

The Interpreter and the Canadian Convention Refugee Hearing: Crossing the potentially life-threatening boundaries between “coccod-e-eh,” “cluck-cluck,” and “cot-cot-cot”

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Article abstract

The Interpreter and the Canadian Convention Refugee Hearing: Crossing the potentially life-threatening boundaries between “coccod-e-eh,” “cluck-cluck,” and “cot-cot-cot” — This paper discusses the obstacles facing interpreters and translators in inter-cultural situations with reference to Canadian Convention refugee hearings, taped in 1987. The author sets forth a theory of interpretation suited to the sometimes comical, but usually tragic elements of failed human interaction as they occur in legal hearings. The article begins with a comparison between a fictional rendering of failed communication from the work of Primo Levi, but then moves on to the plight of persecuted persons who have come to Canada to claim Convention refugee status. Obvious similarities emerge in a comparison of the two processes; but ultimately it is the language of persecution — silence, scars, tears, pleas, and impassioned cries — that is the most difficult to interpret and translate. Given the dynamics of inter-cultural legal discourse and the gravity of the issues at stake, the author argues for a broader mandate for the interpreter, such that s/he will also be permitted to act as a medium through which inter-cultural information can pass, rather than yet another grid into which pained words must fit.

The Interpreter and the Canadian Convention Refugee Hearing: Crossing the potentially life- threatening boundaries between "coccod-e-eh," "cluck-cluck," and "cot-cot-cot"¹

Robert F. Barsky

In a chapter of Primo Levi's book *The Reawakening* called "The little hen," the narrator describes his friend Cesare's attempt to trade six dinner plates for a chicken. Despite the apparent simplicity of the task, Cesare's dream to fill his stomach is impeded by the fact that he only speaks Italian, and the peasants with whom he is trying to negotiate the deal only speak Russian. The narrator attempts to help Cesare by summoning up the few words of Russian that he knows, but to no avail. He writes:

I was in a pickle. Russian, they say, is an Indo-European language, and chickens must have been known to our common ancestors in an epoch certainly previous to their sub-division into the various modern ethnic families. '*His fretus*,' that is to

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1. I would like to thank the SSHRC for the support, which is provided in the form of a post-doctoral fellowship, the IQRC-INRS, and Sherry Simon, who invited me to speak on this subject and therefore provided the incentive for developing my original comments into an article. I also thank Yzabelle Martineau, George Szanto and Denise Helly for their valued advice.

say, on these fine foundations, I tried to say 'chicken' and 'bird' in all the ways known to me, but without any visible result. Cesare was also perplexed. Cesare, deep down, had never really accepted that Germans speak German, and Russians Russian, except out of gross malice; then, in his heart of hearts, he was persuaded that they only pretended not to understand Italian through some refinement of the same malice. Malice, or extreme and scandalous ignorance: clear barbarism. There could be no other explanation. So his perplexity rapidly changed to anger.

He grumbled and swore. Was it possible that it was so difficult to understand what a chicken is, and that we wanted it in exchange for six plates? A chicken, one of those beasts that go around pecking, scratching and saying 'coccodé-e-eh'²: and rather half-heartedly, glowering and sullen, he put on a very second-rate imitation of the habits of the chicken, crouching on the ground, scraping first with one foot and then with the other and pecking here and there with his hands shaped like a wedge. Between one oath and the other, he also cried 'coccodé-e-eh,' but this rendering of the chicken's cry is of course highly conventional; it is only heard in Italy and has no currency elsewhere³.

This is a case of how the inability to translate a simple word can stand in the way of the satisfaction of an essential need, in this case that of allaying the hunger that recently liberated prisoners felt after their liberation from the Auschwitz death camp. In this scene, Cesare refuses to believe that persons cannot understand the Italian word for chicken; after all, if Italian children can understand the Italian word for chicken, how is it that Russian peasants, who continuously deal with livestock and foodstuffs, cannot understand the Italian word for chicken? Cesare is all the

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2. This sound seems rather more appropriate for a rooster; however the subject of discussion is indeed a chicken. The 1966 French translation, published by Grasset, uses *coccodé*. This is a notable example of problems in cultural translation, but the details are irrelevant to my argument.
 3. Primo Levi, *The Reawakening*, translated by Stuart Woolf (NY, Collier Books, 1987), p. 119.

more confounded by the peasants inability to decipher his dramatic rendition of the chicken's behaviour, and of the sound that the chicken makes, rendered into the Italian language as 'coccod-e-eh.'

The drama and the urgency of cross-cultural communication as rendered by the translator and interpreter in times of distress, as well as the sometimes comical, sometimes tragic elements of failed human interaction, are the subjects of this paper. But rather than elaborating issues arising out of Primo Levi's descriptions of ex-prisoners of Nazi extermination camps, I will be describing the plight of persecuted persons who have come to Canada to claim Convention refugee status. There are similarities between the two processes; but the arbitrators are not common peasants who can offer food, they are Canadian immigration officials who can offer territorial asylum; the languages of currency are not Russian and Italian, they are, on the side of the Canadian officials, either French or English, and on the side of the claimants, virtually any language or dialect known to man; and finally, the 'coccod-e-eh,' that untranslatable sound of the Italian chicken, the language that will act as a kind of intermediary between the claimant and the Immigration department, is, in the case of the Convention refugee claimant, the language of persecution; silence, scars, tears, pleas, and impassioned cries.

