

Issues of a Linguistic Nature in Legal Translation

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[excerpted from “*Legal Translation in the U.S., by Madeline Newman Ríos*”]

Legal translation presents multiple challenges. Not only is it necessary for the translator to cross a language barrier; he or she must also be able to interface the concepts and communication modes of two fundamentally different legal systems: Roman law and common law. Furthermore, whereas predominantly oral proceedings prevail in the common law countries such as Britain and the U.S., predominantly written proceedings still prevail in most Spanish speaking countries. As a result, legal translations demand a high level of professional skill and involve several important issues, including knowledge of professional standards and ethics, and knowledge of legal systems themselves. This excerpt will explore issues of a linguistic nature of importance to legal translators.

Legal writing styles may differ greatly between languages. Attention needs to be paid to syntax, grammar, and style conversions so as to produce a readable document. Failure to recognize such differences can lead to mistranslations. Literal conversions can sometimes turn a clear source language passage into an ambiguous target language passage. At times, a literal conversion can even severely distort the meaning of a legal text.

Mistranslations of Simple Language Components: Sometimes, a mistranslation in a legal text can result from an overly literal translation of simple language components such as conjunctions, pronouns, or verb forms. A word as simple as the Spanish word “y” should not necessarily be translated in accordance with its dictionary definition (“and”). For example, the Guatemalan Code of Civil Procedure states: “*Solamente los abogados colegiados podrán ser defensores y procuradores*”. An overly literal translation might read, “Only attorneys admitted to the bar may be defense attorneys and prosecutors.” A more accurate translation would be “Only attorneys admitted to the bar may be defense attorneys or prosecutors.” The original use in Spanish of the word “y” was proper, and thus should be translated using equally appropriate English, which conveys the same meaning as the original sentence.

Demonstrative or possessive pronouns and adjectives (words like “this,” “that,” or “its”), also lend themselves to overly literal translations that can create confusions or distortions. Their Spanish equivalents: “éste,” “ésta,” “su,” etc. are basic components of Spanish language legal writing conventions. For instance, we could have the following typical sentence in a sample contract: “*Los pagos deben efectuarse en el domicilio del Acreedor o donde éste le notifique*”. An overly literal translation might read: “Payments shall be made at the Creditor’s domicile or wherever this one may indicate.” Many people try to correct such a problem by rendering the sentence as, “Payments shall be made at the Creditor’s domicile or wherever the latter may indicate.” Yet the reference word “latter” is still somewhat confusing and inappropriate. On the one hand, there is no explicit or implicit reference to anything that could be identified as the “former.” On the other hand, the word “latter” is rarely employed in a legal writing in the U.S.

At the root of this translation challenge is a fundamental difference in legal writing style conventions for Spanish (and several other languages) vis-a-vis English. As has been pointed out by many writers on practical translation issues (Marina Orellana or Enrique Álcaraz Varó, for example), English allows for a greater degree of repetition than Spanish, especially in legal writing.

My own translation of the sample sentence would have been, “Payments shall be made at the **Creditor’s** domicile or wherever the **Creditor** may indicate.” These types of conversions take place frequently in legal translations.

Verbs have standard forms in legal writing when they refer to obligatory behavior. Our previous sample sentence, for instance, had “*deben efectuarse*” as its verb. A general book on comparative grammar might suggest translations such as “must be made,” “should be made,” or even “ought to be made” for such a phrase. In legal writing, however, if the context tells us that “*deben efectuarse*” is specifying mandatory conduct, the standard verb form in English would be “**shall** be made.”

Some language style features can greatly impact on a legal translation simply because they tend to come up time and again. A statement such as, “*En el anexo A se incluye el avalúo bancario*” would literally translate into English as “The bank's appraisal is included in Attachment A.” Yet it can be translated more succinctly as “Attachment A includes the bank's appraisal.” The expression “*conforme a lo provisto en la Fracción 2 del Artículo B del Código Civil*” literally translates as “in accordance with that which is foreseen in Part 2, Article B of the Civil Code.” A more readable version, in keeping with actual usage for legal writing in the U.S., would simply be: “Pursuant to the Civil Code, Article B, Part 2” or, alternatively, “In accordance with the Civil Code, Section B, Subsection 2.”¹

Certain legal writing conventions may seem strictly stylistic but actually have legal implications. For example, the words “person” or “whoever” are accepted as legal terms in English. Expressions employing structures such as “he who” are reserved for a few rare maxims only. Thus, when translating an expression such as, “*el que priva de la vida a otro*” “Any person who takes the life of another” yields a more standardized legal style than “He who takes the life of another.”

