Legal Translation, the Plain Language Movement, and English as a Lingua Franca

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Abstract:

Should a legal translator render ornate source-language legal texts into clear, streamlined target-language prose? This paper, drawing on the insights of the plain legal language movement, answers with a qualified ‘yes.’ Of course, the translator must always convey the original’s meaning fully and accurately. However, the translator need not – and, in fact, often cannot – reproduce the structure of the original. The audience for the translation determines the amount of permissible clarification. There is a growing market for English-language translations which will be used by non-native speakers – the so-called English as a Lingua Franca (ELF) context. For these audiences, many plain-language techniques, modified according to insights developed by the burgeoning ELF literature, can help render more elegant and useful translations. After developing some general guidelines based on this analysis, this paper applies them to a sample passage to show how they can improve the readability of complex source-language prose.*

*Unless otherwise noted, all translations in this paper are by the author. The author would like to thank
I. Introduction

Those who translate German into English for academic and professional purposes often find themselves confronted with clumsy, unnecessarily complex German legal prose. Lawyers and legal scholars who write clearly remain the minority in Germany, as elsewhere. Not only is there little incentive for any given lawyer to write succinctly, the very abstraction and complexity of the German legal system makes it especially tough for German lawyers to do so. Thus, the translator of German legal prose often faces the task of translating forbiddingly complex German sentences into English. Donald Kommers, an authority on the German Federal Constitutional Court, has called the Court’s decisions ‘complex, and philosophically profound,’ but despaired at their ‘convoluted and repetitious prose’ (Kommers 1997: xvii). Of course, the German judges’ counterparts on the U.S. Supreme Court produce prose that is every bit as turgid.

When a translator faces such ‘convoluted and repetitious prose,’ may she make it simpler and more elegant, by, for instance, splitting up 8-line sentences, untangling nests of relative clauses, and stripping away jargon? My answer is a qualified ‘yes,’ but the issue presents a host of practical and theoretical problems for the translator. In this paper, I will suggest that the audience for the particular translation helps determine the proper approach, but that there is always a role for at least some Plain Language principles. Further, I will address the emergence of a relatively new audience – non-native speaking professionals who use English, as the terminology would have it, as a ‘world language’ or ‘lingua franca.’ Some of the insights drawn from re-

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search into this ‘new’ kind of English – such as the fact that native speaking ability can sometimes be more of a hindrance than a help – can help translators, where appropriate, create plain English legal documents adapted to their audience’s specific needs.

II. The Debate Over Plain-Language Legal Translation

a. Is Translating into Plain English Permissible?

The first question: is it even permissible to translate complex source-language legal prose into plain, or at least plainer, English? According to the Code of Professional Conduct and Business Practices of the American Translators Association, the translator must ‘translate or interpret the original message faithfully, to satisfy the needs of the end user(s).’ (American Translators Association 2002). If the impression you would get from reading the original is complex prose clogged with legal jargon, must you ‘faithfully’ render that into English?

The issue was recently joined by two professional translators in the Journal of the American Translators Association. In Plain English: The Cure Against Translating Infectious Legal-Speak, translator Matthew Adams (2005: 28) cited Richard Wydick’s classic text Plain English for Lawyers to attack the ‘muddled and archaic language that abounds in legal documents.’ Not only are phrases such as ‘hereinafter’ and ‘notwithstanding the fact that’ ugly, translating them into another language – or translating their source-language equivalents into English – can sow unintentional confusion. Adams dismisses the notion that the author of the source-language text used the phrase she wanted to use, and deserves to have that phrase translated:
One of the goals of translation, however, is to express the author’s ideas as clearly as possible in the target language while following the rules of proper usage as established by professionals in the field of the target language. If, and not in the event that, is always the choice of legal writers who know their craft. More importantly, any alteration in style is more than compensated by the improvement in clarity and readability. Further, these are the kinds of subtle changes good translators necessarily make, to good effect, all the time. (ibid. p. 28)