The most significant example of the small amount of work that has addressed the specific question of communication breakdowns in refugee hearings is Walter Kälin's article "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing⁴," which discusses "five (partially overlapping) obstacles to an undistorted interaction between asylum-seeker and official:" "a) the manner in which the asylum-seeker expresses him- or herself; b) the interpreter; c) the cultural relativity of notions and concepts; d) different perceptions of time; and e) the cultural relativity of the concepts of 'lie' and 'truth'" (p. 231). Focusing upon the cultural differences between

4. *International Migration Review*, Vol. XX (2), pp. 230-241.

the asylum-seeker and the refugee official, Kälin demonstrates how distortions in the process of communicating the claim seriously jeopardize the apparent veracity of the claimant's narrative. Kälin's work is a real-world example of problems in cross-cultural communication described elsewhere in works by, for example, V.C. Bickley, C. Geertz, W. Gudykunst and Y.K. Kim, K. Oberg, and L. Pospisil, and is an important contribution to the study of claimant success in the courtroom, as explored previously by P. Bohannan, B. Danet, M.B. Hooker, M. Parkinson, K.R. Scherer and others⁵. This article complements Kälin's by focusing upon the role of the interpreter, and by situating the issues into a context that is uniquely Canadian (Kälin describes his experiences as Counsel for claimants in Switzerland from 1980 to 1983) through reference to actual Canadian refugee claims and rulings. My hypotheses are as follows: first, the system as presently construed cannot fulfil the objectives to which it makes claim (through reference to the 1951 *Convention Relating to the Status of Refugees* and to the 1967 *Protocol Relating to the Status of Refugees*, upon which the *Canadian Immigration Act* is based);

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5. See for example V.C. Bickley, "Language as the Bridge," *Cultures in Contact*, ed. S. Bochner (Oxford, Pergamon, 1982, pp. 99-125); P. Bohannan, "The Differing Realms of the Law," *The Ethnography of Law*, supplement to *American Anthropologist*, 67(2), pp. 33-42; B. Danet, "Language in the Courtroom," *Language, Social Psychological Perspectives*, ed. H. Giles et al., (Oxford, Pergamon, pp. 367-376); C. Geertz, *Local Knowledge* (NY, Basic Books, 1983) and *The Interpretation of Cultures* (NY, Basic Books, 1973); W.B. Gudykunst and Young Yun Kim, *Communicating With Strangers* (Reading MA, Addison Wesley, 1984); K. Oberg, "Culture Shock: Adjustment to New Culture Environments," *Practical Anthropology*, 7, pp. 177-182; M. Parkinson, "Language Behaviour and Courtroom Success," paper presented at the International Conference on Language and Social Psychology (University of Bristol, England, July 1979); L. Pospisil, *Anthropology of Law* (NY, Harper and Row, 1971); and K.R. Scherer, "Voice and Speech Correlates of Perceived Social Influence in Simulated Juries," *Language and Social Psychology*, eds. H. Giles and R. N. St. Clair (Oxford, Basil Blackwell, 1979, pp. 88-120).

second, persons of backgrounds that differ dramatically from those of Canadian adjudicators are most handicapped by the present system by virtue of their being most dependent upon the interpreter and probably least able to judge the efficacy of their own testimony; and third, the assumption that contradictions during the hearing should be grounds for rejecting or doubting the veracity of the claim places undue burden upon the refugee and upon the interpreter who is called to represent the narrative before the adjudicators.

In order to fully articulate the difficulties facing a Convention refugee claimant, it is necessary to describe the process known as the Canadian Convention refugee hearing, before turning to a detailed description of the obligations and obstacles faced by the interpreter in Convention refugee hearings⁶. This kind of interpretation is cross-cultural, belonging to a realm where words are seldom sufficient, and where culturally contingent renditions of reality through sounds, — 'coccocode-e-eh,' 'cocorico,' 'cock-o-doodledo,' and so forth, — become particularly pertinent.

The Convention refugee claim

Persons who have been persecuted in their country of origin have the right, under International Law, to claim Convention refugee status in host countries according to the 1951 *Convention*

6. I make a distinction here between *translator* and *interpreter* to draw attention to the fact that the persons who is charged with rendering the hearing from a language other than French or English for the purposes of the Canadian Convention refugee hearing bears the burden of both literal translation and interpretation as well as the interpretation of the overall sense of the phrases, gestures and concepts articulated during the hearing. These processes are subject to varying *interpretations* since there exists a margin within which various meanings can be proposed.

*relating to the Status of Refugees*⁷, a Convention which was worked out following World War II and adopted by a Conference of Pleni-potentiaries of the United Nations on 28 July 1951 (it entered into force on 21 April 1954) to address the urgent issue of repatriating, or patriating, wartime refugees and displaced persons. Once the short-term post-war obligations had been met, the United Nations recognized that the system would have to be modified to account for the growing numbers of refugees from the Third World. The Convention, which had been created to address "refugee situations that were known to exist at that time [1951], or to those which might subsequently arise from events that had already occurred" could not account for this new, apparently long-term, refugee phenomenon. As a result, the 1967 *Protocol Relating to the Status of Refugees*⁸ was prepared and, following "consideration by the General Assembly of the United Nations, it was opened for accession on 31 January 1967 and entered into force on 4 October 1967⁹." The force of the latter *Protocol* was to recognize that "it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951¹⁰."

