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# Translating Law in 19<sup>th</sup>-Century Belgium: Criticisms of Official Translations of Laws and Decrees

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## Abstract

From the late eighteenth century, nationalist winds blew over Europe, passing also through the new state of Belgium, seceded from the United Kingdom of the Netherlands in 1830. Making use of French as the lingua franca in the political and administrative domains, and trying at the same time to engage the Flemish-speaking part of the population, the Belgian government committed itself to translate its legislative texts into Flemish. Yet, these official translations were broadly criticized by Flemish politicians, lawyers and journalists alike. Their response was to publish translations of key legislative texts via private channels. The purpose of this article is to point out the gap between the government's explicit motivation to inform the people, and the quality and actual usability of the translations of laws, by engaging with the discussion of common criticisms of official translations expressed by members of the Belgian parliament, jurists and the general public.

## Keywords

translation – law – 19<sup>th</sup> century – Belgium – criticisms – official translation – right of access

### 1 Introduction

Since the French Revolution,<sup>1</sup> the concepts of the expression of general will and popular sovereignty have been pitched as ideals with the implications varying according to time and space. In the nineteenth century, it was still in a much more restricted sense, compared to current standards, that many (what we would nowadays describe as the first ‘democratic’) politicians imagined the optimal mode of transforming popular sovereignty into actual power. Part of the bottom line, however, remained that laws, applicable to citizens and authorities under the principle of legality,<sup>2</sup> were supposed to emanate from the will and needs of the people entitled to access the laws, decrees, acts and all other kinds of decisions affecting their lives.

Apart from being characterized as the age of industrialism, liberalism and (proto-)democracy, the ‘long nineteenth century’ (1789–1914) has often also been typified as the dawn of nationalism in Europe, carried by Romanticism and the French Revolution, commending national unity through various means, including through language.<sup>3</sup> Many of the newly emerging nation-states

1 Cf. Déclaration des droits de l’homme et du citoyen du 26 août 1789, art 6.

2 ‘This principle demands that all the subjects of law, individual citizens and legal entities (...) public authorities and private institutions or organizations should abide by the law and by all the other normative acts based on it, applicable to all the social relationships they participate in, under the guarantee of the judicial sanctions that are to be applied in case the judicial norms are not abided by.’ See: Alexandru Stoian, Teodora Drăghici, ‘The principle of legality, principle of public law’ (2015) 21 International conference knowledge-based organization 513. The authors add that ‘[t]he principle of legality represents the main means of obtaining and promoting social order and of maintaining relationships among members of the society based on judicial norms.’

3 See, among others, Marie-Thérèse Bitsch, *Histoire de la Belgique: de l’Antiquité à nos jours* (Complexe 2004) 120; Stephen May, ‘Language, Nationalism and Democracy’ in Gabrielle Hogan-Brun, Stefan Wolff (eds), *Minority languages in Europe: frameworks, status, prospects* (Palgrave Macmillan 2003) 211–213 Wim Vandenbussche, Eline Vanhecke, Roland Willemys, Jetje De Groof, ‘Language policy and language practice in official administrations in 19th century Flanders’ in Eloína Bermúdez Miyares, Leonel Ruiz Miyares (eds), *Linguistics*

were therefore attracted to the dream of having one shared language for one community within one nation, and of a state operating in this language, enabling citizens to communicate their expectations to the authorities, and vice versa.<sup>4</sup> To many a common language seemed the only way to establish true mutual understanding and a sense of citizenship among the masses, as centralizing and/or democratizing states increasingly sought to do.<sup>5</sup>

In many countries however, this ideal was complicated by a multilingual reality.<sup>6</sup> In the current globalizing world, moreover, nations increasingly have to cope with challenges related to multilingualism, as populations become ever more mobile. More than ever, therefore, a bridge is needed between languages within states, as well as within supranational institutions, such as the European Union, with several member states. This bridge inevitably involves translation.

The act of translating entails various challenges, especially where laws are concerned. Translation between legal languages involves not only finding equivalent legal terms, but also transferring legal concepts from one legal system to another, as such equivalents do not always exist. Guaranteeing the quality of legal translation therefore is not, and has never been, self-evident or easily manageable, as it requires appropriate language and translation policies and monitoring. As translations of the law have to ensure equal participation for all citizens, and mistranslating legal texts can have great consequences for people on trial, it is crucial that the state takes these responsibilities seriously, if their ambition is to assure legal certainty.

This article delves into the history of a country that has been considered a potential example for the management of multilingual populations, but that certainly also displays many of the difficulties and pitfalls this initiative involved. Our study focuses on how different 'stakeholders' in Belgian society

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*in the Twenty First Century* (Cambridge Scholar Press 2006) 4; Ulrike Vogl, Matthias Hüning, 'One Nation, One Language? The Case of Belgium Dutch Crossing' (2010) 34 *Dutch Crossing* 228, 233.

4 Lieven D'hulst, Marie Bourguignon, Koen Lemmens, Bieke Nouws, Heleen van Gerwen and Reine Meylaerts, 'Les politiques en matière de traduction en Belgique de 1830 à 1914', in Gilian Lane-Mercier, Denise Merkle and Jane Koustas (eds), *Plurilinguisme et pluriculturalisme. Des modèles officiels dans le monde* (Les Presses de l'Université de Montréal 2016).

5 See also Anna Aguilar-Amat and Jean-Bosco Botsho, 'Obscured cultures: The case of sub-Saharan Africa' in Albert Branchadell and Lovell Margeret West (eds), *Less translated languages* (John Benjamins 2004).

6 Kaisa Koskinen, 'Institutional translation: the art of government by translation' (2014) 22 *Perspectives* 479, 483.

estimated the importance of translations, as the young State, founded in 1830, tried to find its geopolitical position and a sustainable *modus vivendi* in the first six decades of its existence. Today an officially trilingual country,<sup>7</sup> the Belgian state initially had but one official language in which it published its legislation: French. Aware of the presence of Flemish- and German-speaking citizens and of their right of access to the law, while also trying to live up to its self-image of paragon of liberalism,<sup>8</sup> the government committed itself very early on to provide translations.<sup>9</sup> However, these translations were widely considered to be of poor quality, taking away much of the political transparency the Belgian state aspired to, and opening up room for denunciation by non-French speakers and their representatives.

By looking at emergent criticisms of the official translation policy, who voiced them, and what aspects they denounced specifically, we aim to shed light on the discrepancy between official translation regulations and actual translation practices, and on how various social groups responded to the ways in which the gap between the francophone state and Flemish citizens (making up more than half of the population) was bridged. In the first part of the article, we discuss the efforts made on the legislative level to provide translations. In the second part, we provide an overview of the criticisms of official translations from the perspective of various social groups, viz. members of parliament, jurists and the general public. We do not pretend to offer an exhaustive overview of all complaints that were expressed during that period; the purpose of this article is rather to lift a corner of the veil and to demonstrate what these complaints entailed for the access to law in a multilingual context where the national languages do not enjoy equal status.

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7 German was and still is a language spoken by a small minority of the Belgian population. The Germanophones live mainly in the eastern regions of the country, at the border with Germany and Luxembourg.

8 Marnix Beyen and Henk Te Velde, 'Passion and Reason. Modern Parliaments in the Low Countries' in Pasi Ihalainen, Cornelia Ilie and Kari Palonen (eds), *Parliament and Parliamentarism: A Comparative History of a European Concept* (Berghahn Books, 2016); Marnix Beyen, 'Tragically Modern. Centrifugal Sub-nationalisms in Belgium, 1830–2009' in Michel Huyseune (ed), *Handelingen van het Contactforum 'Contemporary Centrifugal Regionalism: Comparing Flanders and Northern Italy', 19–20 juni 2009* (Koninklijke Vlaamse Academie van België voor Wetenschappen en Kunsten 2011).

9 Bieke Nouws and Reine Meylaerts, 'La nécessité des traductions. Translating legislation in a young parliamentary regime. The case of Belgium (1830–1895)' *International Journal of the Sociology of Languages* (forthcoming).

## 2 Translating Law in the New Belgian State

In what is known as the September Revolution of 1830, Belgian revolutionaries, discontented with the absolutist rule of William I, monarch of the United Kingdom of the Netherlands, led the Belgian provinces to independence. In the new Kingdom of Belgium, the new administrators quickly cancelled the strict language policy of William I, which had imposed Dutch (*Nederlandsch* or *Hollandsch*) as the only official language in the Flemish provinces, where the Belgian variant of Dutch (*Vlaamsch*) was spoken by the majority of the population and French by the elite. Even though the Belgian Constitution enshrined the freedom of language, French was almost immediately installed as the only official language for legislation, with non-binding translations into Flemish and German.<sup>10</sup>

According to the principle of legality, '[l]egal rules with a core meaning are to be applied and bind judges, administrators and citizens'.<sup>11</sup> One of the aspects of this principle, the publicity of law, requires that laws be made available to the people 'affected by them'.<sup>12</sup> This principle fulfils a protective role: without being informed of the legislative changes, citizens would be unable to adjust

10 In this article, we will refer to the language spoken in the Flemish provinces as 'Flemish', a generic term commonly used for the Belgian variant(s) spoken in Flanders during the nineteenth century. As the report of the Flemish commission of 1859 states, 'le « néerlandais », c'est la langue du royaume des Pays-Bas ; ce n'est pas la langue flamande.' ('"Dutch" is the language of the kingdom of the Netherlands; it is not the Flemish language.') Commission flamande, *Institution, délibérations, rapport, documents officiels* (CR (Chambre des représentants) 1859) 7. In other words, the term 'Flemish' was intentionally used to make a clear distinction between the language of the Netherlands, the former ruler and enemy, and the language of the majority of the Belgian population. It was only in 1932 that the term 'Dutch' was officially installed in Belgium.

11 Margaret Allars, 'Of Cocoons and Small "c" Constitutionalism: The Principle of Legality and an Australian Perspective on Baker' in David Dyzenhaus (ed), *The Unity of Public Law* (Hart Publishing 2014).

12 According to Fuller:  
 '[e]ven if only one man in a hundred takes the pains to inform himself concerning, say, the laws applicable to the practice of his calling, this is enough to justify the trouble taken to make the laws generally available. This citizen at least is entitled to know, and he cannot be identified in advance. Furthermore, in many activities men observe the law, not because they know it directly, but because they follow the pattern set by others whom they know to be better informed than themselves. In this way knowledge of the law by a few often influences indirectly the actions of many.' Lon Luvois Fuller, *The morality of law* (rev edn, Yale University Press 1969) 51.

their behavior according to the law. In this way, the publicity of laws is linked with legal certainty, which serves to protect citizens against, among others, frequent legislative changes.<sup>13</sup>

The publicity of laws is referred to in article 129 of the Belgian Constitution of 1831. It was made a legal requirement as this article stipulated that legal texts must be brought to the attention of the citizens before they are compulsory: 'Aucune loi, aucun arrêté ou règlement d'administration générale, provinciale ou communale, n'est obligatoire qu'après avoir été publié dans la forme déterminée par la loi.'<sup>14</sup> The issue of the specific mode of publication of laws and decrees was one of the first topics that were discussed by the Provisional Government (*Voorlopig Bewind, Gouvernement provisoire*), which was established shortly after the September Revolution. The new administrators took into account those citizens who did not understand the official language, and consequently provided translations into the minority languages, i.e. Flemish and German.

Until 1898, when the Equality Law was passed, the French text constituted the only authentic and official version of the law, the Flemish text remaining until then only an official translation.<sup>15</sup> According to Herbots' definitions, the official text and the official translation of a law do not have the same legal status. The official text is the one in which the legislator has declared his intention, which has been voted in parliament and which has been passed and promulgated by the head of state. Moreover, the French text was also the only authentic one, i.e. the document that contains the true intention of the legislator or the parties, in case of divergence or inconsistency.<sup>16</sup> The official translation shows different characteristics in its editorial judicial procedure and in its inherent legal status. Since the translation is drafted by the executive power after the adoption and on the basis of the authentic text only, it did not follow the steps of the legislative process (the legal requirement for the creation of laws);

13 'Too frequent changes in the law may nullify the benefits of formal, but slow-moving procedures for making the law known.' *ibid* 92.

