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FORMATION OF LEGAL LANGUAGE IN THE NINETEENTH-CENTURY SOUTH SLAVIC LANDS AND JAPAN[1]

Abstract: This paper will discuss aspects of the formation of legal language in Japan and the South Slavic lands in the nineteenth-century, focusing on the modernization process of laws and translation strategies of legal terms adopted by lawmakers. It will be shown that the people involved strove to establish a legal language for a modernized state on par with advanced Western European states. However, they were often surrounded by unfavorable language situations and faced different dimensions of difficulties.

1. LEGAL LANGUAGE AND THE NINETEENTH-CENTURY SLAVIC LANDS AND JAPAN

Law, of course, is an object of jurisprudence. At the same time, it is very much a linguistic concern, since law is inseparable from language. Each legal act is performed by means of language, and the availability and validity of a language in legal situations is directly connected to the status of that language as well as the quality of the language register in which legal actions are carried out. If a language is not authorized or properly codified, a verbal act conducted with that language, even if intended to be legal, could be considered invalid. In this respect, if Antonio Nebrija stated more than five centuries ago that "language is the companion

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to Empire,"[2] we may say, in our context, that "language is the companion to law".

For the nineteenth-century South Slavic regions, namely, Serbia, Croatia, the coastline of Dalmatia which was not integrated with the inland Croatia at the time, and Montenegro as well as for Japan, the overriding priority was to obtain and secure sovereignty that the world would acknowledge. For this purpose, it was necessary to modernize the societal system, in particular their political and judicial systems. Establishing modern civil law was an inevitable part of this process of societal reformation. The way in which these lands advanced their modernization was not, however, identical, separating them into two groups. Japan, Serbia, Croatia, and the Dalmatian part of Croatia (henceforth, simply mentioned as Dalmatia) had to introduce the Western European legal system as their model, albeit from different reasons, whereas Montenegro chose its autochthonous customary law to draft its written laws. For the former group, codifying a civil law meant acceptance of the foreign law by translating it into their native language, while for the latter, it meant transforming oral elements used in the legal practices of local people's livelihood into a written language of law using generalization and abstraction necessary for the codification of law.

Either way, those who worked to establish a modern legal system faced different dimensions of difficulties, among which the basic one was language. Law needs a particular language with a particular register (a variety of language for a particular purpose) and terminology that expresses legal notions clearly and without ambiguity. However, in these lands at the time of modernization, language cultures were not sufficiently developed to provide legal terms appropriate for the adaptation of Western laws. In what follows, we will describe how the language of modern civil law was obtained and established in these regions, and in particular how the verbal resources of legal language, namely, legal terminologies and register, were determined, which strategies were chosen to obtain legal terminology, and at whom the codification was targeted.

[2] David T. Gies, ed. *The Cambridge History of Spanish Literature*, Cambridge: Cambridge University Press, 2004, p. 175. This phrase was allegedly uttered by Nebrija when he dedicated his published *Grammar of the Castilian Language* to Queen Isabella I of Castilla in 1492.

2. JAPAN: THE MEIJI RESTORATION AND THE MODERNIZATION OF THE CIVIL CODE BEFORE BOISSONADE

The Meiji government set out to codify modern civil law immediately after the Restoration in 1868. It was imperative for the new government to establish modern administrative and judicial systems in line with those of Western Europe, since reorganizing societal institutions, including the public as well as private law systems, was one of the conditions for revising the "unequal treaties" signed between the Tokugawa Shogunate and the Western powers in the mid-nineteenth century. In order to prevent further infringement on Japan's sovereignty by the Western powers, the Japanese government had to reform not only the political and administrative structures but also the legal system. However, for Japan, who throughout its history was never a part of Roman or other European legal traditions, it was inconceivable to draft a civil code that would meet the standards of the Western legal system in short order. Japan had a long history of legal culture, in which public and criminal laws were repeatedly revised and documented each time, while legal actions related to private matters were dealt with by what had been regarded as legitimate on a customary basis. Therefore, it was hardly possible to find written material that could be used to draft the civil code. High officials of the Meiji government then came up with the idea of emulating Western law. It was natural then that the French civil code, "Code Civil des Français," was selected for this purpose, as it was regarded as the best and most influential among all the Western civil codes of the time.

The task of translating the French Civil Code was entrusted to a translator serving the government, Rinsho Mitsukuri (箕作麟祥, 1846–1897), who with his outstanding talent for foreign languages, had already finished the translation of the French Penal Code as early as 1869 (the second year after the Restoration). The statement allegedly uttered by Shinpei Eto (江藤新平, 1834–1874), Minister of Justice at the time, that he should, "without regard to translation errors, just complete the translation as quick as possible,"[3] illustrates how imperative it was for the government to establish a modern legal system. As a result of Mitsukuri's effort, a translation of the French Civil Code was published in November 1871.

Throughout the translation process, as Mitsukuri later confessed, he encountered many difficulties, first and foremost because of the absence in

[3] This utterance is recorded only in Mitsukuri's reminiscences: Masao Ikeda, *Boissonade and his Civil Code of Japan*, Tokyo: Keiogijuku University UP., 2011, p. 79.

Japanese of legal terminology to express Western legal notions. It should be noted here that Mitsukuri was neither the first nor the only Japanese who translated Western law. In the mid-nineteenth century, when the backwardness of the administrative system of the Tokugawa shogunate was admitted to the Tokugawa government, research on the Western administrative system started. Tentative translations of the terminology of Western laws were carried out in the *Banshoshirabesho* (蕃書調所 "The Institute for the study of Western books"), established by the Edo government. Mamichi Tsuda (津田真道, 1829–1903), Mitsukuri's contemporary and later a statesman, was sent to Leiden University in 1862, and during the years of his stay until 1865, he translated the edited lecture notes of Simon Visssering, which appeared under the title of *Taisei Kokuhoron* (泰西国法論 "Western Laws") in 1868. This was the first book that described in Japanese the Western legal system and jurisprudence, and it was in this book that the Japanese word for "civil code" *minpō* 民法 (*min* means "people," and *pō*, an allomorph of *hō*, means "law"; combined it means "law for the people") was coined. Nevertheless, the translation of the whole law code was never carried out before Mitsukuri, and in this and in many other senses, Mitsukuri was the pioneer in Japan in the field of forensic translation. The word *minpō*, although not Mitsukuri's creation, was disseminated as a Japanese term by his use of the word in the translation of the French Civil Code.

