

**The Mediator, the Negotiator, the Arbitrator or the Judge?—Translation as
Dispute Resolution**

Hungpin Pierre Hsieh

**Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements
For the MA degree in Translation Studies
Supervised by Dr. Salah Basalamah**

**School of Translation and Interpretation
Faculty of Arts
University of Ottawa**

© Hungpin Pierre Hsieh, Ottawa, Canada, 2014

The Mediator, the Arbitrator or the Judge?--Translation as Dispute Resolution

Table of Contents

Acknowledgements.....	v
Abstract.....	vi
<i>Résumé:</i>	viii
Introduction.....	1
Chapter One: Literature Review	13
Chapter Two: Hypotheses and Objectives	36
2.1 Formulating My Problems	36
2.2 Hypotheses.....	38
2.3 Objectives	39
2.4 My Contribution.....	40
Chapter Three: Methodology—Translation and Metaphor Theory	43
3.1 Overview.....	43
3.2 Selection of Dispute Resolution Mechanisms and Forming of Schema	44
3.3 Formulation of Metaphor.....	47
3.4 Scope and Limitations of the Research.....	49
3.5 Dispute Resolution and Key Concepts.....	51
3.5.1. Overview.....	51
3.5.2. Conflict/Dispute.....	51
3.5.3 Communication/Communicator.....	52
3.5.4. Alternative Dispute Resolution (ADR), the Dispute Resolution Continuum and the Control and Power Continuum.....	55
3.5.5. Negotiation/Negotiator.....	57
3.5.6 Mediation/Mediator	59
3.5.7 Arbitration/Arbitrator.....	61
3.5.8 Litigation/Judge	63
3.5.9. Summary	65
3.6 Metaphor, Metaphorization and Metaphor Theory	68
3.6.1. Overview.....	68
3.6.2 The Value of Metaphors	71

3.6.3 How Metaphors Work.....	73
3.7 Metaphors and Translation.....	76
3.8 Translation as Dispute Resolution	78
3.8.1 Overview.....	78
3.8.2 My Metaphor Schema.....	80
3.8.3 Bargaining Tactics and Skills	90
3.8.4 Power	91
3.8.5 Ethics.....	101
3.8.6 Decision Making and Choice Making.....	112
Chapter Four: Dispute, Dispute Resolution Mechanisms and ADR.....	115
4.1. The Dispute Resolution Table.....	115
4.2 Overview.....	119
4.3. The History and Current Status of Alternative Dispute Resolution (ADR).....	121
4.4 Four Major Dispute Resolution Mechanisms	127
4.4.1 Background.....	127
4.4.2 Negotiation.....	128
4.4.3 Mediation	131
4.4.4 Arbitration.....	134
4.4.5 Litigation.....	139
Chapter Five: The Four Dispute Resolution Mechanisms as Metaphors.....	142
5.1 Overview.....	142
5.2 Four Possible Roles of the Translator/Translation.....	142
5.2.1 Translator as the Negotiator/Translation as Negotiation.....	142
5.2.2. Translator as the Mediator/Translation as Mediation	148
5.2.3 Translator as the Arbitrator/Translation as Arbitration.....	155
5.2.4 Translator as the Judge/Translation as Litigation	158
5.3 Matches and Mismatches of the Four Roles	167
5.3.1 The Dispute Resolution Table (Updated)	168
5.3.2 Summary Discussion.....	172
Chapter Six: Conclusion	176
6.1 Overview.....	176
6.2 Translator as Mediator, Negotiator or Arbitrator.....	178

6.3 The Translator as the Judge	182
6.4 Recommended Questions for Further Inquiry.....	192
6.5 Final Remarks	195
Bibliography	199

Acknowledgements

First of all, I would like to extend my most sincere gratitude to my thesis supervisor, Professor Salah Basalamah, for his feedback and input on my thesis. Throughout the entire writing process, especially during times of extreme difficulty and stress, his encouragement and emotional support have always been my paramount source of willpower.

And of course, I am equally indebted to every professor on our faculty, all of whom contributed to my training and upbringing in translation studies.

Also, I am grateful to anyone and everyone who has read or commented on—and also everyone who will ever read or comment on—my work.

Last but not least, my greatest debt of gratitude is to my parents for their unconditional support and love, without which I would have never embarked upon this task, and also to H  l  ne, who assisted me through it.

Abstract

Metaphors have long shaped the way pure translation studies describe and justify the translation phenomenon by discovering and consolidating underlying principles. Ultimately, by means of metaphor, something that dwells on the interaction of two seemingly distinct things, translation theorists have obtained a better understanding of the category of translation.

Human beings are gregarious, and disputes are inevitable in every society, ancient or modern, primitive or civilized. In fact, conflict is one iron law of life that mankind has had to improvise ways of resolving, from such formal ones as litigation to private ones such as self-help. We may not be able to eliminate dispute altogether, but we can, however, resolve it through creative and civilized means. Translation can be approached in a similar context, except it concerns a metaphorical dispute between cultures and/or languages—and probably on a more intangible and subtle platform. Disparate cultures, religions and languages in a clash can be brought closer to each other with skillful translation, and hence, translation is a variation of dispute resolution.

That never went totally unnoticed. Over the years, countless translation metaphors have been constructed and exploited with very different results, which indicates how interdisciplinary a subject translation studies really is. Yet, apparently, translation is most often metaphorized as mediation and negotiation but rarely as arbitration or litigation, and one cannot but wonder whether this happened out of sheer coincidence or because of some misunderstanding.

Thus, much as I appreciate what theorists have accomplished with translation metaphors, in regard to didactics and heuristics, my primitive observation is that translation theorists and practitioners have never made full use of metaphorization in that they might have had an incomplete idea of dispute resolution theory in general. After all, a metaphor is, ideally, meant to facilitate active learning and full integration of new knowledge, but there still remains a missing

piece that is part and parcel of our metaphorization of translation. Specifically, translators have always embraced the amicable terms of *negotiation* and *mediation*, distancing themselves from non-mainstream ones such as *arbitration* and *litigation*. To that end, in my thesis, I will explore and examine translation through slightly renewed lenses, demonstrating how and why our metaphor schema and mapping should originate in dispute resolution, and why litigation, and perhaps even arbitration as dispute resolution mechanisms, would serve as good a metaphor—if not a better one—for translation. It is my resolute belief that the translator is more qualified as a judge, a respectable professional vested with immense judicial power, than as a mediator, who is but a third-party neutral facilitating dialogue between two disputants. Only in this way can metaphors do translation theory a great service by furnishing it with a renewed and objective description of translation.

Keywords: Dispute resolution, role of the translator, translation theory, metaphors of translation, interdisciplinarity, descriptive translation studies

Résumé:

Les êtres humains sont des êtres grégaires et, ainsi, les disputes entre des individus sont inévitables. De plus, les conflits à propos d'un intérêt ou d'un droit sont omniprésents—dans toutes les sociétés, anciennes ou modernes, civilisées ou non-civilisées. En conséquence, l'humanité a dû créer diverses méthodes de règlement de conflit comme, par exemple, le litige et l'autoprotection.

Malgré le fait que l'on ne peut complètement éliminer tous les conflits, il est possible de les résoudre d'une manière créative et paisible. On pourrait dire de même de la traduction étant donné que celle-ci vise un conflit différent—culturel ou linguistique. Ainsi, toutes les cultures, toutes les religions et toutes les langues pourraient probablement se rapprocher et résoudre leurs différends grâce à la traduction—au moins de temps en temps.

Depuis longtemps, la théorie de la traductologie décrit les phénomènes de traduction et les justifie en développant des principes empruntés à la vie réelle. L'une des méthodes que les érudits universitaires employaient afin d'atteindre leur but était le recours aux métaphores. De plus en plus, on en est arrivé à réaliser que l'on ne peut comprendre vraiment la nature et l'essence fondamentale de la traduction si ce n'est au moyen des métaphores.

A travers les années, maints métaphores de la traduction ont été élaborées mais avec des résultats finaux. Pratiquement, certains, parmi ceux qui tentent de souligner le rôle et la tâche du traducteur, considèrent la traduction comme une forme de transformation—ceux de signes après lequel le produit final serait plus avancé et plus évolué que l'original. Cela veut dire que la traductologie se trouve dans une situation envisagée différemment et qu'elle est un domaine interdisciplinaire. Ainsi, alors que l'on a tendance à considérer la traduction comme une médiation ou une négociation, on ne la considère que très rarement comme un arbitrage ou un litige. La question est, donc, est-ce que c'est une coïncidence ou un résultat prévisible?

Finalement, en ce qui concerne la didactique et l'heuristique, entre les théoriciens et les praticiens, il existe un malentendu sur le plan des méthodes de règlement des différends, ainsi que de la théorie de résolution de conflits en général. De plus, l'étymologie joue probablement un rôle négatif. En ce sens, cette thèse explorera le phénomène de la traduction sous un angle différent, en montrant comment et pourquoi le litige, et peut-être même l'arbitrage, sont de

meilleures métaphores pour la traduction en ce qui concerne la résolution de conflits, et, en outre, comment et pourquoi le traducteur est plus justement représenté comme juge—un arbitre investi d'un pouvoir énorme—non comme médiateur—une tierce personne, neutre et facilitant le dialogue entre les parties.

Mots-clés : Résolution de conflits, la tâche du traducteur, théorie traductologique, métaphores de la traduction

The Mediator, the Arbitrator or the Judge?--Translation as Dispute Resolution

Hungpin Pierre Hsieh

Introduction

Umberto Eco: *Translation is the language of Europe*.¹

All acts of communication are acts of translation (Steiner 1998: 11).

Matter has to be conceived as something fundamentally different from what it had been thought to be, and we, as rational and intelligent human beings, must learn to do that (Kaspers 1969: 5).

Human beings are gregarious, and conflict is as old as the human race. To the extent that human beings must coexist and interact with others, there will be conflict and dispute. What human civilization has changed is merely how human beings choose to handle their disputes, giving rise to an area of human knowledge known today as dispute resolution. At the same time, the human mind is strikingly metaphorical, and the metaphorical structuring of concepts is ubiquitous and intuitive, while every science, social or natural, has its inherent limits, despite human's resolute efforts to expand the frontiers of their knowledge. This is probably why academics have been making an all-out effort to expand human knowledge by developing new perspectives on existing subjects and disciplines through metaphorization. Thanks to several paradigmatic turns and shifts for translation studies, translation studies has formed many alliances with a wide range of "vintage" disciplines such as sociology, cultural studies, history, gender studies, just to name a

¹ Remark rendered by Umberto Eco at the conference of *Assises de la Traduction littéraire en Arles*, on Sunday, 14 November 1993.

few. Because metaphors structure, arrange and synthesize human sensations and knowledge, they provide people with a starting point by reducing human experiences to a set of categories, and they are thus insightful and powerful, however abstract or intangible they may appear.

By coincidence perhaps, translation exists in almost every society, ancient or modern. Over the long sweep of its history, translation often seems to occupy an intermediate position between two conflicting forces. Since the early days of the translation of the Bible, when the Church realized the urgent need to translate the holy scripture into another language than Hebrew or Greek (Baker 2008: 22-23), along with the invention of the motion picture, when the need for film translation arose, all the way to the modern era, marked by a wealth of international and transnational conventions and treaties to be promulgated and implemented across political and linguistic boundaries, cultures and languages do come into contact with each other, sometimes even resulting in violent and ruthless bloodshed, making the translator's job all the more critical and vital. In that sense, translation is not only a dimension to dispute resolution; it *is* dispute resolution *per se*.

Translation studies has been growing at a phenomenal pace for a few decades, and translation has been conceptualized in various ways over the years. Unfortunately, however, the nature of the translator's task still seems to be a mystery waiting to be unveiled by translation theorists, who are not ready to accept the "conspiracy theory" that translators are "copycats" who imitate. Luckily enough, metaphors came to the rescue, and during the past few generations, theorists started to ascertain the nature of the translation through a multitude of metaphors, believing that translation may be better understood through metaphors. After all, metaphors, something that relies on artful juxtaposition between what we know and what we want to know more about, have long been a topic of interest to philosophers, linguists and translators alike, for their catalyst

role in human comprehension and conceptualization. As a result, the study of metaphor has increasingly become a promising way of examining the process of human conceptual structuring, with some theorists insisting that metaphor theory is at the centre of all problems of translation, semantics and linguistics (Newmark 1981: 96). Thus, assuming that translation is one of those human conceptualization processes, translation theorists are indeed doing themselves a great service by approaching the translation phenomenon at an abstract level, hence the need for translation metaphors. Metaphors are now an integral sector of the translation enterprise, with countless metaphors having been constructed around the task of the translator or the purpose of translation for a more panoramic bird's-eye view. While there may be some people of the opinion that another metaphor will be one too many, what I am proposing is a revitalized metaphor, one that I believe has never even been remotely considered.

While the fact that translation involves some intermediate action between two cultures has never gone unnoticed, how the task on the part of the translator has traditionally been understood is what I am having reservations about. Indeed, while there has been no lack of theorist making a metaphor out of negotiation and mediation, there seems to have been hardly anyone having attempted a metaphor of translation as arbitration and litigation. Worse yet, there has been hardly anyone attempting a metaphor of a higher and more abstract—and perhaps more prototypical—order: the order of dispute resolution. This is important because before we can proceed any further with the metaphorization of translation, we will have to establish the secret behind the taxonomy of definition to justify everything at its root, as much of the appeal stems from the way it offers uniform treatment of concept acquisition, categorization and reference determination.

However, as some theorists have claimed, a re-evaluation of metaphors must precede a renewed understanding of translation, and that is why I am postulating a different approach to translation

metaphors. Basically, I will forge a unique path towards my objective of determining the true nature of translation. In more specific terms, one notable difference with my study that would set it apart from most others on the metaphORIZATION of translation lies in my endeavour to explore two extra mechanisms that are just as, if not even more, powerful and fundamental: arbitration and litigation, in addition to the two mainstream ones of negotiation and mediation.²

Please take note that, herein, I will be constructing a metaphor between translation and dispute resolution, so whenever translation is metaphorized as arbitration, the translator will, by inference, be the arbitrator; whenever translation is metaphorized as mediation, then, of course, the translator will metaphorically be the mediator; and whenever translation is considered a litigation proceeding, then the translator will be the judge.

The reasons for my choice of topic and my choice of metaphor were many. First of all, my academic background in law and dispute resolution theory has provided me with some valuable inspiration in drawing a link between what I studied in the past and what I currently study.³ A metaphor typically likens one category to another within one single magic stroke, and the double “aboutness” exhibited by metaphorical expressions is something worth investigating, and it came to my attention that maybe there is some metaphorical comparability between dispute resolution and translation. Dispute resolution, as a social institution with or without backup force, is meant to resolve, if not prevent, disputes, while translation is also supposed to resolve disputes between two cultures. Another similarity revolves around choice, decision and efficient allocation of

²*Nota bene*: In no way am I denying the importance of and the need for negotiation and mediation for the completeness of my metaphor—quite the opposite actually. In fact, I will demonstrate to my readers that the two are just as indispensable for my metaphor from the perspective of translation studies, as well as from the perspective of dispute resolution theory.

³ I must clarify my position by stressing that even though dispute/conflict and dispute/conflict resolution belong more to the realm of sociology than to the realm of law, they undoubtedly have some bearing on law, and that is one of the major reasons why people in law have realized the need for other means of resolving disputes than litigation, and, as a result, a separate subfield—ADR— came into being in recent decades. In any case, in doing so, by no means am I granting the final say on dispute resolution to any particular academic discipline.

limited (and oftentimes depletable) resources. After all, translation and dispute resolution both work best on wise decision-making regarding choices, which decidedly involves power and ethics, two other factors in my schema. Secondly, while theorists have been known to turn to mediation or negotiation for their metaphor, hardly any of them seems to have tried subsuming those concepts under the heading reflecting a concept of a higher order—dispute resolution; in other words, considering dispute resolution a hypernym for our metaphor will likely yield a more panoramic view at the macro-level than simply looking only at mediation or negotiation—or even litigation—singly in their own isolated capacities. With so many properties shared by them, translation and dispute resolution have strikingly similar characteristics: People unsatisfied with the status quo are in need of someone in a position to walk them through the process to intervene, and bring them towards a renewed relationship through dialogue. The same thing could be said of translation, through which the relationship between two cultures that are not acquainted enough with each other or have some misunderstanding about each other can be transformed, reversed and even enhanced by means of translation, leaving both cultures feeling better off.

Thirdly, translation and dispute resolution both involve an intervention scheme that operates on power relations to varying degrees. Textual interpretation analysts have shown that any act of translation requires some degree of interpretation, and any interpretation is essentially an act of intervention and any reading is a form of re-writing (St. André 2010: 251). To put that in perspective, translation moves along a fine line, which is basically a long spectrum along which the translator skilfully moves to and fro striving to make important decisions, just as the third-party neutral in dispute resolution making every effort to settle the dispute for the parties who have not been able to do so themselves does wield a certain amount of power, however

interfering⁴ the dispute resolution mechanism at issue is. . In dispute resolution, the dispute resolver, be it the mediator or the judge, is essentially an outsider or an “intruder” with great powers, as is the translator when carrying out a translation task, and that power may well be misused—and abused—somewhere. Additionally, along with power there will be ethics—an age-old hot-button issue in both translation and dispute resolution. As I will show my readers, ethics and power should be coordinated for all human institutions to function, and neither of the two should ever exist without the other one in a civic and civilized society.

Fourthly, translation and dispute resolution both require extensive negotiation⁵ skills, on which negotiation specialist William Ury has published two bestsellers: *Getting Past No* and *Getting to Yes*, both of which will be recommended and elaborated on in further detail in this thesis. More broadly, dispute resolution and translation share a total of four properties that comprise a perfect schema for my metaphor.

Last but not least, I chose this topic because I would like to explore more options for the translation studies scholarship in its endeavour to determine the true nature of translation. Instead of always revolving around negotiation, communication and mediation and confining ourselves to mainstream ideas, I think perhaps it is time that we stopped denying ourselves new options. On top of the dispute resolution mechanisms we are already familiar with, I will focus on arbitration and litigation and the metaphorization of translation as dispute resolution at a mega-

⁴ As a quick note, in no way is the term *interfering* to be interpreted in a negative way; as we will soon find out, it simply refers to whether there is a third party involved in a particular dispute resolution process, and if there is, how much power that person is given.

⁵ By the term *negotiation*, I do not mean “negotiation” as a dispute resolution mechanism as in the main body of my text. Instead, I am referring to the art of bargaining, haggling or simply holding a dialogue with another person whose position is apparently in contradiction to one’s own. Thus, perhaps *communication* would be a better choice of terminology. I am open to any and all ideas my readers may have.

level, without negating the validity of existing research. In doing so, we will have a better chance of making contribution without creating tensions among different schools of thoughts..

With what I intend to demonstrate in mind, I have devised a total of six chapters in my thesis. Immediately following the **Introduction**, where I will present the background and purpose of my inquiry as general guidance to my arguments against a backdrop of my key terms, in **Chapter One**, my literature review will be given, in which I will present what academics from fields as diverse as translation studies, philosophy and dispute resolution have accomplished hitherto, with no personal prejudice or presupposition. Next, in **Chapter Two: Hypotheses and Objectives**, I will formulate my problems in accordance with my logical organization, showing that the existing metaphor is in need of an upgrade to a higher order, followed by my initial hypotheses—while negotiation and mediation make good parallels for translation, they should not be the only two for our metaphorization of translation, and arbitration and litigation should be taken into consideration and positioned alongside them. These four dispute resolution mechanisms were selected for their representativeness in dispute resolution theory, and together the four, in light of my literature and due logical inference, I hypothesize that translation is best viewed as dispute resolution owing to some common properties shared by the two. My objectives include proving to my reader why our metaphor of translation is best initially formulated on the social phenomena of dispute resolution in general, and not just on any of the individual mechanisms. Essentially, I will endeavour to demonstrate that, at a general level, dispute resolution completes the mapping of an adequate metaphor, and, at a mechanism-specific level, the validity of the metaphor of translation as litigation will be most convincing. This chapter will be concluded with a layout of my contribution to human knowledge and to extant literature as well.

In **Chapter Three—Methodology: Translation and Metaphor Theory**, I will, before anything, give my readers a brief overview of metaphor theory, which is often categorized as a branch under rhetoric, just to give them a better idea about how, when and why metaphors work—or do not work—for people, and how metaphors could, if applied properly, help us understand many phenomena more easily and quickly, followed by a brief illustration of dispute resolution as a metaphor of translation. My rationale for my four mechanisms will be given, and why the four main types of dispute resolution mechanisms (negotiation, mediation, arbitration and litigation) were selected and what purposes they serve in the socio-legal world. Of course, I will pinpoint the four slots that form the schema of my metaphor TRANSLATION AS DISPUTE RESOLUTION: setting and participants, power, ethics, bargaining skills and decision- and choice-making, essentially properties that are shared by both domains and invoked by the metaphor, which lay down the foundation for my all-out discussion of the nature of translation. The schema of my source domain and my target domain will be presented here, along with the four slots—the four common traits that help complete the mapping, and then a brief statement on the unavoidable limitations of my research will be given, followed by the fundamentals of dispute as a social phenomenon. On top of that, I will present the basics of dispute resolution theory, which I believe is a necessary step before officially enlisting dispute resolution for my metaphor. Each of the four mechanisms will be discussed in detail as an opening to a brief history of the development of the type of dispute resolution known today as alternative dispute resolution (ADR), right before I end with my closing argument on how and why dispute resolution will make a valid metaphor.

In **Chapter Four**, entitled **Dispute, Dispute Resolution Mechanisms and ADR**, in an effort to prepare my reader for a candid and thorough discussion in Chapter Five as to which dispute

resolution mechanism makes the perfect parallel, I will introduce and elaborate on the nuts and bolts of each of the four dispute resolution mechanisms from a socio-legal perspective, along with a brief narrative on the history of ADR, a movement that brought new insight to dispute resolution theory. Additionally, in order to provide my reader with a panoramic view of my four mechanisms, I will include in this chapter the **Dispute Resolution Table**, in which all four mechanisms are clearly laid out for comparison against approximately twenty features in a two-dimensional table. Also, this chapter will come with a **Dispute Resolution Continuum** and a **Control and Power Continuum**, whereby I will show how much power the parties and the dispute resolver are entitled to in each mechanism.

In **Chapter Five**, I will evaluate, based on my metaphor schema that comes with four slots, which of the four dispute resolution mechanisms make the perfect parallel one by one, in anticipation of singling out the one as the relatively best source domain for our metaphor. Of course, the pros and cons will be laid out structurally in reference to all four candidate metaphors: TRANSLATION AS MEDIATION, TRANSLATION AS NEGOTIATION, TRANSLATION AS ARBITRATION and TRANSLATION AS LITIGATION, followed by an updated **Dispute Resolution Table** that includes translation as a dispute resolution mechanism parallel to the other four. In the **Conclusion**, an concluding remark will be given as to why TRANSLATION AS LITIGATION would be my choice of metaphor, while refuting the other three candidates in a critical way. Before ending, I will take the opportunity to propose some questions relevant to my study that I have not had time to address but are nonetheless intriguing and interesting and best left for another thesis.

Now, I would like to draw my reader's attention to a few key terms and concepts concerning translation, metaphor theory and dispute resolution theory.

First of all, **conflict** (or **dispute**) can roughly be understood as any state of disharmony between at least two incompatible persons or nations in terms of idea, belief or interest. Also, *conflict* and *dispute* will be used interchangeably throughout this thesis, as the difference between the two is institutionally minimal and irrelevant to my topic.

Alternative dispute resolution (hereinafter referred to as **ADR**) is an umbrella term that aims to cover all alternatives to judiciary-sanctioned proceedings, including but not limited to mediation and arbitration. For the sake of simplicity, for the moment, all non-litigation dispute resolution processes will be subsumed under the construct of ADR. Although many dispute resolution mechanisms, such as mediation, have been practiced by human beings since time immemorial, they have generated renewed interest in modern times and are thus worth a special mention.

Negotiation is probably by far the most pervasive and best-known dispute resolution mechanism, and it is a skill to be learned and honed. Loosely defined, *negotiation* may be understood as a consensual bargaining process in which the parties attempt to reach an agreement on any matter of dispute (Nolan-Haley 1992: 13). The negotiator is a title to be earned, and, according to some negotiation specialists, it is no coincidence that effective negotiators listen far more than they talk (Ury 1991: 39). In a negotiation proceeding, the parties are allowed to resolve their own dispute by setting the pace of their process. They are allowed to create their own rules, which may be implicit at first. The process of negotiation, by definition, entails some compromise in that, in most cases, neither party will end up winning everything they demanded, nor will either party wind up giving in to every demand put forward by the other party. Negotiation is considered the least interfering dispute resolution mechanism for its total lack of a third party.

Mediation is basically an extension of negotiation—with a minor twist. In a mediation process, parties who are unable or unwilling to settle on their own retain a neutral third party to assist them in reaching an agreement. Thus, mediation provides disputants with complete flexibility, granting them the final say on when the proceeding will commence, how it will be conducted, whether and how the mediator will be compensated and so on. Also, they can decide how much power, if any, to confer to the mediator, thereby making the mediation a facilitative one or an evaluative one. In short, the parties are allowed to draw up their own rules or, alternatively, they can leave every detail to the mediator.

Arbitration is a dispute resolution mechanism whereby disputants present their case to a neutral third party who is empowered to render a binding decision, and it is the most formalized alternative to litigation. In an arbitration proceeding, the arbitrator must resolve the dispute for the parties in the form of an arbitral award that is final and, as such, subject to appeal only on very limited grounds. The arbitral award may leave the parties feeling that they have achieved all, some or none of their goals. In other words, by opting for arbitration, the disputants are delegating power to a third party to resolve their dispute on their behalf and forfeiting their chance of reconciliation with each other, thereby losing their power to determine the outcome for and by themselves.

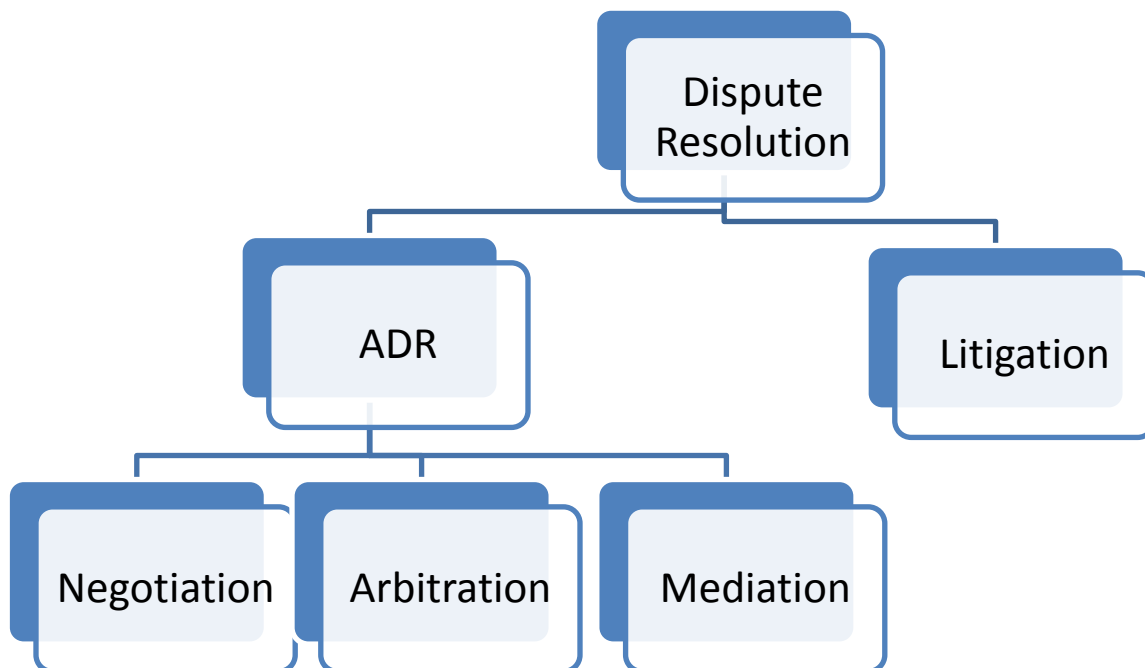
Finally, there is **litigation**. Litigation, though not an ADR mechanism, is undoubtedly a conventional—and very fundamental—form of dispute resolution. Litigation, which entails a lawsuit presided by a judge, is considered the *ultimate* form of dispute resolution, as it is backed up by judicial power, arguably making it the most complex one of all dispute resolution mechanisms. In a legal action, the judge is in charge of a lengthy and bleak process, and the judgment or decision, as the end result, must be based on the law and not on the needs and

interests of the parties. Therefore, litigation is, ideally, reserved as the last resort, and yet, ironically, most lawsuits are resolved at some point with a fair number of litigants initiating it as a threatening incentive for their opponents to start negotiating or mediating a dispute.

Alternative dispute resolution (ADR) is an umbrella term that all non-litigation dispute resolution mechanisms can be subsumed under. I will show my reader the ins and outs of each mechanism in reference to a handful of criteria in the form of a table (my **Dispute Resolution Table**) in Chapter 4.1 for easy comparison. Due to time and space restrictions, the ADR mechanisms that will be dealt with therein are negotiation, mediation and arbitration.

Before the conclusion of this chapter, just to give my reader a clearer view, I would like to present a hierarchy chart in its simplest form:

My Hierarchy Chart of Dispute Resolution Mechanisms



Chapter One: Literature Review

Before proceeding any further with our metaphor, perhaps we should remind ourselves of this: What exactly is a metaphor? What do we want it to be and do for us? Is it just a frivolous yet creative remark through that reminds us of something? Or is it a figurative expression that seeks to convey its truth conditions by way of another semantic content, whose truth conditions are not part of the larger set of truth conditions of the surface utterance? Some claim that it is a semantic give-and-take venue that gives people two ideas for one (Ortony 1979: 123). For this thesis, as far as definition goes, a metaphor will refer to any figure of speech, in which an implied comparison is made between two seemingly dissimilar things that are thought to have something conceptualized in common.

As far as metaphor theory is concerned, I believe that the works of language philosopher George Lakoff *Metaphors We Live By* and *The Political Mind*, which both go into great detail about what metaphors do and how they work as a cognitive process for human beings, deserve our undivided attention, not to mention that the book *The Philosophy of Rhetoric* by I. A. Richards, which had provided Lakoff with immense inspiration for his undertakings, should be consulted for the definition, purpose and every possible aspect of metaphor.⁶

Then, in an effort to move from the general towards the specific, focusing on metaphors that concern translation, I started to review works dedicated to translation metaphors such as *Thinking Through Translation with Metaphors*, edited by James St. André, and, most importantly, *Thinking Through Translation* by Jeffrey M. Green, both of which provided me

⁶ The greatest divergence between Richards and Lakoff lies in metaphor terminology. For what Lakoff calls “target domain” and “source domain”, Richards uses the terms *tenor* and *vehicle*, respectively.

with immense inspiration beyond my expectation. I realized that, on the surface, all metaphors have common traits that they share regardless of domain (i.e., In a way, the metaphor “Translation is dispute resolution” is no different than the metaphor “Life is but a dream”), which has been confirmed by Lakoff, and given the academic status of this thesis, I spared no effort to review some university theses and dissertations such as *Body Part-Related Metaphors in Thai and English* by Metee Kansa, *Translation and Tradition: The Translator as Mediator between Two Literary Systems* by Rosanna Rion, for yet some more valuable inspirations, from which I developed a specific penchant for the phenomenon of metaphORIZATION.

Having obtained a basic understanding of how metaphors function and what purposes they achieve, we must then ascertain, in light of our topic, where the dispute or conflict lies, or, put differently, who the disputants are and whose dispute or conflict the translator is expected to resolve. As the mainstream trajectory seems to suggest that it should be the cultures concerned, I will adhere to it. In the paper entitled *Intercultural Communication, Negotiation and Interpreting*, written by Masaomi Kondo et al., interpretation is understood as an instance of *intercultural* communication (italics mine) (Kondo et al. in Gambier et al. 1997: 150), not to mention that the title itself is rather self-evident of the author’s position. In addition, in his work entitled *Bilingual Translation/Writing as Intercultural Communication*, Daniel Gagnon noted that the language shift featured in self-translation necessarily has a real intercultural communicative and affective dimension (Gagnon in Pym et al. 2006: 127). In her article *Ideology and the Position of the Translator: In What Sense is a Translator ‘in Between’?*, Maria Tymoczko asserted that the “betweenness” of the translator implicitly points to an elsewhere that is separate from both the source culture and the target culture, while questioning what the third space really refers to (Tymoczko in Baker 2010: 213).

Arguably, translation being metaphorized as dispute resolution has always been implied and never officially recognized. While works on metaphors of translation on the two dispute resolution mechanisms of negotiation and mediation are many, few studies have examined how and why people have been focusing solely on these two for inspiration. Hypotheses have been proposed but not tested, and even then they, again, focus mostly on mediation and negotiation on the assumption that only mediation and negotiation are possible candidates for metaphorization with leading translation theorists rarely engaging in wide-scale comparison of multiple dispute resolution mechanisms for a better parallel, and, as a result, not even the potential gaps between negotiation and mediation—the two most widely accepted mechanisms—have ever been identified. As a result, I feel that it is absolutely necessary to review literature on dispute resolution theory in general and then on each individual dispute resolution mechanisms.

One of the compelling purposes of metaphor is to describe an entity, event or concept in terms of another with a view to concisely understanding it which would otherwise be impossible with literal language (Newmark 1981: 84). Words are not, after all, things *per se*, but merely lexical symbols of things, and metaphors do not just spring out of the blue; instead, they usually go through an observable—and often lengthy—process before they finally take root. That procedure is, as one might expect, the perception and application of a certain degree of resemblance between two phenomena/objects/processes, and the one serving as the object of comparison is the source domain (or vehicle) while the one serving as subject of the claim sentence then becomes the target domain (or tenor), subject to the norm and values of the culture in which the metaphor is being expressed. Consequently, while there may be several modes of interaction between tenor and vehicle (Richards 1971: 93), resemblance through comparison is probably the most pervasive—as well as the most persuasive—one. Thus, in order for us to identify what

common properties are shared by translation and dispute resolution through resemblance comparison, I believe that canonical works on metaphor theory by Richards and Johnson and Lakoff will be most instrumental. However, given the flipside of metaphors, we must stay on alert when handling them, as it is impossible to be too careful with them. Granted, metaphorical concepts are systematic in the sense that they provide us with an insight into the profound nature of day-to-day concepts that are so commonplace that would otherwise be taken for granted or even ignored altogether, but at the same time, metaphors can turn dangerous if they end up in the wrong hands, or if they are incidentally construed improperly. Therefore, when constructing or accepting metaphors, one must be cautious and stay alert to potential risks and hazards, otherwise the theme-specific idea that we are trying to convey to our lay audience, which is often uninitiated and inexperienced, might backfire.

Metaphorization of the translation phenomenon is no new undertaking for translation studies, and one need not look too far for amusing and intelligent metaphors that have been hammered out specifically for translation over the years, with translators and translation theorists all making an undaunted effort to probe and explain the phenomenon of translation using metaphors. The historically renowned—and indeed humorous—expression of *Les belles infidels* coined by Gilles Ménage sometime in the 17th century, and, as well, André Lefevere’s borrowing of the term *refraction* from physics for the construction of his metaphor which aimed at characterizing a successful translation as something that would refocus and redirect a source text into a target culture—from different angles caused by the apparent perception of bending of light, and all the way to Andrew Chesterman’s brisk characterization of “all writing is translation” as a “mutualist supermeme, benefiting both itself and the host organism” (Chesterman 1997: 14), and, more recently, Susan Bassnett’s metaphor of translation as a “no-man’s land” (Bassnett 2011: xiii), not

to mention Green's metaphor of translation as tourism and translator as tour guide (Green 2011: 91-93), have all demonstrated that translation is certainly one of the few platforms where people are most open-minded and creative with metaphors. In order for me to be in a better position to elaborate on what metaphor have done for translation I reviewed some of the most canonical monographs for a general outlook on translation, including *Translation Studies* by Susan Bassnett and *The Routledge Encyclopedia of Translation Studies*, a compendium edited and compiled by Mona Baker that includes a separate entry for translation metaphors. Then, in search of thesis methodology, I continued on by reviewing publications such as *The Craft of Research* by Booth, Colomb and Williams, and *Understanding Social Science* by Roger Trigg, moving steadily towards research methodology works geared for translation studies scholars and translators such as *The Map: A Beginner's Guide to Doing Research in Translation Studies* by Williams and Chesterman and, considering that translation studies is widely thought to be a multi-/inter-disciplinary discipline, works on interdisciplinary methodology such as Joe Moran's *Interdisciplinarity* provided me with the necessary insight on interdisciplinary approaches.

In recent years, realizing that translation is a phenomenon and activity deeply embedded in social contexts, a considerable proportion of the scholarship is trying to approach translation studies as an interdisciplinary or multidisciplinary enterprise that involves sociology in particular. As some people claim, translation—simply any translation—necessarily involves the transformation of objects over space and time—somewhat similar to the way human memory works, which probably turned out to be something that gave interdisciplinary theorists that crucial inspiration. Perhaps one of the many factors that triggered the rise of interdisciplinarity was human beings' understanding that the universe cannot be duly understood or explained on one premise alone. Gideon Toury added to the discussion that translation is always a textual activity, and this claim

of his eventually backfired by standing in the way of serious attempts to give unbiased accounts of real-life translation activities without condemning a considerable portion of them at the same time; also, the argument that the target text and the source text must be in some way related to, or, to say the least, similar to, each other, while understandable on the surface, has proven to be a hurdle in theoretical construction for some (Palumbo 2009: 42-43). That had a bearing on my topic as dispute resolution is a deep-rooted process in any culture and community, and the multidisciplinary school of translation studies that refuses to blindly believe in the genetic link between the two texts did definitely contribute to the perfection of my metaphor. Taking all these works as a point of entry was necessary, but perhaps more to the point, while a few of them do not concentrate solely on translation studies, they all provided me with a special insight on translation in terms of research methods and methodology that are shared by every discipline throughout the humanities and social sciences.

However, despite the overwhelming amount of literature on metaphor that people in translation studies are familiar with, I believe that in order to ensure that my metaphors—the metaphor of translation as dispute resolution and, eventually, the metaphor of translation as litigation—can be conveyed to my readers as not just *valid* metaphors but also as *revitalized* ones, I must touch on the very nature of metaphors and the process of metaphORIZATION, which has long been an intriguing topic for language philosophers. As a result, I had to consult a multitude of literature on metaphors and metaphor theory, including, *inter alia*, George Lakoff's *The Political Mind*, *Metaphors We Live By* by Lakoff and Johnson, *Metaphor and Thought* by Andrew Ortony, *The Sexual Metaphor* by Helen Haste, just to update myself and my readers on what, at the basic level, it takes to construct a valid and illustrative metaphor, something that underpins our taken-for-granted assumptions about the world around us. Among these publications, the work by

Helen Haste entitled *The Sexual Metaphor*, though not a work on translation studies in the true sense, deserves some special mention in that it provides us with a panoptic academic view on the metaphorization of some very common concepts. Of course, no discourse on metaphor will ever be complete without some mention of Lakoff and Richards, which was why their works will be cited most profusely herein. The way Richards sees it, throughout history, metaphor has, to his dismay, been believed by many to be little more than a rhetoric device that involves people's obsession—poets' in particular—obsession with words, giving an extra spice or grace to everyday language (Richards 1971: 90). Yet nothing can be further from the truth, despite the disbelief and doubt that efforts made to explain something via a metaphor may engender. In a metaphor, the target domain is metaphorically structured, the related activity metaphorically structured and, as a result, the language that is employed to express it is also metaphorically structured (Lakoff and Johnson 2003: 5). They then went on to say that the metaphor ARGUMENT IS WAR, while presupposed on people's innate understanding of what an argument is, is not only in the words we use to describe it (the three morphemes of *argument*, *is* and *war* that is in possession of any semantic value), it is embodied in our very concept of an argument (*Ibid.*).

In regard to translation-specific metaphors, admittedly, in light of the current status of development of translation studies in reference to metaphor theory, I will probably not, *prima facie*, be in urgent lack of literature to fall back on for my metaphor on translation, given the great amount of metaphors already in extensive use. For instance, in the work entitled *Thinking Through Translation*, translation is metaphorized as a puzzle (Green 2001: 9), translation as a business (Green 2001: 7), translation as adaptation (Green 2001: 11), translation as interpretation (Green 2001: 13), translation as performance (Green 2001: 15), translation as an illusion (Green 2001: 20), while the author frankly acknowledges the conspicuous affinities and potential

deficiencies in each of his metaphors; at the same time, the translator is given several different titles too, including the creative artist (Green 2001: 8), the advocate or spokesman (Green 2001: 15)...just to name a few. My reluctance to endorse all of them notwithstanding, they all confirm that translation is a rich field for metaphors.⁷ Furthermore, because metaphors have played such a significant part in translation studies, even in one of the most canonical and comprehensive encyclopaedias of the discipline *The Routledge Encyclopedia of Translation Studies* there is a separate entry under the heading “Metaphor of Translation” (Baker 2008: 149 et seq.). It is no surprise, then, that some academics even went as far as to claim that the process of metaphORIZING something is *per se* a type of translation (Boase-Beier 2011: 6), with yet others putting it more straightforward by asserting that metaphor and translation are both creations, neither one of which is mechanical; technically, “a translation *is* a metaphor” (italics mine) (White 1990: 235). No wonder that one writer, fascinated by the device, once claimed that among the mysteries of human speech, metaphor remained one of the most baffling (Boyle 1954: 257)!