As we will see later in this paper, Adams’ point of view has substantial support. However, another translator, Cynthia Hazelton, delivered the counter-argument in the next issue of the Journal. Complex legal terminology, says Hazelton, has its role: ‘The use of historical expressions creates an aura of seriousness, authority, and respect for the law. It is for this same reason that ‘archaic’ terminology is still used in many of our cultural rites of passage, such as weddings, baptisms, and funeral services.’ (2006: 36). Eliminating or changing this language can change the register of the document, and ‘to lower the register of a translated legal document in order to make it more readable for the general public violates a basic tenet of translation.’ (2006:46). Finally, Hazelton notes, the audience for legal translations is generally lawyers, who (one hopes), will have no problem understanding complex legal terminology. Indeed, Hazelton notes, ‘[m]y clients have preferred more, not less, legal jargon.’ (2006: 46).

b. The Importance of Audience

The dispute between Adams and Hazelton focuses on one aspect of plain legal English, the use of filler phrases such as ‘hereinafter,’ or ‘in the event that.’ The ban on these phrases is, perhaps, the least controversial part of plain-English doctrine. One recent scholar, summing up the key aspects of
recent plain-language proposals, listed ‘eliminating archaic and Latin expressions’ first in a list of suggestions common to each proposal (Williams 2005: 177). These pure filler phrases generally (1) have no specialized legal import; and (2) can be replaced by simpler phrases without working any changes in meaning, at least changes in meaning perceptible to non-linguists. However, there are trickier problems at the intersection of plain legal English and legal translation. Where does one draw the line between filler phrases such as ‘notwithstanding the fact that,’ and phrases such as ‘statute of limitations’ or Rechtssicherheit, which while complex and unwieldy, have a unique legal meaning that must be conveyed? Further, may the translator break up the long, clause-studded German periods (so-called Schachtelsätze, or ‘box-sentences’), which Donald Kommers complained of?

As Hazelton suggests, considering the audience for the translation often answers these secondary questions. Legal translators face four general types of audiences: legal practitioners whose background is known, clients whose identity is not known, a non-specialist audience (an executive who needs a rental contract translated, for instance), and a publication audience (translating foreign legal judgments or texts for publication). For a native-speaker translator, the situation is easiest when the audience is known to be native speakers of English with legal training. For this audience, specialty terms like verjährt can be translated, without further ado, into ‘time-barred’ or ‘barred by the statute of limitations.’ Legal clients usually appreciate it when filler phrases are dropped, since, to quote a recent study of legal English, ‘[a] number of major law firms are now committed to Plain Language and have rewritten their precedents in Plain Language and trained their lawyers in Plain Language skills.’ (Williams 2005: 176).

Translation for a non-specialist audience poses different problems. Take, for instance, the translation of a German rental contract into English, for a visit-
ing businessperson or artist. Here, the premium is on clarity and jargon reduction, and the translator’s freedom to trim and transpose at its zenith. To non-specialist clients, the English phrase ‘barred by the statute of limitations’ is probably no more comprehensible than the original German *verjährt*. These clients need to know what’s expected of them, and have little interest in a faithful reproduction of the source-language’s grammatical structure or vocabulary. The translator should feel free to split the sentence up, make it active, and ‘unpack’ the German compound words and legalese. In other words, create plain Legal English; such as ‘If you have a complaint about the apartment, you must write it down and send it to our office. If you do not do this within one month of noticing the problem, you will forfeit your right to have us look into the problem.’

c. The ‘English as a Lingua Franca’ Audience

An increasing number of translations are for a market that linguists call ‘English as a Lingua Franca,’ or ELF (other terms, like ‘English as a World Language,’ are sometimes used). This means a translation into English, intended for an audience of non-native English speakers. In a transaction involving a Norwegian and an Italian company, for instance, the documents generated in Norwegian and Italian will have to be translated into a language each side can understand. However, the number of qualified Norwegian to Italian translators may be very limited indeed. Thus, it’s usually more convenient and efficient to simple have the documents translated into English, which – Jacques Chirac notwithstanding¹ – is the lingua franca of international business. There is little disagreement that, in Europe, English has become the European lin-

