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Introduction: Forensic Translation – Practical Issues and their Theoretical Underpinnings

Dieter Stein

This volume addresses a topic that assumes an increasing significance in contact situations between legal cultures in everyday practice of law as reflected in practical problems of translation, as well as a theoretical problem of clash and convergence of legal cultures, again reflected in linguistic issues. While the issues in the circumference of contact between legal systems have traditionally been discussed in comparative law, extensively represented in this volume, these issues acquire a new significance through the fact that legal systems are no longer static, a priori given systems, but are themselves subject to change, to issues of mutual influence, to issues of convergence and divergence. The volume hopes to achieve a balance between practical issues and theoretical underpinnings of these issues that may provide a rationale for practical solutions.

The volume is organized in three parts which are centred on different sides of the issue. Part I ('Language and Different Law Cultures') addresses the issue of cultural contact as the basis of the linguistic and translational problems.

Uwe Kischel ('Legal Cultures – Legal Languages') makes the point that linguistic differences are really epiphenomena of deeper differences in legal cultures on many levels, ranging from different techniques of legal reasoning (e.g. the technique of subsumption in German legal culture) to different styles of arguing and what counts as an argument in, for example, German and American legal cultures. He makes, among other arguments, the interesting point that borrowing a shared word form may well act as a Trojan horse to import a legal concept that did not previously exist in the borrowing culture, a point also addressed in the chapter by Oliver Brand ('Language as a Barrier to Comparative Law'). He demonstrates how linguistic and conceptual differences inhibit the progress of a whole standard field of legal inquiry, comparative law.

2 Translation Issues in Language and Law

Not looking at the outside conditioning forces determining law, at the 'actors', and engaging in 'textism' bars access to more fundamental differences in legal cultures. In an intriguing turn of argument, Brand argues that language analysis has been instrumentalized by a 'functional approach', i.e. the mere technical functioning of legal systems, to mask deeper differences between the legal systems. He goes on to suggest a conceptual meta-instrument that contains all the possible kinds of conceptualizations of legal institutions as a set of universal choices from which individual legal cultures make their specific decisions – a procedure reminiscent of a translation theory that is based on a universal interlingua, into which meanings are translated and out of which meanings are formulated in language-specific terms. It is also isomorphic to the approach in modern linguistic typology, which establishes a universally possible set of linguistic structures, from which individual languages make individual sets of choices.

The chapter by Lawrence Solan ('Statutory Interpretation in the EU: the Augustinian Approach') presents a very different take on the role of different languages. The different conceptualizations of a reality in different languages (and even different speakers) which are the subject of discussion in the majority of chapters in the volume, are amenable to an approach based on comparing equivalent texts in different languages. What is normally considered a problem, several languages, is here seen as an advantage. Given a basically teleological approach to interpreting statutes, the multiplicity of versions in different languages provides a welcome range of constraints on how to interpret a text, and a welcome corrective to 'what is in the text': the 'text' is really 'several texts'. Their ensemble not only precludes American-style textism, but is also seen as a fortunate condition for a multiple perspective on textual meaning.

Maurizio Gotti ('Globalizing Trends in Legal Discourse') discusses a development that countervails the differences caused by culturally different conceptualizations. He contextualizes differences in legal culture from the point of view of a more general effect of globalization: communicants tend to accommodate to the needs of the presumed audience not only in the economy, but also in law. Beyond the much discussed – including in this volume – issue of English taking the place of Latin and French as a lingua franca of law, Gotti's data from arbitration processes show evidence, for all culturally based divergence and the formulation processes taking account of these differences, of legal formulation – again – repeating processes that are well known from linguistic contact situations: incipient hybridization as the result of accommodating negotiation of formulation and concepts.

