

## **Found in Translation: The “Transparency of Japanese Law Project” in Context**

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### *1. The Translator’s Perspective*

Quality translations of Japanese legal materials have, as a rule, been rare. Imagine a city with orderly streets broad and wide and buildings proud. It is not without shady corners and questionable precincts but it has weathered storms, absorbed distant learning and adapted to the winds of change. Its great failing is that it is unknown, shrouded by myth, rumored to be a ramshackle wreck, governed by whim, or uninhabited...this is the lost city of Japanese law. If translations serve as maps, this city was almost uncharted; the few publicly available maps were illegible or riddled with errors, only a wealthy few had access to reliable information.

The costs of failure in the translation of a legal system are serious. Ignorance breeds contempt; a dearth of translations implies there is little of value to translate. A corpus of bad translations serves only to confirm the outsider’s worst suspicions; superficial encounters with bad texts suggest that the “Other” legal system is indeed irrelevant.

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\* This article is based on a presentation given at the Australian National University on 6 July 2007 the Australian Network for Japanese Law (ANJeL) 5<sup>th</sup> International Conference on Japanese Law, within the theme of *Japanese Law after Recession and Reform: Once was Lost, Now is Found*. I am indebted to Stacey Steele, Associate Director (Japan) of the Asian Law Centre at the University of Melbourne for her pertinent and helpful suggestions on developing the content of this article.

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Japan is, after all, a society “lacking legal consciousness”, where law does not matter.<sup>1</sup> The lost city is of no interest after all; it has nothing to offer. Neither of these reactions to Japanese law serves Japanese interests, or the broader regional and global interests in the sharing of legal information.<sup>2</sup>

This article takes a translator’s perspective in examining the early success of the Transparency and Enrichment of Japanese Laws concerning International Transactions in the 21<sup>st</sup> Century – Doing Cross-Border Business with/in Japan Project (the “Transparency Project”), an initiative selected under the 2004 Grants-in-Aid for Scientific Research under the Japanese Ministry of Education, Sports, Science and Technology (MEXT) Specific Field Research initiative and subsequently extended to a six-year period in 2007.<sup>3</sup> The Transparency Project strives to develop a corpus of reliable translations of Japanese legal materials relevant to international dealings to facilitate the global exchange of ideas on Japanese law. I look at the previously insurmountable obstacles to the creation of such a body of work and the catalysts for their removal, before assessing the characteristics of the Transparency Project that have engendered success, in particular the translation theory underlying this effort. Lastly, I suggest policy and funding priorities likely to facilitate the ongoing success of this and similar efforts.

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- 1 The English language debate as to the significance of law in postwar Japan was sparked by the publication of T. KAWASHIMA, *Dispute Resolution in Contemporary Japan*, in: Taylor von Mehren (ed.), *Law in Japan: The Legal Order in a Changing Society* (Cambridge, 1963) 41. A recent overview of that seminal debate is found in: E. FELDMAN, *Law, Culture and Conflict: Dispute Resolution in Postwar Japan* in: University of Pennsylvania Law School Scholarship at Penn Law Paper 154 (March 19 2007) available at <http://lsr.nellco.org/upenn/wps/papers/154> (accessed on 23 August 2007). K. PORT, *Japanese Intellectual Property Law in Translation: Representative Cases and Commentary*, in: *Vanderbilt Journal of Translational Law* 34 (2001) 847 opens with the blunt statement; “inaccessibility has contributed to the misperception that Japanese...law does not exist. Even if it exists, the perception goes...it is nearly irrelevant.”
  - 2 On the value of law as a tool for economic development in the context of overseas development assistance see Y. MATSUURA, *Toward a New Generation Comparative Law: A Framework for Bilateral Collaboration in Law & Development Projects in Asia*, in: *Wisconsin International Law Journal* 23 (2005) 233-250. See G. GREENLEAF / P. CHUNG / A. MOWBRAY, *Emerging Global Networks for Free Access to Law: WorldLII’s Strategies*, in: University of New South Wales Law Research Series 16 (2007) available at <http://law.bepress.com/unswwps/flrps/art16/> (accessed on 23 August 2007) on the global free access to law movement.
  - 3 *Tokutei ryôiki kenkyû (21-seiki ni okeru wagakuni no kokusai torihiki kankei-hô no tômeika to jûjûtsuka – Doing Cross-Border Business with/in Japan no tame ni*; See <http://www.tomeika.jur.kyushu-u.ac.jp/index.html> (accessed on 23 August 2007).

