimented arenas of either immigration or criminal court
now face unprecedented ethical challenges in a changing landscape suddenly
marred by issues of social conflict, ethnic prejudice, and human rights. The di-
vergent ethical duties of interpreter, officer of the court, and citizen, which were
seldom problematized before – and therefore have remained unaddressed by the
ethical codes of most courts and professional organizations – now all too often
come into conflict.

For years now, many interpreters in the United States and elsewhere, but par-
ticularly in the states along the U.S. border with Mexico, have been confront-
ing the ethical dilemmas of “crimmigration” on a daily basis. Without adequate
guidance from their ethical codes or the concerted backing of professional or-
ganizations, they have had little choice but to quietly facilitate, as part of their
work, questionable and downright abusive “crimmigration” proceedings against
their own conscience, and frequently against members of their own ethnic group.
Despite the high incidence of such cases, these difficult working conditions
remained unreported until they were replicated in a high-profile case: the Postville,
Iowa immigration raid and criminal prosecutions of May 2008.
In this landmark case, instead of simply deporting the migrants, as had been previously the norm, hundreds of indigenous and illiterate peasants from Guatemala and Mexico, who were slaving away at a meatpacking plant in Iowa, were raided and charged with the antiterrorism crime of “aggravated identity theft,” in order to force them to plead guilty to lesser charges of social security and document fraud. This resulted in an unprecedented criminalization of migrant labour (Downes 2008). Ten at a time, they were “fast-tracked,” convicted, sentenced, and incarcerated within seven working days. It was the only mass felony prosecution in American history, indeed in the history of modern democracy since WWII. It thus set a dangerous precedent; one month later, the European Union authorized the detention of undocumented migrants for up to 18 months, a measure that drew sharp criticism from most of the developing world (Amnesty International 2008:3).

Thirty-six federally certified Spanish interpreters participated in the Postville prosecutions. Ten could only stay the first week, so another ten were brought in as replacements. I was one of the 16 who worked through both weeks of the proceedings. We were contracted by the federal criminal court in Iowa under false pretences for a secret mission that was supposed to have been a “continuity of operations exercise.” But when we arrived at the heavily guarded cattle auction fairgrounds turned detention compound and field court to begin work, we learned that it was in fact the largest immigration raid in U.S. history.

Each day of the proceedings, I saw a new irregularity, previously unknown in my experience of 23 years working for federal courts across the country. Like pieces of a puzzle, these irregularities compounded to produce wholesale injustice at the other end of the judicial conveyor belt. In individual interviews with detainees, it became apparent that most of them did not even know what a social security number was, and therefore were not guilty of intent crimes as charged. Held without bail, hundreds of workers were forced to plead guilty and accept a five-month sentence, or spend many more months in jail waiting for a dubious trial, while their families starved. The magnitude of the suffering was life-changing. By simply doing my job and following my code of ethics to the letter, I, like the rest of the participants, had facilitated the wrongful demise of hundreds of impoverished workers and vulnerable families. I further knew, from my communications with court personnel, that Postville was a pilot operation to be replicated at scale across the country. The moral burden was too heavy to ignore.

At the end of the proceedings, I discharged my reporting duties to the court by sharing my concerns with a senior judge. I was surprised to see that the judge himself was angered and disgusted at the entire operation. He had no sentencing discretion and was powerless to administer justice. I was witnessing the breakdown of the separation of powers, one of the pillars of our democracy. Months
later in a public interview, this exemplary judge, the Hon. Mark W. Bennett, criti-
cized the Executive for forcing the hand of the Judiciary in the Postville case. He
called the proceedings a “travesty” and expressed his moral sentiment stating:
“I was ashamed to be a U.S. District Court judge that day” (Argueta 2010).

In order to understand the broader legal and political implications of the
events, I proceeded to research and analyze numerous government documents.
Once the cases were closed and I was no longer under contract with the court,
I wrote a full report, which I emailed to judge Bennett and my interpreter col-
leagues in the case, who could verify my findings (Camayd-Freixas 2009a). With
the judge’s knowledge, my colleagues sought my permission to share my report
with their contacts in the legal profession. Within two weeks, counsel for the U.S.
House of Representatives asked me to testify at a congressional hearing inves-
tigating the Postville raid and prosecutions (USHR 2008). Meanwhile, lawyers
across the country urged me to make my report public. At that point, I had fully
discharged my obligations to the court as an interpreter, and was now prepared
to act upon my conscience as a citizen, entitled to freedom of speech by the First
Amendment of the U.S. Constitution. I wanted the legal community and the press
to scrutinize the case, in the interest of restoring the integrity of our justice sys-
tem. Evidently, the scope of these matters went beyond personal or professional
considerations. I urged journalists to conduct a full investigative report, but that
would take months. Instead, the article “An Interpreter Now Speaking Up for Mi-
grants” – with the sensationalist and erroneous caption “Breaking the code of