However, the question now is, with so many metaphors, how we are to obtain a better understanding of translation, and what my metaphor may have in common with all others that came before mine as well as what sets it apart from all others.. In his monograph *Thinking Through Translation*, the author, Green, starts out by warning against the claim that the translator is but another reader (Green 2001: 47), while making painstaking efforts to establish as many metaphors for the translator and the translation phenomenon as his imagination allowed, calling translation a type of transaction, acknowledging the status of the translator as both reader

⁷ A metaphor can be made out of not just translation, but also the text being translated, as demonstrated by Green in his work *Thinking through Translation*. He argues that texts can be viewed as cultural property, thereby making the text the target domain and cultural property/asset the source domain, which I find to be an inspiring endeavour. For details, *vide* Jeffrey M. Green, *Thinking Through Translation*, Athens: The University of Georgia Press, 2001, pp. 94 et seq.

and writer within a greater dynamic among author—translator—editor (Green 2011: 47). At the same time, the author, without directly making any reference to metaphor theory, brings up several relevant issues surrounding translation, such as ethics (Green 2011: 31)⁸ and invisibility (Green 2011: 69)⁹ quite possibly in an effort to complete the mapping of his metaphors (Green 2011: 92 et seq.).

Undeniably, at present, there is extensive literature on translation as mediation and on translation as negotiation. As regards the TRANSLATION IS NEGOTIATION¹⁰ metaphor and TRANSLATION IS MEDIATION metaphor, the most high-profile publications include Anthony Pym's *Negotiating the Frontier*, Humphrey Tonkin's *The Translator as Mediator of Cultures*, and Umberto Eco's *Mouse or Rat: Translation as Negotiation* and, to a lesser extent, Mona Baker's *Translation and Conflict*, which will all be cited on a number of occasions herein. In these publications, many of which have the term *negotiation* or *mediation* in their titles, representative as they are, translation is viewed as a way to mediate or negotiate different cultures and/or communities within a nation that has recently undergone chronic political turmoil and/or tremendous social havoc, or as a phenomenon flourishing under the auspices of globalization (Tonkin and Frank 2010: viii), and the core issues of what dispute resolution is and what sets mediation and negotiation apart from all other dispute resolution mechanisms were never on the authors' academic horizon. Worse yet, on occasions where translation is metaphorized as negotiation, it is, in my view, understood inappropriately, as in this citation:

⁸ He uses the term *honesty* instead, but in his account of it, he does admit that honesty and ethics are two facades of the same idea, so, therefore, I will be treating the two as the same thing.

⁹ Similarly, the author Green did not call it outright invisibility; instead, he constructs two chapters to the same effect: *Translating the Writer's Voice* and *The Translator's Plight*, both of which touch on the sensitive subject of how the translator should position her-/himself. At one point, he even said blatantly "...the pride I take in my work is for effacing myself from it".

¹⁰ For the sake of clarity and quick discernibleness, I will use the typographical font of small capitals for the complete layout of all my metaphors in my body text.

Translation as a sign of fragmentation, of cultural destabilization and negotiation is a powerful image for the late twentieth century (emphasis mine).

(Bassnett and Lefevere 1998: 137)

In the same publication, the author, time and again, stressed that translation is a primary method of imposing meaning while concealing power relations that lie behind the production of that meaning (Bassnett and Lefevere 1998: 136), and that translation is always enmeshed in a set of power relations that exist in both the source and target contexts (Bassnett and Lefevere 1998: 137). That being the case, then it is my understanding that if translation always involves excessive power struggle, with the translator having to yield to the more powerful party by imposing something on the cultures in the end, then a metaphor of translation as negotiation would be little more than a logical fallacy. To that end, I have reviewed extensive literature on dispute resolution that comes in close contact with a range of disciplines including international politics, sociology and law, with Frank Pfetsch's *Negotiating Political Conflicts* being one of them, just to familiarize myself with how the inherent properties of dispute resolution such as decision making, power and ethics are handled in some neighbouring areas.

Communication and bargaining are understood as another *sine qua non* for both translation and dispute resolution, and hence the metaphor of translation as communication that has been quite prevalent across the translation circle. Indeed, a dispute resolver needs to be able to speak, express and communicate their ideas in order to facilitate any dispute resolution. Not only does every dispute resolution process require communication in one way or another, communication is a key component to human survival. Alas, scholars in communication studies have traditionally lamented the difficulty of defining the very key term *communication* (Littlejohn and Foss 1999: 4). Definitions come in a variety of forms and contents, ranging from “those situations in which a source transmits a message to a receiver with conscious intent to affect the

latter's behaviours" (Littlejohn and Foss 1999: 4) to something as minimalistic as "communication is the transmission of information" (Littlejohn and Foss 1999: 5). In any case, the metaphor TRANSLATION IS COMMUNICATION has earned considerable currency in translation studies circles. In the work entitled *The Translator as Communicator* by Basil Hatim and Ian Mason, where translation is likened to communication for its inherent nature of verbal interaction (Hatim and Mason 1997: vi), the authors' position is that since all texts have the intention to elicit some response from the reader, the translator, then, needs to act on the verbal record of an act or a narrative, and then, on the basis of that, relay their understanding or perception of the source text to the target culture as a separate act of communication (Hatim and Mason 1997: vii). To me, this view, while warm and descriptive, does not convey a true stance on communication as cast on translation; the authors should have at least stressed that translation is a three-way or trilateral communication process, if it is to be considered communication at all.

Definition aside, because human beings are social creatures that make use of language¹¹, most human activities take place within a specific social context (hence the saying 'there is a time and place for everything'), and expressing a belief, whether factual or value-based, is an act of communication, and one must be cautious of the addressee's potential responses (Haste 1993: 25). As Ury notes in one of his works, there is no negotiation without communication (Ury 1991: 33), and by inference, there can be no dispute resolution without communication either. In an attempt to explain how messages are produced and understood, Stuart Hall asserted in his influential essay *Encoding, Decoding* that there are always four stages in communication: production, circulation, use and reproduction, with each one being relatively independent of the others (During 1993: 507).

¹¹ Please note that language and communication are two distinct, however closely interdependent, social phenomena.

As White so bluntly puts it, ethics is about the limit of our minds and languages, which makes the activity of translation a set of practices that can serve as an ethical model of law and as a standard of justice (White 1990: 258). As an antithesis maybe, White may be considered a utopian or an idealist, since, according to translation theorist Susan Bassnett, the issue of betrayal has almost been the bread and butter for translators, and it is precisely the need for translators to navigate the no-man's land of the space between languages and cultures, and whenever a translator is needed, it means that there are some people who cannot otherwise communicate with each other, and, as a result, honesty and integrity, along with expertise, are expected of the translator (Bassnett 2011: 22). Further, in the work edited by Jeremy Munday entitled *The Routledge Companion to Translation Studies*, there is a whole chapter (Chapter 6) dedicated to ethics: *Translation, Ethics, Politics* (Munday 2009: 93 et seq.), which demonstrates the importance of ethics for the individual working as a language and cultural ambassador.

As an antithesis maybe, the metaphorization of dispute resolution, i.e., the practice of making dispute resolution the target domain in a metaphor, is a relatively untouched niche in the world of dispute resolution. While one can easily retrieve a wealth of academic works dedicated to the glorification of dispute resolution, including Sven Koopmans' *Diplomatic Dispute Settlement*, Gary Harper's *The Joy of Conflict* and *Dispute Processes* by Simon Roberts and Michael Palmer, and also Colin Rule, who, in his work *Online Dispute Resolution for Business*, asserted that businesspeople benefit from conflict, as it can result in energy, productivity and creativity (Rule 2002: 1). The vast majority of them appear to focus on the complementary value of non-judicial dispute resolution mechanisms; therein, they also claim that a wider array of dispute resolution mechanisms is preferable to human society in terms of aspects such as enhancement of equality, diversity, communal identity and so forth, with little energy dedicated to the metaphorization of

dispute resolution *per se* for the sake of explaining and envisioning the nature, purpose and value of dispute resolution in human society. A case in point is that there have been a handful of academics taking the pre-emptive strike by assigning “synonyms” to conflict/dispute, such as *war, battle, feud, struggle, skirmish...* (Stewart 1998: 9), but their arguments do not go very far beyond that. Susan Stewart did mention in her work *Conflict Resolution* that terms such as *discord* and *dissension* must be avoided because of their potential to invoke violence, and words with violent connotations should be reserved for contexts such as politics and competitive sport (Stewart 1998: 9). Moreover, she went on to stress that metaphors such as ‘the cut-and-thrust of political debate’ and ‘the match carried the resonance of past battles’ make use of militaristic language which is dynamic, powerful and expressive of the male qualities in human nature (Stewart 1998: 9). As it follows, in the end, she resorted to concepts such as harmony and serenity to describe the states of repose and thoughtful meditation that should accompany dispute resolution for her metaphorization of conflict resolution (Ibid.). Nonetheless, one of the contexts in which I have discovered an occurrence of metaphorization of dispute resolution is the book *Dispute Processes*—this time, it is something in the narration style. In Chapter Four of this publication, the co-authors Palmer and Roberts described the daily routine of lawyers as such:

Lawyers represent disputes as ‘cases’—discrete, bounded and pathological episodes, generated by rule-breach. They are, in everyday language, ‘messes’ which need to be ‘cleared up’. In the lawyer’s view, they are most appropriately cleared up in a particular way, through ‘litigation’. This is a process under which, ideally, evenly matched adversaries fight it out—through their legal representatives—on the level playing field of the ‘justice system’.

(Roberts and Palmer 2005: 79)

As one can easily observe, several metaphors were built on the idea of dispute such as “pathological episode” and “mess”, and, more indirectly, dispute resolution was metaphorized as “clearing up the mess” and “fight between adversaries”, however clumsy and heavy-handed they may sound.

Finally, another example which I find unique for its touch on translation from the perspective of dispute resolution, despite the subtlety of the metaphor, was presented by dispute resolution scholar John Paul Lederach, who, in his work *Preparing for Peace*, made this following comment:

In my experience, the perspective nature of our methodology makes little, if any, adjustment as we move across cultural and class lines. Metaphorically, we tend to *translate* our materials into another language rather than create them *in situ*. (italics mine)

(Lederach 1996: 33)

Arguably, the point that Lederach was trying to make is that the cultural neutrality of conflict resolution has been wrongly taken for granted, when, in fact, processes of expressing and handling conflict are deeply embedded in culture, and they must be identified and observed for any dispute resolution efforts to be meaningful. From my perspective, though, what that means is that if translation is considered analogous to something as ethnocentric and culture-specific as dispute resolution, then there can never be one translation theory that is language-neutral or culture-neutral, and any claim otherwise will lead to a heated debate. Another thing about Lederach's remark that I found rather interesting was that, for him and presumably for many people outside the translation circle, translation is expected to be something faithful to the original, or the source language/culture, with little, if any, adjustments permitted. Also, by that logic, if the translator is making any adjustments to time or place in the course of their rendering, then the end product can no longer be considered a translation due to its purported *in situ* nature. Understandably, translators consider that an obsolete, if not a completely flawed, understanding of the translation phenomenon. Granted, dispute resolution is not a task for the faint of heart, and the third-party neutral must be on high alert for nuances arising from cultural and social differences, some of them rather subtle, but that does not mean that the dispute resolver can afford to be ignorant of the target language and target culture without knowing how to express,

communicate and resolve the dispute in an informative way—not in the least. Quite the opposite, in fact; the dispute resolver must, as does the translator, be compassionate and take into account a wide range of interconnected factors in their line of duty, always keeping an eye out for subtle nuances and minor gestures that may spring up here and there. In other words, the translator is by no means a professional who is ignorant to cultural differences; nor is translation an activity centered on the light-minded principle of equivalence. For that matter, although I appreciate his efforts in building a metaphor on dispute resolution through the lenses of translation, it is nonetheless my firm position that the metaphor on dispute resolution via translation as presented by Lederach does not truly reflect reality.¹²

From an alternative perspective, in an effort to expand my horizon on metaphors and further justify my metaphor of translation as dispute resolution, I sought some academic literature where translation serves as the metaphor target domain, and I came across one title: *Innovation with Care in Health Care: Translation as an Alternative Metaphor of Innovation and Change*, which I believe is worth a mention. Over the years, translation occasionally served as a metaphor target domain too. In his paper *Innovation with Care in Health Care: Translation as an Alternative Metaphor of Innovation and Change*, John Dammschueur made an analogy between reform in the health care system and translation. According to him, an innovation may be defined as an idea, practice or object that is perceived as new by an individual or other unit of adoption (Fuglsang 2008: 57). In addition, innovation in the public sector may be divided into different types of innovations: a new or improved service, a process innovation, and administrative innovation, system innovation, conceptual innovation and radical change of rationality (Fuglsang

¹² Please note that in saying so, in no way am I denying the positive side of Lederach's metaphor altogether. On the contrary, thinking of one's own object (target domain) through another concept (source domain) with a view to garnering a fuller understanding of one's object is a sign of encouragement, and even if the mapping is deemed wrong or inappropriate by some, it would still advise us of the current status of the development of the relevant discipline as regards metaphors.

2008: 57). Along with the metaphor of implementation and the metaphor of planned rational change, he adopted the metaphor of translation as the alternative metaphor to justify his position. As regards the metaphor of translation, the diffusion in time and space of any token is assumed to be brought about by people, each of whom may act in very different ways: they may choose to modify the token, deflect it, betray it or appropriate it. Since actors transfer tokens into something else by translating them or associating them with heterogeneous elements that might be humans or objects, as an idea is being translated, the idea itself as well as the translators are changed. Of course, an inchoate idea needs to be translated in accordance with local knowledge, organizing processes and professional interests (Fuglsang 2008: 75). Meanwhile, whether the idea itself or the elements thereof are introduced in practice depends upon whether someone decides to translate it or not. In this sense, translation can probably be defined as one of the various ways that humans can associate such an abstract element as an idea with other human beings and inanimate objects, and, in turn, the translation process could be analyzed by dissecting the entire process into small segments, or “episodes” (Fuglsang 2008: 78-79).

In light of the aforementioned examples from the area of dispute resolution, one will, in all likelihood, be left with the impression that, for the most part, the metaphORIZATION of conflict resolution goes little further than gathering some synonyms that are thought to vaguely epitomize the phenomenon of dispute resolution, and, as such, it takes up only one or two paragraphs inside a chapter, not even deserving a heading of its own. Even in rare cases where dispute resolution is made the target domain in the metaphor, with translation serving as the source domain, the mapping is quite different from what we are familiar with in translation studies. What that indicates is that while translation theorists are trying to obtain a clearer and more panoptic understanding of their profession through metaphors, with dispute resolution implicitly serving

as one of the many source domains, dispute resolution, as an academic discipline, is not quite as devoted to metaphors and the metaphorization of their subject matter, and in the very few cases where translation is involved in metaphorization, it is, in my opinion, cited improperly.

Hopefully, with my thesis, the wide and insurmountable gap between the two disciplines in respect to proper metaphor use will disappear.

TRANSLATION IS NEGOTIATION is no doubt the metaphor that most people are familiar with.

Semiotician and language philosopher Umberto Eco has a publication with a title dedicated to that metaphor— *Mouse or Rat: Translation as Negotiation*.¹³ In his opinion, the choices that the translator is confronted with, however subtle or intuitive, fundamentally necessitate negotiation, without any in-depth reference to what negotiation really means in law or dispute resolution theory, and this is understandable in the sense that translators and translation theorists are apparently “preprogrammed” to understand, or to believe that they understand, what negotiation means. In his work *Negotiating the Frontier*, Anthony Pym attempts to give translation theorists a jumpstart with the question *How should cultures interrelate?*, while acknowledging the pretentious nature of the question itself at the same time (Pym 2000: 1). In response to his own question, Pym stresses the importance of translation, which, in his view, serves as the perfect venue for the study of intercultural activity, and it is his position, by inference, that judging from the work translators do, translation is a type of “mediation between cultures”, with the translator acting as the intermediary. Then Pym goes on to say that while negotiation carries with it so many presuppositions, the negotiator, who is supposed to be the intermediary in most cases, can be seen doing different things and taking up different roles in different contexts (Pym 2006: 10).

¹³ As will be evident to my reader later in this thesis, I will be showing that the use of the term negotiation by Eco was somewhat inappropriate in the sense that it is different from what is accepted across the dispute resolution scholarship.

For the most part, I find that very promising, even though, for one thing, Pym seems to have confused the two distinctive concepts of mediation and negotiation, which is not surprising at all, and for another, he seems to have an incorrect understanding of the dispute resolution mechanism of negotiation.

Another important metaphor carved out of translation in connection with dispute resolution that most translation theorists are familiar with is TRANSLATION IS MEDIATION, or the translator as the mediator. This is especially obvious in the monograph entitled *The Translator as Mediator of Cultures*, edited by Humphrey Tonkin and Maria Esposito Frank. In this work, the translator is crowned the mediator and the conciliator in several passages (Tonkin and Frank 2010: 1), with special attention accorded to societies in transition, South Africa and Russia in particular, both being multiethnic and multicultural nations, where transitional justice has been the word of the day for the past decade or two. However, as we will see later, the authors appear to have given relatively more weight to mediation and conciliation in the socio-political sense than was justified. More specifically, even works by translation theorists who advocate translation as negotiation and translation as mediation are not, in my view, really focused on the metaphor of the translator; instead, most of them seem to be approaching the issue of translation from a socio-political angle by treating it as a means of building—or rebuilding—relationships in divided and/or societies in transition, particularly in the political sense, where translation is part of a broader trajectory of language policy designed for political equality. To that end, therefore, in order for translation to help with healing wounds (as in South Africa, a country in need of transitional justice) and narrowing divides, translation theorists of this view might have carelessly ignored what marks the difference among miscellaneous dispute resolution mechanisms under discussion and whether there exists sufficient evidence to justify the mapping

of the source domain and the target domain (in Pym's case and Baker's case, the mapping between negotiation and translation), and whether there is any other dispute resolution mechanism that just might be able to gear translation to the same audience for the same purposes.

On the surface, in an effort to ascertain the true nature of translation, translation theorists have made an all-out effort to construct as many metaphors as possible out of translation that barely bear any similarity to dispute and dispute resolution in one way or another, and with negotiation and mediation all accounted for, the background of our metaphor linking dispute resolution and translation now seems comprehensive and complete. Or does it? Somehow my instinct is advising me of a missing piece somewhere in the labyrinth of translation. Indeed, translation studies is a complex academic subject with diverse ramifications in schools of thoughts, and the metaphorization of translation is one of the platforms where those ramifications are employed to explain what actually happens in the course of translation. This is exactly where metaphors come into play, and I, for one, think that there is very encouraging news.

Admittedly, translation and translation studies are in no desperate want of metaphor; instead, what is needed is *valid* and *illustrative* metaphors. Otherwise, whatever we make of translation would be nothing more than some cliché¹⁴ or banality. However, one of the most chronic issues, at least from my angle, regarding the current research on metaphors for translation theorists is the inexplicable failure to identify and conduct their research at a higher and more abstract level. In more concrete terms, while many have managed quite successfully to identify the translator as the mediator, the communicator or the negotiator, such as Tonkin, Frank, Hatim and Mason and

¹⁴ A cliché can be loosely defined as any figurative expression that has become commonplace through overuse. A typical example of a cliché would be the statement "You are what you eat".

Baker, hardly any of them have tried to complete the metaphor at a higher level or order—the order of dispute resolution, where negotiation and mediation, along with litigation and arbitration, are all subsumed into one category (refer to my **Hierarchy**). Regrettably, I must say that the trajectory adopted by the mainstream scholarship is by no means complete.

In more practical terms, to my surprise, while translators have spared no effort to metaphorsize translation as negotiation and mediation, up to this day, hardly anyone has attempted a metaphor between translation and dispute resolution—a category to which both negotiation and mediation belong, and hardly any scholar has attempted a metaphor mapping between translation and arbitration or litigation, both of which are parallel concepts falling under the category of dispute resolution (recall **Hierarchy**), alongside the common and popular concepts of mediation and negotiation. Taking Susan Bassnett’s work *Reflections on Translation* as an example, while she starts her chapter by advocating a reevaluation of the translator (Bassnett 2011: xi), she nonetheless insisted that the task of the translator is to *negotiate* difference, finding ways of avoiding homogenization while at the same time making sure that difference does not cause misunderstanding (Bassnett 2011: xiii). Obviously, the age-old ideas of translation as mediation and translation as negotiation are still profoundly entrenched in current translation scholarship, with all other possibilities almost completely left out. I cannot help fearing that such an entrenched idea will be difficult to eschew for some time.

For the moment, to sum up, my proposition would be that there should be a conceptual “meta-system”, a category of a higher order that includes and captures all forms of possible dispute resolution mechanisms as a complete set of diverse choices from which parties to a dispute can make for themselves. I obtained my idea of engaging more dispute resolution mechanisms from what ADR has evolved into in recent years, and therefore it occurred to me that a thorough

examination of the history of ADR would probably shed some light on the trajectory of my argumentation.

Of course, unfortunately, just as not all translations work out smoothly and not all are even translatable at all, not all disputes or conflicts will be resolved in a timely fashion, or even resolved at all, and the late legal philosopher Lon Fuller was once intrigued by certain types of disputes under his observation that were never resolved, suggesting that the legal community should start exploring non-conventional options of resolving “polycentric” problems on a different platform (Nolan-Haley 1992: 6). In his view, every dispute should have some way out one way or another, which provided the fertile soil for today’s “ADR vs. Litigation” debate. Some academics, Todd Carver being one of them, have even gone to the length of downplaying the alternative and complementary nature of ADR in an attempt to make the use of ADR imperative. In one of his articles, Carver wrote “Take control of your disputes now; it is imperative!” (Carver 2000: 84).¹⁵ In other words, in the eyes of these legal activists and realists, if a certain type of dispute never becomes resolved at all, there must be something wrong with either the dispute resolution mechanism being chosen (which includes the wrong third-party neutral being appointed), or the parties were simply diehard holdouts, for, in their belief, there must always be a way out of every dispute, however volatile and dilemmatic.

Today, more and more disputants are expecting a greater say on how their dispute should be resolved, and, as a result, they are looking outside the usual legal framework and seeking options that do not involve the judiciary. As dispute resolution expert Robert Mnookin once sarcastically put it, ADR was born in the shadow of the law, more like a footnote to the regular legal process

¹⁵ Indeed, there have been voices to the effect that litigation should be eliminated altogether, but personally, I find that somewhat extreme and emotional. In any case, this issue is moot here as regards my attempt to explore more options for our translation metaphor.

or a second-tier option than an equivalent institution in its own right (Rule 2002: 13). Frankly, I find that very tragic, for ADR is, despite its exotic title, just an idea about improvising more creative and tailor-made methods of dispute resolution. Whether ADR should be mainstreamed, as Todd Carver claimed, is one thing, but we are in need of more ADR mechanisms to suit the needs of an ever-changing market with wide-ranging tastes, no matter how we look at it—economically, socially or psychologically. In response to shifts in market demand, in recent years, some hybrid dispute resolution procedures, such as Med-Arb¹⁶ for one, involving a combination of mediation and arbitration in different sequences and in different proportions have been developed (Ross and Conlon 2000: 416).

There is one more thing about the literature on negotiation that is worth a mention. While an overwhelming portion of the scholarship assume that negotiation skills are vital in all translation scenarios and metaphorize translators as negotiators and mediators, it appears that even they have approached their metaphor based on the layperson's semantics of *mediation* and *negotiation* without ever consulting canonical works on negotiation theory that encompasses negotiation tactics and strategy, particularly those published by William Ury and Roger Fisher, two of the most leading negotiation experts and the co-founder of Harvard University's Program on Negotiation, and whose influential works of *Getting to Yes* and *Getting Past No* remained bestsellers for extended periods of time.¹⁷ Negotiation, as a subject worthy of academic concern, as Ury and Fisher have emphatically shown, has developed phenomenally over the past two or

¹⁶ Med-Arb, or to a lesser extent, Arb-Med, as the name suggests, is a hybrid dispute resolution mechanism that consists of a combination of mediation and arbitration. Typically, in med-arb, the parties agree that the process will begin as a private mediation and if they are unable to reach a mediated agreement in the end, the process shifts to arbitration. Vide Martin A. Frey, *Alternative Methods of Dispute Resolution*, Clifton Park: Thomson, 2003, pp. 285 *et seq.*

¹⁷ Virtually every publication on dispute resolution will touch on at least one of Ury's and Fisher's two bestsellers, either in the text body or somewhere in the bibliography. For instance, the work *Alternative Methods of Dispute Resolution* by Martin A. Frey, which will be cited many times in this thesis, made a mention of *Getting to Yes* in the introduction. See Martin A. Frey, *Alternative Methods of Dispute Resolution*, Clifton Park: Thomson, 2003, xxiii.

three decades, and it is no longer merely a skill or craft that diplomats, lawyers and entrepreneurs need to learn; instead, it has now become a vital subject matter in various academic disciplines including international politics, business management, government administration, sociology, anthropology, law, and of course, translation studies. Today, negotiation courses are offered in virtually every school, department and faculty, and universities are appointing faculty who specialize in negotiation like never before.¹⁸ To boot, the majority of these programs either have William Ury as one of their course instructors, or use some or all of the works of Ury as textbooks for guidelines and principles to fall back on throughout their program.¹⁹ This, unfortunately, seems to have gone largely unnoticed by translation theorists, including those who claim that the translator is a cultural mediator and those who argue that translation is negotiation. For this reason, I will be consulting the two bestsellers of *Getting to Yes* and *Getting Past No* fairly extensively for much of my discussion on negotiation, as well as dispute resolution in general.

¹⁸ For instance, Columbia University has a Master of Science program in Negotiation and Conflict Resolution, along with hundreds of other universities and NGO's (such as the Canadian International Institute of Applied Negotiation, or CIIAN) worldwide.

¹⁹ I am saying this because, in my own experience, all training courses at the International Chamber of Commerce (ICC) in Paris and the Chartered Institute of Arbitrators (CI Arb) in London use, or at least consult, William Ury's works as part of their required course bibliography.

Chapter Two: Hypotheses and Objectives

2.1 Formulating My Problems

In an effort to enhance the status of translation studies in academia, translation scholars have been trying to validate and verify various claims on the nature of translation, thus giving rise to several movements, the descriptive translation studies (DTS) movement being one of them, in the 1970s. Because of the movement, little by little, research on translation shifted from normative or prescriptive to descriptive, with more momentum directed towards what translators actually do instead of what should be done. In addition, while earlier research on translation focused on the source culture/language/text, recent studies have shifted subtly to the audience, i.e., the target culture/language/text, starting a turn that places the target text on a more or less equal footing with the source text and, arguably, clearing translators of unearned stigma. This set the backdrop of a subtle shift in the discipline, and now translation may be more thoroughly approached, for it is now recognized as a fact of the culture that hosts translators, who, in turn, are treated as agents of change in that particular culture (Burke and Hsia 2007: 2).

From that perspective, as I have mentioned previously, I am delighted with the extended application of dispute resolution theory to translation via metaphorization and metaphor theory, which is something translation theorists have traditionally omitted but would potentially show enthusiasm for, and I sincerely relish all these approaches undertaken by academics over the years. What I am having some serious reservations about, however, is the widespread presumption that negotiation and mediation make the only two possible metaphor source domains. More to the point, I think that theorists' efforts could have been better spent establishing a metaphor between translation and dispute resolution, from which they were to

branch out into translation as litigation and translation as arbitration, in addition to the existing metaphors of translation as mediation and translation as negotiation. And that, I believe, would have made St. André's work *Thinking Through Translation* even more remarkable.

Now shifting our focus to the translation front, every act of translation involves some very personal interpretation, conjecture and judgment of what the author must have been trying to say on the part of the translator, and that was probably what led some to think that “objective” and “genuine” translation is impossible and what convinced me that translation strategies are never stable or permanent. Interestingly enough, the same thing could be said of dispute resolution; to insist that dispute resolution is pointless because the pre-dispute situation can never be restored or even just repaired and reversed from the *status quo*, or simply because what the third party says and does will always be subjective and self-serving is equally absurd. Indeed, the current post-dispute situation will never be “undone” or “untied”.²⁰ It is precisely this that made me second-guess the mainstream and traditional position.

In short, at the heart of my argument is the hypothesis that in light of the current status of translation metaphors, there should be a metaphor at the supralevel between translation and dispute resolution and potentially many other metaphors at the infralevel between translation and individual dispute resolution mechanisms. Essentially and emphatically, my trajectory will be to validate the metaphor of TRANSLATION IS DISPUTE RESOLUTION by means of valid schema mapping, and then via the logical process of subcategorization, I will then continue on to

²⁰ There is an interesting—and also relevant—point to make here. In contract law, whenever a breach occurs, there are (at least) two remedies for breach of contract: expectation damages and reliance damages. While expectation damages address the position that the breached-against party would have been in had the contract been completed, reliance damages aim to place the breached-against party in the position that he would have been in had he/she *never* entered into the contract in the first place. That may leave us wondering whether dispute resolution should bring people back to where they *used to be* or to where they *would have been*.

determine which of the four dispute resolution mechanisms make the best parallel.²¹ Now, with the problems I formulated in mind, we will proceed with my hypotheses in response to those problems I am alleging.

2.2 Hypotheses

While negotiation and mediation are two very convincing source domain options that feed well into our metaphor schema, they should not be the only two for our metaphor; arbitration and litigation should be placed on the same footing, and all four mechanisms taken together can—and will—make our metaphor of TRANSLATION IS DISPUTE RESOLUTION a panoramic, logical and complete one. I would now like to propose some hypotheses, which reflect the problems and questions that I believe have not been addressed duly. Based on my literature review and in response to my problems formulated in the previous paragraph, I would now like to propose a total of three hypotheses.

1. First of all, I firmly believe that dispute resolution at a general level represents an adequate metaphor for translation, as there is persuasive and logically valid mapping between the source domain (i.e., dispute resolution) and the target domain (i.e., translation) in relation to several factors (i.e., slots) which form a metaphor schema taken as a whole, namely power, ethics, bargaining tactics and decision and choice making.
2. The two metaphors of translation as negotiation and translation as mediation, despite translation theorists' familiarity with them, are not as adequate and persuasive as the metaphor of translation as litigation, or even the metaphor of translation as arbitration.

²¹ Indeed, every individual dispute resolution mechanism, litigation, mediation or otherwise, entails dispute resolution, as each one of them is a subcategory of dispute resolution.

3. It is my belief that among the four dispute resolution mechanisms considered herein, litigation makes the most appropriate and convincing metaphor for translation, with the “dispute” or “conflict” to be resolved best viewed as one between two cultures.

2.3 Objectives

In light of the problems I have identified, and in response to my hypotheses, the following four objectives comprise the purpose of my thesis.

Objective 1: In an effort to demonstrate that dispute resolution forms the basis of an adequate metaphor for translation, this thesis aims to explore some of the most representative parallels between dispute resolution and translation by means of a thoroughly thought-out schema.

Objective 2: At a more specific level, I will aim to establish the validity of the metaphor of translation as dispute resolution by highlighting a schema that features parallels in four aspects: (a) the number of agents involved; (b) the purposes thereof; (c) the ethics and power; (d) the skills and tactics involved.

Objective 3: On the basis of some tenets from dispute resolution theory, I will show which one of the four dispute resolution mechanisms (mediation, negotiation, arbitration and litigation) makes the best metaphor fit for translation.

All in all, I believe that metaphORIZATION, a presumably universal process, will help us with our pursuit for a better understanding of the translation phenomenon by virtue of dispute resolution ontology.

2.4 My Contribution

As I have indicated earlier, to my surprise, up to this point, there has hardly been anyone in the translation studies scholarship undertaking the challenge to establish a metaphor targeting translation as either arbitration or litigation.²² What separates my position from the mainstream one lies in my approach to the human understanding of the true nature of translation by way of a different metaphor. To put that into perspective, instead of confining myself to the all-too-familiar metaphors of translation as mediation and translation as negotiation, I will make every endeavour to demonstrate how translation may be better approached and metaphorized as a form of dispute resolution, as opposed to simply a form of mediation or a form of negotiation, alerting scholars to what they may have left out all these years. It is my belief that by virtue of the parallels made in relation to a host of factors, including but not limited to ethics and power, not only will translation theorists have a better understanding of the true nature of the task of the translator, but they will also realize how broad and panoramic their prospects could be if more options were made an integral part of the “fabric” of the translation studies enterprise. To bring my point one step further, because of my research, I will be able to make some contribution to human knowledge on translation, and quite possibly I may even provide a new perspective for dispute resolution theory. The major thrust of my argument will be a new perspective on the human institution and activity of translation through metaphorization, establishing a metaphorical link between translation and dispute resolution as a taxonomical category, and not just a metaphorical link between translation and isolated dispute resolution mechanisms. Put another way, the metaphor TRANSLATION IS DISPUTE RESOLUTION characterizes the entire system, while subcategorization relationships (e.g., TRANSLATION IS MEDIATION) characterize

²² In fact, one can barely be returned any webpage link to any academic paper to that effect with keywords like “translation as arbitration”, “translator as arbitrator” or “translator as judge” on any of the major search engines on the Internet; yet one would be returned countless webpage links using keywords such as “translation and mediation” or “translator as mediator”.

entailment relationships between my metaphors (Lakoff and Johnson 2003: 9). At the same time, I will be introducing “new” dispute resolution mechanisms—new in the sense that they have hardly ever won the attention of translation theorists—litigation and arbitration, to our subcategorization template of metaphors. I believe that with a complete view of dispute resolution as an all-inclusive category, as well as the incorporation of two unprecedented dispute resolution mechanisms to our argumentation, our metaphorical mapping by way of a schema between the source domain and the target domain will become more comprehensive, complete and convincing. That, in my view, will have great original value in that my argumentation will be valuable for exactly what it is in its own right, and profound insights will surely make a great contribution to human knowledge.

Another contribution of mine concerns interdisciplinarity. In recent years, there have been scholars in the translation studies circle advocating “turns” and “shifts” for translation studies, as has been manifested in works such as *Constructing a Sociology of Translation*, edited by Michaela Wolf and Mary Snell-Hornby’s *The Turns of Translation Studies*, just to name a few. I believe that it is only through successful metaphorization of translation can any turn, shift or improvement in translation studies be possible, either in terms of subject matter or methodology, for whenever we are talking about a “turn” for translation studies, we are, to a certain degree, implying interdisciplinarity, which, in turn, requires the use of metaphors for the confirmation of its value in practice and in theory. I believe that the same thing applies universally to all other turns. If we are to think of translation through the lenses of dispute resolution, or even through those of individual dispute resolution mechanisms such as mediation and negotiation, then because they are all socially and culturally constructed concepts, and since our culture structures the actions we perform in resolving disputes or translating, we will inevitably have to examine

the underlying social and cultural conditions that gave rise to each one of them before we can be in a position to pass judgment on whether our metaphor will work.

On a final and personal note, I would like to share the adage “To leave no stones unturned...”, which I consider my motivation motto, with my readers throughout my study and research.

Chapter Three: Methodology—Translation and Metaphor Theory

But the greatest thing by far is to have a command of metaphor. (Aristotle 350 BC: *The Poetics*)

3.1 Overview

The methodology employed in this thesis consists mostly of a logical dialectic with the basics of metaphor theory as a point of departure. The source domain (or vehicle²³) of my metaphor will be dispute resolution and translation will serve as the target domain (or tenor), both of which are in need of a certain degree of justification for a valid and consistent metaphorical mapping. The intellectual debate over the functions of translation and the role of the translator will be demonstrated and propositioned via a metaphoric mapping between translation and dispute resolution based on a schema (or ground)²⁴. Of course, not only will I look into phenomena that have already been explored, but I will also carry out an inquiry into issues beyond them. In addition, each one of the four different dispute resolution mechanisms that I will concentrate on deserves to be examined and investigated on an equal footing one by one, and also the metaphor of translation as dispute resolution will be scrutinized in its capacity as a hypernym which encompasses various mechanisms through subcategorization. In academia, there have been a spate of thoughts on how translation should be viewed and metaphorized; translation can be viewed in terms of nature of the process, status of the translator, status of the target audience and link between the original and the translated version, as demonstrated in the publication *Thinking Through Translation with Metaphors*. Typically, there are things that we do when resolving a dispute, which we conjure up (such as standing in the middle and rebuilding relationships;

²³ For the two halves of a metaphor, in Richards' terminology, *vehicle* is used to describe 'the borrowed idea', and *tenor* refers to 'the original idea'. (Richards 1971: 96)

²⁴ Richards calls the conglomerate of all common characteristics the "ground" of the metaphor. *Vide* I. A. Richards, *The Philosophy of Rhetoric*, Oxford: Oxford University Press, 1971, p. 117.

amicable or hostile nature of the process), and when we are presented with a metaphor such as TRANSLATION IS DISPUTE RESOLUTION, all those things spontaneously form a metaphor schema through which we approach and arrive at the other domain. Once we have determined the value of the metaphor of translation as dispute resolution, we will proceed with our quest for the exact dispute resolution mechanism that is structured most closely to translation in the four aspects (slots) based on our understanding of dispute resolution.

3.2 Selection of Dispute Resolution Mechanisms and Forming of Schema

Presumably, it is the fact that the translator acts as an intermediary party between two cultures, which, in most cases, are unfamiliar with each other, that led most to link translation to dispute resolution activities such as mediation and negotiation. One must take note that constructing a metaphor does not amount to building a hierarchy, in which one thing (usually the target domain) is a subspecies of another (usually the source domain) (Lakoff and Johnson 2003: 5).

Specifically, as far as my metaphor is concerned, I am not trying to argue that translation is taxonomically a *type* or *subspecies* of dispute resolution; instead, I am merely trying to prove that the two phenomena share quite a few common traits.

Once we have established TRANSLATION IS DISPUTE RESOLUTION, we will then have to establish which type of dispute resolution best fits translation. In this regard, as I have emphasized before, I will be concentrating on four dispute resolutions—mediation, negotiation, arbitration and litigation, because they are by far the four most basic and representative dispute resolution mechanisms. In addition, the four mechanisms of arbitration, litigation, mediation and negotiation are the most basic ones of dispute resolution mechanisms in the sense that they cannot be further broken down into simpler forms (as if they were chemical elements), and they

are representative in that all the relatively minor dispute resolution mechanisms that will ever be mentioned herein, such as Med-Arb and ombuds, are technically all creative and *ad hoc* combinations of some or all of the four. I have chosen my four dispute resolution mechanisms primarily for their representativeness and popularity. True, dispute resolution mechanisms should be tailor-made to meet individual needs, and, thus, there may be as many ADR mechanisms as there are disputes in the world, with professionals calling the rise of ADR to the forefront of the dispute resolution market the “faces and masks of law” (Nolan-Haley 1992: 9); yet, many non-judicial dispute resolution mechanisms (for example, acquiescence and inaction) are conspicuously irrelevant and inapplicable to our metaphor, and a handful of others, such as ombuds, Med-Arb, ENE²⁵, SJT²⁶ and so forth are basically intelligent and malleable concoctions improvised on the four dispute resolution mechanisms I have chosen. In short, my four mechanisms can, in a way, be considered dispute resolution mechanism prototypes. At the same time, they are popular in the sense that they by far account for the greatest share of the dispute resolution market that serves all disputants, and together they account for the overwhelming majority of private cases that do not disappear on their own.

It might not take the intelligent reader too much to realize that to my list of dispute resolution mechanism candidates for my metaphor, I have added arbitration, a dispute resolution mechanism that translators and translation theorists are not familiar with, and my reason for this was simple. My curiosity—as well as my astonishment—about the lack of discussion of translation as arbitration among translation theorists was why I insisted on “bucking the trend”

²⁵ ENE, the acronym of “early neutral evaluation”, is a hybrid ADR process in which an individual with experience in the substantive area of the dispute furnishes the parties with some early case assessment, thereby providing the parties and their attorneys with the opportunity to visualize their case from the perspective of a third person.

²⁶ SJT, the acronym of “summary jury trial”, is another hybrid ADR process in which the attorneys of the parties present their case before a mock jury under close supervision by a judge, with the “jury” rendering a mock verdict with a view to giving the parties an idea as to how their case might turn out if it goes to trial. Essentially, it is a shortened form of lawsuit trial.

by including arbitration as one of the potential dispute resolution mechanism candidates deserving some investigation in my research; after all, for one thing, arbitration is a well-established and very widely used dispute resolution mechanism that deserves equal footing with mediation and negotiation, and one simply cannot imagine conducting meaningful research on dispute resolution without engaging arbitration at all. For another thing, even if at the end of my research, arbitration ultimately proves to be a less-than-ideal choice for our metaphor on translation, at least we will have conducted a complete and comprehensive mapping between the source domain of dispute resolution and the target domain of translation on the basis of our schema, sparing ourselves the regret of having left out any possibilities inadvertently. Moreover, arbitration might be able to provide us with some new insights on how translation should be understood through dispute resolution or how translation should be metaphorized at all.

Regarding notation, when a specific dispute resolution at a given time is being referred to as a metaphor of translation, then it is the corresponding third-party neutral of that particular dispute resolution mechanism, or, in the case of negotiation which lacks such third party, the agent or actor of the verb *negotiate*, that is being referred to (i.e., negotiator), and *vice versa*. So, for instance, whenever I am metaphorizing translation as mediation proceeding, then, by simple inference, the translator is being referred to as the mediator, at least for that particular context. Once again, all these options will be left open and be positioned in a dialectical interrelationship until a conclusion has been drawn.

