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Mind the Gap! Translation of Foreign Law Is Not What You Think

Mind the Gap! *Tradução de Direito estrangeiro não é o que você pensa*

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Abstract

While much legal research involves foreign law and much of foreign law exists in a foreign language, the issue of translation has attracted limited theoretical attention only. In particular, few lawyers are aware of the work issuing from fields like literary criticism, philosophy, or translation studies. Urging acknowledgment and redress of such a serious epistemic deficit, basing itself on a critical approach to foreignness, this article offers a constructive guide to the making of just translations. A noteworthy feature of the argument concerns the formulation of conclusions that can fairly be expected to run counter-intuitively to a lawyer's unexamined assumptions. Indeed, much of what is received as conventional wisdom about the translation of foreign law is either ill-considered or plain wrong.

Keywords: comparative law; foreign law; critical theory; translation; interpretation.

Resumo

Embora muitas pesquisas jurídicas envolvam Direito estrangeiro e grande parte do Direito estrangeiro exista em um idioma estrangeiro, a questão da tradução atraiu apenas uma atenção teórica limitada. Em particular, poucos juristas estão cientes do trabalho proveniente de áreas como crítica literária, filosofia ou estudos de tradução. Instando o reconhecimento e a correção de um déficit epistêmico tão sério, baseando-se em uma abordagem crítica da estrangeirice, este artigo oferece um guia construtivo para a realização de traduções justas. Uma característica digna de nota da argumentação refere-se à formulação de conclusões das quais se pode razoavelmente esperar que se manifestem de forma contra-intuitiva às suposições não examinadas de um jurista. Na verdade, muito do que é recebido como sabedoria convencional sobre a tradução de Direito estrangeiro ou é irrefletido ou totalmente errado.

Palavras-chave: Direito Comparado; Direito estrangeiro; teoria crítica; tradução; interpretação.

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"Said is missaid".

–Beckett¹

"Peter [...] is not a *translation* of Pierre".

–Derrida²

The central place of language in life seems undeniable. We use language to command, to claim, to philosophize, to plead, and to praise. We use it in poetry, obituaries, and actuarial reports. We use it directly or obliquely ("How are you" need not be a question about health). We use it to confess, to testify. We use it constatively and performatively ("I name this horse 'Biscaïa', and I name this other horse 'Grégaou'"). We tell jokes and attempt to convince. We talk to our spouses. We talk to ourselves. We commit to our friends. We lie to our colleagues. And think how we read so many kinds of texts and hear orations of such various sorts, all composed of words. But language's significance holds even more primordially. In fact, it is no exaggeration to say that "[o]nly where [there is] language, there is world";³ or, if you will, that "[n]o thing is where the word lacks".⁴ In other terms, language is the condition of possibility of all experience of world. Only what one *calls* a mountain can exist as a mountain ("Oh! Look at the mountain over there..."). And then, one can only *see* the mountain in words. In one's head, one says: "It is huge"; "It is beautiful"; "It is white"; "There is snow". Without words, one is unable to *see* the mountain. Language therefore *constitutes* what one experiences in one's world. Consider a hot bath. What is a *hot* bath? It is what one *calls* a hot bath, what one so designates. It is not that the hot bath exists as such in advance of ascription of meaning on one's part. Rather, one's words constitute the bath as *hot* ("Oh! It is hot..."). Indeed, "[i]t is the world of words that creates the world of things".⁵ So Samuel Beckett, percipiently: "What can you say, words it is, nothing else going".⁶

¹ BECKETT, S. **Worstward Ho**. In: **Company/III Seen III Said/Worstward Ho/Stirrings Still**. D. Van Hulle (ed.). London: Faber & Faber, 2009 [1983]. p. 97.

² DERRIDA, J. **Psyché**. vol. 1. 2nd edn. Paris: Galilée, 1998. p. 209 ["Peter (...) n'est pas une *traduction* de Pierre"].

³ HEIDEGGER, M. **Erläuterungen zu Hölderlins Dichtung**. F.-W. von Herrmann (ed.). Frankfurt: Klostermann, 2012 [1971]. p. 38 ["Nur wo Sprache, da ist Welt"].

⁴ HEIDEGGER, M. **Unterwegs zur Sprache**. Pfullingen: Neske, 1959. p. 163 ["Kein Ding ist, wo das Wort gebricht"].

⁵ LACAN, J. Fonction et champ de la parole et du langage en psychanalyse. In: **Écrits**. Paris: Editions du Seuil, 1966 [1953]. p. 276 ["C'est le monde des mots qui crée le monde des choses"].

⁶ The quotation is an answer Beckett gave Niklaus Gessner, his interviewer. For the transcript, revealing that Beckett spoke in French, see GESSNER, N. **Die Unzulänglichkeit der Sprache**. Zürich: Juris, 1957. p. 75 ["Que voulez-vous, Monsieur, c'est les mots, on n'a rien d'autre"].

Now, each language constitutes its world differently from the way in which each other language constitutes its own world so that there are at least as many worlds as there are languages. To reprise José Ortega y Gasset's famous example, the semantic extension of the Spanish language's "bosque" differs from that of the German language's "Wald";⁷ and while English features words like "wood", "timber", and "woods" (as in "a walk in the woods"), French has "bois" only.⁸ To press the differential point further, contemplate three Spanish sentences: "Quiero a mi mujer", "Me gusta vino", and "Yo amo el fado". The Spanish verbs "querer", "gustar", and "amar" all translate into French as "aimer" ("J'aime ma femme", "J'aime le vin", and "J'aime le fado"). In sum, "language manifests itself in reality only as a multiplicity";⁹ and "in every language there lies a characteristic world-view",¹⁰ which is why a situation being described with a verb in the future perfect in French can well feature a modal verb expressing necessity in English – thus "Il aura oublié son rendez-vous" becomes "He must have forgotten his appointment". And the French "rendez-vous" is masculine, a gender assignment that makes no sense in English.¹¹ (Surely, the fact that the French for "masculinity" is feminine – it is "la masculinité" – does not make much sense either.) Meanwhile, the German language, which also ascribes gender identities, has "moon" in the masculine ("der Mond") and "sun" in the feminine ("die Sonne"), French claiming precisely the opposite ("la lune" and "le soleil"). Also, German allows for neutral terms in addition to masculine and feminine ones, an option unknown to French. "Pig", for example, is neutral in German ("das Schwein"), although it is masculine in French ("le cochon").

Still along differentiating lines, envisage how "La Belle au bois dormant" and "Sleeping Beauty" have long reflexively been deemed interchangeable expressions. Yet, where is the forestal allusion in English? And "Little Red Riding Hood" is evidently "Le Petit chaperon rouge", Charles Perrault's 1697 story. But why the evocation of movement and travel on horseback in English (the reference is to the cloak that would be worn by riding women as an enveloping garment)? For its part, like the French version, Jacob

⁷ ORTEGA Y GASSET, J. *Miseria y esplendor de la traducción*. In: **Obras completas**. vol. 5. 2nd edn. Madrid: Alianza Editorial, 1994 [1946]. p. 436.

⁸ For this illustration, see ECO, U. **Dire quasi la stessa cosa**. Milano: Bompiani 2003. p. 40.

⁹ HUMBOLDT, W. von. **Über die Verschiedenheiten des menschlichen Sprachbaues**. In: **Gesammelte Schriften**. vol. 6/1, A. Leitzmann (ed.). Berlin: Behr, 1907 [1829]. p. 240 ["(d)ie Sprache erscheint in der Wirklichkeit nur als ein Vielfaches"]. This text is Humboldt's so-called "Kawi-Werk", a monumental study of the Kavi language on the island of Java, which remained incomplete at the time of the author's death in 1835.

¹⁰ HUMBOLDT, W. von. **Über die Verschiedenheit des menschlichen Sprachbaues und ihren Einfluß auf die geistige Entwicklung des Menschengeschlechts**. In: **Gesammelte Schriften**. vol. 7/1, A. Leitzmann (ed.). Berlin: Behr, 1907 [1836†]. p. 60 ["in jeder Sprache (liegt) eine eigenthümliche Weltansicht"]. This publication, which came to stand as Humboldt's most famous writing, appeared shortly after the author's death. It is an edited and substantially abbreviated version of Humboldt (note 9).

¹¹ Cf. SEDARIS, D. **Me Talk Pretty One Day**. Boston: Little, Brown, 2000. p. 188: "Of all the stumbling blocks inherent in learning [French], the greatest for me is the principle that each noun has a corresponding sex that affects both its articles and its adjectives".

and Wilhelm Grimm's German 1812 fairy tale, "Rotkaeppchen", does not connote riding gear. Observe also that the differential issue I address is not confined strictly to the linguistic aspect and extends to culture more broadly understood – thus Umberto Eco: "[T]he expressions 'donnez-moi un café', 'give me a coffee', and 'mi dia un caffè' [...] are not culturally equivalent. Uttered in different countries, they produce different effects and they are used to refer to different habits. They produce different stories. Consider these two sentences, one from an Italian novel, the other from an American one: 'Ordinai un caffè, lo buttai giù in un secondo ed uscii dal bar' (literally, 'I ordered a coffee, swilled it down in a second and went out of the bar'); and 'He spent half an hour with the cup in his hands, sipping his coffee and thinking of Mary'. The first sentence can only refer to an Italian coffee and to an Italian bar, since an American coffee cannot be swallowed in a second both because of its quantity and of its temperature. The second sentence cannot refer to an Italian subject (at least to an average one drinking an average espresso) because it presupposes a large cup containing what seems like gallons of coffee".¹² As these diverse instances reveal in short order, language matters crucially to world-making and so does the idiomaticity of each language, whether from a strictly linguistic or wider cultural standpoint.¹³

Bringing these insights to bear on law, it seems safe to affirm at the outset, if in advance of empirical study, that the presence of foreign law, howsoever foreignness be defined, is more frequent and assertive within legal research and writing – whether legislative, judicial, or academic (broadly understood) – than the situation that would have prevailed fifty or even twenty-five years ago. Persistent manifestations of nationalist retrenchment notwithstanding, references to foreign materials are arguably set to expand further if only because technology makes foreign legal information ever-more readily available, either in the source-language or in translation. A handful of exceptions aside,¹⁴ legal scholars in particular have nonetheless failed to appreciate that, whether the translation work is their own or someone else's on whose effort they are relying, any

¹² ECO, U. **Experiences of Translation**. A. McEwen (transl.). Toronto: University of Toronto Press, 2001. p. 17-18. Eco subsequently rewrote this text in his native Italian, incorporating a number of emendations. See Eco (note 8), p. 168.

¹³ For a bold reflection on how different languages construct different experiences of sexuality, see STEINER, G. **My Unwritten Books**. New York: New Directions, 2014. p. 68-90.

¹⁴ See eg ŠARČEVIĆ, S. **New Approach to Legal Translation**. Amsterdam: Kluwer, 1997; OLSEN, F.; LORZ, A.; STEIN, D. (eds.). **Translation Issues in Language and Law**. London: Palgrave Macmillan, 2009; GLANERT, S. **De la traductibilité du droit**. Paris: Dalloz, 2011; GLANERT, S. (ed.). **Comparative Law – Engaging Translation**. London: Routledge, 2014; SORIANO-BARABINO, G. **Comparative Law for Legal Translators**. Bern: Lang, 2016; BIEL, L. et al (eds.). **Research Methods in Legal Translation and Interpreting**. London: Routledge, 2019. See also eg LEGRAND, P. Issues in the Translatability of Law. In: BERMANN, S.; WOOD, M. (eds.). **Nation, Language, and the Ethics of Translation**. Princeton: Princeton University Press, 2005. p. 30-50. For a collaborative effort, see GLANERT, S.; LEGRAND, P. Foreign Law in Translation: If Truth Be Told.... In: FREEMAN, M.; SMITH, F. (eds.). **Law and Language**. Oxford: Oxford University Press, 2013. p. 513-32. For an investigation of the legal translation "industry", see SCOTT, J. R. **Legal Translation Outsourced**. Oxford: Oxford University Press, 2019.

exercise in linguistic transposition must carry difficult and consequential theoretical choices that entail compelling practical implications inasmuch as the translative decisions being made frame and fixate the texts that readers will get to know across languages.

For someone who does not have German and can access Kafka in English only, it is the translator of *Der Prozeß* into English who will have determined the text that one gets to read in English. Assuming the translator has opted to convey the German title as *The Trial*, for example, this particular designation will become the only text that anglophone readers are to know. For them, Kafka is therefore the author of a novel entitled *The Trial*, a substantive that squarely focusses on judicial proceedings. However, if the English translator had translated the German title as *The Process*, anglophone readers would not be thinking of judicial proceedings, but rather of a series of mechanical operations, perhaps administrative or bureaucratic in character. One may, of course, imagine a trial as part of such mechanics, but the term “process” need not evoke a trial at all. Briefly to pursue the law-and-literature theme, the English translation of Albert Camus’s *L’Etranger* as *The Stranger* or *The Foreigner* heralds two different texts, the first insisting on lack of familiarity in some form or other, the second showcasing an individual coming from another country. The first emphasis is broader, and only the second translation can possibly evoke a legal dimension. Depending on the translator’s decision, anglophone readers without access to the French language will therefore be presented with either one of two ascertainably different texts under Camus’s name. In either case, “it would be utopian to pretend that the reader of a translation is truly experiencing the original”.¹⁵

Given that language matters so significantly, that idiomaticity is so important also, that the impact of translation is so serious as to entail different translations making for the articulation of different texts and channelling the reader’s apprehension of the author’s work in different directions, that a particular translation prompts the reader to think of the work as addressing this topic rather than that, it must follow that the translator’s choices require to be informed by theoretical insights whose sophistication must be on a par with their momentousness. Yet, there is little evidence, certainly as regards legal research and writing, that much rigour is being applied to translative interventions – an observation that coheres with my earlier remark to the effect that legal scholars do not realize the complexities at stake. Consider comparative law, the field where the treatment of foreign law is elevated to a specific form of professional expertise. Despite devoting a number of pages to the salient theoretical issues arising from the comparison of laws, even as “an investigation of comparative law should

¹⁵ POLIZZOTTI, M. *Sympathy for the Traitor*. Cambridge: MIT Press, 2018. p. 5.

also concern the translation of texts of law”,¹⁶ the leading textbook having guided comparative research since the late 1970s is silent on language matters.¹⁷ So is the comparatist who has long been the most prominent voice of epistemic opposition in the field.¹⁸ For its part, the only textbook that, at this writing, can legitimately aspire to replace the heretofore standard work and institute itself as the new model of intellectual governance within comparative law holds that the question of translation may ultimately be addressed most simplistically indeed: those taking an interest in Japanese law who can read Japanese do, while those who cannot content themselves with available translations – the two approaches seemingly on an epistemic par.¹⁹ For the comparatist expressing such a jejune view, there are apparently no larger theoretical matters arising.

This article contends that legal scholars who encounter foreign law, whether in the foreign language or by way of a published translation, cannot afford to abdicate epistemic responsibility and need to be aware of a range of basic theoretical concerns that require crucial elections to be made in the course of displacement across languages, these determinations effectively prompting the production of different texts, not least from the readership’s standpoint. The fact that “affirmative action” can be translated, in French, by way of the expression “discrimination positive” (as in France) or “action positive” (as in Canada) shows the dangers that befall the ignorance of translation theory altogether (Zweigert and Kötz/Frankenberg) or its depreciation as a non-issue (Kischel). Indeed, texts featuring “discrimination positive” or “action positive” are different texts, each heralding a singular sensibility vis-à-vis the practice of affirmative action. And these different texts are properly perceived by readers as different texts, one expressing a critical view of affirmative action, the other enunciating support. In the end, the impact of the translator’s election on the opinion that the francophone reader forms of affirmative action cannot be in doubt.

Meanwhile, there exists a huge body of learning in fields like literary criticism, philosophy, and translation studies, with which legal scholars remain largely unversant and that can readily assist the translator-at-law in search of an informed resolution to the quandary he must address. Harnessing such information and casting it as legally relevant – as being pertinent to the re-statement of foreign law across languages (and therefore as other than non-law) – this article offers academics dealing in foreignness within a scholarly setting a set of theoretical reflections and practical recommendations with a view to the formulation of translations purporting to be just,

¹⁶ Derrida (note 2), p. 228 [“une enquête de droit comparé devrait aussi concerner la traduction des textes de droit”].

¹⁷ See ZWIEGERT, K.; KÖTZ, H. *Einführung in die Rechtsvergleichung*. 3rd edn. Tübingen: Mohr Siebeck, 1996. p. 1-61.

¹⁸ See FRANKENBERG, G. *Comparative Law as Critique*. Cheltenham: Elgar, 2016.