14 'No law, decree or regulation of the general, provincial or local administration, is obligatory until it has been published in the mode determined by law.' *Ibid*. All translations are our own.

15 German translations continued to be published in a bilingual edition of the *Bulletin officiel* until 1839, when Belgium lost most of its German-speaking territories and the Minister of Justice Raikem decided that the German translation would be omitted from *Bulletin officiel*. Louis Hymans, *Histoire parlementaire de la Belgique de 1831 à 1880* (Bruylant-Christophe 1878–1880) t.1, 710.

16 Jacques Herbots, *Meertalig rechtswoord, rijkere rechtsvinding* (Story-Scientia 1973) 3.

the different procedure implied that the translation had no legal effect.<sup>17</sup> The legal status of the Flemish translation, as we will see later on in this article, constituted an important topic in the criticisms of the official translation policy. In the following sections, we will give a brief overview of the language and translation regulations that were installed in the first decades after the Belgian independence.

### 2.1 *Language and Translation in the Young Kingdom (1830–1831)*

In 1830, the young Belgian state had to deal with the co-existence of three languages with a diverging social status, i.e. French, the language of the political and social elite; Flemish, the language of the majority of the population; and German, the language of a small minority.<sup>18</sup> Aware of the link between governance and language, being the main instrument of communication between authorities and citizens, and of the multilingual environment, the new leaders realized the importance of a suitable language policy.<sup>19</sup> This raised questions on the need for translations and their practical organization. Decisions with respect to these issues are considered translation policy.<sup>20</sup>

On 5 October 1830, one day after independence was declared, the Provisional Government decided on the publication of its future acts and orders, creating for this purpose a government journal called *Bulletin des arrêtés et actes du gouvernement provisoire de la Belgique*.<sup>21</sup> Their decision did not mention the language of the publication but, as the *Bulletin* was published only in French, it de facto established French as the only official language of the new state.<sup>22</sup> A second order related to the publication mode of the Provisional

17 Ibid 153.

18 Paul Levy, *La querelle du recensement* (Institut belge de sciences politiques, 1960) 40 cited in Jan Clement, *Taalvrijheid, bestuurstaal en minderheidsrechten. Het Belgisch model* (Intersentia 2003), footnote 56.

19 Koen Bovend'eerdt, Charlotte De Kluiver, Leon Trapman en Mojan Samadi, 'Recht en taal' (2015) AA 554, 554: 'In Europe, language planning has classically been a state enterprise aiming to forge national unity through communication in a single, standardizes, literate language'; Josef Lo Bianco, 'The importance of language policies and multilingualism for cultural diversity' (2005) 61 *International Social Science Journal* 37, 54 ; Sophie Weerts, *La langue de l'Etat. Proposition d'un modèle de pluralisme linguistique à partir de l'étude comparée des droits belge et suisse* (Bruylant 2015) 50–55.

20 Reine Meylaerts, 'Translational justice in a multilingual world: an overview of translational regimes' (2011) LVI 4 *Meta*, 743.

21 Weerts (n 19) 126.

22 Arrêté du gouvernement provisoire de la Belgique du 5 octobre 1830 portant création du Bulletin des actes et arrêtés du gouvernement, *Bulletin des arrêtés et actes du gouvernement provisoire de la Belgique*, 10 octobre 1830, n°5, 3, 4. Clement (n 18) 53.

Government's laws and acts was promulgated on 16 November 1830.<sup>23</sup> This order did take into account the other national languages, and aimed to attune the citizens' right to speak their language of preference to that of the public servants working in the general administrations and courts.<sup>24</sup> After stipulating in its first article that the *Bulletin officiel des lois et actes du gouvernement* would be published in French, the order provided in the second article for a Flemish and German translation of the laws and acts of the government for those provinces where Flemish or German was spoken. The responsibility for providing these translations was in the hands of the provincial governors, who were to include them in the respective provincial bulletins, the *Mémoriaux administratifs*. According to the introductory paragraphs of the order, it would be impossible to publish a unique official translation at the central level as the Flemish and German languages varied from province to province, and even from district to district. In other words, the Provisional Government used the lack of a standardized Flemish as a pretext to shift the responsibility of providing translations from the central to the provincial level.

The order of 16 November 1830 demonstrates the status accorded to Flemish and German, considered provincial languages. This idea of installing a system of local translations of laws and decrees was not new, but was in fact a continuation of the philosophy of the decree of 13 October 1795, promulgated at the beginning of the French annexation. This latter decree also enabled translations for those departments where the knowledge of French was not widespread, which could lead to inconveniences and went against the idea that citizens have to know the law. In other words, translations were put in place because they were deemed necessary. Since the order of 16 November 1830 explicitly allowed for translations, it shows how the authorities officially installed translations of laws into the other national languages. However, it also reaffirmed the supreme status of French as the official language of publication of laws. Thus, the order did not only authorize but also prioritize different language versions.<sup>25</sup> It conveyed the idea dominant in francophone spheres that Flemish,

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23 Arrêté du gouvernement provisoire de la Belgique du 16 novembre 1830, *Bulletin des arrêtés et actes du gouvernement provisoire de la Belgique*, 20 novembre 1830, n°33, 3, 4; Clement (n 18) 57–58.

24 The Provisional Government was probably influenced by the debates of the Commission established a few days before to draft the Constitution. Some members of the Commission even suggested to have bilingual legal texts, i.e. texts in Flemish and French with equal legal status. These discussions presumably led to the Provisional Government's decision to officially regulate the use of languages. See also Weerts (n 19) 129–132.

25 Clement (n 18) 62–63.

as it lacked a standardized form, was not a language fit for governing and that, therefore, the Flemish version of legislation could only achieve the status of a translation, without any legal status.<sup>26</sup> However, since the establishment of the National Congress on 10 November 1830, Belgium's legislative and constituent assembly, the Provisional Government only exercised the executive power, which meant that the order of 16 November cannot be considered as a legislative act, *stricto sensu*.<sup>27</sup> Nevertheless, this order is still of historical importance in that it reflects the opinions of the Belgian revolutionaries on language and translation.<sup>28</sup> This order was considered as annulled from 25 February 1831 onwards, as it conflicted with article 23 of the Constitution.<sup>29</sup>

The National Congress's main task was to draft a constitution, which would be the fundamental legal text of the new state. In response to the repressive language policy of the Dutch king William I, as mentioned above, and in the liberal spirit of that time, it adopted the freedom of language in article 23, though with the reservation that language use could be regulated by law for acts of the public authorities and for judicial affairs: 'L'emploi des langues usitées en Belgique est facultatif, il ne peut être réglé que par la loi, et seulement pour les actes de l'autorité publique et pour les affaires judiciaires'.<sup>30</sup> Soon after its establishment, the National Congress addressed the issue concerning the publication of its own acts. Some members of the Congress proposed a decree creating a publication in French, without providing translations.<sup>31</sup> Another suggested mode of publication was the system of local translations, similar to the governmental order of 16 November 1830. However, this system was severely criticized by deputy Charles Liedts, for various reasons, which will be discussed in the second part of this article.<sup>32</sup> Partly because of the arguments raised by Liedts, the Congress opted for a system based on that adopted during

26 Considérants de l'Arrêté du gouvernement provisoire de la Belgique du 16 novembre 1830, *Bulletin des arrêtés et actes du gouvernement provisoire de la Belgique*, 20 novembre 1830, n°33, 3, 4.

27 O. Orban, *Le droit constitutionnel de la Belgique*, t. III, *Libertés constitutionnelles et principes de législation* (Dessain 1911) 405 in Weerts (n 19), 132.

28 Clement (n 18) 58.

29 Clement (n 18) 57–58.

30 'The use of languages spoken in Belgium is optional: it can only be regulated by law, and only for acts of the public authorities and for judicial affairs'. The Constitution itself also had but one official version. A Flemish text was made official in 1967. John Gilissen, *Historische inleiding tot het recht* (Kluwer rechtswetenschappen 1989) 201.

31 CN (*Congrès national*) Deb 18 November 1830 in Emile Huytens, *Discussions du Congrès national de Belgique* (Société typographique belge 1844) ti, 181.

32 CN Deb 27 Novembre 1830 in Huytens (n 31) 331–336.

the French period, on 6 November 1797.<sup>33</sup> The decree of 27 November 1830 stipulated centrally-made translations of the decrees of the National Congress in the *Bulletin officiel des décrets du Congrès National*. Their decrees were to be transmitted to the *pouvoir exécutif* (the executive power), which was now in charge of the translations. The executive power had to publish the texts with a German or Flemish translation and distribute them in the municipalities where these languages were spoken.<sup>34</sup> According to legal historian Jan Clement, this decree recognized the presence of other languages than French on the national level, meaning Flemish and German were no longer considered to be mere provincial languages.<sup>35</sup> Economical, among other, reasons finally prompted the National Congress to establish one single publication containing both the acts emanating from the National Congress and the Provisional Government, this decision thus modifying the publication mode chosen by the latter only eleven days before.<sup>36</sup> The decree of 27 November can in this respect be seen as the replacement of the order of 16 November, even though the latter was strictly speaking not, as already mentioned, a legislative act. From these two texts dealing with Belgian language and translation policy we can infer that the status accorded to a language (national or provincial) influenced the choice to provide translations, and the level on which to execute them.

The law of 19 September 1831, promulgated by the first Belgian parliament elected in August 1831, created the *Bulletin officiel des lois et arrêtés royaux de la Belgique* or *Staetsblad der wetten en koninglyke besluiten van België*. This law prescribed translations of laws and royal decrees into Flemish and German for the municipalities where those languages are spoken, thereby again recognizing the existence of a Flemish- and German-speaking community. Yet it was also highlighted that the French text would remain the only official one ('Le texte français demeurant néanmoins seul officiel'), making French the exclusive official language of laws.<sup>37</sup> While this stipulation only favored

33 A central translation service belonging to the *Bureau de l'envoi des lois* in Paris was from then on responsible for the translations of the *Bulletin des lois*. Clement (n 18) 69; Lieven D'hulst and Michael Schreiber, 'Vers une historiographie des politiques des traductions durant la période française' (2014) 26.1 Target 3.

34 Décret du 27 novembre 1830, 'Formation d'un Bulletin Officiel des décrets du Congrès national de la Belgique et des arrêtés du pouvoir exécutif. Mode de publication des décrets et formule de leur (mandement) d'exécution', *Pasin.*, 1830, 94.

35 Clement (n 18) 57–58, 75.

36 CN Deb 27 Novembre 1830 in Huytens (n 31) 331–336 ; Weerts (n 19) 137–141.

37 Loi du 19 Septembre 1831 concernant la sanction et la promulgation des lois, *Pasin.*, 1831–1832, p 150.

French over the other national languages as language of legislation, it would be interpreted by many historians as an important phase in the Belgian Frenchification.<sup>38</sup> While freedom of language had been enshrined by the Constitution, this applied to both citizens and magistrates, who were consequently equally entitled to the use of the language of their preference. As this freedom could be regulated for acts of the public authorities and in judicial affairs, legislators and magistrates could easily impose French as the language of the law and jurisprudence. Moreover, for the new state's francophone elites, it seemed only natural to not seriously consider Flemish as their working language, French also being a much more internationally prominent language for culture, commerce, sciences and diplomacy.<sup>39</sup>

## 2.2 *Changes in Publication and Translation Modalities of Laws*

Before discussing the major change in the publication of laws in 1845, we should first mention the decree of 1 January 1844 concerning the official Flemish spelling in translations of laws and decrees.<sup>40</sup> Because of the need for a uniform and standardized Flemish spelling for official translations, Minister of Justice Baron J. d'Anethan approved a decree based on guidelines and rules determined during the Taelcongres (Language congress) which had assembled in Ghent on 25 October 1841. The result was that the *Commissie- or Willems-spelling* (named after Jan-Frans Willems, a staunch supporter of the Flemish Cause) introduced virtually the same spelling as the Dutch Siegenbeek-spelling. The decree also divided the Bulletin into two parts, one containing the laws and decrees of general interest and the other the texts of individual

38 Clement (n 18) 87; Herman Van Goethem, *De taaltoestanden in het Vlaams-Belgisch gerecht, 1795–1935* (Paleis der Academiën 1990) 138; Roland Willems 'Liever Hollandsch dan Fransch: taalcontact en taalconflict in het negentiende-eeuwse Vlaanderen' (2002) 3 *Verslagen en Mededelingen van de Koninklijke Academie voor Nederlandse Taal- en Letterkunde* 381, 392.