The methodology employed in this thesis involves both the theoretical and descriptive aspects to the metaphorization of the translation process and the translator. Since pure translation studies is duty bound to serve the dual objective of describing translation phenomena as they occur and developing principles for describing and explaining such phenomena (Baker 2008: 277), I am, by

drawing upon metaphor theory, aiming at describing the way translators carry out their tasks and why they choose to do it in a certain way (e.g., the need to impose a personal choice on the parties), thereby establishing the mapping for my metaphor. Put another way, translators will tend to carry out their duties in a certain way because translation is metaphorically highly comparable to dispute resolution with similar powerful vectors at work throughout, and if dispute resolvers will make every effort to have disputes resolved in a certain way, so will translators. Afterwards, on the basis of the metaphor TRANSLATION IS DISPUTE RESOLUTION, since translators must constantly make difficult yet critical decisions that are to be imposed on the disputants not necessarily to their liking, subject to some professional protocol and ethics, we will then seek to establish which type of dispute resolution mechanism describes translation the best.

In reference to a number of factors such as tactics, ethics, power, and decision-making...etc., I will show that translation is best visualized as dispute resolution. It just means that a metaphor based on the mapping of litigation onto translation will probably work out better and, thus, render a fuller diagram of the translation phenomenon.

3.3 Formulation of Metaphor

A metaphor typically likens a thing or category to some other with one single stroke, and the double “aboutness” exhibited by metaphorical language is something that can only be understood through a schema that comprises several slots. Typically, there is a schema, which consists of slots, that links the source domain (or *vehicle* in Richards’ word, or *secondary subject*) and the target domain (or *tenor* as Richards put it, or *primary subject*) (Richards 1971: 96). Together they complete a metaphor.

For the formation of my schema pursuant to my metaphor, I will refer to the canonical work on metaphor theory *Metaphors We Live By*, co-authored by Lakoff and Johnson, and also, to a lesser extent, the work entitled *The Philosophy of Rhetoric* by philosopher Ivor Richards. I believe that, in reference to the well-known metaphor LOVE IS A JOURNEY, whose mapping is established through a number of factors tacitly known to people in the West, my metaphor TRANSLATION IS DISPUTE RESOLUTION will convince us that our understanding of translation stems from the structure of our knowledge of dispute resolution via the applicable metaphor schema. To that effect, we will have to identify some factors as slots of our schema. A slot is basically a characteristic or attribute that the source domain reminds us of when we are told the metaphor. Let us recall the metaphor LOVE IS A JOURNEY; a possible slot in this case would be “go very far from home”, which is one of the many ideas that the category of *journey* invokes on people. In the same vein, assuming that we have no idea what translation is, or do not understand it well enough, we do not know what to make of translation, and, instead, we rely on our understanding of or our reference to dispute resolution, which probably invokes an image of a setting involving a middleman being involved in a dispute between two individuals. We then apply that image to translation and by looking at translation closely, we finally infer that it may be a process through which cross-cultural disaccords are resolved by the translator, which, depending on one’s subjective take on dispute resolution, may or may not be a pleasurable experience. All in all, that tells us that there must be some direct *correspondence* involved between the two domains (Peuquet 2002: 124), or, alternatively, the target domain and the source domain must be linked by some resemblance, on which their interaction is based (Richards 1971: 106), and/or some common attitude that people take up towards both of them (Richards 1971: 118)—all of which require the cognitive process of comparison.²⁷

²⁷ Even though Richards treated the two points of reference in metaphor of resemblance and common attitude as two

For my mapping between the source domain of dispute resolution and the target domain of translation, I have four slots in my schema, and they are bargaining skills, power, ethics and decision making. Essentially, what that means is that, for me at least, it is precisely these four properties regarding dispute resolution that evoke a clearer picture of translation by means of comparison. Therefore, I have chosen ethics, power, bargaining skills and decision making for my metaphor schema; in other words, to me, translation is dispute resolution in the sense that the translator, as if they were the dispute resolver, is situated between two cultures, empowered with a certain amount of discretionary power while subject to a range of ethics, and trying to make an ultimate choice or decision with sophisticated bargaining skills and tactics. More emphatically, the translator occupies a powerful yet difficult space between cultures (Tymoczko in Baker 2010: 217), comparable to the crossfire that the dispute resolver often finds themselves caught in.

3.4 Scope and Limitations of the Research

Truth be told, all research comes with some limitations, and no thesis can ever include every possible element for discussion. This one is no exception. As is the case with any research, my readers need to ensure that they are evaluating my arguments and results within the context of limitations. Also, given that the process of posing and answering specific research questions typically generates questions that were once overlooked and that require further investigation and research, I have a whole section (6.4) in Chapter Six dedicated to the presentation of some interesting questions that are worthy of further investigation but would otherwise fall beyond the scope of this thesis. Indeed, as a preliminary inquiry into a certain category of metaphors, my

fairly separate things, the difference would be immaterial for me. Therefore, I would like to treat them as one, with the latter being able to be subsumed under the former.

thesis can certainly benefit from further input inasmuch as my findings can be further generalized, fortified and justified.

Because this thesis aims to describe several interrelated metaphors of different taxonomical orders, I made use of metaphor theory for my methodology, along with sound logical reasoning, making extant literature on translation metaphors indispensable at times and inadequate from time to time. The main obstacle, then, would be the apparent lack of extant literature on several metaphors including translation as dispute resolution, translation as arbitration and, most of all, translation as litigation, for which I had to, on the basis of metaphor theory, conduct extensive logical reasoning and occasionally some conjecture. Admittedly, there will always be some unaccountable factors that may potentially affect the quality of my research, but my readers can nonetheless rest assured that every effort was made to ensure the utmost accuracy and relevance in my hypotheses, objectives and literature review throughout the my research. However, frankly, I am absolutely aware of some intrinsic limitations and shortcomings (such as the selection of dispute resolution mechanisms and the application of metaphor theory in terms of domain mapping via slots in my schema) that are inevitable at the same time. Regardless of the rigor and caution exerted by the author, there will always be some blind spots due to, most notably, the ultimate inadequacy in extant literature on the subject, alongside relatively minor ones such as time and funding pressure. Last but not least, one should bear in mind that a metaphor—any metaphor—will, by definition and by nature, always be inadequate in some way, and if we fail to approach metaphors with an open mind, then no metaphor will ever be good enough.

3.5 Dispute Resolution and Key Concepts

3.5.1 Overview

There exist countless dispute resolution mechanisms, which either fall under the category of litigation or that of ADR (*vide* **Hierarchy Chart**). Litigation is what the lay public is most familiar with and, at the same time, most afraid of, whereas ADR consists of many dispute resolution mechanisms, with arbitration, mediation, negotiation, ENE (early neutral evaluation) and adjudication being the most common ones. One rule of thumb is this: as long as it is not litigation but aims to settle a dispute for the parties, chances are it will fall under ADR. However, while it takes little effort to explain to the general public that all dispute resolution mechanisms require some communication among the parties themselves and/or the third-party neutral (if there is one), I will treat the term *communication* as any non-random dialogue or exchange of views, verbal or otherwise, between any two individuals. In addition, the two terms of *conflict* and *dispute* will be used interchangeably, and no serious distinction will be made between translation and interpretation. Of course, there is much more to everything than meets the eye, and I would now like to take this opportunity to explain some key terms in detail.

3.5.2 Conflict/Dispute

In very basic terms, a conflict or a dispute is the violent or disharmonious status that results from the overlapping and clashing positions held by participants on certain interests and/or values (Pfetsch 2007: 16). As far as this thesis is concerned, however, the two terms will be treated as synonyms and will be used interchangeably, although, from time to time and depending on the context, the two may imply different things, with *dispute* generally referring to an interpersonal clash on interests and the term *conflict* being used more extensively in the context of international politics. Since the context-based difference in meaning between the two terms is

irrelevant to the majority of my arguments, I will, for the most part, treat *conflict* and *dispute* as the same thing, and, by extension, I will make no differentiation between *conflict resolution* and *dispute resolution*.

How do disputes/conflicts occur in the first place? While some are of the opinion that disputes are a fact of life (Rule 2002: 1), the starting point is dispute evolution, which, according to sociolinguistics scholars, is, in turn, composed of three phases: naming, blaming and claiming. They are mutually intertwined and difficult to isolate and describe individually (Conley and O'Barr 1998: 78). *Naming* refers to the phase in which a particular experience is understood by one party as injurious (Conley and O'Barr 1998: 79). *Blaming* marks an important phase in the development of a dispute in that when people blame each other, a link is being made between the perceived wrong and the party believed to have caused it (Ibid.). Finally, claiming occurs when the injured party asks for a remedy, voicing the grievance to the party accused of the injury (Ibid.). The three phrases, in reality, might occur in rapid succession, or one after another in short intervals, or one or some of them might have to be recycled a few times if someone involved needs time to assume responsibility. In short, disputes vary by cause, length, duration and complexity, and, as a result, there is no one-size-fits-all approach to dispute resolution that will cover all of them.

3.5.3 Communication/Communicator

Communication, in its loosest definition, refers to the activity in which people exchange ideas; alternatively, it can be thought of as an umbrella term for any activity that aims to convey some meaningful information from one party to another. As it follows, by definition, there should be at least two parties involved: the sender (addressor) and the intended recipient (addressee), along

with the message. I believe that as long as there are at least two individuals involved, there will always be an “impossibility of non-communication”—an expression coined by communication theorist Paul Watzlawick.²⁸ Moreover, naturally, every mode of dispute resolution, be it negotiation, mediation or arbitration, or even inaction or acquiescence, involves communication to varying degrees among all parties concerned. Therefore, for example, when an injured party decides to pursue a case against their aggressor either through negotiation or mediation with or without an attorney, that is, in effect, an act of initiating communication with that other party. Thus, communication is inherently an indispensable element in any dispute resolution process.

Communication constitutes a fundamental proportion of human society in that it is central to every aspect of human life, and yet communication is never easy. In fact, it is so important and basic that people sometimes fail to appreciate it, or even overlook its pervasiveness and complexity inadvertently; it is even difficult between people with an enormous background of shared values, beliefs and experience. Alas, scholars in communication studies have repeatedly lamented the difficulty of defining the very key term *communication* (Littlejohn and Foss 1999: 4). Definitions come in a variety of forms and contents, ranging from “Those situations in which a source transmits a message to a receiver with conscious intent to affect the latter’s behaviours” (Littlejohn and Foss 1999: 4) to something as minimalist as “Communication is the transmission of information” (Littlejohn and Foss 1999: 5). Communication theorists have completed generalizations of common qualities of the communicator, claiming that as the “key player” in social life, the communicator never has perspectives that are completely peculiar and the

²⁸ The original wording was the “impossibility of not communicating”. In the event of absence of all dialogue, then the lack of dialogue or utterance *per se* is a form of communication. *Vide* Paul Watzlawick, Janet Beavin and Don D. Jackson, *Pragmatics of Human Communication*, New York: W. W. Norton & Company, 1967, p. 72.

communicator explains behaviour by observing it and then determining whether it was deliberate or unintentional before making a decision on the cause (Littlejohn and Foss 1999: 79 et seq.).

Definition aside, due to the fact that human beings are social creatures that make use of language, most human activities take place within a specific social context (hence the saying ‘there is a time and place for everything’), and expressing a belief, whether factual or value-based, is an act of communication, and one must be cautious of the addressee’s potential responses (Haste 1993: 25). As Ury notes in one of his works, there is no negotiation without communication (Ury 1991: 33), and by inference, there can be no dispute resolution without communication either. In an attempt to explain how messages are produced and understood, Stuart Hall asserted in his influential essay *Encoding, Decoding* that there are always four stages in communication: production, circulation, use and reproduction, with each one being relatively independent of the others (During 1993: 507). Moreover, language philosopher John L. Austin, in light of the role that speech acts such as questions, apologies and orders play, once argued that communication matters to the construction of meaning, and because, in many cases, meaning is not about being true or false, sentence and utterance meanings must be extended and expanded beyond their truth value. With his argument in mind, we might be in a better position to understand where communication belongs in the greater picture of the role of the translator in translation studies.

3.5.4 Alternative Dispute Resolution (ADR), the Dispute Resolution Continuum and the Control and Power Continuum

Dispute Resolution Continuum (in terms of degree of interference)²⁹

Least Interfering-----Most Interfering

Negotiation ⇨ **Mediation** ⇨ **Arbitration** ⇨ **Litigation**

and

Parties' Control and Power Continuum

Least-----Most

Litigation ⇨ **Arbitration** ⇨ **Mediation** ⇨ **Negotiation**

ADR is an all-inclusive term for any method and mechanism employed to settle conflicts between parties without having to resort to the judicial system.³⁰ It is sometimes referred to as “private justice” because it is a private, non-judicial and non-state alternative to the courts (Rule 2002: 36), and, as such, it is unique with its distinct characteristics. Even though, at least in principle, any non-litigation mechanism might qualify for ADR, only the three mechanisms of negotiation, arbitration and mediation will be discussed in this thesis because of time and space constraints.³¹ Along my Dispute Resolution Continuum, where my three ADR mechanisms plus litigation are distributed across an axis according to how a third party (if any) is involved, and my Control and Power Continuum, where the four mechanisms are distributed across an axis in

²⁹ As repetition for the sake of emphasis, the term *interference* basically refers to whether there is a third-party neutral involved in the dispute resolution process, and if so, how much power that person is afforded.

³⁰ As a reminder to my readers, for a systematic understanding, please refer to the **Hierarchy Chart of Dispute Resolution** presented at the end of Chapter One.

³¹ A similar scheme named the “Conflict Resolution Continuum”, modelled on several criteria such as outcome, third party intervention and disputing parties is presented in the book *Looking at Law*. Vide Patrick Fitzgerald and Barry Wright, *Looking at Law: Canada’s Legal System*, Toronto: Butterworths, 2000, p. 105. In addition, I have conceded in my Limitations of Research paragraph (3.4) that there must be a limited set of dispute resolution mechanisms to examine.

relation to the binding force of the final outcome rendered by the third-party neutral, with three of them being “pillar mechanisms”—mediation, arbitration and negotiation (Fitzgerald and Wright 2000: 105).

There are a host of terms people use to describe the third-party neutral (when there is one) in the dispute resolution process: the human agent, the human go-between, the in-between, middleman, gatekeeper, messenger, intermediary. Which one prevails depends on how one looks at the merits and demerits of each of the dispute resolution processes and what role the third-party neutral is best at playing. Basically, the complementary continuum or a spectrum (*vide* **Dispute Resolution Continuum**) is an axis that reflects various degrees of the intermediary’s authority, involvement and intervention throughout the process. As a general rule, there are two orientations to conflict resolution: competitive and cooperative, and they form the two extreme ends in the continuum. Along the continuum, there will be some dispute resolution mechanisms that involve some threat of force (notably, litigation) on the one end, and ones that advocate non-facilitated problem solving on the other end (notably, negotiation). A convenient way of visualizing the continuum would be by imagining the three pivotal procedures for dealing with opposing preferences: struggle, mediation and negotiation (Väyrynen 2009: 15), with the underlying theory of conflict laying down the framework for the orientations to conflict resolution. Also, conflict resolution should be centered on individual subjective elements: perceptions, attitudes and images, and therefore, conflict resolution should be directed towards these three elements, and the third-party neutral should play a role in trying to change the attitudes and perceptions of the parties (Väyrynen 2009: 15). This orientation coincides with my Dispute Resolution Continuum in that the more one approaches negotiation, the parties’ perceptions and preferences are highlighted, while the further one departs from negotiation and

the closer one gets to litigation, the less the parties' subjective elements (perceptions and images) will be noted by the third-party neutral. As for control and power on the part of the parties, the effects occur in the exact reverse.

3.5.5 Negotiation/Negotiator

Perhaps the best-known dispute resolution mechanism to the general public is negotiation, because not only is the term omnipresent in the layperson's mental lexicon, but also everybody is constantly exposed to the idea of negotiation either knowingly or subconsciously, hence the well-known dispute resolution proverb "You do not get what you deserve; you get what you negotiate." In the business world, virtually all business deals involve some sort of haggling and bargaining, and that is why negotiation is believed to be at the root of all non-binding dispute resolution procedures. In a negotiation proceeding, the two parties sit side-by-side as they work towards a mutually acceptable outcome. Even though such a process sounds slow and inefficient, the advantage to it is that the parties understand that they are in total control of their own destiny; in other words, make or break, they only have themselves to blame (or compliment).

Negotiation, to the lay person and in the most general sense, simply refers to a way of seeking a solution to a conflict of antagonistic interests without the use of violence – something a democratic society prides itself on. To polish the definition slightly, negotiation is a process of reaching a joint decision (Ury 1991: 33). To say the very least, negotiation comes in the form of a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various (often mutually contradictory) interests (Rathee 2010: 241). Of course, insofar as the definition applies, there is a wide range of approaches that may be employed by the negotiator. That is probably one

of the many reasons why the same process has been given various pseudonyms ranging from ‘bargaining’ and ‘haggling’ to ‘meeting people halfway’, all of which purportedly point to the same process of the pursuit of an agreement through communication with a view to reaching a mutually desirable goal (Pfetsch 2007: 1). Thus, in my personal opinion, negotiation is essentially any form of dialogue between any two individuals that purports to resolve any difference and/or conflict between them by convincing the other party of one’s own position through communication. For easy reference, please refer to the **Dispute Resolution Continuum** to understand that negotiation is the least interfering mechanism in that there is no third party coming in between at all, and from the **Parties’ Power and Control Continuum**, one can easily realize that in a negotiation, the parties hold on to almost all of their power and are in control of almost everything.³²

Surprisingly, negotiation is, for the better or for the worse, a very integral part of people’s lives, especially for those working in the legal profession, with some of them going as far as to describe negotiation as a lawyer’s “principal occupation” (Teply 1992: 1). For the legal profession, indeed, negotiation is something with which lawyers create legal relationships in the best interest of their clients in the course of business talks on a joint venture or a plea bargaining session with the prosecution. The main thing, however, is that negotiation is a skill being used as a tool to *effect transactions* or *resolve legal disputes* for their clients (italics original) (Teply 1992: 1-2). Clearly, negotiation skills are indispensable as they transcend all professions and industries.

³² This in no way suggests that there never exists any power imbalance *between* the parties themselves; it simply means that no third party is involved.

3.5.6 Mediation/Mediator

Mediation has been, and probably will continue to be, one of the most prominent methods designed by mankind to administer and resolve conflicts since time immemorial; it is, arguably, the most common alternative to litigation. In fact, as The Honorable Justice Harvey Brownstone from Ontario once so rightly stated that any dispute can be mediated (Brownstone 2009: 38). Whether it is between individuals from the same community at the domestic level or among nations on the international politics front, the greater the human need for effective and efficient conflict management, the more significant mediation as a dispute resolution mechanism is. One of the key reasons why mediation has worked so well for conflicts between or among nations is that it has the effect of resolving disputes while leaving many factors such as the independence, the sovereignty and the freedom of choice of all parties intact (Bercovitch 2002: 4). Presumably, it is also the most familiar mechanism among translation theorists. Surprisingly, though, mediation practitioners have long regarded it as a mysterious and even mystical practice occasionally held behind closed doors, whereas, in the past, dispute resolution academics did not even believe that it deserved any systematic analysis (Bercovitch 2002: 4).

In the most straightforward terms, mediation is a proceeding in which parties who have been unable to resolve their dispute use a third party who would assist them in applying their values to the facts and reaching a result (Nolan-Haley 1992: 54). The secret to mediation lies in the feature by which parties work to resolve their disagreements with the assistance of a neutral third party who has little decision-making power (Rule 2002: 38). While some people assume that mediation, as a dispute resolution mechanism, exists in the shadow of the law, the main concern of mediation is usually not just the parties' legal rights and duties but, rather, a blend of that and

their common interests and values.³³ In a mediation process, the mediator guides the parties through and throughout the communication and resolution process so that everyone has their say and has a chance to be heard. Thus, simply put, mediation is assisted negotiation (Rule 2002: 39).

In real life, it is quite commonplace for disputants to find themselves in a deadlock, unable to reach any meaningful agreement. When this happens, the parties would sometimes prefer to have a third party with no decision-making power involved to help them manage things and “walk” them through the process. That being the case, the mediator works with the disputants to facilitate communication, brainstorm ideas, making every effort to direct them towards agreement. Knowing that they can be dismissed by the parties at anytime, the mediator usually would do little more than facilitate communication, refraining from pushing either party in an extreme direction or “rubbing them the wrong way” while stressing mutual respect as much as possible. Because of the therapeutic and cooperative nature of mediation, despite the lack of a “one-size-fits-all” formula to a mediator’s qualities, there are some general profession-wide personality requirements such as tolerance, patience, compassion, having sufficient resources and so forth. As far as enforcement is concerned, since the parties have a high degree of autonomy over the process and, in turn, over the outcome too, the resolution of the dispute is “semi-final” and the agreement is “quasi-enforceable”, meaning that it is usually highly unlikely for either party to want to breach it. Again, one can refer to the **Dispute Resolution Continuum** to see that mediation is the second least interfering mechanism in that despite the existence of and the apparent intercession by a third-party, that third-party neutral is not empowered to make any final and binding decisions on behalf of the parties. From the **Parties’ Power and Control**

³³ By saying this, in no way am I suggesting that legal and statutory rights and duties will not be part of their common and shared values.

Continuum, one can easily see that in a mediation proceeding, the parties retain most of their powers along the way and are in control of almost everything, as they are permitted to suspend the mediator from their dispute resolution proceeding, or even terminate their service altogether at any time.

3.5.7 Arbitration/Arbitrator

Next comes arbitration—a very eccentric term in the translation studies circle that I would like to introduce to my research. Arbitration involves the submission of a dispute to a neutral third party or a neutral third-party panel who hears arguments, examines evidence and renders a decision on the law as it applies to the facts (Frey 2003: 223). More specifically, arbitration, along with litigation and adjudication, resolves disputes through an authoritative directive, where a sole arbitrator or a panel of arbitrators renders a binding judgment (Korobkin 2002: 343). One must take note that the arbitrator is not a public official, and they may have different procedural rules to follow than would a judge in a court case, but, other than that, the arbitrator resembles the judge in many aspects (Korobkin 2002: 344). In the simplest terms, arbitration may be thought of as private judging, since the parties retain the power to select their arbitrator, whereas court cases are normally assigned randomly to a judge without regard to the parties' wishes (Rule 2002: 42). Before arbitration, the parties have to agree to delegate their decision-making authority to a neutral third party, who is then empowered to determine the outcome of the dispute by handing down a binding decision that resolves the dispute for once and for all (Nolan-Haley 1992: 119). Such consent can either be given before there is any dispute at all or after a dispute has arisen, but once consent has been voluntarily afforded to the arbitrator, they will be entitled to decide on all merits and demerits of the case. That said, it should be noted that there is one defining difference between arbitration and litigation: there is hardly any recourse for the party that lost

the arbitration case; whoever finds the arbitration award unfavourable or unfair must accept it regardless with little chance of appeal. Only in extreme cases where the arbitrator's behaviour is so egregious that the arbitrator is considered unfit to continue their service can either party dismiss the arbitrator(s). On the flipside, however, the advantage to arbitration is precisely its efficient and effective nature and its flexibility as reflected in the parties' right to choose their arbitrator(s).

In light of the nature of arbitration as an ADR mechanism, arbitrators, quite understandably, play a very different role than mediators. This, in turn, entails very different dynamics during an arbitration session. Unlike in a mediation proceeding where friendly dialogue is being encouraged and facilitated, the parties must do everything they can to convince the arbitrator of their position, since they will be forced to abide by the arbitrator's ruling in the end. In short, the arbitrator is not there to help the parties through the stressful process; instead, the arbitrator is there to hand down a powerful decision that will put an end to their woes (or bliss, as the case may be) and close the case for good.

Imaginably, arbitration is the most formalized alternative to the court adjudication of disputes. Again, one can refer to the **Dispute Resolution Continuum** to understand that arbitration is the second most interfering mechanism in that the third-party neutral not only interferes, but also makes a final and binding decision to be imposed on the parties, something quite similar to what happens in litigation. From the **Parties' Power and Control Continuum**, one can easily tell that in an arbitration, the parties give up most of their powers and are in control of nothing but whether to opt for arbitration or not and whom to retain as their arbitrator, and once the arbitration proceeding has begun, neither party can terminate it or suspend or replace the arbitrator.

Arbitration today has become the number-one choice for dispute resolution in a wide range of contexts, from construction disputes to disputes arising from international sales of goods.

Ironically, in the early days, at one point in the United States, arbitration was not welcome by the courts because they feared that arbitration would encroach upon their jurisdiction—something against public policy—as exemplified in Lord Coke’s statement in *Vynior’s Case* (Nolan-Haley 1992: 119-120). For better or for worse, that is no longer the case, as the USA today has turned itself into one of the largest markets for commercial arbitrations across the globe. What this tells us is that a mechanism preferred at one stage may prove to be inappropriate at a subsequent point, as well as *vice versa*, which echoes my claim that we should always be cautious with our metaphors.

3.5.8 Litigation/Judge

Despite the current trend in favour of ADR for a growing number of disputes, litigation must be elaborated upon in my research. Litigation is the most complex and most formal of all dispute resolution mechanisms in that it entails a lawsuit, where the parties are obligated to follow the court’s established rules of procedure and rules of evidence (Frey 2003: 291). Today, litigation is often portrayed as the cornerstone of or justice system. At the same time, for many people, thanks to the pervasion of mass media, litigation is the first thing they know (or think they know) about the law and about what people in the legal profession do for a living. In fact, on our ADR spectrum, litigation is located at the extreme end owing to its pervasiveness and forcible—and oftentimes unpleasant—intervention. To add insult to injury, traditionally, litigation has been a government-sponsored process involving all levels of courts, where magistrates or judges are either elected or appointed to their position and do not always have adequate training in effective interpersonal dispute resolution.

No matter what half-baked account of litigation ordinary people may have, litigation is initiated by one of the parties, i.e., the plaintiff, before a public forum, with the other party, the party being sued, involuntarily becoming the defendant. The procedural and evidentiary rules of the court apply to all cases presented before that court, which must establish its jurisdiction over the case at issue before anything else. Given the duty on the court to represent public interest, the parties have little say on any of the applicable rules, the scheduling of the trial or the selection of the judge (Frey 2003:19). During a trial, the litigants or the attorneys representing them “stage” a series of presentations of law and facts, and if a jury is involved (in a jury trial), then the jury is to resolve questions of fact and the judge is to resolve issues of law. If no jury is involved, then the judge, of course, is duty bound to resolve both categories of issues. Either way, the case must be resolved in compliance with the stark and stringent corpus known as the law, with little regard for the parties’ personal preferences and feelings. Once the judge hands down a decision or judgment, either party can appeal it as long as they feel that they have been wronged by it (Nolan-Haley 1992: 119-120).

Once again, just to give my reader a better idea of what demarcates litigation from the other three mechanisms, I have laid out very clearly in my **Dispute Resolution Continuum** that litigation is by far the most interfering mechanism in that not only is there a third party (i.e., the judge) interfering, that third party will ultimately have to make a final decision that is to be imposed on the parties, the non-compliance of which will invoke serious legal consequences. Also, from the **Parties’ Power and Control Continuum**, one can easily tell that in a lawsuit, the parties retain none of their powers and are in control of hardly anything, as once a lawsuit has been initiated by one party, the other party must yield to the court’s jurisdiction. Also, the parties will never be

permitted to select their own judge, or even just suspend or replace the judge assigned to their case.

3.5.9 Summary

Having given my reader a brief summary of the four dispute resolution mechanisms that I am focusing on for my metaphor, along with their respective characteristics and attributes, I will now make a summary by presenting, in terms of the power and degree of interference by the third party, the four mechanisms in two continuums: the Dispute Resolution Interference Continuum and the Parties' Control and Power Continuum, just to give the reader a graphic understanding of how the four mechanisms are related to one another across a spectrum.

Dispute Resolution Continuum (in terms of degree of interference)³⁴

Least Interfering-----Most Interfering

Negotiation ⇨ Mediation ⇨ Arbitration ⇨ Litigation

³⁴ As repetition for the sake of emphasis, the term *interference* basically refers to whether there is a third-party neutral involved in the dispute resolution process, and if so, how much power that person is afforded.



Parties' Control and Power Continuum

Least-----Most

Litigation ⇨ Arbitration ⇨ Mediation ⇨ Negotiation



It should take the sharp-eyed reader little effort to discover that the four mechanisms are laid out in exactly reverse orders in the two continuums, meaning that, roughly speaking, the more interfering power there is on the part of the third-party neutral, the less power and control the parties are entitled to in the dispute resolution process. Now that we understand our key terms, we will now move on to metaphor theory, another focal point, for a better understanding of why metaphors are important and why our metaphor is a logical and sensible one.

3.6 Metaphor³⁵, Metaphorization and Metaphor Theory

Because we share metaphors, we can share ideas. (Haste 1993: 11)

3.6.1 Overview

The definition of the term *metaphor* is a difficult one to make, with some rejecting the sheer claim that a metaphor is an implicit comparison (Ortony 1979: 11 et seq.). Embarking on the issue as to what metaphors are and do, perhaps we can first consider something philosophical—and yet fundamental. Metaphors are, in a way, quite similar to frames³⁶, and the human conceptual system is fundamentally metaphoric in nature in that metaphors are pervasive in human beings' language, thought and action (Lakoff and Johnson 2003: 3). Human beings often try to understand external objects by fitting them into, or, alternatively, by filtering them through, categories and frames, since this might make the comprehension process easier for them. In his book *Women, Fire, and Dangerous Things: What Categories Reveal about the Mind*, Lakoff made a general argument that people's use and understanding of figurative language is governed by unconscious metaphoric correspondences that structure human concepts (Lakoff 1987: xi). For example, whenever we meet a person for the first time, we would probably ascribe to them some narratives or frames, which we think are unique to that person, just to help us understand them better and remember them more easily, and those narratives and frames tend to be used over and over again from that point on. That is a rough—yet helpful—description of how metaphors work. Indeed, as language philosopher Richards argued, it would be almost impossible to complete three sentences of ordinary fluid discourse without involving at least one

³⁵As a starting point, an analogy is an explicit comparison between two different types of entities, as featured in an expression such as “A system of rivers is to land as arteries are to the human body”, in which there are more elements involved in the course of the interaction between domains. I will treat metaphor as something slightly different from a simile or an analogy, but the distinction among them, as far as my theme is concerned, will be minimal. Thus, the difference between a simile (“You act like a cat”) and a metaphor (“You are a cat”), while important for rigorous philosophers, will only be of marginal importance to me.

³⁶I am using the term frame in the broadest term *frame* to refer to any point of reference employed for the understanding of something. For example, in the utterance *The store is right next to the post office*, the concept *store* is being referred to by means of the reference point *post office*.

metaphor (Richards 1971: 92). Next, take the classical metaphor LOVE IS A JOURNEY for another example. We know very well that the feeling of romantic affection is very different from the sensation obtained from a physical trip out of town, but what the metaphor is conveying is that many of the things we do when falling in love with someone are loosely structured or defined by the experience of going on a journey—at least in our culture (Lakoff and Johnson 2003: 4). In the course of a loving relationship, there is, obviously, no physical journey at all; all there might be is but a series of psychological events, a lengthy process during which one meets an individual they like and together the two of them may go about accomplishing something further. All this happens to coincide, however loosely, with the experience of a physical trip from point A to point B. As a reminder, though, metaphors are culture-based, and the most fundamental values in a culture will be coherent with the metaphorical structure of the most fundamental concepts in the culture (Lakoff and Johnson 2003: 22); in other words, the schema of the metaphor (in this case, travelling a certain distance with food and money) will therefore reflect the culture in which the metaphor originated.

Some seem to be of the opinion that there might be two general types of metaphors: linguistic metaphors and conceptual metaphors. While that may well be true, the distinction between them is irrelevant in this thesis, since, firstly, as Lakoff and Johnson have repeatedly pointed out, the human cognitive faculty is more metaphorical than we realize and, as a result, every human experience can be considered a metaphor (Lakoff and Johnson 2003: 3), and secondly, as Richards sees it, literal language being rare outside the central sectors of the sciences, most sentences in free or fluid discourse are metaphorical (Richards 1971: 120). Finally, Lakoff concluded by arguing that metaphors as linguistic expressions are possible precisely because metaphors permanently exist in the human conceptual and cognitive system, and, as such,

metaphors should never be taken as merely a matter of language (Lakoff and Johnson 2003: 6). Hence, it will be my unwavering position that the distinction between the two terms, however worthy of academic inquiry—in another thesis, is minimal for my research.

As a starting point for metaphORIZATION, drawing an analogy and then a metaphor implies seeing similarities between apparently unrelated things. Not only do metaphors reflect people's values, they also reflect very different modes of thinking among individuals and among cultures; what one might say metaphorically in one culture will not necessarily work the same way, if at all, in another culture.

Interestingly enough, there are, however, some challenges to the status of metaphors and the functions they serve among scholars. Some claim that while metaphors may contribute to people's understanding of external phenomena by granting them epistemic value, in reality, despite their inherent capacity to establish a parallel between things, all it actually does is but perspectivize those things, thereby enabling people to "see this in terms of that" and "see that in terms of this", without changing anything in terms of either ontology or epistemology (Robinson 1991: 159-160).

The truth, as Lakoff points out, is always expressed in relation to a conceptual system that is defined in large part by metaphor (Lakoff and Johnson 2003: 159). Most of our metaphors and the ones that we are most familiar with in particular have evolved in our culture over a long time span, but many have been inflicted upon us by the power elite, which feeds into the fact that people who are in a position to impose metaphors on the culture are vested with the initiative, in effect, to define what the general public considers objectively true (Lakoff and Johnson 2003: 159). Thus, as it turns out, there are actually by far more of our human experiences that are

metaphorical in nature than we consciously realize, with a great proportion of our conceptual system being structured and defined by metaphors, and, as a consequence, a thorough understanding of how metaphors work will have a great bearing on how we understand the truth epistemologically. Plainly put, metaphors carry greater weight than one would ever imagine.

3.6.2 The Value of Metaphors

What do metaphors exactly help human beings achieve that they would not otherwise be able to?

For me, a metaphor can evoke a broad range of elements that comprise our knowledge of something as trivial as a visit to the dentist, and it does so with the smallest of the smallest. In the eyes of philosophers, human beings are metaphorical creatures, who think and calculate far more metaphorically than they would want to admit. Metaphors, as Lakoff argues, exist not only in our language, but also in our conceptual system. How did human beings obtain their subconscious fascination for metaphors in the first place? That brings us to the issue of the value of metaphors.

What functions and interests exactly does a metaphor, or the ubiquitous process of metaphorization in general, serve? As we know it, a metaphor connects two conceptual domains: the target domain and the source domain, mentally through a cognitive process known as mapping. In the course of metaphorical process, the source domain is found to *correspond* to the target domain; in other words, there is a *mapping* or a *projection* between the source domain and the target domain. The target domain X is understood in terms of the source domain Y. For example, in the popular metaphor LOVE IS (LIKE) A JOURNEY, the target domain (tenor) is love and the source domain (vehicle) is journey. Whenever the object of *journey* is mapped onto the idea of love, the two domains correspond to each other in a way that allows us to mentally interpret love as a journey or something related to a journey. When it comes down to it,

metaphors participate in generating different versions of the cosmos: in our case, the “translation world” of the cosmos and the “dispute resolution world”; in other words, if we believe that there is a perfect mapping of dispute resolution onto translation, then we are trying to interpret translation as and through dispute resolution.

Without a doubt, there will always be some confusion, if not conflict, between a literal utterance and a metaphorical statement, and it goes without saying that most people’s understandings, as well as their approval or disapproval, of metaphors are based upon their routine day-to-day life experiences. Metaphors were, depending on the individual situation, once used primarily for poetic and deceptive purposes, especially when political rhetoric was involved, and even though a number of philosophers such as Nietzsche did notice the existence of metaphorical thought, people apparently preferred to steer clear of the scientific details as to how it worked – until Michael Reddy, that is, in 1977 (Lakoff 2009: 252). Reddy’s conclusion drawn on metaphors was that words are containers for ideas, and communication is about putting ideas into words and sending them along a “conduit” until they reach a listener or reader who then extracts the meaning from the words (Lakoff 2009: 252-253). The first and foremost thing about establishing a metaphor should be, according to George Lakoff, that the mapping of the two relevant frames constitutes the metaphor, with the generalization principle behind all of it being conceptual in nature (Lakoff 2009: 253).

Thus, metaphors deserve to be appreciated for the forms they are presented in and for the coherence of apparently disparate ideas (Lakoff 2009: 258). Put another way, being central to the human cognitive apparatus as they are, metaphors are all about human cognition (Kansa 2002: 9). Since metaphors assist us in obtaining a clearer view of the world around us, and since without them, the human cognitive faculty would probably be rendered inoperable, the

phenomenon of metaphORIZATION undoubtedly deserves an in-depth scientific investigation. As we can probably tell from the schema above, schemas are powerful because they are a helpful way of organizing properties, information, interrelationships and lots of things into discernible and easy-to-handle structures. Metaphors are powerful because they provide shortcuts to concepts—sometimes a single word can call to mind a broad and complex topic, providing ways to hash out meanings for less understood concepts. Some concepts, ideas, and phenomena such as translation allow people no easy access to their core meaning, and this is where metaphors step in;

3.6.3 How Metaphors Work

Having reviewed what benefits metaphors can bring us, we now need to know how they actually work, and no study on metaphor can ever be complete without some reference to the teachings of the ancient Greek thinker Aristotle. In light of what metaphors can do for language in terms of communication, Aristotle regarded metaphors as implicit comparisons and, as such, metaphors are always needed to make a definition complete and logical (Kansa 2002: 3). In his eyes, everyday language was purely literal; i.e., it was being utilized to express ideas that people believed fit the world perfectly. Thus, on the rare occasions where metaphors were being used, it would have had little to do with thoughts, but, instead, it would, most likely, have been considered an eccentric, if not grotesque, use of language based upon alleged similarity (Lakoff 2009: 252). Maybe so, but how exactly do metaphors operate in the borderless space of human knowledge?

How the two domains interact with each other is very fundamental, and that is exactly what is required for today's metaphor to become tomorrow's wisdom (Haste 1993: 47). In practical

terms, a metaphor does show how we understand the structure and contents of a particular concept; this framework for describing our source domain (or vehicle) is the schema, and the individual elements inside the schema (such as, in our case, “haggling and bargaining”) can be unofficially called *slots* or *spots*. We use our understanding of schemas and the relationships among the slots in the schema to make sense of the target domain (or tenor). Alternatively, in Richards’ words, the term *ground* of the metaphor is used to refer to “schema”, the whole conglomerate of all common characteristics (Richards 1971: 117). Sometimes the shift between the domains is rather subtle and mysterious, which may boil down to something little more than a sensation of hate or affection.

As a hypothetical example of a schema on the metaphor A JOB INTERVIEW IS A VISIT TO THE DENTIST, this is what the schema may look like:

(Schema 1)

Source Domain (Vehicle): Dentist Visit

Target Domain (Tenor): Job Interview

- | | |
|---|---|
| <ul style="list-style-type: none"> ■ 1. Make an appointment -----→ ■ 2. show up -----→ ■ 3. Sit and wait-----→ ■ 4. Meet the dentist-----→ ■ 5. Dentist pokes and pulls out your teeth----→
(somewhat bloated) resumé ■ 6. Feel pain and bleed...-----→ ■ 7. Wait for dentist report/results-----→ | <ul style="list-style-type: none"> Schedule an interview Show up Sit and wait Meet the interviewer Interviewer questions you on your Feel embarrassed, bewildered and ashamed Wait for notice of rejection |
|---|---|

Correspondingly, our schema for this very metaphor TRANSLATION IS DISPUTE RESOLUTION might look something like this:

(1)

More to the point, perhaps the best evidence of the power of metaphor and schema is the simple fact that we use them unconsciously, at least for the most part. We seldom stop and think, “What item fits in slot X of this schema for an arbitration proceeding?” We constantly use metaphors and schemas to generate meanings, and, sadly, we are often at the mercy of those people who are skilled at packing subtle hints into seemingly innocent language: advertisers and politicians.

Metaphors do work, but on the other end of the spectrum, they can, ironically enough, be consciously and purposefully misused for the fulfillment of ulterior motives. Citing an example given by George Lakoff, one can see that there have been numerous cases where metaphors have been used, misused—and even abused at times—in fields as diverse as literary theory, law, political science and psychology. The U.S. government, for one, has time and again, and with the “assistance” and “cooperation” from the press, used metaphors to persuade the general public of the need to wage many wars, the Gulf War being one of them (Lakoff 2009: 268). This is, in my opinion, an example of manoeuvre of metaphors in full swing—to the detriment of human welfare. I believe we should be prudent and judicious with our choice of translation metaphors lest one inappropriate choice defeat the entire purpose of a fuller understanding of translation through metaphors.

The bottom line is probably that metaphors, however amusing and useful they may appear to us, should never be overlooked, misused, abused or overused, and translation theorists should always be mindful of that. Indeed, as long as they are used properly, metaphors may come in very handy in helping people resolving “persistent explanatory difficulties”, as the use of

metaphors within scientific discourse is particularly telling and symptomatic in that it immediately pinpoints the problems in need of explanation (St. André 2010: 162).

What that means for us translators is that we should preferably be able to envision everything we experience in our professional line of duty through metaphors (such as TRANSLATION AS WRITING or, in my case, TRANSLATION AS DISPUTE RESOLUTION). To put that in perspective, let us have a look at whether metaphors have changed things for translation theory for the better or for the worse.

3.7 Metaphors and Translation

Granted, translation theorists have always been at their fingertips with metaphors, and since the very outset of the struggle for status as a discipline in its own right, translation studies has often been defined by spatial metaphors, with James McFarlane advocating the use of “instruments of modern semantic theory” in an effort to perform a descriptive study of translation as a procedure and a “complex act of communication.” (Duarte, Rosa and Seruya 2006: 1) and TRANSLATION AS SMUGGLING (St. André 2010: 241 *et seq.*)...some of which amount to little more than quips, are all but a handful of examples of how creative translation metaphors can be. However, in spite of my delight, there might well have been some cases of “mistaken identity” involved.