In this situation of limited availability of language material, Mitsukuri had few options to obtain Japanese expressions that could express particular European legal notions. The Old Japanese lexicon being in most cases not appropriate, he could only search for near-equivalents in the Chinese lexicon or coin new words, recruiting Chinese character-morpheme-words[4]. Successful cases of the former strategy are represented by such words as *kenri* (権利 "right") and *gimu* (義務 "obligation") which are used in contemporary Japanese as the basic terms of civil life; these words are often thought to be Mitsukuri's creation, but in fact he found the words in the Chinese translation of *Elements of International Law*, originally written by Henry Wheaton in 1836[5]. Examples of the latter case are represented by *dōsan* (動産 "movables") and *fudōsan* (不動産 "immovables"). These words are formed by compounding, which is the most productive strategy in nominal word formation for Japanese. In the case of *dōsan*, *dō* 動 denotes "move/moving" and *san* 産 means "product/thing," whereas in *fudōsan*, the negative marker

[4] Each Chinese character has a meaning and can function as a morpheme as well as an independent word.

[5] Fumihiko Otsuki, *Mituskuri Rinsho Kunden* [Biography of Rinsho Mitsukuri], Tokyo: Maruzen, 1908, p. 101 [大槻文彦『箕作麟祥君伝』東京: 丸善 明治40年, 101])

fu 不 is added to *dōsan* in the same way that "immovables" is derived from "movables." These terms are well integrated in contemporary Japanese, and are used in daily social life.

Although Mitsukuri's ability to translate French was more than excellent, he could not be spared translation errors that caused serious problems. In many cases, it was in fact not simple errors, but complex misunderstandings stemming from the polysemy of the words and morphemes he treated. A well-known case is his translation of "droit civil" (civil law) into Japanese as *minken* 民権. The problem here is complex in that the phrase of the source language "droit civil" could be ambiguous, as "droit" might mean either "law" or "right." Mitsukuri understood the phrase "droit civil" as "right of the people," expressing it by combining *min* 民 for "people" (as in the case of *minpō*) with *ken* 権 for "right." This translation was not appropriate, of course, since the original meaning of "civil law" was not reflected. However, much more problematic was the polysemy of the word-morpheme *ken* 権. Mitsukuri's intention in recruiting *ken* 権 was to express the French 'droit' (not "law," but "right"), but *ken* 権, a polysemous word, could also mean "power" and "sovereignty" (from its Chinese etymological meaning as "rule, control"), and therefore the word *Minken* could be interpreted as "popular sovereignty." In fact, some high government officers of the time understood the term in this very way, accusing Mitsukuri of creating and using a word with such "subversive" connotation. Mitsukuri eventually escaped punishment under the protection of a prominent politician, but this episode was long remembered as how an ambiguous translation can end a person's career.[6]

After the completion of the translation of French Civil Code, Mitsukuri moved on to draft a civil code for the Japanese government with the assistance of Michiteru Mutaguchi (牟田口通照, 1854–1905), a judicial officer, under the order of then-justice minister Takatō Ōki (大木喬任, 1832–1899). The draft Mitsukuri proposed after years of work was regarded as too dependent on the French Civil Code to be adopted in Japan, and thus was rejected in 1880 by the Civil Law Assembly. The unaccomplished task of drafting a civil code for Japan was then handed to Gustave Boissonade, with whom Mitsukuri's engagement in the reformation of civil code continued. The history of the formation of modern Japanese civil code shows that the civil code Boissonade drafted was completed, but eventually not enacted. In this respect, it might be said that Mitsukuri's contribution to the reformation of Japanese civil code left no traces. Certainly, translating foreign law

[6] Otsuki, Mituskuri Rinsho Kunden, p. 102.

and editing it was what Mitsukuri considered his mission, but proposing his own idea of a civil code that would be in accordance with the needs of Japan at the time was surely not in his vision. Nevertheless, his act of translation was not unsuccessful; on the contrary, it was quite fruitful in that many of the words he created are integrated in the contemporary Japanese lexicon as basic terms for lawyers as well as ordinary people.

The circumstances in which Mitsukuri was entrusted with translating the French Civil Code in the earliest stage of Japan's modernization is reminiscent of the situation of the 19th century South Slavic regions regarding the formation of the language of law. We will discuss this in the following sections.

3. SERBIA: THE *SERBIAN CIVIL CODE* (1844) AND JOVAN HADŽIĆ

The *Serbian Civil Code* (*Srpski građanski zakonik*, hereafter SCC), later renamed the *Civil Code for the Kingdom of Serbia* (1882), appeared in 1844 as the first modern civil law in the South Slavic regions. The authorship is ascribed to Jovan Hadžić (1799–1869), an elite lawyer from Vojvodina, who at the time was also known as a writer with an antagonistic position toward Vuk Karadžić's language reform. His attitude toward the Serbian language is arguably not unrelated to the way he undertook the task of drafting the civil code. One rather received view of the SCC is that it was codified based on the model of the *Austrian Civil Code* (*Allgemeines bürgerliches Gesetzbuch*, in short ABGB) enacted in 1811, or was mostly a copy of the ABGB, yet some researchers estimate it as a positive law with a set of local Serbian customary laws regarding family and inheritance matters embedded in it.

Regardless of how it was estimated as a modern civil code, it was certain that the SCC was severely criticized for its language by lawyers and linguists both in Hadžić's time as well as later. For example, Vuk Karadžić in a letter to P. Atanacković wrote: "He [Hadžić] didn't know the people for whom he composed the Civil Code, and because of that he drew on so many terms and definitions that are against the actual situation of customary law and people's understanding of it."[7] Later, Valtazar Bogišić also denounced Hadžić as incompetent in codifying the law code and called the SCC as nothing but a copy of the ABGB. A well-known example that Bogišić pointed out was the choice of word *sokrovište* (*сокровиште*) as a

[7] For example, Sima Avramović, "Srpski građanski zakonik (1844) i pravni transplanti — kopija austrijskog uzora ili više od toga?" in Poloja, Milena *et al*. *Srpski građanski zakonik — 170 godina*. 2014. Beograd, pp. 13–46.

legal term corresponding to "treasure" (French *le trésor*, German *der Schatz*, Latin *thēsaurus*). Bogišić criticized the word choice as a Slavonic-Serbian element that did not belong to the language of the ordinary people. He instead proposed *blago*, a word also of old Slavonic provenance, used by local people to denote "treasure," which was adopted in his *General Property Law Code for the Principality of Montenegro*.[8] We will discuss Bogišić and his civil code in more detail in Section 6.