## 2. *How Lost?*

Over 25 years ago the doyen of comparative Japanese law, the late Professor Dan Fenno Henderson, lamented the parlous state of English translations of Japanese legal materials, noting that a 1909 annotated translation of the *Minpô* (Civil Code)<sup>4</sup> and a 1931-32 *Shôhô* (Commercial Code)<sup>5</sup> translation remained the best available, even in 1980, and that all existing code translations were “inadequate for the next generation of comparativists.”<sup>6</sup> Henderson argued strongly for consistent use of terminology equivalents and led the creation of the University of Washington Japanese to English Legal Glossary, which, although dated, remains an authority.<sup>7</sup> As late as 2003 the Japan Institute of Labor relied on a bad 1990 translation of the *Rôdô-sha saigai hoshô hoken-hô* (Workers Accident Insurance Compensation Act).<sup>8</sup> An unrealistically low translation budget had been squandered on the lay translation provider, who, unable to either translate or check the finished work, had simply delivered a document marked by unintelligible gibberish, particularly in the long nested sentences characteristic of Japanese statutory drafting. Either unaware of the problem or short of funds for re-translation, the Institute had published and disseminated the bad translation for some 14 years.<sup>9</sup>

Henderson summarized the major obstacles to expert translation of Japanese legal materials as being selecting what to translate, due in part to the complex interdependence of primary and secondary legal materials in Japan so that documents translated in isolation are meaningless, the scarcity of bilingual lawyers to do the work, the enormity and endless nature of the task and the inadequate compensation and demeaning treatment offered to qualified specialists in comparison to academia and practice *per se*, as if Japanese to English legal translation were clerical in nature rather than specialist professional work.<sup>10</sup> It is unfortunately common to find clients in this language pair placing orders on the assumption that legal translation is akin to sophisticated photo-

4 *Minpô*, Law No. 89/1896 and No. 9/1898, as now amended by Law No. 78/2006; Engl. Transl.: Arts. 1-742 available at <http://www.cas.go.jp/jp/seisaku/hourei/data2.html> (accessed on 23 August 2007).

5 *Shôhô*, Law No. 48/1899, as now amended by Law No. 109/2006; Engl. Transl.: EIBUN HÔREI-SHA (ed.) EHS Law Bulletin Series (loose leaf, Tokyo) Vol. II, FA-FAA, No. 2200-2201 (as of 2006). See [http://www.ehs.or.jp/en/index\\_en.html](http://www.ehs.or.jp/en/index_en.html) (accessed on 23 August 2007).

6 D.F. HENDERSON, Japanese Law in English: Reflections on Translation, in: *Journal of Japanese Studies* 6(1) (1980) 117, 137-152

7 A specialist glossary of 3,232 entries still available via Jim Breen's Monash University ftp archive. See <http://dict.regex.info/www/j-e/lawgloss.txt> (accessed on 23 August 2007) for information about the glossary and <http://ftp.monash.edu.au/pub/nihongo/00INDEX.html> for the glossary itself (also accessed on 23 August 2007).

8 *Rôdôsha saigai hoshô hoken-hô* Law No. 50/1947 as then amended by Law No. 101/2001; Engl. Transl.: available at [http://www.jil.go.jp/english/laborinfo/library/documents/lj\\_law12.pdf](http://www.jil.go.jp/english/laborinfo/library/documents/lj_law12.pdf) (accessed on 23 August 2007).

9 This account is drawn from personal experience; the author was engaged to complete the 2003 re-translation of this legislation.

10 HENDERSON, *supra* note 6, 137-142.

copying, and intent on allocating trivial time and resources to the process, no matter how vital or complex the document in question. Although Japanese society continues to rely heavily on translation services, understanding of how to select providers and ensure quality and efficiency remains surprisingly shallow.<sup>11</sup>

### 3. *Catalysts for Change*

The “lost decade”<sup>12</sup> saw the emergence of overlapping catalysts for improvement in the availability of expert translations of Japanese legal materials. At the global level, the concentration of legal publishing into the hands of fewer and fewer stakeholders has prompted the emergence of the university-based World Legal Information Institute (WorldLII), a rapidly expanding counter-movement towards free access to law, which hosts and integrates hundreds of national legal databases and stresses the right of others to republish legal information.<sup>13</sup>