True, given such a plethora of metaphors on translation, we can now learn how to look beyond the disciplinary labels that purportedly come with them and simply focus on the potential interpretations that can be made out of them, leading us to a greater variety of insights which may eventually produce new knowledge (Aalto 2011: 248). In practical terms, logically speaking, what that means is that everything from decision making to smuggling to dispute

resolution was constructed from its own inherently unique prospect on translation, either within a single discipline or across more than one discipline, and of course, each one of these metaphors must have been accompanied with a schema. For example, the TRANSLATION AS TRANSITION metaphor focuses on the discrepancies between the target text and the source text for its schema, while my TRANSLATION IS DISPUTE RESOLUTION metaphor places emphasis on the fixing of differences between the target culture and the source culture. Without a doubt, as previously stated, what a metaphor has as its schema and what it is trying to convey is subject to a number of factors including the addressee's ideological stance, their personal experience and even their language proficiency, and creative metaphors can serve as a source of inspiration for urging people to see things in a different light.³⁷ Of course, that is but one of the many centers of gravity that cut across both translation theory and metaphor theory, which I believe should be taken into account when theorists are dealing with translation metaphors (e.g., TRANSLATION AS A COMPLEX ACT OF COMMUNICATION) (St. André 2010: 161).

My main concern now becomes whether the metaphor comes with the appropriate schema for mapping. Not surprisingly, the translator sometimes finds themselves in the spotlight of negative metaphoric interest—for better or for worse—with people assigning them a host of titles ranging from “plagiarizer” to “writer”, and from “smuggler” to “mediator”, and, of course, everything in between (St. André 2010: 5-6). That being the case, though, ironically and unbelievably, there have been some metaphor philosophers bewailing that the majority of translation textbooks seem to be making only minimal mention of metaphors (Trim 2007: 63). Personally, I believe that while translation theorists may not have paid enough attention to the nuts and bolts of the

³⁷ For example, the metaphors of WAR AS DISEASE and WAR AS CORRUPTION, as international relations scholars have indicated, have not seen too much elaboration, and the insights they can potentially provide are very real and down-to-earth for a new avenue of research—international politics and probably even the biological sciences.

translation of metaphors across languages (e.g. How does one go about translating poetic song lyrics such as *Life is but a dream* into Hindi?), translation itself as a phenomenon and activity has unquestionably long been a target for metaphors, and a popular one for that matter too. As a result, the range of metaphors alluding to the intermediary role of the translator is equally impressive, with each individual metaphor highlighting a particular aspect of the dynamics involved. Finally, we have to ask ourselves whether every metaphor lives up to its promise of ascertaining the true nature of translation through proper mapping, and my answer to that, unfortunately, has to be a negative one.

3.8 Translation as Dispute Resolution

3.8.1 Overview

I would now like to explain why dispute resolution will make a perfect metaphor for translation, or, put alternatively, why dispute resolution can serve as a meaningful source domain vis-à-vis our target domain of translation. Essentially, in compliance with metaphor theory, our TRANSLATION IS DISPUTE RESOLUTION metaphor can be applied to translation if and only if translation can be shown to bear some sufficient resemblance to dispute resolution as a human activity through a thought-out schema.³⁸ As has been claimed by many theorists, every translation is, whatever the genre, in one way or another a “betrayal” of the original, and even this carries a double meaning. From my perspective, the word *betrayal* is little more than a playful way of emphasizing the change involved during translation. Change, as something ontological or otherwise, can be a preferable thing, and it is only through a metaphor on dispute

³⁸ While the appropriate projecting of the source domain onto the target domain is covered by metaphor theory, whether the mapping is valid or not is ultimately going to remain subjective, subject to the metaphor recipient’s cultural frame.

resolution, which hinges on a schema with four slots—bargaining skills, power, tactics and choice and decision, that the true nature of translation will be discovered.

Intuitively, the translator and the dispute resolver are both “middlemen”, and the metaphorization of a process operating on cultural and language differences helps to foreground this very aspect of translation: translation as a method of healing divisions between two cultures/languages with the unrelenting efforts made by the translator.³⁹ In other words, the translator is situated in the middle of two parties unfamiliar with each other trying to make them acquainted with each other. If some day, *translation* and *dispute resolution* become synonyms because of universal consensus, then we would probably have a dead metaphor⁴⁰. Anthony Pym has, focusing on the dual and bilateral nature of translation, drawn a vague link between translation and dispute resolution. Considering his account of the translation of religious texts, the translator is expected to have extensive knowledge of the relevant subject matter, to generate hybrid ideologies, and, most of all, to be willing to accept a *reciprocal concession* (Pym 2000: 32). It seems to me that Pym is, presumably, the translation theorist who has arrived at the closest point to dispute resolution theory in terms of subject matter metaphorization, for he has asserted that there needs to be expertise on the part of the dispute resolver for any dispute resolution process to deserve to be called a success, and, at the same time, the parties must make an effort to make some concession or compromise as proposed by the third-party neutral in order for any progress in their dispute resolution to be possible at all, which is exactly the interactive and communal nature of dispute resolution in full use.

³⁹ The third-party neutral in a dispute acting as a go-between endeavouring to resolve a dispute will never be invisible—not even in an online venue, regardless of the dispute resolution mechanism in use.

⁴⁰ A dead metaphor is a metaphor in which the once-evocative transferred image is no longer effective or even understood, perhaps having been lost in the aeons of time. A dead metaphor is dead in the sense that it is no longer recognized as a metaphor, as it has just become part of a word or term with its simple inherent meaning. A typical example thereof would be expressions such as “the *leg* of a table”, “the *heart* of the city”, and “the *core* of the issue”, most of which have obtained a separate heading within the same dictionary entry.

3.8.2 My Metaphor Schema

What does the metaphor TRANSLATION IS DISPUTE RESOLUTION remind us of? Assuming we do not know enough about translation, but we know much more about dispute resolution and everything that is associated with it. We then take the reference to resolving a dispute, expanding it to encompass everything we believe about dispute resolution. Following the same line of logic, we realize that the source domain of our metaphor TRANSLATION IS DISPUTE RESOLUTION, reminds us of things and/or ideas such as: some disaccord or clash between two people happens, exists and/or persists; the parties acknowledge it and want their conflict resolved; make an appointment with the other party and/or the third-party neutral; the third-party neutral shows up explaining the ground rules; everyone takes turns listening, speaking and meditating; waiting in suspense while neutral deliberates; the third-party neutral serves as the moderator so that order is maintained; there has to be some talk or communication going on; sad stories to be told; emotions run high, and even some name-calling; haggling and bargaining towards some compromise; a final decision to be rendered; adrenaline rises for the non-prevailing party, who may decide to file for an appeal or review...etc.

Needless to say, by no means is the above list a complete one covering every aspect of dispute resolution,

(Schema 2)

Source Domain (Vehicle): Dispute Resolution

Target Domain (Tenor): Translation

- 1. (At least) two parties involved-----→Two cultures
- 2. A squabble between them -----→Misunderstanding because of language barrier
- 3. Bargaining that requires tactics and skills-→Many possible renderings of a lexical item

- 4. Decision making and choice making →Translator makes final term choice
- 5. Power dynamics in action throughout →Translator exerts power between cultures
- 6. Ethics to be observed -----→Translator professional ethics
- 7. There is a ruling/decision in the end ----→Final translation product
- 8. The final decision may be appealed by the non-prevailing party-→Retranslation

In light of so much information, we can now perhaps turn our attention back to metaphors and translation. If we are to view translation through the lenses of dispute resolution, attempting something comparable to “The doctor was my angel”, “The lawyer was a devil’s advocate” or “Love is a long journey”, then when we say that “Translating is resolving disputes for two parties”, we are assuming that, in our cultural context and on the basis of the same schema, there is an ongoing dispute between two parties—usually parties who are otherwise unwilling to compromise—who are in need of a neutral third party to show up and step in. Now, applying that template to our metaphor, we start by considering what we do and what we do not when translating, and the fact that we are conceptualizing translation in terms of how we settle disputes systematically influences the shape translation takes and how it is described. Then, the mapping between properties dispute resolution (source domain) and translation (target domain) in relation to our schema works in this manner:⁴¹

- (2) Some disaccord or clash between two people happens, exists and/or persists may mean some misunderstanding or ignorance between two cultures;

⁴¹ For swift and easy reference to how my schema works for my metaphor, please consult my Dispute Resolution Table as presented in Chapter 4.1

- (3) The parties acknowledge it and want their conflict resolved may mean that the two cultures realize that a certain document that might not be fully understood yet must be conveyed to the other culture;
- (4) Make an appointment with the other party and/or the third-party neutral may mean that the two cultures knowingly come together in the company of the translator;
- (5) The third-party neutral shows up explaining the ground rules may mean that the translator turns up as expected to explain what the ethics are as to the proceeding that they are presiding over;
- (6) Everyone takes turns listening, speaking, rebutting and meditating may mean that the translator, as per the ethics, lets both cultures have their say in the sense that all pertinent information is taken into consideration and neither is underrepresented or misrepresented;
- (7) Waiting in suspense while neutral deliberates may mean that there is little the cultures can do while the translator, given all the power they have, draws up a decision;
- (8) The third-party neutral serves as the moderator who makes sure that order is maintained may mean that the translator must be fair and impartial without letting emotions get the better of either culture, while recognizing power dynamics at play;
- (9) Some talk and communication going on may mean that the translator is in close contact with both cultures with superb skills of eloquence;
- (10) Sad stories to be told, emotions run high, and even some name-calling may mean that the translator, confronted with two cultures with conflicting interests, is often caught in a crossfire;
- (11) Hagglng and bargaining towards some compromise may mean that the translator has to reflect thoroughly on all possible alternatives with his listening skills and bargaining skills;

- (12) A final decision to be rendered means that the translator, facing a multitude of choices, must make a final decision and impose it on the cultures eventually;
- (13) The final decision may be appealed by the non-prevailing party to a higher court or tribunal for review may mean that either culture that feels shortchanged by the translator may request a retranslation.

Let us recall what White said. Translation should be thought of as a way of handling relationships across languages and cultures, as well as relationships between and among individual persons, as law and English literature professor James Boyd White quite plainly puts it (White 1990: 257). In fact, dispute resolution should be envisioned the same way too; it is something about the (inter-)relations with people in a dispute who happen to have arrived on the scene with an enormous load of culture, language and religion. Furthermore, White went on to assert that:

[...]whatever you say to me is never wholly understood by me, and yet I can, and indeed I should and must, create texts in response to yours about which I can claim that bear a relationship of fidelity to what you are saying and do them justice. However, my hope is not that they imitate or repeat your text but that they speak to it truthfully. Given the perpetual but sincere acknowledgement of the limits of our minds and languages, translation will become a set of practices that can serve as an ethical model for dispute resolution, for the law, and most importantly, as a standard of justice. (White 1990: 257-258)

Seen in this light, translation and dispute resolution feature a strikingly great amount of similarities, as has been shown in my schema, and I believe that dispute resolution will make an excellent metaphor in reference to the four aspects of bargaining tactics, power, ethics and, finally, decision-making and choice-making that form my schema, which I will discuss at greater length one by one in the forthcoming subchapters. For now, here is one remark that may wrap it all up: both translation and dispute resolution are essentially about an individual (the translator), endowed with a set of skills and tactics, making choices leading up to a final decision that will affect at least two other parties (the two cultures concerned), with the power—often immense—

that they are vested with subject to some restrictions and constraints—ethics. That is precisely what dispute resolution *prima facie* reminds me of about translation.

Going further into our metaphor, though, the mapping of the metaphor should be explained and analyzed. In this section, I would like to touch upon how dispute resolution, as a source domain, will work for translation, after which my primary focus should then be on the quest for the perfect subtype of dispute resolution in my hierarchy.

Just as dispute resolution requires some institutionalized qualifications on the part of the translator in terms of skills, personality and mental quality, so too does translation, and the quote by British linguist Randolph Quirk that translation is one of the most difficult tasks that a writer can take upon himself (Bassnett 2002: 15). For meaningful dispute resolution, effective and efficient communication skills and tactics are *sine qua non*, and while many people mistakenly think that dispute resolution is just about being “kind and nice”, or about reluctantly giving in and “meeting the other party halfway just to make them happy”, there is much more to it than that. Though it is never about being aggressive and arrogant to one’s opponent either, dispute resolution is far from just surrendering and making compromises; collaboration might be a better way of describing it, without which any “solution” would end up being little more than a source of resentment and frustration. Thus, assertion of one’s own needs and expectations as a disputant at the onset of a dispute resolution process is a key element to successful and effective conflict resolution, which applies to the third-party neutral, too. By virtue of comparison and resemblance, the same thing can be said of translation in that the target culture should be entitled to something that is beneficial to and representative of them—something they believe in or simply something they enjoy reading, and, ideally, both cultures should be given their say on the

process and afforded an opportunity to express their positions, and be guaranteed equal representation while the translator is vested with legitimate power, some latitude and liberties.⁴²

Dispute resolution requires special skills, and since culture is an inalienable element of social reality, dispute resolution also requires of the third party neutral the acknowledgement of culture along with everything it entails, and as the American anthropologist Laura Nader once commented on dispute resolution skills, if we are to systematize or professionalize the task of the third-party neutral or the dispute resolver, then it has to have something to do with the distinctive features to be used (Väyrynen 2009: 4). After all, both theory and experience suggest that dispute often lies not in reality but in people's heads, and a humanitarian dispute resolution strategy will prove less damaging—and less costly—to human relationships (Fisher and Ury 1991: 23). That, I guess, can be interpreted as a reflection on translation, as nothing can be more illustrative of the character of the translator who is constantly “walking a thin line” in search of innovative and effective translation skills without appearing disingenuous to either party, and as Green seems to suggest, readers oftentimes have no choice but to assume the translator's reliability of their evaluation of the original and the requisite skill and knowledge on the part of the translator (Green 2001: 40). As long as the translator can manage to prevent the seeds of suspicion being sowed inside the parties' heads, a more humane translation *modus operandi* will likewise prove effective and less costly to intercultural relationships.

Secondly, since conflict resolution is about creating a joint cooperative frame between the two parties to the conflict, conflict resolution theorists need to examine the creation of shared meanings and the fusion of “horizons” of both parties (Väyrynen 2009: 4). Through the

⁴² While some believe that the translator is not supposed to take liberties with the source text, it is my relentless position that the translator, as a human being made of flesh and blood, is entitled to their own view of whatever text is being translated, otherwise the translator would turn into nothing but a brainless machine working on reflex.

development of relational empathy in a conflict resolution process, a series of give-and-take to the other party's position, which can then serve as a basis for the development of a shared meaning, can be achieved (Väyrynen 2009: 5). What this means is that locating common grounds is part of the dispute resolver's job description, which happens to coincide with that of the translator who is in constant need of a "third space" where effective bargaining skills and tactics must be employed for good translation to be possible.

Another thing to consider is the reason why conflicts occur and how it coincides with the need for translation. Studies have shown that among the most compelling interests that most people fight over are security, economic well-being, a sense of belonging, recognition and control over one's life or livelihood, all of which simply boil down to basic human needs (Fisher and Ury 1991: 48). As a result, then, the resolution of conflict must lie in the alteration of structures and institutions that may be hindering the process of the parties' satisfaction of those basic human needs (Fisher and Ury 1991: 48). Preferably, even disputants themselves should possess certain skills to establish cooperative relationships, allowing an environment to be created where both parties come to recognize the legitimate needs and aspirations of the other party, while the third-party neutral is providing impartial facilitation (Fisher 1997: 89). Moreover, human beings are assumed to be rational and self-interested with their own understandings of reality, and as the interpretive method of dispute resolution suggests, all activities—including self-defining and conflict resolution—are acts of interpretation. Understanding is ultimately treated as an interplay between the movement of tradition and the movement of the interpreter (Väyrynen 2009: 9). In that sense, military conflict that requires diplomacy is not too different from conflict between languages and cultures that requires translation service after all.

Presumably, because translation is essentially about a third party initiating a proceeding and making decisions in an effort to enhance understanding between two parties, translation studies scholars have had little trouble regarding translators as mediators and regarding translation as mediation (Gentzler 1993: 96); nor have they made any bones about understanding translation as negotiation, especially after the rise of post-colonialism in the academic circle. Here are some examples:

The translator emerges as a full participant in the stories of modernity that are enacted across urban space [...] their trajectories across the city and the circulation of language traffic become the material of cultural history. *Mediators* are essential figures on the urban landscape, as Michel de Certeau reminds us. (Simon 2012: 6 (italics mine))

The thresholds translators *negotiate* include disparities in scale [...] but also in time. In the colonial context, for example, translation must bridge the differing temporalities and rhythms of daily life and its literary representation. But translation must also *negotiate* landscapes of disaster, and take into account the realities of absence (italics mine). (Simon 2012: 6 (italics mine)).

The translators I study all incorporate translation into a broad cultural project, and their activities often exceed the definition of conventional language transfer. They stand for a culture of *mediation*, the “middle ground” defined by Scott Spector (2000) where translational tensions reflect the forces on the ground. (Simon 2012: 6 (italics mine))

Furthermore, just to offer my readers more evidence on this, in the preface of the book *The Translator as Mediator of Cultures*, the editors Frank and Tonkin, citing topics at a conference in 2006 entitled *The Translator as Mediator* such as boundaries of languages and increasing cultural hegemonization, seem to suggest that as long as the translator is working between two languages or two cultures, they are a go-between, and, by inference, a mediator, too (Tonkin and Frank 2010: ix). Put another way, to me it appears as if for the majority of translation theorists, a mediator is a person—in fact, any person—who is acting as a middleman in someone else’s dispute, trying to “sort things out” or “patch things up” for the disputants who have otherwise not been able to do it on their own (as we have seen in the preceding chapters, this is what an arbitrator does, too), and that is, alas, a blunt and innocent misunderstanding of the concept of

mediation. Actually, not everyone working between cultures or between languages, or anyone who simply happens to be located in the “middle ground” qualifies for the title of mediator; it actually takes much more to be a competent mediator. A well-intended person intervening in someone’s dispute could, quite possibly, be an arbitrator or a judge, both of which have, alas, been mostly left out of translation studies literature.

Perhaps no one has come closer to the metaphor TRANSLATION IS DISPUTE RESOLUTION than Anthony Pym, who strongly claims that translation depends on transfer (Pym 1992: 18).

However, this causal relationship is mostly unidirectional in that while translation depends on transfer, transfer does not have to depend on translation (Pym 1992: 18). Indeed, all translation must somehow involve some transfer, just as all dispute resolution must necessarily involve some change in status, mentality and mindset in the parties, and if there is no material transfer at all, or no change in either time or space, then no translation could possibly take place. Claiming that translation is nonetheless possible even in the absence of transfer or transformation is tantamount to believing that dispute resolution is capable of restoring people’s antebellum relationships, or is possible even without a change in the parties’ mutual relationships or without some wait-and-see or some give-and-take tactics involved.

Additionally, power and ethics were two sources of inspiration for me. Undeniably, power and ethics exist everywhere, in dispute resolution and in translation, and no discussion on translation as dispute resolution will ever be complete without power and ethics being an integral part of the schema. All laws and regulations—moral or legal, which any dispute resolution mechanism (litigation in particular) is supposed to fall back on, are in fact, seemingly neutral as they are, venues of power *per se*. Whether it is in a courtroom setting, where some people refer their disputes to the judge for resolution, or in an arbitration setting, it is quite obvious that power

almost always rests with the judge or arbitrator, or any individual that is supposed to be the “third-party neutral”, though, of course, not always to the same extent.

By and large, it is the same thing with translation. Sometimes the translator wields more power in the target-translator-source triadic relationship, while on another occasion, the translator may enjoy less power and less leeway. True, the translator and the dispute resolver should both be vested with some power to be in a position to carry out their tasks, but how much power is adequate is never an easy call, and as long as there is some internal and external check and balance on that power, people should have nothing to worry about. Seen in that light, power might not be a bad thing; in fact, it is quite possibly what translators, as well as dispute resolvers, need and sometimes still lack; without power, there will never be any human civilization. Hence, power and ethics are part of my schema.

On balance, it is my belief that, aside from a marginal change in situational setting, translation is a form of transfer no different than a dispute resolution process, through which two parties try to “bury the hatchet” with the help of a third party, and as some academics have claimed, everything we know, or everything we think we know, about cultures beyond our own has come to us through processes of transfer and translation (Pym 1992: 17). To sum up, translation and dispute resolution provide the perfect mapping onto each other in establishing the perfect metaphor in terms of bargaining tactics, power, ethics and choice-making.

Now, I would like to discuss and examine each of these four schema slots in-depth one by one (sections 3.8.3 through 3.8.6), keeping in mind that nothing can be judged and evaluated in absolute terms, as some sort of benchmark and point of reference will always be needed.

3.8.3 Bargaining Tactics and Skills

Bargaining has always been an integral part of the negotiation process, and translators, no different than facilitators and resolvers of disputes, can certainly take advantage of all of the negotiation tactics proposed in the two influential bestsellers in publication history *Getting to Yes* and *Getting Past No*, in which the authors insisted that if we want a wise and amicable agreement at the same time, we need to adopt a non-conventional approach: principled negotiation (or “negotiation on the merits”). Basically what it means is that there are four main propositions of negotiation to follow, and they are: separate the people from the problems; focus on interests and not positions; leave options open; establish objective criteria to base evaluations and estimates on (Fisher and Ury 1991: 15 et seq.). It can even be reduced to a mnemonic: people, interests, options and criteria (“PIOC”) (Fisher and Ury 1991: 10-11).

According to what is proposed in *Getting to Yes*, there are three stages to a principled negotiation: analysis, planning and discussion (Fisher and Ury 1991: 12). The negotiator needs to be familiar with the process, relevant ethical norms and behaviour. In the end, each side should come to understand the interest—not the position—of the other side. Also, the negotiator should never yield to pressure but only to principle (Fisher and Ury 1991: 90-91). What, then, is the ultimate goal of negotiation? It is quite simple: turning adversaries into partners (Ury 1991: 137)—dispute resolution at its finest and noblest. Moreover, Ury introduced the idea of *Vive la différence!* (Fisher and Ury 1991: 76). Fixing differences in belief sometimes just might provide the “fine and final bits” for a done deal, since only in this way can one start devising options through brainstorming for mutual gain. Ury went on to advise negotiators to make an effort to increase the size of the “pie” by broadening all options available, since, in his understanding, there should never be an assumption of a “fixed pie” in the first place, and there will always be some shared interests existing alongside some conflicting ones (Fisher and Ury 1991: 61).

Of course, in any bargaining and haggling process, there will always be some cold realities and entrenched positions that are hard to change, which is why most dispute resolution proceedings have to fall into an impasse or a quagmire at some point. Both the competent and compassionate dispute resolver and the competent and compassionate translator should always remember that differences often exist not in facts themselves but in people's understanding of them, and facts, even well established and well defined ones, may do little to help resolve differences. For this reason, third-party neutrals should, as must translators, learn to listen ("hear people out") without surrendering, and learn to afford everyone concerned a chance to speak and make their point, as should translators make an effort to bring the target culture and the source culture together by acknowledging their differences and resolving them without accidentally hurting anyone—with the skills and tactics and the power—that the translator is endowed with.

3.8.4 Power

Now we have arrived at one of the most sensitive issues of all times: power. Discussion of power appears in a wide array of disciplines, from international politics to psychology, and the idea of power itself has become a key variable in some equations. Indeed, the presupposition is that wherever and whenever there are at least two individuals, there will always be some effect and operation of power, and, therefore, power is no longer a distant abstraction but rather an everyday reality (Conley and O'Barr 1998: 2). Inevitably, neither translation nor dispute resolution, both being contexts that involve more than two individuals, can be immune; neither can distance itself from power and the potential effects thereof. As a reference point, what is power and what does it bring to the trajectory of our metaphor?

Power can be loosely defined as the pre-emptive advantage of insisting on and implementing one's agenda, and there are, at least in the subject of pragmatics, two types of power: control over emerging discourse and control over future action (Schiffrin, Tannen and Hamilton 2003: 454). As well, negotiating "power" can thus be defined as the ability of the negotiator to convince the opposing party to give them what they want even when doing so might be incompatible with the opponent's basic interests; or, put another way, in more primitive terms, power is the ability to bend the opponent to your will (Korobkin 2002: 151). Over the past few decades, there has been a school of thought, or a 'turn' in the translation studies scholarship that concentrates on the psychological and sociological concept of power developing under the branch of descriptive translation studies. From a certain point on, translation studies academics realized that practicing translators began to calibrate their translation techniques to achieve all the effects that they wished to produce in their audiences, whether those effects were religious apostasy, the purchase of commodities or literary success; in practice, translators finally noticed how powerful translated texts could turn out to be in manipulating their target readers to think or act in a certain way (Tymoczko and Gentzler 2002: xi). Moreover, in an effort to construct the culture or political climate desired by the power elite, governments at all levels, being fully aware of that, have implemented policies to encourage certain genres of translations by certain translators to manipulate their people in exchange for their support (Tymoczko and Gentzler 2002: xiii). In effect, governments would exert their power to create—by means of translation if need be—some representation that they want their people to buy into, and so will religious organizations and corporations (Ibid.).

Perhaps one need look no further than the teachings of the German sociologist of the early 20th century, Max Weber, for a comprehensive and even-handed account of the extension and

intension of *power*. For Weber, power is the capacity to attain the intended outcome of an action; essentially, what that means is the powerful person manages to “always have it their way”, often to the detriment of others subjected to their power, voluntarily or involuntarily. In other words, what Weber was saying is that in order to determine who is the more powerful party, we need look no further than whoever consistently and over a period of time seems to achieve the results that they are hoping for and that benefit them themselves most often (Tovey and Share 2003: 94). Of course, physical force and economic coercion are two key elements of power, and in regard to that, Weber proposed the idea of legitimating power, thereby persuading people that one has the right to command them and that their wishes take priority. Moreover, in my view, due to rampant misuse and abuse of power, the idea of power as propositioned and applied by sociologists deserves an overhaul, with some sociologists going as far as to claim that all theories of society ultimately ties back into how well those theories are able to account for the phenomenon of power (Tovey and Share 2003: 94). Since the creator had the invincible power to create the universe, power will undoubtedly exist everywhere on the planet that forms part of that universe. Moreover, since power is inevitable, human beings will be decidedly better off acknowledging its presence and learning how to deal with it than pretending it did not exist. As a defensible position, then, dispute resolution and translation, as two manmade institutions, will share one key characteristic—power.

For starters, let us consider translation. Here, power is omnipresent, since translation, by definition, is a primitive method of imposing meaning while concealing the power relations that lie behind the production of that meaning (Bassnett and Lefevere 1998: 136), although this power may not necessarily overlap with power in the economic, political or physical sense. In the introduction of her work *Translation and Conflict*, Mona Baker did not hesitate to

acknowledge that definitions of conflict inevitably draw upon notions of power, and *vice versa* (Baker 2006: 1), and as if that was not enough, to my surprise, even William Ury, a strong advocate of the best alternative to a negotiated agreement (hereinafter referred to as ‘BATNA’)⁴³ and a staunch believer in peaceful negotiation, conceded in his work that a great deal remains to be said about power in connection with negotiation, especially multilateral and cross-cultural negotiation (Ury 1991: x). In that sense, the role of power and how it transpires subtly at all levels and stages of dispute resolution do deserve a more in-depth investigation, and it is my personal impression that that is one of the many aspects of the metaphor that translation theorists who are unyielding advocates of the negotiation metaphor and the mediation metaphor seem to have failed to address critically.

We must acknowledge that even in a negotiation or mediation, which is supposed to be amicable and non-adversarial, there will always be the operation of power involved somehow and somewhere. For translators, the issue of power becomes all the more prickly and complex because, despite people’s tacit submission to power, since the days of the publication of the book *Translation, History and Culture* by Bassnett and Lefevere, in which the topic of power as regards translation studies was touched upon, more and more people are realizing that translators do in fact manipulate—sometimes even unethically—their readers by means of various translation devices and gimmicks to the advantage of the fulfillment of their personal agenda that may or may not benefit either culture (Tymoczko and Gentzler 2002: xi). Also, translations, instead of being passive, derivative and secondary, have been known to be taken advantage of by governments and regimes to manipulate the populace they are having control over in order to

⁴³ The best alternative to a negotiated agreement, or BATNA, is, simply put, a realistic alternative to a bottom line, against which any proposed agreement should be measured. A BATNA will help disputants obtain better results than they would have without any negotiation with each other at all, and in that sense, it is somewhat like an opportunity cost, which is expected to serve as a reference point when evaluating things.

“construct” the kind of culture desired (Tymoczko and Gentzler 2002: xiii). All that, sadly, holds true of all text types—even (or especially) judicial and legislative texts.⁴⁴

Interestingly, as regards power, James Boyd White has a slightly different perspective. When commenting on different people’s diverse views of judicial opinions, he maintains that it is inevitable for the reader of a text—any text, even a legislative text—to give it some of the meaning they claim for it, and the text will, in turn, confer upon the reader some latitude (or power), which the reader should never abuse (White 1990: 159). To put his remarks in perspective, the text that the translator is reading lends to them some power or latitude, which should be accompanied by corresponding responsibility.⁴⁵ While the translator, as a reader, is trying to enhance understanding between two cultures, they are at the same time reading a text and bringing their own ideas into it, just as in a dispute resolution proceeding, the parties, being the *de jure* bearers of responsibility, are the primary owner of power, but that power will have to be handed over to or delegated to the neutral third party should the parties themselves be unable to resolve their dispute on their own. The neutral third party, then, will be in possession of the power—along with the responsibility—conferred upon them, which is not (ideally) to be misused or abused. It is precisely then and there that the neutral third party becomes the *de facto* bearer of responsibility, who may subsequently be held accountable and probably even criminally liable in the event of power abuse.

⁴⁴ Surprisingly, much as it may sound hard to be believe, the law’s power manifests itself less in court decisions and legislative documents than in everyday venues, such as police stations, and even though, thanks to the law’s lofty ideals, on the surface, no one is to be excluded from public benefits for discriminatory reasons, there is still widespread anxiety about the fairness of the law’s application. In other words, it is natural to harbor the feeling that the law’s power is more accessible to a certain social class than to others. *Vide* John M. Conley and William O’Barr, *Just Words*, Chicago: The University of Chicago Press, 1998, pp. 3 et seq.

⁴⁵ It would probably be even easier for one to understand this if one were to consider Roland Barthes’ position in his influential essay *The Death of the Author* of 1967, where the author argued that once a text has been read and digested by the reader, the text ceases to belong to the author; it is then the “reader’s text”, with which they may take unimaginable liberties.

In any case, it is normally the third-party neutral that decides whose turn it is to speak, who may leave the venue or take the witness stand, and there is usually little the parties can do other than subserviently following those orders. Domination based on the power of law is omnipresent; it exists in the international trade arena, as it does in language and language policy. Some claim that power is meant to be the ability of an individual or group to make their own interests prevail without impunity, even when others try to resist (Kenny and Ryou 2007: 183). The ubiquitous power of law and social norms is inevitably enormous, as everyone falling under their jurisdiction is subject to that power; and in a more specific sense, a particular law may grant greater power to one person over another (e.g., in most jurisdictions, minors under the age of 18 automatically fall under the custody of their parents or legal custodian; customs officials are authorized to search all incoming passengers and cargo), or power may be possessed in a particular dispute resolution setting (the judge and the arbitrator both have enormous power over the parties and the procedures). As a quick example as to what impact power can have on dispute resolution, in a courtroom setting, the judge, who presides over the case and is in charge of all courtroom proceedings with or without a jury, may instruct an attorney—the representative of one of the parties—to step back physically—in an effort to avoid intimidating a witness by their sheer physical proximity, or, conversely, they may decide to do the very opposite, thereby frightening the witness, however nonchalantly (Tiersma 1999: 158-159). This is a powerful tactic, for, psychologically speaking, temporal space is metaphorically equivalent to physical space, since people give space to those they have respect for, and they crowd in on those whom they wish to intimidate (Lakoff 2000: 134). Moreover, in a courtroom or an arbitration setting, control over conversational space belongs to whoever holds the floor, namely the speaker, the moderator or the judge, from the moment their utterance begins until it is the next speaker's turn,

with some cultures being relatively sensitive to silence and a gap in conversation possibly being construed as an aberration. Obviously, the judge or mediator is in a position to grant—or refuse to grant—a party the appearance of power in giving them more control over the conversation by forcing them to stay silent for a few seconds (Lakoff 2000: 134). Even outside the courtroom, turns to talk are often allocated by means of three ordered options: the current speaker selects the text, and then a listener self-selects, followed by speaker continuation (Coulthard and Johnson 2007: 31). In the same vein, a translator is essentially in a position to do almost the same thing, though in a more subtle way and in a different venue—within the text and on paper. The translator, while translating a text, is in a convenient position to wield their power by granting, or refusing to grant, space and power to a particular culture (source or target) through the meticulous use of various cues such as intonation, pause, register, accent, punctuation and text layout, which amounts to the handling of a dispute resolution proceeding. As hypothetical as it may appear, self-translators have confessed that in the course of self-translation, chances are they would take liberties that they would not otherwise have taken with a source text written by someone else:

If, as I am translating in either direction, I find passages that should have been written better, I make every effort to improve them in translation. Since I own the original, I can do what I want with it, and I want it to be as good as I can make it.

(Green 2001: 39)

Most likely, the self-translator can claim that, in this case, they are entitled to make changes anywhere as they see fit, simply because they are their own translator. Apparently, the translator, whose integrity the reader is supposed to be convinced of, has near-absolute power to say what they please, and that is particularly evident in the case of self-translation.

So, are there any checks and balances to the translator's power? There seem to be, and it is, to my astonishment, *power*, though this time it is power originating in the cultures; i.e., something more of a "counterpower"⁴⁶. If either the source culture or the target culture is perceived as powerful by the translator, then the translator, who will tend to "think twice" before making a translation decision, will "self-censor" and have less latitude.

[...] should I, perhaps, treat everything I translate as though I owned it? Would that be an honest or a dishonest approach to the task? To a degree, my answer to that question depends upon my evaluation of the original writer's skill, whether I think I know better. If I am convinced that I am translating a master, I will not be so presumptuous as to claim ownership of the text. But if I am translating someone I take to be a beginner or a bad writer and I wish to produce good work, I may want to reach in deep and take over the text, modifying it as though it were my own.

(Green 2001: 39)

Arguably, pragmatism seems to be the ultimate ulterior motive behind the translator's behaviour, in the sense that if the author is considered powerful, keeping everyone including the translator in awe, then it would be in the translator's interest to "behave themselves" and treat the original text with due respect, whereas if the author is considered powerless, then the translator may decide to take unwarranted liberties with the source text and turn it into something unrecognizable even by the author. That, in my judgment, is power at play in its most primitive and rudimentary form in the context of translation. And as if that was not enough, drawing on a case of courtroom interpretation, studies have repeatedly shown that perceptions of a witness's social and psychological attributes are affected by pragmatic alterations made by the interpreter, and that the interpreter does have the power to change the intent of what a witness speaking a foreign language wishes to express in the way that they would like to say it (Berk-Seligson 2002:

⁴⁶ This term was coined by me.

196-197). In one word, traces of power may seep into the translation process at any stage and sway the translator's position one way or another, as they would in a court proceeding.

When it comes to power as envisioned in translation, perhaps another point of reference is the academic undertaking of language and power. Technically, all discourses *in se* constitute a locus of power, at least under the Foucaultian view. Discourse, as poststructuralist philosopher Michel Foucault understood it, is not simply talk itself, but also how something is being talked about (Conley and O'Barr 1998: 7). As a result, as far as logic is concerned, how people would go about talking about a particular issue is closely related to the way they understand it and ultimately how they choose to react to it. Different discourses compete for ascendancy in the social world, with one staying dominant for a certain period of time and probably being challenged and replaced by another (Conley and O'Barr 1998: 7). If we take the term *discourse* to mean 'anything above sentence level that reflects language use and a broader range of social practices' (Schiffrin, Tannen and Hamilton 2003: 1), then translation—the rendering and transforming of a text, written or verbal—is, without a doubt, tangled up with power.

Notwithstanding our understanding of the potential impact of power, what is noteworthy is the fact that power is still a sticking point for translation theorists. As Tymoczko frankly points out, since the days of post-colonialism are (theoretically) long behinds us, it is high time that we moved beyond postcolonial theory as a primary means for modelling the agency of translators (Tymoczko 2007: 206). Then how are we to develop an approach to the political empowerment of translators? The trajectories of translation theory seem to suggest that new theories of power, ideological resistance and political activism are required for their flexibility and applicability to a broader range of cultural contexts (Tymoczko 2007: 207). In real terms, what that means is the power of translators must be studied in the broader context of trade, markets and resources, in

view of the ever-changing phenomena of globalization, bioinformatics and e-commerce (Tymoczko 2007: 207), as must the power wielded by the third-party neutral.

Coming back to the dispute resolution front, we probably realize now that power works largely the same way here as it does in the translation context, as power has always been a scarce and priceless resource that all parties—the disputants and the third-party neutral—involved would try their best to get hold of. While the “default” dispute resolution mechanism has traditionally been litigation, where a judge decides which party speaks and when, and sometimes even for how long, the dispute resolution market has in fact been slowly shifting in recent years along the Dispute Resolution Continuum, with more and more disputants opting for alternative mechanisms such as mediation and arbitration, thereby retaining some of their inherent power over the proceeding and, eventually, the final outcome of their case. Additionally, today, the dispute resolution landscape is seeing more and more people fleeing their own countries and jurisdictions for venues—often ones far away from home—where they believe they can obtain easier, swifter and less costly justice, or where they are allowed to settle their cases at their own pace in the way they prefer. That is why some countries today are seeing a diminishing court case count, while some non-conventional venues, including the Hong Kong International Arbitration Centre (HKIAC) and the International Chamber of Commerce (ICC), are taking on more cases (mostly in commercial arbitration and mediation) than they can ever handle. Needless to say, the balance of power in terms of how justice is perceived and understood by the general public is shifting little by little, and over time, it will end up diverting a good percentage of the power that once exclusively belonged to the judiciary to someone such as the arbitrator or mediator, much to the judge’s dismay. In response, with courts being increasingly out of touch with the society they are supposed to serve, there have been voices calling for reform within the

judicial system lately, which courts can no longer afford to ignore. All in all, all that simply points to the hard fact that everyone, out of innate and primitive human nature maybe, is fighting for and over power just to be in a position to take the pre-emptive strike with greater leverage over their own fate.

In light of the resemblance between dispute resolution and translation in relation to power as presented above, the mapping in our metaphor TRANSLATION IS DISPUTE RESOLUTION has now been established for the second slot in our schema.

3.8.5 Ethics

Immediately after the most sensitive issue of power comes ethics—a sensitive issue as well, and also a volatile one.⁴⁷ Ethics, in the broadest sense, simply means the unsaid, but nonetheless dominant and somewhat divine, natural rules behind what is right/fair versus what is wrong/unfair. From a philosophical angle, ethics is a philosophical endeavour to make theoretical sense out of people’s classification of actions into the basic categories of the morally permissible, the morally impermissible and the morally obligatory (Earle 1992: 177).

Admittedly, this definition is simply too general to be helpful. Plain as it is, though, the debate centered on ethics has been—and will remain—a controversial one, with egoists, virtue moralists, utilitarianists and deontologists each pushing their agenda and claiming the ultimate authority based on their own understanding of what is ethically acceptable and what is not.

“Easier said than done” would probably be my personal *prima facie* take on ethics.

⁴⁷ For the sake of simple notation, what I mean by *ethics* herein includes ethical concepts, ethical principles, ethical theories and ethical traditions, which, when taken as one, form the framework vis-à-vis a bewildering array of philosophical questions about ethics.

A good place to start would probably be institutionalized and standardized rules and norms. Just as medical professionals are subject to the monolithic but prestigious Hippocratic Oath for professional ethical standards, so too are legal professionals and translators subject to their own. Yet, in light of so general and somewhat ambivalent a definition for ethics, one might start thinking that a metaphor centered on ethics as a point of reference will not be of much help. Thankfully, though, for translators, the ultimate point of contention in regard to professional ethics seems to simply boil down to how not to betray or deceive either culture in pursuit of their personal interest. As a matter of fact, the same thing can be said of dispute resolution, where the third-party neutral, being authorized to intervene and entrusted with power to resolve the dispute for the parties, is subject to many cultural, legal, religious and moral restraints in their line of duty and is not allowed to have anything personal on their radar.

Undeniably, ethics is closely associated with power; whenever there is power involved, particularly if it is absolute and unchecked power, chances are the issue of ethics will be looming somewhere. Even though whether ethics is worth discussing at all is open to debate, it is by no means unusual to hear people making disappointing remarks about ethics and morality, regarding them as nothing but “a matter of opinion”, or “goodness”, not too different from the notion of beauty lying in the eye of the beholder, as some aesthetics philosophers claim. True, throughout history, some philosophers, such as Arthur Schopenhauer, claims that morality is not discovered but created (Teichman and Evans 1995: 67). At the same time, other philosophers, Nietzsche among them, hold that while morality is an abstract idea and a human invention, the “fiction” of morality is a necessary fiction in the sense that the reality of ethical values is deeply connected with human beings’ livelihood, although they may not be readily perceivable by the five senses (Teichman and Evans 1995: 72).