Canada signed the Convention (and its accompanying *Protocol*) in the 1970s, although the Immigration Department had adhered to their basic principles since their respective dates of adoption. Most of the countries in the world are also signatories to this Convention, with the notable exception of the United States, which follows a similar but distinct set of laws. The Convention itself is very simple, and its basic tenets are set forth

7. United Nations, *Treaty Series*, vol. 189, p. 137.

8. United Nations, *Treaty Series*, vol. 606, p. 267.

9. Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status; under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva 1979), p. 4.

10. *Handbook* 81.

in Chapter 1, Article 1A(2) of the *Convention*, where the term "refugee" is said to apply to any person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

The catch is that potential refugee claimants, and there are an estimated 17 million potentially legitimate claimants worldwide (by United Nations High Commissioner for Refugee conservative estimates), must make themselves eligible for status determination (i.e. they must be "outside of the country of his nationality"), usually by illegally fleeing their country of origin. Persecuted persons seldom have either the means or the right to travel, and in most cases the possibility of flight is minimized by the fact that the potential claimant's liquid assets as well as his or her personal papers (including passports and birth certificates) are confiscated as a result of the activities for which they are being persecuted. This does not figure directly into my present discussion, but it must nonetheless be accounted for when contextualizing the claim process and when assessing the wisdom of governments' decisions to expel persons who arrive with "phoney documents." It should also be noted that in the absence of written documentation upholding the testimony of the claimant, the oral hearing (and therefore the role of the interpreter), become paramount to the success of the claim:

Since few asylum seekers are able to prove their claims through written evidence such as decisions of courts, warrants of arrest or press reports of their arrest, many countries rely primarily upon an in-person interrogation or a hearing to establish the facts and to examine the credibility of the applicant. In the absence of written evidence, the interrogation or hearing, and thus the communication between asylum-seeker and official,

becomes crucial to the decision on political asylum applications. (Kälin, pp. 230-231)

Those persecuted persons who do manage to leave their country of origin and make it to (say) Montréal's Mirabel airport must follow a formal procedure in order to undergo a refugee hearing. At the first opportunity, the claimant must request status by announcing to a Canadian Immigration official that he or she is a refugee. After a preliminary interview with a two-members panel (comprised of a member of the Refugee Board and an immigration adjudicator), in which the claimant must convince one of the officials present that the claim is potentially legitimate, the refugee is given a date for a full-scale hearing which is designated to determine whether the claimant in question is in fact a legitimate refugee according to the tenets of the Canadian Immigration Act.

Hearings in Canada can be held in either English or French, and they unfold much like any other trial; but because of the peculiarities of the hearings *Handbook On Procedures And Criteria For Determining Refugee Status* sets out a number of specific Procedures that act as guidelines for signatory countries. Of notable interest for a discussion of translation and inter-cultural communication is article 190, which states that:

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs (p. 45).

and article 192 (iv), which adds that "the applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned" (p. 46). The technical assistance to which the claimant

has access in this country is the Counsel (who is chosen by the claimant) and the interpreter, and he or she also may also request assistance from refugee assistance groups including the Office of the United Nations High Commissioner for Refugees.

The procedure in the Canadian hearing follows the tenets of the *Convention*: the basic facts are set out, the persecution is discussed and compared to the kinds of persecution that are acceptable under Canadian (and international) law, the claimant's testimony is scrutinized — which basically means that the Refugee officials look for contradictions or so-called lies, — and then the claimant goes home and awaits the final decision. One crucial point: until 1989, decisions about the validity of a claim were not made by the immigration officer present during the hearing. Instead, the entire hearing was transcribed, and the decisionmakers, the Refugee Status Advisory Committee (based in Ottawa), would read the transcription and accompanying documentation and make their decision on that basis alone. This of course meant that the role of the interpreter was all the more crucial because the whole apparatus of non-verbal communication was not available to the adjudicators and because there was no way to verify apparent errors or contradictions with the lawyer or the claimant without a follow-up interview¹¹. Although the basic observations and conclusions of this article are applicable not only to the contemporary Canadian adjudication procedures, but also to procedures followed in many countries of the world, the examples provided arise for the most part from research on hearings that were conducted in 1987, during the period at which decisions were still rendered by the Refugee Status Advisory Committee. Some procedures, as I've already pointed out, have been refined (although with the exception of the decisionmaker being present in the room most modifications since 1987 are to the detriment of the claimant); but the problems of inter-cultural communication remain as

11. On this point, see my Ph.D. Dissertation, "The Construction Through Discourse of the Productive Other: The Case of the Canadian Convention Refugee Hearing" (McGill University, 1992, chapter 4).

described. Furthermore, all documents quoted in this article are authentic, and I have copied the texts as they were submitted to the Refugee Determination Board; errors of language and syntax in these citations were present in the originals.