Indeed, the lexical selection of SCC can hardly be estimated as understandable for ordinary people of the time. For instance, article §210 cited below would lose its sense if the meaning of *državina* was not known to the party involved.

§210 кад ствар изгубиш или оставиш твоја државина престаје...
"Once you lost or left behind your thing, your ownership is lapsed..."

The selection and implementation of legal terms expressing abstract ideas was certainly the most troubling issue throughout the process of legal language formation among Slavs in the nineteenth century. To illustrate this, let us look at another article in the SCC:

§199 Ако су ствари бестелесне, као права, онда ћеш држалац или притежалац бити кад то уживаш у своје име.
"If things are incorporeal, such as a right, then you will be a possessor or acquirer when you exercise them in your own name."

It is uncertain whether words such as *bestelesne*, a calque of the Latin *incorporeus*, and *držalac ili pritežalac* (cf. притѧжатель in Old Russian) were comprehensible to the ordinary people of Serbia, although Hadžić's effort to make them understandable is evident through the addition of the complement phrase "such as a right."

It should be noted that the style of the SCC, as was recognized by Ž. Perić, indicates Hadžić's effort of codifying a law that was comprehensible to the people who have not specifically get educated.[9] The next example noticed by Perić illustrates this:

§218 ако ти твојим семеном туђу њиву засејеш, плод није твој но онога чија је њива...
"If you sowed your seed in another's field, the fruits from it are not yours but belong to the owner of the land..."

[8] Miloš Luković, *Razvoj srpskoga pravnog stila*. Beograd: Službeni glasnik, 1994. p. 49.
[9] Valtazar Bogišić, "I opet o stručnim izrazima u zakonima." Mjesečnik. in Bogišić, Izabrana Djela. IV. 1877. p. 132.

The syimplicity of the syntax and wording of these sentences reveals the author's will to make the SCC accessible to lay people.[10] A single look at a sentence from the *Serbian Constitution* of 1838 (also called the "Turkish Constitution") will suffice to confirm this.[11] See, for example, the Serbian Constitution (Султанскій Хатишерифъ), article 60:

> Свакій Сербинъ, великій и малый, подложанъ є плаћаню данка и даянія. Серби Чиновницы, поставлѣни по службама Земальскима, плаћат' ће ньиову припадаюћу часть по соразмѣрію добара и земали, коє притяжаваю;
> "Every Serb, regardless of status, is obliged to pay taxes. Serbian officials of local governments pay their tax in accordance with their property and lands."

Aside from the conservative orthography of Slaveno-srpski (Slavonic-Serbian), the sentences here are evidently archaic with the use of participial constructions (ньиову припадаюћу часть) and Russian-like expressions (притяжаваю). It is quite unlikely that ordinary people could have comprehended them in reading or hearing.

There is no doubt that Karadžić as well as Bogišić's negative opinion of Hadžić's selection of legal terms stemmed from their differences in philosophy on legal language. Though Karadžić was not a jurist, he had a strong belief that the literary language based on the people's vernacular was a precondition for constructing a new state with modern institutions. Bogišić basically took the same line as Karadžić, relying on the ideology of the German historical law school and the idea of Pan-Slavism. Hadžić's position was the opposite: He probably regarded it as most important for his mission to establish a civil code suited to the state and the leaders of the state whom he served. This can be seen in his response to Vuk's criticism, published in the *Response* III (Утук III):

> "Кадъ бы Вукъ управо познавао оно, о чему говори, т.е. кадъ бы онъ знао управо, шта е то быти Србскимъ законописцемъ, шта е то писати законъ за еданъ народъ и старѣшине народне, кои се нигда управо законом управляли нису, и да зна на колико страна Српскій законописацъ свое погледе управити при писаню закона' мора, ако жели да закон у дѣйство ступи и оживи и одъ ползе буде, онъ ямачно небы овако говоріо;..." (Утук III, С. 64)

[10] Živojin Perić, O jeziku u zakonima. Povodom kodifikacije našega prava. Beograd: Geca Kon, 1915, p. 9

[11] Perić, O jeziku u zakonima, p. 9.

> "If Vuk were aware of what he was saying, that is, if he understood the meaning of being a legislator for a nation and its leaders who had never experienced the government of laws of their own, and if he knew how many aspects the Serbian legislator took into account in writing the law code in order that the law would become legally effective and continue to be such, he would not say..."

The idea disclosed here of drafting for the state and leaders a law code that would be broadly effective and consistent is arguably in concord with his linguistic view that favored Slavonic-Serbian, the language of authority and tradition of the time in Vojvodina. Also in concord with his preference for the literary language over vernacular language is his philosophy to demarcate law from ordinary people's customs, which can be witnessed in the phrases found among his writings: "друго е разговарати се у народу о мужу и жени а друго су понятія законна, юридичска, опредѣлна, ограничена..." (Утук III, С.66) "popular speech on the husband and wife is one thing, but quite another is the legal notion, judicial, defined, restricted..."

Selecting traditional written language, already established as a normative model, like Slavonic-Serbian of the first decades in Serbia, for the register of legal language might be a justifiable decision for legislators when codifying the law. However, Slavonic-Serbian, an old written language, as Vuk criticized, was surely not designed for the ordinary people of that time, and in this sense Hadžic's code could hardly be entitled *građanski* "of citizens." Moreover, the simple identification of literary language and legal language was not sufficient to draft a law: the demarcation of legal use of langauge from the other use of it should have been considered. However, at the Hadž's time such a discussion did not take place. This question would be tackeld by lawmakers of later generations.

