

SHARING THOUGHTS

French, English, Amharic: The Law in Ethiopia *Roger Briottet¹

The language of the law is difficult to translate because words or expressions in a particular language often carry concepts which do not exist in another. In this respect, the dissimilarity between French and English laws is striking. The difficulties further increase when either of these two legal systems - or both - is used as a basis for yet another system which adheres to its own legal traditions. Ethiopia is a particularly good example of such a thorny problem. In the 1950s Emperor Haile Salassie undertook a thorough reform of the legal system. At the time little thought seems to have been given to the confusion likely to result from the introduction of the French approach into the existing Ethiopian system. The interpretation of these antiquated codes is proving increasingly difficult because law practitioners cannot access French sources. In this particular case, language is shown to be a key factor in the understanding and correct use of the law.

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Translation is always a challenge. The better the translator, the more secretly tormented he/she is about the quality of the translation. Many factors come into play. Quite apart from an adequate knowledge of both languages, the

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quality of the finished product in literary terms and, above all, the understanding and rendering of the untranslatable raise seemingly intractable problems. This is particularly true for the language of the law which often carries concepts with no exact equivalent in another given language. 'In general (legal) texts are not a mere assemblage of words and phrases...they serve as an organ of collective perception linked to a certain culture and extract the way their meaning is produced' (Vlachopoulos 2004: 100).

Moreover, legislators differ in their approach to legislative drafting. 'Ainsi, le code civil suisse est considéré comme l'exemple du code rédigé dans une langue accessible à tous. A l'inverse, les rédacteurs du code civil allemand, le BGB, ont opté pour une langue dite scientifique, s'adressant aux spécialistes du droit.' (Pelage 2000: 3) [Thus, the Swiss Civil code is regarded as the example of a code drafted in a language accessible to everyone. In contrast, the drafters of the German civil code, the BGB, opted for a so-called scientific language destined to legal experts]. In other words, the law cannot be distinguished from the technical language which expresses it. This is why it is commonly said of judges that they 'disent le droit' [declare the law], i.e. they interpret the legislator's text in words and phrases which will bind lower courts. 'Judges create worlds with words and require us to inhabit them.' (Raymond: 2004 in Harvey 2005; 64). They are law-makers (Taylor 2005: 117). Moreover, the words expressing or defining legal concepts must be construed within the historical context which gave them their original meaning and, sometimes through many centuries, gradually led to their present accepted signification. For example, In English Common Law, the word 'torts' refers to wrongs not arising out of contract for which an action in compensation or damages can be brought. Within this wide definition, the law distinguishes between different torts (trespass, negligence, etc.,) to which specific rules and conditions apply. For instance, in the case of negligence, the injured party must show that he/she has suffered a quantifiable damage whereas this is not required in the case of trespass. The word tort came from the Latin "tortum" and was a legal term in Roman law. It is used in French with a similar meaning (*demande réparation d'un tort*) [to request that a wrong be redressed] though it has lost its precise legal relevance. A decision by the High Court of Montreal (*Mart Steel Corp. v R.*) made it clear that 'by using the term *tort* the Crime Liability Act was intended to have no application in the province of Quebec, where the concept of *tort* is foreign.' (Šarcevic 2000: 1-7) Indeed, the law of torts is regarded by some French jurists as '*un maquis déroutant*' [a disconcerting maze]. This is probably because the French - and similarly other Romano-Germanic systems - have developed a general theory of civil liability based on three articles of

the Civil Code (art. 1382 to 1384) which does not distinguish between separate “torts” as does the Common Law.