¹⁹ See KISCHEL, U. *Rechtsvergleichung*. Munich: Beck, 2015. p. 9.

that is, aiming to do justice to the source-text – which I regard as the abiding ambition that a translation can (and must) pursue. This advice also purports to do justice to the translator's activism, to recognize the translator's input. Now, in accordance with my personal experience of many years' work as a comparatist, I find that my conclusions prove intriguing in a number of respects vis-à-vis the unexamined assumptions that legal scholars readily harbour – namely, that everything is translatable, that an uttered sentence has a definite meaning permanently inhering to it and available to its translator, that a knowing and all-powerful translator enjoys complete and incontrovertible access to the writer's mind, that the writer's intentions are perfectly transferable across languages, that a translation must be evaluated in terms of its fidelity to a source-text, that such correctness or exactitude is at once achievable and assessable so that some translations can rightly be said to be true to the source-text and, chiefly, that the translator's presence must therefore be felt as little as possible, the ideal being something along the lines of invisibility. Discarding such dusty epistemological clutter, superfluous to contemporary discourse on translation, this article seeks to invigorate the ways in which researchers in foreign law theorize and practice translatative interventions.²⁰ In the hope of facilitating matters, I proceed by way of twelve rubrics, each being preceded with a short heading that aims to capture the gist of the relevant claim. Before I begin, however, I find it important to enter three sets of general observations.

First, I maintain that I am firmly operating in the realm of interpretation, which means that, strictly speaking, I do not regard any of the assertions that follow to be pertaining to truth, no matter how strongly I happen to be subscribing to them. Indeed, it would be extraordinarily authoritarian and arrogant on my part to contend that I can ascertain and state truth. This is not at all the spirit in which I advocate for the twelve bundles of exhortations that I have assembled. What I propose is rather what I deem to qualify as the best interpretations out of the wide range of available interpretations with which I am acquainted – what I consider to be the interpretations offering optimal theoretical and practical yield, that is, the interpretations making for the most creditable translation work, for translations revealing themselves to be most favourably just vis-à-vis the source-texts that they enunciate anew.²¹ Also, I do not at all profess that

²⁰ It bears emphasizing that this article addresses situations ascertainably featuring both a primary text and a subsequent translation thereof. For example, the argument is not concerned with instances where, two or more languages having been deemed equally official as a matter of law, the legislative process has the language-versions of the relevant statute being drafted simultaneously through an incessant movement of back-and-forth across languages, neither of which then being properly regardable as a primary text or a translation. Eg: ŠARČEVIĆ, S. The Quest for Legislative Bilingualism and Multilingualism: Co-drafting in Canada and Switzerland. In: GÉMAR, J.-C.; KASIRER, N. (eds.). *Jurilinguistique: entre langues et droits/ Jurilinguistics: Between Law and Language*. Bruxelles: Bruylant, 2005. p. 277-292.

²¹ Cf. HARCOURT, B. E. *Critique and Praxis*. New York: Columbia University Press, 2020. p. 28: "What I am telling is not the truth, but an interpretation".

I am acting objectively. Quite to the contrary, I write on the basis of my socialization and of my institutionalization – of my epistemologization – into the law in general and into comparative law in particular, that is, against the backdrop of my enculturation, on account of the culture – of the cultural complex – into which I have been thrown and that I have incorporated and that I now embody. How, indeed, could I be intervening in any other way than as an encultured translator? There is more, for no translation can possibly be constituted without an array of assertive resolutions orienting the work, every single one an act of power, a foreclosing of certain understandings through a selection of others (it could have been that word, but it will be this one...). Indeed, there is no possibility of a powerless translation. Now, these animating epistemic features must exclude any posture that would prove the least evocative of neutrality (no matter how one is prepared to circumscribe the terminological reach of this term).

Secondly, the enjoinders I develop emphatically do not have to do with method. For greater precision, let me say that I am not propounding anything like a method of translation. Most problematically, I think, method heralds a kind of predictability, a sort of rigidity even – at any rate, a linearity. Indeed, John Law remarks that “[m]ethod [...] is a system for offering more or less bankable guarantees. It hopes to guide us more or less quickly and securely to our destination, a destination that is taken to be knowledge about the processes at work in a single world. It hopes to limit the risks that we entertain along the way”.²² I find such purported enframing to be profoundly incompatible with the interpretive dimension that must inform any translation work and involve, by definition so to speak, uncircumventable contingency. In my view, there is a further difficulty arising, which is that method, in line with its ancestral Cartesian pedigree, would effectively claim to insinuate a certain degree of “scientificity” to the translative endeavour. Indeed, the very point of method is that it should afford a strategy permitting to obviate personal input on the translator’s part.²³ For myself, even as I staunchly argue that any translator has a duty to keep personalization in check, whether on account of unduly ethnocentric proclivities or other excessively hampering idiosyncrasies, I am steadfastly of the view that it is neither possible nor desirable to pretend to be cancelling singular inclinations on account of method. Specifically, not only is any method someone’s method – indeed, method is always designed with a goal in mind, which eschews any idea of impartiality at the outset – but the deployment of method by anyone must feature a personal angle, since one necessarily brings to bear

²² LAW, J. *After Method*. London: Routledge, 2004. p. 9.

²³ In his prominent seventeenth-century *Discours de la méthode*, Descartes objected to the idea that there would ultimately exist nothing more epistemologically trustworthy than one’s enculturation, that the outcome of one’s representations should, in the end, fall prey to the fact that one had been raised with “the French”, “the Germans”, “the Chinese”, or “the Cannibals”: DESCARTES, R. *Discours de la méthode*. In: *Œuvres philosophiques*, vol. 1, F. Alquié (ed.). Paris: Garnier, 1997 [1637], II, p. 583-584 [“des Français”/“des Allemands”/“des Chinois”/“des Cannibales”].

one's own understanding of the method in question.²⁴ Instead of method, I therefore commend a series of *protocols* in order markedly to enhance the ethical and epistemic virtues – the warrant – of scholarly translation in law. It is not at all, then, that anything goes.

Thirdly, while I accept that there exist Englishes – that “privacy” does not mean to a California law teacher what it signifies to an English academic or that the Australian courts’ interpretation of the word “commerce” as regards the Trade and Commerce Power in the Australian constitution differs from the US courts’ interpretation of “commerce” pursuant to the Commerce Clause in the US constitution, which entails that “privacy” is not “privacy” or that “commerce” is not “commerce” – I do not concern myself with situations involving a move from one English to another (or, say, from European to Brazilian Portuguese). Without pronouncing on the debate amongst linguists as to whether one is then dealing with different languages or with dialects of a unique language (a question that might solve itself differently depending on whether one is considering English or Portuguese), I envision instances where the fact that one is operating interlingually is effectively beyond dispute. I have in mind, say, the shift from English to Portuguese or that from German to French.

I now turn to my contentions, which I aim to delineate as neatly as I can although I acknowledge that occasional overlap is inevitable. Indeed – contrary to what the idea of method and its clockworky ways would suggest – the process of translation does not allow itself to be captured in a series of watertight compartments. My sequence runs thus:

- 1 To translate is to differentiate.
- 2 Untranslatability is the translator's guiding motif.
- 3 Translation features a constant tension between two supremacies, that of the translator over the text and that of the text over the translator. In the end, the text carries.
- 4 A translation is unavoidably autobiographical.
- 5 A translation cannot be true (but it can be false).
- 6 Translation is a second original.
- 7 Failure to translate is an opportunity.
- 8 Hearken to the source-text.
- 9 Recognize (and challenge) the injustices pertaining to published translations.
- 10 Translation must not abide by a method.
- 11 Translation must track the source-text as closely as possible even if it should make for disruptive reading in the target-language.
- 12 Recognize that the translator is an inventor.

²⁴ Cf. Law (note 22), p. 143: “[M]ethod is not, and could never be, innocent or purely technical”.

Now, zur Sache selbst!

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1 To translate is to differentiate.

As you prepare to translate, do acknowledge – *do accept* – that translation is not an activity that can ever achieve mutual understanding across languages or allow two languages to reach agreement with one another. Simply avoid such delusion. What a translator does instead, and all that he can ever do, is to articulate difference. Indeed, “translation is not at all destined to make difference disappear of which it is on the contrary the play: constantly it alludes to it, it conceals it, but sometimes by revealing it and often by accentuating it, it is the life itself of that difference”.²⁵ Note how such difference is a structural component of every translation and cannot therefore be erased or overcome, no matter how excellent your translative effort. In other terms, notwithstanding his hardest work, the translator, upon considering the two texts at hand – the text being translated (the source-text) and the text in translation (the target-text) – requires to admit that the two forms of words must incessantly differ.²⁶ At the outset, you therefore have to resist thinking of the languages coming into the translation process in terms of “identity”, “ipseity”, “duplication”, “sameness”, “similarity”, “commonality”, “consensus”, “relation”, “alliance”, “consilience”, “reconciliation”, and “continuity” (or, in French, “mêmeté”). Rather, translation demands the mobilization and application of ideas like “distinction”, “otherness”, “dissensus”, “interruption”, “disrelation”, “discontinuity”, “change”, “mutation”, “transformation”, “generativity”, “seriality”, “supplementation”, and “invention”. Let me insist: identity is ever breached, and “[e]quivalence is an interpretive fiction”.²⁷

Since there can be no bridge or passage of any kind across languages,²⁸ because there can be no communication, say, from English to French,²⁹ a translator

²⁵ BLANCHOT, M. *L'Amitié*. Paris: Gallimard, 1971. p. 70-71 [“la traduction n’est nullement destinée à faire disparaître la différence dont elle est au contraire le jeu: constamment elle y fait allusion, elle la dissimule, mais parfois en la révélant et souvent en l’accentuant, elle est la vie même de cette différence”].

²⁶ “Source-text” and “source-language”, “target-text” and “target-language” are received expressions within translation studies. While I find them inadequate – I especially dislike “target” inasmuch as the term intimates that the translator is taking aim at the host-language or perhaps attacking it – I have learned there is little point in fighting the proverbial windmills.

²⁷ ROBINSON, D. *The Translator’s Turn*. Baltimore: Johns Hopkins University Press, 1991. p. 259. Interestingly, Willard Quine, a foremost analytical philosopher, refers to “sameness of meaning” as “an ill-conceived notion within traditional semantics”: QUINE, W. V. Indeterminacy of Translation Again. *Journal of Philosophy*, New York, vol. 84, n. 1, p. 5-10, 1987. p. 10.

²⁸ See DERRIDA, J. *La Bête et le souverain*. vol. 2, M. Lisse; M.-L. Mallet; G. Michaud (eds.). Paris: Galilée, 2010 [2002]. p. 31.

²⁹ Consider PIRANDELLO, L. *Uno, nessuno e centomila*. P. Cudini (ed.). Firenze: Giunti, 1994 [1926]. p. 32: “We have used, I and you, the same language, the same words. But are we at fault, I and you, if the words in themselves are empty? Empty, my dear. And you fill them with your meaning, as you speak them to me; and I, welcoming them, inevitably, fill them with my meaning. We believed we understood each other; we did not

must even dismiss such notion as “dialogue”, in effect, a stagnant cloud of obscurity. A key operational word for translation is rather “monologue”.³⁰ Indeed, what takes place as translation materializes is the co-existence of two monologues – and these monologues are involved in a negotiation at the translator’s behest (it is, in effect, the translator who is compelling the languages into interaction).³¹ Now, in accordance with Leibniz’s Law,³² if there is more than one language or monologue in co-presence, there must be difference between them, irreducibly so. Leibniz’s insight is that if there is more than one of anything, of any entity, there can no longer be identity (or *id*-entity) – which means that there has to be difference. (Observe therefore that, contrary to the prevailing if unexamined view, words like “sameness” or “similarity” effectively mean difference: for A to be the same as B or for A to be similar to B, there must be A and B, that is, there must be more than one entity, which means that there must be difference between A and B. Nelson Goodman, the influential US philosopher, thus perspicaciously remarks how “[s]imilarity, ever ready to solve philosophical problems and overcome obstacles, is a pretender, an impostor, a quack”.³³)

Crucially, the fact that translation necessarily operates as differentiation is not to be regretted. Rather, translation thereby finds itself able to acknowledge the source-text’s entitlement to recognition and respect. Writing as regards reading, Jacques Derrida exclaims: “*First rule: respect for the other, that is, for his right to difference*”.³⁴ This injunction applies to translation, too.

2 Untranslatability is the translator’s guiding motif.

It is crucial, I contend, that you should readily appreciate how the task of translation is, in effect, an impossibility. Indeed, “translation is another name for the impossible”.³⁵

understand each other at all” [“Abbiamo usato, io e voi la stessa lingua, le stesse parole. Ma che colpa abbiamo, io e voi, se le parole, per sé, sono vuote? Vuote, caro mio. E voi le riempite del senso vostro, nel dimerle; e io nell’accoglierle, inevitabilmente, le riempio del senso mio. Abbiamo creduto d’intenderci; non ci siamo intesi affatto”].

³⁰ Eg: Heidegger (note 4), p. 265: “[L]anguage is monologue”; it speaks “lonesomely” [(D)ie Sprache ist Monolog/“einsam”] (emphasis omitted).

³¹ Cf. LEGENDRE, P. **Le Désir politique de Dieu**. Paris: Fayard, 1988. p. 183: “[D]ogmatic systems as such do not dialogue, [...] they can only negotiate” [(L)es systèmes dogmatiques comme tels ne dialoguent pas, (...) ils ne peuvent que négocier”].

³² See eg LEIBNIZ, G. W. **Nouveaux essais sur l’entendement**. In: **Die philosophischen Schriften von Gottfried Wilhelm Leibniz**. vol. 5, C.I. Gerhardt (ed.). Hildesheim: Olms, 1965 [1764†]. p. 49: ‘[B]y virtue of imperceptible variations, two individual things [...] must always differ’ [(E)n vertu des variations insensibles, deux choses individuelles (...) doivent toujours differer’].

³³ GOODMAN, N. Seven Strictures on Similarity. In: **Problems and Projects**. Indianapolis: Hackett, 1972. p. 437.

³⁴ DERRIDA, J. **Mémoires**. Paris: Galilée, 1988. p. 217 [“*Première règle: le respect pour l’autre, c’est-à-dire pour son droit à la différence*”].

³⁵ DERRIDA, J. **Le Monolinguisme de l’autre**. Paris: Galilée 1996. p. 103 [“(L)a traduction est un autre nom de l’impossible”]. See also eg Ortega y Gasset (note 7), p. 431-52, *passim*.

For example, one cannot say “vieux linge” in English in a manner that would convey the semantic extension of the French expression without any accretion or loss of significance along the way, that would be neither a little above or a little below the French language.³⁶ Whatever English words the translator chooses, no matter how painstakingly he proceeds, the meaning of the English words in English will deviate from the meaning of the French words in French, if ever so slightly. In effect, “we are condemned not to total incomprehension nor to pure untranslatability, but to a work of translation which will never be accomplished”.³⁷

Consider the French statute prohibiting ostensible religious “tenues” in French public schools.³⁸ While the range of English translations is extensive – I have in mind, *inter alia*, “garb”, “dress”, “attire”, “outfit”, “clothes”, or “apparel” – no English word offers a case of identical semantic correspondence with the French term. Such an isomorph (this is the technical designation that would indicate an exact correlation) is impossible, and the gammut of options points to the contingency inherent to the matter of translation – an indeterminacy that simply cannot be overcome, that remains unresolvable. Recall the epigraphs to this article. Rather than correctness or exactitude, there is inevitably some play or slack arising in every translation process so that the way of translation is as leeway and thus as *misway*, structurally, intrinsically, inevitably so. The source-text that obviously exists in advance of the translator, that is there without him and irrespective of him, thus stays out of his epistemic reach: it resists him and his interpretive forays, it keeps a secret from him. Since there is no possible identification between the translator and the text (the self cannot be the other),³⁹ and because his translation only tells the

³⁶ I refer to Letter from S. Beckett to G. Devine in CRAIG, G. *et al* (eds.). **The Letters of Samuel Beckett**. vol. 3. Cambridge: Cambridge University Press, 2014 [16 February 1957]. p. 26. Beckett’s self-translation across French and English supplies endless illustrations of untranslatability. For instance, contemplate this passage from Beckett’s in French: “J’allais le voir, à l’asile. Je le prenais par la main et le traînais devant la fenêtre. Mais regarde! Là! Tout ce blé qui lève. Et là! Regarde! Les voiles des sardinières! Toute cette beauté!”: BECKETT, S. **Fin de partie**. Paris: Editions de Minuit, 1957. p. 60-61. Now, envisage this excerpt from Beckett’s in English in BECKETT, S. **Endgame**. R. McDonald (ed.). London: Faber & Faber, 2009 [1958]. p. 28: “I used to go and see him, in the asylum. I’d take him by the hand and drag him to the window. Look! There! All that rising corn! And there! Look! The sails of the herring fleet! All that loveliness!”. For George Steiner, the prominent comparatist and literary critic, “[t]he transfer is flawless [...]”. Yet the differences in cadence, in tone, in association, are considerable”: STEINER, G. **After Babel**. 3rd edn. Oxford: Oxford University Press, 1998. p. 498. According to Steiner, “[t]hat rising corn’ and ‘ce blé qui lève’ speak of worlds different enough to allow the mind both space and wonder”: *ibid*. To appreciate Steiner’s point requires considerable perspicacity. But his insight is sound, and the difference he indicates is not a figment of his imagination. *It is there*, and what Steiner does is to ascribe meaningful existence to it through a process of elucidation. (Incidentally, what Steiner styles a “flawless” translation consists, in effect, in a transposition that features many semantic differences as Beckett rewrites the French text and transforms it into English.)