4. THE CROATIAN/SERBIAN TRANSLATION OF ABGB

The Revolutions of 1848 provided the South Slavs living in the Habsburg Monarchy a new opportunity to develop a legal culture based on their native Slavic vernacular. With the adoption of the Octroyed Constitution of 1849, the equality of all idioms of the people in the monarchy was approved. At the same time, it was confirmed that every Austrian law would be translated from German into the idioms of the people of the monarchy and be published equally. In conjunction with this political turn, two significant projects for the Slavs were launched: the translation of the Austrian Civil Code, *Das Allgemeine bürgerliche Gesetzbuch* (ABGB), into the languages in the Monarchie (Croatian, Hungarian, Italian, Polish, Russian, Romanian, Serbian, Slovene, and Latin), and the compilation of political and

judicial terms, that is, the *Juridisch-politische Terminologie für die slavischen Sprachen Oesterreichs* (*Juridical and political terminology for the languages spoken in Austria* "JPT"). The JPT was first published as a German-Bohemian-Polish-Russian-Slovene-Serbian terminological lexicon in 1850 in Vienna, and after that as a separate edition the JPT for South Slavic languages (German-Croatian-Serbian-Slovene) appeared in 1853. The necessity of the JPT can be explained by the language situation at the time when the local idioms, having for long periods been deprived of official status, were found to be insufficiently cultivated to provide a full set of appropriate judicial and political terms corresponding to those in German. The translation of ABGB, as can be easily anticipated, encountered similar problems due to the lack of necessary terms.

A Dalmatian-born journalist and writer, Božidar Petranović (1809–1874), was the one engaged in both projects, for the ABGB as a translator for the Serbian and Croatian versions, and for the JPT as one of the co-authors. The Serbian translation was finished in 1849 and published in the Cyrillic, and followed by the Croatian version in the Latin alphabet in 1853.[12] In the same year, the South Slavic edition of the JPT was published.

In a brochure titled "О аустрійскомъ грађанскомъ законику и о србскомъ преводу истога." Беч, 1850 ("On the Austrian civil code and the Serbian translation," Vienna 1850), Petranović disclosed that most serious obstacle in the translation was the lack of words to properly express particular legal notions. Both Serbia and Croatia had in the past had legal codes written in their own languages, such as the Code of King Dušan (XIV c.) of Serbia, the Law Code of Vinodol (XIII c.), and the Statute of Poljica (XV c.), composed in medieval Croatia, but the words used in them were not suitable for a modern civil code. The existence of dialectal divergence made his work more difficult. When there were variations that were synonymous but not identical, Petranović had to decide by himself which to select. For example, the German *Vertrag* ("contract") could be expressed by two Croatian-Serbian words *pogodba* and *ugovor*, of which the former was mainly used in Dalmatia and Slavonia and the latter in Serbia. Petranović's selection on this matter was such that *Vertrag* was translated into *pogodba*, while *ugovor* was regarded as referring to *Verabredung* ("agreement"). However, he himself used these translations inconsistently, inviting criticism from others (see, below).

[12] This constitution, after much disorder and interventions from foreign powers, was drafted in Istanbul and completed by Serbian representatives along with Turkish officers and Russian diplomats in late 1838: Ćirković, *The Serbs*, p. 195.

Another dimension of difficulty was demarcation of the legal use of language from its vernacular use. Petranović emphasized in his brochure, among other matters, the importance of excluding ambiguity, and thereby stressed the necessity to distinguish the legal and vernacular use of language elements. He noted, for example, that the translation of *Verbindichkeiut* ("liabilities") must be *obvezanost* while the meaning of *Pflicht* ("duty") should be rendered by *dužnost*, although, he remarks, in the local varieties the difference between *obveznost* and *dužnost* can be obscured as they are often used as synonyms and appear in the same context. Indeed, the Croatian Academy's dictionary defines *dužnost* as both "debt" and "duty."[13]

In such a situation, where there existed no defined legal terminology, the selection of a particular word in Serbian or Croatian for a particular legal notion was an arbitrary matter dependent on the translator's judgment. It was thus unclear whether his selection was accepted among a wider range of people. In fact, it later became apparent that his translation and the terms in actual practice in local judicial courts disagreed.[14]

Another strategy Petranović used to obtain adequate words was to recruit them from foreign sources. If Mitsukuri when translating the French code looked for terms in Chinese, the language genealogically unrelated with but culturally influential on Japanese, especially with respect to the higher intellectual layers of the Japanese language, Petranović sought words in other Slavic languages into which the ABGB had been translated earlier, namely in Czech.[15]

Petranović's consultation of the Czech translation of the ABGB can be proved by comparing the Czech and Croatian versions of Article 367 (Part II, Teil II).

The German original reads as:

> Die Eigentumsklage gegen den rechtmäßigen und redlichen Besitzer einer beweglichen Sache ist abzuweisen, wenn er beweist, dass er die Sache gegen Entgelt in einer öffentlichen Versteigerung, von einem Unternehmer im gewöhnlichen Betrieb seines Unternehmens oder von jemandem erworben hat, dem sie der vorige Eigentümer anvertraut

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[13] *Obći gradjanski zakonik proglašen patentom od 29. Studenoga 1852 u kraljevinah Ugarskoj, Hervatskoj i Slavonii, serbskoj Vojvodini i tamškim Banatu*.

[14] Божидар Петановић, О аустрійскомъ грађанскомъ законику, С. 34–35; Đ. Daničić, M. Valjavac, P. Budmani, *Rječnik hrvatskoga ili srpskoga jezika*. Dio. 2. Zagreb: HAZU, 1884–1886, p. 913.

[15] Susan Šarčević, *New Approach to Legal Translation,* The Hague, London, Boston: Kluwer Law International, 1997, p. 35.

> "The complaint does not take place against the bona fide possessor of a movable thing, when he proves that he has acquired this thing either at a public auction, or from a tradesman authorized to carry on such a trade, or on payment from someone, to whom the plaintiff himself has entrusted it for use, for preservation, or with whatever intention."

The corresponding part is translated into Czech "Všeobecný občanský zákoník" as:

> Žaloba vlastnická nemá místa proti poctivému držiteli věci movité, prokáže-li, že jí nabyl buď ve veřejné dražbě nebo od živnostníka, který má právo takto obchodovat, nebo za plat od někoho, komu ji žalobce sám k užívání, k uschování nebo v kterémkoliv jinému úmyslu svěřil. [...]

