

University of Michigan Law School

University of Michigan Law School Scholarship Repository

Book Chapters

Faculty Scholarship

1990

Translation, Interpretation, and the Law

James Boyd White

University of Michigan Law School, jbwhite@umich.edu

Available at: https://repository.law.umich.edu/book_chapters/248

Follow this and additional works at: https://repository.law.umich.edu/book_chapters



Part of the [Law and Philosophy Commons](#)

Publication Information & Recommended Citation

White, James Boyd. "Translation, Interpretation, and the Law." In *Textual Fidelity and Textual Disregard*, edited by B. P. Dauenhauer. New York: Peter Lang, 1990.

This Book Chapter is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Book Chapters by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

American University Studies

Series III
Comparative Literature
Vol. 33



PETER LANG
New York • Bern • Frankfurt am Main • Paris

Bernard P. Dauenhauer, Editor

**Textual Fidelity and
Textual Disregard**



PETER LANG

New York • Bern • Frankfurt am Main • Paris

Translation, Interpretation, and the Law¹

James Boyd White

As my title suggests I wish here to elaborate some connections among the practices we know as translation, interpretation, and law.

Translation

Whenever we use the word “translation” we use a metaphor, that of “carrying something over” from one place to another, for the word comes from the Latin *trans* (across) and *latus* (past participle of *fero, ferre, tuli, latus*: carry).² It thus comes from the same Latin verb as “transfer” and has much the same meaning, suggesting that one might carry something over from one language to another as one carries something over from one side of the river to another, or from one tax year to another (as in “tax-loss carryover”). The idea of translation as a kind of transportation commits us implicitly to a certain view of meaning, namely, that it is like an object that can be picked up out of the place where it is found and dropped into another place; or, to put it another way, that the meaning of a sentence can be separated from its words – from its language, from its cultural context – and reproduced in another.

It is true that this sometimes makes a kind of sense. Think, for example, of directions for travel or directions for use: we can use a Serbo-Croatian phrasebook to ask our way to the beach, or we can translate French directions for building a bridge (whether made out of tinker toys or concrete), and do so largely without loss. But this class of cases is small, and it is worth observing what the reason for them is, namely that in them our immediate motives can be represented in material or instrumental terms – getting to the beach, building a bridge. In this sense both speakers have agreed to speak as if their utterances worked by naming or pointing, and in such a case the reduction of their uses of language to “translatable” meanings does little violence to their

practical motives or wishes. For the purposes of the conversation, that is, both assume that one party wants only to get to the beach, or build a bridge, and that the task of the other is to point the way. Both speakers inhabit the same context, or pretend that they do, and they agree to use language to point out certain features of that context such as “hospital,” “hotel,” or “restaurant.” For the moment neither takes any interest in a larger relationship with the other person or with either language, both of which are by agreement treated as purely indexical systems.

But the minute the context changes, the indexical function must be expanded to include something else, a teaching of the language to the one who does not know it. (Think, for example, about how easily Americans get confused by continental terms for “school,” “college,” and “university.”: “In Germany the *Gymnasium*. . .”) And there are many situations in which the view of translation as transportation, of meaning as transportable, makes no sense at all: think of translating a poem, for example, or a political speech, or an expression of love, from one language to another. In such cases the very attempt to translate brings us again and again to face that which is particular or unique to the language and its context, to the speaker himself, and therefore cannot be translated, cannot be “set over.”

How far does the impossibility of translation go? The Spanish linguist Ortega y Gasset tells us that it reaches all acts of translation, for in every representation of a text in another language there are necessarily modifications of the original, and modifications of two kinds: what he calls “deficiencies,” by which he means aspects of the meaning of the original that are not replicated in the translation, and what he calls “exuberances,” by which he means aspects of meaning that appear in the translation but are not part of the original.³

Exuberances and deficiencies arise from many sources: from the fact that the words we use have different histories in the two cultures, hence necessarily different and unreproducible meanings; from the very structures of the two languages, each of which will require that we specify something – gender, tense, aspect, number – as to which the other is silent; and from the differing social, cultural, and physical contexts into which each utterance is an intrusion. (The German “*Wald*” is different from the English “forest,” or the American “woods,” not only linguistically but physically: the trees are different.) In addition, a very large “exuberance” arises from the fact that the new text is a translation in the first place, and thus bears a relation to a prior text, in another language, of a kind that the original does not. Even in the

simplest case, then, there is a sense in which translation is necessarily imperfect; as speech becomes more complex, the imperfections increase until we wonder what connections can exist at all between the original text and its purported replication.⁴

The translator must thus perpetually inhabit the uncertain space between two truths, that it is possible to make a text in one language that to some degree mirrors or reproduces the text made in another, and that this enterprise, so conceived, is always in a fuller sense utterly doomed. How then are we to conceive of and talk about the “meanings” of the texts we translate, and about the process of “translation” itself?