³⁷ BENNINGTON, G.; DERRIDA, J. **Jacques Derrida**. Paris: Editions du Seuil, 1991. p. 164 [“nous sommes condamnés, non pas à l’incompréhension totale, ni à l’intraduisibilité pure, mais à un travail de traduction qui ne sera jamais accompli”]. The words are Geoffrey Bennington’s.

³⁸ Statute no 2004-228 of 15 March 2004, art 1.

³⁹ Cf. DERRIDA, J. *Fidélité à plus d’un*. **Cahiers Intersignes**, Paris, vol. 13, p. 221-265, 1998. p. 226: “One does not have access to the here-now of the other” [“On n’a pas accès à l’ici-maintenant de l’autre”].

source-text as *he* apprehends it, the translation ultimately conveys only “his” reading of the text. Again, notwithstanding how hard the translator tries, how meticulous his work, the fact of the linguistic matter is that no English word will ever capture the full semantic ramifications of the French term “*tenues*”: “[T]here is something of the original text that no translation can touch”.⁴⁰ Indeed, because “the [meaning] itself always slips away”,⁴¹ no integral restitution is possible and the translative debt cannot be acquitted. One more illustration of this epistemological predicament must suffice.

In Kafka’s *Die Verwandlung*, Gregor Samsa finds himself having been transformed into “*einem ungeheueren Ungeziefer*”. Let us review some of the better-known translations in English: “a gigantic insect” (E. and W. Muir, Vintage [Random House] 1933); “a monstrous vermin” (S. Corngold, Modern Library [Random House] 1972 and J. Neugroschel, Scribners 1993); “an enormous bug” (S. Applebaum, Dover 1996); “a horrible vermin” (D. Wyllie, Wisehouse 2002); “a gargantuan pest” (M.A. Roberts, Prestwick House 2005); “a monstrous cockroach” (M. Hofmann, Penguin 2007); “some kind of monstrous vermin” (J. Crick, Oxford University Press 2009); and “some sort of monstrous insect” (S. Bernofsky, Norton 2014). It is, in fact, easy to think of other choices: “a gigantic vermin”; “a gigantic cockroach”; “a gigantic bedbug”; “a monstrous insect”; “a monstrous bedbug”; “some kind of monstrous insect”; “some kind of monstrous cockroach”; “an enormous insect”; “an enormous vermin”; “some sort of monstrous vermin”; and “some sort of monstrous cockroach”. Imagine also the long list of potential permutations if one substitutes words like “beetle”, “bug”, “pest”, “roach”, “wall-louse”, or “wiglouse” – an enumeration that cannot be pronounced closed for “[a] thousand possibilities will always remain open even as one understands something of that sentence that makes sense”.⁴² Not only, then, is “equivocity [...] in fact always irreducible”,⁴³ but “translation changes completely the text”.⁴⁴

No translation is definitive, then – which is why, for example, leading publishers regularly commission retranlations of famous works.⁴⁵ In effect, “[t]he act of translation

⁴⁰ DERRIDA, J. *Table ronde sur la traduction*. In: LEVESQUE, C.; McDONALD, C.V. (eds.). **L’Oreille de l’autre**. Montréal: VLB Editeur, 1982. p. 152 “[l]i y a quelque chose du texte original qu’aucune traduction ne peut toucher”].

⁴¹ DERRIDA, J. **La Voix et le phénomène**. Paris: Presses Universitaires de France, 1967. p. 117 “[Le sens] même se dérobe toujours”. I substitute “sens” (“meaning”) for “chose” (“thing”).

⁴² DERRIDA, J. **Limited Inc** E. Weber (ed.). Paris: Galilée, 1990. p. 122 “[m]ille possibilités resteront toujours ouvertes, alors même qu’on comprend quelque chose de cette phrase qui fait sens”].

⁴³ DERRIDA, J. Introduction. In: HUSSERL, E. **L’Origine de la géométrie (Der Ursprung der Geometrie)** [1954†]. J. Derrida (transl.). Paris: Presses Universitaires de France, 1962. p. 106 “[l]’équivocité (...) en fait toujours irréductible”].

⁴⁴ DERRIDA, J.; FERRARIS, M. **Le Goût du secret**. A. Bellantone; A. Cohen (eds.). Paris: Hermann, 2018 [1994]. p. 84 “[l]a traduction change totalement le texte”]. The words are Derrida’s. Cf. VENUTI, L. **Translation Changes Everything**. London: Routledge, 2013.

⁴⁵ Illustrations abound. Eg: BEAUVOIR, S. de. **The Second Sex**. C. Borde; S. Malovany-Chevallier (transl.). London: Cape, 2009. The earlier translation was HM Parshley’s (Knopf 1953). Beauvoir’s *Le Deuxième sexe* appeared in 1949.

[...] means living *with* difference and living with *failure*. It means acknowledging the co-equal incommensurables that separate us”.⁴⁶ Appreciating that his translation is doomed to fail, that it is fated not to achieve duplication across languages, the translator’s challenge is effectively to “[f]ail better”,⁴⁷ that is, continually to seek to improve upon his always-already deficient translative effort.

Now, the fact that translation is impossible, that there is no ascertainable meaning of a text in translation that would be firm, settled, or permanent, evidently need not imply that translation must not be undertaken. Arguably, the case for the ineradicability of translation seems so evident that it is hardly worth discussing. I am therefore content to quote again George Steiner, who pithily captures the necessity of the translative enterprise by observing that “[w]ithout [translation], we would live in arrogant parishes bordered by silence” – a situation that must be unacceptable to any individual with the least intellectual sophistication.⁴⁸ Even as translation is acknowledged to be impossible, then, no text must be deemed immune to translation.⁴⁹ Again, though, one must appreciate that when one proceeds to translate, one is, literally, performing the impossible, that is, one must realize that one’s endeavour is doomed to failure, that one is operating in “constant renunciation”.⁵⁰ Not only is it important to have a keen awareness of the limits of one’s intellectual assignment, but I find that it is good to bring to bear a sense of modesty to one’s task – to say, with Derrida: “What guides me is always untranslatability”.⁵¹

Still, things are complicated for even as the translator must remain humble, he cannot forget (and others must not forget either) that his input is considerable. In effect, the translator also signs the author’s text. To be sure, it is not a joint signature so much as a *counter-signature*. If this expression evokes the idea that the translator would be counterfeiting the text, such resonance is etymologically apt, since the Latin “contra-facere” means “to make in opposing imitation, to make in contrast to imitation”. It is not, then, that the translator is opposing the source-text, but that his translation runs counter to the idea of imitation. Think also of the sentence, “She is my counterpart in New York”. On reflection, there is no suggestion in the word “counterpart” of any

⁴⁶ MAITLAND, S. *What Is Cultural Translation?* London: Bloomsbury, 2017. p. 8.

⁴⁷ Beckett (note 1), p. 81.

⁴⁸ STEINER, G. Introduction. In: STEINER, G. (ed.). *The Penguin Book of Modern Verse Translation*. London: Penguin, 1966. p. 25.

⁴⁹ Indeed, Derrida suggests that a text is always-already making a request to be translated so as to ensure its survival. In other words, a translation would not arise as an accident that would advene to an already full substance, but would be responding to an initial limitation within the textual substance. Assuming the merit of this insight, can it be applied to law-texts? Does a (local) law-text desire its translation? See Derrida (note 40), p. 201-02.

⁵⁰ GADAMER, H.-G. *Wahrheit und Methode*. 5th edn. Mohr Siebeck, 1986. p. 389-90.

⁵¹ DERRIDA, J. Du mot à la vie: un dialogue entre Jacques Derrida et Hélène Cixous (interview with A. Armel). *Magazine littéraire*, Paris, April 2004, p. 26 [“Ce qui me guide, c’est toujours l’intraductibilité”].

antagonism or mimetism. Rather, one's "counterpart" evokes the idea of an alter ego, of a second entity reminiscent of the initial one although different from it (since there is more than one, there must indeed be difference).⁵² As he responds to the text, the translator affirms it by extending its life beyond its language, by permitting it to *live on* – if differently – by conferring an "increase of being" to it.⁵³

3 Translation features a constant tension between two supremacies, that of the translator over the text and that of the text over the translator. In the end, the text carries.

The translator must be aware that he wields great power over the text being translated. Indeed, his role deserves to be acknowledged well beyond the invisibility to which it has traditionally been confined – inasmuch as the view has long held that a translation must produce a text that does not seem to be translated in the first place, the abiding idea being that the less evident it is, the better the translation.⁵⁴ However, the fact of the matter is that it makes all the difference whether Shakespeare's translation into French is Pierre Leyris's or Yves Bonnefoy's – or, to return to my Beauvoir illustration, whether *Le Deuxième sexe* is Howard Parshley's or Constance Borde's translation into English. Again, this individual ascendancy is what the expression "counter-signature" purports to convey by insisting that the translator is also signing the text, if differently from its author. (Incidentally, time matters, too: the English that prevailed in Parshley's era in the early 1950s is obviously not the English that governed in Borde's moment in the 2010s. Sixty years hence, some English words are no longer current and accordingly terms that Borde would not consider deploying, while other formulations emerged in the intervening six decades that would therefore have been unknown to Parshley.)

Still, even as I argue for the necessary recognition of the translator's power – every individual translation is discriminative, decisive, and critical – I maintain that the text being translated acts as a kind of charter framing the translator's autonomy. To

⁵² I draw on DERRIDA, J. *Contresignature* (unpublished 2000), 44 pp. p. 30 [on file]. At this writing, Derrida's essay remains inedited in its original version. I am grateful to Leslie Hill, University of Warwick, for supplying me with the French document. For a published English translation, see DERRIDA, J. *Countersignature*. M. Hanrahan (transl.). **Paragraph**, Edinburgh, vol. 27, n. 2, p. 7–42, 2004. Reflecting on the "counter-move", Bernard Harcourt writes that "[n]either inherently good nor bad, it can go in multiple directions. It is not thesis, antithesis, synthesis. It is not anti-": Harcourt (note 21), p. 202. He adds: "*Counter can fail*": *ibid*.

⁵³ Gadamer (note 50), p. 145 ["Zuwachs an Sein"]. For Walter Benjamin, translation indeed pertains to the "survival" ("Überleben") or "afterlife" ("Fortleben") of the source-text: BENJAMIN, W. *Die Aufgabe des Übersetzers*. In: BENJAMIN, W. **Illuminationen – Ausgewählte Schriften**. vol. 1, S. Unseld (ed.). Berlin: Suhrkamp, 1977 [1923]. p. 51. It follows that "the original is *a priori* indebted with regard to the translation": Derrida (note 40), p. 201 ["l'original est *a priori* endetté à l'égard de la traduction"].

⁵⁴ In the preface to the English version of his *Rechtsvergleichung* (note 20), Uwe Kischel states that he wanted "a translation that reads not like a translation": KISCHEL, U. **Comparative Law**. A. Hammel (transl.). Oxford: Oxford University Press, 2019. p. ix. See generally VENUTI, L. **The Translator's Invisibility**. 3rd edn. London: Routledge, 2018.

offer a provocative illustration, there is no way in which the word “tenues” in the French statute on religious attire in public schools could meaningfully be translated into English as “nuclear rockets”. Consider Derrida: “One does not do anything whatsoever with language”.⁵⁵ There are the words that there are, there, and while a source-text can have more than one meaning it cannot have every meaning. What control the translator is in a position to exercise – and his authority is considerable – must therefore contend with the source-text’s words themselves. Since no translation is fully exempt from reference – every translation is a translation of *something* – the translator’s readerly sovereignty cannot be unconditional, at least if the exercise must be worthy of being designated a “translation”. For a translation to exist as a translation of a text, it must demonstrably engage with the text, with *that* text. If you will, there is a “going-along-in-understanding” that must be involved in the process of translating a text.⁵⁶ In other terms, translation is re-presentation, a presentation anew of the primary text, an iteration. Arguably, it is not so much that the target-text is to be found vis-à-vis the source-text, but that the source-text inheres to the target-text: it is present within it. Envisage translation as giving effect to a deployment of inherence. Now, because translation is of a text and since – conventionally, at least – the source-text can only signify within a bounded semantic framework, when it comes to meaning it is the words of the source-text that have the last word.

This textual preponderance – this resilience – has to do neither with anything like the essence of the inscribed source-words nor with any form of transcendental withstanding capturing the source-text. Rather, it concerns the way in which a given linguistic community has conventionally invested the relevant term – say, “tenues” – with a received semantic extension or an accepted meaning, often over the *longue* or *très longue durée*. Otherwise said, “[t]he meaning of an utterance [...] is its experience”.⁵⁷ There are therefore limits, or “built-in” conventional semantic constraints, to cabin how much the translator’s assertion of individual consciousness can strike an independent course from the social aspect of human understanding – which entails that there is no unlimited or infinite semiosis: “The words themselves block the way”.⁵⁸ It follows that a translation can be impugned as an over-translation, at least as a conventionally inadmissible over-translation, that is, as a translation *lying* beyond what an original text

⁵⁵ DERRIDA, J. **Apprendre à vivre enfin**. J. Birnbaum (ed.). Paris: Galilée, 2005 [2004]. p. 38 [“On ne fait pas n’importe quoi avec la langue”]. Even as it shows itself to be remarkably open, language thus frames the extent of its own possible unfolding as it reveals “powers of coding or of overcoding, otherwise said, of control and of self-regulation”: Derrida (note 2), p. 354 [“pouvoirs de codage ou de surcodage, autrement dit de contrôle et d’autorégulation”].

⁵⁶ GADAMER, H.-G. *Hermeneutik auf der Spur*. In: **Gesammelte Werke**. vol. 10. Tübingen: Mohr Siebeck, 1995 [1994]. p. 161 [“im Verstehen mitzugehen”].

⁵⁷ FISH, S. **Is There a Text in This Class?** Cambridge: Harvard University Press, 1982. p. 65.

⁵⁸ HARTMAN, G. H. **Saving the Text**. Baltimore: Johns Hopkins University Press, 1981. p. 157.

can legitimately be taken to mean at a certain time within an ascertainable linguistic constituency under any reasonably intelligible or persuasive view.⁵⁹

4 A translation is unavoidably autobiographical.

The idea that a translation would be neutral or impartial – that is, objective – is unsustainable. Rather, a translation must feature an input from the translator – from *this* particular translator – whose inclinations will prompt him, say, to translate “tenues” as “attire” rather than “apparel” (*supra*). Now, when a translator comes to the act of decision-making, he simply cannot operate from a presuppositionless starting-point. Indeed, if every preconception or opinion, if every predisposition or bias, if every predilection or proclivity, were to be removed from the translator’s mind, there would be no intellectual equipment at the translator’s disposal with which to proceed to the determinations that he must make. Otherwise said, “[one] cannot possibly start with a clean slate and still be somebody capable of starting”.⁶⁰ To iterate the point a little more philosophically, translation cannot be dissociated from the idea of a radical fore-structure – a *rooted* fore-structure – within which thought always-already dwells. In effect, translation necessarily projects itself out of that fore-structure. And it is the projective character of translation that inevitably delineates what possibilities will prove available or foreclosed to the specific translator. Projection, possibility, and translation are thus as empirically governed as they are inextricably entwined. (Observe that it would be simplistic to reduce the fore-structure to pre-knowledge, since the instrumental nexus I discuss operates at a more primordial level still. For instance, it embodies all manner of emotions that inform translation even as they do not concern knowledge strictly understood.)

To be sure, the autobiographical character of the decision to translate “tenues” by way of “attire” rather than “apparel” may not be apparent. But this is hardly a sufficient reason to dismiss the fact that the translator brings to bear his fore-structure on the decision to deem one English word more relevant than the other. Indeed, it simply cannot be the case that a translation is not inflected by autobiography for no translation

⁵⁹ Over-translation is a variation on the theme of over-interpretation. Note that even an advocate of over-interpretation such as Jonathan Culler concedes that “meaning is context bound”: CULLER, J. In *Defence of Overinterpretation*. In: COLLINI, S. (ed.). **Interpretation and Overinterpretation**. Cambridge: Cambridge University Press, 1992. p. 120.