In the following months, I was so consumed with the Postville relief effort,
helping journalists with interviews and reports, lobbying labour unions, faith
groups, NGOs, and government officials for a moratorium on raids, and advocat-
ing for immigration reform, that I hardly had time to follow up with my profes-
sion. I received many letters of support from lawyers, judges, and interpreters,
spoke at law schools and bar associations, and received humanitarian awards from
the National Association of Criminal Defence Lawyers, the Florida Immigrant
Advocacy Center, the American Immigration Lawyers Association, the Guatema-
lan Foreign Ministry, and other organizations. I was even elected “Linguist of the
Year” by Intranet Global Translators Network, based in Rouen, France, but our
own professional associations in the United States remained silent and mired in
controversy (Bierman 2008).

Some critics suggested that I should have withdrawn from the case citing
conflict of interest. But by the time I realized the judges had no sentencing dis-
creption, the case was already over. Not one of the 36 interpreters withdrew, even
though many expressed disapproval about the proceedings. One even comment-
ed: “Even if we all withdraw, nothing keeps them from bringing in non-certified
interpreters.” The conflict, real or perceived, did not prevent us from discharging our professional duties to the letter. Every single interpreter, independently, arrived at the same personal decision to stay the course. It was the right decision both from an ethical and a professional standpoint. To withdraw from a high-profile case is tantamount to making a public statement, which could affect the outcome and violate the principle of non-interference and the cardinal rule that the interpreter must not influence the outcome of the case. Yet this cardinal rule, which underlies the code of ethics and the interpreter’s oath of accuracy and impartiality (whose purpose is precisely non-influence), is everywhere implied but nowhere expressly articulated in our ethical codes – this being the first lack to be remedied as part of the deontological revision I propose below.

Moreover, it was the court, not myself, that had acquired a conflict of interest, by the manner in which it accommodated the pre-approved prosecutorial strategy (Preston 2008b). New evidence now confirms that the Chief Judge secretly participated in the planning of the raid and prosecutions almost a year in advance of the operation (Black 2010). The court had failed to live up to the same standard of impartiality required of the interpreters. Impartiality, as defined in judicial codes, requires avoiding any situation that might give even the mere appearance of bias. It applies to all neutral officers of the court: to wit, judges, clerks, and interpreters (JCC 1994: 17; NCSC 1995: 202). Various critics have argued that abridgments of due process in the case compromised the professional ethics of all participants (Greenberg and Martin 2008; Andrade and Orr 2008). Working for a conflicted court turned everyone into agents of the prosecution. I had to interpret coerced guilty pleas I knew were perjured. All the participants were pressed into playing along, while fraud was perpetrated upon the court as an institution. Doing my job quietly and following the code of ethics to the letter violated in spirit my oath of accuracy and impartiality as an interpreter, and conflicted with my ethical reporting duties as an officer of the court. Confidentiality is not an absolute, nor is it part of the interpreter’s oath. Denouncing the proceedings after they were over, at my own personal and professional risk, was the only ethical choice.

Attempting to seek organizational support, I wrote a “Statement to the Profession” asking the National Association of Judiciary Interpreters and Translators (NAJIT) to review my case, but they were unable to adopt an official position or issue any supportive statement (Camayd-Freixas 2008). The American Translators Association (ATA) gave me the opportunity to present at the 2008 convention, where I received overwhelming support from colleagues, including members of the board, but again no official statement was issued. Our associations seemed unprepared to deal with a major ethical challenge. “No consensus is in sight”, reported Chris Durban in the ATA Chronicle (Sibirsky and Taylor 2010: 34–36).
Division and confusion reigned, signalling that a revision of ethical codes and the role of professional organizations is overdue.