At the regional level, Professor Yoshiharu Matsuura notes that development policy emphasizing the “rule of law” has been “the dominant chorus” in both donor and recipient nations as a primary tool of economic development assistance. By 2003 Japan’s amended Official Development Assistance Charter specifically referred to legal reform assistance.<sup>14</sup> The Nagoya University Law School has had an integral role in Japanese government technical assistance for legal reform for East Asian nations transitioning from planned to market economies and from authoritarianism to the “rule of law” since 1998, acting through the Center for Asian Legal Assistance (CALE) since 2002.<sup>15</sup> Effective assistance to disparate recipient nations obviously required high-quality translation of a range of primary and secondary legal materials using the common medium of English. This was one imperative driving the 2004 Japanese government decision to create an environment for the ongoing translation of Japanese legislation and a dictionary to facilitate the work.<sup>16</sup> Professor Noboru Kashiwagi has helpfully outlined the various domestic rationales for and the fruit of the initiatives of the Cabinet Secretariat’s Expert Committee on Statute Translation (the “Statute Translation” initiative) in the most recent edition of the *Journal of Japanese Law*.<sup>17</sup>

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11 See <http://www.jat.org/translatorsearch/workingwithtrans-e.html> for a useful guide to working with translators in this language pair, prepared in both Japanese and English by the Japan Association of Translators.

12 Referring to the 1990s in Japan following the collapse of the ‘bubble economy’; also known as the “fruitful decade” in legal reform circles.

13 GREENLEAF ET AL., *supra* note 2.

14 MATSUURA, *supra* note 2.

15 See <http://cale.nomolog.nagoya-u.ac.jp/en/about> (accessed on 23 August 2007).

16 See the Final Report of the Study Council for Promoting Translation of Japanese Laws and Regulations into Foreign Languages released on 23 March 2006 and available in English at <http://www.cas.go.jp/jp/seisaku/hourei/report.pdf> (accessed on 23 August 2007).

17 N. KASHIWAGI, Translation of Japanese Statutes, in: *ZJapanR/J.Japan.L.* 23 (2007) 221.

Meanwhile in the purely domestic sphere, the Judicial Reform Council was proposing radical legal reforms based on a societal consensus that the time was ripe for the opening up of the legal system. Professor Koji Sato's 2001 statement that "the Japanese legal system is a mystery to people" neatly encapsulated the mood for a transition to a transparently governed society of autonomous individuals reliant on the 'rule of law', even within Japan.<sup>18</sup> A domestic impetus common to both the government Statute Translation initiative and the purely academic Translation of Japanese Law Project was the perception that the Japanese economy would not recover from the recession of the 'lost decade' in the absence of foreign direct investment, the facilitation of which would require transparent access to Japanese legal materials.

At the same time Professor Kent Anderson of the Australian National University has remarked on the expanding interest in the study of Japanese law outside Japan, particularly in Australia, and new avenues for NES students to complete undergraduate Japanese law degrees on MEXT scholarships before completing law degrees in their home country.<sup>19</sup> These developments and the advent of collaborative research bodies such as the Australian Network for Japanese Law<sup>20</sup> have cultivated, for the first time, a promising pool of candidates well-qualified to produce valid translations of Japanese legal materials.

#### 4. *How Found?*

The advent of the Internet has, in itself, brought about a revolution in the last ten years in terms of assortments of translated case law and legislation becoming available in the public domain. Early resources were the work of dedicated enthusiasts and major corporations and law firms with a public service bent, and this has led to an explosion of resources created by both public and private sources, although not all are of equal value,

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18 C. LAWSON / S. THORNLEY, Translation: 'Perceptions of the Current State of the Japanese Legal System': Interview with Koji Sato, Chairman of Japan's Judicial Reform Council, in: *The Australian Journal of Asian Law* 4(1) (2002) 76, 79.

19 K. ANDERSON, personal email correspondence with the author dated 27 August 2007. Professor Anderson's elective introductory course on Japanese law has risen to an enrollment of over 50 students annually, with enrolments in Japanese legal translation courses at over 15 students annually; as many as 25 law students fluent in Japanese applied to join the 2007 International Negotiation and Arbitration Moot Competition team sponsored by the Australian National University and the Australian Network for Japanese Law, following the 2006 team's success (see [http://info.anu.edu.au/StudyAt/\\_Law/Undergraduate/Courses/\\_LAWS2266.asp](http://info.anu.edu.au/StudyAt/_Law/Undergraduate/Courses/_LAWS2266.asp) accessed on 23 August 2007 and [http://law.anu.edu.au/anjel/content/anjel\\_teaching\\_comp.htm](http://law.anu.edu.au/anjel/content/anjel_teaching_comp.htm) accessed on 23 August 2007); the first Australian law students who already possessed undergraduate Japanese law degrees began appearing at Australian law schools early in the current decade.