⁶⁰ FISH, S. *Intention Is All There Is: A Critical Analysis of Aharon Barak’s Purposive Interpretation in Law*. **Cardozo Law Review**, New York, vol. 29, n. 3, p. 1109-1146, 2008. p. 1135. Indeed, Heidegger goes so far as to claim that “[e]very disputation between different interpretations of a work, not only in philosophy, is in truth a mutual reflection relating to leading presuppositions; it is the discussion of these”: HEIDEGGER, M. **Was heisst Denken?** In: **Gesamtausgabe**. vol. 8, P.-L. Coriando (ed.). Frankfurt: Klostermann, 2002 [1954]. p. 181 [(j)ede Auseinandersetzung zwischen verschiedenen Interpretationen eines Werkes, nicht nur des philosophischen, ist in Wahrheit eine wechselseitige Besinnung auf die leitenden Voraussetzungen, ist die Erörterung dieser].

is ever immediate.⁶¹ Rather, a translation must be mediated through the translator's experience: no translation can be dissociated from a translator's commentary on the source-text – even if this narrative should be taking place *sotto voce*. Note that the integration between the translator's self and the source-text runs deeper than co-extension, which assumes separability, measurability, divisibility, or identifiability. It is not that selfhood and texthood parallel or succeed each other, but that they tessellate each other, that they mingle to the point of indissociability. Otherwise said, the translator proceeds to a selfing of the source-text. The translating self textualizes itself: it inscribes itself – it writes itself – into the source-text, it marks the text so that a translation is ultimately resolvable as a quest for the expressive self. It follows that there is no unrhetorical translation, rhetoric being the enabling condition of all articulate thought. "[A]s long as a translation remains a translation, [...] it will always have a translator's presence and therefore a translator's subject position inscribed in it, however well hidden they may be".⁶²

I have been referring to the translator's velleities. It is important to insist that these are not all strictly personal to him, that they are therefore not all at his free disposal to modify. The fact of the matter is that the translator has been thrown into a culture – a cultural complex – that has framed his world and his world-view and that he has made his, largely semi-consciously or even sub-consciously. And that culture, which he has incorporated and now embodies, is at once enabling and constraining: it provides the individual with tools allowing him to make sense of his world (again, think about language, which permits one to name or designate), but it also limits his horizons (an anglophone cannot spontaneously approach a chair as feminine and an armchair as masculine, while a francophone readily thinks of "la chaise" and "le fauteuil"). Within the autobiographical imprint, the fact of enculturation thus certainly occupies a certain place, even if it resists clear description. In effect, autobiography is also autoheterography.

I have been claiming that the translator affirms the text being translated. The point I am making at this juncture is that it is crucial not to lose sight of the fact that *he* affirms the text – *he* does, not someone else. That the ascribed meaning in translation should depend on the *texture* of the translator's experience is another reason, then, for

⁶¹ Cf. FOUCAULT, M. Nietzsche, Freud, Marx. In: **Dits et écrits**. vol 1, D. Defert; F. Ewald (eds.). Paris: Gallimard, 1994 [1967]. p. 571: "There is never [...] an *interpretandum* that be not already *interpretans*, so much so that it is a relation as much of violence as of elucidation that establishes itself in interpretation" ["Il n'y a jamais (...) un *interpretandum* qui ne soit déjà *interpretans*, si bien que c'est un rapport tout autant de violence que d'éclucidation qui s'établit dans l'interprétation"]. A translation – any translation – is, to be sure, an interpretation. See HEIDEGGER, M. **Heraklit**. In: **Gesamtausgabe**, vol. 55, M.S. Frings (ed.). Frankfurt: Klostermann, 1979 [1943]. p. 63: "Interpretation and translation are at their essential core the same" ["Auslegung und Übersetzung sind in ihrem Wesenskern dasselbe"]. I read Heidegger to mean that there is a difference between the two intellectual processes – of course, there is – but that it is slight.

⁶² HERMANS, T. **The Conference of the Tongues**. London: Routledge, 2007. p. 27.

the impossibility of a translation that would be exactly – isomorphically – ad idem with the source-text. The self cannot be the other. You cannot be the text you are translating.

5 A translation cannot be true (but it can be false).

Because it deals in words, translation must belong to the realm of interpretation, and it cannot therefore concern the domain of truth – the two epistemic labels being mutually exclusive. By way of illustration, none of Kafka's English translations that I have collected (*supra*) can reasonably warrant identification as the "true" translation of the German text (in the sense in which it would be the unique, uniquely fixed, uniquely stable, and uniquely acknowledged translation of Kafka's). "Truth" is, in fact, as inapplicable to translation as would be the words "angry" or "loud" by reference to a blanket or a cucumber. In other terms, the search for truth is the pursuit of an imaginary goal thoroughly exogenous to the translative inquiry.

Since to consider the various translations of "einem ungeheueren Ungeziefer" is to witness a conflict of interpretations, not only does no translation justify the ascription of the qualifier "true" to it, but no translation harbours an intrinsic entitlement to carry interpretively over its competitors. For instance, what could it mean that amongst all the published translations of Kafka's, Michael Hofmann's or Joyce Crick's translation should find favour, say, with the largest number of tenured professors in what are, according to the *US News & World Report's* 2022 rankings, the ten leading US universities offering graduate programmes in German Studies? The expression of such a preference by the constituency I identify – even as it is so easy to think of many other focus groups – can only suggest that the specific professors who were surveyed found one particular translation to be more persuasive to them than all the other attempts that had come to their attention by the time they were prompted. Indeed, I find it unbelievable that either Hofmann or Crick would ever think of his or her translation as true, while I fully accept how both translators would earnestly contend that their translation offers the best interpretive yield out of Kafka's work, that it is doing Kafka's text justice in a way that no other translation can quite match. (I appreciate that the late Ronald Dworkin thought otherwise, but I find myself unable to accept his view.⁶³) And it is implausible

⁶³ According to Dworkin, "a scholar who labors for years over a new reading of *Hamlet* cannot believe that his various interpretive conclusions are no more valid than the contradictory conclusions of other scholars [...] [...] [I]f [interpreters] have come to think that one interpretation of something is best, they can also sensibly think that that interpretation meets the test of what defines success in the enterprise, even if they cannot articulate that test in much or any detail. So they can think there is objective truth in interpretation": DWORKIN, R. *Justice for Hedgehogs*. Cambridge: Harvard University Press, 2011. p. 151. I cannot see how Dworkin's scholar is legitimately – and creditably – able to move from "sensibly think[ing] that [his] interpretation meets the test of what defines success in the enterprise" to "think[ing] [that] there is objective truth in interpretation". For me, Dworkin's conjunction ("So") at the beginning of the last sentence of my quotation indeed heralds a non sequitur. While all of Kafka's translators in English are presumably acting seriously and wish to be taken seriously, this sense of purpose, no matter how heightened, does not mean, need not mean, and must not

that such matters as the publisher's reputation, the translator's institutional affiliation, the translator's fame, the reviews of a translation in high-profile literary journals or magazines, even a professor's acquaintance or friendship with Hofmann or Crick, it is implausible, then, that such circumstances would have nothing whatsoever to do with the formulation of one's preference. In sum, the fate of any given translation is tied to the manner in which it manages to convince or not, and persuasion involves the enmeshment of an infinitely complex array of facts, not all of them having to do with high-minded scholarship. At any rate, it is therefore crucial not to think of any translation you produce as being a candidate for elevation to the status of "true" translation. The only verity is variety. However, you must be careful that your translation is not regarded as false.

To be sure, falsehood is no more an objective matter than all other interpretive questions. Even the English translation of "tenues" as "nuclear rockets" cannot be said to be objectively false. However, in advance of empirical study, what can legitimately be expected is that reasonable interpreters will unanimously maintain that such an English translation completely fails to do justice to the French term – that it is, for all intents and purposes, well, false.⁶⁴ Of course, unanimity does not objectivity make, and the issue of falsehood ultimately remains a matter of conventionality. (I insist that my remit is translation rather than, say, heliocentrism.)

The translator's challenge, then, consists in occupying a locus that must be out-of-truth without being false. In passing, let me insist how it is indeed key that a translation ought to be ascertainable as false and thus open to fully-fledged interpretive disqualification. Any idea that translation would imply that "anything goes" – that "any translation goes" – or that the process could generate some translative "free-for-all", any idea that the structural translative play there is could somehow become free play and countenance something like translative anarchy, must prove indefensible. Let me emphasize, too, that one does not need truth in order to be able to ascertain falsehood. Indeed, it cannot be that to declare "nuclear rockets" to be a false English-language reading of "tenues", one requires to have discerned the true English-language reading of "tenues". I cannot accept this binary analytics. Frankly, I find that there is banality to such binarity.

mean that any of these translators should hold his or her interpretation to be "true". Again, what a translator requires to assume, and what his readership needs to accept about his work, is that his translation carries a higher interpretive yield than others. And, as regards any expression of conviction in the supremacy of one interpretation over others, the idea of "truth" is superfluous. Moreover, there would be no sense in talking about "truth for me", since if one adds this codicil the word "truth" ultimately finds itself devoid of meaningful semantic import.

⁶⁴ Considering the matter with specific reference to the issue of interpretation, Simon Blackburn rightly insists that "falsity can be detected for what it is": BLACKBURN, S. **On Truth**. Oxford: Oxford University Press, 2018. p. 126. But, unlike what Blackburn appears to imply (without offering any supporting argument), it does not follow that that there is truth-in-interpretation – or truth-in-translation.

6 Translation is a second original.

The optimal way to acknowledge that a translation is an enactment, a performance, and that the translator is a mediator – to vindicate the fact that translation, even as it maintains semantic correlations and perhaps stylistic resonances with the source-text, does not involve the transfer of an invariant – is to recognize it as a second original (rather than as the first original in a second language).⁶⁵ Translation is, perforce, an original creation – it is the first original, originally once more, if differently. Again, such difference obtains, because straightforward duplication across languages is beyond reach. Indeed, in Derrida's words, "for the notion of translation, one will have to substitute a notion of *transformation*: the regulated transformation of a language by another, of a text by another".⁶⁶ He adds: "We will not have been and have not been involved ever, in fact, in some 'transportation' of pure signifieds that the signifying instrument – or the 'vehicle' – would leave virginal and unbroached, from one language to another".⁶⁷ Otherwise said, there can be "no transportation without transformation".⁶⁸

Observe that while the translator is writing a second original, he is inscribing an original of a peculiar kind, since this second original is not fully autonomous: it is an original that must emanate from the first original, that must be of it. There is play, then, inevitably so, but – to repeat – there is not free play.⁶⁹ Crucially, though, the idea of a second original assists in acknowledging the translator's agency, in recognizing the fact

⁶⁵ There is (ancient) legal evidence to the effect that a translation qualifies as original work. Eg: *Stowe v Thomas* 23 F Cas 201 (Circuit Court Eastern District Pa 1853), where an unauthorized German translation of Harriet Beecher Stowe's novel *Uncle Tom's Cabin* (1852) was said not to have infringed the author's copyright in the English text. At 207, Grier J held that "[t]he same conceptions clothed in another language cannot constitute the same composition". At *ibid*, the judge added, no doubt excessively, that "[t]o make a good translation of a work, often requires more learning, talent and judgment, than was required to write the original". See also *Byrne v Statist Co* [1914] 1 KB 622, where Bailhache J held that a newspaper had infringed a translator's copyright by publishing his translation without his permission. At 627, the judge held a translation to be an "original literary work".

⁶⁶ DERRIDA, J. **Positions**. Paris: Editions de Minuit, 1972. p. 31 ["à la notion de traduction, il faudra substituer une notion de *transformation*: transformation réglée d'une langue par une autre, d'un texte par un autre"].

⁶⁷ *ibid* ["Nous n'aurons et n'avons en fait jamais eu affaire à quelque 'transport' de signifiés purs que l'instrument – ou le 'véhicule' – signifiant laisserait vierge et inentamé, d'une langue à l'autre"]. Cf. BELLOS, D.; SCHEPPELE, K. L. *Translating Law Across Cultures and Societies: A Conversation with David Bellos and Kim Lane Scheppele*. In: MERTZ, E.; MACAULAY, S.; MITCHELL, T. W. (eds.). **The New Legal Realism**. vol. 1. Cambridge: Cambridge University Press, 2016. p. 286: "There is always something that changes in the course of translation because – you changed [the legal institution or legal idea] almost by definition when you moved it to a new place". The words are Scheppele's.

⁶⁸ LATOUR, B. **Aramis ou l'amour des techniques**. Paris: La Découverte, 1992. p. 104 ["pas de transport sans transformation"].

⁶⁹ Cf. BRIGGS, K. **This Little Art**. London: Fitzcarraldo, 2017. p. 338: "Some new thing starts to get made in the frame of againness; something that is *of the original*, yes, but that will extend beyond the reach of it, the purview of it, since it is being made by someone else, by me now".

that the translator is a writer in his own *write* and in his own *re-write*.⁷⁰ To enunciate or enact a translation is *to do* something. A translator's understanding is a "*participating understanding*".⁷¹

A metaphorical excursus may help to change the idea of change that has traditionally governed translation – now to envisage change as a move away from the original form rather than as a (deficient) reformation of it, as a displacement rather than as "the project to return 'strategically', ideally, to an origin or to a 'priority' [that would be] simple, intact, normal, pure, proper, so as *then* to think [through] the derivation, the complication, the degradation, the accident".⁷² The focus must no longer be on how the original finds itself distorted in the process of translation, but rather on the observation of the life that is displayed in the source-text's becoming as it is seen to evolve epigenetically, that is, by way of a differentiation process known as "epigenesis". If you will, one must appreciate that "lost in translation" is but a "tedious old saying";⁷³ instead, one requires to ponder Borges: "The original is unfaithful to the translation".⁷⁴ But I must address elasticity and plasticity.

While different degrees of desirable, allowable, or feasible stretch can be envisaged, elasticity ultimately privileges the original starting-point. In the end, whatever change takes place in the shape of the elastic entity purports to revert to the initial form. Although the original form may have been de-formed, it finds itself being re-formed. Elasticity thus refers to an appearance of change only. Contrariwise, plasticity (as in sculpting or modelling or, beyond hard and malleable materials, as in plastic surgery) is about giving new form: it is about change, too, but it concerns the kind of change that breaks free of the initial structure. All equivalence-based theories of translation (and their deference to the original as something, in effect, along the lines of an immutable essence) fit the elasticity paradigm. If you will, elasticity refers to an economy of exchange, where one form is constantly re-formed. To be sure, the external appearance of the source-text may change (say, from French to English), but the substance of the form, if I can put the matter this way, is meant not to change. It is thus the source-text that delineates the condition of possibility of translation (how thin can the elastic stretch). And when the elastic breaks, there is promptly heard the

⁷⁰ Cf Derrida (note 40), p. 202: "Translation is a writing, [...] it is a productive writing" ["La traduction est une écriture, (...) c'est une écriture productive"].

⁷¹ BULTMANN, R. Das Problem der Hermeneutik. *Zeitschrift für Theologie und Kirche*, Tübingen, vol. 47, p. 47-69, 1950. p. 56 ["teilnehmende(s) Verstehen"].

⁷² Derrida (note 42), p. 174 ["le projet de remonter 'stratégiquement', idéalement, à une origine ou à une 'priorité' simple, intacte, normale, pure, propre, pour penser *ensuite* la dérivation, la complication, la dégradation, l'accident"].

⁷³ FLOTOW, L. von. *Translating Women*. Ottawa: University of Ottawa Press, 2011. p. 9.

⁷⁴ BORGES, J. L. Sobre el Vathek de William Bedford. In: *Otras inquisiciones*. Madrid: Alianza Editorial, 1997 [1952]. p. 207 ["El original es infiel a la traducción"].

discourse of loss (think “lost in translation”). Plasticity, for its part, refers to an alternative economy. Since there is the marble block and, later, the sculpture, the block does not act as a fixed referent determining the sculpture. Indeed, there is no identity between the marble block and the sculpture. Likewise, there is no identity between the source-text and the target-text. Rather, there is more than one text, that is, there is transformation. Of course, there are limits to the plasticity of plasticity, and one cannot do whatever one wants – whether with the marble block or the source-text.⁷⁵

7 Failure to translate is an opportunity.

Once it is established that translation cannot legitimately aspire to truth (*supra*), once the insurmountable recalcitrance of the source-text is acknowledged (*supra*), it might be tempting for the translator to lose faith in the endeavour and perhaps renounce the enterprise altogether. But such defeatism would be grievously mistaken. Indeed, the fact that every translation will necessarily fall short of exactitude or correctness, the fact that it will inevitably not find itself ad idem with the source-text on account of the latter’s infinite meaningfulness, the fact that textual intricacy lies beyond what the translator can see and beyond what he can tell in his language (meaning is unsaturable), the fact that the source-text will therefore inevitably keep a secret from the translator, no matter how meticulous or painstaking the translation, all these circumstances present a signal interpretive opportunity.