In this respect, it is interesting to note that legal dictionaries encounter problems which they are not always able to solve adequately. For instance, the legal dictionary of the Office québécois de la langue française [Quebec French Language Board] translates the French word “cause” used in French contract law by the English word “consideration”, used in English Common Law. In an attempt to clarify the matter, it gives a definition of each of these terms. ‘ Dans les droits Romano-Germanic, la *cause* de l’obligation de l’une des parties est la prestation de l’autre partie (la contre-prestation).’ [In Romano-Germanic legal systems, the *cause* of the obligation of one of the parties is the benefit received from the other party (the counterpart’s benefit).] ‘La *consideration* est une notion propre aux droits anglo-saxons. Pour qu’un contrat soit susceptible d’exécution forcée, la contrepartie doit pouvoir être mesurable financièrement.’ [Consideration is a concept peculiar to Anglo-Saxon law. In order for a contract to be enforceable, the expected benefit must be financially quantifiable.] It follows that, according to these definitions, the only difference between *cause* and *consideration* seems to be that the expected benefit must be financially quantifiable for the latter but not for the former. However, these definitions are somewhat misleading as they avoid the complexity of both these legal terms and their differing legal effects, which only lengthy notes - amounting to a course in contract law! – could satisfactorily clarify. If we now check the English word ‘consideration’, using the same dictionary but starting from the English language section, the French word given is ‘contrepartie’ rather than ‘cause’. ‘Contrepartie’ is closer to consideration than ‘cause’ but cannot be used in French law as its synonym, since the concept of ‘cause’ is much wider than the mere benefit expected from the other party in a contract and even extend to the intention of a donor who can expect no consideration (or *contrepartie*) from the donee. In other words, there is no proper translation of these words in the other language because they express different concepts within two distinct legal contexts.

So far, I have dealt with the tricky problem of legal translation which requires the understanding of a different legal system. I now want to look at the influence of foreign languages on the evolution, understanding and practice of the law. In order to do this, I shall consider the ancient legal system of Ethiopia and analyse the impact of the French and English languages on its evolution and, in particular, the substantial if somewhat incoherent legacy of their introduction in the domestic system they were intended to improve.

The law of Ethiopia – A historical and linguistic approach

Ethiopia, with the exception of Eritrea now independent, has never been colonised by foreign powers. In its long history the country has seen the gradual consolidation of a feudal empire based on the Tygryyan and Amhara aristocracies of the North whose languages, Tigrinya and Amharic, stemmed from the archaic Ge'ez which to this day remains the language of the Christian orthodox Church, just as Romance languages largely originated from Latin which still constitute the backbone of Roman Catholic liturgy. Although more than 80 languages and many more dialects are spoken in Ethiopia Amharic, the written language of past ruling classes, became the official language of the country under the powerful centralising authority of the emperors in the XIXth and XXth centuries. Ethiopian law was mostly expressed in the form of 'Proclamations' or imperial edicts although, as in feudal Europe, many local, largely unwritten customs continued to exist. The resulting system was a complex and sometimes contradictory imbroglio which resisted change and modernisation.

Emperor Haile Selassie, who found refuge in England whilst his country was occupied by Italian forces from 1935 to 1941, resolved to unify and modernise the law of Ethiopia, which could no longer cope with the demands of a society attempting to adapt to a post-war world in rapid evolution. To that effect, in 1954, he appointed a Commission of Codification whom he entrusted with the task of consolidating, revising and codifying most aspects of Ethiopian law. René David, professor of comparative law at the University of Paris, was asked to prepare the work of the Commission charged with drafting a new Civil Code. In parallel, the same Commission's mandate was extended to the drafting of a Code of Commerce. The two codes were meant to complement each other. Although the drafts were written in French, the Commission was at great pains to produce texts which would fit the Amharic legal tradition, represented by the *Fetha Nagast*, and use the Amharic language to the exclusion, whenever possible, of foreign words or phrases. In his report to the Emperor, René David explains:

En ce qui concerne la langue du code civil, la commission s'est abstenue, par principe, d'adopter des mots français ou d'une autre langue, qui n'auraient pas eu de sens pour la majorité des Ethiopiens. Lorsque des mots étrangers ont été, de façon exceptionnelle, employés, c'est le plus souvent parce que d'ores et déjà, on faisait usage de ces mots en Ethiopie dans la pratique courante. Le code est écrit en amharique, et il ne fait qu'un minimum d'emprunts aux langues européennes. Lorsqu'un mot français, employé par l'expert dans son avant-projet, n'avait pas d'équivalent en amharique, or lorsque son équivalent risquait de causer une méprise, la commission s'est efforcée, plutôt que d'adopter le mot français, de trouver un mot ge'ez qui

puisse le traduire...La technique employée conserve au code civil son caractère national, et rattache le code aux traditions anciennes (David 1960 : 668-681).

