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Review

Translation Issues in Language and Law. Olsen, F., Lorz, A. and Stein, D. (eds) (2009)

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Interpreting has been aptly described as 'an imperfect process in an imperfect world' (Hale and Gibbons, 1999) – a statement that to a large extent also applies to translation. Differences between legal systems are at the origin of difficulties encountered by interpreters and translators; these range from the lack of equivalent terms to differences in discourse. However, legal professionals are generally known to be unaware of these limitations and to expect verbatim interpreting and translation.

In light of this, the publication of the interdisciplinary volume *Translation Issues in Language and Law*, edited by Frances Olsen, Alexander Lorz and Dieter Stein, is more than timely. Its authors are mainly lawyers and legal scholars (six out of eleven, not including the editors) who, collected here with scholars of linguistics and translation, examine the problems that arise during spoken and written multilingual communication in cross-cultural and cross-linguistic legal settings. Almost every chapter brings up the facts well known to linguists and interpreters and translators: as a result of different histories, legal systems have developed different procedures and conventions and articulated different concepts and terms. Given this, all the contributors acknowledge that cross-linguistic legal communication, no matter what form it acquires,

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is anything but transparent and mechanical. Translation is an organic part of their discussions.

One of the recent effects of globalisation is that law has spilled over its national borders in an unprecedented way, creating new international settings and activities. European lawyers involved in international business and trade negotiations are often forced to use a foreign language, mainly English, an all-pervasive *lingua franca* – a recurrent motif of this book. Communicating in a foreign language is prone to problems: misunderstanding of both foreign and seemingly shared concepts is compounded by unsuccessful attempts to transpose common law concepts into civil law systems, and vice versa, and by attempting to adapt one's legal style of communication, spoken and written, to that of the foreign legal culture, often under the influence of English-language legal discourse (Uwe Kischel 'Legal cultures – Legal languages'; Volker Triebel 'Pitfalls of English as a Contract Language'). Lawyers who try to 'translate' their legal culture are faced with the lack of legal lexical equivalents between culturally and legally distant languages, such as Chinese and Japanese on the one hand, and European languages on the other. They are misled by deceptive cognates that have different meanings in related languages (e.g., 'law', 'subsumption') and the terms that have non-shared meanings in the dialects of the same language (e.g., German versus Austrian dialects of German, and British English versus American) (Kischel). Lawyers who speak or produce documents in a foreign language become aware of the different discourse rules, often imposed by English, and the different communicative styles that exist in different legal cultures. These are more 'objective' in the European tradition when compared with the American, having a different length and structure of judgments, which goes with a more 'scientific' type of argumentation in the European tradition as opposed to the more practical American (Kischel, Triebel). European lawyers who choose to communicate in English, warns Kischel, do so to their own detriment: unable to express themselves adequately, appropriately and professionally in the non-native language, they will appear less articulate, persuasive and effective (Kischel).

Working with bilingual contracts, parliamentary bills, constitutions, and multilingual documents of international organizations has highlighted a host of questions for lawyers. Following the 2004 enlargements, the European Union (EU) and the Court of Justice of the European Communities routinely produce up to 20 multilingual versions of legal documents by hundreds of drafters and translators (Karen McAuliffe 'Translation of the Court of Justice of the European Communities'). All the language versions are authoritative documents of equal status; they should not be treated as translations of one, original version. However, traditionally these versions have been produced by

means of translation, and achieving equivalence has been one of the challenges (Oliver Brand 'Language as a Barrier to Comparative Law'; Lawrence Solan, 'Statutory interpretation in the EU: the Augustinian approach'). Comparative lawyers who work with these documents experience the problems outlined by Kischel, such as a lack of adequate comprehension of a document in a foreign language, misunderstanding the true meaning of legal lexical terms in foreign languages, and reliance on deceptive cognates to identify meaning (Brand). However, lawyers are often reluctant to recognise that the problem of equivalence in legal texts may be insoluble, making translation a myth, and they resist involving linguists in the discussion (Brand). On the positive side, the availability of several authoritative multilingual versions in the EU legislation may have a beneficial effect. Solan suggests that comparing the various language versions (the 'Augustinian approach') helps to gain a better insight into the documents by extracting clarifications of meaning that may be better expressed in one version than another, or allowing the identification of an error in translation.

The unavoidable differences between the language versions of the a single document raise questions about how they are produced, and highlight the tension between the expectations of lawyers and the realities experienced by translators. There has been only limited success in achieving equivalence among multilingual documents with an equal legal status (Kischel); but lawyers, as Brand highlights, are unaware of the nature of languages, demand a literal rather than an analytical translation, and are reluctant to embark on a more interdisciplinary approach to the interpretation of legal texts. Linguists and translators, on the other hand, are highly aware that the symmetry of translation is an illusion, and that the concept of equivalence is highly problematic (José Lambert 'The Status and Position of Legal Translation: a Chapter in the Discursive Construction of Societies'). Translators have traditionally used loan words, explanations, adaptations, and footnotes to resolve the problems of discrepancy between legal systems and to compensate for the lack of adequate vocabulary, and in the process have imported foreign concepts into some newer legal systems (Jean-Baptist Bigirimana 'Translation as a Dynamic Model in the Development of the Burundi Constitution'). At the same time, these translation techniques have led to the creation of poor versions in the target language. In bilingual Canada, where two legal traditions (common law and civil law) co-exist, the translation approach has led, in the past, to 'literalism and even servility to the source language' (Louis Beaudoin 'Legal translation in Canada – the genius of legal language (s)'). Parliamentary bills used to abound in literal translations, unidiomatic usage, calques, anglicisms in French to denote common law terms, and gallicisms in English to denote civil law terms: *acte* instead of *loi*, *evidence*

instead of *preuve*, and *offense* instead of *infraction* (138–39). Even recent EU translations include unsatisfactory cognates (eg., *reasonable steps* and *reasonable measures* translated into French as *raisonnable*, or *acteurs sociaux, acteurs politiques* translated by a cognate into English) and calques based on a superficial relationship between words (Maurizio Gotti, 'Globalizing trends in legal discourse', 57). The ensuing semantic additions to or alterations of the original meaning by the translator, and the impact of English as a *lingua franca* of communication during drafting, affect the meaning of documents. These problems cannot be resolved by the use of the EU database with the shared EU concepts, as each member state of the EU uses its own legal system, style and accepted register (Gotti, 58–59).