For us, what that means is that as long as translation and dispute resolution are considered social activities no different than buying and selling, then regardless of our position on ethics, ethics will always be looming somewhere in both contexts. If there are ethical concerns surrounding the sale of goods and the rendering of medical services, then there will surely be ethical concerns surrounding translation and dispute resolution. There are some ethical standards in effect at least some of the time, if not always, and one might want to question where those standards came from in the first place. What makes something morally right or wrong? If ethical standards are understood to be wholly derived from a person's society or culture, then are they not relative to space and time? For lack of a more concise expression, we will call this the "philosophical problem about right and wrong" (Mizzoni 2010: 3). Hence another feature shared by translation and dispute resolution.

Finally, turning to a case on political ethics for analogy, as George Lakoff points out, the ethics of care shapes government, which is, in turn, required to play two intertwined roles: protection and empowerment (Lakoff 2009: 47). Essentially, the onus is on whoever is wielding power, who, at the same time, deserves a certain degree of protection and empowerment in order to be able to carry out their duties properly. By extension, what that means in the context of dispute resolution is that the third-party neutral, who enjoys power and discretion in order to be able to resolve the dispute at the disputants' request, should be subject to some ethical standards at the same time, and, similarly, the translator should be subject to some ethical restrictions while being given some latitude and discretion in order to be placed in a position to carry out their work properly.⁴⁸ In short, if there is no duty imposed on someone, there need be no power given to

⁴⁸ Of course, here, care ethics, as an ethical tradition as opposed to utilitarian ethics and deontological ethics, can serve as an inspiration. Basically, believing in caring as the key ethical ideal, care ethicists argue that human beings

them, and if there is no power at play and no interest at stake at all, there need be no ethics.

Ethics help put human commitments into practice.

Starting with the ethics of dispute resolution⁴⁹, perhaps what negotiation specialists proposed can serve as our inspiration. It is argued in *Getting to Yes* that while ethics are sometimes hard to define, considering some objective criteria for negotiation is sometimes key to reaching a fair and sensible outcome, such as the current fair-market value, ongoing rate, moral standards, customs, professional standards etc., all of which are independent of both parties' will and intention (Fisher and Ury 1991: 85).

As it happens, dispute resolution practitioners have always placed a very high priority on ethics in their service rendering because their credibility as an impartial and unbiased third person to resolve disputes is essential to their potential clients' willingness to continue to use their service (Rule 2002: 36). Regardless of the type of dispute resolution process, key professional ethics for the dispute resolver include prevention of conflict of interest⁵⁰, confidentiality and non-breach of trust. In the event of non-compliance with pertinent ethical rules and legal regulations, a mediator may be held liable on the grounds of negligence and/or breach of contract. A conflict of interest occurs when two or more duties on interest come into competition with each other, while the duty of confidentiality concerns confidential information, which refers to information that is secret, private, privileged and/or sensitive (Frey 2003: 165). Obviously, parties to a mediation or an arbitration, as well as the mediator and arbitrator themselves, are all guaranteed total confidentiality for their protection. Why are confidentiality and conflict of interest issues

should focus their attention on the concrete relationships they are in, and all they have to do is attend to the concrete needs of those who are close to them.

⁴⁹ Please consult my **Dispute Resolution Table** in 4.1 for the differences across the four dispute resolution mechanisms in regard to ethics for quick and easy reference.

⁵⁰ In the most general terms, the term *conflict of interests* refers to a situation where regard for one leads to disregard for another (*Black's Law Dictionary* 1994: 97).

important? For one thing, if the third-party neutral, by any chance, has an actual or potential conflict of interest with either one of the parties, then their impartiality may be compromised. In practical terms, the third-party neutral must refrain from being involved in the dispute as long as they are aware of any past and current dealings, pleasant or unpleasant, with either party that may expectedly raise doubts about the neutral's impartiality. The neutral's duty to disclose any and all dealings with either party is ongoing and continues throughout the entire process (Frey 2003: 164). As for confidentiality issues, confidentiality is the key to a candid and free representation of the case on the part of the disputants, allowing for thorough exploration of the dispute on the part of the mediator/arbitrator (Frey 2003: 165). Thus, save for some extreme exceptions, the third-party neutral must always refrain from revealing any information to any outside party, and most information obtained during the proceeding will remain privileged and confidential forever, as confidentiality is closely associated with impartiality.

With a view to guaranteeing the general public's confidence in dispute resolution, professional ethics are guaranteed by a number of regulatory organizations, most of which are scrupulous about detecting and eliminating all potential conflict of interest because reputation and integrity are indispensable in dispute resolution in the sense that once the credibility of the dispute resolution service provider or that of the third-party neutral (the judge included) is compromised, remedy will be virtually impossible (Rule 2002: 36). That is precisely why the American Bar Association (ABA), for one, has always advocated the highest ethical standards regarding its lawyer-members' practice of honest dealings with clients to the utmost, and, as such, it sets forth very clearly in its *Model Rules of Professional Conduct* that a lawyer shall abide by a client's decision whether to accept an offer of settlement in a case (Nolan-Haley 1992: 16). If they do not stand up to scrutiny, then they may be disbarred at best or criminally charged at worst. In

addition, needless to say, judges, who are essentially judicial personnel, are surely subject to a host of procedural rules which largely reflect the ethics as required by statutory law.

Taking mediation as a point of reference, in practice, if the mediator is ignorant of any applicable rules and ethics, then the mediation process can become very unethical to say the least and violent at worst. At a minimum, the mediator must, in the name of impartiality and fairness, resolutely terminate the mediation process once they detect any sign of coercion or risk of harm by one party against the other. In the past, mediation used to be a voluntary process where good faith and active participation are expected of the parties, and yet, today, to capture the spirit of the mechanism to the fullest extent, mediation is being incorporated in the judicial system more and more, as in the case of court-annexed mediation. Thus the likelihood of coercion becomes an issue for some—and with good reason—since litigation, which is an involuntary procedure, will be looming as a “backup” mechanism during the mediation process, implicitly forcing one party to give in to the other’s requests.

As far as supranational statutory ethics is concerned, there have been some developments of late, which might be able to provide us with a generalization on dispute resolution ethics. In 1998, the European Commission adopted Recommendation 98/257/EC in regard to the ethical guarantee of all ADR proceedings, which includes a total of seven criteria: independence, transparency, adversarial principle, effectiveness, legality, liberty and representation (Hodges 2012: 7-8). This legal document, which purports to provide some objective criteria, albeit preventive and recommendatory, is telling evidence of how crucial ethics is for effective dispute resolution.

Speaking of translation ethics, the first axiom that comes to mind would probably be *Traduttore, Traditore*, which is now a well-known alliteration and metaphor. Indeed, there was once a time

when translation was studied in a prescriptive way, and ethics was all about what would make for a “fascinating”, “equivalent” and “correct” translation; yet, over the years, people’s foci seem to have shifted because of the emergence of new dimensions to our understanding of translation ethics. Nonetheless, the hard fact is, even to this day, translators pursue their own agenda in the guise of public interest, and some academics have come to believe that a change of language can make that all the easier.⁵¹

There are now many different elements to ethics, ranging from faithfulness in representation to client loyalty to cooperation; still others posit their ethics on accepted social norms. Of course, all these issues involve ethics (as a subject) and moral philosophy. Generally speaking, the ethics that are of the utmost concern to translators seem to include loyalty (or faithfulness), trust, the translator’s visibility, the translator’s ideology, and codes of practice. Of course, on top of all that, there will always be some personal ethics (Williams and Chesterman 2002: 19).

To put it more bluntly, since the huge gap between languages and cultures will be difficult to eliminate, the art of translation has become utopian in a sense, or ultimately impossible of realization (White 1999: 83). However, according to White:

One tries to do what in some sense cannot be done; yet one is right to try to do it nonetheless, at least if one acts with an appropriate awareness of impossibility and irreducible difference. On this view, the art of translation is not only intellectual but also ethical in character: if languages cannot be collapsed into each other, it means that no one language can claim priority over others, and even that no statement in any language can claim to be universally true. (White 1999: 83-84)

⁵¹ For instance, Joel Barlow is believed to have mistranslated French revolutionist Jacques-Pierre Brissot’s work *Voyage aux États-Unis* as *New Travels to the United States of America* with the intention of turning it into a federalist tract by extensive alteration, addition and omission. *Vide* David Finkelstein and Alistair McCleery (eds.), *The Book History Reader*, London: Routledge, 2002, p. 60.

Such observation should generate an ethics of tentativeness and respect for the other, arising out of the recognition that one's statements and gestures can never have universal validity (White 1999: 84). Therefore, in terms of ethics, the translator should always be ready to listen to and understand, and preferably accept, both cultures. As it follows, then, in that sense, the status of the translator is rather similar to that of the third-party neutral in a dispute resolution proceeding.

As far as ethics and translation are concerned, most associations that represent translators have their own practice guidelines, often referred to as codes of ethics, in an effort to guarantee the accountability, and hence the ethics, of their members vis-à-vis other parties involved in the interaction, particularly clients who pay for their services. Apparently, of central concern is the need to develop a set of guidelines, preferably universal ones that will motivate translators to make ethical decisions in the line of duty (Baker 2011: 274). Today, two of the most cited internationally recognized documents regulating translator's behaviour are the *Translator's Charter* and the *Nairobi Declaration*, introduced by the International Federation of Translators, both of which are remarkable in that they set forth not only principles designed to regulate how translators should behave, but also principles as to how the general public (including consumers who retain translators) should treat translators (Williams and Chesterman 2002: 19). There are even a few translation theorists insisting that a code of conduct written in black and white is never enough, and not even an ethics centered on the translator's faithfulness would ever be sufficient, which simply shows how seriously ethics are taken by translation theorists (Meschonnic 2011: 39). Interestingly enough, on a smaller scale, translation involves similar ethics as dispute resolution: there are codes of good practice, as well as a suggested rate of remuneration, provided by various associations and bodies, that translators need to conform to, and codes of conduct reflect that serve as objective criteria, as well as term banks such as

TermiumPlus, the GDT and IATE working as guidelines for translators—and probably for clients too—something for everyone to fall back on whenever they are not sure if something is right or fair.

Nevertheless, in spite of those similarities, once again, White has something to add that deserves our reflection. According to White, while at a secular and mundane level, the ethics of dispute resolution and the ethics of translation may be subject to different authorities of enforceability and may entail different consequences when breached, they, at the metaphysical level, though, as James Boyd White quite sharply points out, the practice of translation necessarily invites an extra ethical dimension and an intellectual dimension (White 1990: 257). If we admit that the gap between languages—and cultures—can never be fully closed up⁵², then translation is not only intellectual, but also ethical in character, because if whatever is said in one language cannot be completely collapsed into another, then it means that no one language can claim priority over any other, and, following this line of logic, that no statement⁵³ expressed in any language can claim to be universally true (White 1999: 83-84). This is a vision of a world where no superiority can be claimed for one language or culture over another, and even when a well-intentioned person is making allegedly fair judgments with their translations, they need to recognize that their judgments will always be made from a particular position that is both cultural and social (and maybe even political) in character (and thus never value-free), and in a particular language with force and implications of its own (White 1999: 84). In essence, since translators need to process texts given to them, translation is a form of “processing”, which happens to be a fashionable

⁵² Consumer protection agencies, for one, have shown time and again that at least in the EU, language is still the biggest barrier to the smooth resolution of cross-border complaints. *Vide* Christopher Hodges (*et al.*), *Consumer ADR in Europe*, Oxford: HART Publishing, 2012, p. 438.

⁵³*Nota Bene*: Here I mean *statement* and not “proposition” in the philosophical sense. The two have something in common, but basically, a proposition is language-neutral and language-independent and, by definition, either true or false, whereas a statement could be anything said in any language which may or may not have any truth value to it.

word these days (Green 2001: 178), and whenever there is processing (food processing, word processing or the like) happening, there will be some personal judgment involved, which, in turn, necessitates the enforcement of ethics.

Personally, despite White's remarks, I strongly believe that translation is necessary and worthwhile as long as we acknowledge all the ethical issues associated with it, and, in the event that some gap must be left intact as it is, as long as it is made clear to everyone—the translator, the target culture and the source culture, it will still be worth our while. So, how are the ethics of translation and the ethics of dispute resolution comparable to each other? Do they feature a high degree of resemblance in some way? If so, how?

On the face of it, the ethics that the translator should follow and the ethics that the third-party neutral is subject to, equally important as they are in their respective contexts, feature a high degree of similarity. For one thing, the translator is supposed to deal with both cultures concerned with good faith and professionalism without ever resorting to coercion or fraud, just as the mediator should always strive to remain impartial and fair—and perhaps compassionate and agreeable at the same time—in order to be able to facilitate communication between the disputants; for another thing, the translator should never knowingly distort or disclose any confidential information against the parties' wishes, just as the mediator is not supposed to reveal confidential or privileged information to the other party without that party's consent, and things might become murky and fuzzy when there is a risk of conflict of interest.

Moreover, James Boyd White made this following remark in one of his works:

For me, the image of translation thus reached the paradoxical duty, impossible to discharge with perfection, of simultaneously affirming respect for the other—the other language, the other culture, the other person—and asserting the value of one's own experience and judgment, and one's own culture too. For to translate one must, after all,

speaking one's own language, in one's own context, and the same is true of interpretation as well. (White 1999: 84)

He went on to emphasize that as a subscriber to a “reformed” type of relativism—one that does not dissolve into a denial of the possibility of knowledge or judgment, it is his belief that translation is *per se* a way of knowing and judging, and it manifests itself in our every action with language (White 1999: 84-85). This line of thought is a way of connecting what can be meant by “good writing” with the real concerns of social and political life, including justice; the good judge, and the good lawyer and the good person too, is a good translator (White 1999: 85). I believe that is probably one of the most comprehensive remarks that have ever been made in academia in relation to ethics that has encapsulated the very essence of the phenomenon of translation by pinpointing the similarities it shares with dispute resolution. Even though only the occupations of *lawyer* and *judge* were expressly mentioned by White, I think, from a higher standpoint, he is suggesting that the two terms were meant to include every player and agent throughout the entire dispute resolution profession—negotiators, arbitrators and mediators alike. The idea of ethics is within our easy grasp after all.

Finally, White concluded by asserting that learning law in general is akin to learning a foreign language, during which time the issue of translation would constantly come up, and that learning to resolve legal issues is therefore not too different from learning to resolve language issues in translation, since in both cases, the student needs to focus attention on what they are saying and doing; they need to study performances of cultural reconstitution and criticism that they find valuable, in the law and elsewhere; comparing their own languages with others (White 1999: 87). I am in total agreement with White in his claim that in regard to ethics, translation and dispute resolution do have a great deal in common. In fact, as implausible as it may seem, they have so much in common that it would be a mistake on the part of translators and dispute resolution

specialists not to draw a metaphor parallel between them. After all, three of the core issues of ethics—care, impartiality and justice— frequently appear in both contexts, with people constantly expecting the judge to exercise care and impartiality in order to serve justice and with translators often being requested to use care and conscience to do justice to both the target text and the source text. Ethics is often identified with the adoption of an impartial attitude— something expected of the translator and the legal professional, and it should never take the backseat to any other human construct. No wonder, again, that White claims in one of his works that the good translator should serve as a model for everyone, as defining a set of intellectual and ethical possibilities from which we can learn, both as individuals and as lawyers (White 1990: 259). To say the least, that, I think, is yet another vivid testimony to the underlying set of ethics that translation and dispute resolution share, and, by inference, to the parallel between the two phenomena.

3.8.6 Decision Making and Choice Making

Finally, decision making and choice making is yet another featured slot that contributes to the schema of our source domain and our target domain, as both translation and dispute resolution require extensive, repeated and, most of all, interactive and interdependent events of decision making and choice making on the part of all parties concerned. Whenever there is a group or conglomerate of more than one party, whose joint and separate actions may have an impact on all the others, there will be the perplexing issue of how to make the best choice and decision for a maximum joint benefit while leaving no one worse off in the long run.

According to economic behaviorist Barry Schwartz, on the assumption that every human being is rational and self-serving, most of their decisions will involve steps such as figuring out their

goals, evaluating the importance of each goal, arraying all options available, evaluating how likely each option will meet their needs, choosing the winning option and modifying one's goals and re-evaluating future possibilities with the outcomes (Schwartz 2004: 47). It should not take too much effort to realize how useful his approach can be for empirically observing and explaining the behaviour of the translator and that of the dispute resolver.

On the assumption that translation is a venue where repeated decisions and choices are made by the translator, every translation activity is intrinsically a game⁵⁴ in itself, where parties and/or participants are trying to figure out what would be in their best interest on the basis of logical conjecture. For translation, there are always three parties involved: the translator, the source culture (presumably represented by the author) and the target culture (presumably represented by the reader). Similarly, in the dispute resolution context, there will always be the contesting parties plus, in most cases, a third-party neutral, each being confronted with choices and having to make repeated decisions that will eventually have an impact on everyone involved, and not just themselves. What is more, in all four scenarios, whatever one player does can—and will—have an impact on all their own and others' subsequent actions. Translators, comparable to successful leaders, should be expert decision makers, and they either facilitate the dialogue to encourage people within a game context to reach a sensible conclusion or they simply have to do it themselves, and, more often than not, their choices and decisions are non-random and arbitrary (Gagnon in Pym et al. 2006: 122). In a nutshell, they try to “make things happen”, but their choice-making activities are not always conducted to everyone's satisfaction.

⁵⁴All players are assumed to be rational in the sense that they are all conducting their behaviour with a view to maximizing the expected value of their payoff, and intelligence is assumed to the extent that all players know everything there is to know about the situation that is called the “game”, and that he is capable of making any and all inferences that can be made about the situation.

In any case, one thing is certain; translation involves multiple and repeated decision making on the part of the translator, whose previous decisions, which are subject to the reactions of the two parties concerned, may hinder or facilitate any and all subsequent decisions, whereas the dispute resolver is constantly making choices and decisions for themselves and the parties, and their decisions will, of course, also have a significant impact on all subsequent ones. Translators must make choices, and, as a result, translations are inevitably partial (Tymoczko and Gentzler 2002: vxiii). Hence, our metaphor of TRANSLATION IS DISPUTE RESOLUTION can be established through perfect mapping of the four slots in our schema.

For a brief summary, now that the mapping has been established for the schema around the umbrella metaphor of TRANSLATION IS DISPUTE RESOLUTION, we can now proceed with our evaluation of which one of our four makes the appropriate specific metaphor.

Chapter Four: Dispute, Dispute Resolution Mechanisms and ADR

Pactum legem vincit et amor iudicium. (Agreement prevails over law and love over judgment.)

Laws of Henry I, King of England, 1100-1135

Justice delayed is justice denied.

Classical Legal Maxim

Now that we have seen in Chapter Three that there are several valid common factors that we call slots linking our source domain to our target domain for our metaphor, we will now need to find out which of the four dispute resolution mechanisms makes the best metaphor for translation.

Before we deal with this, we must have a full and correct understanding of each one of the four.

We will now examine all four of them in detail one by one, but first, let us have a quick glance at all four of them plus translation from the perspective of dispute resolution theory in this chapter, which will begin with a detailed **Dispute Resolution Table** that I have drawn up for my readers' easy reference.

4.1. The Dispute Resolution Table

(Main sources: Frey 2003: 22-23; Nolan-Haley 1992: 24)

	Who selects the process? Flexible?	Who selects the rules?	Who are the participants?	Voluntary and consensual?	Is there a third-party neutral involved?	Who selects the third party?
Negotiation	The parties themselves Flexible	The Parties	The parties (2 participants)	Yes	No	N/A

Mediation	The parties. Flexible	The Parties	The parties and a mediator (3 participants)	Yes	Yes	The parties
Arbitration	The parties. Not as flexible.	The parties, or if they do not want to, the arbitration service or the arbitrator	The parties, their attorneys and arbitrator	Yes, unless stipulated by law as in labour disputes	Yes	Usually the parties
Litigation	The aggrieved party. Rigid	Applicable procedural rules (legal)	The parties, their attorneys, trial judge	No	Yes	Court with jurisdiction

	Formal or informal?	Private or Open/public	Who decides outcome?	What gets resolved?	Title of outcome	On what is outcome based?
Negotiation	Informal	Private	The parties themselves	Parties' interests and needs	Agreement (contract)	Non-legal
Mediation	Informal	Private	The parties themselves	Parties' interests and needs	Agreement (contract)	Non-legal
Arbitration	More formal	Private	Arbitrator(s)	Issues of law and issues of	Arbitral Award	Law and rules of the venue and/or as

				fact		they are understood by the arbitrator; not always based on law
Litigation	Most formal	Public	Judge	Factual issues and legal issues	Judgment or decree	The law

	An outcome guaranteed?	Is outcome binding?	Is Solution Creative?	Speed	Appeal available? Is outcome reversible?
Negotiation	No	Non-binding	Yes	At the parties' disposal	Yes
Mediation	No	Non-binding	Yes	At the parties' disposal	Yes
Arbitration	Yes	Binding	Less creative	Swift	Extremely limited
Litigation	Yes, but may be appealed	Binding	Not at all	Slow	Yes, but subject to jurisdictional rules

	What are the Ethics?	Expertise on the part of resolver required?	Is it possible to hold the neutral liable?	Overall Costs High or low?	What impact on future relationship?

Negotiation	In good faith	N/A	N/A	Very Low	Positive
Mediation	Confidentiality	Usually no	Yes	Low	Positive
Arbitration	Power imbalance likely	Usually yes	Yes	High	Usually Negative
Litigation	Safeguarded by legal rules	Usually no	No	High	Negative

	Any precedential value in the outcome?	Power for parties to terminate the process?	Risk of non-performance of ruling?	Default ruling possible?	Information disclosed beforehand?
Negotiation	No	Yes	Low	N/A	N/A
Mediation	No	Yes	Low	No	No
Arbitration	Little	No	Higher	Yes	Usually, no, but depends on parties' agreement
Litigation	Yes	Sometimes	Higher	Yes	Yes, through discovery

	Counterclaim possible?	Private caucus permitted?
Negotiation	N/A	N/A
Mediation	N/A	Yes
Arbitration	Yes	No

Litigation	Yes	No
-------------------	-----	----

4.2 Overview

Now that we have a full understanding of the nature of metaphors via metaphor theory, and given our understanding of the nature of translation, in order to be in a better position to substantiate our metaphor, we will have to understand the nuts and bolts of our source domain—dispute resolution as well. Dispute resolution is about how people handle disputes, especially ones that have occurred beyond their expectation, and a close look at it will reveal some interesting details as to how people’s handling and settling of disputes have shifted over the years because of the drastic change in their understanding of dispute itself.

The risks, costs and tragedies that came with conflicts during the 20th century have finally forced people to start looking for more civilized ways of resolving conflicts, with the overreliance on power and avoidance being undesirable ways of dealing with conflict because of their obsolescence (Bercovitch 2002: 22). As a simple example, today more and more people have come to realize that the nature of social relationship development in the course of the due dispute resolution process needs to be re-conceptualized in the sense that interpersonal and international relationships other than those existing between disputants should be included and taken into account, as well as the surrounding social context—a rather elusive concept that includes, to my surprise, the relationship between the agencies of formal and informal social control (Lauderdale and Cruik 1993: 139-140).

Conflict resolution expert Kenneth Thomas identified five main styles of conflict resolution on the basis of the degree of cooperativeness and assertiveness: competitive, collaborative, compromising, accommodating and avoiding (Rathee 2010: 240 et seq.). That, I think, may

provide us with some inspiration for our metaphor in the sense that it loosely coincides with the factors featured in my **Dispute Resolution Continuum** and **Control and Power Continuum**.

Next, preventing people from becoming too entrenched in their (usually foolishly) unchanging position is important, and therefore, separating the people from the problems, learning to listen to others, and exploring options together form a comprehensive scheme to an interested-based resolution approach.⁵⁵ All dispute resolution mechanisms, ancient or modern, are meant to maintain social order; to avoid conflict; to restore harmony; to achieve equality; and, finally, to express communal identity (Roberts and Palmer 2005: 9), which can only be attained if conflicts are dealt with on the basis of interests concerned. Granted, the law, however stark and rigid, serves a dispute resolution function, which is arguably the most “majestic and mysterious” of all roles the law can play (Smith 2004: 127), yet it has done little to stop the diminishing trend of institutions of formal justice (i.e., litigation) being substituted by non-institutional forms of justice. Today, little by little, the benefits of non-violent dispute resolution are being welcomed and reaped by the frail and the powerful alike.

That never went unnoticed by academics, and we have to find out how negotiation—the mother of all dispute resolution procedures—has evolved and developed in the academic circle.

Although dispute resolution has been academically theorized and institutionalized, anyone in search of hands-on experience and down-to-earth skills must have read the two bestsellers on negotiation *Getting to Yes* and *Getting Past No* from cover to cover. Human beings cannot live in solitude, as they need to act, react and interact—and eventually compete and fight—with people around them. That is why negotiation specialist William Ury pointed out very directly at the very

⁵⁵ As a reminder, actually, time and again, Ury and Fisher keep reminding readers in their book *Getting to Yes* to separate the people from the problem and, number two, to focus solely on interests and never on positions when conducting a negotiation. These are very powerful and useful guidelines indeed.

beginning of one of his works, *Getting to Yes*, that conflict has become a growth industry, as more and more occasions require negotiation, with fewer and fewer people ready to accept decisions dictated by someone else and more and more people willing to take matters into their own hands (Fisher and Ury 1991: xvii).

However, pathetic as it may seem, some law schools around the world have yet to incorporate negotiation courses into their curricula, and in this sense, business schools and diplomacy schools, and perhaps even translation and interpretation schools, have taken the lead in setting an example for law schools to follow, despite the fact that it is a calling on law schools to train and produce competent legal professionals who understand how to eliminate disputes without jeopardizing interpersonal ties.

Since, alas, it has come to my attention that dispute resolution is not understood thoroughly enough by translation theorists, I believe that it will be worth my while to cover the pros and cons of dispute resolution theory for my readers.

4.3 The History and Current Status of Alternative Dispute Resolution (ADR)

Traditionally, at least in the West, disputes were regarded as something to avoid, and if they did occur, they were to be resolved through litigation, as the court was considered the predominant place for dispute resolution available to the general public. However, things started to change when courts were seeing an overwhelming influx of cases knocking at their doors, which eventually led to the ADR Movement. Indeed, no human institution will ever just come out of the woodwork, and it all started in the United States, where litigation had become part of the tradition and the way of life, and, as a result, a good many people had fallen victim to their own

litigiousness without realizing it—something that may be blamed on wedge politics. That, I believe, has provided me with a multifaceted backdrop on translation through the lenses of dispute resolution. We are in need of more options, and every little helps.

In retrospect, it could all probably be traced back to at least half a century ago, when historical events fortified people's understanding of power as a motivating factor in cultural domains. As it happens, one key contributing factor was the Civil Rights Movement of the 1960s, when the Cold War was in full swing, in the USA, during which time a large amount of legislations designed to grant a wide range of personal rights, from consumer rights to civil rights, to the general populace, were passed. The pursuit for redress of those rights through the legal system, however, was becoming a complex exercise, and even people who were afforded a favourable court decision often realized that what they obtained was nothing but a hollow victory, leaving them no choice but to start looking for alternatives to court adjudication of disputes, while, at the same time, lamenting the fact that courts were indifferent and inefficient due to chronic overcrowding (Nolan-Haley 1992: 4). As a consequence, Chief Justice Warren Burger's remark "Isn't there a better way?" kicked off the ADR movement in the USA (Nolan-Haley 1992: 4). As it turns out, this remark of his, featuring an unprecedented degree of humanitarianism, generated more momentum than he ever imagined. In fact, contrary to popular belief, miscellaneous views on justice and how it is to be served have always existed throughout history, and it is not simply juridical justice being referred to. The famous ancient Greek thinker Plato, for one, proposed his remarkable idea of justice thousands of years ago. True justice, in Plato's eyes, is a special state of balance and harmony attained with all relevant participants and elements taken into full consideration. In essence, for the individual, harmony is accomplished through that individual's desire for different things and the satisfaction that results from fulfilling those desires (Denise *et*

al. 1996: 10). Furthermore, the idea of objective correctness enters into Plato's doctrine in his view that justice is, to boot, not established merely by convention, or even by the laws or customs that may happen to be observed in one place or another; instead, Plato believed that a certain kind of order or harmony among groups in society is what social justice is really about, even though this harmony is only very imperfectly exemplified in societies around the world (Denise *et al.* 1996: 11). Following this line of thought, Plato also believed that individual justice must have a great deal to do with their perception of justice, as well as the equilibrium of personal desire and satisfaction, even though different societies, quite understandably, may have very different understandings of what is just or unjust. For me, Plato's teaching was utterly simple; it all boils down to the primitive belief that conflict, despite its inevitability, may be resolved in many dissimilar ways, and all those many dissimilar ways have an equal chance of leading people to justice—and also liberty—as long as the parties concerned believe in it. Indeed, the bestowal of such an inalienable right and opportunity on the general public is long overdue. For me, what that means is a wider array of miscellaneous dispute resolution mechanisms to satisfy the needs and values of our day and a wider range of potential metaphors to account for our present-day attitude towards translation, which, in turn, indicates that the metaphorization of translation must take a wider array of dispute resolution mechanisms into account, and not just negotiation and mediation. If (metaphorical) arbitration or litigation happen to do better justice for the cultures, then translation is just that.

In the 1960s, contemporary ideological frames of the time began to collapse, and the massive breakup of colonial empires brought about unprecedented geopolitical shifts. Also, while events in the political arena were having a huge impact on people's attitude towards dispute resolution, along with the bloody Vietnam War and the Civil Rights Movement in the United States, in

almost every sector in society, disenchantment with dominant ideologies began to trigger re-conceptualization of society and power (Tymoczko and Gentzler 2002: xii). The new focus that ensued was on the structures of power in societies, both implicit and explicit, and this all but diminished at the end of the Cold War and the rise of globalization of economies and cultures, which, in turn, led to some sweeping changes in translation studies (Tymoczko and Gentzler 2002: xii). What the current affairs of the time implied was that the people were in need of more power: more power to resist illegal government invasion, unethical racial segregation, and most importantly, a more powerful say on how their disputes should be resolved—all of which eventually tied back into renewed vindication of human rights. Who would have known that the development of more dispute resolution mechanisms should bear such similarities to the shifts occurring in translation studies?

Translation, as we know it, has historically had the potential to transform ideas and create new meanings. Seen in that light, translation and dispute resolution have much in common. For one thing, coincidentally perhaps, the shifts and turns that we have seen in translation studies and the discipline's growing interest in power and power relations occurred in a larger framework of politics starting in the 1960s—a time when the Civil Rights Movement on the political front was in high gear, which explains the multiple key movements having taken place since 1975, when translation studies scholars worldwide began exploring issues on power and translation (Tymoczko and Gentzler 2002: xiii). They outlined a program of descriptive studies of translation that would connect literary translation norms and goals with extraliterary translation contexts. Many academics, Maria Tymoczko and Susan Bassnett being two of them, demonstrated that translations, despite often being thought of as secondary, derivative and lacking creation, were practically one of the primary literary tools that larger social institutions

such as the educational system, publishing industry and even government agencies had at their disposal for manipulation of their society for the sake of the type and form of “culture” that they intended (Tymoczko and Gentzler 2002: xiii). That is comparable to struggling for equal rights for all on the political front. More specifically, the shift and collapse in the structure of power in society as a whole and in academia in particular, joined by numerous catastrophic world events such as the Cold War and the Oil Crisis and followed by the rise of ideologies such as postcolonialism and feminism...all triggered the shift in focus for many academic disciplines, including, of course, translation studies. Consequently, as Tymoczko so accurately pinpoints, the new approach from the perspective of power in translation studies ended up with a foothold inside the larger political trajectories (Tymoczko and Gentzler 2002: xii). Now, finally, not only did people begin to challenge a Eurocentric viewpoint on things they never doubted, they also began to realize that no one single discipline could possibly survive in isolation from any other, nor can any discipline advance outside the larger socio-political environment.

As previously mentioned, interestingly enough, by coincidence or by destiny, the ADR Movement can trace its origins all the way back to the Civil Rights Movement, a movement centered on the struggle for power—another unexpected underpinning shared by the two academic endeavours. Back in the 1970s, some in the legal profession began to realize that a broader array of non-judicial dispute resolution mechanisms was needed, and it kicked off the ADR movement. As it turned out, the ADR Movement directed people’s attention away from litigation and toward a wider variety of possible remedies—ones that work just as well, if not better, stimulating their interest in developing even more alternatives to litigation. Among all ADR mechanisms invented or discovered, mediation seems to have stood out as the most popular dispute resolution method because of its stress on peace and harmony. Then, little by

little, instead of viewing each dispute resolution process in isolation, people learned to regard all those different dispute resolution mechanisms as a consolidated array of processes, whereby a party to a dispute could develop a dispute resolution strategy based on the nature of the dispute and/or their personal needs. Hence the contrast of ADR vs. litigation.

Now, at last, people were poised to accept how much it means to have their disputes resolved in an amicable, civilized and humanitarian way, preferably via a third-party neutral, dispute theory and dispute resolution theory have taken on a new shade of meaning. Today, as an individual practice, dispute resolution is one's way towards personal liberation and emancipation, and as a social act, it is part of the history of reception and transformation, and as a judicial act, it will hopefully liberate Americans from their "rush-to-the-courtroom" syndrome so characteristic of them. As a matter of fact, in recent years, even the dispute resolution profile is changing in the USA. Just to give my readers a basic idea how useful and widely accepted ADR has become, one need look no further than the federal government of the USA, which, unbelievably, according to official statistics published, happens to be one of the largest domestic users of ADR (Rule 2002: 18). The United States Postal Service, for one, which has one of the most sophisticated ADR programs within the federal government system, revealed that roughly 81% of mediated cases are eventually closed without a formal complaint being filed (Rule 2002: 18-19). Not only that, satisfaction rates were extremely high, with exit surveys completed anonymously by 26,000 participants indicating that 88% of the postal service employees polled were either highly satisfied or satisfied with the respect and fairness demonstrated in the ADR process (Rule 2002: 19). This rate, as Colin Rule argues, is very impressive, as the satisfaction rate for the postal service's adversarial process had traditionally been no higher than 44% (Rule 2002: 19).

Therefore, in light of the development history of ADR and what it has become, it is my steadfast

position that all dispute resolution mechanisms must serve one ultimate goal: the peaceful, interactive and cooperative resolution of all disputes that will yield joint positive gain for everyone concerned, and if litigation sometimes fails that mark, then we should try something else during those times. That is certainly the position I think translators should maintain when in search for their best dispute resolution metaphor. That, I believe, should be something that deserves translation theorists' devoted attention, as they, too, are in need of new ways of looking at the "translation dispute" and developing adventurous ways of resolving it through a wider selection of metaphors, leading themselves towards liberation, self-gratification and transformation. Now that we have understood how the evolution of ADR helped transform the dispute resolution profile and how ADR earned its status as an effective leverage against litigation, we will consider which ADR mechanism best suits our metaphor.

4.4 Four Major Dispute Resolution Mechanisms

4.4.1 Background

As mentioned previously, there is a multitude of mechanisms falling under the umbrella of ADR; in fact, theoretically speaking, there could be as many dispute resolution mechanisms as there are creative human minds. Yet, in this thesis, due to temporal and spatial constraints, I am only concentrating on four key dispute resolution mechanisms: negotiation, arbitration, mediation and litigation, as these four are representative in the sense that all other forms of dispute resolution, ADR or otherwise, are, by and large, formulated on a particular combination thereof. In other words, in my view, they can be considered the prototypes of all human dispute resolution mechanisms. Now, we will examine them one by one, starting with negotiation, in regard to

inherent nature and scope of application until we arrive at the one that makes the best parallel for translation.

4.4.2 Negotiation

Negotiation is a term that ordinary people hear, use and love on a daily basis. Indeed, as was claimed in the work *Getting to Yes*, negotiation is something most of us do every day albeit hard to do well (Fisher and Ury 1991: iii-iv). Since negotiation is a basic means of “getting what you want from others”, in a negotiation process, the negotiator is dealing, through communication, with human beings made of flesh and blood who have unpredictable emotions and different values and viewpoints. In one word, for better or for worse, human beings are unfathomable. This aspect of human nature can sometimes be helpful, but it could also become catastrophic if it is manipulated inappropriately. In fact, social beings do engage in negotiation far more often than they realize they have to, as everyone is their own negotiator. True, misunderstanding may breed prejudice, but if dealt with properly by negotiation, it may reinforce mutual understanding and repair broken ties.

However, in order for that to happen, the negotiator, before anything, needs to put themselves in the other side’s shoes, and, moreover, they sometimes need to withhold judgment provisionally without necessarily agreeing to anything in order to have a new look at every aspect of the situation. Negotiation needs to take place at two distinct—yet interrelated—levels; at one level, negotiation addresses the substance, while on the other level, negotiation focuses on the procedure for dealing with the substance (Fisher and Ury 1991: 10). Therefore, the negotiator is confronted with two types of interests: one interest in the substance (the merits and demerits) and another interest in the relationship with the other party (Fisher and Ury 1991: 20).

The hard fact is that it is never as easy as it sounds, as there will usually be at least one party feeling uncomfortable about having to compromise; somehow there will be someone left feeling cheated or shortchanged. So what now? It is quite simple; as negotiation experts suggest, first of all, know oneself, and second of all, know one's adversaries, and thirdly, give some thought to the negotiating conventions in each context (Goldberg *et al.* 2007: 29-30). Also, one must always bear in mind that negotiation and communication do not simply mean giving in to the other party's demands unconditionally; they just mean feeling comfortable facing up to the other party and being willing to speak to them on a one-on-one basis in a diplomatic tone.

Moreover, as I have indicated earlier, contrary to common belief, only a small—perhaps even negligible—proportion of all legal disputes result in litigation, with the majority of them being settled either prior to trial or sometime during trial. Even in the USA, arguably one of the most litigious countries in the world (Freedman 2007: 41-42), where clamor over litigation is outrageous, of all the civil cases filed in all levels of state and federal courts, on average only a modest 5% ever make it to trial. The remaining 95% are settled through negotiated agreements at some point, compelling legal professionals to dedicate a considerable portion of their work time to settlement negotiations (Nolan-Haley 1992: 2), which, in turn, lends a special impetus to negotiation as an advisable alternative to litigation.

Negotiation, if loosely understood as communication for the purpose of persuasion, is truly the preeminent mode of dispute resolution, as all dispute resolution proceedings must involve negotiation, where the disputants bargain, claim, rejoin and reply to and fro on their own, at some point. Its status as a process of allowing disputants to combine positions into one joint agreement on their own makes it almost synonymous with conflict resolution, and it is presumably the most common way of preventing, managing, resolving and transforming

conflicts. Indeed, there seems to be little negotiation that has nothing to do with conflict resolution (Bercovitch, Kremenyuk and Zartman 2009: 322). After all, why would two individuals want to come to the negotiating table voluntarily over something? Most likely, there must have been some disagreement or discord over something that the parties are trying to sort out and put behind them. A new development in scholarship is the discovery that what is known as *negotiation* can be one of these three types of negotiation: negotiations to negotiate, negotiations to end conflict and negotiations to implement the agreement (Bercovitch, Kremenyuk and Zartman 2009: 335). Also, in terms of combined gain and loss and individual gain and loss, negotiation falls into two categories: distributive negotiation and integrative negotiation (Nolan-Haley 1992: 16-17). In distributive negotiation, one party's gain comes at the expense of the other party's loss, ending in a zero sum⁵⁶, while in integrative negotiation, both parties may become better off (or make a positive gain) in the end, making it a "win-win" situation (Goldberg 2007: 22).

More and more people in the legal profession are now beginning to realize that negotiation is a fundamental skill that every lawyer, every judge and every law student need to grasp just to be able to facilitate as many win-win situations as possible for whomever they are dealing with. Even mediators have had to admit that mediation is essentially a spin-off from negotiation (Nolan-Haley 1992: 54), as have arbitrators, who claim that what makes a good arbitrator is self-assurance and other social skills to be able to conduct a hearing with authority, leaving each side equal opportunity to sort out their case, all of which boil down to negotiating skills (Mackie 2000: 110-111).

⁵⁶ A typical example of a zero-sum bargain is when the buyer receives a five-dollar discount from the seller, the seller will immediately lose five dollars; i.e., the buyer's gain comes directly from and is equal to the seller's loss.

4.4.3 Mediation

Mediation, by definition, refers to a dispute resolution process in which parties unable to settle their dispute reaches an agreement by means of dialogue through the help of a neutral third party who is expected to apply the parties' common values (but not necessarily the law) to the facts before them (Nolan-Haley 1992: 54). One key distinguishing feature of mediation is the parties' right to choose the mediator, through whom they have an equal opportunity to speak. Mediation is always voluntary, meaning that no one (not even the parties themselves) can force either party to come to an agreement, or even to come to the mediation table at all. However, contrary to popular belief, the mediator is not there to impose any self-made or ready-made decision on the parties, and, ironically, it is precisely this role that sometimes complicates the mediator's job. In the absence of backup force, it is never easy to work with two disputants lacking mutual trust while nonetheless having to facilitate communicative dialogue between them. That is probably why some people have described the mediator's task as being "partly art and partly science", and yet others consider the mediator, assumed to be gifted with a penchant for communication, the "catalyst" that makes a resolution possible whenever an agreement seems almost impossible (Goldberg 2007: 41).