20 See <http://www.law.usyd.edu.au/anjel/> (accessed on 23 August 2007).

reliability or permanence.<sup>21</sup> I have seen a previously unimaginable wealth of Japanese legal information in both languages move online during the course of teaching part of the legal translation unit in the University of Queensland's Masters in Japanese Interpreting and Translating across the four years since 2004.

The most promising early attempt to provide a corpus of translated case law by a Japanese public institution is found in the Supreme Court's English website. Although this collection is significant in size, it has suffered from the absence of search functions, rendering it almost useless to the NES user. However, in a welcome development echoed elsewhere,<sup>22</sup> the Asian Legal Information Institute, an ostensibly unrelated hub of free legal information, has recently created a search function for the Supreme Court decision English translations site, giving functional access to more than 850 Supreme Court case translations.<sup>23</sup> Unfortunately, a number of these translations remain very poor in quality and too truncated to be of practical use and these failings still compromise the value of the resource.

Although the Transparency Project website contained fully searchable records of over 250 translations of case notes and 2 financial laws as at late August 2007, as well as links to the actual government statute translations, the distinctive strengths of the Transparency Project lie in its savvy consumption of translation services, which has created the conditions for excellence. The Project management recognizes quality as an absolute and has applied that principle in selecting translation providers, fostering a reasonable, measured approach to cost and scheduling on both sides, and encouraging frank communication between translators and authors, all of which engender a quality result.

Perhaps most importantly, attempts by well-intentioned native Japanese speakers (NJS) to 'correct' expert native English are not characteristic of the Transparency Project. There is an unspoken assumption that valid translation will be for meaning and that the right native English speaking (NES) translator will be able to perceive the contextual underbelly of a Japanese text and accurately reflect the intention of the Japanese author in authentic, natural English without muddying or polishing. The translation will be faithful to the Japanese text and fluid, indistinguishable from a work originally created

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21 Such as Jody Chafee's *Senrei* website found at <http://www.senrei.com/index.htm> (accessed on 23 August 2007), Mika's Homepage, a collection of links to translations of over 100 laws found at <http://homepage2.nifty.com/paper/lawcollection.htm> (accessed on 23 August 2007) and the Mizuho Securities site found at <http://www.mizuho-sc.com/english/ebond/law.html> (accessed on 23 August 2007). See Rob Britt's comprehensive list of online Japanese legal research resources for the most up-to-date collection of links in the field <http://lib.law.washington.edu/eald/jlr/jres.html> (accessed on 23 August 2007).

22 See *infra* note 45 regarding the combination of the SBD and the University of Washington Legal Glossary into a single glossary on the Monash University ftp archive site.

23 The AsianLII site is found at <http://www.asianlii.org/jp/cases/JPSC> (accessed on 23 August 2007).

in English. There is no pressure towards literalism, which is the idea that Japanese texts are so exotic as to be impenetrable to a NES,<sup>24</sup> who must limit himself or herself to the mechanical replication of a clumsy string of dictionary meanings of individual words.<sup>25</sup> This demeaning view of Japanese to English translation as no more than an automatic substitution process founds the belief that machine translation or NJS translation into English will produce a valid product, and ironically defeats many translation efforts in the Japanese - English language pair. It is the confluence of these Transparency Project expectations with those of the expert translators qualified to work in this field that is remarkable.

Another distinctive quality is that the Transparency Project management and technical hierarchy is remarkably 'flat', allowing for rapid and flexible responses to translator and user feedback, whether on administrative matters or the functionality of the website that is the interim fruit of the Project. The idea that those who actually create and use a tool are the best source of ideas for its improvement is not new in the Japanese context,<sup>26</sup> however, it is refreshing to see it implemented away from the factory floor.

