

Translating Legal Texts: A Translator's Dilemma

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My modest paper raises a crucial problem in the field of legal translation. No one of us can deny that any transfer of a word or an expression, from one language to another, is very perilous and has a great responsibility to bear. In my paper, then, I'll try to get within the different layers that compose legal texts and elucidate some of the ambiguities they enfold.

Translating a legal text is a hard responsibility, because of both its nature and its purpose. The translator is confronted with a special jurisdiction register, and if he does not consult and learn from lawyers of the Source Language Text (S.L.T.) and the Target Language Text (T.L.T.) what such and such term means, he will not come out with acceptable and correct results. But can a translator be all the time dependent on Lawyers? Or can he be himself a lawyer, so that he can translate?

It goes without saying that legal translators are not lawyers; they have only acquired some theoretical background and some basic practices that enable them to translate in current life. But particularities and peculiarities of legal texts have complicated the matter for them. This fact puts them face to face with a special register, and forces them to learn more and use skilfully their competence, so that they can produce a correct translation.

Many theories and trainings have given a variety of ways and processes to deal with different matter of/in translation. But, unfortunately, the problem of having a good translation persists and remains far-fetched. Margaret Marks, in her web article about translation, gives us three major prerequisites for a good translation:

- 1-A balance between giving a complete transcript of ideas of the original work;
- 2-Recreating the style of writing of the original work;
- 3-Achieving the ease of original composition (par. 2).

She suggests that the second element, '**recreating the style**', must be disregarded in legal translation, i.e., no rhetoric should be used. Indeed, she puts more emphasis on the first element. She assumes that a correct translation is the one that should resemble the original; thus, both the author and the translator must disappear, letting the full authority to the text—the text must appear authorless and autonomous (par. 4).

But the problem that comes up after such translation is that its translator refuses to disappear, because, as Marks puts it, the original is being explained and interpreted, not merely translated. This fact makes the text rendition of the original look like a new one, far from its original source (par. 5).

The cause of such matter is the lawyers themselves. They manipulate words, and thus, the used words lack precision. This is the real problem for translators. C. Neal Tate points out: "Lawyers are word doctors, exhibiting a skill in the manipulation of ideas that make lay people nervous. One of the first lessons a law student learns is that precision in the use of language is important, not just in the presentation of ideas, but in the details of style and format" (69).

On the other hand, Judith N. Levi and Anne Graffam Warker admit that the image of legal language is false. Form always counts. Formality has political dimensions. There are

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rules for all types of communication, even the most causal, and violations are met with disapproval or dismissal. But, intensity to the implicit rules that structure communication, in fact, is more perilous, because it signals that one is culturally obtuse (969).

The translator is not a voice machine or a robot without individuality and personhood (Tate 70), but an active participant in the text. In the terms of James Boyd White, “Judicial excellence lies less in the choice of doctrine than in what this doctrine chosen is made to mean” (214).

No one of us should deny, then, that the translation of a legal text, from SLT to TLT, is a very difficult matter. It is littered with a series of different and differing obstacles; some of them do not hold any serious solutions. It is evident that judicial texts aim at referring to a system or systems, to a mode or modes of thought and philosophy anchored into the culture or cultures particular to a nation or a state. The referent, being different from one nation to another, becomes the crack of the matter in translation. “Les textes de loi,” assumes Frédéric Houbert, “sont les plus souvent le résultat des réflexions d’ordre éthique, philosophique, psychologique, cultural et même religieux, qui sont propres à chaque pays, à chaque nation” (par. 1).

But, nonetheless, the translator of a legal text should be clear, correct and faithful to SLT. Such prerequisite elements lie in the ability to communicate the content of the text to the Other—The citizen. About the process of jurisdiction translation Pascale Aubry writes: “Le traducteur doit respecter le lecteur en situant le discours à son niveau, quel qu’il soit. Si le traducteur ne sait pas exactement à qui le texte est destiné, il lui faut viser le plus large. Par contre, s’il sait qu’il s’adresse à un lecteur instruit, son respect pour le lecteur peut le pousser

dans l'autre sens en utilisant par exemple un vocabulaire plus recherché" (2).