Regardless of the type of mediation, commercial, international or otherwise, each party must have something that the other party wants or needs, and they must also be mutually interdependent, realizing that any alternative to a mediated agreement will leave them even worse off (Bercovitch 2002: 259). These perceptual conditions offer the perfect venue and mentality to reconcile different positions by focusing on their long-term relationship, not short-term interests or rights (Bercovitch 2002: 259). As a general rule, mediation is expected to be a short-term, structured, task-oriented and participatory dispute resolution process, whereby the

disputing parties work with the mediator to reach a mutually acceptable agreement. Therefore, some of the significant characteristics of mediation include:

1. Mediation is an extension and continuation of the parties' own conflict management efforts.
2. Mediation involves the intervention of an individual into a dispute/conflict.
3. Mediation is a non-coercive, non-violent and non-binding form of intervention.
4. Mediation turns a dyadic (two-sided) relationship into a triadic (three-sided) one, thereby bringing structural changes and new focal points.
5. The mediator, as a non-party, is supposed to affect, change, resolve, modify and/or influence in some way.
6. Mediators may still, consciously, subconsciously or unconsciously, bring with them ideas, resources and interests of their own.
7. Mediation is a voluntary form of intervention.
8. Mediation operates on an *ad hoc* basis only. (Goldberg 2007: 5)

Mediation must be a consensual process with or without a preselected mediation provision in the contract. Thus the decision to resort to mediation requires the participation by both parties, because there will be a third party intervening in the process (*vide* **Dispute Resolution Table**), and no one should ever be under the obligation to refer their dispute (which usually involves a certain degree of privacy and delicacy) to an outsider. Moreover, by nature, mediation should be a give-and-take process, where both parties evaluate and re-evaluate their claims and positions as the discussion unfolds. Another distinguishing feature is that they must arrive at their agreement out of their own freewill, and that the mediator will not resolve the dispute for them by imposing on them some "agreement", be it a verbal one or a written one (Frey 2003: 147). Because it is the parties who are ultimately vested with the power to make a decision, not the mediator., mediation, at least in the dispute resolution context, is often seen as an extension of the negotiation process, for in a negotiation, each party is their own negotiator (Nolan-Haley 1992:

54). What the mediator has to do is to provide the disputants with some ground rules and values, including but not limited to a sense of equity, fairness, morals and ethics.

Indeed, mediation has become widely accepted as the preferred dispute resolution mechanism in a growing number of contexts probably for its emphasis on relationship building and collaborative decision-making, circumventing the issues of who is right and who is wrong. The mediator “improvises” a result that will satisfy both parties without challenging the legitimacy of either party or their position, and in order to be able to do that, the mediator must have a number of qualities such as knowledge, experience, compassion, process and content skills, courage and adaptability, which all happen to be the basic qualities of a translator.

Most importantly, the mediator must be the person in control of the proceeding, who interprets concerns, relays information between the parties, frames issues and refocuses all problems (Nolan-Haley 1992: 68), and how these functions come into play depends on the mediator’s personal style, or *modus operandi*, and the level of hostility between the parties. Of course, as long as they remain strictly impartial at all times, the mediator does have the latitude of granting the disputants a certain degree of control over the agenda while trying to walk them towards resolution. Other conflict situations may require slightly more intervention on the part of the mediator, who would, accordingly, make specific suggestions and limit dialogue between the parties. Notwithstanding, one should never forget that nothing can guarantee a mediator any success, since whatever effort is made for successful, effective and efficient mediation, there will always be unexpected conditions occurring out of the blue to the detriment of the mediator’s position, such as conflict dimensions, nature of the relevant issues, commitment to mediation, relative power of disputants, mediator resources and the stage of conflict, and they can all be understood as decisive factors that may have an impact on the final outcome of the mediation

(Bercovitch 2002: 262). Naturally, mediation, as an ADR mechanism, would work best if the disputants arrive at the negotiating table in good faith and ready to share their true concerns and interests with each other and the mediator. However, in reality, the parties may not be willing to speak their minds for fear that whatever they say during mediation may subsequently be interpreted against them should the mediation fail and litigation becomes unavoidable. How this can be tackled to make mediation even more reliable and acceptable is surely worth some thoughts.

4.4.4 Arbitration

The third type of ADR discussed in this thesis is arbitration, which is probably the mechanism least understood in the translation studies circle. As the most common third-party adjudication⁵⁷ form of ADR, in reference to my **Dispute Resolution Table** presented previously, arbitration is probably the most formalized alternative to litigation. By definition, arbitration is a process in which the disputants present their case to a neutral third party (the number of arbitrators assigned to a case is typically one or three) who is empowered to hand down a binding decision not to be appealed subsequently. Thus, choosing arbitration is tantamount to foregoing any subsequent opportunity to litigate. In any arbitration process, the parties no longer have any control over the outcome of their dispute, and the agreement to arbitrate designates the arbitrator or arbitration panel. The only thing that the parties have a say in is whether or not to opt for arbitration at all, as, for arbitration to commence, the parties concerned must consent to the process in the form of either a pre-dispute arbitration clause in their first contract or a post-dispute arbitration agreement. More to the point, if either one of the parties is unwilling to seek resolution via

⁵⁷ The term *adjudication* here simply refers to any rendering or decision made by a third-party neutral that comes with any level of binding force.

arbitration, then, with only a few notable exceptions, there will be absolutely no way for arbitration to happen. However, once the parties do agree to arbitration, and once an arbitrator or an arbitration panel has been selected, the parties will no longer have control over the proceeding, much less the final outcome, which would now be subject to the arbitrator's understanding and discretion. Then what happens in an arbitration proceeding is that the disputants present their case to a neutral third party, or the arbitrator(s), who is/are vested with the power and jurisdiction to render a legally binding decision, which is called an arbitral award. For some pragmatic purposes, arbitration today has been transformed into a more flexible process than it was originally intended for, existing in both voluntary form and compulsory form. For a long period in Anglo-American legal history, the courts had inherited, rightly or wrongly, traditional British antagonism towards binding arbitration agreements that would practically override the courts' jurisdiction and, as a result, courts would routinely refuse to honour contract clauses that invoked the use of arbitration in future disputes arising out of the contractual subject matter (Nolan-Haley 1992: 120). It was not until well into the 20th century that several state and federal laws advocating and promoting arbitration were passed by Congress. In 1925, the US Congress enacted the *United States Arbitration Act* (known today as the *Federal Arbitration Act* (FAA)) to place arbitration agreements on the same footing as other contractual clauses, thereby encouraging the use of commercial arbitration as an alternative to litigation, at least for business transaction-related disputes. For that matter, the *Uniform Arbitration Act*, which was modeled upon the corresponding New York statute, is in fact a model act originally drafted in 1955 by the Conference of Commissioners on Uniform State Laws (Nolan-Haley 1992: 120). As a law, the FAA was supposed to soften centuries of hostility towards the "eccentric" dispute resolution mechanism known as *arbitration*. It was not until well after World War Two, however, that

arbitration received increasingly universal recognition with its expansion into the labour-management relations arena due to its improving status in overall labour policy of the USA, after which it eventually expanded into commercial transactions, employment contracts and various service agreements (Nolan-Haley 1992: 124).

In practice, with the arbitrator being the trier of both facts and law (*vide* **Dispute Resolution Table**), arbitration is, not surprisingly, much more rigid than mediation, and the arbitration award is final and binding, meaning that it may not be appealed to a court or any tribunal unless the appeal alleges the unconstitutionality of the arbitration process or an abuse of the arbitrators' discretion, which, rarely happens (Frey 2003: 223). On the flipside, unlike mediation where no resolution is guaranteed, an arbitration proceeding does guarantee the parties some resolution, however harsh or unfavorable it may seem to either party, by the end of the process, while with mediation, there would be no such guarantee; mediation parties may end up with nothing and be forced back to where they started. Then, unlike litigation, where the parties are required to disclose certain information and evidence through discovery proceedings, in an arbitration proceeding, in most cases, disclosure of information and evidence may not be requested. The presentation of evidence plays an important role in arbitration, with witness testimony (with the parties being witnesses themselves), exhibits, documents and admissions provided by the other party being the most frequently used methods of evidence, and, more often than not, both the claimant and the respondent are represented by their counsellor.

Another distinguishing feature of arbitration concerns the burden of proof. The claimant bears the burden of proof on the claim, and the respondent bears the burden of proof on the counterclaim, on which they must establish their respective factual claims. In addition, the parties do not have a formal role other than testifying as witnesses, and meeting with their

attorney or the arbitrator in a caucus (a private meeting without the other party present) in an arbitration proceeding is usually not allowed, and, most of all, *stare decisis*—the judicial principle to follow cases—is not adhered to as vigorously in arbitration as in litigation.

Understandably, arbitration, where the arbitrator wields near-absolute power, is doomed to be haunted with ethical issues. First and foremost, it is the arbitrability issue. In plain words, this is about whether or not the dispute, in regard to subject matter, is legally acceptable for arbitration, or, put another way, whether the panel of arbitrators was vested with the due jurisdiction to decide on a case of such nature.⁵⁸ Also, unlike mediation or negotiation, where disputants are permitted to withdraw from the proceeding at any time while in session, in arbitration, once the process has been initiated, it is nearly impossible for either party to terminate it, meaning that although the parties to an arbitration does have a say on whom to select as their arbitrator, but that is just about as far as their power goes. While disputants may choose arbitration over litigation out of either personal preference or concern for their business interests, one thing that people tend to forget is the fact that the arbitrator may or may not actually follow the law, rules or regulations in the way the parties expect them to. As a result, the arbitral award may or may not be legally correct, and since arbitration awards rarely come with a watertight reasoned opinion in writing, and since following precedents is not a requirement, it is typically difficult for either party to predict the outcome of their case.

Nevertheless, illogical as it may sound, the decision made by the parties to resort to arbitration instead of litigation is often a decision based on personal and business needs and interests, and

⁵⁸ In fact, the issue of arbitrability could probably be compared metaphorically to the translatability issue that has been haunting the whole translation studies circle for some time now. A link between the two will require a great amount of evidence, which is something was beyond the scope of this study of mine. However, in one quick word, we can probably picture the analogy this way: Is the translator in a position to translate something into another language? And is the arbitrator in the legal position to hand down an award on some subject matter? Or does the judge or the court really have jurisdictional power over this case?

not on their trust in law, if anything. So if the parties have, through a cost-and-benefit analysis, already weighed the gain (or loss) that arbitration may be able to generate, against the gain (or loss) that another dispute resolution mechanism (say, litigation) may provide, then they should presumably be ready for whatever arbitral award they will be granted.

Moreover, unlike negotiation and mediation, arbitration does in fact guarantee the parties a resolution, which will be final and binding, and not just explanatory or advisory. The arbitrator is allowed to ignore the law altogether (at least in principle), unless there is a clause or provision specifically stating otherwise included in the arbitration agreement. For the most part, arbitration is a preferred method for resolving international commercial disputes and sometimes construction disputes for the same reason that it is appealing on the domestic front: speed, privacy, expertise of the decision-maker and, last but not least, procedural flexibility (Nolan-Haley 1992: 166).

Of course, by now we should be able to understand that when trying to decide whether to resort to arbitration, the parties should conduct a complete cost-and-benefit analysis by weighing arbitration against all other ADR mechanisms, keeping in mind that an arbitration award, once rendered, will be non-appealable and virtually unreviewable. To make matters worse, because an arbitration award largely features a win-lose outcome and a zero-sum result, it will do little to help conserve the ongoing and/or long-term relationship between the parties, despite its speed and confidentiality. And that is definitely something to keep in mind when seeking the best dispute resolution mechanism for our metaphor.

4.4.5 Litigation

The final mechanism for dispute resolution discussed here is litigation, the age-old dispute resolution mechanism that has been part of humanity since time immemorial, with the judicial branch forming one of the three branches of government. Litigation, standing firmly at the most interfering end of my Dispute Resolution Continuum, is by far the most intrusive and invasive dispute resolution process, involving magistrates and public servants alongside numerous witnesses in front of a live courtroom audience. The rules of evidence and procedure in litigation are designed, promulgated and implemented by the legislature in the form of laws and regulations. Neither the plaintiff nor the defendant—much less the witnesses—has a say on the rules of procedure, the rules of evidence or the selection of the judge. All of these are highly pertinent to their case, because court cases must be heard, tried and decided in accordance with the law, statutory, case or otherwise, with little regard for the individual needs or interests of the parties. However, unlike arbitration, the parties do have a right to appeal the trial court's judgment or decree⁵⁹ to a higher court if they find it unfavorable or unsatisfactory.

Simple as it may sound, and prestigious and legitimate as it may seem to the lay public, litigation should never be taken lightly as a dispute resolution option, as there are a few tests that must be applied before the aggrieved party should officially press charges against their opponent in court. First of all, preferably with the help of an attorney, they should make sure that the law clearly provides judicial redress for the dispute; secondly, the party, usually under the consultation of an attorney, who is to determine if the client has a good enough chance of winning the lawsuit—and winning with sufficient recovery—to make the lawsuit worthwhile, must decide for themselves if they will be potentially able to gain more than what the lawsuit will cost them. Even if the case has passed these tests, the lawyer would usually advise their client as to whether it will be worth

⁵⁹ A decree is a judicial decision coming from a court of equity or a court of chancery.

the time, the efforts, the actual pecuniary expenses and the potential psychological trauma, among all other costs, even if the client will eventually recover everything in their claim, or if it would be more preferable for the client to consider another dispute resolution for loss recovery. In one word, litigation will always be a complex and lengthy process.

In the event that litigation is considered preferable and inevitable, a judge will be assigned to the case. Typically, the judge will have only general—not specific—expertise on the subject matter of the case; in real terms, one cannot expect the judge to understand, for example, how building foundations are laid down, or what and how stock brokers charge their clients for commission. In addition, the court must have jurisdiction over the parties and the subject matter. In the end, even if the court rules in favor of the plaintiff granting them an utterly great sum of money, oftentimes they will have to collect it by means of a process called “execution”, in which a non-complying defendant’s property is attached or seized and then sold or auctioned off in order to satisfy the plaintiff’s judgment.

One of the distinguishing features of litigation, which sets it apart from the other dispute resolution mechanisms covered in this thesis, is appeal for the non-prevailing party. Usually, a non-prevailing party may appeal their case to an appellate court, i.e., a higher court in terms of jurisdiction, and ask for a review. Commonly cited grounds for appeal include trial procedure errors, factual errors and errors in substantive law, but the scope of appellate review varies by jurisdiction.

Once a lawsuit is in pending status, the parties (or the *litigants* to be accurate) lose all control over their case immediately. By the end of the proceedings, the judge will issue a decision, a judgment or a decree which purports to resolve the dispute in compliance with the law—not the

personal interests and needs of the parties. Even if the dispute is resolved at the conclusion of the trial, the decision might be appealed to a higher court by either party, triggering a second trial and possibly even a second appeal thereafter. The judgment, even if and when it does become final, may not be voluntarily honoured and performed by the defeated party and may then need some further help with enforcement from the court, and thus the prevailing party might have to go through an execution proceeding to collect on their judgment or to compel performance on the part of the losing party. In the unfortunate event that the losing party is financially insolvent and cannot pay off any outstanding debt, then what the plaintiff has accomplished would be nothing but a hollow and illusory victory.

In sum, litigation is a necessary dispute resolution mechanism with a long tradition filled with glamour and awe, and it would be unthinkable to leave it out of any discussion of dispute and dispute resolution.

Chapter Five: The Four Dispute Resolution Mechanisms as Metaphors

5.1 Overview

Having gained a good understanding of the nature of the four dispute resolution mechanisms, we will scrutinize each one of them and find out which one makes the best match for translation, keeping in mind all their inherent properties and functions within the greater paradigm of dispute resolution as the phenomenon of the highest order.

The **Dispute Resolution Continuum** of dispute resolution processes (Section) based on the degree of interference, beginning with the least interfering, where one disputant resolves the dispute by keeping silent and doing nothing at all, all the way to the most interfering one where one or both parties invite a neutral third party to resolve the dispute for them by filing a lawsuit.

As I stated in my Objectives section (2.3), in light of dispute resolution theory focusing on dispute and dispute resolution in general, along with the four dispute resolution mechanisms that come under the same heading, we will now proceed with our task of finding out which of the four makes the best metaphor for translation.

5.2 Four Possible Roles of the Translator/Translation

5.2.1 Translator as the Negotiator/Translation as Negotiation

To begin with, just to show how important the mental quality of the translator is (metaphorically) in terms of the ability to negotiate, American journalist George Packer once stressed that concerning the gifts and skills that the interpreters brought on the table for Americans unfamiliar with Arab culture, in effect, each of the Arabic translators was, as it appeared to him, potentially a cultural advisor, an intelligence officer and a policy analyst—all three at the same time

(Sibirsky and Taylor 2010: 131). This remark somewhat reflects the description of the negotiator/mediator at the negotiating table, who, according to Ury, needs to stay on the alert for many cues when trying to apply what he termed as *principled negotiation*⁶⁰. Translation is widely believed to imply and necessitate negotiation, a concept that has expanded its domain, now moving beyond the worlds of trade and diplomacy and into the area of the exchange of ideas (Burke 2009: 9), and, as such, the TRANSLATION IS NEGOTIATION metaphor continues to enjoy prestigious status across the translation studies scholarship to this day.

In his book *Dire presque la même chose*, the semiotician and translation theorist Umberto Eco called the difficult choice between the terms *souris* and *rat* a process of negotiation:

Négocier: souris ou rat? – Il serait facile de dire que, dans un processus de traduction où il doit rendre le terme *mouse*, *souris*, *topo* ou *Maus*, le traducteur devrait choisir ce terme qui, dans sa langue, transporte le mieux le Contenu Nucléaire correspondant. [...] Un traducteur traduit des textes, et, après avoir clarifié le Contenu Nucléaire d'un terme, il peut décider, par fidélité aux intentions du texte, de négocier d'importantes violations d'un principe abstrait de littéralité. (emphasis mine) (Eco 2003 (1): 107)

Eco conceded that, in his view, the choice between foreignizing and domesticating is ultimately, a matter of careful negotiation, acknowledging that his translator William Weaver's⁶¹ translation solutions were simply the result of curious discussions with Eco's wife, who was originally from Germany (Eco 2003: 94).

Much as I agree with Eco that translation, by way of foreignizing, domesticating or otherwise, is sometimes a prolonged process of give-and-take. However, in my mind, he, perhaps out of innocent misunderstanding of the term *negotiation*, did not use it as William Ury would have, to say the least. It appears to me that, for him, as well as for many translation theorists, as long as

⁶⁰ As a reminder, the four pillars of principled negotiation, as presented by Ury, are the separation of people from the problem, focus on interests instead of positions, creation of options for mutual gain and adoption of objective criteria.

⁶¹ William Weaver is a contemporary leading Italian-to-English literary translator who was responsible for most of Umberto Eco's works' translations.

verbal dialogue and visible body language are involved, it must be negotiation, while little do they know that it can well be mediation, to say the least, if not arbitration or litigation, especially if the number of participants involved is taken into account. Furthermore, he also mentioned subsequently in his book *Mouse or Rat*:

In the preceding seven chapters, I have repeatedly spoken of negotiation. Translators must negotiate with the ghost of a distant author, with the disturbing presence of foreign text, with the phantom of the reader they are translating for. Translation is a negotiation to such an extent that translators must also negotiate with publishers, because a translation may be more or less domesticated or foreignised according to the context in which the book is published, or the age of its expected readers. (all emphases mine) (Eco 2003(b): 173)

Again, I believe that the misunderstanding of the definition of the key term *negotiation* led to his citation of it in the context of translation, which I find inappropriate. To go one step further, sometimes it appears to me as if it was actually communication that he was referring to when he was using the term *negotiation*, since by the term *communication*, we mean, as has been stated clearly at the beginning of this essay, any intentional exchange of idea conducted by at least two human beings—which is precisely what every participant in the translation cycle is devoted to. Alternatively, perhaps we can describe it another way, this time with reference to our schema slot of choice and decision making. When someone is calling the translation process a negotiation, then they are merely looking at translation in a two-dimensional prospect; the translator negotiates with the author, after which the translator would turn to the target reader and try to initiate a negotiation proceeding with them, bringing us a total of at least two ongoing negotiations. In other words, the translator would not have a three-dimensional prospect, with all three individuals cooperating and coordinating back and forth at the same time, and there could never be a simultaneous three-way or tridimensional dialogue among all three parties concerned in translation if it were understood as negotiation. Each party is their own negotiator and,

ultimately, their own choice and decision maker, whereas in translation, only the translator can possibly be the decision maker.

Intuitively, I thought that negotiation won its prestige among translation theorists for its one-of-a-kind communicative and discursive effects. Yet, after some scrutiny, I realized that perhaps there was another dimension—or “geometry”—to this claim. As Anthony Pym pointed out in his work *Negotiating the Frontier*:

There is also a general interest in the social forces that help configure intercultural space, forces such as the transfer of embodied value, changes in communication technologies, the movement of education practices and migrations of people. [...] all of them share the same geometry. In all cases, these studies configure a world where people move, [...] and capital, human bodies, technologies and prestige not only take place through the overlap of cultures, but also contribute to the fluctuating substance of interculturalities. This is indeed the conceptual geometry of frontier society. In a sense, the studies of things moving should help set the social sciences where negotiations can then take place (emphasis mine). (Pym 2000: 11)

Apparently, for Pym at least, negotiation is probably the only setting where translation can naturally take place for its interdisciplinary nature. To put it differently—and more bluntly too—what he is saying is probably that in a society where many activities, translation being one of them, compete for limited space and, as a result, become framed and defined in a similar way, and because the overlap of disciplines is inevitable, negotiation will probably be the best device to account for every social phenomenon and activity. In his account, essentially every social activity can and should be viewed as a negotiation, if the dispute resolution metaphor must come into play. Why are so many people, Pym being one of them, so tenacious about the metaphor of negotiation?

I believe that the reasons behind it must be manifold. To begin with, during a negotiation, which allows only the disputants as the legitimate parties, the negotiator, which both parties must take turns being, has to negotiate with their own interests in mind to be able to formulate an ultimate

solution that yields maximum benefit to both sides; otherwise, a seemingly one-sided offer will, almost without fail, be rejected by the other party. Next, during a negotiation proceeding, new information—favourable or unfavourable—may be discovered, and all subsequent exchanges may even be further complicated by predicting and conjecturing, often foolishly, how the other side would act and react. That being the case, even though, in my opinion, the translator can hardly be considered a negotiator in the real sense, it is my firm belief that negotiation skills—the know-how to bargaining and haggling—are a *sine qua non* qualification on the part of the translator and on the part of any dispute resolver.

No matter what dispute resolution mechanism we think translation resembles, everyone needs solid negotiation skills, even a judge, not to mention that inadequate negotiating skills may backfire and turn into sufficient grounds for a legal malpractice claim on top of the impossibility to resolve a dispute. At the same time, as we are aware, translators are often confronted with a dilemma that is difficult to resolve: should they be faithful to the source text (foreignizing) or should they strive to be intelligible to the target text reader (domesticating)? In the words of Schleiermacher, are translators supposed to bring the source text closer to the reader, who belongs to the target culture, or should they instead bring the reader closer to the text by signalling the foreignness to the reader? They are fundamental decisions to be made that deserve serious reflection, if they are to be made fairly and ethically. Therefore, in that sense, the translator could be a “negotiator” much like the mediator could double as a “negotiator”—a person who knows how to haggle, effectively talk to and convince people in a nice and kind way. As it follows, then, it would be natural for translation theorists to be inclined to think of translation as negotiation, with Pym commenting that translation and the training thereof are essentially a “negotiation of mistakes and errors”, with translators fully aware of their clients’

mode of thought, learning from past translation mistakes, and most importantly, learning how to establish one's authority as a translator by "exerting the right amount of pressure without telling too many lies" (Pym 1993: 131 et seq.). Judging from his remark, I think that Pym is concentrated on the communicative exchange aspect of translation—an intercultural activity which coincides with human exchange activities such as the migration of labor, the movement of capital and the international sale of goods and services.

Indeed, negotiation is a very useful and powerful skill that everyone should learn and master, and in terms of the schema slot bargaining skills and tactics, translation can go hand in hand with negotiation. I believe in what William Ury introduced in his bestseller *Getting Past No* as the breakthrough negotiation strategy in its utmost form: the destruction of your adversary by making them your partner in the course of problem-solving negotiation (Ury 1991: 146).⁶² As a matter of fact, everyone, including arbitrators, judges and mediators—and even, in our case, translators—and not just negotiators, should always remember that it is in their power to transform—and conclude—the most difficult negotiations, and all disputes and conflicts are potentially resolvable, as there will always be a way out. We must understand that resolving a conflict collaboratively should be made a way of life, but it simply does not happen overnight; it requires compassion, courage and some perseverance. Negotiation, in its most primitive form, is a skill required for all forms of dispute resolution, and since the translator is constantly dealing with seemingly unsolvable translation issues, the translatability issue being one of the dominant ones, the translator's job requires a skill that happens to, in a way, coincide with that of the negotiator's task. That is how the translation process, during which time the translator is expected to negotiate with both cultures with passion and compassion singlehandedly and on an

⁶² I have made a minor change here; in the original text, which was published in 1991, it is the word *him* that was used for the personal pronoun, but here I would like to use *them* instead in accordance with political correctness.

individual basis, is to work, no matter which metaphor prevails. Thus, in that sense, I could provisionally accept the precarious view that translation is negotiation—though with strong reservations. As it stands now, I would like to stress here that much as sophisticated negotiation skills should be appreciated, yet in a genuine negotiation proceeding, there can only be the disputing parties and no one else, and such a frame will leave absolutely no room at all for the translator, who is supposed to serve as the third-party neutral. Once again, translation, unfortunately, does not fit into the definition of negotiation for the aforementioned reasons, but it should nonetheless be noted that in no way am I withdrawing my belief that negotiation skills—skills that urge people to understand other people’s emotions and treat them with respect, as presented by Fisher and Ury (Fisher and Ury: 1991 190)—should be required of every translator and dispute resolver.

Finally, as a brief and concise summary, in terms of the schema slot of power, of course, the parties to a negotiation hold on to their power, which contradicts the scenario of translation, and in regard to the schema slot of ethics, since negotiation is a very informal and unofficial process, the ethics involved are mostly general ones such as courtesy, prohibition of threat and violence, which are mostly day-to-day ethics.

5.2.2 Translator as the Mediator/Translation as Mediation

Our second possible role for the translator is the mediator. Indeed, the idea of mediation itself conjures up a picturesque image of resolving disputes through friendly and peaceful dialogue, which adds an extra shade of humanitarianism to the practice of translation. That being the case, we will now examine it more closely to find out if this widely accepted metaphor lives up to its reputation.

In terms of definition, mediation, again, is essentially negotiation carried out with the assistance of a third-party neutral who is retained to facilitate dialogue between the parties (Frey 2003: 147), and, as has been noted previously, mediation can be considered extended negotiation, thereby making it similar to negotiation in terms of bargaining tactics and skills, one of our schema slots. Mediation is, thus, a consensual process, as it requires explicit consent and cooperation of both parties. The parties retain most of their power, with which they can terminate the process or replace the mediator at any time (*vide* **Dispute Resolution Table**). In that sense, then, if translation is metaphorized as mediation, the target culture and the source cultures, which are allegedly in a dispute, are supposed to retain most of their power, without having to concede it to the translator. In this sense, translation can be viewed as mediation. To put that in real terms, in regard to the schema power, the two cultures have the power to replace or dismiss the translator at any time, or even terminate the translation process altogether, should they find the translator's duty performance unsatisfactory. Is that the case in reality? Are the cultures ever really empowered to terminate the mediation-translation process altogether? That is, in fact, usually not the case, and maybe even the editor hired by the publisher, an integral participant of the paratext, sometimes have more leverage in terminating the translation process than the two cultures concerned. However, that is not why I am rejecting TRANSLATION IS MEDIATION.

My reservation has more to do with the extent to which the translator, as a reader of a text, is not restricted by what they are reading and is allowed to paint and color the text with their own "brush of ideas"—thereby bringing us to the schema slot of decision making. In principle, then, the translator, who is not supposed to choose what text to read, should be situated in the center of the process, acting as an intermediate who may have their own reading of the text which may then be expressed in their own words in another human language. If we take that at face value,

then it means that the translator is seen as nothing more than a “broker” who is focusing on the cognitive dimension of the rendering of a text without claiming membership in either culture. In fact, the translator is never merely a person trying to eliminate differences and healing divisions, and all translations entail some manipulation of the source text for a certain purpose to varying degrees (Snell-Hornby 1998: 23), which will seriously undermine the claim of translation as mediation. To make matters worse, the fact that the translator usually chooses which texts to read and translate will probably further put this claim in jeopardy. Nevertheless, the position occupied by the translator still seems to form the basis of the rationale for most scholars who insist that translation is mediation, calling the translator’s position the “third space”. Another focal point cited by theorists is the subject of mediation in regard to translatability; after all, the translator is located at the epicenter of the interface between the two cultures. Snell-Hornby has, time and again, commented that the translatability of a text depends largely on how embedded the text is in its own specific culture, and also how far apart, both temporally and spatially, the background of the source culture and that of the target text recipient are from each other (Snell-Hornby 1988: 41). Hence, in that sense, the translator seems to be a mediator who is trying to change something hard to change, directing the parties towards a mutually acceptable agreement.

Before we draw our conclusion as to whether the translator is a mediator, or deserves to be called one, let’s first find out who the two parties are, or whose “conflict” or “dispute” the translator is trying to resolve as a third-party neutral. After all, the relationship between the translator and the author is a very unique one, for it could either be “as intimate as a marriage” or “as perfunctory as an emailed ‘c.c.’” (Wilson 2009: 63). In fact, the relationship as featured in translation is rather unidirectional, instigated and fragmented; it is unidirectional in the sense that not every author will have the chance to read and understand the translator’s work in its entirety, and fewer

still are even capable of judging the quality of the translation; it is instigated in the sense that it is usually not the cultures—but the translator—initiating the translation process, and it is fragmented in the sense that not all three parties would be working collaboratively on an equal footing with the same agenda. Since it is problematic to picture the target culture and the source culture agreeing to the mediation voluntarily and engaging in repeated back-and-forth exchange and haggling through the translator, it would be somewhat difficult to consider translation mediation in the dispute resolution sense.

The most fundamental—and fatal—counterargument of all concerns voluntariness and freewill. After all, mediation should be agreed to by the parties even if the idea was first proposed by someone else, and the parties themselves are not expected to cede any of their power to the mediator. That, however, is not necessarily the case with translation. While in some cases, the target audience is hoping for a translated version of a foreign text, translators sometimes translate texts that were never expected by, much less known to, the target audience—sometimes even against their wishes. Put another way, while translation never occurs in a vacuum, it does not always occur out of bilateral freewill either; it sometimes happens unilaterally or even initiated by the translator out of curiosity or intention to make a profit without the two cultures' consent. Also, what texts are translated and what texts never are has, for the most part, more to do with market supply and demand forces, as well as the cost and benefit structure and power dynamics prevalent in the particular locale, which the cultures are rarely a part of. Moreover, in yet some other cases, it is an outsider, a fourth party such as an editor, a publisher or a government agency, that invites or encourages the translator to translate something that neither the target audience nor the author has ever wanted translated. Further, there have been cases where it is the translator who wanted to translate something out of their own personal interest in pursuit of their own

hidden agenda. Last but not least, regardless of the motive to translate, the translator must eventually come up with a decision as to how to render the source text into the target text, and that decision is mostly arbitrary and personal, however motivated it may be at the same time, and happens to be the key “deal breaker” to the hypothesis of translation as mediation, for mediators should never be authorized to impose anything on either party.

Alternatively, perhaps we can approach this hypothesis another way. In the dispute resolution sector, what types of cases is mediation relatively suited for? While there is no sure-fire rule to it, there have been several criteria developed by ADR experts over the years to that effect, and they include, among others, the parties’ willingness to settle the case, the ongoing and future long-term relationship between the disputants, the nature of the dispute itself, the uncertainty of a judicial outcome and the need for privacy (Nolan-Haley 1992: 115). So does a dispute between two cultures that necessitates translation qualify for mediation if seen in this light? First of all, the parties may not perceive any dispute at all, and many text types (such as legal texts and religious texts, along with EU food labels) require publicity, and the unpredictable nature of the final outcome of the translation decision should be of no concern to the parties. Therefore, since translation has failed each one of those litmus tests of the metaphor’s appropriateness, translation does not qualify as mediation.

Then comes the issue of ethics—another schema slot. The reader of the target text readily trusts the translator, even though they may be aware that, most likely, he/she is not getting the “whole deal”, as there will almost always be some change and deviation, deliberate or incidental, by the translator for political, rhetorical or ideological reasons, as indicated earlier. The parties having entrusted the mediator with their dispute, there will be a set of ethics that the mediator should observe. A competent mediator should make every effort to help the parties reach agreement by

facilitating dialogue in a robust atmosphere between them in an ethical and professional way, meaning that they must always abide by rules, written or unwritten. Otherwise the translator will ultimately aggravate the distrust between the cultures. I believe that, first and foremost, ethics is important, and it is even more important in mediation, where the parties and the mediator are supposed to be honest and sincere to one another, and, as a result, any breach of trust or honor would constitute a transgression in its utmost form. However, if we are aware that there will always be some anticipated change, if not distortion, because of some conduct on the part of the translator and often without the knowledge of either party, then as far as ethics is concerned, translation does not deserve to be considered mediation, since in real-life mediation, the agenda of the mediator should be aligned with that of the parties, and it is the parties that should have the final say on everything. That, apparently, is not the case with translation.

Indeed, the mediator is morally duty bound to identify—and soften—the disparity between cultures, but, according to some academics, there is another sense in which translators are considered mediators; in a way, they are ‘privileged readers’ of the source text in that, unlike the grassroots text reader, the translator reads in order to produce, and decodes in order to re-encode (Hatim and Mason 1990: 224). As a consequence, the processing of the incoming text by the translator must be thorough, probably even more deliberate than that by the ordinary reader, and, at the same time, the rendering of the source text into the target language must be complete, honest, fair and equivalent⁶³; if it is not, then the cultures concerned must be advised of it. Yet in real life, is that really the case? Probably not, but in any case, being widely accepted as it is, the claim that the translator is the mediator of cultures and ideas seems to go perfectly hand in hand

⁶³ By the word *equivalent* I simply intend to refer to the connection or interconnection between the source text and the target text, with no implications whatsoever on the equivalence theory as featured in the translation studies circle.

with the current mainstream tenets in translation studies, with scholars insisting that the built-in motivation or orientation on the part of the translator may be seen in terms of degrees of mediation; i.e., the extent to which translators intervene in the transfer process, feeding their own knowledge and beliefs into their own processing of a text (Hatim and Mason 1997: 147).

However, little did they know that it is precisely this aspect of mediation, on which the parallel between translation and mediation is based, that I have some serious reservations about. For one thing, in a real-life mediation proceeding, either between two quarrelling individuals or two belligerent nations, the mediator is not supposed to “intervene” at all; instead, the mediator is only allowed to “step in” and “provide assistance” and guide them through the process—at the request of the parties; and even if one considers “stepping in”, “getting involved” and “providing assistance” a form of intervention, still, the mediator is not supposed to push the proceeding “into the right direction” by imposing their own preference, interest, beliefs or ideology on either party—it should always be the parties themselves who are to cut the final deal.

Despite the common impression of it as a “primitive” dispute resolution mechanism probably used only in “primitive” societies, mediation remains one of the most pervasive forms of dispute resolution even to this day with little sign of diminishing—and with good reason. , Mediation is relatively informal and with flexible rules compared to arbitration and is, thus, highly recommended for disputants with a high degree of shared values and experiences, and that is why it still plays an important part in present-day commerce and trade circles (Adams and Brownsword 1999: 169). On balance, mediation makes a good metaphor for translation in the sense that it generates a beautiful image of peace and tranquility for the dispute resolution process, but, despite my preference to side with public opinion, I am afraid I have to reject it for its failure to fit into our metaphor schema.

5.2.3 Translator as the Arbitrator/Translation as Arbitration

Now we are entering a relatively untouched terrain, where the translator is likened to an arbitrator. Hardly anyone in translation studies, in law or in sociology has attempted to call the translator the arbitrator. So far, the only place in translation studies where I have encountered any vague reference to arbitration was in the work *The Translator as Mediator of Cultures*, and nothing beyond that.

In truth, the South African situation, with its processes of linguistic inclusion and exclusion, is a microcosm of the worldwide linguistic context. Increasingly, translators seem to be the guardians and arbiters⁶⁴ of many of these linguistic interactions—essential figures in the preservation of multilingualism, and also (as Venuti 1995 describes them) the invisible conveyors of cultural values from language to language. (emphasis mine)

(Tonkin and Frank 2010: ix)

That is probably how close translation studies have come to espousing the idea of arbitration, however subtly. Nevertheless, the author seems to be using the term *arbiter*⁶⁵ in a slightly different way than the term *arbitrator* would be used in a legal context, and as far as metaphors on translation are concerned, translation as arbitration does not seem to be something that sits well with theorists. That is, in fact, a shame, for not only would it leave a gap in our wider picture of translation as dispute resolution, it would also blur the line between arbitration and mediation. As far as our schema slot power is concerned and with legal terminology aside, the metaphor of TRANSLATOR AS THE ARBITRATOR has at its core the power vested in the arbitrator, as is intrinsic in the translator. An arbitration proceeding must, by definition, be swift, relatively

⁶⁴ This is based on the assumption that *arbiter* and *arbitrator* mean the same thing, despite the fact that in the legal world at least, *arbitrator* seems to be the only correct word of the day, whereas the term *arbiter*, while not totally unrecognizable, has long been deemed archaic and outdated.

⁶⁵ I fully understand that some people do not think these two terms are the same thing, which they might not be. However, please note that what I am saying here is that the term *arbiter* is probably the closest one can get to arbitration throughout the realm of translation studies literature.

inexpensive, binding and confidential, and also partially tailored to the parties' wishes, and therefore power for the arbitrator is a *sine qua non*. Moreover, as was emphasized earlier, arbitration is the dispute resolution mechanism preferred in many sectors (the construction industry in particular) for many types of business deals (employment contracts being a notable example) precisely for these qualities. This means that arbitration should not be ruled out as a candidate for our source domain. In addition, the use of arbitration has even expanded into some hybrid mechanisms such as Med-Arb and adjudication.

So if arbitration is one of the major dispute resolution mechanisms, and if translation theorists have been turning to dispute resolution mechanisms such as negotiation and mediation for their metaphors, why exactly is it, then, that hardly anyone in academia has given arbitration any thought? That is one of the most puzzling questions for me, and, in my humble opinion, there may be several possible answers. The most fundamental one might be that translation theorists might not have had adequate knowledge of dispute resolution as a stand-alone subject and, etymologically speaking, the connotations that the term *arbitration* may have. Despite my reservations for the metaphor of translation as arbitration, I still believe that this option should be examined closely before being rejected, since our metaphor on the nature of translation through dispute resolution will be far from complete without this phase of critical dialectic thinking.

Now we will examine the schema slot of decision and choice making. However, the key problem with arbitration is that the arbitrator's decision, i.e., the arbitral award, is, with few exceptions, final and non-appealable, leaving little recourse to the parties. That, presumably, is not something we would like to make of translation. After all, while translators should be granted the power to read, understand, interpret and then re-write, re-express and transform things in a different language, no one would go as far as to claim that any one translator's decision should

be final and not subject to appeal or review. As a matter of fact, quite to the contrary, re-translation does happen in the translation industry, and in many cases, more than once (How many translated versions of the Bible are there? And Agatha Christie's mysteries translated, adapted and made into films?). Since readers are expected to come into contact with anything they read with the worst premonition, anyone who, in their judgment, believes that the translator handled something improperly should at least be entitled to raise doubts about the translation. I believe that all translations, as with all decisions in life that may have an impact on other people, should be afforded at least one review, and that is why I am of the opinion that the metaphor of TRANSLATION IS ARBITRATION should be rejected, but not until it has been fully scrutinized.

In terms of the schema slot ethics, since most if not all arbitration proceedings are administered by organizations such as the American Arbitration Association (AAA) and CIArb (Chartered Institute of Arbitrators), which have official guidelines and protocols prescribed to them by law, arbitration is subject to one of the highest ethical standards. That coincides with translation in that translators who are licensed and unionized are subject to their respective association's guidelines, and moreover, all translators need to consult established and accepted rendering of terms as published by term banks such as IATE and TermiumPlus, most of which are sanctioned by government bodies and agencies.

Before my closing of this subchapter, I would like to make special note to my readers as to why I had to introduce arbitration as a possible candidate only to reject it as a source domain for our metaphor in the end. Have I not made an unnecessary detour? Absolutely not; I consider it a necessary boost for an inadequate discussion for two main reasons. For one, in order for us to understand the true nature of translation, which is metaphorically dispute resolution, it is imperative that we have an accurate and complete description of dispute resolution in general,

and, thus the true nature of each one of the predominant dispute resolution mechanisms, arbitration being one of them, must be determined; for another, the metaphorization of arbitration will help conclude a flawless dialectic of our metaphors by providing extra insights, and no metaphor of translation on dispute resolution as a whole or on any individual dispute resolution mechanism will ever be complete without some reference to arbitration.

5.2.4 Translator as the Judge/Translation as Litigation

Finally, TRANSLATION IS LITIGATION will be our last metaphor candidate. Before we go into details, there are a few things that I need to clarify in order to proceed. Litigation, along with arbitration, has left few footprints in the methodological approach to metaphors and translation across the translation studies circle, and I can imagine my readers resisting the idea, only more so here than in the previous paragraph. Because I totally understand that few would take any pleasure in a lawsuit, either as a witness or as a party, linking translation and litigation will be met with resistance, if not also disdain and ridicule. That is something regrettable but not totally unexpected, given the possible issue of etymology on top of the system-wide unfamiliarity with dispute resolution theory, as with the case of arbitration presented in the previous subchapter.