39 On French as the dominant cultural language in European society throughout the nineteenth century, see Sharon Goodman and David Graddol (eds), *Redesigning English: New Texts, New Identities* (Routledge 1996) 188 ; Tore Janson, *The History of Languages: An Introduction* (OUP 2012) 225; Tomasz Kamusella, *The Politics of Language and Nationalism in Modern Central Europe* (Palgrave Macmillan 2009) 90; David O'Regan, *International Auditing: Practical Resource Guide* (John Wiley and Sons 2004) 204.

40 Arrêté royal du 1 janvier 1844 qui prescrit la division du Bulletin officiel en deux parties et fixe l'orthographe de la traduction flamande des lois et arrêtés, *Pasin.*, 3<sup>e</sup> série, 1844, n°14, 5–6.

and local interest.<sup>41</sup> This decree was the first attempt to improve the quality and uniformity of the Flemish translations, but was also heavily criticized by some members of parliament (cf. *infra*) and the so-called particularists, who wanted to create a proper Flemish language, independent from Dutch.<sup>42</sup>

With the law of 28 February 1845,<sup>43</sup> the publication of laws was radically reorganized. According to the parliamentary documents, the aim of this law was to achieve uniformity in the publication of laws and general decrees, and to change the date of commencement, i.e. the date on which the law takes effect, to the publication date instead of the promulgation date. The *Bulletin officiel* ceased to exist and was replaced by the *Moniteur belge*, which had been established in 1831 as a government newspaper to express the government's points of view and which consisted of an official and a non-official part. The *Moniteur* became the official publication of governmental texts but contained (predominantly) monolingual French texts, until the end of the century.<sup>44</sup> The legislators' argument in favor of a single official version of the legislation was that they wanted to avoid additional ambiguities and contradictions, since these led to legal uncertainty or even injustice.<sup>45</sup> Next to installing the *Moniteur belge* as the official government publication, article 5 of the law of 28 February 1845 established a separate medium, the *Recueil des lois et arrêtés royaux de la Belgique*, in Flemish the *Verzameling der wetten en koninklijke besluiten van België*, which compiled the French texts of laws and royal decrees with their translations:

Le gouvernement fera réimprimer, dans un recueil spécial, les lois et arrêtés d'une application usuelle, avec une traduction flamande pour les communes où l'on parle cette langue. Néanmoins, ne seront pas imprimés dans ce recueil, les lois et arrêtés dont l'objet est purement individuel ou local.<sup>46</sup>

41 CR Deb 19 January 1844, M.B. (*Moniteur belge*). 20 January 1844, 6–7 ; CR Deb 25 January 1844, M.B. 26 January 1844; Hymans (n 15) t.2, 264; Guido van Dievoet, 'Het Nederlands als wetstaal' (2003) 5.1 Pro memorie 104.

42 Willemyns (n 38) 400.

43 Loi du 28 février 1845 prescrivant un nouveau mode de sanction et de promulgation des lois et de publication des lois et Arrêtés, *Pasin.*, 3e série, 1845, n°15, 25–34.

44 CR Deb 17 January 1845, Ann. parl. (*Annales parlementaires*), 517–525; CR Deb 18 January 1845, Ann. parl., 528–536; Hymans (n 15) 357.

45 Debates can be found in *Pasinomie* (n 45) 25–34; van Dievoet (n 41) 105 footnote 28.

46 'The government will reprint in a special collection, laws and decrees, with a Flemish translation for the municipalities where they speak this language. Nevertheless, will not

As the article states, the *Recueil* did not include translation of laws and decrees of individual and local importance, meaning that these texts were not translated at the central level. However, it is plausible that translations of these local and individual laws were published in the provincial bulletins, since, following a discussion on the publication of a Flemish translation of the official part of the *Moniteur* in 1859, it was mentioned that this measure would entail a duplication of the *Mémorial administratif*.<sup>47</sup> Moreover, the *Recueil* was not, as opposed to the *Moniteur*, published on a daily basis. While the authenticity or legal force of the French texts appearing both in the *Moniteur* and in the *Recueil* was the same, the Flemish text included in the *Recueil* was only a translation that had no force of law. As the official French text of the laws and their translations did not appear simultaneously and the law came into force at the time of its publication in the *Moniteur*, this situation entailed that, in theory, Flemish citizens would have to respect the law before the translation was published in the *Recueil*, in other words before they were able to be acquainted with the law. While some Flemish texts were published in the *Moniteur* after 1845, such as the Flemish translation of the Code of Criminal Procedure in 1874, these remained highly exceptional.

### 2.3 *More Rights to the Flemish (Language): The Linguistic Laws*

From the second half of the nineteenth century, supporters of the Flemish Movement increasingly raised their voices to gain more rights for the Flemish language and the Flemish citizens. Their efforts resulted in the passing of the linguistic laws granting more rights to Flemish in criminal cases (law of 17 August 1873) and in administrative matters (law of 22 May 1878). These linguistic laws had an influence on the publication of translations in the *Moniteur belge*. The translation of the Code of Criminal Procedure was published on 4 September 1874 as an appendix to the decree of 17 August 1874, which executed article 12 of the law of 17 August 1873: 'Dans le délai d'un an, il sera publié, par les soins du gouvernement, une traduction flamande du code d'instruction criminelle'.<sup>48</sup> Since the law of 22 May 1878, the Flemish text of the amendments to the Civil Code was being published in the *Moniteur* but not always next to the French text. Sometimes the translations appeared in a later issue of the

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be reprinted in this collection, laws and decrees whose purpose is strictly individual or local.' Article 5 de la Loi du 28 février 1845, *Pasin.*, 3e série, 1845, n°15, 25–34.

47 Clement (n 18) 120.

48 'Within the course of one year, a Flemish translation of the Code of Criminal Procedure will be published through the agency of the government.'

*Moniteur*, making them more difficult to find.<sup>49</sup> Finally, the Equality Law of 18 April 1898 was a decisive moment for the use of Flemish in the publication of laws. By this time, the principle that everyone had the right to be administered in his own language was unanimously supported.<sup>50</sup> The Equality Law was an important triumph of the Flemish Movement and was an (indirect) consequence of the establishment of universal plural suffrage in 1893.<sup>51</sup> From then on, laws were to be voted, passed, promulgated and published in both French and Flemish, the two texts having equal force of law.<sup>52</sup> This meant that the Flemish version, at least officially, was no longer a translation: Flemish citizens could now rely on a text in their native language that had legal status.

### 3 Criticisms of Official Translations: An Overview

Contrary to the principles that underlay them, the measures taken by the government to provide translations of laws and decrees were not met with unanimous approval. The realization of these official translations, brought into existence with the aim to provide access to the law for non-French-speaking citizens, were frequently criticized by various social groups for several reasons. In the following sections, we will summarize the most common complaints about the Flemish versions of the law (i.e. the Flemish translations before 1898 and the official Flemish texts after 1898) published in the government publications (*Bulletin officiel*, *Moniteur belge*, *Recueil des lois* etc.) by members of parliament (Subsection 3.1), jurists and magistrates (Subsection 3.2) and the general public (Subsection 3.3).

#### 3.1 Parliamentary Criticisms

The first criticisms of the official system of translation of laws were voiced from the very onset. During the National Congress's debates on the publication of their acts in November 1830, deputy Charles Liedts severely criticized the system of locally translated laws established by the order of 16 November 1830,

49 Dirk Heirbaut and Gustaaf Baeteman, *Cumulatieve editie van het Burgerlijk Wetboek. Edition cumulative du Code civil* (Kluwer 2004) LVII.

50 Clement (n 18) 218–219.

51 'The establishment of universal plural suffrage increases the electoral weight of the highly populated Flanders and rehabilitates Flemish, the only language understood by many voters. Also, the Catholic majority, which depends to a large extent on the Flemish rural electorate, has adopted several linguistic laws.' Bitsch (n 3) 122.

52 Clement (n 18) 209–215.

which stipulated that the governors of the Flemish provinces had to provide a Flemish or a German translation in the *Mémorial administratif*. His first argument was that providing a different translation for each province where translations were needed was not economical, since this would require employing multiple translators. Moreover, he implicitly also warned against the way this system would affect legal certainty and legal equality, two components of the principle of legality.<sup>53</sup> Following the principle that ‘those who have to obey the law must be able to read and understand it’,<sup>54</sup> he argued that multiple versions entailed the risk of diverging interpretations of the French version of the law in the Flemish provinces. Even though the translations did not have legal force, it was still desirable that they be uniform for all Flemish provinces, so that the law would be uniformly understood. Finally, he mentioned the delays to which this system would lead. Since the *Mémorial administratif* was often only published bi-weekly, the law would become compulsory before the Flemish citizens would have access to the translation.<sup>55</sup> Apparently, Liedts’ arguments were sufficiently convincing, since the National Congress opted, as already mentioned, for the system of centrally-made translations, through the decree of 27 November 1830.

Almost one year later, on 16 September 1831, a few days before the first elected parliament of Belgium adopted the law on the publication of laws and their translations, Minister of Justice Raikem, in the same vein as Liedts’ argument, commented on the possible delays that could be caused by installing the system of locally-made translations. Although not opposed to the insertion of translations in the official government journal, he pointed out that these were bound to delay the publication of the laws. Given the time needed to translate the sometimes very extensive laws, it proved difficult to hasten the publication rhythm, which was already irregular.<sup>56</sup>

Several years later, in January 1837, several members of parliament, among whom Désiré Lejeune, François Donny and Eugène De Smet, criticized the Flemish translations of the laws published in the *Bulletin officiel*. They denounced that the translations included many ‘*bastaardwoorden*’ (Gallicisms), that they were incomprehensible and that in some cases the Flemish text even meant the opposite of the official French version. In response to these criticisms, the Minister of Justice Ernst agreed to request an increase in the budget

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53 Fuller (n 12) 39, 46.

54 CN Deb 27 November 1830 in Huyttens (n 31) 330.

55 Ibid 331.

56 CR Deb 16 September 1831, M.B. 18 September 1831, 95.

allocated to translation and acknowledged the need for a translator fluent in both languages and acquainted with the law.<sup>57</sup>

At the end of 1837, the translation of the laws again provoked criticisms in the two parliamentary assemblies.<sup>58</sup> While measures had been implemented, Lejeune and De Smet were still not satisfied with the official translations. The increase in the budget of the Ministry of Justice did not succeed in improving the translations, which still contained a host of Gallicisms and mistranslations. For example, the '*ministère de la justice*' (Ministry of Justice) got translated as '*bewind van justitie*' (regime of justice) and the '*corps des ingénieurs*' (engineers' corps) as '*het genootschap der ingénieurs*' (engineers' society).