As matters stand, if any colleague confronts abuse and decides to exercise professional discretion and report the violation, that interpreter will stand alone. This is unacceptable, inasmuch as a core role of professional associations is precisely to support the mission of the individual interpreter. We need not wait until the next mass prosecution. I have corresponded with many interpreters who confront similar abuses, and feel disenfranchised, afraid, and alone. In a changing landscape marked by the erosion of democratic principles and constitutional protections, including abuse of process, arbitrary detention, intimidation, and torture, interpreters are often forced to become tacit facilitators of such abuses (Inghilleri 2008). “In situations where conflicting agendas arise or where the proper exercise of human or legal rights may be in doubt, translators’ ethical and political judgments become as central to their task as cultural or linguistic competence. Translators cannot escape the burden of their moral proximity to others” (Inghilleri 2010: 153). Interpreters everywhere are often advocates for various social causes. Yet the role of advocacy in judicial interpreting is seldom recognized or contemplated (Boéri and Maier 2010).

In response to this changing landscape, it is incumbent upon professional organizations to revisit their ethical codes and draft principled resolutions. The California Federation of Interpreters (2010) has already taken the lead in appointing an exploratory committee on ethics. The present discussion seeks to contribute to that collective effort.

2. Pre-existing rules (deontology)

Any rigorous review of professional codes of conduct should go back to fundamentals: the main ethical traditions that constitute the foundation of all modern ethical codes. Since ancient times, philosophers have attempted to formulate a set of rules to capture our moral intuitions in all situations. After centuries of failing to bridge the distance between codification and reality, we understand that no code can ever fully achieve that. Instead, three complementary ethical systems have been handed down through the ages: Kant’s “categorical imperatives,” British “consequentialism,” and the Confucian “ethics of virtue.” Each has limitations, as well as useful implications for interpreter ethics.

Immanuel Kant (1724–1804) provides the philosophical basis for modern ethical codes – a system of a priori “categorical imperatives” or pre-existing rules and prohibitions to be universally observed. The term a priori or pre-existing rules refers to ethical tenets that pre-date the particular situation to which the
rules are supposed to apply. Although Kant placed a central emphasis on “will” or “intention” as a determinant of an act’s morality, such states of mind are not observable to others, and in law require an overt act. The fact that codes of ethics cannot practically provide for the “intentions” of an act suggests that the status of “categorical imperatives” accorded to pre-existing rules and codes is a distortion of Kantian ethics. Kant never advocated following rules blindly nor proposed any particular set of rules. By the same token the non-observable quality of intentions is a limitation in the applicability of Kantian ethics, which therefore cannot support any set of rules being construed as absolute or categorical. For Kant it is intentions that count, not rules or consequences.

Yet undoubtedly, a good set of rules will serve us well in most circumstances, and is particularly necessary for the beginning professional. But sooner or later, experienced interpreters will confront the inherent limitations of such purportedly “universal” codes. This is bound to happen whenever codified, pre-existing rules are tested against new social, political, and legal realities.

Inherent limitations in ethical codes belong to three categories: (1) grey areas in reality which fall “in between” ethical tenets, obscuring their interpretation and applicability; (2) situations where different tenets conflict or lead to divergent conclusions; and (3) bias in the way the code originated and evolved.

Regarding bias, consider that interpreter codes in the United States originated with the Court Interpreters Act of 1978, at a time when ad hoc interpreters were the norm, and administrators sought to suppress “non-professional” behaviour. Even after “professionalization” (if such historical achievement could be pinpointed), the desire to control new interpreters continues to perpetuate this “supervisory” bias. That is, our codes originated and evolved as administrative tools designed to empower supervisors, not professional interpreters.

Researchers find that “institutions sometimes negotiate the rules sensitively with their members and take account of their experience and values, but more often they impose these codes from the top down, as a response to some legal or public relations concerns” (Baker 2011:283f.). Thus “professional responsibility” came to imply “not rocking the boat” even if it means “ignoring broader moral standards in society” (Cheney et al. 2010:15; cf. Hennessy 2008). The resulting codes seek “compliance with regulations” more than “elevating behaviour” or “being morally responsible” – which sometimes may require “resisting an order, going public with private information, or leaving a job or career altogether” (Cheney et al. 2010:153).

Today, “model” court interpreter codes in the United States (Federal, California, and NAJIT – available at www.CourtEthics.org) are still unrevised supervisory codes. They continue to treat interpreters as though they were still ad hoc outsiders to the judicial process, denying them any professional discretion as
participants in the proceedings. This is profoundly at odds with rules 604 and 702 of the *Federal Criminal Code and Rules* (1989), which grant the interpreter the combined status of *expert witness* and *officer of the court* – roles whose scope of responsibility transcends interpreter canons (Dueñas et al. 1991:160).