First of all, let us examine the schema slot of choice and decision making. Common belief aside, I believe that the title and position of the judge would do the translator perfect justice, since, as mentioned previously, in the course of their duties, the translator is constantly confronted with choices, on which they are expected to make decisions that come with considerable binding force on both cultures. This is extremely similar to what judges and arbitrators face. What separates litigation from arbitration, insomuch as is relevant to our metaphor, is the possibility of an

appeal/review. In a lawsuit, the judge's decision, with few exceptions⁶⁶, can be appealed to a higher court without the need to cite any particular reason, while in arbitration, the arbitral award is, with even fewer exceptions, final in that neither party will be able to refer the same case to another arbitration tribunal or a court. To put that in perspective for our metaphor, in the translation industry, texts are translated and then re-translated, sometimes even more than once, indicating that no one translator's judgement call should ever be considered final. All things considered, I think that this is the correct approach to take.

Some translators retranslate their own texts that have been either self-translated or translated by someone else just to verify the accuracy and inner coherence thereof by giving themselves a chance to review or criticize their own thinking. More to the point, retranslation becomes a two-way process; it is a forward-moving movement, cumulating different viewpoints, which is, at the same time, constantly contradicted and complemented by retranslation as a backward-moving motion (Finger, Guldin and Bernardo 2010: 50). Furthermore, in every jurisdiction and especially at common law, a judge enjoys near-absolute immunity from action in the course of the execution of their judicial functions. In fact, this is one of the few protections for the judiciary designed for the sake of judicial independence. Coming back to our metaphor, even if a text is retranslated, it is as if a case is reopened by another "judge", who decides to vacate the first translation, the judge-translator in the old case, whose work was overturned or reversed, should nonetheless be indemnified, i.e., exempted from any further legal liability—which is exactly what happens in the legal context. The clever reader who happens to be skeptical of my view might want to argue that re-translation usually happens not just once but repeatedly—again,

⁶⁶ One of the most notable exceptions is a decision rendered by a judge with limited jurisdiction, such as one in a small claims court. Judges in such cases are given jurisdiction to rule on cases up to a certain monetary amount, and their decisions and findings are generally final.

again and again, while, in the case of litigation, once the judge hands down a decision, there will always be a limited number of appeals that apply before that decision becomes forever final. True, in almost every jurisdiction, there will always be a limited number of appeals as a general rule, but an exceptional review will always be granted in exceptional cases under the most extreme circumstances (such as a case of belated discovery of substantial evidence). Hence, regarding the case of multiple re-translations, we could, for the moment, perhaps envision it as an example of a court case going through multiple appeals, being reversed and/or remanded repeatedly because of some extreme circumstances. In fact, as supporting information, in some states in the USA, some capital offence cases (some involving DNA evidence) have been remanded and reviewed multiple times while the defendant sits earnestly—or hopelessly—on death row.⁶⁷ Moreover, under some extreme circumstances, some court cases are in fact reopened for review for more than the regular number of times allowed (e.g., a contract concluded a few moments before a war broke out prescribing delivery or performance sometime during the war). Moreover, some criminal cases (notably those involving Nazi war crimes) are not subject to any statutory limitations, terminologically known as prescriptions, and a new trial may be ordered at any time. One can see, then, that, counterintuitive as it may seem, not all legal cases are always final; or, cases are final only in a relative—not absolute—sense.

In terms of power, the translator and the judge are comparable. The parties may have little power over their lawsuit itself, and the judge may hand down a powerful decision. But, fortunately, the shoe does not pinch too hard; the parties have the power to appeal the judge's decision, which is something comparable to retranslation in the context of translation. Furthermore, in terms of bargaining skills and tactics, it should be fairly obvious that during a legal action, the parties and

⁶⁷ For complete statistics, please visit the website of the Department of Justice at <http://bjs.ojp.usdoj.gov/content/glance/tables/drracetab.cfm>

their attorneys must go through repeated bargaining and haggling—between themselves and sometimes with the judge, which requires the need for special skills and tactics on the part of the lawyers. Similarly, the translator is, by means of their skills and tactics, in constant need of bargaining with all parties concerned—a cue that bears resemblance to the judge—though they may have to do this in a more subtle and *metaphorical* manner.

Perhaps one challenge to this metaphor of TRANSLATION IS LITIGATION concerns the freedom enjoyed by the translator. Some may want to claim that the translator, subject to various internal and external constraints and restrictions, is given little latitude and never truly “free” in their line of work. It is no news that the translator is compelled to translate in a certain way because their supervisor or client or whoever is hiring them wants it a certain way or because it is the only way to be published, but we should not jump to the conclusion that the translator does not live up to the true image of a judge. In reality, does the translator cease to become a (metaphorical) judge simply because they were subject to outside pressure against their wishes? I believe that the answer should be an uncompromisingly negative one, since, even a judge, or any dispute resolver for that matter, is sometimes swayed or even compelled to render a decision, either socially, psychologically, or, at times, politically. Who honestly believes that a judge or mediator will always be free to do whatever they wish?

Indeed, there have always been remarks made about judges in countries where there was, as the saying goes, no free press and no freedom of expression, as those in the former Soviet Union (Friedman 1984: 81), however biased it may have been. The way I see it, though, even a judge from a single-party state and living in repressive times is no less of a judge than one from a land where everyone is supposedly “free” and allowed to make choices for themselves, for a judge is expected, and sometimes even compelled, to act and perform in a certain way at a given time and

place in history, no different than any other social being in any capacity. Are we already forgetting about the sociological turn of translation studies? It is simply a matter of socialization in a socialized context—plain and simple. Besides, who would possibly dare to make the naïve claim that judges are completely independent of partisan politics and that there are no corrupt judges at all here in Canada? True, in order to decide cases impartially, judges are afforded a great amount of judicial independence of the legislative branch and the executive branch in many countries, in addition to their security of office (or tenure) (Doolan 2003: 41). That being the case, and despite my subscription to the philosophical school of thought of free will instead of determinism, however, to my astonishment, inappropriate attempts to unduly influence a judge are by no means unheard-of in Canada, and some judges have, regrettably, had to give in. As a case in point, in 1976, it was revealed in the press that three cabinet ministers, including Indian Affairs Minister, of the administration of Jean Chrétien, had either made telephone calls to judges or had visited them privately in an attempt to influence the outcome or the timing of their judicial decisions, and this is but one shocking example of a direct and ruthless violation of judicial independence (Greene 2006: 77). And that is not all; indirect and covert breaches of judicial independence are even more rampant, usually involving actions that are calculated to encourage a group of judges to decide certain types of cases in a particular way (Greene 2006: 77). These actions might take the form of salary reductions, and, unbelievably, retaliations were not uncommon in England before the 18th century (Greene 2006: 77). Another survey revealed that as many as 101 of Canada's 125 appellate court judges—a good two thirds of them—thought that there had been serious threats, including but not limited to unwarranted pressure from special interest groups, being posed against judicial independence (Greene 2006: 78). In the wake of these jaw-dropping and shameful stories, would we consider any of those judges

involved any less of a judge? And would anyone even doubt the integrity of our judicial system even for a minute? I think not. As if that was not convincing enough, perhaps we can take a look at the USA now. While our instincts tell us that a person's personality depend heavily on their upbringing and surroundings, and, at the same time, judicial behaviour has been studied systematically by scholars for many years, and yet, no one has been able to provide a conclusive and rigorous answer to questions like these: Does it matter if a judge is a Republican or a Democrat? Whether they are religiously Catholic or Jew? Whether they came from a wealthy or impoverished family? Worse yet, many scholars suspect that judges are prejudiced against minorities—racial, ethnic, linguistic, religious and/or economic ones—and they could very well be right, except that there is very little hard evidence to conclusively prove it due to inherent problems with data collection and the large amount of intertwined and confounding statistical variables involved (Friedman 1984: 82). As it stands, the idea of justice and the perfect rule of law are both nothing but lofty philosophical ideals, and it will probably never be fully attainable, and ditto for the concept of the “impartial tribunal” (Waddams 1997: 8); all of that is but a myth to be debunked.

Also, judges do make policy, however indirectly, and as legal philosophy professor Lawrence Friedman pointed out, a realist judge should, instead of pretending threats and hazards do not exist, be a judge who acknowledges both internal and external pressures— and is aware of the way they affect his work (Friedman 1984: 86). I think that he made a good point, and as long as judges are aware of those hard facts and understand how to work around them, things will go smoothly. However, as the popular saying goes: “Easier said than done”, since ideology, something always lurking in the shadow, has long crept into the judiciary, and, by inference, into the law as a whole, giving itself an unearned name. As legal anthropologist Susan Philips

conceded in her book *Ideology in the Language of Judges*, judges are often compelled to submit to ideological conflict, which is often disguised in the course of the everyday non-legal discussion of courtroom control such that it would be a mistake to think of judges as non-ideological or as mere implementers of law made by others (Philips 1998: 122-123). Former United States Supreme Court Justice William J. Brennan, Jr. once introduced the “principle” by the name of the “Rule of Five”, arguing that one can do anything they want at the Supreme Court, as long as they have five votes on their side (Garbus 2002: 283). Moreover, sadly enough, those five votes today, more than ever before, are based more on partisan politics and less on legal reasoning, and since the court’s composition is determined by politicians in an increasingly polarized society, there is hardly anything that is free of politics (Garbus 2002: 283). Thus, judges will always be subjected to a number of forces, external or internal, implicit or explicit.

In terms of decision and choice making, it is quite obvious that the translator and the judge both make choices and decisions. Having sketched the political and social backdrop of a judge’s task and coming back to our metaphor of TRANSLATION IS LITIGATION, I would now approach this metaphor in a slightly different way. A translator who is deferential to their sponsor or whoever is paying them may be in no position to make many translation choices, and they may, thus, often find themselves having to yield to their sponsors’ orders or risk losing their job. In this case, do we still consider the translator a judge? Yes, of course! They might not be the most creative and intrepid translator, but they are nonetheless a translator—and a judge—through and through, for the same reasons that a corrupt and coerced judge is no less of a (judicial) judge. Similarly, if a corrupt judge, arbitrator or even a mediator, who has accepted bribe from one of the parties and is thus inclined to rule for that party, then would we consider them any less of a judge, mediator or arbitrator? What if the judge was under duress or threatened psychologically

or physically to hand down a very inequitable and unfair judgment, but decided to remain silent about it out of personal safety concerns? In each of these cases, would one ever consider the judge or arbitrator any less of a judge or arbitrator? The answer should be a negative one.

Therefore, I do not hold that just because there might have been an “invisible hand”⁶⁸ involved— whoever or whatever is allegedly exerting undue influence on the judge’s reasoning and ruling, my stance on my metaphor will change. If the translator were nothing but a puppet who is having its strings pulled by someone, then whoever is behind it (be it the sponsor or the employer) would have never had to do it through an incarnation or the invisible hand, and could well have done it hands down themselves. And why did they not? The reason is very obvious; they had to do it through a translator in order to make everything look appropriate for a *translation*, thereby sparing themselves the notorious title of dictator or intruder, and until the “dictator” is willing to step forward and show their true colors, there will be a *raison d’être* for the translator. Logically speaking, a corrupt mediator is still a mediator, and an incompetent judge is no less of a judge, and, naturally, an unfit translator who has done an undesirable job translating a text is no less of a translator. Therefore, I am holding firmly to my position that the sheer fact that many translators are “forced” to translate in a certain way by others or for others, most of whom are involved in the paratext, has little bearing on our metaphor as laid out herein, and the metaphor TRANSLATION AS LITIGATION still holds as true as ever.

In spite of the unrealistic and utopian ideals of absolute fairness and justice, the judicial system does have some unique qualities that will complete the schema for my metaphor of TRANSLATION IS LITIGATION. In terms of ethics, it goes without saying that the judge must

⁶⁸ The *invisible hand* is a term widely used in economics to justify free market under capitalism. It was first introduced by the British economist Adam Smith, but I am using it *metaphorically* here.

follow the law whether they agree with it or not, as does the translator, who must follow established guidelines and specific renderings for particular terms. Specifically, it is our endeavour for institutional fairness and impartiality by requiring that similar cases be decided alike, a.k.a. *stare decisis*, which is something that I, as a believer of TRANSLATION IS LITIGATION, am giving my rapt attention to. In light of the principle of *stare decisis*, which is meant to regulate a judge's legal reasoning in deciding cases, as far as translation and translation theory are concerned, I believe that, in practice, what the translator does is exactly what a judge does, following either black letter law⁶⁹ or the *ratio decidendi* of a precedent, in the sense that the translator needs to follow ongoing, widely accepted rules and norms of their time, and sometimes even word renderings provided by term banks, not just from a sociological perspective, but also from an ideological and economic perspective, just as a judge hearing a case needs to yield to, subtly or expressly, the current social norms and decorum of the day, as well as public opinion, public policy and their own deep-rooted beliefs, all of which must have been part or all of their upbringing. Indeed, under true determinism, everything human beings do stems from factors beyond their control, and human actions do not arise out of free choice, but, instead, out of the individual's genetic blueprint and/or all incidents of social shaping and conditionings (Teichman and Evans 1995: 37). Therefore, as a result, the iron law of causation suggests that, in a sense, the future is already predetermined and cannot be altered, meaning that regardless of what we consider the translator to be, the translator will never have true freedom, and, thus, it should not be used against my argument that the translator is a judge.

⁶⁹ The term *black letter law* refers loosely to the conglomerate of legal principles and doctrines that are known to everyone and free from doubt and ambiguity. One notable example of it is that there should be a legal age of majority in every jurisdiction.

How would the schema be completely fulfilled for our metaphor? We will start with the qualifications of a judge. While there has been much debate around how user-friendly courts should make themselves, judges do need systematic legal training that is usually rigorous and taxing at the same time, and their appointment is approved by the judiciary (and in some cases, by the electorate via an election), and, as a result, they are often considered the “ultimate goalkeeper of justice”. Because of expectations regarding the constructive role they play, judges are urged to act, think and speak in a certain way that is not expected of a dispute resolver such as arbitrators and mediators, and many of them do actually adjust themselves to live up to the general public’s expectations of their professionalism. That is probably why some judges try to become linguists or “language purists”, always being overly cautious to wordings such as *can* and *may* and *and* and *or* (Solan 1993: 63). As former judge and legal language expert Lawrence Solan writes, it is an indisputable fact that judges do endeavor to act fair and square when deciding cases under pressure and to write persuasively within the boundaries of valid legal argumentation, and a considerable proportion of the criticism of the current judicial institution as a whole could probably be attributed to the desperate responses of our courts to a multitude of laws and statutes (Solan 1993: 63). Thus, in terms of training, mental quality, upbringing, integrity, professional ethics and professionalism, the judge and the translator are not vastly different occupations after all!

5.3 Matches and Mismatches of the Four Roles

Having reviewed dispute resolution theory and all four possible roles of the translator, we will now run a concluding concise summary of each of the four dispute resolution mechanisms, starting with the metaphor of TRANSLATION IS NEGOTIATION. At this moment, I would like to

introduce a refined version of my **Dispute Resolution Table** from Section 4.1, this time with the addition of translation alongside the four current dispute resolution mechanisms in order to highlight the parallels and the differences.

5.3.1 The Dispute Resolution Table (Updated)

	Who selects the process? Flexible?	Who selects the rules?	Who are the participants?	Voluntary and consensual?	Is there a third-party neutral involved?	Who selects the third party?
Schema Slot	Power	Power	N/A	Power	Power and Ethics	Power
Negotiation	The parties themselves Flexible	The Parties	The parties (2 participants)	Yes	No	N/A
Mediation	The parties. Flexible	The Parties	The parties and a mediator (3 participants)	Yes	Yes	The parties
Arbitration	The parties. Not as flexible.	The parties, or if they do not want to, the arbitration service or the arbitrator	The parties, their attorneys and arbitrator	Yes, unless stipulated by law as in labour disputes	Yes	Usually the parties
Litigation	The aggrieved party. Rigid	Applicable procedural rules (legal)	The parties, their attorneys, trial judge	No	Yes	Court with jurisdiction

Translation	The translator. Flexible.	The translator	The two cultures and the translator	Sometimes	Yes	Anybody
--------------------	----------------------------------	----------------	-------------------------------------	-----------	-----	---------

	Formal or informal?	Private or Open/public	Who decides outcome?	What gets resolved?	Title of outcome	On what is outcome based?
Schema Slot	Power	N/A	Choice-making and Power	Choice-making	N/A	Choice-making
Negotiation	Informal	Private	The parties themselves	Parties' interests and needs	Agreement (contract)	Non-legal
Mediation	Informal	Private	The parties themselves	Parties' interests and needs	Agreement (contract)	Non-legal
Arbitration	More formal	Private	Arbitrator(s)	Issues of law and issues of fact	Arbitral Award	Law and rules of the venue and/or as they are understood by the arbitrator; not always based on law
Litigation	Most formal	Public	Judge	Factual issues and legal	Judgment or decree	The law

				issues		
Translation	Formal or informal	Public	Translator	All issues	Translated work	All laws, rules and norms applicable

	An outcome guaranteed?	Is outcome binding?	Is Solution Creative?	Speed	Appeal available? Is outcome reversible?
Schema Slot	Power and Choice-making	Ethics and Power	Bargaining Skills	Power	Decision-making
Negotiation	No	Non-binding	Yes	At the parties' disposal	Yes
Mediation	No	Non-binding	Yes	At the parties' disposal	Yes
Arbitration	Yes	Binding	Less creative	Swift	Extremely limited
Litigation	Yes, but may be appealed	Binding	Not at all	Slow	Yes, but subject to jurisdictional rules
(Translation)	Yes	Depends on the text and context	Yes	Sometimes	Yes

	What are the Ethics?	Expertise on the part of resolver required?	Is it possible to hold the neutral liable?	Overall Costs High or low?	What impact on future relationship?

Schema Slot	Ethics	Bargaining skills	Ethics and Power	N/A	Choice-making
Negotiation	In good faith	N/A	N/A	Very Low	Positive
Mediation	Confidentiality	Usually no	Yes	Low	Positive
Arbitration	Power imbalance likely	Usually yes	Yes	High	Usually Negative
Litigation	Safeguarded by legal rules	Usually no	No	High	Negative
Translation	Theoretical guidelines on ethics	Sometimes	Sometimes	It all depends	It depends

	Any precedential value in the outcome?	Power for parties to terminate the process?	Risk of non-performance of ruling?	Default ruling possible?	Information disclosed beforehand?
Schema Slot	Choice-making	Power	Ethics	Decision-making	Ethics
Negotiation	No	Yes	Low	N/A	N/A
Mediation	No	Yes	Low	No	No
Arbitration	Little	No	Higher	Yes	Usually, no, but depends on parties' agreement
Litigation	Yes	Sometimes	Higher	Yes	Yes, through discovery
Translation	Some	Sometimes	High	Yes	Yes

	Counterclaim possible?	Private caucus permitted?
Schema Slot	Bargaining Skills	Bargaining Skills
Negotiation	N/A	N/A
Mediation	N/A	Yes
Arbitration	Yes	No
Litigation	Yes	No
Translation	Yes	Probably

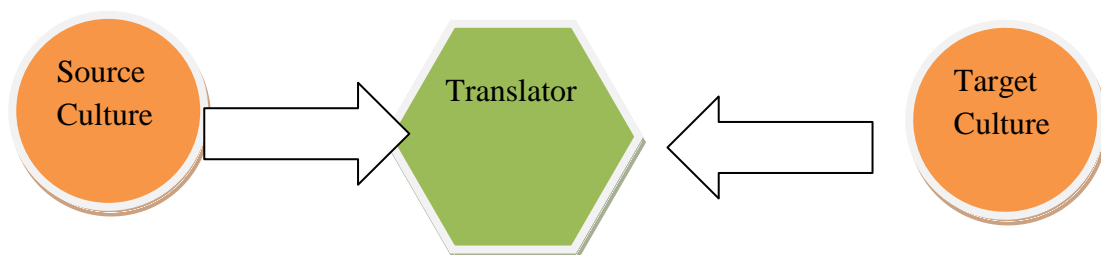
5.3.2 Summary Discussion

In a negotiation, there are only two parties, who work on their own—with or without the presence of an attorney—towards a mutually acceptable agreement that is usually not based on law or any legal principle. There is no real “decision” to be handed down by a third party in a negotiation proceeding, as there is no third-party neutral.

The metaphor TRANSLATION IS NEGOTIATION seems to be a preferred one in translation studies, but it is simply not persuasive enough for me, being aware of the true nature of negotiation in the legal sense. Essentially, it would be unrealistic to think of translation as a two-party, or bilateral, activity, which is exactly what negotiation is supposed to be, even though, admittedly, all dispute resolution proceedings require negotiation skills one way or another, and in this respect, I am acting in rare concert with translation theorists subscribing to this idea. There is no doubt that

how a negotiator acts in bargaining situations depends partially on the culture in which s/he has been socialized and institutionalized and partially on the local culture of the negotiation venue, and, thus, the problems one might encounter when studying the role of culture in negotiation are similar to those that have always perplexed researchers of culture and translation. However, in response to those who insist that translation is negotiation, indeed, while the translator is in need of sophisticated negotiation skills, and by extension, BATNA skills, to complete the TRANSLATION AS NEGOTIATION metaphor, the translator would have to be seen as a party negotiating with one culture/language at a time, constantly switching back and forth between the two languages/cultures, with the two cultures/languages concerned never speaking to each other. That would not form a synchronized dispute resolution proceeding involving all parties concerned; it would just amount to a fragmented process involving two spontaneous individual devices occurring diachronically.

No direct contact or communication



Another issue would be that such a dispute resolution process would not have the third-party neutral in an all-inclusive interactive process between the two disputants; they would just be in a position where the translator is negotiating with the source culture, and then when finished, they would have to switch over to the target culture and try to start a negotiation with them, and then back to the first party, and then the process is repeated over and over.

Next, let's look at mediation. While a mediation proceeding involves the disputants plus the third-party neutral, the mediator, the mediator is supposed to do little more than walk the parties through a difficult and hostile dispute, helping them reach a final mediated agreement—out of their freewill. The parties are to honor the agreement on their own with the help of a mediator who may be able to moderate a brainstorming session, and it, as with the case of negotiation, has little to do with concrete law or any legal principle; all there might be in the case of non-compliance is the pangs of conscience, if anything at all. Hence, in a mediation, drawing up the final agreement with logical or legal justification is largely unnecessary. However, the fatal drawback to this metaphor is that in mediation, the mediator should be on location just to facilitate exchange and communication and should, on moral and professional grounds, refrain from making and final decisions on behalf of the parties—arguably even at their request, much less inflict on them anything that may entail any legal consequences, as that would be something against the grain of true mediation. Regrettably, making a final decision vis-à-vis a troublesome situation is exactly what the translator has to do, even if that decision was made in a professional and non-violent way.

That leaves us only two options: TRANSLATION IS LITIGATION and TRANSLATION IS ARBITRATION. Both of them accentuate the need for the translator to make a personal and final decision to be imposed on the cultures, but one of their key differences has tempted me to accept TRANSLATION IS LITIGATION.

What was it? If both arbitration and litigation are powerful dispute resolution mechanisms requiring decision making and choice making on the part of the third party neutral, why do I think that the translator would probably make a better judge than either a mediator or an arbitrator? My reasons are simple and straightforward; with few exceptions, a judge is often w

expected to be a “jack of all trades” who is fully aware of the interests and needs of every trade and profession. That is definitely not what a judge is. Therefore, there may be times when parties to a commercial dispute would rather have that dispute resolved by a person whom they trust and have mutually agreed upon. However, while only proceedings such as litigation (judicial) and arbitration (quasi-judicial) will result in a legally binding and enforceable outcome⁷⁰, the key difference between them is the fact that a judge’s decision can be appealed by either party, whereas an arbitrator’s arbitral award is basically final, allowing either party hardly any recourse (Nolan-Haley 1992: 156-157).⁷¹ Since there should be no translation without a chance at re-translation,, a lawsuit, which may take a longer period of time to run its course, will provide either party that happens to loathe the judge’s ruling with an opportunity to appeal it to a higher court within the judiciary hierarchy, and this way it provides the parties with one more chance of having all possible human errors repaired.

⁷⁰ At one point, there were voices encouraging parties to an arbitration proceeding to challenge an arbitration award rendered, which greatly undermined one of the most desirable features of arbitration – that the arbitration award be final. This compelling interest was finally recognized and officially established in the *Arbitration Act of 1979* of the United Kingdom.

⁷¹ Only in extremely exceptional cases are courts willing to reverse, or even just review, an arbitration award. The few oft-cited grounds on which an arbitration award may be vacated, as set forth by the FAA, include corruption or fraud; misconduct on the part of the arbitrators; abuse or misuse of authority *ultra vires* by the arbitrators. In general, pertinent laws and regulations tend to keep reviewable arbitration awards to a minimum.

Chapter Six: Conclusion

6.1 Overview

Undeniably, during its lengthy endeavor to secure itself a niche amidst the “jungle” of disciplines fighting each other for more recognition, translation studies has had to go through fits and starts. In the end, to my delight, it did manage to win considerable ground by virtue of the remarkable development of a few discipline-specific approaches often in the form of schools of thought or “turns”, such as the sociological turn of translation studies and the cultural turn, both of which we are all familiar with. Since these “twists and turns” have never hesitated to make full use of metaphors to justify their positions whenever possible (for example, the “third space” as introduced in the ideological turn by postcolonial scholars), perhaps it is high time that we learned to explore more options, even if that means conducting research under the same framework, without rejecting the validity of any of the academic undertakings made up to this point. At a down-to-earth level, most learning is fundamental, and thinking without comparison is unthinkable; at a higher level, what we already know becomes enriched—both in terms of depth and breadth—by comparison. Through this process, we liberate ourselves from all existing structures and confinements. That summarizes the basic logic of this metaphor of mine.

However, somehow, it seems to me that the reason why there are still so many metaphors being constructed in translation studies is that theorists are still having trouble determining the true nature of the subject matter of their discipline—translation. While I appreciate their efforts in generating metaphors, I think that the mainstream metaphors are inappropriate and incomplete, and that we will need more high-quality and logically valid metaphors to make translation studies an enterprising subject.

Arguably, one of the compelling reasons why so many translation theorists consider translators to be mediators is that, by translating texts that are often culture-bound and culture-specific, translators work as intermediaries between the source text producer and the target text recipients (Hatim and Mason 1990: 224). But does the sheer fact that translators work between languages and cultures necessarily make them true mediators? Or, put another way, does anyone working between two other individuals deserve to be called a mediator by virtue of that very position? I am inclined to think not. That translators work between or among cultures to produce a target text to help the author reach out to a larger readership does not *ipso facto* make them mediators; instead, it just makes them communicators in the sense that they are trying to convey some information by imbuing the mind of a target population with some exotic ideas; or, to go one step further, it just makes them negotiators in the sense that they are holding dialogues individually with both cultures concerned—the target culture and the source culture—just not at the simultaneously or synchronically with a view to “cutting the best deal” for everyone. Finally, that fact also makes them possible candidates for judgeship and arbitratorship because, while the translator needs to be completely bilingual and bicultural, they will eventually have to make a relatively final decision⁷² with considerable binding force in relation to what terms or words to use in the target language to express what is being said in the source text, with a little tint of personal choice made possible through the addition, removal and skewing of some of the information present in the source text.

⁷² Please note that by the term *final*, as used here, I am simply indicating that any legal case, whatever the jurisdiction and the instance it is in, must be brought to a close or an end by the judge in the form of a decision or judgment rendering, which comes with a certain degree of legally and legitimately binding force. Of course any case may be subsequently appealed to a court higher in the jurisdictional hierarchy, but eventually, there will always be a highest court—usually the supreme court—that is empowered to make the final decision, after which little recourse or remedy will be possible.

Thus, it is my position that the translator could possibly be deemed only the judge or the arbitrator, as the job description of the mediator and that of the negotiator do not coincide with that of the translator. Then, which one of the two is the better choice? In terms of our metaphor schema, translation resembles litigation more than it does arbitration.

6.2 Translator as Mediator, Negotiator or Arbitrator

To begin with, it is no exaggeration to say that for me it was certainly a “tough call” involving a double-edged sword cutting both ways. The advantages of the mediation metaphor lie in its profound humanitarian and maybe diplomatic effect on the parties’ long-term relationship, as mediation may encourage cooperation and reduce confrontation between parties that were once in conflict (*vide* Dispute Resolution Table)—something that arbitration is not capable of achieving. Nevertheless, as long as we accept the metaphor that translation is dispute resolution, then all subsequent metaphors that come under the hierarchy, such as the translator as the mediator, the translator as the judge, the translator as the arbitrator, and even the translator as the negotiator must all be considered on an equal footing, given comparable weight and be taken as a whole, before being rejected—or accepted—one by one through analysis. After all, the mediator, the judge, the arbitrator and the negotiator all share an image schema: someone trying to resolve a dispute for two parties, with all these conceptual metaphors being combined by neural binding, using the terminology of Srinivasa Narayanan, a cognitive scientist (Lakoff 2009: 258). More importantly, each metaphor has a schema that is based on a corresponding human experience: only when there are two parties can one have both translation (source culture/language and target language/culture) and negotiation dispute resolution (claimant and respondent); only when there is a third-party go-between (the third-party neutral *vs.* the translator) involved can either

translation or non-negotiation dispute resolution exist. Furthermore, there needs to be some ongoing disagreement or disharmony between the two parties concerned (a legal dispute *vs.* a need to understand and the expectation not to be misunderstood); there must also be some sort of ruling rendered by the third-party neutral (a decision, a decree or a judgment *vs.* a final translation product) for there to be transform or resolution, all of which are required for the complete mapping between the source domain and the target domain in a metaphor. Based on the remaining similarities, such as the extensive use of communication, its informal and private nature, are simply too marginal to bear any significance on the validation of the metaphor. Hence, pitifully, TRANSLATION AS NEGOTIATION does not fit into our schema.

The facilitative mediator is not supposed to put forward, let alone impose, any resolution scheme, and even in evaluative mediation, the mediator, as a “peace-monger”, is just allowed to suggest some creative and amicable “way out” for the disputants by improvising a workable solution which would only have an advisory and preventive effect and hardly any binding force on either party; in other words, the mediator in a facilitative role should never even make a remark about the merits and demerits of the case. The evaluative mediator, despite their more proactive role, is only allowed to improvise or propose a favorable resolution to the parties without forcibly imposing anything on them. When carrying out translation duties, the translator, who is socially conditioned, does have to make an arbitrary and subjective decision eventually, and such final decision, more likely than not, will be something based upon individual choice and personal preference arising from a particular social context. Therefore, alas, the metaphor of translator as mediator, however cheerful and lovely it may sound to the ears of translation theorists, will not work for me.

Then comes my unique metaphor TRANSLATION IS ARBITRATION. Given their petrifying and fearful etymology, the terms *arbitration* and *arbitrator* sound extremely monumental and outlandish to most people. At the lexical level, the term *arbitrator* seems to highlight the arbitrary decision-making aspect of the translation process, however superficially. After the argument hearing and all due process by the third-party neutral, an arbitration award, which entails extreme legal consequences, is to be imposed upon both parties regardless, as if it were a translator's decision being imposed on the text and the two cultures.⁷³ While the arbitrator, whose nomination and appointment was contingent upon both parties' approval, has to make a final decision that is to be imposed onto the parties, and the final decision, or the arbitral award, is often non-legal and sometimes not even morality-based, often just intuitive. The arbitrator or arbitration panel is not required to follow any law or judicial precedent, and they are not even required to enumerate their justifications at all, let alone one by one in any detail. Also, an arbitral award has little, if any at all, precedential value for subsequent cases of any sort (please refer to my **Dispute Resolution Table**).

Therefore, *prima facie* this metaphor would arguably be a more accurate description of the translator's task than the TRANSLATION IS MEDIATION metaphor, and yet, however, in my mind, etymology aside, its most serious shortcoming concerns the lack of a right to appeal the translator's decision for either party, which makes it difficult to account for the universal phenomenon of retranslation and the fundamental human right to have an erroneous decision

⁷³ The translator as the communicator is another metaphor rather popular across academia. The title sounds elegant, but it is simply too vague a metaphor as it draws excessively on reductionism—a philosophical perspective claiming that everything can be broken down to something more basic. Personally, I think that to claim that all translation is communication is simply insufficient in describing this complicated phenomenon existing in a larger system, or a larger web of many systems and subsystems. Of course, TRANSLATION AS COMMUNICATION is not part of my argumentation in this thesis, so I will hereby leave it to my readers' imagination.

corrected, which constitutes a robust aspect of the phenomenon known as translation. Moreover, the lack of precedential value is also a factor that makes the metaphor of TRANSLATION IS ARBITRATION fail the litmus test, since in reality, the translator does follow current rules and norms of the trade, and their translation decisions do have some precedential value for subsequent translators who find themselves in a similar situation.

That leaves us with two possible metaphor candidates: TRANSLATION IS ARBITRATION and TRANSLATION IS LITIGATION. If the translation process is likened to a lawsuit or an arbitration proceeding, then it would imply that not only is the translator empowered to pass judgment on the case at issue, but they are engaged in an adversarial proceeding in which the two parties are expected to attack each other by launching onslaughts serving their respective positions.

Arbitration and litigation are similar mechanisms in this respect. That being the case, despite the fact that the arbitrator must make a powerful decision for the parties, which is often the case in translation, the lack of precedential value in an arbitral award somewhat nullifies the metaphor of TRANSLATION AS ARBITRATION, since, as shown previously, the common practice of following examples (What are all those government-sponsored term banks for?) must be accounted for.

The other confounding issue with the arbitration metaphor concerns the lack of opportunity to appeal, leaving no room for re-translation. I think that is probably the end-all to the justification of this metaphor, and, as a result, I am not surprised at all to learn that people may have a negative view of this metaphor, and translation theorists thus far, no matter how avant-garde, have stopped short of making such a claim.

In sum, TRANSLATION IS MEDIATION and TRANSLATION IS ARBITRATION, both with their inherent strengths and weaknesses, are two metaphors that look pleasant on the outside but with underlying logic difficult to hold together, which indicates that TRANSLATION IS LITIGATION is

our only eligible candidate. As a staunch believer in TRANSLATION IS LITIGATION, I argue that the translator should be treated as the judge, for a number of reasons: the need to make final decisions to be imposed upon the parties, possibility of appeal to correct mistakes, the state-sponsored prestige and respect that come with the title and position, the need for rigorous reasoning, and, most of all, as we will see in the next chapter, the judicial candor expected of judges, all of which are qualities attributable to the translator that will eventually offer a fuller description of the translation phenomenon, and also, in turn, a higher status for the translator in the production and publication of texts, which will then ultimately lead to better consumer protection for the translator's clients and the cultures they represent.

6.3 The Translator as the Judge

To begin with, the metaphor of TRANSLATION AS LITIGATION and that of TRANSLATOR AS JUDGE are not metaphors that would normally appear in day-to-day translation studies articles—and with good reason. To some people's astonishment maybe, the judge seems like the most advisable title for the translator to me, considering the status and prestige enjoyed by the judge academically, judicially and socially. In fact, it should not take even the lay person too much effort to realize that—at least in our society—offering someone the title of a judge would actually be tantamount to admiring them with respect and veneration. The final and binding judicial decision that the judge is to hand down is, as expected, to be imposed on the parties by legal force, but either party is entitled to appeal any judicial decision they consider unfavourable—step by step but all the way up to the court of final appeals. Admittedly, this is the most preferable metaphor for me because cultures, as “disputants”, should be entitled to at least one appeal, thereby wielding some leverage against the neutral third party, the translator.

This will account for the industry-wide practice of retranslation. True, on the flipside of it, it might perhaps be somewhat unacceptable for some people who would prefer not to identify translation as “going to court” or “filing a lawsuit”. Furthermore, a retranslation of a text already translated is no different from filing an appeal in a higher court on the basis of some unforeseen change in circumstances or out of plain disapproval of the decision by one party. In legal practice, the most oft-cited reasons for appeal include error of law, error of fact and error in procedure (Doolan 2003: 47-48). Depending on the jurisdiction, a court case can only normally be appealed a certain number of times, but in extreme and exceptional circumstances, such as *inter alia* conspicuous witness fraud, a case that is closed and declared final and *res judicata* can be reopened. I believe that this should be sufficient to account for translation in the sense that a change in times, values and external environment constitutes an extreme circumstance in the legal sense, thereby justifying the reopening of a closed case.

Quite understandably, some people might still be feeling apprehensive about the translator being the judge and, correspondingly, about the metaphor TRANSLATION IS LITIGATION, considering my **Hierarchy Chart of Dispute Resolution** presented in the **Introduction**. Frankly, even I myself used to have some concerns about making the translator a judge primarily because of the potential resistance I may receive from scholars, not to mention that that it may be considered an “act of subversion” because of its apparent conflict with the irreversible trend of “ADR instead of litigation” that has been on the horizon of legal professionals for decades now. However, as time went by and as I went deeper into my research, I, to my delight, discovered much common ground between litigation and translation, and I decided to address this seemingly sensitive issue head-on.

My logic is rather simple., it is my relentless and undaunted belief that no one single translator should ever be given the final say on any textual rendering, whether it is interlingual translation or intralingual translation or even adaptation, and, as such, no one translation should be granted anything as irreversible and tyrannical as a final status. True, translators should and do wield a certain amount of power, and translation will always be enmeshed in a set of power relations that exist in both contexts (Bassnett and Lefevere 1998: 137), and yet, for the sake of check and balance, the parties should, at the same time, be given the chance to appeal a decision, judgment or verdict handed down by the dispute resolver, especially one that concerns their interest and fate, as the one last resort. As we know, it is not unusual for translations become rejected at a later date, just as it is perfectly normal, and sometimes even expected, for a court with appellate jurisdiction to overturn a lower court's decision. That is why something as powerful—and yet non-appealable—as an arbitration award does not make an ideal metaphor for the translator's work, and, as well, that is why litigation, as a dispute resolution mechanism designed to serve judicial justice and eliminate human error, should make the cut. For another thing, in order for us to account for the common practice of resorting to term banks and precedents for translation solutions, often standardized ones, which is a also a common practice in the translation profession, translation must be metaphorized as litigation, as only judges are expected to follow precedents by virtue of a principle known as *stare decisis*.

Once again, insomuch as the status and the role of the translator are concerned, and in light of the nature of translation as presented herein, our choice between litigation and arbitration should be easier than we first imagined. To choose between them for our metaphor, one must refer back to the basic characteristics, which is presented in the **Dispute Resolution Table**, always keeping in mind that in an arbitration proceeding, the arbitrator has near-absolute power in the sense that

their decision (the arbitral award) is final with hardly any recourse available for either party (*Vide Dispute Resolution Table*). On the other hand, with translation, the translator, while wielding a considerable amount of power, needs to make a decision on a term or sentence or any other lexical unit from the source text which is to be imposed on the target reader. Out of innocent misunderstanding maybe, the translator may well have been mistaken or confused, and that is why examples of retranslation abound for many genres of texts, which may or may not have been carried out by the same translator, over years, decades or even centuries. Since only the metaphor TRANSLATION IS LITIGATION can duly account for most of the schema in the every possible way, translation is litigation and the translator is the judge.

Nevertheless, that having been said, I am in no way suggesting that there will be no challenge to the metaphorization of TRANSLATION AS LITIGATION. For one thing, in a judicial decision (or a judgment) or arbitral award, there must be, with few exceptions, one official loser and one official winner declared due to the confrontational nature of the dispute resolution mechanism of litigation, often leaving the losing party discrediting the justice system. While that is understandable, what about the prevailing party? Do they always feel that justice has been served? Another downside to the TRANSLATION IS LITIGATION metaphor is probably the occasional difficulty in enforcing the judgment or decision (*vide Dispute Resolution Table*), as the winner often find themselves stranded in an awkward situation where the defendant with hardly any assets to satisfy the legitimate and is not willing to honour it voluntarily, meaning that, picturing it on our metaphor, how does one make both parties more willing to voluntarily accept—and conform to—the final call made by the translator? If and when one or both parties do not believe in the translator's translation, do we just let them reject it altogether? So, is there really no better way of increasing the likelihood of the voluntary performance of the resolution?

Coming back to our metaphor, it would be pleasurable if every translator can produce a translation work that leaves everyone happy, resulting in a “win-win” situation, where both parties rejoice. As regards my TRANSLATION IS LITIGATION metaphor, one of the relative minor issues that still needs to be overcome, primarily concerns the interrelated key terms of *judge*, *litigation* and *lawsuit*. To be frank, I can imagine that many people simply do not have a favorable impression of courts, lawsuits and lawyers, but perhaps we should try looking at it from another perspective. There may be people not in favor of *court* and *lawyer*, but most of them do not have anything against judges. We are regarding translators as judges, not lawyers. Judges, as we are aware, are entrusted with immense judicial power, with which they are to render decisions that appear fair, justified and logically sound not only to the parties but also to the general public that is potentially affected by the decision, and they would normally make every effort to sound as fair, law-abiding and authoritative as possible (Tiersma 1999: 76). Therefore, a judge who takes themselves and their responsibility seriously, is in constant struggle with two objectives: decision making and presentation with justification (Solan 1993: 1). Moreover, judges constantly have to struggle with controversial court cases that are difficult to decide either way, and the decisions that they do ultimately make will have a great impact on people’s everyday lives no matter what. In view of the weight a court decision carries in relation to social justice and human conscience, and how the general public perceives it, as well as the prestige associated with the title of judgeship, it all becomes straightforward that as long as we are able to overcome all the fear and worries associated with it, translation would be best viewed as litigation.