¹ On March 24, 2006, Chirac walked out of a Brussels address being given by Ernest-Antoine Seillière, head of a European business organization, when Sellière began speaking to the mixed crowd in English, rather than his native French. See [http://www.timesonline.co.uk/article/0,,135092102373,00.html](http://www.timesonline.co.uk/article/0,,135092102373,00.html).
gua franca. In fact, English-speaking ability has become so widespread in some European countries that, as Jenkins reports, the scholarly consensus is that the ‘linguistic outcome’ of developments in Europe will be the creation of a ‘nativised hybrid variety of English, in effect, a European version of English which contains a number of grammatical, lexical, phonological, and discoursal features found in individual mainland European languages along with some items common to many of these languages but not to standard British (or American) English.’ (Jenkins 2003: 42)

Translating for an ELF audience poses different challenges than translating for a native-speaker audience. A recent report by the British Council on the Future of English discussed the emergence of ELF, defined the scope and purpose of ELFs as follows:

Unlike traditional EFL [English as a Foreign Language], ELF focuses also on pragmatic strategies required in intercultural communication. The target model of English, within the ELF framework, is not a native speaker but a fluent bilingual speaker, who retains a national identity in terms of accent, and who also has the special skills required to negotiate understanding with another non-native speaker. (Graddol 2006: 87)

Being a native speaker of English, the report added, can actually be a hindrance:

In the new, rapidly emerging climate, native speakers may increasingly be identified as part of the problem rather than the source of a solution. They may be seen as bringing with them cultural baggage in which learners wanting to use English primarily as an international language are not interested; or as ‘gold plating’ the teaching process, making it more expensive and difficult to train teachers and equip classrooms. Native speaker accents may seem too remote from the people that
learners expect to communicate with; and as teachers, native speakers may not possess some the skills required by bilingual speakers, such as those of translation and interpreting.

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Increasingly, the problem may be that few native speakers belong to the community of practice which is developing amongst lingua franca users. (ibid. pp. 114, 115)

Some ELF theorists even suggest that speech patterns native speakers would regard as ‘incorrect’ should no longer be seen as errors if ELF users can understand them.

Much ELF research deals with spoken English, and the strategies ELF speakers use to communicate orally (such as dropping definite articles before certain nouns, or accepting ‘non-standard’ pronunciations of ‘th’). Thus, it’s not so much the specific research results of ELF that come into play in the context of translation, but the general orientation, which stresses the use of English as a pragmatic tool for communication. This is where many plain legal English principles can be applied with profit. For instance, the following key principles, set out by Professor Joseph Kimble (2002: 44), the leading spokesman for Plain English in the United States, are universally helpful in making complex legal documents more comprehensible to non-native speakers of English:

1. Prefer short and medium-length sentences. As a guideline, keep the average length to about 20 words.

2. In most sentences, put the subject near the beginning; keep it short and concrete; make it something the reader already knows about; and make it the agent of the action in the verb.
3. Put the central action in strong verbs, not in abstract nouns. (‘If the seller delivers the goods late, the buyer may cancel the contract.’ Not: ‘Late delivery of the goods may result in cancellation of the contract.’)

4. Keep the subject near the verb, and the verb near the object (or complement). Avoid intrusive phrases and clauses.

Following these principles helps create clearer documents. A Finnish or Italian client is, presumably, not interested in a translation of a German contract that faithfully replicates the long-winded, confusing style of the original. Nor is she interested in a translation that features the most idiomatic legal expression for a certain phrase. This is especially true when the correct translation would be different in American and British English. It is often better, for instance, to simply use the term ‘licensed accountant’ in a document, rather than make the choice between the American version (‘Certified Public Accountant’) or the English version (‘Chartered Accountant’). The client is interested in a translation she can read, at one sitting, without too many trips to the dictionary. She wants a translation into the sort of English that is used, as ELF theorists observe, as a tool of intercultural communication.

As a practical matter, creating useful ELF/Plain Language translations requires the translator to do four things:

1. Split up long German sentences.

2. Translate using a core, Latinate vocabulary.

3. If terms of art are unavoidable because they describe a specific legal doctrine essential to the point being made (‘statute of frauds,’ ‘parole evidence rule,’ ‘dormant commerce clause’), explain them in footnotes or commentary.
4. Avoid unusual legal metaphors or turns of phrase (‘this case is on all fours with Jackson,’ ‘stay the hand of justice’).