Another basic language component that is often mishandled in legal translations is the Spanish *gerundio* (that is, the present participle, verb forms ending in *ndo*). Such verb forms are in some degree equivalent to English verb forms ending in “ing.” Yet the Spanish *gerundio* actually modifies an adverb phrase or functions as a combination conjunction/verb. A mechanical translation of a *gerundio* into an English “-ing” form turns the phrase into what is functionally an adjective or a noun. Furthermore, the syntax associated with the *gerundio* is almost always Verb - Subject, rather than Subject - Verb, as dominates in English. Literal translations of the *gerundio* almost always result in an extremely awkward text, as can be seen in the following excerpt from a Peruvian passport:

En caso de pérdida, destrucción o robo, debe notificarse de inmediato a la Policía de

¹ The proper translation of words such as “*Artículo*,” when used to describe subdivisions of law, is a point of controversy among certain Spanish>English translators. There is one school which feels that it should be translated as “Section,” since law in the U.S. is broken down into “Chapter” “Section” “Subsection.” Other translators argue that the use of the word “Article” to denote a subdivision of a law is easily understandable. Furthermore, they argue that the purpose of citing an article of a foreign law is to aid those who wish to look up that law, which process is facilitated by using the cognate. Thus, they treat the word almost as a proper noun, analogous to an address, and translate it as “Article.”

la localidad..., **siendo** requisito para la obtención de un nuevo pasaporte la constancia de la denuncia respectiva.

Suggested Translation: Notify your local police at once, if this passport is lost, destroyed, or stolen. Proof of having made the respective report is a requirement for obtaining a new passport.

Literal translation: In case of loss, destruction or theft, an immediate notification should be made to the police of the locality..., **being** a requirement for the obtaining of a new passport a proof of the respective denunciation.

Mistranslations of the *gerundio* can produce major conceptual distortions, as can be illustrated with the following passage:

Hace imprudente uso de ese arbitrio la autoridad de segunda instancia que confirma la pena de prisión señalada en el máximo legal para el responsable de un homicidio calificado...**observándose** que, si bien en el caso concurren tres calificativas...se presentan como datos de significación atenuante los que consisten en que aquel sujeto había observado buena conducta anterior.²

Translation: The appeals court judge misapplied his discretion when he upheld the prison sentence set at the legal maximum for the perpetrator of a first degree murder . . . **for it should be noted** that, though three qualifying aggravating factors were present in the case . . . mitigating circumstances were also present, consisting of the fact that the defendant had previously observed good moral conduct.

If the translator of this passage had mechanically translated the underscored words as “**observing**,” the translation would have turned the original concept into its direct opposite. The argument which reasons that three qualifying aggravating factors were present, but that mitigating circumstances were also present, would have been incorrectly attributed to the (misguided) appeals court judge, rather than to the judge who wrote this opinion.

Certain language that does not rise to the level of legal terminology can often be common in legal texts, but rare in other contexts. A good example of this is the conjunction “*toda vez que*,” which, for general usage, normally takes the subjunctive mood and means “whenever.” In legal writing, it almost always means “inasmuch as” or “insofar as” and is followed by the indicative mood. Even among well educated Spanish speakers who are not familiar with Spanish legal writing, this usage seems rather odd.

Language Considerations and their Influence on Terminology Usage: Basic elements of style preferences in a given language also influence terminology usage. For example, Spanish shuns repetition. English, relatively speaking, will often use repetition for the sake of clarity. As one writer puts it, English legal writing has a “syntax characterized by repetition of words or syntactical constructions that are avoided in Spanish.”³ Thus, if the Code of Civil Procedure is mentioned twice

² Marco Antonio Díaz de León, Diccionario de derecho procesal penal, Editorial Porrúa, S.A., Mexico City, 1989, p. 227.