The Convention refugee hearing

At the beginning of each refugee hearing the official representing Immigration Canada reads out a statement: until 1989, for example, this statement was as follows:

Allow me at this point to explain to you the purpose and the sequence of this examination. This meeting is not an inquiry. We are here today to gather information concerning your claim to be a Convention refugee. I will not make any recommendations nor judgements during this examination, and I have no decision-making power over your case. We shall proceed in the following manner. First of all, we will rapidly review your Basic Data Form and we will examine your passport and copies of these documents will be attached to your examination under oath. In the second place, I will read to you the definition of a Convention Refugee. Finally, it will be your responsibility to give us the reasons why your fear persecution in your country, and why you are claiming political refugee status in Canada. The information that you will give should be related as closely as possible to the definition of Convention refugees, and moreover to you. The Refugee Status Advisory Committee is aware of the general situation that exists in your country and therefore I am asking you to limit your statement to facts and events pertaining to your particular case. During your statement, try to keep a chronological order of the events, and please be as precise as you can concerning the dates, the places and the names of any persons stated during your examination. Furthermore, for the purpose of the transcription, I would ask you to spell all the names of the persons and places that you mention during your statement. Your counsel may assist you by asking you questions. I might also intervene to try to clarify certain points. If you have notes, you may freely refer to them and at the end you and your Counsel will have a period of time to add any other relevant information to your claim.

The role of the interpreter in the procedure thus described is critical, particularly since the Mulroney government found it fit to tighten laws regulating refugee determination by refusing requests for appeal except for reasons of "error in law" (which generally suggests that that prescribed procedures for claiming were not followed by the Board). This means that under the present guidelines the claimant gets only one chance to make his or her case; if there are errors, lacunae, or contradictions in the testimony — even if they are not the fault of the claimant — then refugee status may not be granted and claimants may be deported back to their country of origin, with the possible consequence of continued persecution or death.

Most of these claimants come from the Third World, and most of them speak neither English nor French, or, in some cases, they can speak one or both but prefer to give this crucial testimony in their mother tongue. Thus if the claimant so chooses, he or she has the right to an interpreter, who is appointed by Immigration Canada. In the case where an interpreter is present, the following swearing-in takes place at the outset:

Par l'A.I.S. [l'Agent d'immigration supérieur] (à l'interprète):

Q. Nous avons aujourd'hui les services d'un interprète.

Monsieur, je vais vous assermenter, veuillez placer votre main droite sur la Bible. Jurez-vous de traduire fidèlement et correctement, du français à l'espagnol et de l'espagnol au français, toute question, réponse ou document qui peuvent être présentés ou soumis à cette déclaration?

R. Je le jure.

Merci.

In English, the standard format is as follows:

By the S.I.O. [Senior Immigration Officer] (to the interpreter):

Q. Please place your right hand on the bible. Do you swear sir to translate faithfully, correctly and to the best of your ability from English to Spanish and from Spanish to English all questions, answers, testimony, documents or anything else which may be presented during the course of this examination?

A. I do.

Thank you.

The interpreter's role is to translate each sentence of the hearing; thus the hearing usually proceeds from one sentence to the next, with a brief pause in between to allow for the translation. Variation between the speaker's intended meaning and the translated text, is, by the very nature of the procedure, inevitable. Interpreters are given the task of both making possible communication between persons speaking different languages, and acting "as mediator[s] between cultures¹²." Walter Kälin points out that even when excellent interpreters are available, which is the exception in this country (see further on), systemic problems exist:

Because of the close links between language and culture, however, even excellent translators fulfil this task only when they attempt to communicate in their translations the cultural context of words and concepts. Interpreters used in the asylum procedure often not only lack this sophistication; sometimes they are also not qualified or they make mistakes because of fatigue resulting from a lengthy hearing. All this may distort the communication between asylum-seeker and refugee (p. 233).

Any number of examples exist to back up Kälin's claim that a failed interpretation can lead to contradictions in the testimony, which in turn can be grounds for rejection of the claimant as refugee. I will set forth a selection of potentially decisive errors made by interpreters further on; however it is useful to first situate these errors in terms of their legal consequences.

12. V.C. Bickley, "Language as the Bridge," *Cultures in Contact*, ed. S. Bochner (Oxford, NY, Toronto, Pergamon, 1982), p. 107.

Legal Consequences of Failed Interpretation

To suggest that minor errors made by the interpreter could be fatal is no overstatement; I base this opinion on a reading of two cases¹³, in which I highlighted the attention payed by the Senior Immigration Officer to apparently contradictory testimony and to empirical data, and on a reading of cases in which unsuccessful refugee claims have been reviewed internally, by the Refugee Appeal Board, and 'externally'¹⁴, by the Canadian Federal Appeal Court. In one particular example, *The Case of A-1265-87, Appeal before Federal Court Judges Heald, Hugellen, and Mahoney (ruling written by Judge Mahoney)*, Judge Mahoney is called to rule upon the decision of the Refugee Appeal Board to reject a claim made by a Ghanian, Charles Kofi Owusu Ansah, on the grounds that the testimony is *inconsistent*. The Board's decision contains the following statement and example which I will cite at length as a means of dramatizing the degree to which even the slightest detail can become grounds for rejection:

The various events of the applicant's odyssey as related by him in the record, as well as during the course of the hearing, are full of inconsistencies and contradictions which lead the Board to question the credibility of the applicant. I wish to highlight some of these inconsistencies and contradictions.