* * *

I want now to turn from “translation” to what we call “interpretation” and say: Interpretation is directly continuous with translation, for one who seeks to make a text of his own in response to another text composed in his own language must inhabit his own version of the translator’s uncertain space, knowing that it is impossible fully to reproduce the meaning of the prior text except in the words of the prior text, in its context, yet knowing as well that conversations can take place about such texts in which they are for some purposes, and in some ways, usefully represented in other terms. This is true not only in literary criticism, where the critic must create his own sense of the text he talks about, but true in law as well, where we are forever reducing a case to what we call its “holding,” and where the meaning of one case is shifted by subsequent cases that depend upon it.

We can best think of an expression not as a way of conveying a message or idea, as a “vehicle” with a “content,” but as a gesture the meaning of which is indissolubly tied to its immediate and unique context: to its language and culture, to the social relations out of which it emerges and upon which it acts, to the prior texts that its author and audience use to establish and understand its terms, to its location in a particular place in the physical world, and so on. Our responses to such expressions, whether “interpretations” or “translations,” are not to be thought of as replicating the originals or conveying their “content” but as gestures themselves; as if the first expression were a piece of a dance, an invitation to make a dance together, and as if our responses to it were answering movements.⁵ There is to such a gesture no single right response but an infinite number of possible responses, many of them good

ones, many not so good; in evaluating them we should not speak of accuracy so much as appropriateness.⁶

* * *

Consider the following words:

Andra moi ennepe, Mousa, polytropon

Some readers will recognize this as the first clause of the *Odyssey*, but for most I assume this will be a set of unintelligible marks and sounds. I want to ask: What happens as I start to give it further meaning?

This process has in fact already begun, and the passage has acquired a kind of meaning it lacked at first, for I have identified it as coming from the *Odyssey*. This means that the reader will attend to it differently, with a different attitude and a different part of the mind, from the way he would if he were told, say, that this was a Finnish phrase meaning, “Please leave the washroom clean for the next passenger.”

Suppose I say that this Greek phrase means: “Speak, Muse, of the man of many turnings.” Have I actually replicated the meaning of the Greek in that phrase, and if not, what have I done? What attitude should you have towards these English words? What else do you need to learn in order to feel that you understand this line of Greek?

Consider the phrase “Speak, Muse. . .” (*ennepe Mousa*), and think of the questions that could be asked of it. What is this “Muse” invoked here, why is she invoked this way, and what is the “speaking” she is asked to do? How is this line to be read, for example, against the first line of the *Iliad*, which asks the “goddess” (*thea*) (not the Muse) to “sing” (*aoide*) (not speak)? What is the role of the poet supposed to be? (Here you need to be told that the poet here appears as a dative pronoun – *moi*, suppressed in the translation – that means “to me” or “through me” or “for me” or something like that.) And “man” (*andra*): does this just mean “person,” or is it emphatically male? Does it express or suggest a set of values about men, and by implication women, in this world? These are questions of real difficulty, each of which could be pursued at considerable length.

Beyond them there is the way the words fit together in the two languages: The Greek poet can begin with *andra* (accusative of *aner*) for Greek is an inflected language that does not depend as English does primarily

on order or sequence to establish relations among its words. Here the noun is put in a case that implies an action and an actor affecting it. The next word – *moi* – defines the poet’s role, suggesting, by the dative, that something is being done to or for the speaker. The “speak” verb – *ennepe* – comes next, defining this activity, and “*Mousa*” – the Muse – provides the nominative agent. (A name, in the vocative, that implies the existence of a person; but there is no such person, so how is this gesture to be read? As the formal marker that tells us we are beginning a certain sort of poem? As a statement of “religious belief”? But what could such a phrase mean in this unretrievable context?) The last word, *polytropon*, in the accusative masculine singular, goes with the first – inflection permits it to be moved to the end of the clause, for shape and emphasis – and combines elements meaning “many” or “much” and “turn,” ambiguous as to whether objective or subjective, so at once: “man suffering many turns” and “man capable of many turns.” We thus end our translation this way:

andra moi ennepe, Mousa, polytropon

This sketch is only the merest beginning: even if you were to spend your life on it, this text would always be imperfectly before you, the questions we have just raised serious and open ones, for we can never fully know what needs to be known about the prior texts and social facts that defined the context into which it was an intrusion, in which it was a performance. Any interpretation we give it, like any translation of it, will be full of exuberances and deficiencies.