[Regarding the language of the Civil Code, the Commission refrained, as a matter of principle, from using French words or words from another language, which would have been incomprehensible to most Ethiopians. Where foreign words have exceptionally been used, it is usually because these words were already currently used in Ethiopia. The Code is written in Amharic, and it borrows very little from European languages. When a French word used by the expert in his draft text had no equivalent in Amharic, or when its equivalent might have led to a misunderstanding, the Commission endeavoured to find a *Ge'ez* word which could translate it...The technique thus used maintains the national characteristics of the Code and ties it to ancient traditions.]

The important point here is that the Amharic version, not the original French text, has force of law, the English translation being subsidiary. According to S. Šarcevic 'all authenticated translations (i.e. those legally recognised as valid translations of the original text) are just as inviolate as the original text(s). Hence they are not regarded as "mere translations" but as originals and are not even referred to as translation' (Šarcevic 2000: 1-7). However, in Ethiopia, the law does not 'authenticate' the translation of the original French text which had no legal status to start with. Rather, it decrees that the Amharic version is the only authentic version which gives it the force of law. Unfortunately, law practitioners have little or no knowledge of the French language, let alone French law, and are thus deprived of access to an essential source of present Ethiopian positive law.

As to the contents of these codes, the commission referred to various sources, including common law digests, international instruments, judicial precedents and learned studies. All in all however, the main inspiration of the projects can be traced to the Romano-Germanic tradition and, more specifically, to French legal principles and judicial practice.

The code of civil procedure was drafted, also in French, under the direction of another expert, Dr Graven, a professor of criminal law at the University of Geneva, and completed after the above two codes had already been approved. In criminal law, two new codes were promulgated: the penal code in 1957 and the criminal procedure code in 1961 (Graven 1965: 2-6). In contrast to the civil, civil procedure and commerce codes, these last two codes, although inspired by the Swiss code, owe a great deal to the Common Law. This is probably because the introduction of an inquisitorial system on the continental model would have required the creation of new institutions, such as the ancestral investigating judge (the *juge d'instruction*), which were

alien to the Ethiopian tradition and practice in criminal matters. However, as no equivalent to the English Director of Public Prosecution was introduced, the new system was not in line with an important element of Common Law practice.

Nevertheless, the reform put at the disposal of judges, legal practitioners and scholars a modern, comprehensive and codified legal system produced in Amharic, the national language. The English translation also published in the *Negarit Gazeta*, the official compendium of Proclamations or laws, gave those with imperfect knowledge of Amharic a parallel access to legislative texts.

The legacy of the reform - linguistic pitfalls and legal confusion

Fifty years have passed since the extensive reform of the Ethiopian legal system. As we have seen, the Codification Commission was acutely aware of the importance of language and strove to express the law in clear and concise Amharic. Further updating which led – *inter alia* – to the new criminal code of 2005, followed the same principles. Yet, neither the Commission nor its followers seemed to have been aware of the major problems facing the implementation of the reform. These problems are closely linked to the language in which the law is written. Even more importantly, they relate to the sources of the law which, expressed in a different language, carry concepts, traditions and meanings not necessarily understood without reference to these sources. This is why, in any country and in various degrees, judges and attorneys study judicial precedents, consult learned commentators and generally speaking keep abreast of the evolution of the law in any given field. This is not new; in the early 1800s, commentators agreed that Roman law was becoming indispensable to interpret the new (Napoleonic) codes. Unfortunately, this is precisely what most Ethiopian lawyers can no longer do, since few are proficient in French, let alone Latin! Moreover those who can read French find very few legal French books in the university or court libraries, and commentaries in Amharic or in English dealing with French law are rare and often superficial or obsolete. The Internet, which could direct to some French sources, is not yet easily accessible to practitioners and students. As a result the law, cut off from its roots, ceases to be fully intelligible. Ironically, former colonies, because they inherited the coloniser's legal system which was forced upon them, can easily refer to that system in a language they understand and practice. This is not of course always true, especially when a novel political and linguistic influence had displaced the language and the law imposed by the former coloniser. In East Timor for instance, Portuguese was partly superseded by English when the United Nations briefly became the legal government after independence from

