The following article, “Rechtsverordnung” and the Terminology of Legal Translation, by Geoffrey Perrin, appeared in *Lebende Sprachen* Nr. 1/1988. Geoffrey Perrin has kindly allowed me to make it available online at www.margaret-marks.com/Transblawg.
Not only does it offer advice on translating the word ‘Rechtsverordnung’ that is still useful today, but it also describes the process a legal translator went through to express a concept from a foreign legal sentence in English.

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"Rechtsverordnung" and the Terminology of Legal Translation

1. Introduction
The special terminological problems involved in the translation of legal texts are by now fairly well known. They have their root in the difficulty of applying to this sphere one of the basic tenets of successful translation, that of keeping the system of concepts in between one language (more precisely, culture) and another as unaltered as possible. As a result, any previous translation as "prosecuion" for "Strafverfolgung" fails in fact to convey an essential part of the original. The German procedure is governed by the principle of mandatory prosecution (Verwaltungsstrafrechtspflichtprinzip), the English one by the principle of discretionary prosecution (Grundsatz der Staatlichkeit des Strafverfahrens) and so on. It was no doubt just this kind of difficulty which was being referred to when, at the opening plenary session of the 3rd Deutscher Terminologentag, a plea was made for the holding of a special conference on the problems of "vorgleichende Terminologie."

In the following, I am going to try and throw some light on the difficult decision-making process involved in the terminology of legal translation. To do this, I propose to take a particularly knotty problem from this field (one which is occasionally the topic of quizzes I get from other translators) - namely, the English rendering of the German "Rechtsverordnung" and to attempt to establish criteria which will permit us to arrive at a satisfactory translation.

2. "Rechtsverordnung"
Cretzschmid (1983) has the following to say about the "Rechtsverordnung":
Rechtsverordnung is a weitgehend verbindliche Anordnung für eine abnehmende Vielzahl von Personen, die mich im fürstlichen Gesetzgebungsgesetzen erregt, sondern von Organen der Vollzugs, der üblichen (Bundesverwaltung, städtisches Verwaltungs, aber auch Selbstverwaltungskörperchaften) gesetze wird. Die Art, den ermittelten, im materiellen (zum formellen Gesetz) hat die Rechtsverordnung vom formellen Gesetz, für allgemeinen Inhalt von dem auf die Regelung eines Einzelfalles getroffenen Verwaltungsverfahren, die Wesen als Rechts- nicht von dem nur verwaltungs, sondern Verwaltungs- verordnung. Da sie Rechtsnormen enthält, ist die Rechtsverordnung Gesetz im umfangene (zum formellen Gesetz) hat die voll- ziehende Gewalt am Erlang von Rechtsverordnungen ermächtigen. ... Unabhängig ist ... die Ermächtigung, zu rechtsverordnen. Ver- ordnung i. S. einer stellvertretenden und gemäß aufrechten Regelung im Ermessen der Macht; Rechtsverordnungen dürfen nur zur Durchführung und zur inhaltlich bereit vorgebrachten Ausführung und Ergänzung des formellen Gesetzes ergeben.

The language professional coming new to the field of German-English legal translation quickly discovers that this concept is most frequently rendered in English translations employing some sort of official status by "ordinance". Examples are legion; it will suffice here just to mention the translation of the Federal German "Arbeits- förderungsgesetz" (Employment Promotion Act) done by the International Labour Office (e.g. section 3 (5), sections 108 and 109), and of the German Federal "Gesetz gegen Wettbewerbsbeschrän- kungen" (Anti-Competition Act) contained in F.-K. Beier et al. (1983) (e.g. sections 33 and 190). What justification is there, then, for using the term in English translations?

Let us start by considering legislative practice in the United King- dom. An ordinance here is a comparatively rare and highly speciali- zed form of legislation, as made clear in Martin (1985):
ordinance n. One of the forms taken by legislation under the royal prerogative, usually for the purpose of the U.K. dependence.
The term also has an archaic ring about it, as evidenced by the observations made by Walker (1980) and Padfield (1981:16):
In its present form, an ordinance is, of course, a kind of law and as such, as a kind of law, it is made to be used by the people of the United States, we find that Farmworth (1983:57) has the follow- ing saying: "A Municipal Ordinance is usually of local interest." In fact, Farmworth (loc. cit.) places ordinances, together with municipal charters, rules and regulations, on the eighth and bottom rung of his hierarchy of U.S. legislation...

(As regards the notion of hierarchy: I do not intend here to get bogged down in unnecessary details of the relationship between regulatory provision at the federal level and that at state level, either with regard to the United States or to the Federal Republic of Ger- many.) And should we choose to regard Farmworth only as a per- spective authority, 1983:57 to 5520) is, to continue the legal idiom, surely a binding one. This section, dealing with city or county ordinances providing for the collection of employment taxes, contains under (c) (2) the following definition:
"ordinance means an ordinance, order, resolution or similar instrument which is daily adopted and approved by a city or county in accordance with the constitution and statutes of the State in which it is located and which has the force of law within such city or county.
It can thus be seen that although ordinances do indeed have "the force of law" in both the United Kingdom and the USA (cf. Cretz- schmid (loc. cit.): "Rechtsverordnungen"), there must nonetheless be strong reservations about employing the term in a translation of "Rechtsverordnung" if we take the notion of "system" as a criterion. Whilst "Rechtsverordnung" is a middle-order concept in the Federal Ger- man regulatory hierarchy (it has above it: "Verfassungsrecht" and ordinary "Gesetz", and below it, the "Verwaltungsrecht" and the "Verwaltungswesen"), and can relate furthermore to virtually any subject-matter, "ordinances" in both English and the USA is a lower-order entity) - in the former country because of its restricted scope and frequency, in the latter because of its lack of importance relative to other types of regulatory provision."