Law as Translation

One of the speeches of the Greek orator Lysias is conventionally entitled “Against Theomnestus, on a Charge of Slander.” Lysias wrote this speech on behalf of an unnamed speaker who is suing Theomnestus for having said that the plaintiff “killed” his own father. (The word I translate as “kill” is *apokteinein*.) Athenian law had no general cause of action for defamation, as we do, couched in terms of injury to reputation, but instead by legislation made actionable certain specific utterances, including charges of murder, of throwing away one’s shield, and of beating a parent. In the part of the speech that is for present purposes of greatest interest, the speaker responds to an anticipated defense by Theomnestus, namely, that he is charged only with

having said that the plaintiff “killed” his father (*apokteinein*) not, what the law prohibits, that he “murdered” him (*androphonein*). The question is whether this difference should matter.⁷

Lysias argues that it should not, on the grounds that it would be impossible for the lawgiver to write down all the words that have the same force. In saying one he makes clear his meaning with respect to all the others that are like it. Lysias then gives examples. It is actionable to call someone a “father-beater” or “mother-beater”; should someone escape liability who says that a person had beaten his “male” or “female parent”? The law makes it actionable to say that someone “threw” (*apoballasthai*) away his shield; should someone be able to avoid liability by saying instead that he “flung” (*riptein*) away his shield? Similarly, it is a statutory offense to steal “clothes”: should someone be able to escape liability by saying that he had only stolen a “cloak” or “chiton”?

He then reads a series of old laws, each one of which uses an archaic term that means something different in the ordinary language of his day from what it meant when it was used. One such law, for example, authorizes certain people to be placed in the stocks (*podokakai*); it would certainly not be a valid complaint against the official who did this that he otherwise properly placed an offender instead “in the wood” (*xulos*), which is the modern name for stocks. Similarly the law uses a word for “swearing” that in contemporary Greek means “false swearing,” but it should obviously be taken in the former sense. Antique words used in legislation that prohibited “shutting the door” to protect a thief, “placing out” money for interest, “street-walking,” and the like have also changed their meaning in ordinary discourse, but in all these cases the original meaning of the word, not the current one, should prevail.

This argument for the maintenance of old meanings, and old words, is in effect – though Lysias may not have known it – an argument that the law should be regarded as creating a distinct discourse of its own, in which words are given their meanings by reference to the purposes and contexts of the law, not to the shifting usages of ordinary speech. To us this seems obvious, for we have long lived with a technical legal language; to the Athenian, who tried cases without lawyers, without precedent, without legal scholars, before juries that sometimes included as many as one-tenth of the entire body of the citizens (who were of course also the legislators), the idea of a distinct legal discourse was a foreign one. (By what special speakers, in what special conversations, was it to be maintained? You can see how the Athenian democrat would resist it.)

But beyond that, Lysias is here arguing that interpretation is a kind of translation: one cannot simply use the old words as if they meant what they do in today's ordinary Greek; one must recognize their different meanings and try to give them life in the present moment. And what Lysias claims for the Greeks is also true for us as well, that the law written at one time must be interpreted in another, when not only social and cultural circumstances but even more explicitly the language itself has undergone a change. We often say that the words are to be given the meaning that they had in their original context, so far as this is possible; this necessarily requires both the maintenance of that language as a distinct one and a kind of glossing that is really a form of translation, a recasting of the old text to state its meaning in new terms. But this activity is far more complex and uncertain than Lysias makes it seem, for one cannot simply look to the original meaning of the words and carry that meaning without loss into the present. The act of setting over – of interpretation or translation – will always involve “exuberances” and “deficiencies”; indeed it should also involve an acknowledgment on our part that our sense of the meaning both of the past expression and of our own version of it (by a comparison of which the exuberances and deficiencies might be measured) is itself incomplete and uncertain.

The reading of legal texts requires a kind of judgment that is in fact a form of lawmaking, entailed in the very act of interpretation itself. Think, for example, of common-law adjudication, where one typically asks of a set of cases: “What general principle can be found here that will explain them all?” and “How does that principle bear on the present one?” This kind of common-law interpretation is explicitly a form of lawmaking, and legitimately so. Lysias shows that statutory interpretation is too, and for the same reason, namely, that the original text must be “translated” to present circumstances and contemporary language; what we can see more clearly than he acknowledges is that in this process of translation there is always gain and always loss, always transformation; that the “original meaning” of the text cannot be our meaning, for in restating it in our terms, in our world, no matter how faithfully or literally, we produce something new and different.

The central activity of law is the reading of texts – cases, statutes, regulations – and their imperfect reproduction and arrangement, in compositions of our making, in contexts to some degree distinct from those in which they were made. It is in fact a kind of translation, and this knowledge should shape both the way we engage in it ourselves and the way we judge the productions of others.

* * *

Some years ago the Canadian Royal Commission on Bilingualism and Biculturalism published a series of Studies on the problems of life in a two-language culture, one of which (prepared by Claude-Armand Sheppard) was entitled *The Law of Languages in Canada* (1971). In Canada both French and English are official languages: languages of the law, of theoretically equal status. But how does this work out in practice? Think, for example, of the process by which laws are made: Are they to be “drafted” in one language, then “translated” into another, or are they to be drafted simultaneously in both languages? In either case how will this be done?