On the other hand, by translating a legal text, we mean reproducing it carefully and faithfully to another reader who ignores the original, as Arabic/French, Arabic/English, French/Italian, etc... In other words, a translated text should have the same effect as in its initial version. The Italian translator Davide De Leo, in his web-article "Pitfalls in Legal Translation," has underlined a series of difficulties, mainly in looking for equivalences between SLT and TLT, as:

**Loi / Legge (Law) (French / Italian)*

**Death Penalty / Pena di morte (English / Italian)*

**Appropriazione indebita / Theft (Italian / English)*

The first difficulty De Loe has encountered is how to translate the term '*Loi*'. Does it, really, mean '*Legge*', in Italian? He is doubting about its exactness, however. He assumes that both terms have different referents, and therefore they must be different in meaning. Loe writes: If I need to translate the French '*Loi*' in Italian '*Legge*' (Law), I am aware that the two terms are not identical in meaning. For instance, a French law is voted in by an institution (parliament) which is structured differently to its Italian equivalent; to be passed, the same law might need a different majority to that required in Italy (par. 4).

Another case arises when there are institutions that exist in one legal system, but absent in the other, e.g. '*Death Penalty*'. "If I am confronted with the English term '*Death Penalty*,'" he explains, "I understand exactly what it means and how to translate it into Italian ('*Pena di Morte*'), even though this penalty does no longer exist in my country" (par. 5). What matters, according to De Leo, is the name of the institution which does not exist in the country of the target language. In other words, if De Leo is required to give the

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translated name of the institution, that is absent, in the T.L.T., what does he do? The problem, of course, could not be posed when the institution exists in both the S.L.T. and T.L.T., as in Sweden and the U.S.A. Though the institution is absent in the U.S.A., the translator of the Swedish text could find the term in English language, because such institution exists in Great Britain. “Luckily, enough,” suggests De Leo, “the offence is defined—and therefore mentioned—in English law. As a result we may use the English term in the translation for the U.S.A.” (par. 5).

Another case of equivalence problem is how to translate the Italian term ‘*appropriazione indebito*’ into English. “As a part of request from the British legal authority to their Italian counterparts,” writes De Leo, “ I was asked to translate the term *appropriazione indebito* into English. As I was unable to find the British English equivalent (The English Magistrate suggested *Theft*, which was later rejected), we decided to use ‘*Fraudulent Conversion*’, which is, in fact, a U.S. offence. While the English Magistrate had some initial reservations about using a term he knew to be English, he eventually approved my choice” (par. 5).

The absence of equivalences, in both S.L.T. and T.L.T., also characterizes the French judicial system. Some terms that we find, for example in English, are absent in French language. This is probably due to the background of the English law, which is essentially based on customs and tradition, whereas the French law is wholly based on foundation texts as ‘The Constitution’.

The term ‘*Barrister*,’ and ‘*Solicitor*’ exist in England, but absent in France. How, then, could such term be translated? Do they mean , consecutively, ‘*avoué*’ and ‘*notaire*’. The term ‘*Barrister*’ means literally, a lawyer who has the right to speak and argue as an ‘*advocate*’ in higher law

courts. But in England and Wales the term '*advocate*' is not used, whereas in Scotland they do use it. In other words, though Scotland belongs to Great Britain along with Wales and England, it uses the term '*Advocate*' instead of '*Barrister*'. '*Advocate*' means literally, a person who speaks in favour of somebody or a cause: For example, to be an '*advocate*' of equal pay for men and women. In legal register, it means a person who does this activity professionally in a court of law. It is equivalent to the term '*Barrister*', but, nonetheless, not the same. What is really astonishing is that this term is absent in the U.S.A.

The second term, '*Solicitor*', exists in both Great Britain and The U.S.A., but, it holds different meanings in both countries. In Great Britain, it means a lawyer who prepares legal documents, e.g. wills, sale of land or buildings, and advises clients on legal matters and speaks on their behalf in lower courts. In the U.S.A., it holds a quite different meaning. '*Solicitor*' is a person who solicits trade, support, etc...; he looks like a *Canvasser*, i.e., his job is to go from person to person and asks for votes, orders for goods, subscriptions, etc..., or learns about people's views on a question.

It is noticeable that these two terms are very confusing, because they hold different meanings from one country to another, as the case of Great Britain and The U.S.A., and in the same country, as the case of England, Wales and Scotland, in United Kingdom

Then, the question is, how can we equate these two terms with its equivalent in French language, since they differ in meaning in the same language source? Do they mean '*notaire*' or '*avocat*' or '*avoué*'? It is very difficult to adopt any of the terms! Open a French-English Dictionary, and you will find the following meanings of the term '*avocat*' in both English English and American English:

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*‘*Avocat*’ means in British English ‘*British Jurisdiction Barrister*’, whereas in American means ‘*Attorney-at-law*’.

