

# Improving Legal Transparency: The Translation Project of Japanese Law and the Prospect of New Comparative Law

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## **Introduction: Seriously Imperfect Information**

Since the 1990s Japan has been engaged in the legal reform assistance to the developing countries and countries in transition to market economy. The legal reform assistance includes such projects as codification of basic laws, re-structuring of the court system, reform of administration of justice, land law reform and so forth. Further, education and enlightenment of the elites of these countries who will take the initiative in legal reform projects are one of the most important ways of assistance. All these projects strive for good governance and economic growth of these countries.

The elites of the recipient countries in fact showed remarkable enthusiasm to learn from Japan and expressed high expectation to share the experience and lessons of modernization and economic success of Japan. In case of Nagoya University Law Faculty, the faculty hosted diverse opportunities for judges, attorneys, prosecutors, public officials, law professors and law students of these countries. Currently one hundred overseas students are enrolled in the graduate programs of law at Nagoya.

As soon as the technical assistance projects began, everybody quickly noticed one major problem. It is the fact that laws and related legal documents of Japan are not readily accessible to visitors from overseas who are eager to learn from the Japanese experience. Almost all the legal documents are there but they are available mostly in the Japanese language. Translated documents, such as laws, law review articles, cases and government papers, are often outdated and fragmental and thus do not describe the current Japanese law. In this sense Japan is not prepared for effective dissemination of her “unique” experience about law.

Though visitors from countries in transition usually have good command of English or other foreign languages, only a few can read the Japanese legal text which is often written with archaic terms and phrases. As a result, those who wish to learn from the Japanese experience are obliged to rely heavily on the oral communication such as interview. Interviews often provide the public officials and practitioners of countries in transition with some important and current information about Japanese law. But the situation is very serious for degree candidates, for they have very limited primary and secondary sources they could use in their academic works.

In addition, the information about the laws of a recipient country is often imperfect. Laws of Asian countries are mostly written in their native languages such as in Vietnamese, Laotian or Khmer. Like Japanese law, translation of their legal documents is very limited and fragmental. This fact has profound implication for legal reform assistance. Projects of legal reform assistance

are usually conducted through some sort of comparative law method. In order to make meaningful comparison we need accurate information of two different legal systems. Feasible and relevant assistance becomes possible only when both the donor and the recipient countries understand the mechanism and function of respective legal system to a fair degree.

This is the reason for growing awareness of the importance to translate laws and statutes in Asian countries, including Japan. In fact there has been strong demand for more information about Japanese law in English. Demand came from various sources, such as the legal reform assistance projects, business world, government, and institutions for advanced education. In 2004 the Japanese government at long last made decision to promote the translation project<sup>1</sup>.

The focus of the translation project of Japan is set upon the codes and statutes. Because the black letter law is always, at least in the Continental legal tradition, the starting point and the core of serious legal research and legal thinking.

In the following, the author will describe the overall plan of the translation project and argue that the translated black letter law could become a platform to develop a comparative study of law where both donor and recipient countries can contribute and share the fruits of the research.

## **2. Real Challenges to the Translation Project**

The demand for translation of laws and statutes of Japan is not new. In the past many people and institutions attempted to produce decent translation of the Japanese law. In fact we can find some good translations of laws and statutes. The real challenge to the translation project is, however, to keep the pace with amendments and changes continually added to the original text of law. Many past attempts of translation were short-lived mainly because they were not prepared for the fact that laws are always amended, repealed and newly enacted. The work of updating the translation has no end and demands the tremendous commitment on the part of the project promoters. There is no functioning system that can timely meet this challenge.

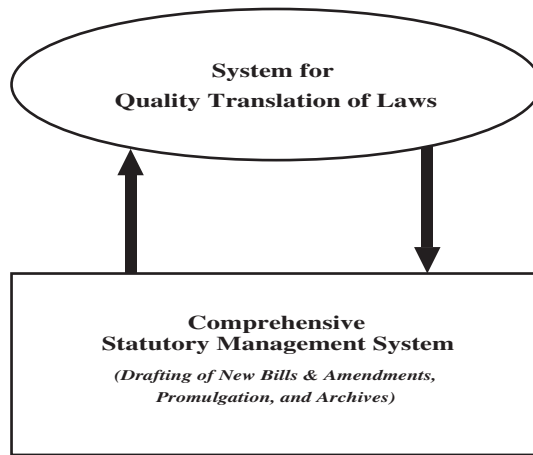
Therefore, it is essential for the success of the translation project to design the system which has a built-in mechanism to reflect any change in current law without delay. The system must tell whether the translation available is the translation of current and valid law or not. This is easy to say. In order to implement the translation system with this function, however, it is necessary to introduce the elaborate data-management system to monitor the whole body of law of one country.