In fact at the time of the Study the practice of the Canadian federal government had been the former, to draft all national legislation in English, then translate it into French. The achievement of the Study is to show that this practice operates on a set of false assumptions not only about translation but also about the process of statutory drafting, activities that the Report sees not as discrete but as continuous and of deeply similar structure. Think of the way legislation is drafted, for example: the draftsman starts with a rather general statement by the legislature, or more properly by a ministerial department or committee, which it is his job to convert into the language of the law. This requires continuing thought and reflection both about the proposed legislation and about the legal context into which it is an intrusion; the task of the draftsman, like that of the translator, is to create a text that is different from, yet faithful to, a text composed by another. Here is what the Study says:

The draftsman of a statute must first of all understand the legislative policy which the statute is intended to express. He must examine critically, as a lawyer, the policy which he is to draft into a legislative enactment. He may have to round out that policy and supply a multitude of details since the legislative proposal he receives is in the form of a broad statement. Some of these details and refinements of policy appear only while the statute is actually being drafted. In drafting the statute the draftsman must consider it in relation to other statutes and the law generally. Where it happens that more than one government department may be interested in a proposed piece of legislation, the draftsman brings together officials from these various departments, and the initial

decisions as to the policy of the act may be altered as a result. Sometimes the legislative proposal has not been properly prepared by the departments concerned and the draftsman must join with the departments in policy discussions. He sometimes has to elicit opinions on policy or to prepare alternative drafts. In order to understand the legislative proposal fully, he must familiarize himself with its subject matter, with the legislative problems involved, and with the proposed solutions. Conferences with the sponsoring department may become necessary for this purpose. Once he truly understands what is expected, he must then plan the kinds of provisions the statute will have to include. This will entail further discussions with the sponsoring department, as a result of which further changes may be made. Finally he is ready to draft. Once he has completed his draft, it must be revised, examined for imperfections, commented upon, and considered and discussed with the sponsoring department until both the sponsors and the draftsmen are satisfied with the statute's form and content. It is then submitted to the deputy minister or minister and further conferences take place, after which further change may also be required. In the process the draftsman, having participated in all the deliberations culminating in the production of a statute, will have become somewhat imbued with the spirit in which the original policy and its subsequent modifications were conceived, and should therefore be more thoroughly acquainted with it than would someone who merely reads his finished product (111-12).

The reason for the present practice, the Commission was told, is that "statutes can be drafted only in one language," and that language has to be English, for it is the majority language. Only after they are drafted in English are the statutes translated,⁸ and this by officers of the Bureau for Translation, who have no particular legal expertise. The result is this:

Anyone who has examined the French text of any federal statute, even in the most perfunctory manner, has become painfully aware not so much of grammatical errors as of the totally non-Latin and non-idiomatic use of the language. In fact, the French text is frequently almost incomprehensible to a French lawyer. The reason was best explained by [Adjutor] Rivard:

“The way an Englishman likes to develop an idea bears scarcely any resemblance to the way a Frenchman would do it. The mentality, turn of mind, and method are different. One may thoroughly grasp the idea of a law as expressed in one language, and yet be unable to translate it properly into the other. Unless the two languages have a common genius and the intellectual processes of both peoples are identical, any attempt at translation is vain if it is not preceded by a complete dissimilation of the legal idea to be transplanted. And that will necessarily involve fundamental modifications, the development of new insights, the organization of both the whole and the parts along different lines – in fact a new concept of the law with all the changes necessary to conform to a different way of thinking, doing and speaking. Any other method of borrowing will lead to deplorable consequences (114).”

In its quiet way the Study thus shows that the activities of “drafting” and “translating” cannot be separated from each other, as we normally think, or from “interpretation” either. These are not so much distinct practices as the same practice in different forms: in all three a person is seeking to elaborate the meaning of one text by composing another, of his or her own making. In each case fidelity to the prior text is the central ethical imperative, yet in none can that faithfulness be defined as a mindless literalism – which would be no fidelity at all – nor can the duty of fidelity be discharged in any other merely mechanical or technical way. There is in fact no one right way to discharge it; it requires a response of individual mind and imagination, the kind of self-assertion implied in the making of any real text. It presents us with a genuine intellectual and ethical difficulty.⁹

How are we to talk about this difficulty and the art of language and of judgment by which it might be met? The Study talks about what the “draftsman” knows by virtue of his participation in the legislative process that the mere “translator” of the finished product does not by saying that he understands the “policy” of the legislation. But, it goes on, this is not just a matter of obedience to the will of another, nor of simple cognition, for he must “examine the policy critically, as a lawyer.” His task is to “round it out” and to “supply details,” for what he receives is a “broad statement,” what he

produces is legislation. He must “consider it, in relation to other statutes and the law generally.”