*‘*Avocat de defence*’ means ‘*counsel for the defence*’ in British English, whereas in American it means ‘*defence counsel*’.

* ‘*Avocat general*’ means in British English ‘*counsel for prosecution*’, whereas in American it means ‘*prosecuting attorney*’.

Take the other term ‘*notaire*’, and you find the approximate-not even the equivalent meaning- ‘*solicitor*’, ‘*lawyer*’, or ‘*barrister*’. Compared to the aforementioned definitions, the term ‘*notaire*’ seems to be more general: Literally, ‘*notaire*’ means: Officier public titulaire d’un office ministériel, chargé de dresser des actes qui ont force authentique et force exécutoire. Dans le cadre de leur activité, les notaires ont un rôle essentiel pour conseiller les familles dans la gestion et la transmission de leur patrimoine et les entreprises dans leurs projets d’investissements et leurs opérations de crédits “*Notaire*”.

Likewise, the term ‘*avoué*’ does not sound exact : it holds a partial meaning of solicitor. It means literally: “officier ministériel seul compétent pour présenter les parties devant les cours d’appel” (“*Avoué*”).

‘*Solicitor*’ is, in fact, a judicial officer who is a ‘*bias*’ or ‘*intermediary*’ between the lawyer and the citizen. In French language, there are terms that could signify such meaning, but never in a complete manner: we have ‘*avoué*’, or ‘*notaire*’. Even this English word, is introduced in French Dictionary, and it means: “Homme d’affaires anglais dont les fonctions s’apparentent à celles de l’avoué et du notaire français” (“*Solicitor*”).

Frederic Houbert, a French translator, records for us some difficulties in translation, mainly between French and English. He gives us two terms in English:

**Execution of an agreement*

**To enter into an agreement*

As far as the first term is concerned, Houbert claims that it does not mean in any case '*execution d'un contract*'. It is, in fact, a very misleading term, because '*execution*' signifies in English and mainly American English '*signature*', whereas in French '*executer un contract*' means to execute all the obligations it contains (par. 5).

The second term is, likewise, a problem. According to Houbert, '*To enter into an agreement*' does not mean '*signer un contract*'. '*enter*' can mean '*signer*', but it is larger than we pretend to be. In fact, '*signer*' implies necessarily the existence of '*un contract écrit*'. Then, it should be translated as, '*Conclure de contract ou d'accord*' (par. 5).

'Enter into an agreement or understanding'==
'Conclure de contract ou d'accord'

But I see that it seems, in turn, very vague. This expression that Houbert has suggested looks, however, very unclear and needs, thus, to be reworded and reworked. I would, modestly, suggest the word: '*bond*', which means literally: agreement or engagement that a person is bound to observe, especially one that has force in law, i.e., he holds signed and sealed documents. And thus the expression: '*signer un contract*' could be translated as '*to enter into a bond*'. What I would like to say is that even the English Expression '*To enter into an agreement*' does not really sound English. I mean the word agreement does not seem convincing as far as correctness and adequacy are concerned. In other words, it does not fit the meaning.

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On the other hand, the translator Pascale Aubry seems to be very annoyed and lost into the labyrinth of the French law and its translation in other languages. He writes: “Pourquoi les lois traduites en Français sont-t-elles souvent formulées de façon compliquée? Leurs infinis détails sont-ils nécessaires? En droit français on écrit les lois non seulement pour régler un problème, mais également pour couvrir tout problème potentiel. A l’opposé, en droit anglais, les lois sont essentiellement remédiatrices : la justice règle un problème et uniquement ce problème” (par. 2).

What solution(s) could be given, then? Do we translate word for word? Or just transmit the equivalent meaning, regardless to the physical resemblances between the two texts (S.L.T./T.L.T.)?

I opt, but unwillingly, for the second tendency, for two reasons:

1-The translator can manipulate words and structures of sentences, but never can he change the meaning.

2-He should faithfully communicate the message—what the source text means.

Really, the translator learns how to translate through practice. He, thus, should not consider his first translation as final. In the contrary, he should know that the first translation is only a tentative rendering: He will have more insights afterwards. “When words belonging to the so-called general English appear next to specific terms and within a specific context,” point out Guadalupe Acedo Dominguez and Patricia Edwards Rokowski, “they contain nuances that must be accounted for in the final translation” (par. 2).

Translator’s success does not lie in what he has as a theoretical background, but more in the ability to understand and comprehend the text on its entirety.

But is he able to make it? That is the question?

Thank you.

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