Note that not all of these strategies map onto the prescriptions of the Plain Language movement. All skilled writers of English prefer crisp Anglo-Saxon words to their Latinate equivalents. As George Orwell (1946) put it in Politics and the English Language: ‘Bad writers, and especially scientific, political, and sociological writers, are nearly always haunted by the notion that Latin or Greek words are grander than Saxon ones, and unnecessary words like expedite, ameliorate, predict, extraneous, deracinated, clandestine, subaqueous, and hundreds of others constantly gain ground.’ I avoid such words in my own writing, but they’re often useful for a European ELF audience. Translate a word such as beschleunigen as ‘expedite,’ and many readers whose first language is a Romance language will understand it. Translate it as ‘speed up,’ and you risk confusion.

Latinate words aside, most of the techniques listed above mesh with principles of the Plain Language movement. They are also in keeping with more general principles of translation. ‘Improving the original,’ in the sense of keeping the meaning of a clumsy or ungrammatical source-language text while enhancing readability, is an accepted part of the translator’s task, according to Judith Macheiner, who teaches translation at the Humboldt University in Berlin. In her book Übersezten: Ein Vade Mecum (‘Translating: A Vade Mecum’) Macheiner (2004: 12) acknowledges the principle of faithfulness to the original text, but qualifies it as follows: ‘We do have an objection to faithfulness to the original, however, when the original itself is stylistically unsuccessful – not because we are caviling, but because, when we translate, we do not wish to be held responsible for defects that are present in the original.’ Discussing the translator’s duty when confronting stereotyped structures used in technical areas such as the law, Macheiner (p. 230) observes: ‘Along
with breathtakingly lovely uses of language there are conventional patterns which are an unacceptable imposition on all readers who are not accustomed to them…. When someone tells us that cumbersome structures are characteristic of a certain type of text, and perhaps even expects us to transform a well-written original into a poorly-written translation, we must decline the demand.’ After describing legal texts as being ‘on an outright war footing with principles of the neutral use of language,’ she provides several examples showing how clumsy, opaque legal originals can be improved by using principles very similar to the plain-language principles outlined above (pp. 230-34).  

The freedom to re-structure the original finds support on a more theoretical level in John E. Joseph’s *Indeterminacy, Translation and the Law*. ‘Translation always falls short of its goal of conveying the meaning and style of a text in a new text that reads like an original composition in the second language. The law is always subject to interpretation, the idea that it is ‘carved in stone’ is only an illusion’ (1995: 14). Joseph soon qualifies what might seem to be a recklessly broad theoretical assertion of indeterminacy; he is referring here to the kind of common-or-garden indeterminacy that ‘has [always] been more obvious to practitioners than theoreticians’ (p. 17). Joseph, drawing on philosophy and literary theory, evaluates the relevance of textual indeterminacy to the task of legal translation. Of course, he warns, legal text do have a distinct sense, and ‘departure from that sense’ would be ‘malpractice at least,’ since ‘even if the rights and wrongs of legal practice can never be established with absolute surety, the perception of wrongs has legal consequences that are qualitatively different from those in literature as traditionally defined’ (p. 17).

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2 Writing in German, Macheiner recasts cumbersome translations of legal texts by reducing nominalizations and participial phrases and eliminating unnecessary prepositional phrases.
However, the style of the original, Joseph continues, may be changed, and sometimes must be changed, to faithfully convey the ‘sense’ of the original: ‘I cannot imagine an instance in which a legal translator would be concerned to preserve the style and manner of the original, unless that style and manner were somehow directly implicated in a question of the interpretation of the meaning of the original.’ Joseph argues that this is usually not the case. Sometimes, to convey the various shades of meaning a legal term can have in one language, the translator may well have to include additional explicit information about the context in which the source-language term is found, and the additional overtones of meaning it may have in the source language that are absent in the target language. Thus, the legal translator, to fulfill the overriding goal of communicating the entire meaning of the original, may have to intervene in the text to provide additional elaboration, in the form of footnotes or in-text commentary. Thus changing the style and flow of the original, Joseph argues, is acceptable, since in legal translation ‘all that matters is the exact transference of meaning from the original language into the precise conventional formulations of the target language, with no regard (except in extraordinary circumstances) for authorial style, or for authorship at all.’ (2005: 19).

