

**From Academic Comparative Law to
Legal Translation in Practice**

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Introduction

Almost a year ago, in November 2001, Professor (Horst) Dippel wrote to the Director of Translation at the Court of Justice of the European Communities in Luxembourg. He explained that he and his team were engaged in a project called "The Rise of Modern Constitutionalism 1776-1849" which aimed to create a scholarly edition of all the constitutions which were part of the rising tide of modern constitutionalism between those dates. The plan was for the texts to be available both in the original language and in an English translation.

Having outlined the nature of the project and the plan for a conference in Autumn 2002 to discuss the basic problems involved, Professor Dippel stated that, as far as the English translations of several hundreds of constitutions were concerned, his team needed, and I quote, "expert advice from professional translators of legal documents as to terminology, style, tense and further basic problems involved". He then requested the Court of Justice to "provide an expert on that topic to participate in the scheduled conference".

Logically enough, our Director, who is responsible for all 11 language divisions in the Court's Translation Directorate, asked if anyone in the English-language Division was interested in assisting the project. I am the surviving volunteer!

But why me? And what is it that I have to offer you?

Until four years ago, I had been for 13 years an academic in the United Kingdom, teaching English and French law and conducting research in the field of comparative, particularly public law.

For the last four years I have been a lawyer-linguist in the English translation Division of the Court, translating into English primarily from French, but also from German and now Italian, a broad range of documents required by the Court, whether internally or for publication. At one end of the spectrum are the stylised, formulaic judgments of the Court (and Reports for the Hearing) with standard passages, written in "EuroFrench" by authors who are available in case of doubt. Then there are Opinions of the Advocates General in the Advocate General's mother tongue, government and other observations, statements in intervention and, at the other end of the spectrum, requests from the national courts for preliminary rulings, which are written in real national language by authors who cannot be consulted. Lastly, we translate press releases, written in a slightly less formal style, and other miscellaneous documents, such as letters and questions.

Thus although I was not trained as a translator (and this is as true of almost all my colleagues as it is of you), all my day-to-day work for the Court relates to translation, but of modern documents. There are inevitable references to legislation of any date, which was in force at the material time, and to any case-law which the parties may choose to rely on, but constitutions and historical sources form a small part of my work in the office. I would say that my real interest and expertise in the substantive aspect of your project come from my earlier professional life and my current extra-curricular activities.

As a function of my background, I am not therefore qualified to speak specifically on the translation from German or Spanish (or indeed any particular language) of historical constitutions, but I am in a position to advise, from the perspective of a former academic, on **the translation into English of legal, and even constitutional material.**

How, in reality, is it done? And how should it be done? How can you instruct the translators in your countries whose work you will be checking?

Throughout your work you will be aware of a number of **issues to be resolved**, some of which have been mentioned by Professor Dippel. I prefer not to call them problems, but I am supposed to offer solutions! The principal issues or choices may usefully be listed as follows:

- language:
 - should it be historical or modern?
 - should the "English" be British or American?

- should it be in the present or the future?
- terminology, particularly specific terminology: when should it *not* be translated?
- style and register: which are appropriate?
- and then what are perhaps your guiding lights: correctness, accuracy, clarity and consistency.

Rather than tackling these issues in the abstract, it may be helpful to see the work of legal translation as consisting of a number of stages, at each of which different questions need to be addressed. Various models of organisation are possible as to who is responsible for which stage. In my work, it is one translator, one reviser and one proof-reader per document within strict deadlines, according to a number of agreed guidelines. You have a team of people per document, perhaps as much time as you choose, but a need for guidelines!

But what are the stages or elements which I would identify in the process of translating legal texts?

We begin with the original text, the source document, our input.

- Stage 1 is understanding the source language.

At the Court, we are required to know *passively* at least two foreign languages, including French, when we arrive, and we consult foreign colleagues.

Your translators, or at least you, their organisers, have this source language as a mother tongue.

- Stage 2 is understanding the source document and the related legal culture.

At the Court, we are not required to have training in foreign law, although it is common, and we consult appropriate foreign language colleagues.

Your translators, or at least you, are dealing with your own constitution.

- Stage 3 is translation.

