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Introduction to the Symposium

Neil B. Cohen

Claire Kelly

Lawrence M. Solan

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INTRODUCTION

*Neil B. Cohen**

*Claire Kelly***

*Lawrence M. Solan****

We are pleased to introduce this symposium, the fruit of collaboration between two of Brooklyn Law School's Centers: the Center for the Study of International Business Law, and the Center for the Study of Law, Language and Cognition. A volume devoted to the issues addressed here is long overdue, and their substance most timely. As Dean Joan Wexler stated in her introduction to the conference, which took place in September 2003:

Today's symposium, *Creating and Interpreting Law in a Multilingual Environment*, addresses important problems that have received very little attention in the American legal academic community: Increasingly, legal rules are developed and applied among people and cultures that speak different languages. How do the problems of language and communication affect the development of these rules, and what should be done when those problems have an impact on the application of those rules? Our speakers today will cast some light on this subject, which has become even more pressing as international commerce transcends national and linguistic borders.

Despite their vital importance, the issues addressed in these papers have been virtually ignored in the American academy. During the past quarter century, a substantial amount of scholarly literature on statutory interpretation has developed in the United States, much of it generated by the strong views repeatedly expressed by Associate Justice Antonin Scalia of the Supreme Court of the United States. In that time, Legislation and Statutory Interpretation courses have sprung up at many American law schools, including Brooklyn Law School. Case books and other educational materials on the subject have pro-

* Jeffrey D. Forchelli Professor of Law, Brooklyn Law School.

** Assistant Professor of Law, and Associate Director of the Center for the Study of International Business Law Brooklyn Law School.

*** Professor of Law and Director, Center for the Study of Law, Language and Cognition, Brooklyn Law School.

liferated, as publishers compete with each other for this educational market. Conferences are held, often with published proceedings. Yet, virtually all of this material limits itself to questions of statutory interpretation within the boundaries of the United States even though "globalization" has become a buzzword. Business has become an international affair, and legal systems have been developing at a rapid pace to accommodate this reality. Whether we speak of the European Union, the World Trade Organization, or of domestic laws enacted pursuant to international conventions, legal systems are getting accustomed to addressing legal orders beyond their own domestic law.

A consequence of this globalization of the legal order, of course, is that single laws are sometimes rendered in multiple language versions and deemed to have equal status, and that nations sometimes commit themselves to enacting, within their own systems and in their own language, substantively identical laws. The recent expansion of the European Union gives it 25 member nations and 20 official languages. What if a dispute arises between Cyprus and the Czech Republic over an EU law [directive?]? What version should courts use when they interpret it? What happens when a legal concept that is part of an international convention only *seems* to translate crisply from one legal system to another? In fact, similar sounding words often have radically different legal implications.

These are among the questions that the distinguished authors whose papers are published here address. The symposium was divided into three panels, and the articles track that organization. The first group of articles (Sullivan, Côté, Revell) deal with multilingual legislation and statutory interpretation within a single country: Canada. We are fortunate to have the opportunity to draw on the experience of a country so close to ours, and especially fortunate to publish articles by such distinguished contributors. Professors Sullivan and Côté are each recognized as leading scholars in the area of statutory interpretation in Canada, and Mr. Revell is responsible for the multilingual drafting of statutes in the province of Ontario.

Professor Sullivan's article, *The Challenges of Interpreting Multilingual, Multijural Legislation*, gets right to the heart of the matter: Canada's legal system is both bilingual and bijural, since Quebec is not only a French-speaking province, but it is also a civil law province in an otherwise common law country.

Moreover, the establishment in 1999 of the new Territory of Nunavut, whose government is to be based on traditional Inuit values, promises to make Canada multilingual and multijural. Sullivan regards questions of statutory interpretation and drafting as a means of resolving the tension between two goals: maintaining a coherent, unified legal order, and diverse legal cultures, which operate in different languages and use divergent concepts. In this context, she criticizes current legal doctrine and suggests principles more likely to accomplish these goals.

Professor Côté's article, *Bilingual Interpretation of Enactments in Canada: Principles v. Practice*, is an exercise in legal realism. While statutory interpretation in Canada is supposed to be bilingual, Côté argues forcefully that, in practice, it is not. For one thing, interpretation occurs largely in environments where one language predominates. It would be unusual to find lawyers in Quebec consulting the English version of a provincial statute that everybody has been construing in French. For the most part, however, the asymmetry privileges the English versions of statutes.

Finally, an article by Donald Revell, who is Chief Legislative Counsel to the province of Ontario, writes about the process of bilingual drafting in his article, *Authoring Bilingual Laws: The Importance of Process*. Canada's parliamentary form of government generally means that ministries will be the source of legislative proposals. Revell argues that drafting proposed legislation first in English and then translating it into French works very well when the proper checks are in place. Problems with legislation come not from the fact that a law originated in one language or the other, but, rather, from the absence of a serious process with multiple opportunities for review and revision, which come with taking bilingualism seriously.