The translation framework under development by a Nagoya University team consists of two parts. The first part is a comprehensive statutory management system which supports the drafting process of new laws and stores the past records of laws and statutes. It also provides the current information about Japanese law in the Japanese language. The second part is the system that generates the English translation of the Japanese law. Two parts are to be integrated so that they could keep pace with any change in the original text of Japanese law. The figure 1 is a rough illustration of the translation project.

Currently the Japanese government offers via internet free information of current laws and

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<sup>1</sup> See the Feb. 15, 2005 issue of *JURISUTO (JURIST)* which featured the articles on the translation project of Japanese law by the government initiative.



**Figure 1.** Core concept of the whole project

statutes in Japanese<sup>2</sup>. It is a fairly accurate approximation to the current Japanese law and frequently used to identify the current black letter law. It is also used by drafters of new bills. But it is not easy to identify what part of the law was recently modified and what words were replaced, deleted or added. Nor is it easy to know which provisions are brand-new.

In order to use the current government service as the foundation of the translation project, it is necessary to modify or re-design the government system so that it should provide authentic text of current law as well as specific information as to the changes in laws and statutes. The translation system is to be erected upon this firm foundation. If the government system does not offer this service, it will become necessary to develop a statutes data-base which can provide information essential to the translation project.

Creating a human network to produce translation continuously is another challenge. Translation projects of the European Union and the French government operate on the established policy to employ professional translators who are native speakers of the target language (for example, a native speaker of English, in case of translation of French text into English). In addition they require translators to have a college degree and fair understanding of legal science. This policy sounds quite reasonable, if the required human resources are actually available.

In case of Japan, we do not have sufficient number of native speakers of English who can read and understand the Japanese legal documents. The European approach does not seem to be feasible in Japan. Many countries in Asia may face the same difficulty when they try to translate their laws into English.

One possibility to clear this hurdle is to utilize information technology. Since the Nagoya project plans to use information technology extensively, the author shall discuss, in the next section, how information technology will be utilized.

<sup>2</sup> <http://law.e-gov.go.jp/cgi-bin/idxsearch.cgi>

### 3. Good Translation and Information Technology

Translation of statutory provisions is not an easy task. When we review the work of translation already done, we can easily find some weaknesses of past efforts. For example, the same legal term is translated in various ways mainly because many translators involved did their work without any consideration of long term consistency. There was no official mechanism to maintain consistent use of a legal term. The sentence style of translation varied depending on the taste of each translator. The result was the unrefined accumulation of translated text of law.

The notion of version management of translation was simply missing. Since law is amended from time to time, it is important to identify the original text of law which was actually used by the translator. Curiously many translations did not include this information in their work and it often became necessary to identify the year of the original text used by them. Without this check, we feel very uneasy because we might be reading the translation of law which was repealed long before.

Some translations are good and some are bad. But the problem is that there was no easy way to know the quality of translation, because there was no reliable procedure to test the quality of translation.

Even when the translation of current law is fortunately available, the information may not be sufficient. A provision of a statute may delegate the power to issue guidelines to regulations or ordinances. In this case the translation of major statutes must be supplemented with the translation of other relevant regulations and ordinances. If the translation is to be socially useful, it must include all provisions related to one particular provision. This has been done very imperfectly.

In order to overcome the past weakness of many translation projects the Nagoya project proposed to utilize information technology. It set off its work from construction of a reliable translation dictionary, because the reliable dictionary is the key to good and consistent translation of statutory text.

The project uses a tool called “Bilingual KWIC” to create the dictionary. The tool called KWIC (Key Word In Context) has been in use for years. It can list all the relevant sentences which include a keyword or a key expression so that we can see how a keyword is used in these sentences. It provides the contextual information how a word is used in real sentences. The Bilingual KWIC does this in two different languages. Suppose the Japanese Civil Code and its English translation is available. The bilingual KWIC can show a comparative table of the Japanese text and its English translation with a keyword high-lighted. The following figure illustrates this function.