Canon 6 of the federal code illustrates this bias: “Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.” This restriction obstructs constitutional freedom of speech and professional advancement through publication, and is neither required nor expected from any other officer of the court. For example, a court clerk in the Postville case published his own criticism of the proceedings, without raising any eyebrows (Moyers 2009). In contrast with this double standard, the most evolved code in our profession, *Massachusetts Code of Professional Conduct for Court Interpreters of the Trial Court*, deliberately states: “A court interpreter shall not discuss publicly, report or offer an opinion concerning a matter in which he/she has been engaged and while such matter is pending.” Given that the cases were closed even to appeal, my report was in absolute conformity with the Massachusetts Code. I knew this from the outset, since I trained at Boston Superior Court (1980–1986) where the Massachusetts Code originated.

Moreover, we will see later that the Massachusetts Code is the only one to offer *guiding principles*, the fundamental values that the rules are designed to protect. Precisely because other codes do not recognize any room for professional discretion, they see no need to offer principles for guiding the interpretation and applicability of rules, expecting interpreters to follow them mechanically. Therefore, such codes suffer from all three shortcomings outlined above: inapplicability to grey areas, conflicting tenets, and bias. In contrast, the Massachusetts code clearly states its guiding principles before issuing any rules or prohibitions. I will return to this under “Virtue Ethics,” but now I wish to emphasize that instead of serving to educate and empower interpreters, rigid supervisory codes actually foster what ethical philosophers call “rule worshipping” – following rules blindly, regardless of their consequences or rationales (cf. Hennessy 2008).

The following case illustrates the limitations of ethical codes and the potential consequences of rule worshipping. It concerns a trial where lawyer and interpreter were actually co-defendants, *U.S. v. Carbone and Mejia* (1999). The lawyer, through the interpreter, had coached a witness in preparation for a previous trial, and it backfired. Arguably, the interpreter followed the code of ethics to the letter, interpreting the lawyer’s coaching without interfering. Yet both were charged, convicted, and sentenced with the same level of culpability, for subornation of perjury. This case shows that the interpreter is a *facilitator*. If one interprets during the commission of a crime, interrogation by torture, or rights violations (as I
did in Postville), one has facilitated the abuse – as a full-fledged accomplice. The myth that the interpreter is not a participant is, and has always been, untenable.

Ethical codes do not exist in a vacuum. Over my years as a trainer, I developed with the help of students and colleagues the following “compliance priority”: The Law, Employer Policy, Interpreter Code of Ethics, and One’s Conscience. Before making an ethical decision, the interpreter must fully consider all of these sources of authority, without singling out any particular tenet or making any one principle absolute, to the detriment of other considerations. Finally, when searching one’s conscience, one should consider the foreseeable consequences of one’s actions: “What is the worst that could happen if I speak out and if I don’t, and can I live with the consequences?” This method has the advantage of properly incorporating rules, consequences, and the virtues or rationales behind the rules, into an ethical decision-tree. One or more factors should clearly justify one’s choice. In the absence of clear and distinct indication, do nothing.

3. Consequentialism

The question of consequences remains an insurmountable argument against “rule worshippers” and pre-existing rules. According to Jeremy Bentham (1748–1832) an act is moral only if its foreseeable consequences bring “the greatest happiness to the greatest number.” Consequentialism is the ethical side of British empiricism and utilitarianism, which together constitute the philosophical foundation of Anglo-American Common Law, linking ethics, justice, and democracy. In contrast, authoritarian rules impose a code of silence and acquiescence, predicated upon the system’s presumed infallibility.

Consequences, however, are not always clear-cut or easy to foresee, let alone quantify. How do we calculate happiness and suffering? Such are the limitations of consequentialism, and the reason why it cannot be relied upon exclusively, any more than pre-existing rules.

In the Postville case, I had to contend with the question of consequences: What if I didn’t speak out? But here, the magnitude of the events made the calculation easy: a community devastated, hundreds of parents wrongfully convicted, hundreds of children at stake – and this was just the pilot operation. The thought of it happening again in a democracy was horrifying. On the other hand, my report brought legal scrutiny to bear upon the case, and helped public defenders better prepare to represent their clients (Kansas Public Defender’s Office 2008). Mass prosecutions ceased and worksite raids subsided. My collaboration in an amicus brief to the U.S. Supreme Court resulted in a unanimous ruling to disallow the use of identity theft charges against unknowing migrants – protecting 7.8
million undocumented workers in the United States from frivolous prosecution (NYU 2008; Camayd-Freixas 2009b). Our fallible system works, because it allows us to challenge it.