Furthermore, Lejeune pointed out that the translator was not sufficiently acquainted with the Flemish language and literature to be able to translate an official bulletin, which covered the broadest range of subject matters. Ernst acknowledged that the translation was made by a '*littérateur et jurisconsulte distingué*' (a distinguished man of letters and jurist) but that he did not have any experience in translation. Lejeune repeated his request for an increase in the budget, before citing some observations on the Flemish text of the *Bulletin des lois* by several Flemish men of letters, among whom Jan-Frans Willems, Karel Ledeganck, Philippe Blommaert and Frans Rens, all supporters of the Flemish cause. The Flemish used in translations was described as 'detestable' and as 'mocking Flemish and the Flemings'. The translator was even compared to 'a primary school pupil who performed the job mechanically, looking up every word that he found in the French text in the dictionary and copying it without considering the particular genius of the language to which he translated and without examining whether it was the right term or the equivalent of what was said in the French text'. The Flemish translation was considered so incoherent that it was impossible to understand it without consulting the official French text of the laws.<sup>59</sup>

In the parliamentary session of 30 May 1840, Lejeune again addressed the subject of the Flemish translations. While he did not disapprove of the translation system in place, he deplored its execution. He acknowledged that, compared to before, the quality of the translations was no longer as poor but it still was not '*tout ce qu'elle devrait être*'.<sup>60</sup> The criticisms addressed here mainly concerned the quality of the translation and do not touch upon its legal status. In 1837, Lejeune even affirmed that the measure of having the French text

57 CR Deb 20 January 1837, M.B. 21 January 1837, 21; Hymans (n 15) 489.

58 Hymans (n 15) 588, 627.

59 CR Deb 1 December 1837, M.B. 2 December 1837, 336.

60 'All as it should be'. CR Deb 30 May 1840, M.B. 31 May 1840, 152.

the only official text was a sensible one, because it was this version only that was discussed and approved in parliament. As already discussed above, official translations show different characteristics in its editorial judicial procedure, as it is drafted by the executive power after the adoption of the authentic text. It thus did not follow the procedure for the creation of laws. If the Flemish translation was also made official, it would mean that 'laws would be abandoned at the discretion of a ministry or even a simple translator', as the Flemish text was indeed 'only' the translation of the French authentic one and was neither discussed nor approved by the parliament.<sup>61</sup>

The adoption of the new spelling, which greatly resembled the Dutch spelling, adopted for use in the Flemish translations of legal texts introduced by the decree of 1 January 1844, was briefly at the heart of the parliamentary debates. Most approved of this spelling as it was adopted by the great Flemish writers. Others, Léon de Foere in particular, opposed the new spelling, anticipating a dangerous rapprochement with the Netherlands, as de Foere was convinced that the decree attempted to replace Flemish with Dutch. He considered the decree to be unconstitutional, since article 23 of the Belgian Constitution stated that the use of language can only be settled by law for acts of the public authorities, and thus not by a decree of the Minister of Justice. However, after lengthy discussions during the sessions of 20 and 25 January 1844, the majority of members of parliament agreed that the issue of spelling constituted a linguistic question rather than a political one. Moreover, it only concerned the spelling used in the translation of laws from French into Flemish, and was not meant to be generally imposed.<sup>62</sup>

In 1856, a parliamentary commission was established to report on linguistic complaints of the Flemish citizens. This report of the so-called *Grievencommissie* (Commission of Complaints), published in 1859, contained several demands related to the publication of laws in Flemish. The commission demanded the Flemish translation of the *Moniteur*, or at least of the Parliamentary Proceedings.<sup>63</sup> The commission also demanded that the legal status of the translation be changed: the Flemish version of laws and royal decrees should receive legal status. This would lead to the increased use of Flemish in parliament and would facilitate the use of Flemish for a Flemish lawyer, who had to instantly and mentally translate the laws that he had to cite in courts, as

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61 CR Deb 20 January 1837, M.B. 21 January 1837, 21.

62 CR Deb 20 January 1844, M.B. 21 January 1844, 21; CR Deb 25 January 1844, M.B. 26 January 1844, 26.

63 Commission flamande (n 10) 27.

well as reproduce their exact meaning.<sup>64</sup> Eventually, the commission mitigated this demand by only requiring a translation into Flemish of the official part of the *Moniteur*, without acknowledging its authenticity: it was agreed that the existence of two official texts would lead to inconveniences, since there were already lengthy discussions on the meaning of terms in one single text. However, the commission specified that it was only to be considered an intermediate step toward acknowledging the Flemish version of laws and decrees as having legal value.<sup>65</sup> The criticisms of the *Grievencommissie* mainly concerned the channels through which translations were published and the rate at which they were produced. In their view, the shorter the delays, the sooner the intermediaries (administrations, communal authorities, etc.) could take note of the legal texts and be able to avoid instances of power abuse from those that could understand and use French, as apparently occurred in the correspondence between officials of the administration of finances and the central administration.<sup>66</sup>

In 1860, in response to senator De Block's request for a translation of the *Moniteur* and Parliamentary Proceedings,<sup>67</sup> Minister of Justice Tesch declared that this would not be useful since the translation of the official acts was already included in the *Recueil des lois*.<sup>68</sup> As mentioned, since 1845 Flemish translations were no longer provided next to the official French law texts in the official government journal, but were only published in the *Recueil des lois*. Tesch's view was shared by Baron Dellafaille, who considered the translation of the *Moniteur* to be 'completely useless', since, according to him, all the documents published in the *Moniteur* were reported by the official journals and published in the bilingual edition of the *Recueil*.<sup>69</sup> However, as mentioned in our discussion on the *Recueil des lois*, not all legislative acts that appeared in the *Moniteur* were translated and published in the *Recueil*, as those of local and individual interest were not included. Either Tesch and Dellafaille were not aware of this exclusion, or they did not deem these local or individual laws to be of much interest to Flemish citizens.

This discussion was taken up again in 1871, when Gerrits, an Antwerp representative in the Chamber of Representatives, demanded the publication of the

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64 Ibid 27–28.

65 Ibid 72.

66 Ibid 122.

67 Although not a member of the Grievencommissie, De Block also supported this idea.

68 S (Sénat) Deb 28 June 1860, Ann. parl., 166. They mention *Bulletin des lois*. However, the *Bulletin des lois* had by then been renamed as *Recueil des lois*.

69 S Deb 28 June 1860, Ann. parl., 166.

laws in both Flemish and French. He deplored that the laws were being written in only one national language.<sup>70</sup> The Minister of the Interior Kervyn de Lettenhove used the same, erroneous, argument as his colleague Tesch a decade earlier, i.e. that the Flemish translations were already published in the *Recueil des lois et arrêtés royaux*. Edouard Pirmez, former Minister of the Interior, found this answer unsatisfactory because it meant that the Minister did not intend to change the situation.<sup>71</sup> The fact that the Minister of the Interior published his circulars in both French and Flemish in the *Moniteur* did not appease Pirmez, who noticed that this was not the case for circulars emanating from other ministries, such as Minister of Justice Prosper Cornesse's communications, which were of particular interest to the lower classes, mainly consisting of Flemings. He wondered, ironically, if the other circulars were 'clear enough in French to not require translation'.<sup>72</sup> By challenging the few Flemish texts in the *Moniteur*, Pirmez added, still ironically, that 'one feels bored with a newspaper that one can read every day, it becomes monotonous, while a newspaper where one finds something to read only after six weeks or two months, offers something charming (...) Behold the subscriber in absolute happiness'.<sup>73</sup>

Flemish deputy Edward Coremans considered the publication of an official Flemish version of the legal texts a necessity. Without them, he believed, laws cannot be invoked against the Flemish citizens: 'Nous savons qu'il existe une espèce de traduction en néerlandais de nos lois. Mais (...) on ne pourrait pas l'invoquer devant les tribunaux et par cela même il est peu utile.' In his opinion, the translations of laws were little known and little widespread in Flanders, claiming that this kind of translation and no translation at all amounted to the same thing. He also considered the access to translations as the natural right of the Flemish population.<sup>74</sup>

In summary, we can distinguish four main strands of criticisms of the official translation policy emanating from some members of parliament. The first was related to the practical aspects of official translation. Members of parliament mainly commented on the costs and the risk of diverging interpretations through the employment of multiple official translators, the proficiency of the

70 CR Deb 10 March 1871, Ann. parl., 776.

71 CR Deb 11 March 1871, Ann. parl., 786.

72 Ibid 788.

73 Ibid.

74 'We know there is a kind of Flemish translation of our laws. But (...) it cannot be invoked before the courts and for that very reason it is of little use.' CR Deb 11 Mars 1871, Ann. parl. 781–789. Coremans also implicitly mentioned the principle of legality as he continued: 'We need an official text that the people who only understand Flemish can invoke before all the authorities of the countries'.

official translators, the channels via which translations were to be distributed, and the publication rhythm. The second concerns the quality of the translations, which were often incomprehensible and riddled with errors. The third relates to the principle of legality, i.e. the right of the Flemish citizens to have access to the law via translations. The last deals with the status of the translations, which remained without legal force until the Equality Law of 1898.

### 3.2 *Jurists' Criticisms*

In the following paragraphs, complaints expressed by jurists about the official translations will be discussed. More particularly, we scrutinized the opinions of some authors of articles in *La Belgique Judiciaire* (LBJ), one of the oldest and leading legal journals in Belgium, based in Brussels and founded in 1842;<sup>75</sup> those of members of the *Vlaamse Conferentie der Balie van Gent* (VCBG), an association of lawyers at the Bar in Ghent (East-Flanders) founded in 1873; and of contributors to the Flemish legal journal *Rechtskundig Tijdschrift van Vlaamsch-België* (RTVB), founded in 1897. What did these jurists and magistrates, daily experiencing the challenges of multilingualism in legal settings, have to say about the translations of laws (not) provided by the government?

#### 3.2.1 Vlaamse Conferentie der Balie van Gent

Quite a number of jurists were engaged with the Flemish Movement throughout the second half of the nineteenth century.<sup>76</sup> Yet, as the board of the VCBG noted, a distinction should be made between militants promoting the Flemish language as such, and those legal experts, such as themselves, who only argued in favor of the use of Flemish because and insofar as it facilitated the pursuit of justice.<sup>77</sup> With regard to the official translations of legal codes, Lodewijk De Hondt's work as translator of the Criminal Code (1867), the Military Code (1870)

75 Sebastiaan Vandenbogaerde, *Vectoren van het recht. Geschiedenis van de Belgische juridische tijdschriften* (PhD thesis UGent 2014) 57, 66.

76 Although more in absolute numbers than on the whole, see below.

77 De straffelijke rechtspleging daarentegen is nooit een werk van vaderlandsche beschaving. In name der rechtvaardigheid spoort zij de waarheid op in elk gegeven geval. [Eens de partijen] elkander verstaan, neemt de wetgever er vrede mede, in welke taal het ook zij dat zulks moge geschieden. [...] Pleegt men te verzekeren dat het Fransch slechts bij uitzondering wordt gebruikt, wij noemen dit eene bloote verwarring van denkbeelden.

(Criminal justice to the contrary is never a work of patriotic civilization. In the name of justice, it seeks the truth in every case. [When the parties] understand each other, the Law is at peace with whatever language that they use to that end. [...] Insisting that French only be used exceptionally, we call a blatant mix-up of ways of thinking.)

and Code of Criminal Procedure (1874) was praised by many.<sup>78</sup> The liberal newspaper *Het Volksbelang*, co-edited by Julius Vuylsteke, one of the founding members of the VCBG, expressed its frustration over the fact that some newspapers mistook the VCBG's plea for additional official translations for a wish to have Flemish codes that had the same force of law as the original, enacted French texts that could actually be invoked in court.<sup>79</sup> What they actually intended, as *Het Volksbelang* specified, were 'ambtelijke' (official, governmental) translations, carried out under the auspices of a committee of government-appointed legal as well as language experts, who discussed and co-decided on precarious translations (mostly related to equivalents of legal terms), as had been done for De Hondt's translations.