Indonesia thus imposing an entirely new language to the lawyers who had to deal with the United Nations administration and World Bank contracts! By the time power was transferred to an East Timorese administration, the English language was fairly well established and no doubt carried with it elements of Common Law which may in time displace local customs and Portuguese law. In Commonwealth countries, a measure of coherence and consistency can be preserved since, in some circumstances, the Privy Council in London can hear appeals from their courts. In French speaking countries, lawyers and judges can sometimes refer to French precedents because the common language and an understanding of a common legal heritage make it possible. It is the case for instance in Haiti, which gained its independence from France as early as 1804, but where important domestic cases are still commented in the light of the Paris *Cour de Cassation*'s decisions although there is no judicial link between the Haitian and the French judicial systems.

Ethiopian lawyers are aware of the problems posed by the discontinuity between past sources and current law due to language limitations. Girma W. Selassie, writing in the Mizan Law Review explains:

For much of the time I was associated with the Addis Ababa University Law School, Legal French was a compulsory course. The reason is that several of our codes, including the Civil and Commercial codes, were drafted by French men and they drew heavily on French law. Therefore a fuller understanding of a substantial portion of our law requires going back to the primary source. Although some may consider this a luxury, I still believe a smattering of the French language to be a useful tool to any Ethiopian lawyer worth his salt (Selassie 2007:127).

It was different when the reform took place. For instance, the Ethiopian Minister of Justice requested a French version of the new code of commerce which was duly handed over and published in Paris with an introduction by Alfred Jauffret who had assisted the Commission of Codification (Jauffret 1965: 2-6).

The problem was further aggravated by several factors. First, between 1974 and 1991, under the regime of Colonel Mengistu, a number of Ethiopians went to the Soviet Union or to other East European countries to study various subjects, including law. Although this is hardly noticeable now, the use of an East European language and the knowledge of a socialist legal system which fitted the Ethiopian regime of the day but was alien to the Ethiopian legal tradition have no doubt influenced a generation of lawyers. Second, the way law is taught in Ethiopia has created problems of its own. Since the change of regime in 1991, five new universities were created. They all include a law school which generally follows the curriculum of Addis Ababa University (AAU). As finding a relatively large number of competent

teachers became increasingly difficult the government, as it did in the 1960s when AAU was created, called upon foreign lawyers who can teach in English, the only foreign language that all students can understand, taught as it is in secondary schools, although Girma W. Selassie (op. cit) laments:

Students are supposed to supplement that (classroom learning) with a substantial dosage of reading on their own. But the lamentable state of our libraries gives them a ready excuse not to. Yet, that is not the real or, at least, principal reason. Too many students simply do not have the requisite vocabulary to read and understand a textbook in English, a language that we continue to pretend to be the medium of instruction (Girma W. Selassie: 127).