This is a welcome relief from simple-minded talk about “effectuating the legislative intention,” for it is obvious that the drafter helps to create that “intention.” But the Study speaks in largely conclusory terms, as though we all knew what it meant to examine a policy “critically as a lawyer,” or to “consider” a statute “in relation to other statutes and the law generally.” And the text shifts emphasis, between seeing the drafter as an active source of law and pretending that he is only the tool of the true lawmaker (whose “intention” he is to realize) in a way that is less than fully coherent:

In the process, the draftsman, having participated in all the deliberations culminating in the production of a statute, will have become somewhat imbued with the spirit in which the original policy and its subsequent modifications were conceived, and should be therefore somewhat more acquainted with it than would someone who merely reads his finished product (112).

What is the “it” in that sentence? the ‘spirit’? the policy? the statute?

Turn now to the remarks of Adjutor Rivard quoted above. He says that the difficulty is at heart what we would call cultural (or perhaps psychological): “the mentality, the turn of mind are different. Unless the two languages have a common genius, and the intellectual processes of both people are identical, any attempt at translation is vain if it is not preceded by complete dissimilation of the legal idea to be ‘transplanted.’” This will in turn require the creation of a whole new idea of law, a culture in the space between cultures, resulting less in a “translation” from English to French than in the invention of a new language, a new world.

* * *

Compare the problems that arise when the terms of a treaty provide that it be authoritative in both (or all) the languages in which it is composed (or into which it is translated before signing). The effect of such a provision is not to give, by fiat, both versions the same meaning, for that is impossible; it is simply to postpone the problem of language difference and make it the subject of negotiation at some later date, when the two sides propose differing constructions of the treaty, each relying on its own version.¹⁰

For it is inevitable that the two texts will generate differences of meaning. These will be resolved, if at all, not by simple assertion, but by a process of conversation that draws upon the rest of the document, upon its evident aims, upon the prior texts defining the context upon which it acted, and so forth. Obviously in such a case the “interpreter” is not simply yielding obedience to a plain text but construing it, translating it, giving it meaning, and doing so in ways that cannot be reduced to rules or organized by them either. Here, as elsewhere, “reading” is an art, to be judged in its particular performances, not a “science” reducible to system.

Consider what “intention” means in the treaty context: two heads of state work out a rough agreement about arms reduction (or rather a pair of rough agreements), say in Russian and in English. What happens next? “Drafters” and “translators” go to work producing a pair of texts which are authenticated by the leaders. Do the leaders understand what they authenticate? In some sense certainly not: each is rather acting with confidence in the advice of his subordinates and committing himself and his country to a set of rhetorical practices by which the future relations between the countries will to some degree be shaped. “We agree that this document can be invoked as authoritative; we know it is full of uncertainty, but we have confidence in our skill at managing the kind of argument by which its interpretation will go on.” This is what they are saying, whether they know it or not.

Is this a foolish confidence? Not at all: it is full of uncertainty, but it is the only kind of confidence it is open to us to have; it is certainly less foolish than thinking that your wishes have been clearly and immutably set down in writing in such a way as to govern any future dispute. In particular it is the only kind of confidence that the framer of a legal text can ever have – whether it is a contract, a statute, a constitution, or an opinion that he has written – for the meaning of his text will of necessity be given it in considerable part by others, engaged in practices of thought and argument which are only roughly predictable ahead of time. This does not mean, as some would say, that it is senseless to talk of the text having any meaning at all, on the theory that all the meaning is made by the “community of interpreters” – a view that is as wrong as its opposite, that the meaning of a text simply lies there in the text, for future generations to pick up. Meaning is always made by interaction between mind and text, and this is true in what we think of as interpretation and translation alike: the real question is, with what attitude and skill we engage in this process.

* * *

The law works by the translation of authoritative texts into the present moment, a kind of pushing forward of what was written in one context into another, where it has a necessarily somewhat different meaning. This is not a mechanical or technical process and its burdens and responsibilities cannot be cut short by any of the devices used to avoid them, such as resort to the “original intention” of the framers or the “plain” words of the text. It always requires an act of creation, a making of something new; yet the original text cannot be forgotten, for fidelity is always due to it. Indeed it is upon the prior text that our right to speak at all depends. One has no authority to disregard it and substitute for it texts of one’s own composition, setting forth one’s own view of proper policy, proper practice. One must inhabit the space of uncertainty, at once bound by fidelity to the texts of the law and burdened with the knowledge that these texts do not translate (or interpret) themselves and that any construction of them is an act of one’s own for which one is oneself responsible.

At the center of law is the activity of translation.

Talking About Translation

I have spoken above of the impossibility of complete translation from one language, one text, to another. Here I wish to expand and complicate that theme, beginning with the implications of our ordinary talk about translation. In the translator’s preface to the *New English Bible*,¹¹ for example, we find the following sentence about translation, which states rather well what many people – what all of us, sometimes – would be inclined to say: “We have conceived our task to be that of understanding the original as precisely as we could (using all available aids), and then saying again in our own native idiom what we believed the author to be saying in his.”