Notable here is the word for "public auction," which in Czech is translated as *veřejná dražba*. The same word is found in the Croatian translation of ABGB, in the same article, §367.

> Tužbi o vlastnosti neima miesta suprot poštenom posiedniku stvari pokretne, ako on dokaže, da je tu stvar pribavio ili na javnoj dražbi, ili od kojega obertnika, ovlastjenoga voditi takovi promet, ili za platju od onoga, komu ju povieri isti tužitelj da se njom služi, da ju čuva, ili na koju mu drago inu sverhu. [...]

The absence of the word *dražba*[16] in the Croatian Academy's dictionary as well as in Vuk's Serbian dictionary (2nd edition) strongly suggests that this word did not exist in the Serbo-Croatian linguistic domain before the mid-nineteenth century, and it is most likely that Petranović borrowed it from Czech. As this word is a part of the standard lexicon in contemporary Serbian and Croatian, Petranović's borrowing of this word can be regarded as a successful case of searching for foreign, albeit genealogically close, sources to find elements for legal terminology.

Petranović apparently opted for the literary language rather than the vernacular as the basis of legal language in line with Hadžić, and in this respect distanced himself from Karadžić's reformation, yet his language was not the Slavonic-Serbian type used by Hadžić. Petranović's effort for stylistic aspect is visible, for example, in the translation of the ABGB §19. In the original German, this article reads as:

[16] The Czech translation of the ABGB was published immediately after the enactment of ABGB in 1811; the translation task was entrusted first to Josef Zlobický, professor of Czech language and literature at Vienna University and then, after Zlobický passed away, to Vojtěch Veselý.

> Jedem, der sich in seinem Rechte gekränkt zu sein erachtet, steht es frei, seine Beschwerde vor der durch die Gesetze bestimmten Behörde anzubringen. Wer sich aber mit Hintansetzung derselben der eigenmächtigen Hilfe bedient oder, wer die Grenzen der Notwehr überschreitet, ist dafür verantwortlich.
>
> "Everyone, who considers himself injured in his rights, is allowed to bring his complaint before the authority fixed by the law. But whoever disregarding it employs his arbitrary remedy, or whoever exceeds the limits of the legal defense in case of peril, is answerable for it"

The Czech translation reads:

> Každému, kdo se cítí zkrácen ve svém právu, je zůstaveno, aby svou stížnost přivedl na úřad ustanovený zákonem. Kdo však úřadu nedbá a jedná svémocně nebo kdo překročí meze nutné obrany, je z toho odpovědn.

The Croatian Translation reads:

> Tko misli da je uvredjen u svojem pravu, prosto mu je tužit se oblasti po zakonih ustanovljenoj. Tko mimoišavši oblast sam sebi sudi, ili tko predje granice pravedne obrane, taj je z a to odgovoran.

Compared to the Czech translation, which is mostly a literal translation with German-like word order and syntactic constructions, Petranović's translation is less constrained, although it still shows bookish features such as the use of participles.

His effort to make the translation less bound to German syntax and closer to natural Slavic was nevertheless later criticized. Franjo Spevec, for example, complains that the translation should have been done in more "natural Croatian." Among the shortcomings Spevec noticed in Petranović's translation, the ambiguous use of *pogodba* and *ugovor,* which Petranović himself noted (as mentioned earlier), was one. Spevec points out that *Vertrag* is sometimes translated as *pogodba* and at other times as *ugovor*. Moreover, *ugovor* is also used for *Unterhaltungen* ("conversation"), *Verabredungen* ("appointment"), *Einverständnis* ("consent"), *Pakt* ("pact"), and *Bestimmung* ("determination"). Spevec's criticism ranges further to the translation of complex German words, calling Petranović's translations of German *Grundeigenthum* as *zemljovlastništvo*, *Allein-Gesetz* as *samoposjed*, and *Geschäftsführung* as *poslovodstvo* too literal. He also mentions that the overuse of literal translation sometimes makes the text incomprehensible, as here: "Verwahrungsmittel des Inhabers gegen mehrere zusammentreffende Besitzwerber" as "ohranjiva sredstva držaoca suprot više stičućih se tražilaca posjeda" In such cases,

Spevec advises paraphrasing the text, such as "Kako da se osigura držalac, kad više njih traži stvar od njega."[17]

Petranović's translation of the ABGB into Croatian/Serbian was the first modern civil code written in Serbian and Croatian. Although it was not accessible and understandable to the people for whom it was intended, it was, like Mitsukuri's translation, one significant step forward in the history of the Serbo-Croatian standard language becoming a fully functional language.

5. DALMATIA: THE "ILIRSKO [PRAVNOSLOVNO] JEZIKOSLOVJE" IN *PRAVDONOŠA*

In addition to the government-controlled project of translating the civil code and composing official terminology, there occurred movements to ameliorate the language situation of the legal matters of citizens. Here also, translation was an important factor.

Like Serbia and inland Croatia, Dalmatia in the nineteenth century also faced the necessity of establishing legal language norms based on the local vernacular Slavic. What was specific in Dalmatia was that the language whose influence needed to be overcome was Italian.

Up until the mid-nineteenth century, the prestige language in Dalmatia was Italian; official documents were issued in this language and the language of court processes was nearly exclusively Italian. However, political and social changes in the Habsburg Monarchy after 1848 brought an end to this situation. In 1849, for example, the official gazette in Zadar was issued in three languages: Italian, German, and the local dialect of the coastline Croatia, referred here, for the sake of avoiding confusion with inland Croatian, as "Dalmatian." Thus, it became possible for the people of Dalmatia to use their idiom as an authorized language in legislative and judicial matters.

It was in this context that the urban intellectuals of Dalmatia started taking actions toward normalizing the legal language for the local inhabitants. One such activist was Ante Kuzmanić (1807–1889), a professor at the Zadar Midwifery School. Being aware of the necessity of a normalized, fully functional language equal in stature to Italian that could be used in legal and court matters, in 1851, with the cooperation of Ivan Danilov and Božidar Petranović,[18] he launched a law journal titled *Pravdonoša*. If Hadžić's SCC was the first modern civil code in the South Slavic region, *Pravdonoša* was the first legal journal for the South Slavic peoples. The journal, consisting of articles devoted to

[17] Đ. Daničić, M. Valjavac, P. Budmani, *Rječnik hrvatskoga ili srpskoga jezika*. Dio. 2. 1884–1886; Вук Караџић, *Српски рјечник*. Беч, 1853.