These lecturers are mainly American and Indian lawyers, financed by their government or by private legal institutions, who tend to teach their own brand of common law as practised in their country. Books and other teaching materials are also often imported from their country of origin. As a result, not only did French sources become inaccessible, but they were replaced by a common law approach which varies according to the nationality and experience of the teachers, and is often at variance with the law of England which had inspired some of the legislation codified in the 1950s. This is particularly true of criminal law and procedure. The problem is particularly acute in criminal courts where the understanding of the procedure governed by the old 1961 Criminal Procedure Code reveals differences of interpretation between the Amharic and the English texts. Often the English version is used, not because it is necessarily clearer, but because it can be linked and explained by reference to the common law system taught in law schools. The lacunae of the Criminal Procedure Code, such as the lack of provisions governing the admissibility of evidence, are often covered by reference to common law treatises or cases decided in England or elsewhere without reasoned argument as to their relevance to the corpus of Ethiopian law. As the European Union observer of the Opposition's trial at the Federal High Court in 2006-2007, I noted that Judges, Prosecution and Defence, rather than citing largely unpublished Ethiopian precedents, referred on more than one occasions to American or Indian judgements which seemed to have little relevance to the case but were expressed in a legal English which appeared to give them authority!

Foreign legal experts invited by the Ministry of Justice to assist with the seemingly permanent process of legal reform often unwittingly compound the problem. Few have any idea of Ethiopian law, let alone Ethiopian culture and language and, generally speaking, do not have enough time to acquire it whilst they stay in the country. They also bring with them a legal language filled with untranslatable concepts which is met by lawyers and civil servants

alike with respectful appreciation, patient incomprehension, muted commiseration or outright opposition.

The way forward:

A comparative legal approach recognising the essential contribution of languages to the evolution of modern Ethiopian law

The initiative taken by Haile Selassie in the 1950s and the comprehensive reform of the justice system launched by the present government all aim to consolidate existing laws and modernise the codification of the legal system. Ethiopian lawyers recognise the essential role played by foreign languages in the evolution of the law. Senior judges and civil servants of the Ministry of Justice regularly travel abroad to acquaint themselves with foreign legal systems. Some undertake doctoral or post doctoral research in Europe, especially in the United Kingdom, and the United States. In most cases, the medium of study and research in Ethiopia and abroad is the English language. The hiatus between the French sources of the codified positive law and its understanding and implementation is therefore patent and probably irreversible. The solution to this very difficult problem involves a combined linguistic and legal approach. English, as a teaching medium in law schools will of course continue to be used in parallel with Amharic in the teaching and the interpretation of the law. But the reform of the legal system in which the Ministry of Justice is currently engaged may offer an opportunity to tackle the two problems already mentioned: the understanding of Romano-Germanic sources of current law and the harmonious combination of the two legal systems which, together with Ethiopian tradition, inspired the codification. The process of legal harmonisation within the European Union present similar problems and may therefore be of help in the Ethiopian situation. EU directives are transposed into national law by national legislation. The European Court of Justice (ECJ) provides a uniform interpretation of these transposed directives by national courts (Taylor 2005:121). In practice, this means that national courts will be bound to adopt the ECJ's version of any given directive, notwithstanding the language in which it is received by the national courts or the legal system in which it will be applied. In other words, the translation of the directive having been 'authenticated' has therefore acquired the force of law.

In Ethiopia, the objective is to establish a sound legal system taking account of the three historical sources and providing a coherent mechanism to clarify ambiguities and enable practitioners to solve present legal problems. This could be achieved by a team of Ethiopian and foreign comparative lawyers with a good knowledge of the three legal languages and systems

which influenced the modern evolution of the law. Such a proposal was made in 2005 by the expert team of judges and other legal experts sent by the Center for International Legal Cooperation (CILC), on the Ethiopian government's invitation, to assist with the Justice Reform Program. In its final report of 2005 CILC recommended – *inter alia* – a review of the legal system including its consolidation, and a review of the legal terminology used in the two languages, Amharic and English. In this respect, a judicial body could be set up to pronounce on the interpretation of texts and practices originating in foreign (French and English) systems in a manner similar to the procedure used by the ECJ.

Whatever is decided in Ethiopia in the years to come, there is no doubt that languages will remain at the heart of any reform of the Ethiopian legal system. The solutions which will be found to solve these difficult problems may inspire linguists and lawyers confronted to similar situations in other parts of the world. ■

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