³ Enrique Álcaraz Varó, El inglés jurídico, Editorial, Ariel, S.A., Barcelona, p. 81. Translation is mine.

in a paragraph, a Spanish legal text may refer to it the first time as “*Código de Procedimientos Civiles*” and the second time as “*Ley adjactiva*.” If the Constitution is mentioned twice in a row, it may be called “*constitución*” in one place and “*Magna Carta*” in another. If a tariff is being discussed, the word “*arancel*” (“tariff”) may be mentioned at first, while a few sentences later, the word “*tarifa*” (a term that implies a list of charges for importation of goods) may be used. English legal writing would employ repetition in most of these cases. Even when it comes to numbering Articles of a law, Spanish will structure a sentence by saying “Articles 5 and 6 of the Penal Code and 2 of the Code of Penal Procedure,” whereas English would state, “Articles 5 and 6 of the Penal Code and Article 2 of the Code of Penal Procedure.” Nonetheless, one must be careful to research terminology and legal concepts so as to be able to distinguish synonyms from actual conceptual differences. For example, the legal concepts of a “foreclosure” and an “execution on real property” have certain aspects in common, yet the first is an “*in rem*” action (against the property), while the second results from “*in personam*” proceedings (actions against the person). Conversely, the words “*embargo*,” “*secuestro*,” and “*gravamen*” are sometimes used interchangeably to refer to an “attachment” in civil legal terminology.

Sometimes, particularly in legal writing, Spanish may use a general word in reference to a specific term containing said word. The proper translation into English must take such style considerations into account. For example, a standard “open-ended” stock corporation is “*Sociedad Anónima*” in Spanish, while a partnership would be a “*contrato de sociedad*.” Yet the term is only likely to be spelled out once in a document. Afterwards, the company in question would simply be referred to as a “*sociedad*,” a term which, when taken out of context, can refer to a myriad of organizational structures. A proper English translation would stay consistent. So long as the word “*sociedad*” was referring back to the “*sociedad anónima*,” we would probably translate the word as “corporation.” An interesting analogy for this phenomenon was provided by my legal consultant when confronted with this phenomenon. In his terms, “[in Spanish] we might call a '*sociedad anónima*' by its first name, '*sociedad*,' and leave off its last name, '*anónima*.’”⁴ As another example, let's suppose that Page One of a Spanish document mentions a “*declaración adjunta*” (literally: “an attached declaration”). When we get to the Page Two, *voilá*, there's the “declaration,” which turns out not to be just any old “declaration,” but a “sworn, written declaration,” in other words, an “affidavit.” If we decide to use the word “affidavit” on Page Two, we should also be using it on Page One, and translate “*declaración adjunta*” as the “attached affidavit.”

Some words in Spanish, such as “*acta*,” cover a number of concepts, which must be delineated for translation into English. An “*acta*” can refer to a record of any type of proceeding. It could mean the minutes of a meeting, or some other type of proceeding record. “*Acta*” is also used to refer to civil registry records (birth, marriage or death certificates). An “*escrito*” can be any type of document prepared by lawyers and submitted to a court: The “complaint” that opens a civil law suit can be an “*escrito*;” so can an opening brief or a closing brief (presented in writing). A “*mandato*” can be any act by which one person officially authorizes or orders another person to do something. If it is drawn up by a private party, it would be a “power of attorney.” If it is drawn up by a judge, it could be a “writ” or an “injunction.” Another good example of this linguistic phenomenon can be seen in the way that the word “*patria potestad*” is used in Spanish. Its dictionary definition is “*patria potestas*,” “parental authority,” or “parental rights.” Yet, when a judge awards “legal custody” to a

⁴ Interview with Fernando Tejada, 8/30/96.

parent, the word employed in Spanish is usually “*patria potestad*.” The reason for such usage is that legal custody is encompassed by the concept of parental rights. Thus, the more general term “*patria potestad*” can be appropriately applied to also refer to an “award” of “parental rights” in a divorce case in Spanish. In English, “parental rights” would be inappropriate terminology for such a context, as its meaning is too broad. Conversely, words like “defendant” in English may have literally dozens of translations in Spanish (*indiciado, presunto responsable, procesado, reo, etc.*) depending on the stage of the case. If the venue is civil, the defendant might be the “*demandado*” or “*reo*.” One must determine from the context of the document whether or not such distinctions need to be spelled out in English. In one context, “*procesado*” might be best translated as “defendant.” In another, it might be necessary to indicate that “*procesado*” specifically refers to a defendant subsequent to issuance of a committal order, and prior to pronouncement of judgment.