[18] Šarčević, New Approach to Legal Translation, pp. 34–35.

various dimensions of judicial matters, had a short life of no longer than two years, and as G. Thomas's observation suggests, it might not have had much of an influence on the history of legal language formation in Dalmatia/Croatia.[19] However, its value is not to be ignored in that it was an attempt to provide a guideline for the notions and usage of legal terms in Croatia in Dalmatia. A regular column, titled "Ilirsko jezikoslovlje" ("Ilirian linguistics") and later renamed "Pravoslovno jezikoslovlje" ("Forensic linguistics"), is indicative of this. The column is made up of a list of terms for criminal and civil courts, with each term presented in Dalmatian along with its Italian and German equivalents. Table 1 shows some examples extracted from the column in question.

Examples from "Ilirsko jezikoslovlje" in *Pravdonoša* (No. 6 & No. 11)

From *Pravdonoša* No. 6 (03.05.1851) "Ilirsko jezikoslovje"			English (added by Mitani)
Croatian	Italian	German	
krivac	reo	Schuldige	offender
sukrivac	correo	Mitschuldige	accessory/accomplice
dionik	complice	Theilnehmer	accomplice
zločinac	delinquente	Verbrecher	criminal
kazan, pedipsa	pena	Strafe	penalty
žig	marchio	Brandmark	brand
žigosati	improniare il marchio	brandmarken	brand (v.)
From *Pravdonoša* No. 11 (17.05.1851) "Ilirsko jezikoslovje"			English
prisiednik	assessore	Beisitzer	assessor
pristav	aggiunto	Adjunkt	adjunct
tajnik	secretario	Sekräter	secretary
perovodja	alluario	Schriftführer	clerk
upisovnik	protocollista	Protokollshührer	minutes secretary
porota	assise	Schwurgericht	jury court
porotnici	guirati	Geschworne	juries

The sources of these Croatian words are not entirely clear, but as the column title "Ilirsko (Illyrian)" indicates, the author(s) presumably relied heavily on the lexicon proposed by promoters of the Illyrian movement, led by Ljudevit Gaj, and not on local Dalmatian dialectal elements. Some words are obviously coinages, such as *perovodja*, and some are recruited from the old literary tradition. For example, *krivac* ("offender") is an old Croatian/Dalmatian and Serbian word going back as far as the twelfth century. Note,

[19] It is still unknown to what extent Petranović was engaged in this journal, although it is possible that his participation, particularly in editing the part on "Illyrian linguistics," was considerable.

however, that this word had been used ambiguously both as "offender" and "defendant."[20] In this column, *krivac* is defined as "an offender," whereas in a column in a later issue (1852, 5. Jan. 31), the word "defendant" (Italian *convenuto*, *impetito*, German *Beklagter*) is interpreted as *tuženik*.

This single example may suffice to suggest that the intent of the authors was to organize legal expressions in correspondence with Italian and German and to implement them among speakers in Dalmatia. This understanding can be endorsed by the preface to the column published in the first issue:

> Ovaj [= local Slavonic/Dalmacian] je... od mnogo viekovah bio zapušten i potljačen u našoj otačbini, jer izobraženija versta ljudih, najskoli gradjani, odtudjivši se od naroda svojeg govorili su i govore do dan današnji jezikom talianskim... najpotrebilije su nam one, koje idu u nauku pravdoslovnu. U toj nauci što se tiče izrazah vlada kod nas veliki nered i prava zabuna; jer koliko je god književnikah u najnovie vrime o njoj pisalo, ili iz nje u naš jezik prevodilo, mal da nije svak od nijh često isti pojam, istu stvar po svojoj ćudi drugačie nazvao.
>
> "This [=Dalmatian] language has... since long been neglected and oppressed in our homeland, for educated people, the urban resident in particular, distancing themselves from the local people, spoke and still speak in Italian... Urgently necessary for us are those words that are used in the judicial science. Regarding the terminology of this field of science, the situation is chaotic and quite confusing; no matter how much the learned people write on legal matters or translate them into our language, it happens almost always that the same idea, the same thing is named differently, depending on the author's disposition."

The substantial effect of *Pravdonoša* on the formation of legal terms in the Western South Slavonic regions is yet to be studied, but at least the endeavor of the people involved in unifying legal language norms is evident.

6. MONTENEGRO: VALTAZAR BOGIŠIĆ AND THE *GENERAL PROPERTY CODE FOR THE PRINCIPALITY OF MONTENEGRO*

The formation of a modern legal code and legal language continued to advance with the establishment of political independence of the Slavs in the second half of the nineteenth century. The wave finally reached Montenegro, where in 1873, Nikola I assigned Valtazar Bogišić (1834–1908) to codify a civil law. This civil code, the *General Property Code for the Principality*

[20] Pietro Budmani, *Rječnik hrvatskoga ili srpskoga jezika*. Zagreb: JAZU. Dio V, 1898–1903, p. 563.

of Montenegro (*Opšti Imovinski Zakonik za knjiaževinu Crnu Goru*; hereafter, OIZ), written by Bogišić, was promulgated in 1888, enabling Montenegro to enter modern European legal society.

Bogišić's idea of law and legal language was quite different from that of the other jurists we have examined in the previous sections. It is usually regarded as to be formed under the strong influence of the German historical school of jurisprudence, founded by Friedrich von Carl Savigny, and by the ideas of Pan-Slavism in the nineteenth century. In the early years of his scholarly activities, he had already emphasized the importance of the customary law that was still functioning at the time in the livelihood of South Slavs,[21] and had formed the conviction that the language of a legal code should be that of the ordinary people to whom the law is applied.