Without being prescriptive, the authors in the book examine alternative ways of making all the multilingual versions functional and effective. In the Court of Justice of the European Communities, it is accepted that translation is not an exact science and that translators should use 'approximation' (Karen McAuliffe 'Translation of the Court of Justice of the European Communities'). In Canada, bilingual bills are now drafted by teams of jurilinguists, rather than translated (Beaudoin). In his excellent chapter, Gotti advocates for enhanced quality of drafting at supranational level as a partial solution, with subsequent translations into national languages. But even drafting can be dominated by the English drafting style, by language-bound terms and by 'weasel words' (*appropriate, reasonable, justifiable*) creeping into local legal terminology (Gotti, 60, 65). Each legal culture, Gotti observes, has its own rhetorical, social and cultural requirements, and for the EU-originated document to be valid and effective in the domestic legislation of new members, it needs to undergo 'the process of adjustment and adaptation of a text issued by an international organization to the legal and sociocultural features of the various national target users' (Gotti, 75).

Co-construction of parallel texts through a combination of drafting and translation has been given a detailed treatment by Agnieszka Doczekalska in 'Drafting or translation – production of multilingual legal texts'. Multilingual states, international organizations and courts, and supranational organisations implement the principles of the equal authenticity of all language versions of a legal document through a combination of drafting and translation in different proportions. Multilingual and multilegal countries (Canada, Switzerland, Hong Kong) provide examples of different approaches. They include: (a) parallel drafting of the whole act in two languages by two drafters who work separately, without any translation; (b) drafting of alternate of different parts of the act, some drafted in language A and others in language B, and then translated into languages B and A respectively; (c) shared drafting of the text divided into two halves, with each half drafted in its own language, and

then translated into the other language(s); (d) double-entry drafting (only a theoretical possibility at this stage), involving one bilingual drafter responsible for both versions; and (e) joint drafting where the whole document is prepared by two drafters together in two languages (Doczekalska, 124). Drafting and co-drafting bilingual documents without translation altogether exclude the notions of source and target language text, and avoids the tension between the original and the translation.

A multilingual document that originated through drafting rather than translation stops being the object of translation studies and requires that its creator be recognised as an author or co-author rather than translator (Doczekalska, 133). These new practices lead to the redefinition of the qualifications, role, and professional identity of the authors of multilingual documents, to determine whether they are legal translators, lawyers, linguists, jurilinguists (lawyers and legal language specialists) (Beaudoin), or professionals with even more complex expertise as drafters/translators/lawyers (Doczekalska). These observations echo the earlier statement by Brand, calling for a more interdisciplinary approach to legal texts, with lawyers seeking linguists' advice, and seeing the future of comparative law in interdisciplinary team efforts (32–33).

While globalisation has created new challenges for legal translation, authors like Lambert remind us that domestic legal traditions have always 'maintained and developed linguistic relationships with 'other' (neighbouring?) legal traditions', and that translation has always played a more far-reaching role than has been considered by translation studies, in shaping societies through the importation of legal concepts from other cultures (José Lambert, 'The status and position of legal translation: a chapter in the discursive construction of societies', 76–77). The structure and language of the bilingual Burundi Constitution reflects its colonial origins, Belgian and French. New concepts in its Kirundi version have been introduced from French through loans, adaptations, and other techniques, and its legal language reflects the 'zairisation' of the culture (Bigirimana).

But the fact that legal discourse is largely a translated discourse is not new. Today's Western legal systems have also been shaped through translations of Roman law and the Napoleonic Code (Lambert). In the EU, the text of the foundation document (*acquis)* has to be translated before member countries accept EU legislation. For the text to be understood in the member state, it has to be translated by an appropriately briefed translator by means of a 'domestication' approach to translation – that is, in a natural style, to introduce innovative concepts through 'normal', 'familiar' discourse (Lambert, 89). The translation of the EU *acquis* thus becomes much more than a translation exercise, with its traditional questions of, 'How should I or can I translate? Is this word translated correctly?' It becomes:

> the massive transfer of texts, rules and terminology [that] has been envisaged as a persuasive and organised movement of know-how from a limited number of countries and people (the Brussels 'Eurocrats') into the Central European belt with its post-communist world view. Translation is a technical service, indeed, but it is also and inevitably much more, it is […] also a political, a social and a cultural large-scale operation. (Lambert, 91)

While readers of *Translation Issues in Language and Law* may not find all the articles of equal interest, its interdisciplinary perspective is a definite strength and will attract a diverse audience. Practical considerations, including examples from the legal and comparative lawyers' perspective, will confirm interpreters' and translators' observations, and lawyers will gain an insight into the challenges of cross-linguistic and cross-cultural communication. Applied linguists, including forensic linguists, could be encouraged to study the legal discourse of languages other than English and/or the growing impact of English as an international language on international legal practices. Organisations whose operations involve the production of multilingual documents will learn about the advantages and disadvantages of different approaches. Finally, readers will be reminded of the complexities of translation, its limitations and its socio-cultural impact on societies, and will be alerted to the need for a further interdisciplinary approach to multilingual legal communication in today's globalised society.