In terms of translator selection, the Transparency Project uses only expert legal translators with both qualifications and practical experience in the field of Japanese law. Henderson notes that "legal translation...is necessarily a comparative law exercise" and "requires sensitivity to structural differences in the civil law and common law systems, as well as awareness of peculiarities of Japanese legal culture and of the uses of law in Japanese society."<sup>27</sup> I should add that the more important a legal document, the more important that the translation be prepared by a person with sophisticated English legal document design skills, who in addition to knowing both the Japanese and western systems of law, and having advanced Japanese and English language skills, is expert in communicating complex legal concepts in written English to both lay and legal readerships. This additional document design requirement employs knowledge of how NES readers perceive and absorb written materials, including the use of plain legal English,<sup>28</sup> to ensure visual and cognitive accessibility.

Unscrupulous NSJ and NES translation providers do tout for Japanese to English legal translation work and may promise fast delivery of bulk orders at cheaper rates.

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24 Expressed, for example in R.B. PARKER, *Law, Language and the Individual in Japan and the United States*, in: *Wisconsin International Law Journal*, 7 (1989) 179 and A.J. BOLLA JR., *The (Im)probable Future in Japanese Charter Parties: The Language of Law*, in: *Journal of Maritime Law and Commerce*, 29(1) (1998) 107.

25 See HENDERSON, *supra* note 6, 142 for condemnation of literalism and the disincentive it represents for talented NES translators.

26 Toyota's well-known collaborative quality control principles "in the quest for superior quality" can be found in English at <http://www.toyotageorgetown.com/qualdex.asp> (accessed on 23 August 2007).

27 HENDERSON, *supra* note 6, 126.

28 See the website of Clarity – an international association promoting plain legal language, available at <http://www.clarity-international.net/> (accessed on 23 August 2007).

However tempting in a financial sense, there is no prospect of a successful outcome by this route. The economics of the standard translation business model means that the translators performing the work will be untrained laypersons working under extreme time pressure, as will any editors checking their work. The model is adequate in many contexts, but not for the translation of a nation's seminal legal materials.

Professor Toshiyuki Kono, the Field Representative heading the Transparency Project notes that the Project is also remarkable in that, as the first initiative of its kind within the Japanese academic community, it has easily attracted the support of both eminent law professors and dozens of younger legal academics from a wide range of universities across the length and breadth of Japan, organized into 5 sub-groups covering 11 research fields. Further, the fact that the Transparency Project was selected by MEXT through not bureaucratic processes, but a peer review process, seems to confirm a latent awareness in the legal academic community of the imperative of quality legal translation, independent of political processes.<sup>29</sup> These various sub-groups determine the selection of materials to be translated. Henderson's concerns about the ineffectiveness of translating interrelated primary and secondary materials in isolation will be ameliorated by the practice of providing translations of statutes, relevant case notes and complementary commentaries for each research field.<sup>30</sup>

Professor Kono points out that the creation of a website for accessing reliable translations on Japanese law directly or indirectly related to international dealings is but a means to an end. The Project's approach is that Japanese law is "not only for Japanese but also for global users." The ultimate goal of the Transparency Project is to make this law available "for the comments and suggestions of global users of Japanese law on matters such as possible amendments and new legislation" in the same way that global users of English law, for example, contribute to debates on its development.<sup>31</sup> There are, in fact, two separate invitations for feedback on the site and user comments are acknowledged promptly in practice.<sup>32</sup>

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29 T. KONO, personal email correspondence with the writer dated 23 August 2007. See <http://www.tomeika.jur.kyushu-u.ac.jp/organization.html> for a list of participants and the structure of the Project.

30 HENDERSON, *supra* note 6, in particular comments on the need for translators to grasp the differing hierarchy of Japanese legal resources at 126-128 and 137 et. seq.

31 T. KONO, personal email correspondence with the writer dated 24 August 2007.

32 See *supra* note 3. A general e-mail contact form via "Contact Us" and a detailed interactive feedback form via "Comments and Suggestions"; acknowledgment is received within two working days in my experience.