Part I closes with what is arguably the most political chapter in the volume and, at the same time, a befitting closing chapter for this more theoretically and fundamentally oriented first part. José Lambert ('The Status and Position of Legal Translation: a Chapter in the Discursive Construction of Societies') stresses the fact, adumbrated in the chapter by Brand, that translation is an epiphenomenon of the fact that law is always linguistically constituted in discourses and that all constitutions and normative texts, signally including the Code Napoléon, always have multicultural and multilingual ancestry, even if a reductionist tendency of constitutions towards an illusion of a pure and single legal culture and language, inherent in lawyers' discourses on languages, misguidedly seems to suggest the contrary. If all legal discourse, like all languages, has multiple ancestry, the central role of translation becomes apparent, as well as the requirement of a research agenda into the role of language in law that is based on an enlightened, and culture-based, theory of translation. Thus, the chapter echoes, for the area of translation theory, Brand's suggestion to base translation theory on a broader and more general theoretical basis.

Part II ('Handling Legal Discourse in the Modern World') deals with organization of language mediation activities in practical institutional settings. How do organizations pragmatically cope with the challenges of having to translate and interpret? Karen McAuliffe ('Translation at the Court of Justice of the European Communities'), based on an empirical study at the front line of translation in the European Union, gives us a glimpse behind the everyday practice and the language and translation policies and politics that are involved in adding new member states to the EU. It also discusses the effect of the specific type of language contact involved in translation in the EU and its effect in the shape of 'hybridization', such that expressions have specific EU meanings that are not present in any single EU language, thus instantiating a point similarly made by Gotti, that there is a development in the direction of an international legal English, or an *Ausgleichssprache*.

Discussing another practical context of translation, Agnieszka Doczekalska ('Drafting or Translation – Production of Multilingual Legal Texts') discusses a solution, successfully practised by several political bodies, to the notorious problem of the primacy of a source text from which the target texts are translated. Co-drafting is the solution for bijural and bilingual systems, the effect amounting to a dissolving of 'the text' and its authority into several texts with shared authority, much in the vein of the Augustinian approach described by Solan.

4 *Translation Issues in Language and Law*

Finally, Louis Beaudoin ('Legal Translation in Canada: the Genius of Legal Language(s)') offers a case study in very concrete terms of the way nearly all problems and solutions that have bedevilled a bilingual and bilingual country in the historical development of its linguo-legal culture, up to the present point of co-drafting, with an extensive history of legal-linguistic takeover of the French by the English culture. Like Lambert, he makes the point that given that law is made up of language, proper linguistic training is paramount for the legal profession, and in particular for jurilinguists.

Part III ('Concrete Problems in Legal Translation') takes the bull by the horns and discusses individual issues of translational equivalence and strategies in trying to achieve as much equivalence as possible.

Volker Triebel's contribution ('Pitfalls of English as a Contract Language') sets the tone with a very rich and detailed compendium of cases, gleaned from a rich practical everyday experience, of examples where the German and English law culture concepts are both treacherously close, but conceptually miles apart, and therefore offer dangerous traps for the not properly trained to fall into. The rich discussion, from and for the civil lawyer's practice, ranges from a historical account of the divergencies to the potentially dismal effects of seemingly small points of grammar.

In a similar 'contrastive' vein, Enrique Alcaraz Varó ('Isomorphism and Anisomorphism in the Translation of Legal Texts') looks at differences and pitfalls in Spanish-English translation in terms of isomorphism and its counterpart, a concept denoting structural parallelism or its absence as a basically aesthetic concept, with isomorphy functioning more like a facilitator and anisomorphy more like a pitfall for legal translation.

Part III closes with a contribution by Jean-Baptist Bigirimana ('Translation as a Dynamic Model in the Development of the Burundi Constitution(s)') that discusses the very complex, but typical situation a developing country finds itself in when trying to formulate a constitution. The many practical problems faced by developing countries include issues, repeatedly mentioned in previous contributions, of the contact between indigenous vs colonial legal systems and are aggravated by the issues of different languages in which they are couched, and to what extent translation of the resultant into the indigenous language can and should be done to enhance acceptance. Based on a discussion of the linguistic situation, the author sketches in a detailed analysis the tug of war between the different forces shaping the content and linguistic form of the Burundi constitution.

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