On account of what is, in effect, a structural misunderstanding – the way in which the act of translation is structured means that there must be an interpretive gap between the source-text and the target-text, howsoever intrinsically excellent the translation⁷⁶ – there can potentially arise a multiplicity of translations. Every single one of these translations will obligatorily be “disadjusted” vis-à-vis the source-text, if ever so

⁷⁵ I draw on Carolyn Shread who, reflecting on her own work as Catherine Malabou’s translator into English, applies to translation studies Malabou’s distinction between “elasticity” and “plasticity”. Eg: SHREAD, C. *Une intelligence autre: Reception Plasticity and the Melancholy of the Translated Author*. **Palimpsestes**, Paris, n. 33, p. 92-101, 2019; SHREAD, C. The Horror of Translation. **theory@buffalo**, Buffalo, vol. 16, p. 77-95, 2012; SHREAD, C. Catherine Malabou’s Plasticity in Translation. **TTR: Traduction, terminologie, rédaction**, Montréal, vol. 24, n. 1, p. 125-148, 2011. For Malabou’s principal philosophical work with respect to this distinction, see MALABOU, C. **La Plasticité au soir de l’écriture**. Paris: Scheer, 2005; MALABOU, C. **Le Change Heidegger**. Paris: Scheer, 2004; MALABOU, C. **L’Avenir de Hegel**. Paris: Vrin, 2000. Malabou explains that she owes the concept of plasticity to Hegel. See HEGEL, G. W. F. **Wissenschaft der Logik**. Frankfurt: Suhrkamp, 1986 [1832]. p. 30-31 and 33. I refer specifically to the preface to the second edition, which was written in 1831. There are other Hegel texts that are also relevant. For instance, Hegel mentions “elasticity” (“Elastizität”) in HEGEL, G. W. F. **Phänomenologie des Geistes**. Frankfurt: Suhrkamp, 1986 [1807]. p. 204, 383, and 532. The value of Malabou’s insight stands apart from her wider claim that writing is becoming irrelevant and being replaced by plasticity as a new paradigm for thought – which I regard as an exaggeration that need not detain me.

⁷⁶ Cf. STEINER, G. **No Passion Spent**. New Haven: Yale University Press, 1996. p. 152, who refers to “the failures or incompletions of even the finest of translations”.

slightly.⁷⁷ Indeed, no translation can legitimately claim to be the source-text's exclusive voice in the target-language, and every translation heralds the choice of a certain infidelity. And the multiplicity of translations reveals the extent of the potentialities that inhere to the source-text and thus affords the occasion for further deliberation both about the equivocal meaning of the source-text and the semantic extension of the various contingencies on offer in the target-language. It is good that the sentence "Aujourd'hui, maman est morte", Albert Camus's famous incipit in his novel *L'Etranger*, should have been translated as "Mother died today" (S. Gilbert, Vintage [Random House] 1946); as "Maman died today" (M. Ward, Vintage [Random House] 1989); and as "My mother died today" (S. Smith, Penguin 2012): "[O]n one side, the singular, the text, the origins, and on the other, the plural, the variations, the derivatives".⁷⁸

It is these variations – these iterations, these repetitions with a difference – that allow for the kind of investigation probing the meaning of Camus's term ("maman") and also the meanings of the different proposed corollaries in translation ("Mother"; "Maman"; "My mother").⁷⁹ Such inquiry may indeed invite a further translation, such as "Today, Maman died".⁸⁰ Still, what is said in translation is structurally "missaid" (I refer, once more, to this article's epigraphs). Along the way, the plurality of translations that I discuss offers a further confirmation of the source-text's untranslatability. Now, this predicament entails that "[the] search for meaning should not be abandoned but rather intensified".⁸¹ Contrariwise, if one translation and one translation only were to be identified as the true, exact, or correct one, this move would bring any conversation to an abrupt end. Ultimately, "an interpretation without failure, an understanding by the self totally adequate [...] would render everything *impossible*, both the event and the advent of the other, the advent to the other".⁸² Yes. If the truth had indeed been proclaimed, what else would there be to say? What discussion would such a very repressive motion leave possible?

⁷⁷ DERRIDA, J. *Spectres de Marx*. Paris: Galilée, 1993. p. 43 ["désajustées"].

⁷⁸ BANU, G. Aujourd'hui, je traduis du grec. In: MUHLEISEN, L. (ed.). *Antoine Vitez, le devoir de traduire*. 2nd edn. Arles: Actes Sud, 2017. p. 38-39 ["(D)'un côté le singulier, le texte, l'origine, et de l'autre, le pluriel, les variantes, les dérivés"].

⁷⁹ Cf. XIE, M. *Conditions of Comparison*. London: Bloomsbury, 2011. p. 161: "We cannot underestimate the fact that not-understanding and mis-understanding also produce knowledge".

⁸⁰ BLOOM, R. Lost in Translation: What the First Line of "The Stranger" Should Be. *The New Yorker*, "Page-Turner" Blog, 11 May 2012. Available at: <<https://www.newyorker.com/books/page-turner/lost-in-translation-what-the-first-line-of-the-stranger-should-be>> [on file]. See also MESSUD, C. A New "L'Etranger". *The New York Review of Books*, New York, 5 June 2014, p. 6 [on file]. For a detailed examination of the fate of Camus's incipit in English with specific reference to the lessons that comparative law can usefully derive from disagreement amongst translators, see GLANERT, S. "Aujourd'hui, maman est morte": traduction littéraire et droit comparé. *Revue droit & littérature*, Paris, n. 4, p. 373-389, 2020.

⁸¹ GASCHÉ, R. *The Tain of the Mirror*. Cambridge: Harvard University Press, 1986. p. 266.

⁸² DERRIDA, J. *Papier Machine*. Paris: Galilée 2001. p. 306-07 ["une interprétation sans défaut, une compréhension de soi totalement adéquate (...) rendrai(t) tout *impossible*, et l'événement et la venue de l'autre, la venue à l'autre"].

8 Hearken to the source-text.

As you proceed, it is incumbent upon you to be attentive, listening, receptive, hearkening, to be *lending an ear* to the claims of the source-text. In other words, the translator must not be all intervention. As regards the heeding disposition, it is the source-text's wording that matters – and it is the source-text's wording that the translator must consider. I emphasize that the translator's focus ought to be on the source-text's wording – that is, on the words and on the discursive traces they conceal, that lurk between the lines, that are encrypted within the textual fabric⁸³ – and certainly not on anything like the author's intention. Indeed, I reject the idea that words can even “carry” intentions so that they could be perfectly homogeneous vis-à-vis what wanted to be expressed, so that the scripted deed could match the wish. Even if there should be such correlation, which I dispute, I also refute the idea that this expression of intention could ever become reliably known to a translator and then ever be loyally constructed or reconstructed by a translator operating in his own words. Of course, I accept that “[a]ll texts lay out desires,”⁸⁴ which means that I have no difficulty with the idea of the source-text as a volitional product in the sense, at least, that it exists as the outcome of a range of lexicographical choices and, indeed, as a form of willed communication. But the fact that there can be no intentionless text does not entail that intention ought to guide ascription of meaning in translation. In fact, my thesis is that intention, even assuming its expressibility and knowability and constructibility through the translator's words, cannot govern the translation of texts.

Intentionalism assumes that the past can be ascertained “as it really was”, that one can transcend one's translative horizon and somehow return to the moment of creation of meaning by the author of a source-text. Now, this premiss can only pertain to fantasy, and the benchmark of the author's intention therefore supply but illusory normativity. In the lucid words of literary critics William Wimsatt and Monroe Beardsley, “the design or intention of the author is [...] no[t] available.”⁸⁵ To invoke further literary criticism, Derek Attridge's decisive formulation holds that “there is no possibility of a recourse to anything like an intention ‘itself’.”⁸⁶ Meanwhile, Edward Hirsch aptly reminds one that “we have no direct access to the author's mind.”⁸⁷ Hence, Northrop Frye's dispiritment as he famously called intention “[o]ne of the many slovenly illiteracies

⁸³ For a discussion of tracing as a primordial interpretive strategy within comparative law, see LEGRAND, P. *Siting Foreign Law: How Derrida Can Help*. **Duke Journal of Comparative & International Law**, Durham, vol. 21, n. 3, p. 595-630, 2011.

⁸⁴ SPIVAK, G. C. **Readings**. Kolkata: Seagull Books, 2014. p. 136.

⁸⁵ WIMSATT, W. K.; BEARDSLEY, M. C. The Intentional Fallacy. **Sewanee Review**, Baltimore, vol. 54, n. 3, p. 468-488, 1946. p. 468.

⁸⁶ ATTRIDGE, D. **The Singularity of Literature**. London: Routledge, 2004. p. 101.

⁸⁷ HIRSCH, E. D. **Validity in Interpretation**. New Haven: Yale University Press, 1967. p. 99.

that the absence of systematic criticism has allowed to grow up”⁸⁸ It follows that a translator can only ever hope to win the persuasion game if, “in the explicit listening to the discourse of the other”;⁸⁹ he can convincingly point to the words of the text, not to any intention allegedly informing the writing. Intention simply cannot supply the touchstone of translation, and it cannot act as a limit to translation either.

9 Recognize (and challenge) the injustices pertaining to published translations.

It can be tempting to draw on a published translation – especially if such text has been released under a leading academic press’s imprint. Although I appreciate that this standard can readily prove impractical to uphold, you should always verify the published translation against the source-text before mobilizing it – possibly with the assistance of someone conversant in the source-language if you yourself are not. After all, why would you rely on the published translator’s interpretation of the source-text (the fact that the translation appears under a famous publishing imprint changing nothing to the suspicion you ought to be harbouring)? In most cases, this published translator will be unknown to you as will be the circumstances pursuant to which the translation was conducted. For example, one of Derrida’s most famous translators into English has written how, at some point, it was felt to have become important to translate Derrida’s work in a hurry – a fact that you yourself would not realize as you proceed to commit trust in a given translation.⁹⁰ (If one were not minded to remain charitable, it would be easy to add that the concern for swiftness I mention is, regrettably, on full display in many English translations of Derrida’s texts.) An excellent illustration of the difficulty I address concerns the translation of Derrida’s “jeu” in the published proceedings of his prominent contribution to the celebrated 1966 Johns Hopkins conference on structuralism not as “play”, but as “free play”.⁹¹ The implications of this injustice to the French source-text have proven hugely consequential concerning both Derrida’s reputation as a philosopher and the fate of deconstruction, the term that came to designate his philosophical project. By ricochet, so to speak, the consequences I address also affect comparative law. Consider this account of the matter.

While Derrida’s French text, “La structure, le signe et le jeu dans le discours des sciences humaines”, argues that the very point of the idea of “structure” in philosophy

⁸⁸ FRYE, N. **Anatomy of Criticism**. Princeton: Princeton University Press, 1957. p. 57.

⁸⁹ HEIDEGGER, M. **Sein und Zeit**. Tübingen: Niemeyer, 2001 [1927]. p. 164 [“im ausdrücklichen Hören der Rede des Anderen”].

⁹⁰ See KAMUF, P. Traduire dans l’urgence. **Magazine littéraire**, Paris, Avril 2004. p. 49.

⁹¹ For a recension of the basic facts concerning this matter, see NEALON, J. T. Deconstruction and the Yale School of Literary Theory. In: SCHRIFT, A. D. (ed.). **Poststructuralism and Critical Theory’s Second Generation**. London: Routledge, 2014. p. 389-90.

and anthropology (for instance, in the work of Claude Lévi-Strauss) has been to try and limit “the *play* of the structure” (“le *jeu* de la structure”), it maintains that such play is effectively inherent to every structure and that it is therefore uneliminable.⁹² Derrida’s contention is momentous, which I can show by making reference to a long-standing controversy within comparative law. I begin with James Gordley, an erudite comparatist, who tells us that as regards liability for bodily harm or the sale of defective goods, the law is “much the same” in, inter alia, Montpellier, Tucson, Tel Aviv, Tokyo, and Jakarta.⁹³ Meanwhile, Alan Watson, in his *Society and Legal Change*, offers a statement that well encapsulates his views on legal dissemination: “Visigothic Spain, parts of post-mediaeval Germany and nineteenth century California could accept for a variety of reasons what is basically the same régime of matrimonial property”.⁹⁴ I suggest that Gordley and Watson are effectively maintaining the existence (or the reality) of structures in law. They are saying, if you will, that there are embedded within various legal cultures an array of basic concepts literally structuring the law, structuring each law, wherever. Think of contract, ownership, and such like. And these structures are “much the same” (Gordley) or “basically the same” (Watson) in various locations. Every comparatist will have discerned the theory of so-called “legal transplants”.

For discussion’s sake, let me concede that there are indeed structures like “contract” and others, and let me further concede that these structures are recognizably present in a wide range of contemporary legal cultures. Now, my concessions that there are these ascertainable structures across laws does not compel me to the further concession that when one is considering a structure as it has established itself, say, in Slovenia and Portugal, one is then dealing in identity or in near-identity. There are, in fact, a number of points of entry into my objection to the argument from “legal transplants”, but I propose to emphasize one pathway only – and to deploy Derrida’s critique in the process.

Let us return to Constantinople, if briefly! The “Roman” conception of “contractus” as it existed in the sixth century was not some free-floating affair. In advance of empirical study, I hold that this “contractus” would very much have been a grounded conceptual entity with all manner of singular features that would have been informed by whatever were the concerns of the jurisconsults of the day – whether these preoccupations pertained to analytics, ideology, or what not. Now, irrespective of the “Roman” understanding of “contractus”, it is inconceivable that that ascertainable structure (I am upholding my concessions!) would have moved by itself from Constantinople to northern Italy or elsewhere. Indeed, for that displacement to have occurred, someone

⁹² DERRIDA, J. *L’Écriture et la différence*. Paris: Editions du Seuil, 1967. p. 409 and 426-28.

⁹³ GORDLEY, J. *The Philosophical Origins of Modern Contract Doctrine*. Oxford: Oxford University Press, 1991. p. 1.

⁹⁴ WATSON, A. *Society and Legal Change*. 2nd edn. Philadelphia: Temple University Press, 2001. p. 110.

would have had to take hold of “contractus” and dislocate it. Concretely speaking, someone would have had to write about “contractus” in northern Italy or teach it there and have advocated for its local relevance, perhaps under another label derived from a local language. And that move to northern Italy would ultimately have been prompted by desire. In other words, the mover would have had his motives, his ambitions – there would have been the mover’s striving informing the move. And then, at some later point in time, the structure would have moved from northern Italy to the south of France on account of someone having undertaken that displacement for his own reasons. That is, someone in the south of France would have written or spoken about northern Italian/“Roman” “contractus” and would have suggested its relevance to the south of France. And then, the structure would have moved from the south of France to Strasbourg, possibly at the behest of a jurist like Du Moulin (1500-66), who would have heralded its virtues for the benefit of local law. And so forth!

My basic point – and Derrida’s – is that, strictly speaking, although the structure is in motion and affixing itself locally in various locales along the merry way, it is never, strictly speaking, duplicating itself. Despite what appearances may suggest, a transformation of the structure will have been taking place every time it will have “landed” somewhere – so that there is, in all rigour, no “transplant” at all – this term very much consisting of a metaphorical fallacy. For example, the transformation may have happened, because in the local language the word for “contractus” carried a different semantic extension than the one it harboured in the language whence it came. It could also be that the concept’s local interpreters – say, judges or doctrinal writers – assigned a different meaning to the term. Be that as it may, there cannot not have been a transformation – or so I contend (in line with Derrida). To draw once more on Bruno Latour, if there is transportation, there must be transformation.⁹⁵ Therefore, one can say that what there is, what takes place each and every time, is repetition with a transformation (which is, in effect, loose language, since if scrupulous expression be upheld, what appears is not a repetition, but an *iteration*, a repetition with a difference). Again, every implementation of the structure carries with it a transformation of the structure. Otherwise said, that transformation, that change, is at once necessary and inevitable.

The claim regarding “necessity” is more philosophical, and it goes back to Leibniz’s Law (*supra*). So, if there is more than one instance of “contractus” – say, the one in Constantinople, the further one in northern Italy, the other one in the south of France, and the additional one in Strasbourg – there is necessarily difference across these various instantiations of the structure. Once more, the differend could have to do with local language, local interpretation, or local anything. The contention about

⁹⁵ *Supra* (note 68).

“inevitability” is more sociological. For the structure to be able to embed itself in a new legal/cultural environment, that is, for the structure to “work” in its new place, it must go “local” in some meaningful way or other. It must adapt to local circumstances. There must be a “fit”. On account of the necessity and inevitability that I mention, no matter how structural a structure happens to be, there must be found within any structure an in-built mechanism allowing for its “reproduction” outside of the framework of identity – permitting its iteration. When Gordley and Watson claim that the law is “much the same” or “basically the same” in different places, they are minimizing somewhat dramatically the local colour that the legal unavoidably assumes – and must inevitably assume.