Translations had to be adequate because they would be used more frequently as the number of trials conducted in Flemish would go up after 1873, but also because they had the potential to enable, in part, this evolution. Translating a legal text meant thinking over the words and formulas, or inventing them if necessary, to administer justice in Flemish. As *La Belgique Judiciaire* wrote on 21 September 1873: 'C'est donc moins d'une traduction dans le sens usuel du mot, qu'il s'agit dans notre art. 12, que d'une langue à créer en grande partie.'<sup>80</sup> The VCBG moreover insisted, among others, on the governmental responsibility of these translations, as nothing would be more confusing and pernicious

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VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1877–1878' (1879) 21–22. See also VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1876–1877' (1878) 4.

78 'Bibliographie. De quelques livres de droit en langue flamande', *La Belgique Judiciaire* (Brussels, 30 January 1868) 144; 'La traduction flamande du nouveau Code Pénal par M De Hondt', *La Belgique Judiciaire* (Brussels, 11 October 1868) 1297–1304; Prosper Charles Alexandre de Haulleville, *La nationalité belge, ou Flamands et Wallons* (Hoste 1870) 133; VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879' (1879) 43; VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1889–1890' (1890) 45; 'Bibliographie. De Nederlandse rechtstaal, inzonderheid met betrekking tot het strafrecht', *La Belgique Judiciaire* (Brussels, 30 July 1892) 830; VRCB (Vlaamsch Rechtskundig Congres Brugge), 'Handelingen van het IVe Vlaamsch Rechtskundig Congres te Brugge op Zondag 21 April 1907' (1907) 28–29, 111–112; VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1907–1908' (1909) 42–44.

79 VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1889–1890' (1890) 78.

80 'It is thus less a translation in the usual sense of the word, with which our art. 12 is concerned [Within the year, the government will arrange for the publication of a Flemish translation of the Code of Civil Procedure], than with the creation of a language to a large extent.' 'Loi du 17 aout 1873 sur l'emploi de la langue flamande en matière répressive' *La Belgique Judiciaire* (Brussels, 21 September 1873) 1201–1213.

for legal certainty than a multitude of competing versions. In a speech delivered in 1879 to the steering committee he even suggested a ban on private translations, since this practice went against the principle of a single official version of the legislation:

De eenheid van tekst, op het stuk van recht, is eene onwaardeerbare weldaad. Zij is eene voorwaarde van eerbied voor de wet, zij belet de verwarring in haar aanduiden [...] en bij onze nog weifelende woordenkunde [...] zou geene grootere klip te dochten zijn, dan het blinde vermenigvuldigen van noodeloze vertalingen. [...] M]en zou bijkans uit mogen roepen: in zake van teksten, beter één slechte dan twee goede! Moest onze ambtelijke overzetting waarlijk op de hoogte zijn, de regeering zou ze met strengheid moeten opleggen [...]. Ja, wij vragen het ons af, of de wetgever het vertalen van zijne reeds vertaalde wetten niet als iets gevaarlijks zou hoeven te regelen, het recht daarvan buiten het openbaar gebied houden, en, als het ware, plaatsen onder de hoogere waakzaamheid van het staatsbestuur.<sup>81</sup>

Unfortunately, they concluded, the quality of the official translations was indeed that poor, that they themselves explained the bourgeoning of private alternatives, which we will discuss later on.<sup>82</sup>

81 Where legal matters are concerned, textual uniformity is an invaluable virtue. It is a prerequisite of respect for the law, it inhibits confusion about its meaning [...] and in the face of a still hesitant lexical system [...] there would be no bigger challenge to overcome, than the blind multiplication of needless translations. [O]ne would almost exclaim: where texts are concerned, better one bad than two good ones! If our governmental translations would be better informed, the government would have to impose them severely. Yes, we ask ourselves, whether the government should not treat the translation of its already translated laws as something dangerous, restrain that right from public space, and, as it were, place it under the higher vigilance of the State government.

VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879' (1879) 41–42.

82 'Voldoen de ambtelijke vertalingen van onze wetten aan dien hoogen eisch? Het later uitgeven, door bijzonderen mannen uit het vak, van andere vertalingen, betreffende diezelfde wetten, schijnt een genoegzaam antwoord op de vraag. [...] E]ne tweede vertaling is noodwendig de satire van de eerste! (Do the official translations of our laws answer to that high demand? The later publication, by special men of the trade, of other translations, concerning those same laws, appears to be a satisfactory answer to the question. [...] A] second translation is necessarily the satire of the first!') VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879' (1879) 41.

The same disparaging discourse was used with regard to the quality of the more periodic legal translations in the *Bulletin officiel* and *Recueil des lois*. Although the VCBG congratulated the government on consistently providing translations of all Belgian laws enacted since 1830,<sup>83</sup> the association deplored the resulting product: neglected, carried out too hastily, and from the appearance, by bookkeepers instead of people familiar with the law.<sup>84</sup> Reason for which the board wrote on 31 March 1890 to the former and current Ministers of Justice Joseph De Volder and Jules Lejeune to call their attention to the ‘numerous mutilations’ of the texts, the translations of which were only to be consulted with great caution.<sup>85</sup> The solution, they believed, would be to introduce a course at university in which students would be taught about Flemish legal language, preparing them for their work in Flemish courts (both those included in the 1873 law and those excluded, but hopefully soon to be reorganized), as well as perfectly suitable legal translators.<sup>86</sup>

Apart from the dreadful quality, another element that also critically reduced the profitability of the *Recueil* was the bulkiness of its volumes, in which one could hardly distinguish between important and more trivial texts, and which usually were to be found under a layer of ‘venerable dust’, on the most unreachable of shelves in the library.<sup>87</sup> The VCBG proposed that the translations be published separately and in a smaller size, or better still, in the *Moniteur belge*. The official journal was distributed among legal experts, whereas the *Recueil* was hardly owned by anyone but the governmental institutions who received it for free. Some lawyers did not even know the *Recueil* existed.<sup>88</sup> The VCBG

83 The same mistake as that of Tesch and Dellafaille is made, since the *Recueil* did not provide translations of laws or decrees of individual or local importance. See Nouws and Meylaerts (n 9); VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879’ (1879) 23–25.

84 ‘Zij schijnt door overhaasting heel en gansch verwaarloosd’ (‘It appears to be totally and utterly neglected through precipitance’) VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879’ (1879) 42.

85 VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1889–1890’ (1890) 44.

86 VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1882–1883’ (1883) 10–11; VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1884–1885’ (1885) 6–7; VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1888–1889’ (1889) 8; VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1890–1891’ (1891) 10, 29; VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1904–1905’ (1905) 4–5.

87 VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879’ (1879) 32–34.

88 Ibid 33.

was certain that legal professionals formed the main audience of these translations. After all, the majority of citizens would not be able to understand the legal terminology in any language:

De groote hoop der burgers is overigens niet berekend om van de wetten hunne lievelingslezing te maken! De wetten komen op eene uiterst ingewikkelde wetenschap neer, en geene kleine dwaling is het te gelooven, dat het genoeg zij, een artikel te kunnen spellen, om hetzelfde te kunnen verstaan.<sup>89</sup>

Nonetheless, several legal experts throughout the century had noted that translations were vital: as the principle of legality indirectly required, all citizens should be able to read the laws they are subject to and to know their rights and duties.<sup>90</sup> In its program, the *Vlaamsch Verbond* (a liberal pro-Flemish organization co-founded by VCBG-member Julius Vuylsteke<sup>91</sup>) wrote in 1861:

Le premier devoir d'un gouvernement est de ne rien négliger, pour éclairer les citoyens sur leurs droits et leurs devoirs. Par conséquent, comme il n'existe pas jusqu'à présent de texte officiel flamand des Codes, le gouvernement doit mettre à la portée du peuple dans les provinces flamandes une traduction convenable desdits Codes [et] veiller à ce que la traduction flamande des lois et arrêtés paraisse régulièrement et ne laisse rien à désirer.<sup>92</sup>

In his 1867 *Voordrachten over de grondwet (Lectures on the Constitution)*, Flemish lawyer Gustave Rolin-Jaacquemyns moreover highlighted that a truly free country needed an official journal in the popular vernacular to enable everyone

89 'The majority of citizens is not qualified to make of the laws their favourite reading matter! The laws come down to an extremely complicated science, and it is no small mistake to believe that it suffices to be able to spell an article in order to understand it.' *ibid* 19–20.

90 Fuller (n 12) 39. Regarding legality, Fuller identified eight kinds of legal excellence toward which a system of rules may strive among which the understanding of laws.

91 José Verschaeren, *Julius vuylsteke (1835–1903) klauwaart en geus* (Van Ghemert 1984) 16.

92 'The first task of a government is to not neglect in any way the clarification to the citizens of their rights and duties. Consequently, as no official Flemish texts of the codes exist at present, the government must provide the people in the Flemish provinces with a suitable translation of these codes [and] see to it that the Flemish translation of laws and decrees appears regularly and leaves nothing to be desired.' De Haulleville (n 78) 153–154.

to stay informed of public affairs.<sup>93</sup> Similarly, the board of the VCBG dreamed of a new translation into the *moedertaal* of *Ons Groote Charter* (the mother tongue of the Constitution) to celebrate the 50<sup>th</sup> anniversary of independent Belgium. This, they imagined, would not only inform the people of the exact contents of *their Big Charter*, but also incite a patriotic sentiment in them: “t ware niet alleen de onontbeerlijke kennis van ons grondwettelijk beheer, die er bij winnen zou, 't ware ook [...] de niet min onontbeerlijke liefde tot dat beheer!”<sup>94</sup>

Last but not least, the poor quality of some translations was perceived by Alfons Prayon-Van Zuylen, lawyer at the Court of Appeal in Brussels, as nothing less than insulting. Prayon-Van Zuylen was one of the leading figures of the so-called Flemish Movement,<sup>95</sup> which until the 1890s was still largely a movement of elites and certain middle class professions, such as teachers, and was only starting to organize itself as a political pressure group.<sup>96</sup> The issues they raised were often of a cultural nature and of little concern to the workers and farmers belonging to the lower social classes.<sup>97</sup> Yet men such as Prayon-Van Zuylen paved the way for a more popular Flemish Movement, by raising the status of the *Vlaamsche, Nederlandse* or *Nederduitsche taal* (the Flemish or Dutch language). In his award-winning treatise on *De Belgische taalwetten* (*The Belgian language laws*) of 1892 he suggested the government neglected them on purpose, to discredit the Flemish legal language, or even the idea thereof: ‘men [is]

93 Gustave Rolin-Jaequemyns, *Voordrachten over de grondwet: het grondgebied, de grondwettelijke vrijheden* (Rogghé 1867) 295–296.

94 ‘It isn’t just the indispensable knowledge of our constitutional administration that would gain from it, it is also, we all agree, it is also the no less indispensable love for that administration!’ VCBG, ‘Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879’ (1879) 45.

95 Van Goethem (n 38) 196, 228, 286.

96 Notwithstanding a number of attempts to mobilize the masses around particular issues. See e.g. *ibid* 158. Political initiatives had been taken before, mostly from the 1860 on (leading for instance to the law on language use in Flemish courts in 1873). Hendrik Jozef Elias, *Geschiedenis van de Vlaamse gedachte* (Nederlandsche boekhandel 1963) vol 2, 42; Van Goethem (n 38) 154; Harry Van Velthoven, *Scheurmakers en carrièristen: de opstand van christendemocraten en katholieke flaminganten (1890–1914)* (Pelckmans 2014) 44, 70, 207, 210, 222; Lode Wils, *Van de Belgische naar de Vlaamse natie: een geschiedenis van de Vlaamse beweging* (Acco 2009) 91; Els Witte and Harry Van Velthoven, *Strijden om taal: de Belgische taalkwestie in historisch perspectief* (Pelckmans 2010) 102.