We are not required to have formal training or experience, only an ability to translate.

And you? Who is responsible for checking equivalence? the faithfulness and correctness of the translation? presumably you.

And then we come to the translated text, the target or output.

- Stage 4 is manipulating the target language.

At the Court, the translators and revisers always work *into* their mother tongue.

In your project, I believe, it is *non*-native speakers of English who translate and revise, and the English native speaker in the research group who acts as a quality controller of the English, but without the benefit of the original text or language. This, to me, amounts to a read-through. I would only warn that the utterly plausible can be so very wrong: it will be necessary to ask questions in cases of doubt or surprise.

- Stage 5 is using the concepts and terminology of law in the target language.

We are required to have legal training from the UK or Ireland, that is the English-speaking Member States.

In your case, perhaps this is the speciality of the English-speaking member of your group.

- Stage 6 is presentation.

In our system, this is the domain of proof-readers.

Let us work through these stages, addressing the issues and choices in their context.

Stage 1. Understanding the source language, and

Stage 2. Understanding the source document.

Since it is native speakers who are involved at this stage in your project, perhaps it would be more reasonable to speak of analysis of the constitution with a view to translation, combined with a certain amount of cross-checking.

The issues are these:

- First, choice of words in the constitution:
 - are they general or specific? that is, what is the level of abstraction?
 - (is it all law, or only legislation? is it all courts, or only a particular sub-set? is it Ministers or only Government Ministers?)
 - what was the meaning of the words then? and is it different now? were the words innovative? shocking or revolutionary? did they refer to the past?

- Second, significance of terms, that is terminology:
 - do they refer to a concept, an institution, a value, principle, custom, tradition — were they unique to that country or period?

- Third, internal cross-referencing:
 - were different terms, or even the same terms used in different parts of the one document to refer to the same concept?

- Fourth, external references:
 - what references were made to the past? to unmentioned reality, quite clear to contemporary readers?
 - what were the context and influences? what is the relationship between the constitution and other documents (whether earlier or contemporary), particularly those within your project, for example on which the constitution is based? is there any codification or consolidation?

- Fifth, style:
 - was it didactic? direct? legalistic? everyday?

- Sixth, register:
 - presumably high, formal, but perhaps not.

- Seventh, ambiguity:
 - was it intentional? and has it been resolved over the years by dint of application, hindsight and interpretation? These are long-considered documents, BUT you have no contact with the draftsman.

Having undertaken the analysis of a constitution with which you are very familiar, you must embark on:

Stage 3. Translation

This is **NOT** interpretation or commentary or summary. It **IS** transition, reflection, conversion, equivalence, representation, transposition both legal and linguistic. You are aiming to produce a document which says the same thing, with the same effect, but in a different language

Your objective is for you to decide:

- do you wish to produce a document as it would have been, if written in English (the great irony being that there have been no written UK Constitutions)?
- do you wish to retain
 - length of sentences? (remembering that breaking them up can signify a lack of facility in English: remember the possibility of semi-colons instead of full stops)
 - order of clauses, elements of sentences? reordering can be a mania — is it necessary?
 - historical language?

Whatever you decide, I would advise:

- First, translation must be faithful, accurate and complete — the content and meaning must be the same as the original; it seems to me necessary to do whatever is required to represent the foreign reality (that is to say, to preserve the style, register, essence/flavour, order of thought, logic).
- Second, Latin: if there is any, leave it in Latin, if that word or maxim is common in legal English, ensuring that the same Latin is used in English. If in doubt, translate it into clear English
- Third, specific terminology: that is, for which no equivalent exists in English (perhaps a court's name): when should it be translated?

The choice between the possible solutions depends on your objective:

- a. leave the foreign word untranslated, unannotated — however what precisely would be the point?
- b. translate the term literally, possibly unsatisfactorily, perhaps in inverted commas to show its foreignness, and use the translated term "hereinafter"

- c. My preference, retain the foreign word, but define it accurately and economically, whether in brackets, in a footnote (to avoid an interruption in the text) or in a glossary (very indirect and may defeat the object), and then use the *foreign* term or its abbreviation "hereinafter".

If you strive for accessibility for readers who are ignorant of the source language, it is essential to translate or explain or define.