The above table shows how a Japanese legal term (*Torikeshi*) has been translated into English. We can see from the table that the same Japanese term was translated in two English words, “annulment” and “revocation.” A group of legal experts on the Japanese Civil Code could use this result as a starting point to develop a reliable dictionary for translating laws and statutes. They could decide the proper choice of English words for a particular Japanese legal term. For example, they might maintain the use of two English words by assigning each English word to a particular legal domain. They could decide that the word “annulment” should be used in the context of making the marriage null and void and the word “revocation” to make

<p>九条の規定は、婚姻の取消につきこれを準用する。箇月間は、その婚姻の取消を請求することができる者は、その婚姻の取消を裁判所に請求すること</p> <p>四 設立許可の取消</p> <p>の規定は、設立許可の取消による解散の際に就職し、破産及び設立許可の取消の場合を除くほか、解散清算人の責任の免除の取消。但し、特別清算の開始監督役の責任の免除の取消。但し、整理の開始から六条の規定は、縁組の取消これを準用する。した者は、その縁組の取消を裁判所に請求すること</p> <p>女が前婚の再婚又は再婚の前から懐胎していた場</p> <p>二款 婚姻の無効及び取消</p> <p>二款 縁組の無効及び取消</p> <p>第五節 遺言の取消</p> <p>がないときは、遺言の取消を家庭裁判所に請求する</p> <p>○1 申込の取消の通知が承諾の通知を発</p> <p>前条の規定は、廃除の取消これを準用する。</p> <p>、推定相続人の廃除の取消を家庭裁判所に請求する</p>	<p>ations to the annulment of a marriage.</p> <p>apply for the annulment of the marriage during a</p> <p>Court for the annulment of such marriage.</p> <p>4. The annulment of the permission for or</p> <p>solution upon annulment of permission for creati</p> <p>bankruptcy or annulment of permission for creati</p> <p>4. Annulment of any release from liab</p> <p>7. Annulment of any release from liab</p> <p>court for the annulment of adoption. However, th</p> <p>ations to the annulment of adoption.</p> <p>issolutio or annulment of her previous marriage</p> <p>. Nullity and Annulment of Marriage</p> <p>. Nullity and Annulment of Adoption</p> <p>Section V. Revocation of Will</p> <p>Court for the revocation of the will, if no perf</p> <p>notice of the revocation of an offer has arrived</p> <p>ations to the revocation of the disinheritance o</p> <p>Court for the revocation of the disinheritance o</p>
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Figure 2. A sample view of the Bilingual KWIC

the testator’s will invalid. Or they might decide that only “annulment” should be used in all the legal domains. In this way they could construct the dictionary for translation of statutes.

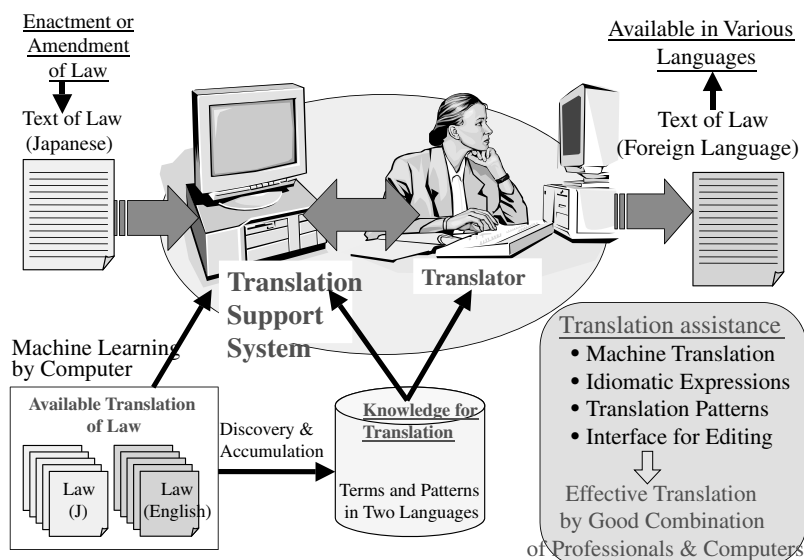
The Bilingual KWIC can provide not only the usage samples of words but also the samples of idiomatic expressions. Thus, it can show how conventional expressions in legal documents were translated. This means that we can list up English translation of all the technical terms and conventional expressions, which in turn can be used to generate a comprehensive dictionary and assist the work of translators.

The next step is to select more appropriate terms and expressions for the dictionary. It may become necessary to add or coin English terms when the Bilingual KWIC does not list candidates from the past translation. If we could organize the substantial number of legal experts in a particular field such as the law of contract and provide the data generated by the Bilingual KWIC, legal experts can go over the list of technical terms and expressions and actually choose the best candidates for the dictionary. In the similar way the translation dictionary for major legal subjects will be developed.