97 Harry Van Velthoven, *Waarheen met België? Van taalstrijd tot communautaire conflicten: een selectie uit 35 jaar wetenschappelijk onderzoek* (Karen Celis and Jasmien Van Daele ed, ASP 2011) 151.

gerechtigd zich af te vragen of er hier geen voorbedacht plan bestond om onze taal bespottelijk te maken.<sup>98</sup>

### 3.2.2 Rechtskundig Tijdschrift voor Vlaamsch-België

Founded in 1897, at the eve of the Equality Law, the *Rechtskundig Tijdschrift voor Vlaamsch-België* was created to form a Flemish counterpart to the existing francophone legal journals and to promote the use of the *Nederlandsche rechtstaal* (the Dutch legal language) in Flanders. The editorial team and contributors of this legal journal aimed to achieve this through the publication of articles on the Dutch legal language, judgements pronounced in Flemish and Dutch courts as well as through the publication of translations of laws and decrees as they appeared in the *Moniteur belge* and translations of important francophone judgements. The idea was to raise the status of the Flemish legal language, not by creating a distinct Flemish legal vocabulary, but rather by adopting the existing, more prestigious Dutch legal language of the Netherlands.<sup>99</sup>

The principal focus of the RTVB was the status and use of the Flemish legal language in legal settings. The editors of the journal endeavored to counter the arguments, mostly those of francophone jurists and magistrates, claiming that Flemish was not a proper legal and administrative language. They realized that efforts had to be made to raise the status of Flemish and of its legal vocabulary, if it was to become the second official language of Belgium from 1898 onwards. This creation of a functional legal vocabulary, fit for use in Flemish legal settings, was to be achieved by moving away from the dominant French influence, traceable by the frequent use of Gallicisms, calques and loan words from French, and by achieving uniformity with the Dutch legal language of the Netherlands.

It should consequently not come as a surprise that the criticisms voiced in the RTVB were mainly concerned with the official Flemish translations of French legal terms. The official translations of laws and decrees as published in the *Moniteur* were included in the journal and often supplemented with commentaries in footnotes on the use of certain terms, both general and specifically legal. The issue of the so-called *bastaardwoorden* in particular was at

98 'One [is] justified to ask himself if there was no premeditated plan to ridicule our language'. Alfons Prayon-van Zuylen, *De Belgische taalwetten* (Siffer 1892) 134.

99 Vandenbogaerde (n 75); Heleen van Gerwen, 'In Vlaanderen Vlaamsch! Translation Practices in Flemish Legal Journals: The Case of *Rechtskundig Tijdschrift voor Vlaamsch-België* (1897–98)' (2017) 2 *Journal of European Periodical Studies* 3–20.

the heart of frequent heated discussions on the accurate translation of French legal terms and on the development of the Flemish legal language. These Gallicisms or calques of French terms were criticized as follows: ‘Ontelbaar zijn de bastaardwoorden die het Vlaamsch ontsieren, ja soms, voor die geen Fransch kennen, onverstaanbaar maken.’<sup>100</sup> We can distinguish two attitudes towards the use of Gallicisms in translations. The first, and that of the RTVB, was absolute rejection, save in the following situations: when they had already been generally accepted, when they could not be conveyed by an equivalent Dutch term, or when the existing Dutch term had not yet been generally accepted.<sup>101</sup> The second was moderate tolerance. According to adherents of this attitude, most Gallicisms were simply best suited to convey the French legal term, they were already generally used among jurists and they were also best known to the general public.<sup>102</sup>

A second important criticism concerned the literal translations included in the government journal. These ‘both literal as unliterary translations’ were most notably denounced by Alberik de Swarte, senator and jurist, in the 1900–1901 issue of the RTVB.<sup>103</sup> He blamed the order of 16 November 1830 for triggering the ensuing ‘translation fever’, responsible for the many literal translations in the legal domain. He even went so far as to say that people did no longer speak and write Dutch legal language, but ‘translated French’. In this respect, de Swarte considered purism to be necessary and even ‘wholesome’ to the extent that it could protect Flemish from foreign influences by ‘eradicating’ regional expressions and Gallicisms. Literal translations and Gallicisms were indeed regarded as an attack on the true genius of the Flemish language, and were therefore to be avoided at all costs. Some jurists and translators resorted to the creation of new terms as a way of avoiding this foreign influence, a practice that was condemned by de Swarte, since this made the language ‘awkward and absurd’. De Swarte instead called for the use of the Dutch legal language as a model for Flemish, since it was already an independent and autonomous language, as opposed to Flemish which remained subordinate to the French legal language. The union with Dutch was frequently presented as the best

100 ‘Countless are the Gallicisms that are a blot on Flemish, yes sometimes, for those who do not know French, make it incomprehensible’. A. Op De Beeck, ‘Taal- en Rechtskundige Aanteekeningen’ (1903), RTVB, 42.

101 De opstelraad, ‘Aanmerkingen’ (1897–98), RTVB, 51–52.

102 Felix Rodenbach, ‘Jurisprudentie of rechtspraak? – Mitoyenniteit of gemeenheid?’ (1897–98) RTVB, 115–118.

103 Alberik de Swarte, ‘Over de studie der Nederlandsche rechtstaal’ (1900–1901) RTVB, 79.

solution to the problems of terminological inconsistencies and problems in interpretation.<sup>104</sup>

In summary, the criticisms expressed by jurists and magistrates are to a large extent similar to those of the members of parliament. Pointing out the importance of one authoritative Flemish version of the law, they also warned of the risks of having multiple, competing versions of translations. Although they were aware of the merits of private translations, which stemmed from the lack and shortcomings of official translations (cf. *infra*), they believed that providing a decent translation of the law fell under the responsibility of the government. The central demand was repeated continually, i.e. that the official translations should be published in the daily government journal *Moniteur belge*. To enable transparent access to the law was indeed generally considered as a governmental duty. They also commented on the poor quality of the translations, which were filled with Gallicisms and suffered from the over-use of literal translation.

Despite all these complaints about inadequate Flemish versions of legislative texts, we should not jump to the conclusion that the struggle for more and better translations by the government was something on the mind of many people working in the legal world. Few lawyers and magistrates, all of whom were trained in French, felt an urgent need to replace it as the legal vernacular.<sup>105</sup> Court interpreters in that system were indispensable, legally mandatory and probably ubiquitous, but to what extent the translation of laws in written form was generally deemed urgent is hard to say at this stage. All those who

104 Hendrik de Hoon, 'Onze Rechtstaal' (1902) RTVB 193.

105 This was also the case for the editors of *La Belgique Judiciaire*. While not opposed to translation of laws, codes and in courts (for as far as we can tell) the journal was not particularly known for being in the vanguard of Flemish emancipatory action. Sebastiaan Vandenbogaerde for instance also identified its lack of interest for the language laws of 1935 as the journal's deathblow. Sebastiaan Vandenbogaerde, 'Exegi Monumentum. La Belgique Judiciaire (1842–1939)' (2012) *Tijdschrift voor Tijdschriftstudies* 31, 57. Herman Van Goethem even quoted an unspecified source, counting that in Brussels (also the home port of the journal) in 1889 'only six out of 805 lawyers could be called pro-Flemish (*vlaamsgezind*)'. Ghent, on the other hand, had proven before to be the operating base of some of the more pro-Flemish lawyers, although in the last two to three decades of the century, their colleagues from Antwerp would become the more active advocates of the Flemish legal language. Van Goethem (n 38) 275. See e.g. 'Vlaamsch Verbond. Algemeene zitting te Brussel', *Het Handelsblad* (Antwerp, 19 May 1861) 1–2; Van Goethem (n 38) 269, 274 and Miroslav Hroch therein 280: 'its nucleus [of the Flemish Movement] emerges clearly in the shape of the province of East-Flanders'.

wrote on the topic moreover agreed that legal translation was a particularly difficult job, requiring patience and highly skilled jurilinguists, and ridden with a risk of honoring the Italian proverb *traduttore traditore*.<sup>106</sup> Yet, most of them believed that it was not impossible to do it well, as the supervised translations by De Hondt had shown. Even though there were few jurists that truly cared about the quality of the translations, there were still some who found good translations a necessity, and who saw a market for them to provide translations of laws or even entire codes on their own private initiative.

### 3.3 *Popular Criticisms*

When we read through some of the more important newspapers of that time,<sup>107</sup> we observe that many of the jurists' concerns and complaints with regard to governmental translations of legislation were shared by the broader public. *Le Messenger de Gand*, a liberal newspaper from Ghent, complained already in 1835 about the poor quality of official translations, saying that 'les lois qui doivent servir de règle aux Flamands, sont confiées à des gens qui ne savent pas un mot de flamand et qui traduisent à coups de dictionnaire'.<sup>108</sup> People depended on these translations to enjoy their rights and to be able to fulfil their duties, as *Le Messenger de Gand* pointed out in a later issue.<sup>109</sup> But with the Belgian Revolution still fresh in mind, they also experienced it as an identity question, and even as a subjugation:

Quand on songe, en présence de ces traductions inintelligibles, que le texte français des lois belges [...] a été déclaré seul obligatoire et légal, on se demande si dans notre organisation révolutionnaire les riches

106 See e.g. 'La traduction flamande du nouveau Code Pénal par M De Hondt' *La Belgique Judiciaire* (Brussels, 11 October 1868) 1297; VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1878–1879' (1879) 16–17, 42; VCBG, 'Verslag over de werkzaamheden gedurende het rechterlijk jaar 1882–1883' (1883) 44.

107 We consulted the online database of the Royal Belgian Library (KBR), which provides access to many francophone and Flemish newspapers: <<http://opac.kbr.be/belgicapress.php?lang=EN>>.

108 '[T]he laws that have to serve as rule to the Flemish people, are trusted to people who do not know a word of Flemish and who translate using a dictionary' in 'Toeplitz et les vieilles monarchies' *Le Messenger de Gand* (Ghent, 6 November 1835) 1; Els De Bens, *De pers in België: het verhaal van de Belgische dagbladpers gisteren, vandaag en morgen* (Lannoo, 1997) 29.

109 'Le Code Civil' *Le Messenger de Gand* (Ghent, 30 August 1841) 2.

provinces flamandes sont autre chose que des pays conquis, dont les habitans [sic] sont taillables et corvéables à merci et miséricorde.<sup>110</sup>

Some criticisms directly concerned the person chosen to translate. In 1837, a commentary on this subject appeared in the *Bydragen der Gazette van Gent voor Letterkunde, Kunsten en Wetenschappen*, which denounced the fact that the government had chosen someone from Luxembourg instead of someone from Flanders to translate the legal texts. Eventually this Luxembourger was replaced by a young lawyer, ‘more proficient in the language’.<sup>111</sup> Still in 1837, Frans Rens claimed that any Flemish person who had seen the translations could not but dispute their poor quality.<sup>112</sup> He saw in Lejeune’s criticism addressed in parliament the hope that ‘also in the administration of the state, Flemish will reign with the same richness and the same purity’.<sup>113</sup> A few years later, *L’Indépendant*, a renowned liberal newspaper from Brussels, even identified a pattern in the quality complaints, writing in December 1839:

Depuis plusieurs années, la traduction flamande du *Bulletin Officiel* a donné lieu à des justes plaintes. Ce recueil, le seul dans lequel les Flamands puissent apprendre à connaître les actes du pouvoir, a donné, pendant une période de plusieurs années, pour du flamand une espèce de langage informe et barbare, dans lequel les Flamands n’ont pu, avec la meilleure volonté, reconnaître leur langue.<sup>114</sup>

110 When we think, in the face of these incomprehensible translations, of the fact that the French texts of laws were declared the only obligatory and legal ones [during the French period: 1794–1814], one asks oneself whether in our revolutionary organisation the rich Flemish provinces are anything else than conquered lands, the inhabitants of which are subject to exploitation. ‘Toeplitz et les vieilles monarchies’ (n 108) 1.

111 ‘Over de nieuwe Vlaemsche Spraekkunsten’, *Bydragen der Gazette van Gent voor Letterkunde, Kunsten en Wetenschappen* (Ghent, 1837, XVIII) 44.