4. Moral sentiments and meta-ethics

As a complement to consequentialism and ethical rationalism, the Scottish moral philosopher and political economist Adam Smith (1723–1790) wrote *The Theory of Moral Sentiments* (1759), the ethical foundation for his best-known work, *The Wealth of Nations* (1776).

How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortunes of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it. Of this kind is pity or compassion, the emotion we feel for the misery of others, when we either see it, or are made to conceive it in a very lively manner (I.I.1).

For Smith, the moral sentiments of sympathy (empathy), compassion, and benevolence are primary to any rationalization of ethics. Thus, the “utility” of our judgments is “plainly an afterthought, and not what first recommends them to our approbation” (I.I.33).

Two main principles in Smith’s theory are of import to court interpreter ethics. First there is the notion that the proper evaluation of ethical judgments requires, more than just rules and rationales, the participation of moral sentiments, which in turn require presence or affective immediacy. That is, we cannot fully evaluate a situation unless “we either see it, or are made to conceive it in a very lively manner.” Thus, presence and/or immediacy are required for the formation of empathy and moral sentiments, which are essential to judgment. “As we have no immediate experience of what other men feel, we can form no idea of the manner in which they are affected, but by conceiving what we ourselves should feel in the like situation” (I.I.2).

This quality of empathy is central to the interpreting process. The interpreter must convey *what* is said but also *how* it is said, that is, the state of mind of the speaker. This is only possible by identifying morally and culturally with each speaker. Further, the interpreter’s bilingual and bicultural competence provide for a high degree of cultural and historical familiarity with each speaker. This places the interpreter in a closer moral proximity to others than any other actor in the judicial process. If we add to this the oath of accuracy and impartiality, we can readily see that no one is in a better position to judge than an interpreter who was there.
Yet inevitably, those who were not there will pass judgment upon those who were, on the basis of abstract pre-existing rules, which – having no direct experience or affective immediacy to the attending facts and moral sentiments – they can only apply hypothetically and mechanically, as though rules applied infallibly and admitted of no possible exception. This underscores the importance of recognizing the role of professional discretion in ethical decision-making for those interpreters who are immersed in a particular situation of conflict.

The second of Smith’s principles that concerns us is that of the primacy of moral sentiment, the idea that our moral intuitions or “gut feelings” about right and wrong come first, and only then do our rationalizations follow. This prefigures modern social psychology’s “attribution theory of emotions,” which suggests that we perceive complex situations pre-consciously as a physiological reaction, before subjecting them to discursive reasoning. We then attribute those physiological reactions to fear, love, anger, or other emotions depending on cues from the environment (Fónagy 2001:108).

For me that moment of reckoning came during our individual attorney-client interviews at Newton State Penitentiary in Iowa. We were to explain to the Guatemalans the government’s coercive plea agreement, and why it was “in their best interest” to sign it. That is when we interviewed Isaías, an illiterate peasant from the highlands of Chimaltenango, who had traversed Mexico on foot and crossed the desert into the United States, in order to toil gruelling hours at the Postville slaughterhouse for meagre wages, hoping to pay his debts and send a few pennies home, where his four children, wife, sister, and mother survived on his remittances. For him the government’s plea bargain meant, “sign here or your family starves.” We determined beyond doubt that he had no idea what a social security number was. With this, the entire case of the prosecution, based on identity theft and document fraud, crumbled. He was patently innocent of all charges, and yet there was nothing the attorneys could do for him or the other 300 workers. He distrusted both his attorney and his interpreters, for he rightly saw us as part of the same system as his captors. “God knows you are all doing your job to support your families”, he said between bouts of tears, “and that job is to keep me from supporting mine.” As I translated those words, I saw the attorney recoil, speechless. She took the truth exactly as I did: like a kick in the gut. The only difference is that, as an interpreter, I was not free to show any emotion. Beyond this point any ethical deliberation was mere rationalization, “plainly an afterthought.”

In recent decades, the theory of moral sentiments has resurged in the field of “meta-ethics,” which includes questions on the psychological foundations of ethics and the manner in which we arrive at ethical decisions. Slote (2010) argues that sentimentalism based on empathy can deal with significant aspects of ethical decisions that rationalism commonly tends to ignore.