- Fourth, is anything untranslatable?

In *Legal Traditions of the World* (at p. 44), Glenn treats this as part of the incommensurability argument: all translations are false, *traduire c'est trahir*, reading a translation is not the real thing, there is nothing outside the text.

BUT, he says, "the untranslatability argument exaggerates the difficulties in human communication" and "the importance of the text" — "thought may exist prior to language" and "may be rendered in multiple languages".

In other words, IDENTIFY THE THOUGHT, BYPASS THE ORIGINAL LANGUAGE AND RENDER IT IN ENGLISH.

- Fifth, balance between too literal and too free translation.

Briefly, if the literal sounds like good, idiomatic English and is accurate, leave it. If not, modify it.

Guidance on translation: see how others have translated into English the same constitution (e.g. 1789 French Declaration of the Rights of Man and of the Citizen in Bell, *French Constitutional Law*, p. 261), derivative documents (i.e. later/current constitutions, particularly if they are modelled on one of the constitutions in your period of reference), source documents, terms (e.g. Latin America and terms from the Spanish legal system).

Tools for translation of legal terminology into English

- Eurodicautom (European terminology database, via European Commission website)
- Celex search (for any official language of the EU), via Eur-lex
- Bilingual (legal) dictionaries

Stage 4. Manipulation of the target language, in this case English

Much of what I have to say is true of writing English on *any* subject

- First, correctness — grammar, syntax, punctuation (especially the placing of commas), word order, spelling, vocabulary, avoiding foreign pollution.

You need to AGREE on a reference work on English usage, on conventions about spelling (UK/US?) and on an English language dictionary.

- Second, what might be called generally quality:
 - the English must be comprehensible, clear and precise, above all
 - unless the original is ambiguous, when that lack of clarity should arguably be reflected: the truly opaque or actual mistakes may be overcome by the judicious use of square brackets (or even a footnote) to indicate your changes or additions (just as three dots indicate an omission)
 - positioning of "only" as near as possible to that which it qualifies
 - order of elements of sentence: requests from the national courts for preliminary rulings (from the Court of Justice), rather than requests for preliminary rulings from the national courts
 - style: the tendencies of good, clear, legal English
 - true to the original
 - omitting unnecessary words
 - not long words where short will do, subject to register
 - active, not passive
 - use possessive, not "of", in general
 - verbs rather than nouns
 - tendency to name names, not "that person", "the former", "the latter"
 - "whose" instead of "of which", in general
 - "on which", "from which" in order not to lose the preposition
 - "thereof", "therefrom" can be ugly and heavy if overused, but judicious use has the advantage of succinctness

- register: technical/legal v everyday — will depend on text
 - choice of terms: use/employ, buy/purchase,
 - seller/vendor, get/acquire, be/constitute

- Third, what for convenience I am grouping under the heading type:
 - historical or modern: you must position your objective on the fidelity spectrum — the purist must read the constitution, like the Koran, in the original language; the biggest step away from the original is translation, into the foreign i.e. the "wrong" language, plus updating, into the "wrong" era, to ensure maximum accessibility and comprehensibility, as in modern translations of the Bible; the middle course is perhaps to capture the flavour and style by retaining *appropriate*, though not ridiculously flowery, historical language, thus ensuring historical if not linguistic authenticity.

 - present or future tense: **traditional English statutes** use the future as in theft "shall be" subject to imprisonment, which becomes "is to be" when the document is referred to; **modern English Parliamentary Counsel** (responsible for drafting government legislation) use "is" which stays as "is" in indirect speech.
 The problem is neatly highlighted by John Bell in *French Legal Cultures* (p. 204): Article 11 of the **1958 French Constitution** provides "le Président signe les ordonnances". Should this be rendered as "the President signs ordinances"? or "the President shall sign ordinances"? In 1986 President Mitterrand refused to sign certain of the Right-wing Prime Minister's measures, casting doubt on the command nature of "shall sign". Thus, subject to such interpretation by you, perhaps "shall" should be reserved for the imperative, whereas "is" can be used for conditions and circumstances.