112 In 1837, Rens was the head of the society of Flemish literature (*voorzitter van de maetschappij voor Vlaemsche letterkunde*). ‘Maetschappy van Vlaemsche Letteroefeningen’, *Bydragen der Gazette van Gent voor Letterkunde, Kunsten en Wetenschappen* (Ghent, 1837, IV) 9.

113 ‘Vlaemsche vertaling van het Staatsblad der Wetten en Koninklyke Besluiten van Belgie’, *Bydragen der Gazette van Gent voor Letterkunde, Kunsten en Wetenschappen* (Ghent, 1837, V) 11.

114 Since several years, the Flemish translation of the *Bulletin Officiel* has given rise to righteous complaints. This journal, the only one through which the Flemish people can learn about the acts of the government, has been, for several years, a place where such amorphous and barbaric Flemish was used, that the Flemish would not have been able, with the best will of the world, to recognize their language in it. ‘Langue flamande’ *L’Indépendant* (Brussels, 25 December 1839) 1. For more complaints about the quality of the translations,

The legislative nature of the texts required that they be transformed with care, and the newspaper furthermore noted that ‘le gouvernement a dans ce recueil un des moyens les plus efficaces pour encourager l’étude du flamand’.<sup>115</sup> Not only do we see here another resemblance with some of the criticisms present in legal journals, it seems *L’Indépendant* was very early in calling for the cultivation of a Flemish legal language. Even the Flemish Movement at this stage was still largely concerned with the revival of Flemish as cultural language.<sup>116</sup> Another exception was the Flemish petition of 1840 (*het Vlaamsch petitionnement*) that called for the use of Flemish in Flemish courts, in lower administrations and in the communication with national administrations. The subscribers from Antwerp had also demanded that there be official Flemish texts of all laws, but according to Ghislain Lernout, who studied the petition in depth, this demand was truly radical at that time.<sup>117</sup> Like some of the legal experts we mentioned, several newspapers were also bothered by the slow and tardy issue of the translations and the fact that the bilingual *Recueil* did not feature all laws and decrees: both problems to which a truly bilingual *Moniteur* would be a solution.<sup>118</sup> The same demand was repeated some twenty years later. The Flemish Catholic Newspaper *Het Handelsblad* published an article on Flemish grievances, in which one required among others to publish the official part of the *Moniteur* in both languages.<sup>119</sup>

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see ‘Langue flamande’ *L’Indépendant* (Brussels, 7 January 1840) 1; ‘Dat arme vlaemsch’ *Het Handelsblad* (Antwerp, 17 July 1849) 1 and ‘Stadsnieuws’ *Het Handelsblad* (Antwerp, 14 September 1860) 3; Marc D’Hoore, ‘L’Indépendance Belge’ <[http://belgica.kbr.be/nl/coll/jour/jourJb555\\_nl.html](http://belgica.kbr.be/nl/coll/jour/jourJb555_nl.html)> accessed 15 December 2016; De Bens (n 108) 28.

- 115 ‘The government holds with this journal one of the main means for encouraging the study of the Flemish language.’ ‘Langue flamande’ *L’Indépendant* (Brussels, 25 December 1839) 1.
- 116 Harry van Velthoven, ‘Historical Aspects: The Process of Language Shift in Brussels: Historical Background and Mechanisms’ in Els Witte and Hugo Baetens Beardsmore (eds), *The interdisciplinary study of urban bilingualism in Brussels* (Multilingual Matters 1987) 17.
- 117 Ghislain Lernout, *De Belgische pers en het Vlaams petitionnement van 1840* (MA Thesis, KU Leuven 1970) 28; Clement (n 18) 107–109.
- 118 For examples of complaints about the tardy appearance of translations, see ‘Brussel, 26 January’ *Het Handelsblad* (Antwerp, 27 January 1854) 2; ‘Moniteur’ *Het Handelsblad* (Antwerp, 17 August 1889) 5; ‘Binnenlandsche nieuwstijdingen – Oost-Vlaanderen’ *Vooruit* (Ghent, 26 October 1889) 2; ‘Allerlei tijdingen – Het ministerie van nijverheid en arbeid’ *Het Handelsblad* (Antwerp, 21 July 1905) 1. For pleas for Flemish versions of all legislative texts (in the *Moniteur*), see e.g. ‘De Nadruk’ *De Broedermin* copied in *Het Handelsblad* (Antwerp, 24 January 1852) 2; ‘Alleen Fransch!’ *Het Handelsblad* (Antwerp, 14 June 1857) 1; ‘Senaat – M De Block. – Het Vlaemsch’ *De Broedermin* copied in *Het Handelsblad* (Antwerp, 29 June 1860) 1; ‘Vlaamsch.’ *Het Handelsblad* (Antwerp, 13 April 1880) 1.
- 119 ‘De Grieven der Vlamingen’ *Het Handelsblad* (Antwerp, 12 December 1860) 1.

On 29 May 1862, *Het Handelsblad* again addressed briefly what it considered to be a failure of the government. It wondered whether the government had done its duty towards the Flemish people and if it could in good conscience say that it had done everything it could to enable Flemings to know the laws and regulations. It even questioned the democratic ('demokratieke') character of the country, which did not have an official Flemish version of its constitution, which was only made known to the people by means of a 'cheap edition'. After having compared the French version with hieroglyphics incomprehensible to the Flemish people, it proposed a competition, organized by the government, for the compilation of a book explaining to the people the content of their constitution.<sup>120</sup>

Where legal codes and the Constitution were concerned, we read in different newspapers similar concerns about the lack of government-directed translations.<sup>121</sup> *Het Handelsblad* for example made clear in 1867 that not any (private) translation would suffice, because government-approved Flemish codes were required to guarantee their conformity to the legislator's will: 'Non seulement la traduction flamande est sans valeur devant la justice, mais il n'existe pas de traduction de la plupart de nos codes; du moins il n'en existait pas une seule publiée par les soins du gouvernement et recommandée comme fidèle.'<sup>122</sup>

Similarly, the Flemish liberal newspaper *Het Laatste Nieuws* estimated that the law of 1873, which caused Flemish to be used on a regular basis in Flemish criminal courts, made governmental translations indispensable, as lawyers otherwise would continue using translation ambiguities to obscure court proceedings:

Inderdaad, de wet bepaalt niet door welk Vlaamsch woord: woonst, huisvesting, woning, woonstede, huis, verblijf, verblijfplaats, de Fransche term *domicile* behoort vertaald te worden. Bestond, die wettelijke vertaling, dan had M<sup>ter</sup> Hallet daarover zijne vitterijen kunnen sparen.<sup>123</sup>

<sup>120</sup> 'Een nieuwe Prys-kamp' *Het Handelsblad* (Antwerp, 29 May 1862) 1.

<sup>121</sup> See e.g. 'De Nadruk' (n 82) 2; 'De Constitutie' *Het Handelsblad* (Antwerp, 6 August 1852) 1; *Het Fondsenblad* copied in *Het Handelsblad* (Antwerp 30 April 1873) 1.

<sup>122</sup> 'Not only is the Flemish translation without value in court, a translation of most of our codes does not even exist; at least, there did not exist a single one published by the care of the government and recommended as faithful [before the recent appointment of a translation commission for the new Criminal Code].'*Het Handelsblad* (Antwerp, 11 August 1867) 1; Lionel Bertelson, *La presse d'information. Tableau chronologique des journaux belges* (Institut pour Journalistes de Belgique, 1974) 219; De Bens (n 110) 264–265.

<sup>123</sup> 'Indeed, the law does not stipulate by which Flemish word the French term *domicile* is supposed to be translated: *woonst, huisvesting, woning, woonstede, huis, verblijf* or

Though, even when the codes were officially translated, there were still reactions and criticisms. In 1869, Minister of Justice Bara had ordered the translation of the Penal Code. *Het Handelsblad* considered this translation as a ‘*speelpop*’, a doll, ‘given to a child to silence him’, and deplored the fact that the Flemish version of the laws was only an official translation and not a text with legal status (*stricto sensu*), as it was not voted in parliament.<sup>124</sup> The translations of the Criminal Code and the Code of Criminal Procedure by De Hondt seem to have been less known to the general public, or were at least hardly ever mentioned in the general press.

Once again, we have to be cautious in drawing conclusions from what remains a small sample of source articles. It seems an overstatement to say that before 1880, the poor quality or (partial) lack of government-made translations was a top priority, even to Flemish newspapers. *Het Handelsblad*, one of the most pro-Flemish papers merely noted in a few short, objective lines in 1874 that the official translation of the Code of Criminal Procedure had appeared and was very brief in expressing its approval of the Minister’s plans to have the Civil Code officially translated five years later.<sup>125</sup> It is difficult to measure if and to what extent popular criticisms of the official translations led to the government taking steps to improve them. These criticisms mainly concerned the quality of the translations as well as the lack of governmental intervention in providing them through government channels. What is certain is that the awareness of the poor quality of the translations and the criticisms addressed to them led to various initiatives taken by translators, acting as intermediaries between the citizens and the state which was perceived as failing in its duties towards the former.

#### 4 Alternatives to Official Translations: How Private Translations Tried to Fill the Gap

The many complaints on the official translations inspired many, jurists and journalists alike, to take steps against the status quo. As a consequence of the freedom of language enshrined in Article 23 of the Constitution, an explicit

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*verblijfplaats* [all synonyms of house or home]. Had such a legal [official] translation existed, then Mr Hallet could have spared his caviling about this: ‘Vlaamsche rechtstaal’ *Het Laatste Nieuws* (Brussels, 21 February 1897) 5; De Bens (n 110) 335.

124 ‘Nederduitsche Bond’ *Het Handelsblad* (Antwerp, 12 October 1869) 2.

125 ‘Koninklijke besluiten’ *Het Handelsblad* (Antwerp, 4 September 1874) 2; *Het Handelsblad* (Antwerp, 5 September 1874) 1; *Het Handelsblad* (Antwerp, 4 June 1879) 1.

language legislation, and consequently a legislative framework on translation, were not immediately installed or remained relatively vague. In reaction to this lack of framework (or rather to this overly broad framework, since citizens and public officials both had the right to express themselves in the language they preferred),<sup>126</sup> and to the many criticisms of the official translations cited above, private initiatives came to bridge this gap. These private translations became a necessity in achieving the understanding of the law, a corollary of the principle of legality, those elements being essential to popular sovereignty.<sup>127</sup> Indeed, according to Fuller, 'the laws should also be given adequate publication so that they may be subject to public criticism'.<sup>128</sup> In general, private translators published their translations in separate volumes or periodicals at commercial publishing houses, intended for the Flemish administrations and/or citizens.

One of the prime examples of a private translation that aimed to fill this gap was Ledeganck's private translation of the Civil Code of 1841 (*Het Burgerlijk Wetboek uit het fransch vertaald*). Karel Ledeganck was one of the first (and arguably the best known) legal translators of the nineteenth century. In the preface to his translation of the Civil Code, he explained his intention, i.e. to provide an 'accurate' translation, which he described as a wording reflecting the same meaning as the original wording. Ledeganck denounced the use of Gallicisms and tried to avoid them as much as possible. He assumed that the meaning of an unfamiliar word in Flemish is always easier to understand and remember for the Flemish people than a word in a foreign language. To this end, he read the old Flemish customs in search of 'true' Flemish legal terms.<sup>129</sup> Ledeganck's translation was widely approved by both jurists and the general

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126 As mentioned, article 23 of the Constitution provided for the possibility of limiting the freedom of languages legally for acts of public authority and for judicial matters. The legislator did not, however, exercise this power, which meant that the administration and the courts could freely use French if desired without having to adapt to the Flemish citizens. In this case, the lack of specific language legislation and the wide scope of language freedom impeded some linguistic justice. As pointed out by Clement, '[h]et zou echter snel blijken dat om effectief te zijn de taalvrijheid in de publieke sfeer nood heeft aan een zekere inperking of regeling' ('However, it would soon be proved that to be effective the freedom of language in the public sphere needs a certain degree of limitation or regulation'), Clement (n 18) 105.