What are we to think of this language? It is familiar – it is how we all talk – but to me it seems utterly wrong. Of course it is important to try to “understand” the original, but what does it mean to try to do that? As we know from our brief experience with the *Odyssey*, the process is problematic at its heart: we can never “understand” a text completely in the first place, and what we do “understand” can really be said only in the original language and in the forms of the original text. The word “precisely” in the sentence above, and the talk about the use of “aids,” seem to me to point in just the

wrong direction: toward something called the “meaning” of the text that is imagined to exist above, or beyond, or behind its language, when in truth the meaning is in the words as they are uttered in their particular context and nowhere else. The rest of the sentence, which assumes that someone is “saying something” in his language that can be separated from it and “said again” in another, is a formula that is in its own way as misleading as talk about “concepts,” or as misleading as the familiar nostrum in which one says that one is trying to translate the *Aeneid*, say, in such a way as “to produce the poem that Virgil would have written had he been alive today” – when “Virgil” could not be “alive” today, for he was in large part formed by the language and education in which he was raised, and, still more perplexingly, when the “today” in which we are to imagine him is in part shaped by the *Aeneid* itself.

But these ways of talking about translation run deep in our culture. To return for the moment to Lysias, he argues that in the instances he gives – of “stocks,” and “oaths,” and the like – the things (*pragmatai*) are the same, but we sometimes use different names (*onoma*). With respect to the slander cases, he says that what counts is not the name (*onoma*) but the meaning (*dianoia*). He is here talking as if words were merely labels, either for realities (*pragmata*) or for meanings (*dianoia*). But this will hardly do. Circumstances and meanings change, as Lysias himself elaborates; there is in fact no stable nonlinguistic reality to which words can simply “refer” as “names.”

Or think of the formulation, common in our own day, that words have “core” meanings, often called “denotative,” that are readily translatable; it is their “associations” or “connotations” that cannot be set over. But there is no translatable “core”: all the meanings of words are established by connections either to other words (and other texts) or to our world of particular experiences. In the sense that is implicit in our usual ways of thinking and talking about it, “translation” is impossible: one cannot get the “ideas” or “concepts” or “information” contained in one text, composed in one language, “over” into another text, composed in another language, nor can one in other respects create the “equivalent” in one’s own language of a text composed in another. What one can do is to create a text in response to an earlier text, a gesture answering a gesture.

Or so I have been saying. There are those who disagree. Roman Jacobsen, for example, asserts that “all cognitive experience and its classification is conveyable in any existing language.”¹² But he goes on to say that “poetry” is not in this sense translatable, for in poetry “syntactic and morphological categories, roots, and affixes, phonemes and their components

(distinctive features) – in short, any constituents of the verbal code – are confronted, juxtaposed, brought into contiguous relation according to the principle of similarity and contrast and carry their own autonomous signification.” He is of course right about poetry, but not only for these reasons: think, for example, of the music of a line, in French or English or Greek, and how obviously that cannot be reproduced elsewhere. But what he says about poetry is right about prose too: every element in the new text has different meanings from the old, for, like the old, the new one acquires its meanings from its context – from the expectations of its audience, against which it plays, by confirmation or surprise – and this context is always new. Think, to take an obvious example, of the translation of a funeral scene from Chinese, where “white” is the color of death: do you write “white” or “black”?¹³ Different languages create different kinds of relations among their words, and these cannot be replicated.

To take a more extended example, consider Sir Ernest Barker’s introduction to his translation of Aristotle’s *Politics*. As Barker says, it is not only in their poetry but also in their writings on political theory that the vocabulary of the Greeks had “overtones, echoes, and associations” of a kind we “can hardly recapture.” “Their political terms were charged with the significance of their own political environment and their own political experience; and neither the environment nor the experience is ours.”

He addresses this gap in part by giving his reader a kind of lexical introduction to the central terms of the Athenian political life, part of which is reproduced immediately below. He starts with the distinction between the Greek word *polis* and our word “state,”¹⁴ often used to translate it. One problem with “state,” he says, is its Latin origins, and in this it is typical of much of our political vocabulary:

We speak not only of the ‘state’, but also of ‘constitution’, ‘government’, ‘administration’, ‘sovereignty’, ‘statute’, ‘justice’, – and every word is derived from the Latin. The bulk of our political vocabulary is a Latin vocabulary. It is a useful, and indeed a majestic vocabulary: Latin has not only sonority, but it has also the gift of solemnity; and it adds precision to both. But the precision of Latin cannot do proper justice to the flexibility and nuances of the Greek (xii).

Barker then goes on to discuss a series of key terms, the first of which is *polis* itself.