It is to be noted that the translation dictionary will emerge not in a conventional form of a book. Rather, it will emerge as an evolving dictionary on the web. The following figure will be useful to understand how a translation dictionary grows continuously.

When new laws or amendments pass the parliament, the text of the law is transmitted to the translation system. The system check the current law data-base so that it could show what part is added or new in the Japanese text. Since the system includes the data-base of statutes with reference function, it can offer the information of what other provisions and subordinate regulations are relevant to a particular provision newly added. It also tells whether the English translation is available or not. If available, the outdated part of the English translation will be identified.

The Japanese text of new laws or amendments is sent to translators. The translator knows the provisions to be translated, including the ones relevant to the new laws. The translators now use the translation dictionary which provides English expressions for particular Japanese terms and expressions. In Fig. 2 the dictionary is described as “Knowledge for Translation,” for it will provide far more diverse information than the conventional dictionary. The dictionary also offers the Bilingual KWIC service so that the translators utilize the past translations (“Available Translation of Law” in Fig.2). At this stage the translator works somewhat like a lawyer researching the past cases and precedents.



**Figure 3.** Framework of the translation project

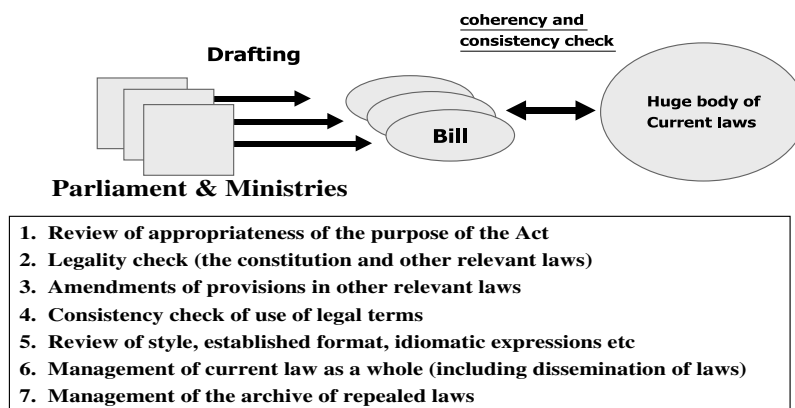
As soon as the translation work finishes, it will be sent to the translation system. The system checks to what extent the translator’s work complies with the translation dictionary. When the work satisfies the quality check by the computer system, it will be submitted to the experts committee which tests accuracy of the translation and quality of English.

The translation endorsed by the experts committee will be published through the internet or printed for distribution. At the same time the terms and idiomatic expressions used in the endorsed translation are automatically added to the translation dictionary. The dictionary will keep the past record such as what term was used in what period and replaced with what term.

After the publication of new translations, anybody can “challenge” the current translation by submitting his or her alternative translation to the experts committee. If the committee agrees, the current translation will be replaced by the proposed translation. In this way the translation dictionary grows continuously.

#### **4. The Translation System and the Computer-aided Legislative Drafting**

It is necessary to describe the Japanese approach to legislative drafting briefly, since it inspired the translation project of Nagoya University. The Japanese approach strives for the national law without contradiction, inconsistency and overlap. For example, when drafters of new legislation use a particular legal concept in their draft, they list up all the provisions of the past legislation which used this particular concept to avoid any deviation from the conventional usage. For this purpose the current statutory data-base of the government is used and some drafters characterized it as “indispensable to the drafting.” This concern with consistency is observed in the stylistic structure of the law, numbering of provisions, punctuation and so forth. Consistency and coherence are valued most in the drafting process for many years. The Figure 4 illustrates some critical tasks in the legislative drafting.



**Figure 4.** Complex tasks involved in the legislative drafting

From the perspective of the translation project the Japanese commitment to the stylistic completeness and long range consistency is a great advantage. The project members thought it easier to develop a translation dictionary, given the rigid rules for drafting. For computer is fit for rigid rules.

The drafters also work hard to identify all the provisions to be amended. In many cases a particular provision refers to other provisions and subordinate rules explicitly or implicitly. Amending a provision makes it necessary to amend other relevant rules at the same time. The information of explicit as well as implicit references has been kept manually. The more complex the cross-reference of rules becomes, the harder it becomes to maintain this information complete.