The applicant testified that the friend of his friends whom he met in Nigeria gave him \$500.00 upon arrival in Brazil in order to secure an airline ticket and to obtain any other documentation necessary. However, at page 50 of the transcript of the hearing is transcribed the following testimony by the applicant:

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13. This research was undertaken for my Ph.D. dissertation (cf. note 11).
 14. This may not be the right word since Federal Court judges are appointed by the government; however given their status and their virtual impermeability to reprimand, they are generally more impartial than the adjudicators of the Refugee Appeal Board.

Q. What nationality was he?

A. He's a Nigerian.

Q. Okay. And what did he do for you?

A. So there he told me that — I explain everything to him and my friends also supported what I told him about myself, so this man, he feel sympathy for me and he said he can help me. But not financially, because he wasn't all that financially good. So the help he can give me is if I can travel with him from Lagos to Port Harcourt. (The underlining is the Board's)

The Board has singled out the phrase "but not financially, because he wasn't all that financially good" as proof of inconsistent testimony. Judge Mahoney's comments concerning the Board's ruling are as follows:

The Board based its decision as to his refugee claim on the finding that the Applicant was not credible. To the extent that it based that finding on the foregoing "inconsistencies," it based its decision on an erroneous finding of fact made without regard to the material before it. The finding of an inconsistency in the cook being in funds after the voyage and not "all that financially good" before one is so patently unreasonable as to fall into the same category. The failures to disclose the name of the assisting soldier, the location of UFLG head office and to produce additional documentation, while correctly found as facts, cannot be rationally related to the Applicant's credibility. The Board erred in law in so relating them.

This demonstrates that even a minor detail, in the hands of an unsympathetic Board, can be grounds for dismissing obviously valid claims. This must be born in mind when reading the following examples of interpreter's mistakes. Furthermore, since present rules forbid appeals except in cases of demonstrable errors in law, there is no possibility of a fresh hearing if the interpreter is deemed incompetent. Even under the pre-1989 rules, which were far more lenient, errors in translation were generally insufficient grounds for a new hearing because, as Roger Cantin (a legal advisor to the Refugee Appeal Board) notes, "minor translation inadequacies in the transcript of the examination under oath are... not defects enough to undermine

the validity of the decision of the Minister¹⁵" (see *Milius and Minister of Employment and Immigration* (F.C.A., no. A-1130-83), Pratte, Marceau, MacGuigan, J.J., December 20, 1984). Cantin does note one exception where, "due to 200 places in the 25 page transcript of the examination under oath which were marked *inaudible*, the Board refused to entertain the application for redetermination because of such serious and fundamental prejudice to the claimant as to nullify the Minister's decision and the examination under oath¹⁶." This is a truly exceptional case; as such it demonstrates the limits to which one must go before the Board will consider dismissal on the grounds of poor performance on the part of the interpreter.

The Interpreter and the Convention refugee hearing

There are a number of ways in which the interpreter, or the system, can fail the claimant. The presence and the use of an interpreter is at the discretion of the claimant, and in certain cases, it is clear that the claimant should have opted to make use of the interpreter's services. For example, in the case of a Pakistanian claimant, the following foray was recorded:

BY THE S.I.O. (to the person concerned):

Q. Do you think that you have said everything that you wanted to say regarding your fear of persecution?

A. ...

15. Roger Cantin, *Redetermination of a Claim to be a Convention Refugee; A Review of the Jurisprudence*, unpublished manuscript written for the Immigration Appeal Board (1986), p. 14.

16. Although *inaudible* testimony was in this case apparently the fault of the interpreter, it in other cases be the fault of an inattentive transcriber, or a transcriber who, knowledgeable of the fact that payment for work done was made in accordance to the number of pages completed every day, simply did not wish to make the time-consuming effort of rewinding the tape to listen once again to the interpreter's voice. See discussion concerning the role of the transcriber in chapter 4 of my *The Construction Through Discourse of the Productive Other*, op. cit.

- Q. Do you think you have said everything that you want to say, or wanted to say?
- A. No, I think I have said everything.
- Q. Yes I have said everything, you should say.
- A. Yes. Yes.
- Q. Are you satisfied that you expressed yourself quite well without the need of the interpreter, only a few times?
- A. Yes. I have satisfied myself.
- Q. Anything else to say?
- A. No.