127 Fuller (n 12) 39.

128 Ibid 51.

129 Karel Ledeganck, *Het Burgerlyk Wetboek, uit het fransch vertaald* (Hoste 1841).

public.<sup>130</sup> It saw six editions, the last appearing in 1899, which suggests that his work answered to a specific need and that it was widely used in the legal world.

On repeated occasions, the private initiatives, and Ledeganck's translation in particular, were used to demand more official translation initiatives from the authorities. In 1842, in one of the issues of *Noordstar*, a periodical for the arts and sciences, it was suggested that the private translations could be made official and used as authoritative documents. Nevertheless, the article states, as Ledeganck's main aim was to make his book accessible to the public, his work had become an explanation of the laws, more of a scholarly commentary than a purely legal translation.<sup>131</sup> This could halt the authorities from recognizing its official character as readily. In the report of the Flemish commission of 1859, we observe a similar line of reasoning, asking for more official translations modelled on private ones:

Parlant de traduction, il ne serait pas seulement à désirer, mais il serait très nécessaire que l'on publiât des textes officielles [sic] flamands de tous les codes existants et qui sont employés par les juges et les avocats. La traduction du code civil de Ledeganck pourrait servir de modèle.<sup>132</sup>

Other notable instances of successful private translations were Julius De Vigne's 1871 translations of the electoral laws.<sup>133</sup> He undertook these translations since, even though these laws constituted a crucial part of the Belgian legislation, no one had yet taken the initiative to translate these works.<sup>134</sup> In 1876, Felix Rodenbach published a translation in the form of a manual concerning the inheritance laws because he felt there was a need for a Flemish manual. In his

130 P F Van Kerckhoven, 'Het burgerlijk wetboek' (1842) Deel I *Noordstar* 38; 'Mengelingen' *Kunst- en Letterblad* (Ghent, 1841) 16; P F Van Kerckhoven, 'Het Burgerlijk Wetboek, Vertaald door C. Ledeganck (Tweede uitgaef)' *Kunst- en Letterblad* (Ghent, 1844) 68. 'Ledeganck (Charles-Louis)' *Biographie nationale* (Bruylant-Christophe 1890–1891), vol 11, para 607.

131 P F Van Kerckhoven (n 130) 38.

132 'Speaking of translation, it would not only be desirable, but it would be very necessary to publish official Flemish texts of all existing codes and which are used by judges and lawyers. The translation of the civil code of Ledeganck could serve as a model.' Commission flamande (n 10) 27.

133 Julius De Vigne, *Kiezershandboek of uitleggingen op de Belgische kieswetten* (Rogghé 1871).

134 *Ibid* 1. This is however an incorrect statement: the Constitution and electoral code had already been translated before 1871.

opinion, his work is written in a way that anyone working in the administrative field could understand it.<sup>135</sup>

While we only briefly touched upon the wealth of private translations, published throughout the second half of the century (which could in fact sometimes be regarded as scholarly commentaries), their importance to the Flemish part of the Belgian population should not be underestimated.<sup>136</sup> They constituted an important means of access to (certain parts of the) Belgian legislation, and could indirectly serve as an incentive to the authorities to seriously consider the issue of good-quality and authoritative official translations. Several of these private translations, among which most notably Ledeganck's, were highly appreciated and used by jurists, yet many deplored the lack of an official approval.<sup>137</sup> Despite the complaints about the absence of (adequate) translations provided by the government, we should consider the possibility of translations by Flemish newspapers and publishers as being a profitable activity for these parties, since this constituted a way to attract and maintain a large, monolingual Flemish audience.<sup>138</sup>

## 5 Conclusion

Throughout the nineteenth century, different social groups expressed their dissatisfaction with the official translations and translation policy of the Belgian authorities. Among the problems commonly identified were the delayed issue of the translations, their unwieldy arrangement, and most of all the quality of the (legal) language itself. The use of *bastaardwoorden* (Gallicisms)

135 Felix Rodenbach, *Handboek der rechten van successie en van overgang gevolgd van formules en een tabel voor de verschillende termijnen* (Dieudonné-Vercauteren 1876).

136 Private translations were published from the 1840s onwards, but knew a steady increase since the linguistic laws. They appeared under many forms: as separate publications of the codes, as individual articles in (legal) journals, as dictionaries, manuals, etc.

137 P F Van Kerckhoven (n 130) 38.

138 A few examples supporting such a hypothesis are: 'Le Code Civil' (n 111) 2: 'Se trouve à Gand, chez M Hoste, éditeur-libraire et chez les principaux libraires' ('[the private translation of the Code Civil discussed in this article] can be bought in Ghent, from Mr Hoste, editor-librarian, and from the main [editor-] librarians'); 'Correspondance' *Le Bien Public*, (Ghent, 10 April 1879) 2: 'Je [Lodewijk de Vriese] profite de la gracieuse hospitalité que vous m'offrez dans vos colonnes pour communiquer à vos lecteurs la liste de mes travaux antérieurs'. ('[Lodewijk de Vriese, author of several translations of legislative texts] make use of the gracious hospitality you offer me to pass to your readers a list of my previous works').

and the recourse to literal translations were practices that were particularly criticized. Though people had various reasons to consider this an important issue, it can be inferred from the examples given above that the concerns of the three groups discussed in this article to a large extent stemmed from the same principles. The argument that stands out most of all, which was mentioned by all groups and considered the crucial reason why comprehensible official translations of laws and decrees were indispensable, was the right of access to the authorities' decisions. Putting adequate translations at the disposal of all citizens was regarded by politicians, jurists and citizens alike to be a duty of the government, observing the principle of legality. Through the publicity of laws, the government provides all citizens with access to the law and enables them to adjust their conduct to the norms that are laid down in these laws. While private translations offered a highly-appreciated alternative, they were never truly considered sufficient, as they lacked the governmental seal of approval and thus legal authority. By the end of the century, pro-Flemish militants increasingly grew to scorn not only the poor quality of the Flemish texts, but also their very status as 'mere' translations, which they regarded as proof that the authorities sanctioned and intentionally institutionalized the inferiority of Flemish.<sup>139</sup> A small, but trans professional group of MPs, legal experts and middle-class supporters of the Flemish cause started campaigning, first for official translations, later (more ambitiously) for official equality of the Flemish and French texts, which they obtained in 1898 with the Equality Law. Criticisms of the official translations outlasted, if not increased, after the Equality Law of 1898,<sup>140</sup> which made the Flemish translations even more precarious.<sup>141</sup>

139 Luc Vandeweyer, 'Vertalingen als steen des aanstoets. Taalpolitiek in het ministerie van Financiën vóór 1914 – Deel II' (2003) LXII/2 Wetenschappelijke tijdingen 96.

140 A number of examples: 'Stadsnieuws' *Het Handelsblad* (Antwerp, 29 May 1881) 2; *Le Bien Public* (Ghent: 24 October 1883) 1; *Het Handelsblad* (Antwerp, 14 February 1884) 1; *L'Indépendance Belge* (Brussels, 26 January 1886) 1; 'Moniteur vlaamsch' *Het Handelsblad* (Antwerp, 26 January 1886) 3; 'Wallon persécuté' *Gazette de Charleroi* (Charleroi, 17 December 1887) 2; 'De Stemming' *Het Handelsblad* (Antwerp, 6 February 1887) 1; 'De vlaamsche wetten in den senaat' *Het Nieuws van den Dag* (Brussels, 5 February 1897) 1; 'Officieele vertalingen?' *Het Nieuws van den Dag* (Brussels, 15 May 1898) 2; 'Het blad Ons Vlaanderen' *Het Laatste Nieuws* (Brussels, 16 May 1899) 2; 'Onze Konfrater <Le Petit Blue>' *Het Laatste Nieuws* (Brussels, 28 September 1902) 1; 'Heimelijke kadodders' *Het Laatste Nieuws* (Brussels, 4 December 1902) 1; 'Kronijk van den dag – Naar 't hoofd' *Het Laatste Nieuws* (Brussels, 26 August 1903) 2; 'Het vlaamsch in de openbare besturen' *Het Laatste Nieuws* (Brussels, 15 July 1910) 1.

141 As the popular Brussels Catholic newspaper *Het Nieuws van den Dag* wrote on 25 May 1901 ('Hoe men wetten bakt', 1): 'Maar, zult gij zeggen, dat is enkel eene fout van vertaling.

A number of reorganizations and expansions of translator services became necessary and were carried through in the wake of this law (among others), heightening the frustration: the contrast between financial efforts by the government and translator's wages and their performance.<sup>142</sup> On top of this came complaints of favoritism pointing to a true politics of translation jobs emerging around the turn of the nineteenth to twentieth century, and highlighting the importance and prestige of the profession, despite all critique.<sup>143</sup>

Throughout history, many countries have been in similar situations to Belgium. The 19<sup>th</sup>-century Habsburg Monarchy for instance had to reconcile its democratic ambitions with a reality of some eight language groups, and was equally criticized for translation mistakes, changing the sense of legislative texts, and for not publishing the different versions of the *Reichsgesetzblatt* at the same time.<sup>144</sup> Unfortunately, elaborate historical studies like the one by Michaela Wolf and that of our own (although to a far restricted extent) are still a rarity in translation studies, as well as other disciplines, such as legal history, making it difficult to compare the Belgian case to others, and to draw conclusions that can be helpful in improving present-day policies.

Yet, the study of historical topics, like the one discussed in this article, has the potential to guide us in these challenging times of increasing exposition to super-diversity, which are nevertheless not wholly unprecedented. Governments are, and have always been, confronted with issues of multilingualism and translation. Through the historical study of multilingual states, we can improve our understanding of how language and translation policies came

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Neen, maar die fout van vertaling in het chineesch heeft kracht van wet'. ('But, you will say, that is only a translation mistake. No, but that translation mistake into Chinese has force of law'); Els De Bens (n 110) 266.

142 Some examples: 'Officieele Vertalers' *Het Handelsblad* (Antwerp, 17 July 1880) 1; 'Moniteur' *Het Fondsenblad* copied in *Het Handelsblad* (Antwerp, 17 August 1889) 5; 'In de Kamer – Hier is't <In de Babelkous >' *Het Laatste Nieuws* (Brussels, 3 December 1898) 2; 'Onze verslaggevers' *Het Laatste Nieuws* (Brussels, 30 January 1899) 2; 'Het blad Ons Vlaanderen' (n 90) 2; 'De Vlaamsche kloefkappers der Kamer – Eene interpellatie. – vragen die op antwoord wachten' *Het Laatste Nieuws* (Brussels, 9 July 1899) 1; 'Vlaamsche vertaaldienst der Kamer van Volksvertegenwoordigers' *Het Laatste Nieuws* (Brussels, 23 May 1901) 1; 'In en om de Kamer – Het beknopt Kamerverslag' *Het Laatste Nieuws* (Brussels, 12 February 1902) 2; 'De vertaaldienst' *Het Laatste Nieuws* (Brussels, 28 November 1902) 1; 'De zondagrust' *Het nieuws van den dag* (Brussels, 15 August 1906) 2.

143 Some examples: 'Brusselse Kronijk – Een goed begin' *Het Laatste Nieuws* (Brussels, 25 December 1898) 5; 'Spreekende over het beknopt verslag' *Het Laatste Nieuws* (Brussels, 7 November 1903) 1.

144 Michaela Wolf, *The Habsburg Monarchy's Many-Languaged Soul: Translating and interpreting, 1848–1918*. (John Benjamins 2015) 89, 93.

into being and what potential problems and solutions can be. It is clear that translation is a factor that needs to be taken into account when dealing with fundamental (language) policy questions, such as how to organize a democratic nation-state, guarantee equal opportunities and justice for all, and ensure full respect for human rights: the central questions that have occupied Europe since its last great war. Only when we explore it further, when we dig deeper into it and learn more about the *if*, *how* and *why (not)* of official translation in the past, will we truly be able to use history to our current benefit.