### 5. *Prospects and Perspectives*

In general it seems clear that the prospects for the creation of a valid corpus of Japanese legal materials in English have never been better. In particular it is apparent that well-organized and funded collaborative initiatives that consume translation services in an informed and strategic manner unhampered by fear or pride will make a tremendous contribution. Collaboration in a spirit of humility will always be a simple key to ensuring full comprehension by NES of Japanese legal concepts and full comprehension by NJS of the native English used to convey them. Henderson wrote eloquently of the comparative ease and satisfaction found through collaborative efforts that maximize the respective linguistic and legal strengths of the participants.<sup>33</sup>

The recent emergence of a talent pool of candidate NES Japanese to English legal translators could mean, if there is a wider appreciation of the expertise required in this field, that these candidates are not casualties of ‘translator recoil’,<sup>34</sup> but develop translation careers, even in combination with academia or practice, and in turn recruit others. Henderson recommended that NES translators of Japanese statutes have a thorough knowledge of the rigorous *Hôsei Kyoku* (Cabinet Legislation Bureau) drafting rules for Japanese legislation.<sup>35</sup> The provision of an online translation or even English summary of the principles in these manuals for aspiring NES legal translators would seem an obvious manner in which to augment the Standard Bilingual Dictionary and accelerate the production of quality English translations.<sup>36</sup>

As most Japanese legislation is now destined for continual translation, this collaboration would be reciprocal in nature. Just as the plain legal English movement<sup>37</sup> favors the abandonment of opaque and archaic terminology and drafting, there is ample room for the emergence of a plain legal Japanese movement, which would consider the needs of ordinary NJS and NES users and actively replace unnecessarily impenetrable expressions with accessible legal language. The most serendipitous result of plain Japanese drafting would be a reduction in ongoing translation costs and delays, in perpetuity. Eventually the adoption plain Japanese drafting principles would also ease the training and workload of the *Hôsei Kyoku* itself, which has been much overburdened during the “fruitful decade” of law reforms.<sup>38</sup> Some changes in the linguistic training of the

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33 HENDERSON, *supra* note 6, 142.

34 See *infra* at note 44 for an explanation of this tendency of expert NES legal translators to avoid the field following unsuccessful collaboration.

35 HENDERSON, *supra* note 6, 145 et. seq.

36 Prior to the publication of the SBD in March 2006, V. BEYER, *Translating Japanese Legal Documents into English: A Short Course*, in: MORRIS (ed.), *Translation and the Law* (Amsterdam/Philadelphia 1995) 145, in combination with the University of Washington Legal Glossary (*supra* note 9) and Henderson’s 1980 work (*supra* note 8) formed the only useful primer for those considering the field.

37 See *supra* note 28.

38 See *supra* note 12.

judiciary may also be helpful. Elegant and measured as the language of Japanese judgments is for the tastes of a seasoned legal translator, Professor Sato noted in 2001 that the language of Japanese “judgments... (is) somehow removed from the ordinary citizen’s everyday language and expressions.”<sup>39</sup> The more accessible the language, the larger the pool of people who might usefully translate it, and the wider the audiences who will understand it, in both Japanese and English.

As promising as the early results of the government Statute Translation effort and the academic Transparency Project have been, it is also useful to note areas for possible improvement. In this translator’s view, the most efficient way to accelerate the production of quality translations of Japanese legal materials is to develop and extend the highly-useful government Standard Bilingual Dictionary (SBD) to achieve the standard of functionality and excellence set by, for example, what is otherwise the most useful legal dictionary available today, the Kenkyusha Online Dictionary (KOD).<sup>40</sup> The KOD offers unerring accuracy, is rich in actual usage examples, responsive to user suggestions and undergoing continuous expansion, whereas the SBD is not interactive and has been updated only annually so far. Improvement of the SBD will mean immediate improvement in every statute translated in compliance with it, and in all those documents deriving from those translations, and so on. Professor Kashiwagi has already offered an initiative in this regard in the form of willingness to accept direct email correspondence on the dictionary, and moreover has clearly articulated the rejection of literalism.<sup>41</sup> Both of these are enlightened approaches and most welcome, however, the harnessing of a wider group of users efforts to improve and expand the dictionary, whether by means of a ‘wiki’ or other collaborative online method, may well serve to rapidly advance the standard of government statute translation and the translation of Japanese legal materials in general more than any other investment. By expansion I mean both the inclusion of a variety of additional terms commonly found in Japanese statutes and the addition of usage examples for all entries. My own experience is that the existence and considerable utility of the dictionary is not yet well known, especially among the business community and lay translators working on the periphery of the legal translation field, although access to it would greatly benefit these groups. This may be due in part to the dictionary’s name, which bears no apparent relation to Japanese law and so contributes to its relative obscurity.

In practice, one form of collaboration that can streamline the process of any translation is for an expert NES translator to check<sup>42</sup> an expert NSJ translation rather than starting from scratch. It should be noted that these efficiencies are defeated if the first

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39 LAWSON / THORNLEY, *supra* note 18, 79.

