

Translating "bank"

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This paper discusses the issue of translation from English to Tokelauan, using as an example the word "bank" in the Tokelau Business Restriction Regulations 1989.

I INTRODUCTION

The Tokelau Business Restriction Regulations 1989 (SR 1989/267) state in regulation 2:

"Bank" means any person who carries on the business of banking, and includes any person who carries on any business in the normal course of which that person pays cheques drawn by and collects cheques paid in by that person's customers.

In the Tokelauan version of the Business Restriction Regulations 1989, the word "bank" is translated:¹

"Tino teutupe" ko tona uiga ko ho he tino pe he kamupani e fai e ia he pihinihi
"Banker" means any person or company which does a business
 ko te teutupe, ma e aofia ai ho he tino pe he kamupani teia e faia ho he pihinihi
of banking, and includes any person or company which does any business
 i te auala mahani teia e tofogi ai e te tino pe ko te kamupani na hiaki e haini
in the usual way which pays by the person or the company the cheques which are signed
 e ana tino mahani ma ao na hiaki e teu ki loto e ana tino mahani.
by its customer and collects the cheques deposited there by its customer.

This definition of "bank" and its translation into Tokelauan is used here as a simple example of some aspects of the difficulties of translating English into Tokelauan.

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1 Some words have clear English derivation. *Hiaki* is English "cheque", and because *hiaki* is a phonological derivation it also means "check" in the sense of correct, and "jack" (the tool; the playing card). *Haini* is from the English "sign", *kamupani* from "company", and *pihinihi* from "business". *Tupe* is a traditional Tokelauan word; it is not a derivation from "to pay" - see note 8 below.

II TRANSLATION OF LAWS IN NEW ZEALAND

The question of translating New Zealand law into another language has always been a concern for New Zealand lawyers. The amount of consideration given to it has varied with time and subject matter. In the earliest days the question arose in the context of translation of law from English into Maori.² More recently the focus has shifted to treaties and documents evidencing international commercial transactions and now again to indigenous languages. This is in part a refocusing on the importance of translation of laws into the Maori language³ but it includes the question of translating legal documents into Tokelauan as an aspect of the fulfilment by the Government of New Zealand of its obligations under international law to prepare the internal territory of Tokelau for the exercise of its right of self-determination.⁴

The Maori language has well over a century of experience with the English language and the translation of English terms. The Maori Language Commission is now building on that experience for the better communication in Maori of law and legislation that is in English. Tokelau has not had the same length or depth of experience with the English language, and essentially came to these problems in the last decade as matters which had to be dealt with without the benefit of prior experience.

It is the belief of the writers of this note that the translation of New Zealand legal documents into Tokelauan is a significant exercise in terms of human rights and access to the law. The present drafting of New Zealand legislation does not take adequate account of the fact that legislation will be translated into or communicated in another language,⁵ and the translation exercise would be greatly simplified and communication facilitated if drafting did take account of the necessity of translation.⁶

2 *Ko Nga Ture o Ingarani* (Native Secretary's Office, Auckland, 1858).

3 See, eg, the Maori Language Act 1987, and the work of the Maori Language Commission.

4 Charter of the United Nations, article 73; International Covenant on Civil and Political Rights, article 1(1) and (3); International Covenant on Economic, Social and Cultural Rights, article 1(1) and (3).

5 In the field of translating and interpreting it is accepted that simplicity of expression aids accuracy. It is the general rule when writing a text or when analysing a text as a first step in translating, that verb constructions should be preferred to noun constructions, that active verb forms are easier to translate than passive or participial constructions, and that short sentences are preferable to long sentences.

6 It is also believed that the quality of the New Zealand English language legislation would improve as a result of simplification of expression.

III THE TOKELAU BUSINESS RESTRICTION REGULATIONS 1989

By way of background it is relevant to know that the Tokelau Business Restriction Regulations 1989 arose from a concern of the Elders of Tokelau regarding the inadequacies of the Common Law in respect of the activities of moneylenders and insurers.⁷ Some life insurance business is done on Tokelau and it was thought desirable that a simple control mechanism should be put in place to protect the residents of Tokelau from possible exploitation by unscrupulous operators, and further to ensure that if a life insurance policy was ever used as security for a loan the conditions attached to that loan would not be usurious. The issue was discussed in Tokelau, a proposal prepared in Tokelauan, and it was understood that the law as eventually promulgated would be translated from the official English into Tokelauan for use by the people of Tokelau. The Tokelau Business Restriction Regulations 1989 are the result.