An incidence in 2004 was symptomatic. After the time-pressed preparation of rather complex amendments of pension laws, a set of amendment laws successfully passed the Japanese Parliament and was duly promulgated. Soon after, more than forty mistakes, including typographic errors, were discovered. This came as a total embarrassment to the government and some officers were disciplined for this irregularity. The government announced that it will introduce the double-checking system at the earliest occasion.

This incident suggests the significance of introducing a computer-aided legislative drafting (it might be called as “e-legislation”). It should maintain the style of writing and coherence in the whole body of law. It should provide comprehensive information of cross-reference among laws. In addition, it should offer the current information about Japanese law. This is what we mean by “Comprehensive Statutory Management System.” The current government site of statutory data-base does not fit for this purpose<sup>3</sup>.

Needless to say, commitment to consistency and coherence varies, depending on the legal culture of each country. Centrally controlled system for legislative drafting may appear as a great threat to regional autonomy and democracy. It may work against the more flexible growth of law.

<sup>3</sup> There is one commercial product for e-legislation developed by CRESTEC Company. It was developed for use by regional governments. The translation project regards this product as a prototype of e-legislation which could be used, with some improvements, for the translation project.

Still, there is much to say for a computer-aided legislative drafting. If it is important to grasp comprehensive information about a particular provision, the cross-reference function of the system will be far better than the manual research. If it is socially valuable to integrate national and regional rules without too much inconsistency, both computer-aided legislative drafting and a statutory data-base with inconsistency screening function will be very important.

Though the degree of consistency and coherence should be chosen by each country, developing countries and countries in transition seem to need this kind of assistance. A country like Cambodia does not have many skilled drafters of new legislation. Vietnam and Uzbekistan appear to work hard to strike out incoherence between national laws and regional rules. So long as the legislative drafting is done by different hands, a mechanism is necessary to achieve coherence and consistency in law.

For this reason the translation project of Nagoya University promotes a separate project to convert the Japanese e-legislation system for other countries.

## **5. A New Approach to Comparative Law**

The translation project has an interesting implication for comparative study of law. Translation of the black letter law does not provide extensive information about one legal system, rather it only scratches the surface. For example, it is easy to translate the Japanese word “*Fudohsan*” into the English word “Real Property.” But this translation does not tell much about the Japanese real property system unless one knows that the house and the land are treated differently under the Japanese law and thus partly subject to different rules. One might wish to know further why the Japanese law treats the house and the land separately and what rules apply to the land.

It is the common sense of the legal profession that the black letter law makes sense only when we understand the legal institution, the function of a particular provision, the socio-economic context where the rule was created, the function of law socially expected and so forth. In one sense the black letter law is a leaf floating on the stream.

At the early stage of the legal reform assistance, projects tended to focus upon the code or major statutes. But if it is true that the black letter law makes sense when it is integrated into the background context, relevant information must be linked to the black letter law. It is critically important how we relate the background context to the code and statutes.

It seems to be a sound policy that the donor and the recipient countries respectively provide the background information of their own legal system. This is simply because we can most comfortably talk about our own legal system. For example, Japanese experts assisting the reform of the Business Law of Lao PDR can describe and explain the Japanese company law and its background context. In return Lao experts can offer to the Japanese experts the explanation of their Business Law and its contextual information.

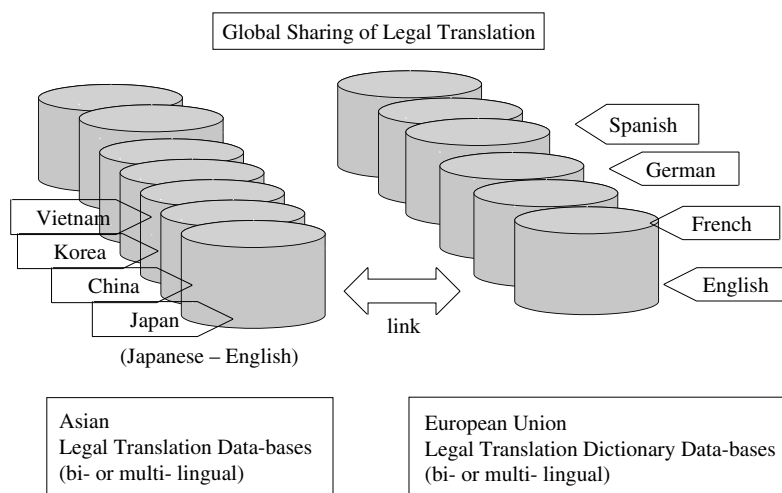
One of the purposes of the legal reform assistance is to help the recipient countries make better choice. Legal experts of the donor countries can contribute more by talking extensively about their own legal system.