The second kind of failed interpretation is simply the fault of an incompetent interpreter. In an article by M. Lalonde called "Refugee board says test flawed as 40% fail interpreters' exam," published in the February 18, 1992 *Montréal Gazette*, the accuracy of the interpretations provided by interpreters working for Immigration Canada was put into doubt, confirming some of the worst fears of persons who work in the area of immigration law. In the spring of 1991, interpreters were given tests in order to implement standardized accreditation for immigration interpreters. Of the 370 interpreters who took the tests at the board's five regional offices, 40% failed. Having seen the results, a former employee of the Québec-Atlantic region office in Montréal is cited in the article as stating that "a lot of people are not getting a fair shake because the interpreters used by the refugee board are not capable of doing their jobs" (A4). In the article there are some remarkable quotes from an immigration lawyer named William Sloan, who states that "I had one [interpreter] who translated 'socialist party' as 'social group,'" and, further on: "I've seen cases where a claimant with two university degrees is made to sound completely garbled (by an incompetent interpreter). That can cause contradictions where their [sic] are none." These contradictions, as I've already said, are grounds for rejecting claimants; the interpreters, therefore, like other links in this system, undermine a potentially valid claim.

Interpreters can also create gaps in the testimony by making incomplete or selective translations. If the lawyer or the

immigration official do not recognize this early on, then the claimant's testimony might be maligned without anyone ever realizing that the fault is with the interpreter and not with the claimant's description of his or her experience. For example, in the case of a Turkish claimant, Monsieur R. who began by making his claim in French, there was a switch after fifteen minutes of testimony:

By the Senior Immigration Officer:

Monsieur R. on dirait que vous ne comprenez pas les questions. Si il y a des choses que vous ne comprenez pas, faites signe à l'interprète. Il va vous le traduire.

By the Counsel:

Monsieur R. is your French better than your English, or...?

By the claimant:

My English is better than my French, but...

Counsel:

Okay, we'll continue in English.

Claimant:

No problem.

It seemed as though the testimony was being transmitted correctly and that everything was normal, until some of the answers to questions seemed discontinuous with the questions being asked:

Counsel:

Mr. interpreter, is it an impression I have, or are we losing something in this interpretation? It looks like my client has very long answers and that yours are quite short. Of course, Mr. R. is able to see if everything has been said.

By the Senior Immigration Officer:

Is something wrong?

...

By the counsel:

Mr. R. Please make sure that everything is... that everything is correct. And please make your answers short... phrase after phrase, so that we are sure not to lose anything.

Further on in the same case, when the Counsel realized that there were many place and proper names that were unfamiliar to him and therefore to the person who would transcribe the case, he again spoke to the interpreter.

By the counsel:

Could you please spell something so that we can have some spelling around here?

The kinds of words that were causing difficulty were *Yusuf*, the given name of the person that helped him, *Iskenderum* and *Antioshiya*, two persons who were killed in the prison where the claimant was being held. That these names be correctly spelled is imperative since it is the kind of empirical data that can be verified by the adjudicators of the case. Much later on in the same hearing the interpreter was replaced not because he could not understand the claimant, but because he had difficulty expressing himself in English.

The other difficulty that the claimant has is that the refugee hearings are legal documents, and as such even small lacunae on the part of the interpreter could be fatal for technical reasons. For example:

Senior Immigration Officer:

Let me now ask you five questions related to your persecution. In your country do you have a well-founded fear of persecution because of your race?

Claimant:

No.

Counsel:

You're not making an exact translation. I am sorry, I hate to trouble you. I know that this is hard. He said well-founded. You have to translate the whole sentence and you have to try and be precise.

When the Counsel suspects that the interpreter is incompetent, he can request that a new one; unfortunately, the previous testimony is not deleted, there is simply a pause in the hearing while the interpreter is replaced.

Sometimes the interpreter is called upon to undertake more than just a translation, which brings us into the realm of cross-cultural translation. This kind of interpretation can take many forms: first, there are clarifications about customs, places, foods, and so forth, where the interpreter helps to describe certain customs to the Canadian officials. For example, in the case of a Sri Lankan claimant:

S.I.O.:

What is your place of birth, and in which country is that?

Claimant:

Puthur (phonetic pudder), Sri Lanka, P.U.T.H.U.R.

S.I.O.:

Wait, is that Puther or Putter?

Claimant:

Puther.

Interpreter:

Excuse me, th's and d's in Tamil are commonly interchanged.

Second, interpreters are sometimes called upon to verify data concerning the country of origin. For example, in a case involving a Pakistanian claimant:

Counsel:

... Following my client's entry into the Pakistan People's Party, he became a very active member, and began making door to door propaganda for that party. In 1974, he was elected area organizer for the P.P.P. in Pira Gahib.

Interpreter:

The P.P.P. had area organizers?

Claimant:

Yes, by 1974 they did.

Third, there is the translation of gestures and bodily marks (i.e. scars indicating torture) into text. Recall that until 1989 it was necessary to describe all events that occurred in the room because the decisionmakers were not present. So the interpreter was also called upon to describe bodily marks into words. For example:

Counsel:

Were you tortured during the time that you were interred in the prison in Pakistan?

Claimant:

Yes.

Lawyer:

Can you give us details?

Claimant:

First they kept on beating me and then they took melted wax and which they put...

Interpreter:

He is pointing to his left side of his chest and he says that he has a scar over there still.

Lawyer:

What did they put there?

Claimant:

Scalding hot wax.

S.I.O.:

Please take off your sweater and show us.

Interpreter:

The claimant is showing us a long scar, about twenty five centimetres long and a twenty five cent piece in diameter.