### III. Plain English Translation: An Example

Thus armed with Plain Language and ELF principles, and authorized by practice and theory, let me illustrate plain-language legal translation with an example taken from a recent edition of the main German legal news journal, the *Neue Juristische Wochenschrift*. The original sentence reads as follows:
Das hierin zum Ausdruck kommende Prinzip einer Generationenübergreifenden Perpetuierung des Übergebervermögens wird bei der hier erörterten Konstellation der Schuldentilgung nur gewährt, wenn und soweit ein Finanzierungszusammenhang mit dem Erwerb einer ertragbringenden Vermögensanlage besteht, die ihrerseits Objekt einer Vermögensübergabe sein könnte.

This sentence clocks in at a healthy 41 words, many of which are German compound nouns whose only (readable) equivalent in English is a short phrase. The sentence thus handily illustrates the rationale for splitting German sentences in translation. Otherwise, you’ll end up with something like this: ‘The principle expressed here of a generation-spanning perpetuation of the transferor’s wealth is, in the here-discussed context of debt redemption, only assured when and to the extent that a financial relationship exists with respect to the acquisition of a revenue-producing investment, which, for its part, could the object of a wealth transfer.’ Although reasonably accurate, this translation is unwieldy and risks confusing even a careful, well-informed reader.

Assuming the client hasn’t expressed a contrary preference, the case for translating a sentence like this into plain – or at least, plainer – legal English is compelling. The Latinate word ‘perpetuation’ (Perpetuierung) will be kept. Otherwise, however, plain English principles will be applied. One of the most important of these – keeping sentences as short as practicable – will require surgery on the German original. My suggested translation would be: ‘The principle expressed here is of a generation-spanning perpetuation of the transferor’s wealth. In the context of debt redemption, which is the context under discussion, this principle can be assured only to the extent that a financial relationship exists with respect to the acquisition of a revenue-producing in-
vestment. This investment, for its part, could be the object of a wealth transfer.’

Splitting up the sentences in the original does require the insertion of some additional phrases to relate antecedents and modifiers clearly to their objects. Since German adjectives and pronouns are declined by possessor’s gender, object gender, and number, their respective antecedents are immediately clear to a German in a way that cannot be reproduced in English. Thus, in the example above, the word ihrerseits, a female possessive pronoun (literally, ‘for her part’), shows automatically that the phrase that follows it modifies the feminine noun Vermögensanlage (investment), rather than the masculine noun Finanzierungszusammenhang. As the literal translation shows, inserting the information necessary to point the reader to the correct antecedents into a one-sentence English translation yields a virtually unreadable result. Splitting the sentences up, however, permits the insertion of these necessary extra pointers. Of course, the translator must always take care to make sure the proper antecedent is being indicated, and that the phrase does not add inaccuracy or unwanted connotations.

The diction has been simplified, when possible. Thus, Vermögensanlage has been translated simply as ‘investment,’ although comprehensive German/English legal dictionaries also list other translations. However, these alternate translations could introduce unnecessary confusion. Additional information about the precise kind of investment at issue is almost always provided by the larger context of the translation, as it is here. Using the simplest practicable translation not only aids clarity, but also avoids unnecessary length, as the word ‘investment’ must be repeated in the translation to preserve clarity of antecedents, as discussed above.
The resulting translation is, I would argue, about as readable as it can be made without sacrificing meaning. It would still probably pose challenges to a reader without legal training, but even the most fervent supporter of plain legal English – and I count myself in that category – acknowledges limits to how plain legal English can become.

IV. Conclusion

The Plain English movement has not yet revolutionized English-language legal writing, but it is on its way to doing so. In the United States, it already counts prominent judges among its vanguard, including Judge Richard A. Posner of the Seventh Circuit Court of Appeals, whose lively and lucid judicial opinions prose won him the 2005 Lexis-Nexis Distinguished Judicial Writing Award. I have attempted to show that translators can use some of the tenets of the Plain English movement – most importantly, controlling sentence length – to produce clearer and more useful translations. Especially in view of the growing importance of non-native speakers as a market for legal translation into English, plain-English legal translation is not just a good idea, it may be the wave of the future.
References