The word *polis*, as has already been implied at the beginning of this prefatory note, means a civic republic, or, more particularly and especially, the city which is its heart. But this is a general statement; and it instantly needs qualification. We must therefore add, speaking more precisely, that the Greeks had a special word for the city as a place of residence – the word *asty* – and that the word *polis* originally meant the citadel (or acropolis, as it was called at Athens) at the foot of which lay the *asty*. But if this was its original sense, the word *polis* came in time to mean the whole organized political community, including both the residents in the *asty* (with, of course, any magistrates or other resident in the citadel) and the country-dwellers around the *asty* who frequented it for business and politics. This transference and extension of the sense of the word *polis* is easy to understand. The citadel, to which alone the appellation of *polis* was originally given, was the natural centre of gravity and the focus of authority; and it was an easy matter to use the term which originally denoted the centre in order to denote the whole circle and its content.

A further refinement may be added. It has been noted by scholars that the word *polis* was specially applied in Athenian documents to denote the circle of the organized community when it was acting externally (in the way of treaties or otherwise), and was thus engaged in relations with other organized communities. In other words, it was used as a term of the language of diplomacy; and it signified a ‘power’ engaged in relation with other ‘powers.’ Another term was employed, in the usage of Athenian documents, to designate the organized community when it was acting internally, and was thus engaged in the conduct of its own domestic affairs. This was the term *demos*, the ancestor of the word ‘democracy.’ Here again we have to record a growth and a transference of the original sense of the term. The word *demos* was originally used to denote the country-side and the country-dwellers (the people of the *agros*, as distinct from the people of the *asty*); and we accordingly find the units of the country-side called, in general Athenian usage, by the name of *demoi*, and their inhabitants by

the name of *demotai*. But by the fifth century a new use had supervened. The term *demos*, used in the singular as a general collective noun, had come to signify more particularly the whole Athenian community when assembled for its domestic affairs in an ‘assembly of the summoned’ or ‘meeting of those called out for attendance’ – which is the literal meaning of the word *ecclesia*

.....

From this refinement (which, it will be noticed, relates specifically to Athens – but Attic speech and Athenian terminology set the general tone for all Greece) we may now return to the word *polis*. It had a large number of derivatives. There is the derivative *polites*, or as we translate it by a Latin word, ‘citizen’. There is the derivative *politikos*, which is better translated (though, even so, it is translated imperfectly) by the Latin word ‘statesman’ than by the word ‘politician.’ There is the derivative *politeia*, which we translate by the Latin terms ‘constitution’ or ‘form of government’, but which again is something different from either; for it means, as Aristotle explains, a way of life, or a system of social ethics, as well as a way of assigning political offices. Finally, there is the derivative *politeuma*, which is used by Aristotle to signify the concrete or personal side of the *politeia*, or, in other words, to mean the body of persons enjoying full civic rights under the *politeia* (xiii-xiv).

Notice that despite the implications of his earlier talk about “associations,” Barker does not here proceed on the assumption that the “core” meaning of *polis* and “state” are the same, and that his task is thus to inform us about the “overtones” of the term, but recognizes that the terms are completely different in their origin and significance. It is not their secondary meanings that are different but their primary meanings; they are different all the way through. His method is not that of the abstract philosopher who aims to produce a definition of a term by equation or description merely seeking an equivalent term or phrase, but that of the philologist who gives you one word in relation to others. This is where their meanings lie.¹⁵ He teaches his reader something of the language she does not know.

All this means that to talk about a transparent proposition (whether about the natural or intellectual world) that can be translated without gain or

loss, without transformation, is to mislead. No sentence can be translated into another language without change.¹⁶

Suppose, for example, that instead of the first line of the *Odyssey* I had reproduced above the first sentence of Socrates' *Apology*, pure prose: the problems of comprehension would have been nearly the same, and would have begun with our ignorance about the social and rhetorical context in which he acted. Who are these "judges" or "men of Athens" he addresses, what kind of thing is this trial, what does this charge about impiety really mean, in short, against what expectations does this text play?¹⁷ The words, in Barker's phrase, have their meaning in an "environment" and "experience" which we can only guess at, and which is itself partly linguistic in nature; and, as we saw in the *Odyssey* too, part of the experience of language is the experience of the way words connect with each other, which is different in the two languages and not translatable. Our attempt to translate the *Apology* would once more have ended, as Barker's translation itself does too, in a language lesson.

* * *

For us it is almost impossible not to think and speak as if there were an objectifiable meaning out there, in Greek or Japanese, say, which it is our task to "set over" or "transfer" to English, in a process thought of as a kind of transportation. But we can come to recognize that what is out there is not a meaning but a text, and that the text cannot be set over into English; it is Greek or Japanese. Instead, what happens in what we call translation – and drafting and interpretation too – is that we make one text in response to another. The heart of the process is learning the language of another not as material for transposition but as a language of meaning in its own right,¹⁸ then making a text of one's own in the full knowledge that it will have a meaning of its own, different from but related to that of the original, and that one is responsible for the meaning one makes. The translated poem is both a poem itself and an interpretation of the original,¹⁹ and I think this doubleness is characteristic of all translation, and all interpretations too, indeed of all speech: one produces a text that is of value (good or bad) both in its own right and by virtue of its relation to another.