Thus far, the issue seems fairly clear-cut: the differences between the German and the English language concept outweigh the similari- ties. Before we can start to draw conclusions for our work as termi- nologists, however, we must first answer another question: are there any English-medicus legal systems in the world which employ the term "ordinance" in a sense which differs from that understood in both the USA and the UK.

Research into this point produces an answer which is really only the start of the terminological exercise. For example, the WIPO (World Intellectual Property Organization) document PACE/90, relating to a meeting of experts on industrial property protection, contains in Annex I a "List of Selected Trademark Laws". There, on page 3, under (g), we find entered for Hong Kong: "Trade Marks Ordinance". The English text makes clear that in Hong Kong, an ordinance is at least equivalent to a statute in a "Rechtsverordnung".

3. Conclusion
Faced with the kind of terminological decision we have here, we need to look carefully at the communicative situation, and at one element of it in particular, namely the context in which it is used and the purpose for which it is employed. Or to put it more drastically, we need to think about who the recipient is of the translation, and what the purpose of the translation is, i.e., whether it is intended to be used by the one who commissioned it or by the one who is going to be the primary user of the translated document. If the criterion is the former, the translation is intended to be a "legislative" translation, if the latter, a "translation," and vice versa.

Let us look again at the two major English-medicus legal orders and see whether either of them offers any help here. In the UK, the form of statutory provision which has grown most sharply in volume in recent years is delegated legislation. Martin (op. cit.) defines this as follows:

degulated legislation (subordinate legislation)
Legislation made under powers conferred by an Act of Parliament (an enabling statute, often called the parent Act). The bulk of delega- ted legislation is governmental; it consists mainly of... instruments of various names... its principal sources are the delegated Acts of Parliament by prescribing the detailed and technical rules required for the effective operation, under an Act, of legislation which is to be made (and later amended if necessary) without taking up parliamentary time.
The similarity with the Cretzschmid's definition given above is unmis-
takable (cf. also Creifelds’ observation: “Das Institut der Rechtsverordnung hat in neuerer Zeit große Bedeutung erlangt, weil es den zeitgenössischen Weg der Gesetzgebung ermöglicht und schnelleren Ausbau der Rechtsordnung den veränderten Verhältnisse ermöglicht.”). Consequently, I see no good reason for not adopting “delegated legislation” as a rendering of “Rechtsverordnung” where the latter is used as a general collective term. “Delegated legislation” I prefer to its synonym “subordinating legislation” for the simple reason that I have actually found the former, but not the latter, used in texts with an international circulation—namely, Council of Europe documents (see for example the judgment of the European Court of Human Rights in the Dooland case, § 60).

This still leaves us with the problem of what to do when “Rechtsverordnung” has specific reference.2) The most important form of delegated legislation in the UK is the statutory instrument, the latter being known up to 1948 as statutory rules and orders (Walker op. cit.). If we look a little more closely at the term “statutory order,” we notice something rather interesting: its two constituent elements (statutory + order) form a neat semantic fit with those of “Rechtsverordnung” (Recht + Verordnung). The semantic transparency of the term, lacking in the more modern expression “statutory instrument,” obviously commends it from the point of view of international comprehensibility, and in fact, I have found it used in two translations, one of major significance—that of the German “Bürgerliches Gesetzbuch” (Civil Code) done by Forrester et al. (e.g., section 1615 (3))—the other also by no means unimportant: that of the Federal German “Warenzeichengesetz” (Trademark Law), published in an issue of the WIPO review, “Industrial Property.”3) The first is notable for the fact that it is an American work, so we can assume that the term “statutory order” must be readily understandable to anyone with a US legal background. The second unfortunately3) is notable for the fact that the translator blew his copybook by translating “Rechtsverordnung” in section 50 subsection 1 as “statutory order,” and then unaccountably following this up by translating the same German term in section 36 subsection 2 as “ordinance.” As a first point, I should perhaps mention that in the UK, “statutory order” is no means as obsolete a term as I may have inadvertently suggested—in fact, it still occurs today alongside “statutory instrument” (see for example the statutory instrument reproduced in the enclosure).4)

Summing up, I would like to make the following points in relation to the translation of legal texts:

I. The elaboration and consolidation of legal terminology for translation purposes demands much painstaking research and much relevant research to original texts in both source and target language.

II. The choice of one term rather than another will in some instances be determined by reader-expectancy (some may prefer to call this “reader-experience” or “reader-background”). In the former case, I was much influenced by the choice of the term “statutory order.”

Actually, both ‘terms are equally well to most other forms of translation—for instance, the “horses-for-courses” approach proposed in (ii) was described in relation to technical translation at the Johannes Gerlach “Seminär für Übersetzungstechnische Übersetzungen” in Cologne in 1985, where the possibility of storing a dictionary with concepts and concept-specific wishes with regard to terminology was explained. My main reason for emphasizing these two points here is my belief that they have special relevance in connection with what Pich and Draskau (op. cit.: 128) have called the “soft sciences.”

One point I hope not touched on, as it would have made the present article unreasonably long, is what to do when the target language offers no term whatsoever which we can adopt or adapt for translation purposes, simply because the legal institution referred to in the source language (here German) does not exist in any English-medium system of law known to us. Again, the phenomenon of “creative terminology”—filling a gap, which will not always be the same as text ex exegesis—is probably common to all the soft sciences, which in this respect share the same problem with the “hard” sciences.