Terminology Usage

*General terms that exist in one language,
but not in another:*

Acta

minutes

*proceeding
record*

certificate

*(a record of any type of legal or
organizational proceeding or event)*

Defendant

indiciado

presunto responsable

procesado

reo

CRIMINAL

demandado

reo

CIVIL

Mandato

writ injunction

power of attorney

(any act by which one person officially authorizes or orders another person to do something)

Un escrito

complaint

brief

petition

letter

(writing to someone, especially by lawyers for submission to a court)

Garantía

constitutional right

security

bond

warranty

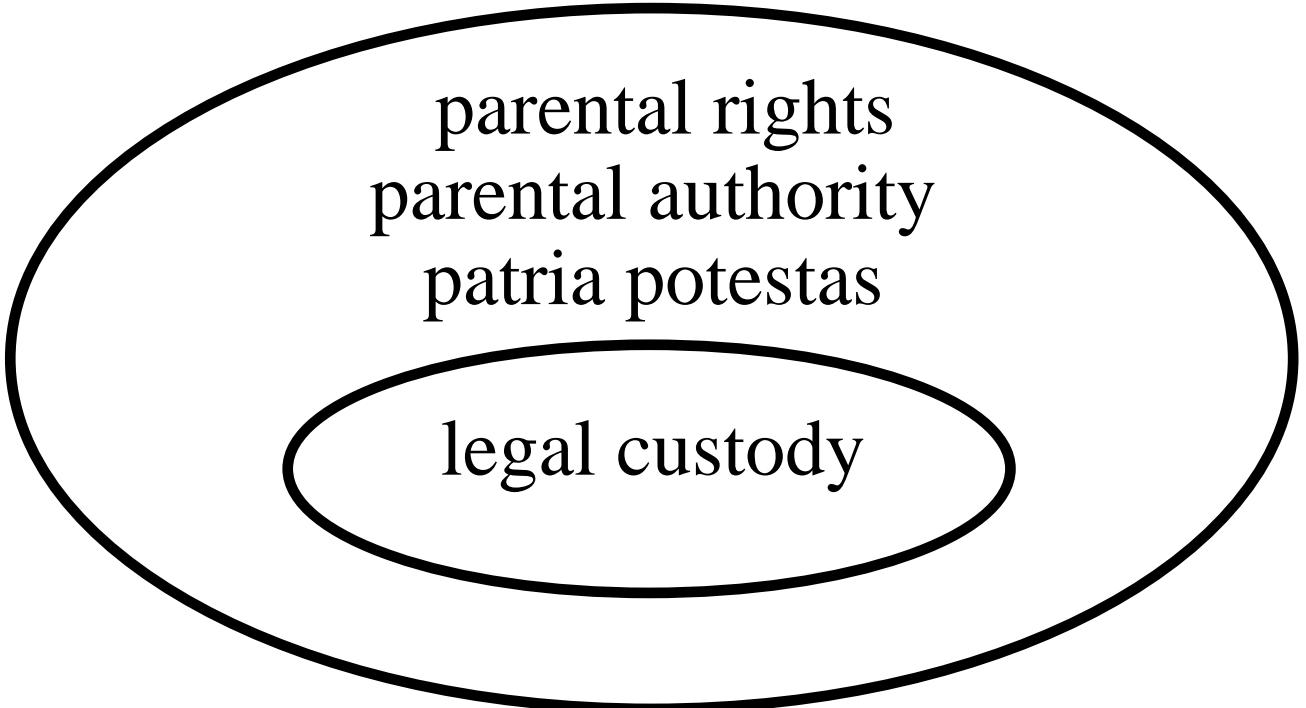
collateral

guaranty

(anything that guarantees or secures anything else)

A general term may be applicable in one language, where a specific term must be employed in the other:

Patria Potestad



parental rights
parental authority
patria potestas

legal custody

Spanish legal usage sometimes employs the same word to refer to a proceeding and to the record that results from such a proceeding. Thus, an affidavit might close with words such as “*Se termina la presente diligencia, la que leen, aceptan, ratifican y firman*”. Literally, this sentence would translate as: “This proceeding is concluded, and it is read, accepted, ratified, and signed.” A more meaningful translation would read, “This proceeding concluded, and the affidavit was read, accepted, ratified, and signed.” The same exact sentence might be found at the foot of a birth certificate, in which case, it might be translated as, “This proceeding concluded, and the certificate was read . . .”