Fourth, there is the job of interpreting silence, giving meaning to gaps or silence in the claimant's testimony. A Sri Lankan

claimant, for example, refused to reply to certain critical questions; the interpreter was called upon to, as it were, interpret the claimants reticence:

Claimant:

I was there with my father in law, my mother in law and my cousin, in my father in law's house. He had sent the other families home, to Jaffna, to remain there, knowing there were riots. Some members of the government militia came into the house during the riots.

S.I.O.:

And then?

Claimant:

They um, they damaged the house.

Interpreter:

I am sorry, I believe that he means that they destroyed it.

S.I.O.:

Is that correct?

Claimant:

Yes. Then they were looking for this man. He was hiding under a bed in the house, with his wife and child. The child was two or three years old. The child escaped from under the bed, he crawled out of the room. The militia snatched up the child and took him, and they wanted to snatch the father. So the father jumped out to save the son. So luckily the son was given to someone who was in the house and who went out with the child. Then my father in law was stabbed badly, more or less killed.

S.I.O.:

What do you mean more or less killed?

Interpreter:

They killed him.

S.I.O.:

Is that correct?

Claimant:

Yes. They stabbed him, they beat him, and then they put petrol on him, set him on fire. Then afterwards, my mother in law was sent up north from Colombo to Jaffna.

Numerous other examples of the peculiar role that the interpreter plays in refugee hearings could be mentioned, examples of when they must decipher prices relative to moneys spent in the country of origin, examples of how they must interpret the meaning of time for persons from cultures where time is measured or evaluated differently, examples of how interpreters must give long descriptions of apparently simple words, like *brother* for example, which happens to mean fellow members of a tribe within certain Ghanian groups. These are often uplifting examples of how potentially-crippling misunderstandings can be clarified when the interpreter is allowed to speak beyond word-for-word translation. In fact, I had to look through several hundred cases in order to find the examples provided, because Immigration Canada apparently believes that literal translations suffice; even when the claimant is a persecuted nomad from a Saharan tribe, for example, there is little in the way of cultural orientation for Senior Immigration Officers and adjudicators who, from my own experience, generally demonstrate feeble understanding of such crucial notions as time, truth, or spatial orientation of diverse cultural groups¹⁷. They are not as blatantly narrow-minded as Cesare, from the citation I mentioned at the beginning, who thinks that everybody does deep down

17. Kälén seems to have had similar experiences in Switzerland. He states that "the cultural relativity of words, notions and concepts, and, even more importantly, the lack of consciousness of these differences in perception, are major sources of misunderstandings in cross-cultural communication. The problem certainly affects the asylum procedure: Too often officials assume that the way they think is also the way the asylum-seeker thinks... This may result in serious misunderstandings and even contribute to the denial of asylum for genuine refugees who, while doing their best to give all the requested information, fail because their counterpart misinterprets their statements" (p. 234).

speak Italian and those who don't admit it are simply rude or ignorant. But in asking that interpreters limit themselves to the words without allowing for a larger space of bodily and cultural interpretation, Immigration Canada, and I might add most other officials who deal with cross-cultural or cross-contextual translation, are guilty of another kind of closed-mindedness. Too many cases exist in which the officials clearly misunderstood the cultural context of the claim and therefore found contradictions where there were none, or uncovered so-called "lies" when a simple explanation from a learned advisor would have sufficed. There is no reason for Cesare to believe that *coccode-e-eh* does not sound like a chicken, so he uses it, fully expecting the Russian peasants to understand his meaning. And there is no reason for the Ghanian claimant to think that "brother" shouldn't imply "member of a tribe" for the officials at an immigration hearing. But if he is wrong, and if the interpreter does not fill in the appropriate information, the consequences could be tragic. Of course there is a danger in what I am suggesting; allowing more leeway to interpreters may act against the interests of the claimant if the interpreter, for whatever reason, does not act in good faith. Appealing to interpreters who are natives of the claimant's country of origin may lead to conscious or unconscious bias practised by a judgemental interpreter or by a suspicious claimant, because, as Walter Kälin notes, "in these cases asylum-seekers regularly suspect the interpreter of being a collaborator with the embassy of their country, capable of passing information to the persecuting government" (p. 233). Considering the refugee claimant's previous experience with government agents and agencies, such a reaction would not be irrational. Or there is the opposite risk, that the immigration officials suspect bias in interpretation because of an apparent collusion between two persons of the same national origin, or because the claimant is friendly with the interpreter:

The official, therefore, might suspect them [the interpreters] of not merely translating but instead of interpreting and improving upon the statements of the applicant. This becomes a particular problem where, as is often the case, the interpreter comments upon and expresses open support for the asylum-seeker's claims during the hearing. (Kälin, p. 233)

So in light of all of these pitfalls, what reforms should be put into place? By insisting upon a translation limited exclusively to words uttered is a means by which cultural diversity in language is profoundly limited; rendering experiences of persecution through monologized discourse alone is to deny that even single national languages contain within themselves a veritable plethora or languages, what M.M. Bakhtin called "heteroglossia"¹⁸ and accounting for this heteroglossia would require a broader mandate for the interpreter and a broader range of discursive possibilities for the claimant. Bakhtin, for one, is not pessimistic in this regard; he suggests that the kind of interaction that translation demands forces us to examine the perspective of the other from both the inside and the outside, leading to a richer and potentially more living sense of the other's discourse:

Thanks to the ability of a language to represent another language while still retaining the capacity to sound simultaneously both outside it and within it, to talk about it and at the same time to talk in and within it, to talk about it and at the same time to talk in and with it — and thanks to the ability of the language being represented simultaneously to serve as an object of representation while continuing to be able to speak to itself — thanks to all this, the creation of specific novelistic images of languages becomes possible. Therefore, the framing authorial context can least of all treat the language it is representing as a thing, a mute and unresponsive speech object, something that remains outside the authorial context as might any other object of speech¹⁹.