What I maintain – and this is very much Derrida’s claim – is that a structure, no matter how profoundly structural, must feature some in-built latitude or intrinsic lee-way allowing for its peripatetics and making it possible for it to acquire the local colour that will allow it to “match” locally – that is, to enable its iteration. It is this lee-way that Derrida calls “jeu”. In French, in this specific context, “jeu” means “movement” as in “There is abnormal play in the steering wheel” or “The nail on which you plan to hang your picture is loose. There is too much play there. The nail needs to be solidified”. But Derrida’s deployment of “jeu” is even more subtle for the word also refers to the proper operation of something as in “Because of the oblique axis of the Earth, we get the play of seasons” (“le jeu des saisons”). In sum – and to return to “contractus” – even if there is a structure, it must be the case that the iterative deployment of the structure features lee-way.

Now, Derrida’s English translators, instead of straightforwardly inscribing the word “play” to account for the French “jeu”, used “free play” thereby forsaking the two intimations that Derrida had sought to suggest.⁹⁶ Worse, “free play” evokes a kind of interpretive latitude effectively bordering on anarchy that fuelled the critique of Derrida and of deconstruction as lacking any sense of interpretive restraint and as entrusting interpreters with the legitimacy to do whatever they wanted with the text having come their way. Rightly, Derrida expressly complained about this injustice to himself and to his work.⁹⁷

Another example of the danger attendant upon reliance on published translations must also be of interest to translators. This further illustration involves three texts: Fredric Jameson’s *The Prison-House of Language*,⁹⁸ Erich Heller’s *The Artist’s*

⁹⁶ DERRIDA, J. Structure, Sign, and Play in the Discourse of the Human Sciences. In: MACKSEY, R.; DONATO, E. (eds.). *The Languages of Criticism and the Sciences of Man*. Baltimore: Johns Hopkins University Press, 1970. p. 247-48.

⁹⁷ See Derrida (note 35), p. 209.

⁹⁸ JAMESON, F. *The Prison-House of Language*. Princeton: Princeton University Press, 1972.

Journey Into the Interior,⁹⁹ and Nietzsche's *Nachlass*.¹⁰⁰ Having emigrated from the Czech Republic, where he was born in 1911, Heller became a foremost British literary critic with a particular interest in German literature and philosophy. After teaching in England for a number of years, he moved to Chicago and settled at Northwestern University as of 1960 for the last twenty years of his career or so. Heller's essays on Nietzsche earned him much critical acclaim in his life-time and continue to be widely regarded as authoritative. In *The Artist's Journey Into the Interior*, Heller quotes and translates Nietzsche into English as referring to "the prison-house of language".¹⁰¹ Heller's source is the Musarion edition of Nietzsche's complete works, the German text reading "de[r] sprachlich[e] Zwan[g]".¹⁰² Since these words translate straightforwardly as "the linguistic constraint" – the standard English translation, Walter Kaufmann's, has "the constraint of language"¹⁰³ – it is quite unclear why Heller opted for the term "prison-house". It is not that the expression had never been used in philosophy. Indeed, the same year that Heller published his translation, Adorno mentioned "the prison of language" ("Gefängnis der Sprache") in his own work.¹⁰⁴ But while Adorno may have used the carceral metaphor, Nietzsche did not. And when Jameson, a prominent literary critic and philosopher in his own right, attributes the expression "prison-house" to Nietzsche, which he does in the very epigraph to his book, even as Nietzsche himself only ever employed the much looser term "constraint", he is effectively distorting Nietzsche's thought. While "constraint" is not a true translation of "Zwang" ("fetter", "restriction", or "impediment" might also have done justice to the German term), "prison-house" is a false one – an example of "translation-as-violation".¹⁰⁵

And why would such a seasoned writer like Jameson proceed to misstate Nietzsche?¹⁰⁶ The answer appears to be quite simply that Jameson took Heller's

⁹⁹ HELLER, E. **The Artist's Journey Into the Interior**. New York: Random House, 1965.

¹⁰⁰ For the authoritative edition, see NIETZSCHE, F. *Nachgelassene Fragmente*. In: **Digitale Kritische Gesamtausgabe**. G. Colli; M. Montinari; P. D'Iorio (eds.). 2009 [1886-87]. <<http://www.nietzschesource.org/eKGWB/index#eKGWB/NF-1886,5>> 5 [22].

¹⁰¹ Heller (note 99), p. 219. The relevant passage appears in italics. It is from an essay entitled "Wittgenstein and Nietzsche" first published in 1959 as HELLER, E. Ludwig Wittgenstein. **Encounter**, London, n. 72, p. 40-47, 1959. p. 46.

¹⁰² NIETZSCHE, F. **Friedrich Nietzsche Gesammelte Werke**. vol. 19, R. Oehler *et al* (eds.). Basel: Musarion, 1926. p. 34. The phrase is in italics.

¹⁰³ NIETZSCHE, F. **The Will to Power**. W. Kaufmann; R.J. Hollingdale (transl.). New York: Random House, 1968. §522, p. 283. Assembled by Nietzsche's sister immediately after the philosopher's death in 1900, in all likelihood out of self-interest, *The Will to Power (Der Wille zur Macht)* is a collection of reflections liberally lifted from unpublished notebooks. See generally DIETHE, C. **Nietzsche's Sister and the Will to Power**. Champaign: University of Illinois Press, 2003.

¹⁰⁴ ADORNO, T. W. **Metaphysik**. R. Tiedemann (ed.). Frankfurt: Suhrkamp, 1998 [1965]. p. 107.

¹⁰⁵ SPIVAK, G. C. **A Critique of Postcolonial Reason**. Cambridge: Harvard University Press, 1999. p. 162.

¹⁰⁶ Jameson's inaccuracy misled later writers. Eg: MILLER, J. H. The Critic as Host. In: BLOOM, H. *et al*. **Deconstruction and Criticism**. London: Continuum, 1979. p. 188.

published translation for granted without making the effort to verify the German source-text for himself – a startling omission, a particularly strange oversight as regards one's epigraph.¹⁰⁷ Strictly speaking, I am operating in the realm of interpretation for there is no hard evidence that Jameson drew on Heller. Specifically, the name "Heller" appears neither in Jameson's bibliography nor in his index. But Jameson's epigraph, which consists of thirty-seven words, is identical to Heller's translation, which is itself unique. Given that Heller released his translation but a few years before Jameson published his essay and because of the convergence of intellectual interests between the two writers – not to repeat the fact of Heller's critical renown – no reasonable explanation other than copy-and-paste appears to stand. To be sure, the substantive pertinence of the carceral metaphor remains open to discussion.¹⁰⁸ But my point is that Nietzsche himself did not use it, contrary to what Jameson asserts on account of his lazy reliance on a published translation aptly said to be "quite misleading" and "very loose".¹⁰⁹

These two case-studies show that it can be very risky to take a published translation on trust, even if it should have been released under the auspices of a leading academic press or produced by a leading critic. In the two instances I discuss, the published English translation does not do justice to the source-text: it distorts it. A further example amongst a seemingly endless series of cases that I have encountered over the years emphasizes the seriousness of the issue, underscores how published translations can prove unjust vis-à-vis the source-text, and serves an additional warning to comparatists. Arguably, the following passage, of considerable interest for any theoretical reflection on translation, is one of the most important statements in Hans-Georg Gadamer's *Wahrheit und Methode*, a book ascertainably considered as a foremost twentieth-century philosophical text: "Es genügt zu sagen, daß man *anders* versteht, wenn man überhaupt versteht".¹¹⁰ I suggest that a just English translation might read thus: "It suffices to say that one understands *differently*, when one understands at all". As

¹⁰⁷ For critique, see LOVEKIN, D. **Technique, Discourse, and Consciousness**. Bethlehem: Lehigh University Press, 1991. p. 209; BEHLER, E. Translating Nietzsche in the United States: Critical Observations on *The Complete Works of Friedrich Nietzsche*. In: MUELLER-VOLLMER, K.; IRMSCHER, M. (eds.). **Translating Literatures Translating Cultures**. Palo Alto: Stanford University Press, 1998. p. 142-43.

¹⁰⁸ Eg: APTER, E. The Prison-House of Translation? Carceral Models, Translational Turns. **Diacritics**, Baltimore, vol. 47, n. 4, p. 50-79, 2019. p. 56-58.

¹⁰⁹ Behler (note 107), p. 142. It is ironic that on the very same page where Heller daringly coins "prison-house", he chastises a translator of Wittgenstein's for having "use[d] 'language-game' where the German is simply 'Sprache'": Heller (note 99), p. 219.

¹¹⁰ Gadamer (note 50), p. 302. For the significance of Gadamer's thought, see eg WARNKE, G. (ed.). **Inheriting Gadamer**. Edinburgh: Edinburgh University Press, 2016; MALPAS, J.; ZABALA, S. (eds.). **Consequences of Hermeneutics: Fifty Years After Gadamer's Truth and Method**. Evanston: Northwestern University Press, 2010; KRAJEWSKI, B. (ed.). **Gadamer's Repercussions**. Berkeley: University of California Press, 2004; MALPAS, J.; ARNSWALD, U.; KERTSCHER, J. (eds.). **Gadamer's Century**. Cambridge: MIT Press, 2002; HAHN, L. E. (ed.). **The Philosophy of Hans-Georg Gadamer**. Chicago: Open Court, 1996. Out of a plethoric bibliography, I limit this list to noteworthy collections of essays in English.

I see it, Gadamer's German sentence translates into English rather straightforwardly, in fact. Indeed, this exercise calls for one observation only, which concerns the term "überhaupt", a word featuring a wide semantic reach. Here, it appears to me that "überhaupt" means "at all" as in the sentence "Er hat überhaupt keine Ahnung", or "He has no idea at all". Forwardness notwithstanding, the published French translation is unjust vis-à-vis the German original. It reads as follows: "Il suffit de dire que, *dès que l'on comprend, on comprend autrement*".¹¹¹ Leaving to one side the fact that the French translators invert the two relevant passages in Gadamer's sentence and italicize both occurrences of the German verb "verstehen", even as Gadamer does so once only, the French passage somewhat strikingly distorts Gadamer's text. For Gadamer, whether there will ever be understanding remains doubtful. "[W]hen one understands at all", he writes, which means "if ever one manages to understand in the first place", then, he says, but only then, understanding will operate differently (say, from other understandings and from the text being understood). In other words, Gadamer distinguishes between two sets of situations, one habitual and the other exceptional. For him, there are the usual instances, which is when there will be no understanding whatsoever, and there are the less ordinary cases, which is when there will be understanding. And it is specifically the latter occasions that hold Gadamer's interest (which makes sense, since there is not so much to say about configurations where no understanding whatsoever arises). And what are the implications of the understanding that will materialize in the situations where there is to be understanding? For Gadamer, such understanding will, perforce, operate singularly. However, the French text assumes that there will always be understanding along the way, that understanding will always emerge at some point – which is what the preposition "dès" indicates. A literal translation of the published French translation into English might read as follows: "It suffices to say that as soon as one understands, one understands differently". For Gadamer, again, in most occurrences the moment of understanding will not even come to pass. Here, the French translation ignores the German "überhaupt" in a way that is unjust to Gadamer's text. Meanwhile, a just French translation might have rendered "überhaupt" by "si jamais" so as to read: "Il suffit de dire qu'on comprend *autrement, si jamais l'on comprend*".

For its part, the Italian text is likewise problematic, and it also does an injustice to Gadamer's writing in one significant respect – it also distorts Gadamer's work. In Italian, Gadamer's enunciation reads thus: "È sufficiente dire che, *quando in generale si comprende, si comprende diversamente*".¹¹² Now, the Italian formulation "*quando in generale si comprende, si comprende diversamente*" can be transposed into English as

¹¹¹ GADAMER, H.-G. **Vérité et méthode**. P. Fruchon; G. Merlio; J. Grondin (transl.). Paris: Editions du Seuil, 1996. p. 318.

¹¹² GADAMER, H.-G. **Verità e metodo**. G. Vattimo (transl.). Milano: Bompiani, 2019 [2000]. p. 615.

“when one understands in general, one understands differently”. Once more overlooking the inversion, the objectionable terms are obviously the words “in general”, which are nowhere to be found in Gadamer’s text. Here, the German “überhaupt” is misunderstood in a way that is unjust to Gadamer’s text.

It is, I think, relevant to observe that Jean Grondin, one of the three French co-translators, and Gianni Vattimo, the Italian translator, were both Gadamer’s dedicated students and are widely regarded as two of the foremost exponents of philosophical hermeneutics. In other words, neither Grondin and Vattimo’s loyalty to Gadamer’s thought nor their expertise in matters Gadamerian can be reasonably questioned. Nonetheless, it is the published English translation that comes closest to doing justice to Gadamer’s text. Joel Weinsheimer and Donald G Marshall write in these terms: “It is enough to say that we understand in a *different* way, if we understand at all”.¹¹³ Still, Weinsheimer and Marshall problematically introduce the first person plural, twice, while Gadamer had elected to retain the third person impersonal throughout – after his mentor Martin Heidegger, perhaps, who makes conspicuous use of the expression “das Man” in his own work.¹¹⁴ And then, there is the addition of the word “way” in the expression “a *different* way” (the German term would be “Weg”, which is not in Gadamer’s text).

My basic claim is that the francophone, italophone, or anglophone writer who would choose to rely exclusively on the Fruchon/Grondin/Merlio, Vattimo, or Weinsheimer/Marshall translation without investing the time and effort to verify these translations against the source-text would fail to appreciate that for Gadamer the emergence of an understanding is not in the least ordinary (contrary to what the published French text holds); would fail to realize that Gadamer’s focus was not understanding in general (contrary to what the published Italian text suggests); and would fail to acknowledge that Gadamer did not write in the consensual language that the term “we” intimates (contrary to what the published English text indicates).

Let me emphasize my steadfast contention one more time: while evidently convenient, it can be risky to rely on published translations, no matter how authoritative they appear to be – either on account of the publisher’s prestige, of the translator’s eminence, or both. Why would you want the published translation’s inadequacies to become yours?

¹¹³ GADAMER, H.-G. **Truth and Method**. 2nd English edn. J. Weinsheimer; D. Marshall (transl.). New York: Continuum, 2004. p. 296.

¹¹⁴ Eg: DREYFUS, H. L. Interpreting Heidegger on *Das Man*. **Inquiry**, London, vol. 38, n. 4, p. 423-430, 1995; ROBINSON, D. **Critical Translation Studies**. London: Routledge, 2017. p. 113-23.

10 Translation must not abide by a method.

I wish to return to method, briefly. “Just as comparison is not a methodology, the idea of translation must not be combined with any form of methodology”.¹¹⁵ Resolutely heed Clive Scott’s introspective guidance, then: “My version of translation is without methodologies and a code of practice”.¹¹⁶ (Scott is a foremost scholar in comparative literature and translation studies.) The governing idea must therefore be that translation, envisaged as a form of comparative interpretation, should not “poin[t] to a method but rather to a scope and a disposition toward knowledge”,¹¹⁷ a strategy that Simone Glanert expressly recommends with specific reference to comparative law broadly understood on the assumption that there simply cannot be anything groove-like about a process of comparison-as-translation-as-interpretation.¹¹⁸ For his part, bringing to bear a philosophical perspective ranging beyond the case of translation, Theodor Adorno, without encouraging an appeal to “the arbitrariness of bare ideas and randomness”, percipiently holds that “where we think in a pithy sense, we really think always-already unmethodically”.¹¹⁹

No more, I think, need usefully be said.

11 Translation must track the source-text as closely as possible even if it should make for disruptive reading in the target-language.

Assume the Portuguese sentence “Eu amo colher pitangas”. I hold that the London-based English translator, eschewing the non-translation “I love to pick pitangas”, should write “I love to pick Brazilian cherries”, thus signalling the foreignness of the source-text through the translating language, since “pitangas”, strictly speaking, are not cherries. And, because “pitangas” are not cherries, this translator should avoid “I love to pick cherries”, that is, he should resist selecting the closest local fruit, the one that will readily speak to an English readership in New York and would make the reader forget that he is reading about a foreign fruit.

¹¹⁵ YENGOYAN, A. On the Issue of Comparison. In: YENGOYAN, A. (ed.). **Modes of Comparison**. Ann Arbor: University of Michigan Press, 2006. p. 15.

¹¹⁶ SCOTT, C. **The Work of Literary Translation**. Cambridge: Cambridge University Press, 2018. p. 245.

¹¹⁷ MELAS, N. **All the Difference in the World**. Palo Alto: Stanford University Press, 2007. p. 30.

¹¹⁸ See GLANERT, S. Method? In: MONATERI, P. G. (ed.). **Methods of Comparative Law**. Cheltenham: Elgar, 2012. p. 61-81.