Many countries with more than one official language face issues about statutory interpretation similar to Canada's. The discussion in this set of articles will be relevant in this broader context, as well.

The second panel focused on the EU, where laws are written in all languages of its member nations. What happens when a dispute arises as to the meaning of one of those laws? How do judges decide which text to examine in order to remain loyal to the purpose of the statute without stepping on the sovereignty or sensitivities of any of the members? The contributors to this

section, Professors McLeod, Engberg, and Salmi-Tolonen are all in a position to shed light on these important issues.

Professor McLeod's article, *Literal and Purposive Techniques of Legislative Interpretation: Some European Community and Common Law Perspectives*, will resonate with American legal thinkers who work in the area of statutory interpretation. A legal theorist from the U.K., McLeod considers the problem of what happens when the domestic courts of EU members, charged with enforcing EU law, have their own principles of statutory interpretation that are at odds with the principles employed by the European Court of Justice, which is charged with the ultimate interpretation of EU law. In particular, EU law, deriving largely from the civil law tradition of the continent, approaches the interpretation of statutes in a purposive manner, while common law countries appear to be much more concerned with a statute's literal meaning. In this instance, however, McLeod argues that the law of the U.K. has moved considerably towards considering the purpose of the statute and intent of the legislature over the past decades, rendering any conflict only apparent. In making these points, McLeod provides an excellent introduction to interpretive problems facing the EU, and provides the basis of interesting comparative analysis between the U.S. and the U.K.

The next two articles are written by authors with background in linguistics, and address the difficulty of a multilingual legal order trying to govern itself under a single set of authoritative documents written in the languages of all its members. Professor Engberg, a Danish linguist who writes about issues of legal interpretation, points out serious problems when the concepts from one language do not match those of another in his article, *Statutory Texts as Instances of Language(s): Consequences and Limitations on Interpretation*. From the perspective of the psychology of language, problems of statutory interpretation in multilingual settings mimic problems of statutory interpretation in monolingual settings. The problem that arises is flexibility in our understanding of legally relevant concepts. Multilingualism complicates matters by adding an additional dimension: not only do different people understand the same concepts differently, as so often happens in the domestic setting, but the concepts themselves are, to some extent, culturally-bound and not identical when translated from one language to another. Engberg presents interesting models of word meaning to ex-

plain how these problems arise, and the extent to which they can be handled successfully. He illustrates his points nicely with cases from the EU.

Professor Salmi-Tolonen's goals are similar to those of Engberg. In her article, *Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments*, Salmi-Tolonen draws on her wealth of knowledge about both linguistic theory and problems of legal interpretation both within European countries themselves and in the EU. Drawing on interpretive issues that arise in the interpretation of statutes in her native Finland, Salmi-Tolonen also sees the problem of multilingualism as yet another complicating factor in an already problematic interpretive setting. She illustrates her points with examples both from the use of Swedish and Finnish in domestic statutory interpretation, and from the problems facing the interpretation of EU legislation and international conventions, whose concepts are instantiated in local laws. The papers from both linguists present explanations for many of the problems and disputes that the legal authors, both from Europe and North America, present in their contributions to this volume.

Finally, the third panel looked at a particular problem in making law across borders. Problems of interpretation sometimes arise when the laws or legal cultures of the various countries use expressions that *seem* to be translations of one another, but actually convey very different concepts. How can different legal systems fashion laws in their own languages and within their own cultures that will be uniform and predictable enough to allow the smooth flow of commerce across borders?

Dr. Lopéz-Rodríguez, in *Towards a European Civil Code Without a Common European Culture? The Link Between Law, Language and Culture*, considers whether calls for more European harmonization are viable, specifically in the area of contract law. To facilitate harmonization, Dr. Lopez-Rodriguez suggests the promotion a common European discourse to pave the way for meaningful European legal uniformity. Dr. Lopéz-Rodríguez believes that such a discourse is necessary to overcome obstacles created by both language and culture. Such obstacles may manifest themselves in different national laws transposing a given European directive, or in the difficulty transposing concepts between legal languages of the various countries (whether these concepts are new or previously existing, but modified, concepts). The components to promote this

desired discourse include legal research, legal education, and the evolution of a common methodology. This discourse is necessary to overcome cultural and linguistic differences prior to harmonization; indeed, it is the foundation upon which further harmonization can be sought.

It is both interesting and gratifying to see how well these papers fit together, although written by people with training in very different disciplines, examining diverse legal systems. But it should not be surprising. The creation and interpretation of law is a human endeavor. What better way to study it than to raise important questions of law, and to force broad exploration into aspects of our human nature that make the rule of law in multilingual settings both possible and difficult at the same time?