* * *

The common mistaken expectation about translation – that "what is said" in one language can be "said" in another – is itself I think the result of

a defective view of language more generally, namely, that language is a “code” into which “messages” are encoded, or perhaps a system of “signifiers” that derives its ultimate meaning from the real or imaginary things “signified.” In both cases language is conceived of as transparent; the speaker is assumed to engage, before speaking, in intellectual processes that in some way yield the content – the “message” or proposition or observation – that will ultimately be expressed in the utterance but have as yet no linguistic form. In its strongest version it assumes that we all live in a common nonlinguistic world of shapes, objects, animals, colors, ideas, concepts, and so forth, which different languages happen to label differently, with different sounds.²⁰

But in fact our experience is linguistic at every stage: our languages shape what we say and what we mean, what we see and what we experience; we are always talking in inner or outer speech; there can be no “content” without language; and language is neither a “code” nor a system of signification that points to things external to it. To think of the nonlinguistic world as the same for all of us is to erase the whole plane of cultural and social reality that is constituted in language and that in turn gives meaning to the natural world. (Who among us sees the sea and rocks as Odysseus did, or as the geologist does?)

There is, then, no “translation,” only transformation achieved in a process by which one seeks to attune oneself to another’s text and language, to appropriate them yet to respect their difference and autonomy as well, in what Hugh Kenner calls “interchanges of voice and personality.”²¹ In making (and reading translations) we should think and speak, then, not about transportable “content,” but about the relations – between texts, between languages, between people – that we establish in our own compositions; about the attitudes towards other people, other languages, that we embody in our expressions.

* * *

Thinking about translation thus brings us to face the facts, present in all reading and writing and talking, that perfect communication is impossible, that we always write and talk across our languages, as well as within them, and that there is no such thing as “understanding” in any simple sense of the word. Think, for example, of the definition of what we ordinarily mean by “a language”: when I say I will try to translate this text from “French” to “English,” the question can be asked, “What French and whose English?” We

speak as if all French-speakers spoke the same language, but obviously that is not true. No two people speak exactly the same French; their vocabularies overlap imperfectly, the prior texts that make up their reservoir of resources and allusions vary, their life experiences and range of associations differ, and so on. In the real world all language is idiolect, and this is as true of English as of French.

What then can translation be? It cannot be the setting over of meaning from one non-existent linguistic abstraction into another; it must be the composition of a particular text by one individual mind in response to another text. Neither of these texts can be understood perfectly, let alone “translated.” To try to “translate,” in the sense of fully reproducing meaning, is to experience radical failure.

But failure of a most instructive kind, for it brings one to a sense of self and language that is very different from, and erosive of, those that guide our initial expectations. Much the same is true when one tries to “interpret” a text with the idea of reproducing its meaning, or when one seeks to be wholly “obedient” to a text, say by giving it a “literal” reading, or when one wishes to arrive at perfect “understanding” of a text. To attempt to translate puts you in a place between texts, between languages, where you must respect both; to attempt to interpret puts you between the text and the present, where again you must respect both. In either case the more fully you inhabit the original – the more familiar you make it – the stranger and more unsatisfactory your own language (or your own version of a text you are reading) becomes. You always reproduce less than you find in the original, but you always intrude upon it as well, and as you work, you become increasingly conscious of these things. The effect is to render your own language problematic: opaque, awkward, restrictive. You open a chamber of the mind that before was closed and bring under scrutiny that which had theretofore seemed invisible, natural, beyond any imagined contemplation, your language itself.

* * *

But there is another side to all this, for something we call translation takes place all the time, and so do the associated practices of drafting and interpretation. We cannot read a foreign text at all without translating it, at least until we have made the language our own (and it has made us its own). We must talk in our own words about the texts we read, in law and literature and ordinary life alike, and we can sometimes do this satisfactorily. Transla-

tion is a necessary part of life. It is the process by which human beings understand and respond to one another.

What is more, we can – indeed we must – judge our own performances of these kinds, and the performances of others, as being done well or badly, of value to us or the reverse. We must not forget that this very chapter began with talk about a Greek text – was that a translation? – and that the remarks of Adjutor Rivard in the Canadian Commission Report may or may not have been translated. (Does it matter whether they were?) Some success is possible, then, if not full and perfect “translation”: What is it, and how is it to be talked about?

If we think that the proper measure of a “translation” is the degree to which it succeeds in “setting over” the meaning of an original, we shall indeed find translation to be impossible. But if we think of translation instead as the composition of one text in response to another, as a way of establishing relations by reciprocal gesture, to be judged by criteria of appropriateness, translation can, of course, “succeed” and do so in ways beyond number. There is no single appropriate response to the text of another, nor even a finite appropriate set of responses; what is called for is a kind of imaginative self-assertion in relation to another. It will be judged by its coherence, by the kinds of fidelity it establishes with the original, and by the ethical and cultural meaning it performs as a gesture of its own.²²