¹¹⁹ ADORNO, T. W. **Vorlesung über Negative Dialektik**. R. Tiedemann (ed.). Frankfurt: Suhrkamp, 2007 [1965]. p. 214 [“die Willkür des bloßen Einfalls und die Zufälligkeit”/“wo wir im prägnanten Sinn denken, denken wir eigentlich immer schon unmethodisch”].

No translation can escape politics, and no translation can eschew ethics. Now, I claim that the politics and the ethics that inform translation must be resolutely other-oriented – or, if you will, they must operate other-wise, that is, they must display wisdom vis-à-vis otherness with a view to doing it optimal justice. Concretely, a politically and ethically sound translation compels the translator to introduce foreignness into the target-language even if this should entail this language's transformation through formulations straining convention inasmuch as they do not read as smoothly as a "standard" text written from within the target-language itself.¹²⁰ It is indeed crucial that the transportation of a text across languages should not prompt the elision or erasure of all foreignness: the foreign text must emphatically not be made into a local text to the point where readers in the target-language actually forget that they are reading a foreign text. Even in the target-language, the foreignness of the text must be admitted rather than camouflaged, which means that the translator's power must exercise itself both strategically and altruistically – *strategicaltruistically*.¹²¹ To allow for the survival of the source-text in a foreign language is thus both a stake and a responsibility. Admittedly, this view very much remains a minority position, certainly in English where there prevails "[t]he dominance of fluency in English-language translation",¹²² "comments hav[ing] grown amazingly consistent in praising fluency while damning deviations from it".¹²³ (To be sure, fluency answers commercial pressure for uncomplicated readability.) Note that the politics and the ethics I address also concern the translator himself who, in foreignizing the text he is writing, does not pretend to be investing it with the kind of original authority that it does not have and that it is not entitled to claim.

Albeit structurally maladjusted, although "all disadjusted",¹²⁴ translations must (try to) be just. Indeed, a translation can only be just – *it can just be just*. Such is the best that it can be. However, as a matter of the recognition and respect that are due

¹²⁰ For Venuti (note 44), p. 19, foreignization is a "fundamentally *ethical* attitud[e] towards a foreign text and culture". An earlier expression of this view is in Walter Benjamin's. In his "Die Aufgabe des Übersetzers" (note 53), p. 61, Benjamin endorses Rudolf Pannwitz, a nineteenth-century German poet and philosopher, saying of Pannwitz's observations on translation in *Die Krisis der europäischen Kultur* (1917), that they "may easily be the best on the theory of translation that has been published in Germany" ["leicht das Beste sein dürften, was in Deutschland zur Theorie der Übersetzung veröffentlicht wurde"]. Benjamin's long quotation of Pannwitz's features the following sentence: "[T]he fundamental error of the translator is that he clings to the random state of his own language instead of letting it be powerfully moved by the foreign language" ["(D)er grundsätzliche Irrtum des Übertragenden ist dass er den zufälligen stand der eignen sprache festhält anstatt sie durch die fremde sprache gewaltig bewegen zu lassen"].

¹²¹ I am not thinking in terms of "the absolute privilege of the original", which Gayatri Spivak does well to challenge: SPIVAK, G. C. Translator's Preface. In: DERRIDA, J. *Of Grammatology*. G. C. Spivak (transl.). Baltimore: Johns Hopkins University Press, 1997. p. lxxxvi. I deliberately refer to this edition of Spivak's commentary.

¹²² Venuti (note 44), p. 2.

¹²³ *ibid.*

¹²⁴ Derrida (note 77), p. 43 ["toutes désajustées"].

to the other's text (or law-text), translation must strive, through optimal hearkening to otherness, to be just. Indeed, to be just is more important than to be correct or exact. Writing to his long-standing confidante and lover – a translator of Flaubert, of Michel Tournier, of Marguerite Duras, and of many other French authors – Beckett, soliciting a reaction to a draft translation of his, thus astutely observes: “[A]ccuracy obviously secondary consideration”.¹²⁵ The goal, then, is *le mot juste*. In French, the word “juste” seems especially helpful for it conveys at once the ideas of “justness” and “aptness”.¹²⁶

In its quest for the just word-in-translation – or for the just distance from the source-text – a translator must therefore attempt to do justice to the text being translated through a process of incessant negotiation with it. But translative justice is not exclusively “of” the text in the sense at least that the source-text's claim to justice requires to be formulated through a process of interpretation and thus to be conveyed “to” the text by the interpreter as hearkener. Yet, justice must be understood as being strictly a matter of place and time, that is, as being thoroughly immanent or embedded or singular: it is *of that* text, it is being conveyed *by this* interpreter on *this* occasion, *then*. As regards translation, justice is but the application of local interpretive knowledge in timely response to the source-text's interpellation, a process that will itself be validated or invalidated by reference to further interpretive knowledge, either here or elsewhere (think of any situated readership). Let me repeat: a translation cannot be expected – and does not need – to be correct, but it must be just and hopefully find itself accepted as just. One must integrate translation within a theory of justice, no less.¹²⁷

The disruption in the target-language may require an explanation so as to avoid undue disconcertion on the reader's part. I recommend that such additional enlightenment be left to the notes – which, conveniently, should take the form of footnotes rather than endnotes. While perhaps expressing less than full support for Nabokov's stance – “I want translations with copious footnotes, footnotes reaching up like skyscrapers to the top of this or that page so as to leave only the gleam of one textual line between commentary and eternity”¹²⁸ – I do find that glosses are in principle eminently meritorious and helpful. (Incidentally, these annotations need

¹²⁵ Letter from S. Beckett to B. Bray in CRAIG, G. *et al* (eds.). **The Letters of Samuel Beckett**. vol. 2. Cambridge: Cambridge University Press, 2011 [14 November 1959]. p. 255.

¹²⁶ For an argument in favour of just translation, see generally Glanert and Legrand (note 14).

¹²⁷ This is the leitmotiv in Lawrence Venuti's influential scholarship as it draws heavily on Antoine Berman's. See eg Venuti (note 44) and BERMAN, A. **La Traduction et la lettre ou l'auberge du lointain**. Paris: Editions du Seuil 1999 [1985]. For a connection between justice and hospitality with specific reference to translation, see DERRIDA, J. La chance et l'hospitalité. **Trois**, Laval (Québec), vol. 14, n. 2-3, p. 71-83, 1999. p. 72: “Just translation, is that not hospitality itself?” [“La traduction juste, n'est-ce pas l'hospitalité même?”].

¹²⁸ NABOKOV, V. Problems of Translation: “Onegin” in English. **Partisan Review**, New York, vol. 22, n. 4, p. 496-512, 1955. p. 522.

not limit themselves to the source-text and its cultural circumstances, but can well extend to the target-language and explain, by way of linguistic introspection so to speak, how it is being revisited with a view to accommodating foreignness.) Let me, then, re-state the matter in slightly different terms. Translation must sanction the foreign's preponderance. Rather than assimilate or appropriate the foreign, instead of taming and integrating the foreign, the translator must concede defeat, allowing his intervention to be simultaneously strong and weak. Even as it is strong because it wrestles, courageously, with the source-language, translation must ultimately accept to subordinate itself to foreignness. It must implement its inescapable weakness vis-à-vis the foreign.

Consider the following illustration showing how the translator's goal must not be to create a thoroughly local text out of the foreign one, but instead to bring the local reader to the foreign text's foreignness – to get this reader to appreciate at all times that although he is reading in “his” language,¹²⁹ what he is reading remains foreign. Choosing my example literally at random (I must have come across hundreds of such illustrations), I refer to *L'Écriture et la différence*, which appeared in 1967 as Derrida's first authored book, a few months before *De la grammatologie*. In a chapter entitled “Freud et la scène de l'écriture”, which had been published in the literary journal *Tel Quel* the year before, Derrida addresses translation in these terms:

“Or un corps verbal ne se laisse pas traduire ou transporter dans une autre langue. Il est cela même que la traduction laisse tomber. Laisser tomber le corps, telle est même l'énergie essentielle de la traduction.”¹³⁰

Released by the University of Chicago Press in 1978, more than ten years after the French publication, the English translation is the work of Alan Bass, a noted philosopher and practicing psychoanalyst. Bass's text runs thus:

“The materiality of a word cannot be translated or carried over into another language. Materiality is precisely that which translation relinquishes. To relinquish materiality: such is the driving force of translation.”¹³¹

¹²⁹ Cf. Derrida (note 55), p. 39: “[A] language does not belong” [(U)ne langue, ça n'appartient pas”].

¹³⁰ Derrida (note 92), p. 312.

¹³¹ DERRIDA, J. **Writing and Difference**. A. Bass (transl.). Chicago: University of Chicago Press, 1978. p. 210.

I suggest five observations in support of the view that Bass's translation is insufficiently sensitive to the need to preserve foreignness in the target-language. To make this point differently, I hold that Bass is unduly concerned with writing in "good" (or conventional) English and insufficiently preoccupied with attending to the abiding Frenchness of Derrida's text (not to mention its characteristic "derridaneity").¹³²

First, Derrida begins his statement with "Or", a conjunction linking the relevant sentence with the previous one – a word that, in this context, could be translated as "Now". Bass ignores this coupling, in effect denying Derrida's "building-block" approach to argumentation and rhetoric.

Secondly, "un corps verbal" becomes "[t]he materiality of a word". Even someone who has minimal French, I suggest, is readily able to appreciate that Bass is moving well away from Derrida. In the sense in which Derrida is using it, the term "verbal" refers to what concerns the word (from the latin "verbum", which means "word"). Derrida's reference is to the chain of graphematic signifiers that constitute the text, the very inscriptions themselves, the marks on the page. Here, Derrida's French is concrete and metaphoric, while Bass's English is more abstract and perhaps more precise. Along the way, not only is Derrida's French vocabulary being redirected, but so is his allegiance to a certain philosophical style. While Derrida's philosophy adheres to a more literary discourse – not unlike, say, Nietzsche's or Heidegger's – Bass's English readily evokes the British/US philosophical tradition and its analytical predilections (think of John Austin or Bertrand Russell).¹³³ Along analogous lines, Derrida's "l'énergie essentielle" becomes "the driving force".

Thirdly, Derrida writes that this "corps verbal" he is discussing "ne se laisse pas traduire ou transporter". Specifically, Derrida is deploying "laisser" as a pronominal verb, which means that he is mobilizing the impersonal reflexive pronoun "se". Derrida's focus is thus squarely on that "corps verbal" and on its refusal to allow itself to be "translate[d] or transport[ed]". If you will, Derrida emphasizes the "corps verbal"'s own unwillingness to be moved across languages – its own intrinsic reticence to displacement. For his part, Bass turns his attention away from the "corps verbal" towards the process of translation. Stressing the process's limits, he holds of the "corps verbal" that it "cannot be translated or carried over". The limitation is no longer inherent to the "corps verbal" itself, to its resistance; instead, it has become processual – a fact having to do with the matter of translation, perhaps with the translator.

¹³² Is it necessary to emphasize that the issue is not at all Bass's competence? For observations on the meticulousness with which Bass acquitted himself of his translatable task, see PEETERS, B. **Derrida**. Paris: Flammarion, 2010. p. 284. For anecdotes expressing the proximity (and therefore the ease of communication) between Bass and Derrida, see *id.*, p. 283-84, 512, 516-17, 524, and 688n3. Bass also translated Derrida's **Marges**. Paris: Editions de Minuit, 1972; **Positions** (note 66); and **La Carte postale**. Paris: Flammarion, 1980.

¹³³ See Venuti (note 44), p. 35-36.

Fourthly, Bass lets go of the chain of French signifiers, that is, he does not reprise French syntax and its placement of adjectives after nouns (as in “un corps verbal” or “l’énergie essentielle”). Presumably, Bass holds that even as the location of adjectives after nouns is standard usage in French, it has become archaic in English. But as he deviates from Derrida’s French syntax (“[t]he materiality of a word”, “the driving force”), Bass is, in effect, anglicizing the text.

Fifthly, Bass withdraws from the French text by refusing to abide by certain words or expressions (“transporter” becomes not “transport”, but “carried over”; “cela même” becomes not “that itself”, but “precisely”; “laisse tomber” becomes not “lets drop”, but “relinquishes”).

I do not seek to deny Bass’s capture of Derrida’s three-fold argument that the chain of graphematic signifiers constituting the foreign text inevitably cannot be reproduced in translation, that the translator therefore renounces this reproduction, and that such abdication is effectively the very gist of translation – in the sense at least that translation is primordially a departure from the sequence of syllables that are inscribed as the foreign text. But I maintain that Bass’s English text ultimately features undue ethnocentrism.¹³⁴ Not only is there an excessive loss of intratextual effects – the singular texture of the source-text is forsaken in a number of important respects – but there is also an exorbitant forfeiture of intertextual effects as many of the singular evocations of the source-language within the source-text are sacrificed.¹³⁵ Even as every translation necessarily generates difference, Bass’s translation produces the kind of difference that fails to do justice to Derrida’s French text. For my part, I would, at this writing, translate Derrida’s sentence as follows (I copy Bass’s translation *en regard* in order to facilitate the identification of the many differences between the two interventions):

[PL] “Now, a body verbal does not let itself be translated or transported into another language. It is that indeed which translation lets drop. To let drop the body, such is even the energy essential to translation”.

[Bass] “The materiality of a word cannot be translated or carried over into another language. Materiality is precisely that which translation relinquishes. To relinquish materiality: such is the driving force of translation”.

¹³⁴ I am minded to quote Derrida in DERRIDA, J. *De la grammatologie*. Paris: Editions de Minuit, 1967. p. 178: “[O]ne will apparently avoid ethnocentrism at the very moment when it will have already operated in depth, silently imposing its ongoing concepts of speech and of writing” [“(O)n évitera en apparence l’ethnocentrisme au moment même où il aura déjà opéré en profondeur, imposant silencieusement ses concepts courants de la parole et de l’écriture”].

¹³⁵ Cf. Venuti (note 44), p. 35.

And here is my translation vis-à-vis Derrida's text:

"Now, a body verbal does not let itself be translated or transported into another language. It is that indeed which translation lets drop. To let drop the body, such is even the energy essential to translation".

"Or un corps verbal ne se laisse pas traduire ou transporter dans une autre langue. Il est cela même que la traduction laisse tomber. Laisser tomber le corps, telle est même l'énergie essentielle de la traduction".

As I translate, I attempt to reprise the foreign text as closely as I can, if at all possible to track it word by word,¹³⁶ without being too concerned with the disruption that I may provoke in my anglophone reader's readerly expectations. (Derrida's French text numbers thirty-seven words, while my English translation has thirty-six.) Again, my abiding concern is to preserve some at least of the foreignness of the source-text in the target-language with a view to doing justice to the source-text's singularity – to ensuring that foreignness features a remainder within the target-text. Once more, this goal must mean that my anglophone reader may find himself discountenanced. I accept that interference. Indeed, I welcome such disturbance. In Venuti's terms, the idea is that "[i]n its effort to do right abroad, [...] translation practice must do wrong at home, deviating enough from native norms to stage an alien reading experience".¹³⁷ Now, the expression "do[ing] wrong at home" requires to be promptly qualified, for "[t]he translator enriches his tongue by allowing the source language to penetrate and modify it".¹³⁸

By way of further illustration of the foreignizing strategy that I defend, I proceed to show two English interventions as regards an influential German treatise in comparative law along with the German source-text. These translations are Tony Weir's

¹³⁶ Cf. DERRIDA, J. **Qu'est-ce qu'une traduction "relevante"?** Paris: L'Herne, 2005. p. 22-23: "So that one legitimately uses the word 'translation' [...], it must be that [...] the translation be *quantitatively* equivalent to the original. [...] [I]t is not about counting the number of signs [...], but counting the *number of words*" ["Pour qu'on se serve légitimement du mot 'traduction' (...), il faut que (...) la traduction soit *quantitativement* équivalente à l'original. (...) (I)l ne s'agit pas de compter le nombre des signes (...), mais de compter le *nombre des mots*"]. See also Derrida (note 39), p. 204: "When the translator [...] can add a note, or else put words between brackets, obviously, what he does is not an operation of translation at that moment; to comment, to analyze, to warn, it is not to translate [...]. [...] [A]s soon as one puts two words or three for one, and that the translation becomes analytical explication, it is no longer a translation in the strict sense" ["Quand le traducteur (...) peut ajouter une note, ou bien mettre des mots entre crochets, évidemment, ce qu'il fait n'est pas une opération de traduction à ce moment-là; commenter, analyser, mettre en garde, ce n'est pas traduire (...). (...) (D)ès que l'on met deux mots ou trois pour un, et que la traduction devient explication analytique, ce n'est plus une traduction au sens strict"].

¹³⁷ Venuti (note 44), p. 15-16.

¹³⁸ Steiner (note 36), p. 67.

and appear as Oxford University Press's "official" or authorized English version. Along the way, I add my own suggestions.¹³⁹

[Weir] "[T]he solutions [comparatists] find in the different jurisdictions must be cut loose from their conceptual context and stripped of their national doctrinal overtones".