Where can we store and share the information so provided by experts of the donor and the recipient countries? The data-base of the translated laws and statutes might be a good storage. The translation project of Nagoya University focuses upon statutory provisions of Japanese



law. Japan will be able to disseminate the English translations of her important laws and statutes. There is no technical difficulty to add the background information to each translated provision in the form of “link.” Legal experts of Japan can provide the contextual information voluntarily. But it is far more important for them to respond to the request of legal experts of foreign countries, particularly recipient countries. To talk about the common sense is not easy, for we take it granted and often fail to notice the critical importance of the common sense of our own law and society. A simple question of a foreign lawyer such as “Why does your rule work?” might open an eye of a native lawyer as to an open question of effective law.

If each country and its experts of various disciplines can provide the similar service, we will be able to create, in substance, an extensive information service by expanding the database of the translated laws. The following illustration shows a conceptual image of the global sharing of statutory information.

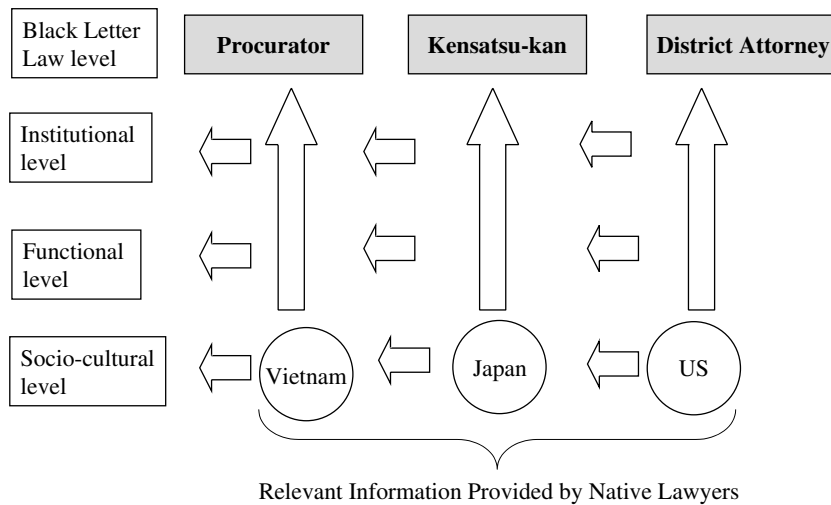


**Figure 5.** Sharing of translated laws and background information

As already mentioned, the first step of the translation project is to generate the “translation dictionary” or “translation memory” which works as the yardstick of translation. If Japan produces a translation dictionary of Japanese-English and Laos does one dictionary of Lao-English, it is technically possible to create an integrated translation dictionary of Japanese-Lao-English laws. In this way we can grow the integrated translation dictionary for laws of various countries. Actually the European Union has already developed the translation dictionary for more than twenty languages. If we can establish a network of translation dictionaries developed in Asia and relate it to the dictionaries of the European Union, an extensive translation dictionary with global coverage will emerge on the web.

Even if we can create the network of translation dictionaries and share the huge body of translated laws of various countries, we still need to supplement it with extensive contextual information. This will be the real forum for the comparative study which is pursued by global collaboration. Relevant contextual information will include socio-economic environment, history, legal culture, political context, culture and so forth.

Figure 6 shows a slightly structured view of the contextual information. A legal expert by the name of “prosecutor” may make an interesting example. Prosecutor seems to carry quite different social significance. In socialist countries a prosecutor performs the role of the guardian of the social justice. In some cases he appears more like the conventional Lord Chancellor of England who embodied equity. In contrast the Japanese prosecutor (*kensatsu-kan*) is regarded as a public officer of the state who works in the public domain and is seen very different from an attorney working in a private domain. In the US and UK prosecutor is simply an attorney with a different mask. It is useful to discriminate the levels of description to characterize what the prosecutor is.



**Figure 6.** Layers of contextual information

The suggested global sharing of the statutory information will function somewhat like a menu from which the recipient countries choose for their legal transplant. For successful legal transplant diverse information is essential. Public officials, practicing lawyers, and academic lawyers of both donor and recipient countries can contribute to this process by contributing their unique experience and wisdom. In addition non-lawyer experts can contribute to clarification of the contextual information. Long term fruit of this process will be, it is expected, emergence of a new comparative study of law.