Likewise, certain legal usage in any language will often include coined phrases that do not translate well into another language unless their expanded meaning is taken into account. Thus, the English phrase “no legal cause” may really mean “no legal cause that judgment should not be pronounced at this time.” Mexican vital statistics documents frequently end with the phrase “*firmó el que supo*” (literally: “he who knows signed”), which really means “*firmó el que supo, pudo y quiso hacerlo*” (“those persons able and willing to place their signatures did so.”) The closing of such a document may also include such seemingly unintelligible statements as, “*Testados d-l-n-Omítase. Entrelíneas nombre. Léase,*” which means, “the crossed out letters, 'd,' 'l,' and 'n' are stricken. The interlineated word 'nombre' is a valid inclusion.” Likewise, when a Spanish language legal document refers to “*el tercer considerando*” (“the third *considerando*”), it really means “Clause Three of the document section entitled *Considerandos*,” in other words, “Clause Three of the Findings of Law” if the document is a court decision, or “Clause Three of the Points and Authorities and Issues of Law” if the document in question is a brief.

Historical Factors also influence legal language. Thus, the Liberal Revolution in the late 1800's in Mexico and certain other Latin American countries resulted in a much stricter separation of church and state in those countries' legal systems than what we have in the U.S. As a result, no one ever “swears” in a Mexican court. One takes an affirmation under penalty of perjury, known as a “*protesta*.” Yet several countries in South America do swear (“*juramentar*”) to tell the truth.

Some documents close with political slogans that are historically significant. Thus, the expression “*SUFRAGIO EFECTIVO, NO REELECCIÓN*” below the name of a Mexican judge has nothing to do with whether or not he was elected. It is simply an old revolutionary slogan, “*EFFECTIVE SUFFRAGE. NO REELECTION.*” Putting it in quotes can help convey such an idea. The Mexican Revolution also did away with the “*tercera instancia*.” Thus, in proper technical terms, there are only two levels to any Mexican legal case.

Legal language in Latin America is supposed to be strictly Spanish, to the point where Latin abbreviations are forbidden for use in court by law. Thus, words such as “*res judicata*” are rendered in Spanish as “*cosa juzgada*” (something that has already been completely litigated). Even little abbreviations such as “*et. seq.*” (“and those that follow”) will be rendered as “*ss*” (for “*siguentes*”). This hard and fast rule does not always apply. Latin words are often employed for in jurisprudence and case law. For example, the Latin expression “*a quo*” for the lower court invariably pops up in Spanish language court decisions. Still, there is a tendency to use less Latin in Spanish than in English legal language.

An overall perspective is always important when one takes on the complicated tasks involved

in professional work. An understanding of the status of regulations, standards, enforcement, and training opportunities helps to create realistic solutions to problems. Often times translators in today's market are called upon to translate documents that challenge their abilities. One basic issue to remember in any translation of difficult material is the need to analyze a document in order to grasp the overall concept being communicated. In other words, the document should be read and comprehension should be sought before the translation itself is attempted. Such an approach to translation is necessary to provide perspective and avoid mechanical translation. It also subconsciously prepares one's mind so as to be able to conceptualize during the translation process. Translators likewise are urged to accumulate resources by investing in an adequate reference library with which to research their translations. It is also important to realize that a translator's own subjective evaluation of his or her work can often leave room for errors. Thus, translators are urged to participate in seminars, study opportunities, and peer review processes such as the ATA accreditation process. These types of experiences can assist a translator by discovering deficiencies and can help the translator to further professionalize. Finally, translators should hire competent editors and consultants to review their work whenever possible. Though such a process may cut into short term profits, it is key to improving skill levels and leads to better pay and marketability over the long haul.

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