The idea of the German historical school of jurisprudence that law, in the same fashion as language and custom, represents the spirit and development of the people is indeed fundamental to Bogišić's philosophy. Given Bogišić's reference to Savigny and Georg F. Puchta (1798–1846) in his lectures and writings during the drafting of the law code for Montenegro, the influence of these lawyers to him looks apparent. Nevertheless, his broad-ranged scholarly activities, including the study of people's customs accompanied by the collection of old Slavic laws, and interest in language not only of law but also of folklore suggests the presence of another figure who exerted considerable influence on Bogišić in his early years—Jakob Grimm.

Jakob Grimm (1785–1863), known as a linguist (as "Grimm's law" shows) and Germanist (the author of monumental works of a German grammar and dictionary) as well as a collector of folktales, started his scholarly career as a lawyer. His main works on German language are the outcome of the conflation of the idea of the Historical Law School of Savigny with the ideology of Germanistik. Rather than studying the history of German law, Grimm became more involved in the study of old Germanic languages, their historical development, and the ethno-mythological meanings of Germanic words in which were, Grimm believed, hidden traces of old Germanic legal customs. His essay titled "Von der Poesie im Recht" (On the poetry in law) written in 1816 conveys his ideology of the inseparability of language and law as well as their mutual inclusiveness, using the rhetoric of poetry and law as coming down from one and the same source. Grimm's idea that the relics of old German law could be found only in the meaning of words and phrases of the Germanic languages made him turn to the linguistic study of the Germanic languages.

[21] Valtazar Bogišić, "O važnosti sakupljanja pravnijeh običaja kod Slovena," *Književnik,* 3. Zagreb, 1866, pp. 1–17.

It is unknown whether Bogišić had a chance to meet Grimm while studying in Berlin in 1860–1861 when Grimm was still alive, yet it is certain that Bogišić encountered Grimm's ideas and was inspired by them. The introduction of Bogišić's first essay on law, titled "On the importance of collecting legal customs of the Slavs,"[22] highlights the significance of researching the customary law that is still active among the Slavs, insisting that the law people follow is as essential a part of their culture as the language. Bogišić mentions along with Savigny the name of Grimm, and cites Grimm's "Deutsche rechtsaltertümer" (German legal antiquities) in which the German *Weisthümer,* both by its nature and content,[23] is regarded as comparable with people's language and poetry. Further applying Grimm's idea to his context, Bogišić argues that recognizing legal customs is significant not only for elucidating the legal history of people but also for exploring the ethnocultural and neighboring fields of study, since all of them stem from one common origin—the livelihood of the people.[24]

Stressing the necessity of studying legal customs among the people for the purpose of advancing their scholarly interest in the customary law of Slavs, Bogišić's essay, published in 1866, again refers to the activities of Grimm, which ranged from studying law to the historical and linguistic studies of German language as well as folklore and mythology, comparing them to what the Slavs had or had not accomplished.[25]

According to Bogišić, Slavs can name, for example, Josef Dobrovský (1753–1829) and Vuk Karadžić as scholars comparable to Grimm in the field of philology, while in mythology and folklore, Jozef Jíreček (1825–1888) and Russian scholars such as Ivan Snegirev (1793–1868) and Ivan Sacharov (1807–1863) attained the level of Grimm. In contrast, Bogišić complains, in the field of jurisprudence and law, it is rarely possible to list works comparable to those of Grimm and his collaborators, except for some works by Ognjeslav Utješenović (1817–1890) on *zadruga* and the collection of Czech and Slovak legal proverbs by František Čelakovský. It seems, Bogišić writes, that Slavs are more enthusiastic about popular literature and poetry than the people's law, as if they considered the latter worthless or thought of it as already extinct. He insists that such a view is not correct, as proved by Grimm, and here he again quotes Grimm's "Poetry in law."[26]

[22] Bogišić, "O važnosti sakupljanja... "
[23] Bogišić, "O važnosti sakupljanja...," p. 2.
[24] Bogišić, "O važnosti sakupljanja...," p. 9.
[25] Bogišić, "O važnosti sakupljanja...," p. 10.
[26] Bogišić, "O važnosti sakupljanja...," p. 13.

Grimm's name does not appear in Bogišić's later works. Nevertheless, the reference to Grimm's works in his early writing indicates that in the formation of his vision on drafting the civil code, the influence of Grimm's idea was arguably not irrelevant.

As a legal code, the OIZ today is regarded as an eclectic product of Roman and Slavic customary law, but regarding the language, Bogišić certainly stuck to his principle of relying on the local vernacular while codifying the OIZ. His words from a lecture held in Petersburg in 1887 make this explicit:

> "... Naveli smo autoritetna mišljenja o potrebi lakoga razumijevanja zakona, koja se mogu svesti na pravilo o kojemu se često govori "Ako zakonodavac želi da bude razumljiv narodu, valja da se i služi njegovijem jezikom." To se podudara, prema s nekim malijem razlikama, s poznatom formulom Vuka Karadžića: "Piši, kako govoriš," tj. kako narod govori.... Po tome naše opšte pravilo, u određivanju termina, treba da bude: *čvrsto se držati narodnoga živog jezika; a kod je niminovna potreba odstupiti od toga: onda se čvrsto držati njegobv duha*."[27]
>
> "...We quoted the authorities' view on the necessity of easy understanding of law, which could be summarized into a principle, usually stated as, "If a legislator hopes to have his law understood by people, use their language." This corresponds, with a slight difference, to the famous formula of Vuk Karadžić: "Write as you speak," that is, as ordinary people speak... Therefore, our general principle in determining legal terms. arises from here: build on the people's living language; and when it is inevitable to deviate from it, then build on the spirit of people's language."

It is worth mentioning that Bogišić's insistence on using the local vernacular resulted not only from the general principle required of legislators, the philosophy of the historical school of jurisprudence, and Grimm's philosophy that the law and the language of a nation develop hand in hand, but also from his recognition of the reality of Montenegrin society. This is evident from his letter to P. Stremouhov, dated October 15, 1873:[28]

> Jezik zakona mora biti svakome shvatljiv i koliko je moguće konkretan pri čemu treba izbjegavati sve zagonetke i narodu nejasne apstrakcije. To nije samo s ciljem: **a.** da bi jasnije bilo prostom i nepismenom

[27] Valtazar Bogišić, "Tehnički termini u Zakonodavstvu." SPb. 1887, in Valtazar Bogišić, *Izabrana djela*. 2004. Podgorica — Beograd, Vol. IV. p. 117.