Aside from the two reasons mentioned emphatically (chance of appeal and status of precedents), without being excessively presumptuous, if we consider translation something as sacred and

solemn as the judicial function, performed by the branch of government that is sanctioned by constitutional law and deemed by many as the “ultimate guardian” of fundamental human rights, then who should be more honoured and proud of their profession than us? Second of all, judges, unlike arbitrators, mediators and negotiators, are often called upon to review and interpret all types of documents (not just legal ones), and it is precisely then that the judge must decide what a particular document is expressing, and in order to do that, judges often conduct subtly elaborate linguistic analysis of the document at hand, even though they sometimes do it rather eccentrically and incoherently (Solan 1993: 1). Because judges have such enormous powers at their disposal, there is, accordingly, immense pressure on them to articulate their decisions, as well as how they arrived at those decisions, logically and persuasively; they sometimes even require linguistic training for it. At face value, it all seems rather plain and simple, while, in reality, all that glitters is not gold. The judge must, by handing down their decision, affirm that their opinion is the only sensible, legitimate and logical one to make, refuting all other alternatives, reasonable or plausible, sometimes even to the extent that the lawyer on the losing side would, having no inkling of what the judge was trying to achieve, ironically enough, go as far as to doubt the sanity on the part of the judge.⁷⁴ In real terms, cut-and-dry cases are few and far between, and what the judge is expected to do is to hand down a decision in a resolute and unequivocal manner, brushing aside any suggestion of doubt without revealing too much detail about their personal impressions. Generally speaking, there are two main forces that prevent judges from disclosing the true rationale behind the judicial decisions they hand down: power and neutrality (Solan 1993: 3), not to mention that judges sometimes do try to instil popular

⁷⁴ The same is unlikely to be said of an arbitrator, or of a mediator, since they operate on a totally different set of ethics and are subject to a different standard of equity and fairness, and most of all, they are not really bound by legal rules and principles (*vide* Dispute Resolution Table).

morality into law once they realize that it is the “decent” thing to do.⁷⁵ Besides, all judges must be highly educated and have gone through rigorous legal training and even many standardized tests, as must translators, who must be educated and trained to be truly competent for their professional duties. Unfortunately, the same thing cannot be said of arbitrators and mediators, and rarely, if ever, would any outsider understand the ordeal, struggle and ambivalence a judge needs to go through before arriving at a decision. Finally, in litigation, the judge’s decision must be based on applicable laws of the venue, as set forth either by statute or by precedent. As Solan observed in his line of work, in almost every court case, the judge is, despite their power and neutrality, under a legal obligation to decide cases based on the facts brought before them in compliance with all applicable laws, offering a detailed account of how they have ruled based on the facts as they understand them and why (Solan 1993: 175). As a rhetorical matter, judges must incessantly expound the reasons behind their decisions in legal terms, because this is probably the only way to convince people of their decisions—and their power and authority.

As it happens, then, there is much common ground between what the judge does and what the translator does, perhaps more than anyone could have possibly imagined. For one thing, the judge needs to strictly separate their own personal preferences from their own pursuit for justice. Rarely, if ever, would a judge in a criminal case, however he finds the defendant’s conduct repulsive and reprehensible, make a remark such as “I think those on death row simply get too many appeals, and I am going to affirm the death penalty on this defendant because of his unforgiveable deeds and his incorrigible character” in black and white in their decision; instead, most likely, the judge would rely on—however superficially—precedents, cases, laws, statutes and even morality for the predominant holding of their ruling, in hopes for a professional and

⁷⁵ Of course, by saying so in no way am I suggesting that all decisions rendered by judges are righteous and fair; there are always going to be some judicial opinions written with less than perfect candor.

artificially compassionate appearance to the third person. While that is something expected of the translator, it is never really expected of the arbitrator and the mediator, who carry out their duties on a totally different set of protocols.

I do believe that as long as we can pinpoint every characteristics of litigation and judgeship that are unique, positive and useful in dispute resolution and try our best to establish a parallel between the activities of translation and litigation around those similarities, we will certainly have little difficulty accepting the viewpoint that translation is a form of dispute resolution, and that, despite all those deep-rooted stereotypes, is litigation down to the letter. It is my sincere belief that judgeship is the title most suited and well-deserved for the translator as it draws upon the very basic nature of a judge's task which I presented earlier: they decide cases with critical thinking and they justify their decisions in the form of a logically structured opinion, while keeping all personal emotions at bay, and, most of all, they follow precedents to the utmost of their power. Only in this way can a judicial decision be logical and acceptable. It is precisely this self-esteem and self-pride that irritated some academics so much that they went as far as to dismiss the entire legal profession as a "cult obsessed with mysticism".⁷⁶

Why do judges need to go to the length of handing down decisions by making their profession appear so mysterious to the layperson's eye? After all, isn't what they are doing something legal and legitimate, something that deserves the utmost respect and support from the public? The truth is, it is no coincidence that some believe that legal reasoning and theory—something used as justification for a judicial opinion—is nothing but a discursive and rhetorical device that judges make use of to conceal something innate, mystical and covert: their ideology, personal

⁷⁶Over the last decade or two, many academic works have been published with titles such as *The Cult of the Court* by John Brigham and *The Evil Supreme Court* by Walter Picca, with an intention to demonstrate how pretentious and sanctimonious the supreme court justices tend to be through an oxymoron.

beliefs and convictions; in short, their entire set of conviction. Which judge would possibly want the public to think that they are handing down a decision in an antitrust case simply out of their preference for socialism or capitalism? Which judge would ever dare to embrace openly the ideas of racism, sexism, ageism or religious fervor in an unfair dismissal case? Granted, a judge, being a human being as they are, is entitled to their personal viewpoints and interpersonal affiliations, but the point is, at the very same time, a judge would nonetheless wish to convince people that some intricate legal theory accompanied with watertight logic was all that was behind the decision—nothing more and nothing less. So how is that to be achieved? It is simple; they make every effort to generate and retain the impression that all their decisions were and will be made in light of all relevant factual circumstances and a discoverable and indisputable rule of law by means of organized legal reasoning without tarnishing their honour, respect and creditworthiness. In a nutshell, it is just “judicial candor” behind everything.⁷⁷ Ex-judge Lawrence Solan did concede in one of his works that, to his dismay, judges are simply not daring enough to be willing to part ways with tradition and justify their rulings with integrity or, as he put it, judicial candor (Solan 1993: 187). To this day, some legal language experts even argue that the judge is a civil servant holding two positions—decision maker and rhetorician (Solan 1993: 177).

Then, without further ado, does all that sound familiar to the “translator’s ear”? I truly think it should, and that is yet another reason why I believe that the translator is best viewed as a judge. The translator’s task is all about choice, decision and presentation, verbal or written, with justification, or more sharply, decision making and presentation with rhetoric, is it not? How does one go about translating a phrase as simple as “Take it easy!” into French? Do we say *Allez-*

⁷⁷ The innovative term “judicial candor” was first introduced by Shapiro in his paper entitled *In Defense of Judicial Candor* in 1987, but, according to reliable sources, the idea was first thought up by Justice Benjamin Cardozo.

y doucement, Relaxez or something much longer such as *Ne vous faites pas de soucis?*⁷⁸

Whichever one of them gets our final vote, is it not decision making and presentation with justification and/or rhetoric after all, which, in a way, mirrors the judge's task? Is it not our innate and unspoken ideology, social background, political affiliation and conviction that are behind our choices? Also, is it not the case that we need to draw upon a "translation rule" to justify our final choice without resorting to downright arbitrariness and personal preference just to make everything look all the more persuasive and fair? And can all that not be reduced to something as fancy as "translational candor"?

My impression is that across the translation studies scholarship, it has been traditionally accepted that translation is negotiation and mediation, and not litigation or arbitration, not simply because the first two mechanisms are christened with a humanitarian name, but also because they have become part of an "accepted" cognitive framework with minimal knowledge of dispute resolution theory because of innocent misunderstanding. Whether or not it is a reflection of what is labelled as "path dependence" in economics, once an idea takes root and persists unchallenged for a matter of decades, it would normally take more than an academic paper or two to make people change their belief, and it will take even more for people to want to relinquish their age-old belief altogether. That must be one of the main reasons for the status quo.⁷⁹ Now, with the term I coined (or parodied) *translational candor*, which I consider an adaptation of the term "judicial candor", as introduced by Lawrence Solan and welcomed by likeminded jurists and judges, perhaps the idea of *litigation*, as a dispute resolution mechanism, and the idea of *judge*,

⁷⁸ These examples were excerpted from this publication: Jean Delisle, *La traduction raisonnée*, Ottawa: Les Presses de l'Université d'Ottawa, 2003, p. 198. My utmost gratitude to the author.

⁷⁹ Please take note that here, despite my mention of arbitration/arbitrator, I am in no way going back on my claim that the litigation metaphor is the best metaphor; I will always firmly believe it is. I am only trying to encourage more people to stop contemplating nothing but negotiation and mediation. In other words, I would rather have more scholars start considering arbitration for their metaphor than passively halt at the border between arbitration and mediation, because this way we will wind up with a fuller argumentation for our metaphor.

as a public servant accredited and hired by the state to resolve disputes in compliance with legal principles can prove to be just as approachable and amicable as *mediation* and *mediator* after all.

6.4 Recommended Questions for Further Inquiry

Finally, there remain a few intriguing, thought-provoking and not entirely irrelevant questions that I would like to leave to my inquisitive and imaginative readers to reflect upon. First of all, what if the author and/or the culture the author was representing is dead? How would their death affect our metaphorical paradigm in which the translator is placed as a type of dispute resolver? For all we know, there have been claims made by literary translators that translation is much easier when the author is dead. Would self-translation constitute a special case? Does the self-translator, who is acting as the third-party “neutral” in translating their own text for a target audience, deserve to be categorically called the judge or even the dispute resolver at all? Does any conflict or dispute exist at all in the foreground and aftermath of self-translation, where authority tends to be loosely defined and tolerated, and if so, would there be conflict of interest concerns? Would treating everything being translated as self-owned be an honest thing to do, as disputed by some (Green 2001: 39)? Sometimes translation needs to go through a pivot language⁸⁰, which would definitely challenge, if not downright uproot, the foundations of our model and paradigm (e.g., whose dispute(s), and how many disputes are we talking about now...). How does the translator go about making them appreciate each other (more)? In this era of bioinformatics, will machine translation, which relies heavily on computers that are

⁸⁰ Surprisingly, in the European Parliament, efforts towards direct translation from each official EU language into all the others present a dilemma, and it is more the exception than the rule. The fact that each official EU language should be translated into all the 22 others, amounting to a total of 506 possible combinations, can prove to be horrendous and costly for the translation authority, and so a translation relay system must be in place. The three most common relay languages, or pivot languages, are, as one might have expected, English, French and German.

impersonal, change power differentials in conventional translation contexts? And if it will, will our metaphor still work for machine translation?

As a side note, in the dispute resolution scholarship, lately there have been voices advocating the idea of *conflict management*⁸¹ alongside the vintage idea of conflict resolution (Bercovitch and Jackson 2009: 1). There have always been contacts, exchanges, misunderstandings, contradictions and conflicts between people of different linguistic and/or cultural origins not just literally, but also physically. Seen in a different light, there happen to be some amusing and light-hearted similarities between dispute resolution and translation. For one thing, as some conflict resolution experts have emphatically pointed out, while dispute or conflict may not *per se* be an enjoyable thing for the majority of people, the resolution thereof could nonetheless be a source of joy and delight (Harper 2004: 2). That may sound far-fetched at first, but if one looks deeper down, then conflict resolution might just be a form of change that leads to overall improvement – or gain in dollar value for all parties concerned – making everyone better off than before the conflict ever occurred. That is perhaps yet another point of reference, through which our metaphor may be studied. Just imagine thinking of translation as dispute/conflict management instead of dispute resolution! Could it be something that can be studied alongside business management or personnel management? Can we make a metaphor on translation out of conflict management? Can we say that translation and dispute management are comparable simply because they both provide joy and happiness on the parties involved?

As my research was progressing, there came a time when I was assuming that game theory, with all its profound roots in economics and mathematics, might be extendable to the research, study

⁸¹ Among sociologists, there have been some who refer to it as “dispute management”, which will, by inference, be treated as the same thing in this paper.

and description of translation, as game theory is, by nature, an elaborate theory aimed at human behaviour, the human decision-making and choice-making faculties in particular.⁸² Of course, in no way am I suggesting that game theory will be applicable in the context of translation regardless; nor am I implying that game theory is infallible or unchallengeable; as a matter of fact, it has drawn considerable criticism and been challenged by some academics in respect to the scope of its applicability.⁸³ Yet, nonetheless, game theory purportedly accounts for the scientific analysis of situations where at least two individuals are making critical decisions that may have an impact on their own welfare and/or the other party's welfare and/or their joint welfare, with all figures and readings envisioned as pecuniary interest and expressed in monetary terms. In that sense, then, I believe that the application of game theory may further strengthen my argument from a different perspective that translation is litigation in the broader context of translation as dispute resolution, but it is probably best left for another thesis.

All in all, none of my questions presented in this subchapter come with a simple answer, and they may well challenge (or contribute to, depending on how one looks at it) our metaphor. Or perhaps raising views that run counter to mainstream ones by proposing these questions is more important than answering them, if possible at all. Yet, notwithstanding, due to the limitation of this paper, I regret that my imagination and enthusiasm must terminate right here.

⁸² In his article entitled *Translation as a Decision Process*, Jiri Levy did make reference to game theory as the cornerstone of choice making activities in translation, but personally, I believe his interpretation of game theory was wrong.

6.5 Final Remarks

Needless to say, it takes more than just vivid imagination for a metaphor to work in our favor, especially when translation—one of the most widespread but misunderstood transformation processes in human society—happens to be one of the domains of the trope. In a way, metaphors work as if it were a stage actor in that one cannot dismiss a metaphor as “unrealistic” or “simplistic”. I think that they are something that has the potential to cut both ways like a double-edged sword—for us and against us, and we should take extra care with them lest it defeat the entire purpose of ascertaining the true nature of translation via metaphors. Again, all my metaphors proposed herein are meant to shape and structure people’s understanding of the human phenomenon known as translation without reference to any overt rhetoric, in an effort to encourage more people to step forward and spearhead a campaign that explores alternatives instead of following the fixed path unconditionally. What can possibly be more thought-provoking and inspiring than at a time when the discipline of translation studies is developing and growing at a phenomenal pace?

Furthermore, given the present stage of knowledge and development of dispute resolution theory, the metaphor of translation on dispute resolution and the absence of the two mechanisms of litigation and arbitration can probably be attributed to the (mis)understanding of dispute resolution among translation scholars. Throughout my research, I somehow gained the impression that it could well be the case that current translation studies scholarship has never had a complete idea of dispute resolution, under which there exist at least four dominant dispute resolution mechanisms, which include the “classical” ones of negotiation and mediation

alongside the “neoclassical” ones of arbitration and litigation⁸⁴. The reader should be able to understand that by now.

Drawing an analogy from Solan’s claim on translation, in carrying out their tasks, translators often have to succumb to the same external sources of pressure that haunt judges, which include everything from convention and accepted norms of the trade, all the way to public opinion and pressure from interest groups. In addition, in their line of duty, translators often face the dilemma that judges face, and yielding to the status quo in the absence of any “translational candor” will probably only aggravate the situation. Perhaps, then, it is now high time that translators adopted a different attitude, in the same way that Solan believes judges should. If that is still not convincing enough for my readers, and if this is any consolation, then White argues in one of his works that the good judge (and also the good lawyer) is a good translator, for they need to know how to write well given their social and political circumstances (White 1999: 85).

Indeed, breaking away from tradition and customs is never easy; but at least people are speaking of candor for judges, and not for arbitrators. I think that, the very fact that people are expecting something of judges indicates that there is still room for improvement and that they have not given up on judges, and none of the other three dispute resolvers enjoy the same privilege. Thus, in light of everything presented in this chapter, I would like to reiterate my position one more time that the translator is the judge.

On balance, we should never forget that an open mind is what we will always need, for we are dealing with a multifaceted issue through a complex metaphor with no simple answer, and translation scholars must understand that no one approach, however flawless and sophisticated,

⁸⁴ My readers should be advised that by using the terms *classical* and *neoclassical*, I am in no way delving into the altercation between two contradictory schools of thought, as the case may be for economics. Instead, I am simply using them in a frivolous way for the identification of a certain chronological order.

will ever be sufficient to provide an answer to everything any more than it can provide the methodology required for research in the ever-changing discipline of translation studies, especially if the research involves metaphors, which are, by definition, always incomplete in some way. In any event, as long as we understand that a minor incompatible point in a metaphor is nothing unusual, and that it will not necessarily negate the metaphor, there will always be colorful and vivid metaphors being created to help us understand the true nature of the social phenomenon we know as translation.

Translation theorist Mona Baker has emphasized that translation studies can and will hopefully continue to draw on a variety of discourses and disciplines and to encourage pluralism and heterogeneity (Baker 2008: 280), which is exactly what the metaphORIZATION of translation requires. Of course, in the beginning, there might well be some disdain and stigma attached to the adoption of a evolutionary hypothesis, and if we do not try to create and maintain constructive dialogue with people with different positions treating their opinions with due respect, then we would be falling into the trap that we first created ourselves: translation is not merely a metaphORIZED dispute resolution process, and it will actually turn into a very real venue of contradiction that creates and aggravates disputes. I suppose that is not something anyone would like to see, regardless of their stance on translation and metaphors, and, after all, science can only develop and prosper when people, having discovered the absence and want of something, somehow develop the curiosity to account for that knowledge gap and decide to embark on a painstaking mission of filling up that gap. That is exactly how it is now for translation studies, a discipline that is as vibrant as ever where theorists are making every effort to secure the best position for the discipline via a wide range of different twists and turns, many of them interdisciplinary, because translators understand that no one methodology or approach

will ever be sufficient, and the translation studies scholarship should truly make every endeavour towards pluralism and diversity by drawing on as many different subjects as possible. For that matter, metaphor theory and dispute resolution theory in particular, I believe, are proudly amongst those subjects.

I hope that I have made some interdisciplinary contribution to the metaphORIZATION of translation and to dispute resolution theory—and even metaphor theory in general—with my thesis. There is no doubt in my mind that there will be change in many things in my lifetime, and I will always remain hopeful.

Bibliography

- Aalto, Pami, Vilho Harle, and Sami Moisiö (eds.), *International Studies: Interdisciplinary Approaches*, London: Palgrave Macmillan, 2011.
- Adams, John N., and Roger Brownsword. *Understanding Law*, London: Sweet & Maxwell, 1999.
- Baker, Mona (ed.), *Routledge Encyclopedia of Translation Studies*, New York: Routledge, 2008.
- Baker, Mona (ed.), *Critical Readings in Translation Studies*, New York: Routledge, 2010.
- Baker, Mona, *Translation and Conflict*, London: Routledge, 2006.
- Bassnett, Susan, *Reflections on Translation*, Bristol: Multilingual Matters, 2011.
- Bassnett, Susan, *Translation Studies*, New York: Routledge, 2002.
- Bassnett, Susan and Peter Bush (eds.), *The Translator as Writer*, London: Continuum, 2006.
- Bassnett, Susan and André Lefevere, *Constructing Cultures: Essays on Literary Translation*, Clevedon: Multilingual Matters, 1998.
- Beamish, Rob, *The Promise of Sociology*, Toronto: The University of Toronto Press, 2010.
- Beeby, Allison, Doris Ensinger, and Marisa Presas (eds.). *Investigating Translation*, Amsterdam & Philadelphia: John Benjamins, 2000.
- Bercovitch, Jacob (ed.), *Studies in International Mediation*, New York: Palgrave Macmillan, 2002.
- Bercovitch, Jacob, and Richard Jackson, *Conflict Resolution in the Twenty-first Century*, Ann Arbor: The University of Michigan Press, 2009.
- Bercovitch, Jacob, Victor Kremenyuk and I. William Zartman (eds.), *The SAGE Handbook of Conflict Resolution*, London: SAGE Publications, 2009.
- Berk-Seligson, Susan, *The Bilingual Courtroom*, Chicago: The University of Chicago Press, 2002.
- Best, Shaun, *A Beginner's Guide to Social Theory*, London: SAGE Publications, 2003.
- Bhatia, Vijay K., Christopher N. Candlin and Jan Engberg (eds.), *Legal Discourse across Cultures and Systems*, Hong Kong: Hong Kong University Press, 2008.

- Boase-Beier, Jean, *A Critical Introduction to Translation Studies*, London: Continuum, 2011.
- Bowker, Lynne (ed.), *Lexicography, Terminology and Translation*, Ottawa: University of Ottawa Press, 2006.
- Boyle, Richard, "The Nature of Metaphor", *Modern Schoolman*, Volume 31, 1954.
- Briggs, Charles L. (ed.), *Disorderly Discourse*, Oxford: Oxford University Press, 1996.
- Briggs, Charles L., "Linguistic Ideologies and the Naturalization of Power in Warao Discourse, Pragmatics", 2(3): 387.
- Brownstone, Harvey, *Tug of War*, Toronto: ECW Press, 2009.
- Burke, Lucy, Tony Crowley and Alan Girvin, *The Routledge Language and Cultural Theory Reader*, London: Routledge, 2000.
- Burke, Peter and R. Po-chia Hsia, *Cultural Translation in Early Modern Europe*, Cambridge: Cambridge University Press, 2007.
- Cameron, David and Richard Simeon (eds.), *Language Matters*, Vancouver: UBC Press, 2009.
- Campbell, Stephen J. and Stephen J. Milner (eds.), *Artistic Exchange and Cultural Translation in the Italian Renaissance City*, Cambridge: Cambridge University Press, 2004.
- Carver, Todd B., *ADR—The Competitive Imperative*, Practicing Law Institute, 561 PLI/Lit 59.
- Chesterman, Andrew, *Memes of Translation: The Spread of Ideas in Translation Theory*, New York and Amsterdam: John Benjamins, 1997.
- Chukwu, Uzoma, "Plaidoyer pour la part de la jurisprudence en traductologie", *Meta : journal des traducteurs / Meta: Translators' Journal*, vol. 36, n° 4, 1991, p. 558-566.
- Coffin, Caroline, Theresa Lillis and Kieran O'Halloran (eds.), *Applied Linguistics Methods Reader*, London: Routledge, 2010.
- Conklin, William, *The Phenomenology of Modern Legal Discourse*, Brookfield: Ashgate, 1998.
- Conley, John M. and William M. O'Barr, *Rules versus Relationships*, Chicago: The University of Chicago Press, 1990.
- Conley, John M. and William M. O'Barr, *Just Words*, Chicago: The University of Chicago Press, 1998.
- Cotterrell, Roger, *Law's Community*, Oxford: Oxford University Press, 2005.
- Crompton, Rosemary, *Class and Stratification*, Oxford: Polity Press, 1993.

Dakroury, Aliaa, Mahmoud Eid and Yahya R. Kammalipour (eds.), *The Right to Communicate*, Dubuque: Kendall Hunt, 2009.

Damm, Beate, *Talking Text(s): Metaphorics and Processes of a Translation*, Ph.D. Dissertation, The University of Wisconsin-Milwaukee, May 2006.

Delisle, Jean, *La traduction raisonnée*, Ottawa: Les Presses de l'Université d'Ottawa, 2003.

Denise, Theodore, Sheldon Peterfreund and Nicholas P. White, *Great Traditions in Ethics*, Belmont: Wadsworth Publishing Company, 1996.

Donati, Pierpaolo, *Relational Sociology*, London: Routledge, 2011.

Doolan, Brian, *Principles of Irish Law*, Dublin: Gill & Macmillan, 2003.

Duarte, João Ferreira, Alexandra Assis Rosa and Teresa Seruya, *Translation Studies at the Interface of Disciplines*, Amsterdam: John Benjamins, 2006.

Dunmore, Charles, W., *Studies in Etymology*, Newburyport: Focus Books, 1993.

During, Simon (ed.), *The Cultural Studies Reader*, London: Routledge, 1993.

Earle, William James, *Introduction to Philosophy*, New York: McGraw-Hill, 1992.

Eco, Umberto, *Dire presque la même chose*, Paris: Bernard Grasset, 2003a.

Eco, Umberto, *Mouse or Rat: Translation as Negotiation*, London: Weidenfeld & Nicolson, 2003b.

Elgin, Suzette Haden, *The Language Imperative*, Cambridge: Perseus Publishing, 2000.

Evans, Vyvyan, *How Words Mean*, Oxford: Oxford University Press, 2009.

Farb, Peter, *Word Play*, New York: Vintage Books, 1993.

Farnsworth, Ward, *The Legal Analyst*, Chicago: The University of Chicago Press, 2007.

Finger, Anke, Rainer Guldin and Gustavo Bernardo, *Vilem Flusser: An Introduction*, Minneapolis: University of Minnesota Press, 2010.

Finkelstein, David and Alistair McCleery (eds.), *The Book History Reader*, London: Routledge, 2002.

Fisher, Roger and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, New York: Penguin Books, 1991.

- Fisher, Ronald J., *Interactive Conflict Resolution*, Syracuse: Syracuse University Press, 1997.
- Fitzgerald, Patrick and Barry Wright, *Looking at Law: Canada's Legal System*, Toronto: Butterworths, 2000.
- Frey, Martin A., *Alternative Methods of Dispute Resolution*, Clifton Park: Thomson, 2003.
- Freedman, Adam, *The Party of the First Part*, New York: Henry Holt and Company, 2007.
- Friedman, David, *Hidden Order*, New York: Harper Collins, 1996.
- Friedman, David D., *Law's Order*, Princeton: Princeton University Press, 2000.
- Friedman, Lawrence M., *American Law*, New York: W. W. Norton & Company, 1984.
- Fuglsang, Lars, *Innovation and the Creative Process*, Cheltenham: Edward Elgar, 2008.
- Gaiba, Francesca, *The Origins of Simultaneous Interpretation*, Ottawa: University of Ottawa Press, 1998.
- Gambier, Yves, Daniel Gile and Christopher Taylor (eds.), *Conference Interpreting: Current Trends in Research*, Amsterdam: John Benjamins, 1997.
- Garbus, Martin, *Courting Disaster*, New York: Times Books, 2002.
- Gémar, Jean-Claude and Nicholas Kasirer (eds.), *Jurilinguistique*, Montréal: Les éditions Thémis, 2005.
- Gentzler, Edwin, *Contemporary Translation Theories*, London: Routledge, 1993.
- Gibbons, John, *Forensic Linguistics*, Malden: Blackwell Publishing, 2003.
- Gibbons, John (ed.), *Language and the Law*, London: Longman, 1994.
- Gile, Daniel, Gyde Hansen and Nike K. Pokorn (eds.), *Why Translation Studies Matters*, Amsterdam: John Benjamins, 2010.
- Glendon, Mary Ann, Michael W. Gordon and Paolo G. Carozza, *Comparative Legal Traditions in a Nutshell*, St. Paul: West Publishing, 1999.
- Goddard, Cliff, *Semantic Analysis*, Oxford: Oxford University Press, 1998.
- Goldberg, Stephen B. et al., *Dispute Resolution: Negotiation, Mediation, and Other Processes*, New York: Aspen Publishers, 2007.
- Green, Jeffrey M., *Thinking Through Translation*, Athens: The University of Georgia Press, 2001.
- Greene, Ian, *The Courts*, Vancouver: UBC Press, 2006.

- Gurvitch, Georges, *Sociology of Law*, London: Transaction Publishers, 2001.
- Gutt, Ernst-August, *Relevance Theory*, New York: Summer Institute of Linguistics, 1992.
- Habermas, Jürgen, *The Theory of Communicative Action (Volume 1)*, Boston: Beacon Press, 1984.
- Halliday, M. A. K., *Linguistic Studies of Text and Discourse*, London: Continuum, 2002.
- Harper, Gary, *The Joy of Conflict*, Gabriola Island: New Society Publishers, 2004.
- Haste, Helen, *The Sexual Metaphor*, Hertfordshire: Harvester Wheatsheaf, 1993.
- Hatim, B. and I. Mason, *Discourse and the Translator*, London: Longman, 1990.
- Hatim, Basil and Ian Mason, *The Translator as Communicator*, London: Routledge, 1997.
- Haynes, John Michael, Gretchen L. Haynes and Larry Sun Fong, *Mediation: Positive Conflict Management*, Albany: State University of New York Press, 2004.
- Hébert, Jean-Claude, *Fenêtres sur la justice*, Montréal: Boréal, 2006.
- Hartman, Heinz, “Clash of Cultures, When and Where? Critical Comments on a New Theory of Conflict and Its Translation into German”, *International Sociology*, Volume 10 No. 2, June 1995.
- Herbrechter Stefan (ed.), *Cultural Studies: Interdisciplinarity and Translation*, Amsterdam & New York: Rodopi, 2002.
- Hodges, Christopher, Iris Benöhr, Naomi Creutzfeldt-Banda, *Consumer ADR in Europe*, Oxford: HART Publishing, 2012.
- Huggan, Graham, *Interdisciplinary Measures*, Liverpool: Liverpool University Press, 2008.
- Janicki, Karol, *Confusing Discourse*, London: Palgrave Macmillan, 2010.
- Jolley, Kelly Dean (ed.), *Wittgenstein Key Concepts*, Durham: Acumen, 2010.
- Kansa, Metee, *Body Part-Related Metaphors in Thai and English*, PhD Dissertation, Ball State University, December 2002.
- Jaspers, Karl, *Philosophy is for Everyman*, London: Hutchinson & Co, Ltd., 1969.
- Katan, David, *Translating Cultures*, Manchester: St. Jerome, 1999.

- Kenny, Dorothy and Kyongjoo Ryou, *Across Boundaries*, Newcastle: Cambridge Scholars Publishing, 2007.
- Kevelson, Roberta, *The Law as a System of Signs*, New York: Plenum Press, 1988.
- Klein, Julie Thompson, *Humanities, Culture, and Interdisciplinarity: The Changing American Academy*, Stony Brook: State University of New York Press, 2005.
- Klinck, Dennis R., *The Word of the Law*, Ottawa: Carleton University Press, 1992.
- Kolodko, Grzegorz, *Truth, Errors and Lies*, William R. Brand (translated from Polish), New York: Columbia University Press, 2011.
- Korobkin, Russell, *Negotiation Theory and Strategy*, New York: Aspen Law & Business, 2002.
- Lakoff, George, *Women, Fire, and Dangerous Things: What Categories Reveal about the Mind*, Chicago: The University of Chicago Press, 1987.
- Lakoff, George, *The Political Mind*, New York: Penguin Group, 2009.
- Lakoff, George and Mark Johnson, *Metaphors We Live By*, Chicago: The University of Chicago Press, 2003.
- Lakoff, Robin Tolmarch, *The Language War*, Berkeley: University of California Press, 2000.
- Larkin, Philip J., Bernadette Dierckx de Casterlé and Paul Schotsmans, *Multilingual Translation Issues in Qualitative Research: Reflections on a Metaphorical Process*, Thousand Oaks: Qualitative Health Research, Volume 17 Number 4, April 2007.
- Lauderdale, Pat and Michael Cruik, *The Struggle for Control*, Albany: State University of New York Press, 1993.
- Lederach, John Paul, *Preparing for Peace: Conflict Transformation Across Cultures*, Syracuse: Syracuse University Press, 1996.
- Levi, Judith N. and Anne Graffam Walker (eds.), *Language in the Judicial Process*, New York: Plenum Press, 1990.
- Littlejohn, Stephen W. and Karen A. Foss, *Theories of Human Communication*, Long Grove: Waveland Press, 1999.
- Mackie, Karl J. (ed.), *A Handbook of Dispute Resolution*, London: Routledge, 2000.
- Marmor, Andrei, *Interpretation and Legal Theory*, Oxford: Hart Publishing, 2005.
- Martin, Bronwen and Felizitas Ringham, *Key Terms in Semiotics*, London: Continuum, 2006.

- Martinez, Lilliana Maria Montoya, *Translation as a Metaphor in the Transcultural Writing of Two Latino Canadian Authors, Carmen Rodríguez and Sergio Kokis*, University of Ottawa, M.A. Thesis, November, 2008.
- Matoesian, Gregory M., *Reproducing Rape*, Chicago: The University of Chicago Press, 1993.
- McGlone, Matthew S., "What is the Explanatory value of a Conceptual Metaphor?", *Language and Communication*, 27, (2007) 109-126.
- Mellinkoff, David, *The Language of the Law*, Boston: Little Brown and Company, 1963.
- Merino, Miguel Bernal, "On the Translation of Video Games", *The Journal of Specialised Translation*, Issue 6, July 2006.
- Merrigan, Gerianne and Carole L. Huston, *Communication Research Methods*, New York: Oxford University Press, 2009.
- Meschonnic, Henri, *Ethics and Politics of Translation*, Amsterdam: John Benjamins, 2011.
- Miller, Alexander, *Philosophy of Language*, London: Routledge, 2007.
- Mizzoni, John, *Ethics: The Basics*, Oxford: Wiley-Blackwell, 2010.
- Mootz, Francis J., III (ed.), *Gadamer and Law*, Aldershot: Ashgate, 2007.
- Moran, Joe, *Interdisciplinarity*, New York: Routledge, 2002.
- Morris, Marshall, *Translation and the Law*, Amsterdam: John Benjamins, 1995.
- Mounin, Georges, *Les problèmes théoriques de la traduction*, Paris: Gallimard, 1963.
- Munday, Jeremy (ed.), *The Routledge Companion to Translation Studies*, New York: Routledge, 2009.
- Myerson, Roger B., *Game Theory*, Cambridge: Harvard University Press, 1991.
- Myles, Russell Myles and Kelly Reese, "Arbitration: Avoiding the Runaway Jury", *American Journal of Trial Advocacy*, Summer 1999, 23 Am. J. Trial Advoc. 129.
- Nelken, David and Johannes Feest (eds.), *Adapting Legal Cultures*, Oxford: Hart Publishing, 2001.
- Newmark, Peter, *Approaches to Translation*, Oxford: Pergamon Press, 1981.
- Nolan-Haley, Jacqueline M., *Alternative Dispute Resolution in a Nutshell*, St. Paul: West Publishing, 1992.

- Noreau, Pierre (ed.), *Dans le regard de l'autre: In the Eye of the Beholder*, Montréal : Les Éditions Thémis, 2007.
- Olsen, Frances, Alexander Lorz and Dieter Stein (eds.), *Translation Issues in Language and Law*, New York: Palgrave Macmillan, 2009.
- Ortony, Andrew (ed.), *Metaphor and Thought*, Cambridge: Cambridge University Press, 1979.
- Palumbo, Giuseppe, *Key Terms in Translation Studies*, London: Continuum, 2009.
- Peuquet, Donna J., *Representations of Space and Time*, New York: The Guilford Press, 2002.
- Pfetsch, Frank R., *Negotiating Political Conflicts*, New York: Palgrave Macmillan, 2007.
- Philips, Susan U., *Ideology in the Language of Judges*, Oxford: Oxford University Press, 1998.
- Pinker, Steven, *The Language Instinct*, London: Penguin Books, 1995.
- Posner, Richard A., *Frontiers of Legal Theory*, Cambridge: Harvard University Press, 2001.
- Posner, Richard, *Law and Literature*, Cambridge: Harvard University Press, 1998.
- Pym, Anthony, *Epistemological Problems in Translation and Its Teaching*, Calaceit: Edicions Caminade, 1993.
- Pym, Anthony, *Exploring Translation Theories*, London: Routledge, 2010.
- Pym, Anthony, *Negotiating the Frontier*, Manchester: St. Jerome, 2000.
- Pym, Anthony, Miriam Shlesinger and Zuzuna Jettmarová (eds.), *Sociocultural Aspects of Translating and Interpreting*, Amsterdam: John Benjamins, 2003.
- Pym, Anthony, *Translation and Text Transfer*, Frankfurt am Main: Peter Lang, 1992.
- Pym, Anthony, Miriam Shlesinger, Daniel Simeoni (eds.), *Beyond Descriptive Translation Studies*, Amsterdam: John Benjamins, 2008.
- Rathee, Neelam (ed.), *Violence and Conflict Resolution*, New Delhi: Global Vision Publishing House, 2010.
- Reynolds, William L., *Judicial Process in a Nutshell*, St. Paul: West Publishing, 2003.
- Richards, I. A., *The Philosophy of Rhetoric*, Oxford: Oxford University Press, 1971.

- Rion, Rosanna, *Translation and Tradition: The Translator as Mediator between Two Literary Systems*, Coolabah, Vol.3, 2009, Observatori: Centre d'Estudis Australians, Australian Studies Centre, Universitat de Barcelona.
- Roberts, Simon and Michael Palmer, *Dispute Processes*, Cambridge: Cambridge University Press, 2005.
- Robinson, Douglas, *The Translator's Turn*, Baltimore: The John Hopkins Press, 1991.
- Roland, Ruth A., *Interpreters as Diplomats*, Ottawa: University of Ottawa Press, 1999.
- Ross, William H. and Donald E. Conlon, "Hybrid forms of third-party dispute resolution: Theoretical implications of Combining Mediation and Arbitration", *The Academy of Management Review*, Volume 25.2, April 2000, pp. 416-427.
- Rule, Colin, *Online Dispute Resolution for Business*, San Francisco: Jossey-Bass, 2002.
- Sakai, Naoki and Jon Solomon (eds.), *Translation, Biopolitics, Colonial Difference*, Hong Kong: Hong Kong University Press, 2006.
- Šarčević, Susan, *New Approach to Legal Translation*, The Hague: Kluwer Law International, 1997.
- Sareen, S. K. and R. S. Gupta, *Translation as Cultural Negotiation*, South Asia: Journal of South Asian Studies, 23: 1, 15 — 20, 2000.
- Schiffrin, Deborah, Deborah Tannen and Heidi E. Hamilton (eds.), *The Handbook of Discourse Analysis*, Malden: Blackwell, 2003.
- Schulte, Rainer, *The Geography of Translation and Interpretation*, Lewiston: The Edwin Mellen Press, 2001.
- Schwartz, Barry, *The Paradox of Choice*, New York: Harper Collins, 2004.
- Shoemaker, Donald J., *Theories of Delinquency*, Oxford: Oxford University Press, 1996.
- Shuy, Roger W., *Fighting over Words*, Oxford: Oxford University Press, 2008.
- Sibirsky, Saul and Martin C. Taylor, *Language into Language*, Jefferson: McFarland & Company, Inc., 2010.
- Simon, Sherry, *Cities in Translation*, London: Routledge, 2012.
- Smith, Steven D., *Law's Quandary*, Cambridge: Harvard University Press, 2004.
- Snell-Hornby, Mary, *The Turns of Translation Studies*, Amsterdam: John Benjamins, 2006.

- Snell-Hornby, Mary, *Translation Studies: An Integrated Approach*, Amsterdam: John Benjamins, 1995.
- Snell-Hornby, Mary, *Translation Studies: An Interdiscipline*, Amsterdam: John Benjamins, 1994.
- Solan, Lawrence M., *The Language of Judges*, Chicago: The University of Chicago Press, 1993.
- St. André, James (ed.), *Thinking Through Translation with Metaphors*, Manchester: St. Jerome Publishing, 2010.
- St. Pierre, Paul and Prafulla C. Kar, *In Translation—Reflections, Refractions, Transformations*, Amsterdam: John Benjamins, 2007.
- Steiner, George, *After Babel: Aspects of Language and Translation*, Oxford: Oxford University Press, 1998.
- Teichman, Jenny and Katherine C. Evans, *Philosophy: A Beginner's Guide*, Oxford: Blackwell Publishers, 1995.
- Teply, Larry L., *Legal Negotiation in a Nutshell*, St. Paul: West Publishing, 2005.
- Tiersma, Peter, *Legal Language*, Chicago: The University of Chicago Press, 1999.
- Tonkin, Humphrey and Maria Esposito Frank (eds.), *The Translator as Mediator of Cultures*, Amsterdam: John Benjamins, 2010.
- Tovey, Hilary and Perry Share, *A Sociology of Ireland*, Dublin: Gill & Macmillan, 2003.
- Trim, Richard, *Metaphor Networks*, New York: Palgrave Macmillan, 2007.
- Tymoczko, Maria, *Enlarging Translation, Empowering Translators*, Manchester: St. Jerome Publishing, 2007.
- Tymoczko, Maria and Edwin Gentzler (eds.), *Translation and Power*, Amherst: University of Massachusetts Press, 2002.
- Ury, William, *Getting Past No: Negotiating with Difficult People*, London: Random House, 1991.
- Valero-Garcés, Carmen, "Mediation as Translation or translation as mediation? -- Widening the translator's role in a new multicultural Society", <http://www.translationdirectory.com/article324.htm>, accessed Feb 12, 2011.
- Väyrynen, Tarja, *Culture and International Conflict Resolution*, Manchester: Manchester University Press, 2009.
- Venuti, Lawrence (ed.), *Rethinking Translation*, London: Routledge, 1992.

- Venuti, Lawrence (ed.), *The Translation Studies Reader*, London: Routledge, 1999.
- Waddams, S. M., *Introduction to the Study of Law*, Toronto: Carswell, 1997.
- White, James Boyd, *From Expectation to Experience*, Ann Arbor: The University of Michigan Press, 1999.
- White, James Boyd, *Justice as Translation*, Chicago: The University of Chicago Press, 1990.
- Whitton, Evan, *The Cartel: Lawyers and Their Nine Magic Tricks*, Glebe: Griffin Press, 1998.
- Williams, Jenny and Andrew Chesterman, *The Map: A Beginner's Guide to Doing Research in Translation Studies*, Manchester: St. Jerome, 2002.
- Wilson, Andrew, *Translators on Translating*, Vancouver: CCSP Press, 2009.
- Wodak, Ruth and Michael Meyer (eds.), *Methods of Critical Discourse Analysis*, London: SAGE, 2009.
- Wolf, Michaela and Alexandra Fukari (eds.), *Constructing a Sociology of Translation*, Amsterdam: John Benjamins, 2007.
- Zack, Arnold M., "Can Alternative Dispute Resolution Help Resolve Employment Disputes?", *International Labor Review*, Spring, 1997, Vol. 136, No. 1, 95.