 - which English? UK v US v Euro + house style
 - UK (there are variations between English, Scots and Irish usage)
 - US (no question in the EC context, and Americanisms can still offend English readers BUT the fact that certain constitutions were at least partially based on the US Constitution argues in favour of the reproduction of US English in the translation of such documents, as was suggested at the conference by Professor Heun)
 - Euro (in the EC institutions, where it is as English as we can make it, but none the less floating above national specificities)

Guidance on the English language

- monolingual English dictionary
- books on English usage

Stage 4, the manipulation of English, is in fact tackled at the same time as

Stage 5. Use based on understanding of concepts and terminology in the specialist field, namely constitutional law

- First, precision:
 - again the correct use and appropriate choice of terms is in law even more important because of implications and consequences
(contract in technical sense, or mere agreement, or treaty, or convention? Ministry of, or Minister for? Parliament or legislature? courts or judiciary? government with a small or large G? court of appeal or appellate court? judge or court? law or legislation or statute?)
- Second, constancy of use, internal consistency:
 - elegant variation is generally not appropriate in English texts — if a different term is used, we presume that a different thing is being labelled
- Third, significance of the chosen term:
 - what does the term mean to the English reader? If it labels a particular national or English institution, is that institution equivalent to the one referred to in the source text? It can be necessary to invent a term, or a combination of terms, in order to avoid inappropriate culture-specific terminology — higher level of abstraction v Anglo-centric
("cour d'appel" is not "court of appeal", "judicial review" is narrower than "review by the courts")
- Fourth, consistency again, but between documents, external references:
 - we have at the Court of Justice the equivalent of hypertext links to legislation, case-law and other documents. You need analysis and cross-checking.

Guidance on using legal terminology and concepts in English:

- comparable documents which are authentic in English, namely UK legislation of constitutional significance, especially the historical, such as the Bill of Rights 1689, the

Act of Settlement 1701; US Constitution and amendments; international treaties; European treaties

- what has been written in English on
 - foreign constitutions
 - comparative constitutional law
 - the history of constitutions
- English legal dictionaries.

Stage 6. Presentation of the output

For me, this is a question for the proof-readers who follow certain conventions and guidelines. The Court of Justice has a Vade Mecum with rules on citation, typography and presentation, that is to say *form*, to ensure the publishable quality of the product.

Although this may seem a trivial issue, you will be more impressed by the finished work if you agree on the following:

- dates: 5 November 1983 is standard British English
- spelling: for example, "-ise" or "-ize"? agree on the dictionary to be followed
- plurals: for example, referendums or referenda?
- numbers: for example, one to ten in words, but figures thereafter. Ccommas become hard spaces and commas become decimal points e.g. 1 000.6
- abbreviations: Art.? s? para.?
- font: for example, italics, bold (or inverted commas) for specific elements
- capitalisation: for example, "Law No 403", but "that law"; "Article 3", but "this article"
- names: courts, authorities, legal acts — for example, first in full in the original language, followed by an agreed translation in brackets, and thereafter a short form in the original language (or English)
- citation: highly formalised at the Court — cases, treaties, legislation and parts thereof
 citations and recitals in the preamble to
 indent/subparagraph of paragraph of article of
 section (UK) v paragraph (DE) v article
 annex or schedule to

- layout/format: we use a skeleton document (*canevas*), but will you reflect the original layout or have a standardised output? For example, will you follow a hierarchy such as bold, italics, roman, numbers in the presentation of headings?

Conclusion

All the choices I have alluded to must, in my view, be made as a function of **the objectives of your interesting project** which presents a most pleasing juxtaposition between the constitutions of the past and the electronic media of the future. Your clarity of vision about objectives will help you to make choices between the different approaches possible.

Is your goal

- to educate the English-speakers of the world?
- to increase international understanding amongst those who do not know the source languages?
- to draw lessons and seek solutions from the past and from abroad?
- to improve the protection of human rights?
- to identify the constitutional traditions, values and principles which endure and abide, and show the best way of organising the state? (Van Caeneghem, p. ix, plus fascinating conclusions in the epilogue, p. 292 et seq.) and thus to create a better model of a constitution?

In other words, **what is the audience or readership for your translations, and what are you trying to achieve by disseminating them?**

(all views are strictly personal)

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