[28] Valtazar Bogišić Petru Nikolajeviču Stremouhovu o glavnim naučnim tezama na kojima treba da se zasniva rad na izradi zakonika. in Bogišić, *Izabrana djela*. 2004. Podgorica — Beograd, Vol. I. p. 239.

> narodu, nego i **b**. da bi zakoni bili shvatljivi i samim sudijama, koji su, kako je poznato, takođe u većini nepismeni...
> "The language of law must be understandable to all and be as concrete as possible; and it is necessary to avoid any kind of riddle and abstraction that people cannot resolve. The law is. not only for the purpose that it be understandable to **a**. ordinary people who are illiterate, but also to **b**. juries of whom majorities are no less illiterate..."

Thus, the cultural backwardness of Montenegro was a significant factor that Bogišić took into account when codifying the civil code.

As a natural consequence, Bogišić considered it particularly necessary to select dialectal elements of Montenegro and its neighboring Hercegovina. For example, the terms adopted for "interest" (*usura*) in the OIZ were *dobit*, *dobitak*, and *većinak*. It is interesting to compare these terms with those in other legal documents expressing the same notion. Hadžić's SCC, for instance, discusses "interest" using three terms: *lihva*, *interes,* and *dobitak*. The first is an old lexical element, as evidenced in the Old Church Slavonic text,[29] and the second, *interest,* is of foreign origin but is broadly used in Europe as well as in the Balkans. However, neither of them is adopted in the OIZ; only *dobitak* coincides with Bogišić's choice. The *Juridisch-politische Terminologie* adopted the terms *kamata* and *obrest*,[30] neither of which appear in the OIZ. The reason for Bogišić's exclusion of popular words such as *interest* and *kamata* is not clear, but it could have resulted from his self-avowed purism against foreign words.[31] Here, however, we would like to point out the word *većinak*.[32] This word is notable because it does not appear in any other legal document written prior to the OIZ, not even in Vuk's *Serbian Dictionary* (2nd ed.). Bogišić explains that *većinak*, even though Vuk did not include it in his dictionary, is known to every inhabitant of Montenegro, and therefore it is appropriate to incorporate it as a legal term.

Not every local vernacular word Bogišić adopted in the OIZ survived as a legal term, such as *većinak*, but according to Luković, around 30 words used at that time in the daily lives of the local people and adopted as terms

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[29] Josef Kurz (hl. red.) *Slovník jazyka staroslověnského*. Československá akademie věd. II. 1973, p. 124; Miklosich, Franz. *Lexicon palaeoslovenico-graeco-latinum*. 1862–65. Wien: Braumueller, p. 338. This word is still used in Serbian-Croatian-Montenegrin, often meaning "high-rate of interest."

[30] *Juridisch-politische Terminologie,* p. 290.

[31] Bogišić, "Tehnički termini," in *Izabrana Djela*, IV. p. 120.

[32] In fact, this word is used only in the title of the part dealing with the loan (III. 3), as "O dobiti ili većinku" ("On interest or *interest*").

by Bogišić, such as *zabluda* (*error*) and *prigovor* (*exceptio*), were established as such and are still used in contemporary law.[33]

7. CONCLUSION

In Japan and in the South Slavic lands, up to the mid-nineteenth century, the modernization of the legal system, including the formation of modern civil code, was led by the government in a top-down mode. The legislators/translators first and foremost worked for the state and its leaders. The languages of the law codes were based on the old literary languages that were difficult for ordinary people to comprehend. Movements in Dalmatia in the mid-nineteenth century reflect the changes of the time; elites started to be concerned about ordinary people, yet the establishment of legal language norms acceptable to all the people was still a long way off; even orthographic unification was not yet completed. Bogišić's position, in contrast, excelled in his consideration and understanding of the community and language for which he drafted the Civil Code. Our observation in this paper can be summerized in the table below.

	Japan R. Mitsukuri (1874/75)	Serbia J. Hadžić (1844)	Serbia/Croatia B. Petranović (1849–53)	Croatia Illi. jezikoslovje (1851/52)	Montenegro V. Bogišić (1888)
Target	State and leaders	State and leaders	State and people	Local people	Local people
Language	Old literary language for educated elites	Slavenoic-Serbian (Literary language of that time)	Literary language mixed with vernacular features	Local vernacular (iekavian)	Local vernacular, in line with Vuk's reformation
Sources of legal terms	Old lexicon and new coinages	Old Church Slavonic, Russian, & local elements	Old Croatian/ Serbian, Borrowings from other Slavic languages, Coinages (calques)	Old Croatian, Borrowings from other Slavic languages, Coinages (calques)	Local elements, Existing legal terms
Effects	Some coinages are implemented in contemporary Japanese	Defeated by Vuk's reforms	Borrowing from Czech is domesticated; the first step for Croats and Serbs to have a civil code in their modern language	Attempt to regulate legal terms based on the vernacular language	Some are implemented as legal terms, some remained hapax legomena

[33] Luković, Miloš. 2009. *Bogišićev zakonik. Priprema i jezičko oblikovanje*. Beograd: SASA, Institute for Balkan Studies. 2009, p. 278.

The history of Japan and the South Slavic lands in the nineteenth century, in terms of forensic linguistics, can be characterized by the process of obtaining legal codes and the formation of legal language norms. The people engaged in this process had to tackle difficulties ranging from ways to adopt a legal system to the selection and determination of legal terminology.

In the field of jurisprudence as well as in forensic linguistics, much has been said about the requirements of a legal language. Vijay Bhatia, for example, calls for clarity, precision, unambiguity, and inclusiveness (i. e., comprehensibility and interpretability).[34] Our overview of the undertakers of legal language formation in nineteenth-century Japan and South Slavic regions showed that they were aware of these requirements and tried to practice them, although the outcomes of their tasks were dissimilar because of the differences in conditions and the times in which they worked.

[34] Vijay Bhatia, "Specification in legislative writing: Accessibility, transparency, power and control," in Coulthard, Malcolm and Alison Johnson (eds.) *The Routledge Handbook of Forensic Linguistics*. London: Routledge Taylor & Francis Group, 2010, pp. 37–50.