40 See <http://kod.kenkyusha.co.jp/service/> (accessed on 23 August 2007).

41 KASHIWAGI, *supra* note 17, 225-226.

42 Meaning a careful process involving checking for both accuracy and style against the Japanese text; beyond ‘editing’.

NSJ translation is poor and re-translation is required, resulting in considerable delays and ballooning costs. Whilst this streamlining is often attempted, it is rarely successful, due to unrealistic assessments of the quality of NSJ work. The word ‘bilingual’ can be used inaccurately in Japan to describe a NSJ who has a modest degree of English literacy or fluency, by no means approaching native level. Considerable kudos attaches to the description and flattered, the individual may not demur, and so gains an objectively inaccurate reputation for native level English literacy. When the individual is asked to perform impossibly complex specialist translations he or she resolves their dilemma by performing shoddy work that is goes unquestioned due to their reputation, or by engaging a “ghost” translator, taking credit for the work and perpetuating the myth. Placing translation orders on the basis of rumored native English literacy proficiency in a NSJ who could not possibly possess that very rare ability is fraught with risk. Having expressed that strong reservation, however, I should add an observation from Professor Kent Anderson that increases in the number of NJS undertaking *juris doctorate* (J.D.) courses in the United States in lieu of the *shihô shiken* (National Bar Examination) in Japan, or Masters in Law (LL.M) courses in native English speaking countries may be leading to another welcome development, a corresponding new talent pool of expert NJS with the substantive ability to produce a viable draft translation of Japanese legal materials into English ready for collaborative checking by expert NES.<sup>43</sup>

In another scenario, the literalist assumption that translation is mere clerical word substitution means a NJS with brief or superficial experience of native legal English is assigned to “check” an expert NES translation. The hapless NJS adds only errors and the mangled version is published without further consultation with the NES. The frustration arising from what is, to the NES expert, in the nature of professional vandalism, can lead to “translator recoil,”<sup>44</sup> where talented NES lawyers able to do the work decline association with legal translation efforts. Collaboration in form but not substance is a sure route to translation failure; fruitful collaboration requires participants well-matched in professional qualifications and experience, and a circular process, in which the expertise of each side is recognized and given maximum expression.

Ultimately the goal of the SBD should, in my view, be to perfect the content to the extent where it is automatically incorporated into commercial dictionaries in the language pair, and available for download in file formats ready for use in translation memory software commonly used in the translation industry.<sup>45</sup> The existence of a sole

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43 ANDERSON, *supra* note 19.

44 See text at *supra* note 34 for an earlier mention of ‘translator recoil’.

45 The SBD has already been combined with the University of Washington Legal Glossary and made available in EDICT format to create a specialist legal glossary of 6010 entries, accessible via <http://ftp.monash.edu.au/pub/nihongo/00INDEX.html> (accessed on 23 August 2007). Innovation, it seems is becoming the rule in NES communication of Japanese legal concepts. See T. RYAN, *Dear Judge Ichiro* (Burleigh 2007) for an intriguing work of fiction introducing a series of debates as to the import of Japanese law.

standard, polished by collaboration between NJS and NES users and permeating all Japanese to English legal translation efforts could lead to the level of consistency and reliability in the field that is the natural expectation of the global community. Associate Professor Frank Bennett of Nagoya University School of Law adds his weight to this view, commenting that if the dictionary and other tools are to be widely adopted as standards, they must be not only be indisputably excellent, but “freely redistributable” with a “well-defined and non-obstructive” maintenance process that reflects the needs of “a widened circle of stakeholders”, beyond the ministry officials responsible for the translation of each statute.<sup>46</sup>

The reception of the July 2007 presentation on which this article is based illustrated that many in the Japanese law field outside Japan were also as yet relatively unaware of the Transparency Project and its achievements. The presentation itself may have assisted in this regard, however, search engine optimization processes may be another strategy for disseminating information about the Project to the broadest possible pool of potential users. The user-friendliness of the Transparency Project site would also be augmented by the inclusion of a chronological list of materials translated to date, possibly also organized by field.<sup>47</sup> It may also be that the inclusion of overarching commentaries by Japanese law academics placing Japanese law in the frameworks of global regulation and Japanese society, economics, history and politics in terms familiar to the NES reader would aid the Transparency Project’s aims.<sup>48</sup> A further conundrum is that whilst the university conduit is ideal for projects such as the Transparency Project, as universities are largely free of the profit motive that creates the unreasonable pressures common in the commercial translation industry and so are ideally placed to identify the right translation providers, the inflexibility of university accounting requirements can form a perverse impediment to selection of the suppliers actually capable of completing the work at the required standard and to engaging translators located outside Japan.