18. On "monologism" and "heteroglossia" see the works of M.M. Bakhtin, in particular, *Speech Genres and Other Late Essays*, eds. and int. Caryl Emerson and Michael Holquist, trans. Vern W. McGee (Austin, University of Texas Press, 1986).

19. M. M. Bakhtin, *The Dialogic Imagination; Four Essays*, ed. Michael Holquist, trans. Caryl Emerson and Michael Holquist (Texas, University of Texas Press, 1981), p. 358.

But interpreters must be provided with the tools for this kind of aggrandizement, and the system must be rendered sufficiently open-ended to permit its participants to learn from, rather than suppress, the persons with whom it interacts. Thus in the short term, before what I would consider as the necessary *radical* upheaval of the present system that adjudicates migrations of persons²⁰, we need cultural translators with a larger range of possibilities. There may be a second possibility here, to which I am increasingly partial considering the nature of the present crisis in immigration and refugee law (the rise of the right, particularly in Germany and in France, the present trend towards limiting access to the system through "third country clauses," the introduction of severe penalties for assisting potential claimants, and so forth), which is to recognize the insurmountable difficulties of the hearing, and to put into place instead a system of quotas for each country in the First World depending upon their capacity to absorb new persons. This kind of system, though inherently more impartial, would cause other problems related to international cooperation, potentially unrealistic or inflexible quotas that cannot account for sudden upheaval, or forms of detrimental competition amongst countries for the most desirable (i.e. most Westernized, or highly educated, or rich) refugees (as we see in the realm of immigration determination). But until the system is modified to actually account for day-to-day problems posed by intercultural communication, the Immigration Department will not be able to meet its own voluntarily-acquiesced obligations and criteria for the adjudication of Convention refugee claims; and if we follow our present course (the Mulroney bills C-55, C-84, C-86, etc.) countries like Canada will continue to modify the system to the

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20. This would entail international agreement that refugees are often produced because nations, corporations or other groups render acceptable lifestyles unbearable through their interference in, or their neglect of, the lives of the innocent. To view refugee determination as a duty and an obligation imposed by our own actions would be a valuable first step towards amending inequalities that are often the result of our considering the offer of "safe haven" as an example of charity.

point where access to the hearing will be limited to the rich, the well-connected, or the highly-trained rather than the most needy.

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ABSTRACT: The Interpreter and the Canadian Convention Refugee Hearing: Crossing the potentially life-threatening boundaries between "coccod-e-eh," "cluck-cluck," and "cot-cot-cot" — This paper discusses the obstacles facing interpreters and translators in inter-cultural situations with reference to Canadian Convention refugee hearings, taped in 1987. The author sets forth a theory of interpretation suited to the sometimes comical, but usually tragic elements of failed human interaction as they occur in legal hearings. The article begins with a comparison between a fictional rendering of failed communication from the work of Primo Levi, but then moves on to the plight of persecuted persons who have come to Canada to claim Convention refugee status. Obvious similarities emerge in a comparison of the two processes; but ultimately it is the language of persecution — silence, scars, tears, pleas, and impassioned cries — that is the most difficult to interpret and translate. Given the dynamics of inter-cultural legal discourse and the gravity of the issues at stake, the author argues for a broader mandate for the interpreter, such that s/he will also be permitted to act as a medium through which inter-cultural information can pass, rather than yet another grid into which pained words must fit.

RÉSUMÉ: The Interpreter and the Canadian Convention Refugee Hearing: Crossing the potentially life-threatening boundaries between "coccod-e-eh," "cluck-cluck," and "cot-cot-cot" — L'auteur passe en revue les difficultés que rencontrent les traducteurs et les interprètes lors des enquêtes dont les demandeurs d'asile ont fait l'objet en 1987 au Canada. Il propose une théorie de l'interprétation qui rendrait compte des éléments comiques parfois, tragiques le plus souvent, qui résultent d'une interaction humaine défailante, lors des enquêtes. Il examine d'abord un texte fictionnel de Primo Levi, puis le récit des personnes demandant le statut de réfugiés au Canada. On constate des ressemblances frappantes entre les deux processus; ultimement, c'est cependant le langage de la persécution — le silence, les cicatrices, les larmes, les suppliques et les cris de détresse — qui pose le plus de difficultés aux interprètes. Étant donné la dynamique du discours juridique interculturel et la gravité des cas en cause, l'auteur propose que le mandat des interprètes soit élargi pour qu'ils/elles deviennent des intermédiaires interculturels au lieu d'être des obstacles supplémentaires dans l'expression de la souffrance des demandeurs d'asile.