[PL] "The solutions of the investigated legal orders are to be freed of all systematic concepts of these legal orders, to be unfastened out of their solely-national dogmatic incrustations".

"Die Lösungen der untersuchten Rechtsordnungen sind von allen systematischen Begriffen dieser Rechtsordnungen zu befreien, aus ihren nur-nationalen dogmatischen Verkrustungen zu lösen".

Another example, also drawn from Zweigert and Kötz's book,¹⁴⁰ reads thus:

[Weir] "[Comparatists] must cut themselves loose from their own doctrinal and juridical preconceptions and liberate themselves from their own cultural context in order to discover 'neutral' concepts with which to describe [...] problems".

[PL] "[T]he comparatist must unfasten himself from his own juridical-dogmatic preconceptions and his own cultural context and must avail himself of 'neutral' concepts".

"[D]er Rechtsvergleicher [muß sich] von seinen eigenen juristisch-dogmatischen Vorverständnissen und seinem eigenen kulturellen Umfeld lösen und sich 'neutraler' Begriffe bedienen".

In these two instances, it must be clear that Weir's translations are English-language-oriented, that is, they seek to re-write the German text into elegant English, even if this strategy must mean departing from the German source (which Weir

¹³⁹ ZWIEGERT, K.; KÖTZ, H. **Introduction to Comparative Law**. 3rd edn. T. Weir (transl.). Oxford: Oxford University Press, 1998. p. 44; Zweigert and Kötz (note 17), p. 43. Incidentally, I fundamentally disagree with Zweigert and Kötz's advice, which I would literally turn on its head so that the comparatist approaches legal solutions as the instantiations of a local cultural discourse that they necessarily are.

¹⁴⁰ Zweigert and Kötz (note 139), p. 10; Zweigert and Kötz (note 17), p. 11. Again, I hold diametrically opposite views to Zweigert and Kötz's. The cultural unfastening they advise is neither possible nor desirable. Meanwhile, the conceptual neutrality they seek can only pertain to the realm of fiction, which brings to mind the image of the proverbial red herring.

repeatedly does). Here, the translator's goal, I surmise, is effectively to ensure that an anglophone reader will forget that he is reading a German text. As I explain, I beg to differ, and I argue that the anglophone reader must be reminded at all times, through an "agrammaticality effect" if you will, that he is indeed reading a foreign text.¹⁴¹ To my mind, such is the merit, in the formulations that I devise, of terms like "the investigated legal orders", "of these legal orders", and "juridical-dogmatic". The idea that I am deliberately implementing is very much to generate a friction, to strike a discordant note, to impede the fluency of the target-language so that the discontinuities on display will put the anglophone reader on notice that things are not normal, that it is not reading business as usual, so to speak.¹⁴²

The translator must therefore resist any urge towards embellishment and eschew the siren calls of the "belles infidèles" in order to avoid charges of undue ethnocentrism. In 1648, when Gilles Ménage (1613-92), a famous linguist and literary critic, was asked what he thought of a certain translation, he replied that it reminded him of one of his former mistresses: it was as beautiful as it was infidel. The sobriquet "belle infidèle" stuck, and it continues to designate a practice, often thought to be particularly prevalent in France, whereby, say, the foreign text is Frenchified so that it reads as elegantly in French as if it had originally been written in French. For adherents to the "belles infidèles" strategy, what Haun Saussy styles "a tension between ethics and aesthetics" must be resolved in favour of beauty.¹⁴³ I argue that precisely the opposite is the case. For the sake of the recognition of otherness and in the name of respect for otherness, it is crucial that the translator should avoid any attempt to embellish the translation in the target-language. Despite what a literal appreciation of the French expression might suggest, it is not so much a matter of fidelity as it is a question of justice to the source-text. The three short illustrations that follow reveal some of the pitfalls that must be circumvented.

Consider GEM Anscombe's translation of Wittgenstein's posthumously published *Philosophical Investigations* (*Philosophische Untersuchungen*), which appeared in 1953. In translating §38, Anscombe renders the German "Denn die philosophischen Probleme entstehen, wenn die Sprache *feiert*" not as "For philosophical problems arise

¹⁴¹ BONOLI, L. *Lire les cultures*. Paris: Kimé, 2008. p. 98 ["effet d'agrammaticalité"] (emphasis omitted).

¹⁴² *id.*, p. 58, where Lorenzo Bonoli refers, approvingly, to "a friction that happens within the horizon of a familiar sense but that manifests the existence of something that contrasts with that horizon and that comes to interrupt the comfort ensured by the 'already known'" ["un heurt qui se produit à l'intérieur d'un horizon de sens familier mais qui manifeste l'existence de quelque chose qui entre en contraste avec cet horizon et qui vient interrompre le confort assuré par le 'déjà connu'"] (emphasis omitted). Cf. Bellos and Scheppele (note 67), p. 270: "In general, my preference in translation is to use a word that will make the foreign institution strange, because you *want* people to stop and say, 'What is this? I don't know what this is: [...]' [Y]ou want people to stop and realize that they don't know what they don't know". The words are Scheppele's.

¹⁴³ SAUSSY, H. *Translation as Citation*. Oxford: Oxford University Press, 2018. p. 11.

when language *idles*”, but as “[...] when language *goes on holiday*”.¹⁴⁴ Here, Anscombe’s familiar register does violence to the foreign text, her formulation being highly heterogeneous vis-à-vis it. Indeed at §132,¹⁴⁵ Wittgenstein has “Die Verwirrungen, die uns beschäftigen, entstehen gleichsam, wenn die Sprache leerläuft, nicht wenn sie arbeitet”, which he himself agreed to have translated as “The confusions which occupy us arise when language is, as it were, idling, not when it is doing work”.¹⁴⁶

Another example of unacceptable beautification of the foreign text involves a deliberate anachronism, which includes a reference to “Cape Kennedy” in the translation of a passage from Homer’s *Iliad* regarding Achilles’s talking horses and the way they soar in the skies – “as in dreams, or at Cape Kennedy, they rise”.¹⁴⁷ Is there any reasonable way in which this translation can be said to be appropriately responding to a hidden claim of the source-text, or is it not illegitimately imposing itself on the foreign through a locutory gimmick being deployed by an interpreter who would no longer be operating as a hearer, who would not be addressing the text’s *genius loci*? I maintain that such translational anarchism must steadfastly be avoided. (It is false.)

And to return to comparative law, when Zweigert and Kötz write “Unterschiede [sind] in Wahrheit nicht relevant”,¹⁴⁸ a just translation should read “Differences are in truth not relevant”, not “[D]ifferences are really immaterial”.¹⁴⁹ While “in truth not relevant” may not be as elegant as “really immaterial”, the translator, in wanting to bring stylistic improvement to the English version, is not being just to the German original.

In sum, you will do very well to heed Nabokov’s advice : “The clumsiest literal translation is a thousand times more useful than the prettiest paraphrase”¹⁵⁰ – which means, for instance, that the source-text’s repetitious words must not be replaced and its equivocalities not be disambiguated.

How much foreignization is needed, though? To be sure, “the terms ‘domestication’ and ‘foreignization’ do not establish a neat binary opposition”.¹⁵¹ Rather, one must think along the lines of a sliding scale, of a spectrum featuring various

¹⁴⁴ WITTGENSTEIN, L. **Philosophical Investigations**. German-English edn. G. E. M. Anscombe (transl.). Oxford: Blackwell, 1953. p. 19. This translation is retained in WITTGENSTEIN, L. **Philosophical Investigations**. 4th German-English edn. P. M. S. Hacker; J. Schulte (eds.). G. E. M. Anscombe; P. M. S. Hacker; J. Schulte (transl.). Oxford: Wiley-Blackwell, 2009. p. 23.

¹⁴⁵ Wittgenstein/Hacker and Schulte (note 144), p. 56.

¹⁴⁶ See BAKER, G. P.; HACKER, P. M. S. **Wittgenstein: Understanding and Meaning**. vol 1. 2nd edn. P. M. S. Hacker (ed.). Oxford: Wiley-Blackwell, 2009. p. 114.

¹⁴⁷ LOGUE, C. **War Music: An Account of Books 1-4 and 16 to 19 of Homer’s Iliad**. Chicago: University of Chicago Press, 1997. p. 214.

¹⁴⁸ Zweigert and Kötz (note 17), p. 60.

¹⁴⁹ Zweigert and Kötz (note 139) p. 62. Meanwhile, pace Zweigert and Kötz, differences across laws are of the utmost relevance and must emphatically be the primary focus of comparative law.

¹⁵⁰ Nabokov (note 128), p. 496.

¹⁵¹ Venuti (note 44), p. 19.

degrees of transition. Nonetheless, one must accept that ultimately “foreignness kills the foreign”.¹⁵² Indeed, the mobilization of amendments to the target-language that are too idiosyncratic, or perhaps too numerous, can reasonably be expected to entail the translation falling prey to a failure of persuasion – a rejection that would effectively foreclose the readership’s access to the source-text. This outcome can also result from a recourse to loan words, that is, words that are lifted from the source-text and carried as such into the target-language. Illustrations of the two hurdles that I mention are as follows.

Excessive idiosyncrasy

Evidently, “Wörterbuch” (dictionary) must not be translated as “book of words” and “Krankenschwester” (nurse) must not become “the sick’s sister” – two examples readily demonstrating how a surfeit of foreignization becomes counter-productive in terms of intelligibility in the target-language. Now, consider what are arguably two of Heidegger’s most famous sentences: “Die Sprache spricht. Wie ist es mit ihrem Sprechen?”¹⁵³ In order for English to capture the German assonance in the first sentence, if necessarily imperfectly, one would have to translate either as “Language languages” or “Speaking speaks”. Either way, the foreignization would be excessive and run the risk of placing the English text (and, by extension, the author’s philosophical work) beyond the reach of the anglophone reading public. In order to avoid such impasse, Albert Hofstadter wisely translates Heidegger’s text as “Language speaks”, a formulation that, while suitably cryptic and therefore challenging enough from the standpoint of an anglophone reader, avoids the kind of undue foreignizing that would have proven unhelpful.¹⁵⁴ If anything, the second sentence demanded even more restraint on the translator’s part. A literal translation would feature “What is it about her speaking?”, the feminine addressing the fact that in German the word “Sprache” carries this gender. In English, however, the use of “she” would definitely make for undue foreignization. While Hofstadter writes “What about its speaking?”, I suggest that “What is it with its speaking?” would have struck a more foreign-orientated note – that this form of words would have been more just to the foreign text – without sacrificing English intelligibility.

Recourse to loan words

I mentioned Camus’s incipit in *L’Etranger*, and I observed that when Random House commissioned a retranslation in the 1980s, Matthew Ward produced the following:

¹⁵² CASSIN, B. **Eloge de la traduction**. Paris: Fayard, 2016. p. 188 [“l’étrangeté tue l’étranger”].

¹⁵³ Heidegger (note 4), p. 16.

¹⁵⁴ HEIDEGGER, M. Language. In: **Poetry, Language, Thought**. A. Hofstadter (transl.). New York: Harper & Row, 1971 [1959]. p. 191.

"Maman died today" (*supra*). I suggest that Ward's incorporation of the loan word "Maman" illustrates how unsatisfactory this process may prove. Indeed, how further advanced is the anglophone reader who, presumably, is reading the English translation because the French text is presenting him with a difficult linguistic challenge?

12 Recognize that the translator is an inventor.

To assert that the translator is an inventor – that the process of translation is one of invention – may strike you as bold, perhaps excessive. In fact, this is precisely what is the case. Etymologically, the term "invention" straddles the ideas of finding and fashioning (the comparatist comes to the foreign law-text that he finds, there, and then moves to articulate it, to fashion it, by way of his translation). In effect, "the concept of invention distributes its two essential values between the two poles of the constative (to discover or disclose [...]) and the performative (to produce, institute, transform)", there being an "infinitely rapid oscillation" between the two situations.¹⁵⁵ Invention? The comparatist *inventing* translation? Yes. He is finding or discovering foreign law, and he is fashioning or devising it for the purposes of his re-formulation. In effect, his fashioning is indissociable from his finding, since the very act of selection whereby he retains some words in the target-language, while dispensing with others, partakes of the making of the translation that he will inscribe, perhaps in his comparative study. Always, the comparatist must prove himself determined to implement a sophisticated appreciation of textuality and thus purport to *invent* – that is, find-and-fashion – an articulable translation that will be suitably haunted by the foreignness of the source-text through infinitely complex networks of enmeshment.

Translation can never reach so far as to embrace fully the foreignness of the foreign text, and it can never deploy itself so independently from the translator so that he could creditably claim to have eschewed all involvement. Etymologically, "to translate" initially comes from "transfere" ("latus"/"latio" is the past participle of "ferre"). The Latin verb meant "to carry" or "to bring" ("ferre") "across" ("trans"). The main idea is that of

¹⁵⁵ Eg: see Derrida (note 2), p. 23 and 25 ["le concept d'invention distribue ses deux valeurs essentielles entre les deux pôles du constatif (découvrir ou dévoiler [...]) et du performatif (produire, instituer, transformer)"/"oscillation infiniment rapide"]. Derrida is right to claim that "one would no longer say today that Christopher Columbus has invented America [...]. [...] [U]sage or the system of certain modern, relatively modern conventions would prohibit us from speaking of an invention whose object would be an existence as such": *id.*, p. 41 ["on ne dirait plus aujourd'hui que Christophe Colomb a inventé l'Amérique (...). (...) [L]'usage ou le système de certaines conventions modernes, relativement modernes, nous interdiraient de parler d'une invention dont l'objet serait une existence comme telle"]. Yet, in the Roman liturgical rite, there was long celebrated on 3 May the Invention of the Holy Cross (*Inventio Sancta Crucis*), that is, St Helena's *discovery* of the Cross in 326. Having been abolished by Pope John XXIII in 1960, the feast of the *Inventio* remains important for the Church of the East on 13 September. As one applies oneself to repair one's understanding of translation, "one must today reinvent invention": *id.*, p. 37 ["il faut aujourd'hui réinventer l'invention"].

conveyance, but it is also that of indistinction. The focus is indeed squarely on identity. Now, Gianfranco Folena shows the emergence as of 1400 – as of 5 September 1400, in fact – of the term “traducere” to substitute for the word “transfere”. As Folena explains, “traducere” features the ideas of crossing and movement, but also, co-constitutively and inseparably, that of individuality (Folena invites a comparison of “ferre” and “duco”/“dux”), which underlines at once the originality and the personal involvement within an intervention thus becoming less anonymous.¹⁵⁶ And through his motions and elections not only does the translator allow the foreign another life in another language, but he also countenances the foreign investing the target-language and inflecting it with a view to preserving the singularity of what remains an untranslatable idiom. Because translation thus evokes “a braiding together of activity and passivity, agency and patiency, the development of a capacity to be acted upon, even as one acts,”¹⁵⁷ the translator requires, in effect, to learn the “mastery of non-mastery”¹⁵⁸ – to control a process, the taming of the foreign, that ultimately remains out of his control.

It seems apt to return to the idea of difference. Michael Hofmann, a noted poet, literary critic, and translator of German literature into English, writes: “I want, as a translator, to make a difference.”¹⁵⁹ I am inclined to add that it is good that Hoffman should want to make a difference, because he is bound to be doing so. In other words, a translator inevitably makes a difference, since duplication across languages lies beyond anything structurally possible: translation inherently constitutes “a practice producing difference out of incommensurability (rather than equivalence out of difference).”¹⁶⁰ This characteristic, inherent to the process of translation, is arguably the most important *fact* that you must constantly heed as you translate.

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¹⁵⁶ See FOLENA, G. **Volgarizzare e tradurre**. Turin: Einaudi, 1991. p. 67-68, which I closely track. Observe that, according to the electronic version of the *Oxford English Dictionary*’s first meaning, “to traduce” is to convert, to alter, to modify; by extension, it is to pervert, to misrepresent (eg: In so many universities, scholarship has been traduced into managerialism).

¹⁵⁷ PAPER BOAT COLLECTIVE. **Archipelagos, A Voyage in Writing**. In: PANDIAN, A.; McLEAN, S. J. (eds.). **Crumpled Paper Boat**. Durham: Duke University Press, 2017. p. 17.

¹⁵⁸ BARTHES, R. **Fragments d’un discours amoureux**. In: **Œuvres complètes**. vol 5. 2nd edn. E. Marty (ed.). Paris: Editions du Seuil, 2002 [1977]. p. 258 [“maîtrise de la non-maîtrise”].

¹⁵⁹ HOFMANN, M. **Where Have You Been?** New York: Farrar, Straus & Giroux, 2014. p. 203. I have mentioned Hofmann’s translation of Kafka (*supra*).

¹⁶⁰ MORRIS, M. Foreword. In: SAKAI, N. **Translation and Subjectivity**. University of Minnesota Press, 1997. p. xiii.

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