Ultimately the Transparency Project is a valuable model for future legal translation efforts that are able to select translation suppliers with skill and deftly avoid the pitfalls common to consumption of Japanese to English legal translation services in order to make a solid contribution to a corpus of reliable, expert translations that reveal the lost city of Japanese law in an accurate, faithful and globally accessible manner.

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46 F. BENNETT, personal e-mail correspondence with the writer dated 23 August 2007. My own view is that as the actual translations produced by the Statute Translation effort, whilst much improved on previous attempts, do contain errors, this will mean not only the thorough and prompt reworking of the translation when an act is amended, but openness to user questions and feedback at any time, creating a continuous and open quality control process.

47 I am indebted to Professor Veronica Taylor of the University of Washington for this suggestion, made on 6 July 2007 at the ANJeL presentation on which this article is based.

48 I am indebted to Dr. Luke Nottage of the University of Sydney for this suggestion, made on 6 July 2007 at the ANJeL presentation on which this article is based.

## ZUSAMMENFASSUNG

*Qualitativ hochwertige Übersetzungen japanischer Rechtsquellen waren lange Zeit Mangelware. Man stelle sich zum Vergleich eine Stadt mit breiten, gepflegten Straßen und stolzen Bauwerken vor. Es gibt in ihr zwar durchaus auch dunkle Ecken und zwielichtige Viertel; sie hat jedoch vielen Stürmen standgehalten und sich als weltoffen und gegenüber den Veränderungen im Zeitenwechsel als anpassungsfähig erwiesen. Leider ist sie in der Welt – und das ist ihr wunder Punkt – weithin unbekannt und mythenumrankt; es heißt, daß ihre Gemäuer vom Verfall bedroht seien, daß in ihr die Willkür herrsche, daß sie gar völlig unbewohnt sei ... dies ist die verlorene Stadt des japanischen Rechts.*

*Der Mangel an Übersetzungen der Quellen einer Rechtsordnung hat weitreichende Folgen. Aus Unkenntnis entsteht schnell Verachtung; fehlende Übersetzungen implizieren, daß es auch nichts gibt, was einer Übersetzung wert ist. Und die vorhandenen schlechten Übersetzungen bestätigen den schlimmsten Verdacht des ausländischen Beobachters: das „andere“ Rechtssystem erscheint ihm tatsächlich irrelevant, die japanische Gesellschaft ist eben doch eine „ohne Rechtsbewußtsein“, in der das Recht nichts zählt. Diese Reaktionen dienen indes weder den japanischen, noch den regionalen oder den globalen Interessen an einer Teilhabe an juristischen Informationen.*

*Der Beitrag stellt die ersten Erfolge des „Transparency of Japanese Law Project“ aus der Sicht einer Übersetzerin vor. Das Projekt wurde im Jahr 2004 für das „Grants-in-Aid for Scientific Research“-Programm im Rahmen der Initiative „Japanese Ministry of Education, Sports, Science and Technology (MEXT) Specific Field Research“ ausgewählt. Die Mitarbeiter des Transparency Project haben es sich zur Aufgabe gemacht, einen Korpus von verlässlichen englischen Übersetzungen japanischer Rechtsquellen zu erarbeiten, die im internationalen Kontext von Bedeutung sind, um das japanische Recht auf diese Weise Interessierten auf der ganzen Welt zugänglich zu machen, deren Reaktionen ihrerseits wiederum die rechtliche Entwicklung in Japan fördern. Die Verfasserin beleuchtet die zunächst schier unüberwindbar erscheinenden Hindernisse, die sich dem Aufbau eines solchen Korpus an Übersetzungen entgegenstellten, und die Faktoren, die letztlich doch zu ihrer Überwindung führten, und betrachtet sodann die Charakteristika, die den Erfolg des Projekts ermöglicht haben. Abschließend formuliert der Beitrag strategische und finanzielle Prioritäten, die einen dauerhaften Erfolg dieser wie auch ähnlicher Bemühungen gewährleisten könnten.*

*(Dt. Übers. durch die Red.)*