There is one banking facility in Tokelau; it is for savings only, and is provided by the Tokelau Administration. In English it is identified as the Tokelau Savings System, and in Tokelauan on each island by the word normally used for "bank", which is at base a word referring to a building - *faletupe*.⁸ No terms were defined in the proposal submitted by the Elders of Tokelau.

IV THE TRANSLATION

A "Bank"

The inclusion of the definition of bank in the regulations probably follows from the reference to the "business of banking" in the definition of "moneylender". The word "bank" is used in the regulations only in the context of "a bank or a moneylender or an insurer".⁹ The immediate tendency of the translator in that context is to think of a person, a banker, which in Tokelau requires a phrase, *tino teutupe* - "a person who does banking", "a treasurer". This usage luckily is not very wordy. If it were, the necessary translation would cancel out the advantage obtained by defining words in the English system: there the encoded form provides a neat abbreviation for later use. If the term defined is a phrase or a paraphrase then its usefulness is severely restricted, and for grammatical reasons may not fit as well in the other contexts, where the word appears, for various structural reasons relating to the language. The question then is whether the key word chosen can, in that form in the target language, remain a key word and serve its purpose, or whether the idea becomes lost in a multitude of words.

7 The Common Law of England of 14 January 1840 is the relevant Tokelau law on these matters. See the Tokelau Act 1948, s 4A.

8 *Fale* (house) and *tupe* (money). *Faletupe* conveys the idea only of a building - not that of a person. *Tupe* also means kneecap, and the operculum covering the aperture of a univalve mollusc. The shape of coins may have been the reason for using this word to designate money.

9 In regulations 2 (Approval), 3, 4, and 10. "Insurer" is not defined.

B "Person"

"'Bank' means a person ..." has two difficulties from the Tokelauan point of view. If the coding purpose is followed with the use of a single word for bank, then bank is translated as *faletupe*, a building. Tokelauan uses for "person" the word *tinu* and that means human being. It is something of an oddity in a culture which is not used to the law or fictions of the kind that the Common Law delights in, to call a building a human being. Tokelauan does know the notion of companies and associations, but as yet has no term which carries the dual connotation of natural person and artificial person, and therefore person has to be translated by two words which indicate the human and non-human possibilities, *he tinu pe he kamupani*.¹⁰ In the definition of "bank", person is used four times, in Tokelauan that produces 12 more words than in English.

Most sensibly in Tokelauan the definition of bank would be "a person who does banking", ie the definition of "banker". Translating banker again requires the use of person in both its connotations.

C "Cheque"

Less critical, but nevertheless relevant at least to the decision whether the word "bank" needs defining or not, is the fact that cheques are not issued in Tokelau and are not a form of payment in use there. The idea of a cheque is known, but principally in the limited context of remittances that Tokelau residents receive from outside Tokelau which are then paid into the Tokelau Administration for clearance through external banking systems.

D "Customer"

Then there is the question of the word "customer". Each Tokelau village has a store and the person who buys goods there is *te tinu fakatau mahani*. This expression is at this stage still strongly related to the idea of purchases at a shop and is therefore inappropriate to express the relationship between a banker and a client. *Tinu mahani* used here for the customer of a bank also means "someone you are familiar with", "someone you know very well" or "a friend".

E "That person" - gender neutrality

English language usage is still settling to a new gender neutral mode of expression in the face of the social and political imperatives of recent years. The English definition is somewhat awkward because of this. The problem however does not exist for many other languages and does not exist for Tokelauan. "That person" which is awkward in English, is not only awkward but unnecessary in Tokelauan. The use of "he", "she", or "it" would in Tokelauan be translated by the same word, *ana*. The English was not followed literally in the translation of the word "bank", at this point, and an attempt was made to use the more natural Tokelauan form.

¹⁰ "A human being or a company".

V CONCLUSION

All these matters raise questions about the coherence of the original English (no matter how simple it appears to the native English reader), and the appropriateness of the language to the cultural, geographical and language environment in which the law will operate.

In practical terms the translation of regulation 2 (which is one page of text) took as long as the translation of the remaining three pages of text. By far the most difficult clause was the definition of "bank" and, inclusive of the discussion about the meaning of the many concepts involved and the testing of the terms available to translate them, it took nearly two hours to settle those four lines of English text. The Tokelau text of the definition has 72 words and is much longer than the English text of 41 words. This greater length is perhaps predictable because Tokelauan is working with ideas which are strange to it. However, some of the extra length is attributable to lack of forethought to the eventual translation need.



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