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A Jurilinguistic Study of the Trilingual Civil Code of Québec

Jimena Andino Dorato

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A JURILINGUISTIC STUDY OF THE TRILINGUAL CIVIL CODE OF QUÉBEC*

Jimena Andino Dorato[†]

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* The title of the trilingual Code, following the suggestion of the translators, uses no accent on Quebec in Spanish. In recent decades, the practice in legislative drafting in English, at the level of the province, has been to write the name of the province with the French accent. However, this is not the practice in the Spanish language, nor was it traditionally the case in Quebec English (see, for example, sections 2, 3, 4, 5 and 21 of the schedule to article 17 of the Civil Code of Lower Canada). For the present article, the choice was made to adopt the spelling which is without an accent, every time the name of the province is going to be used, other than in text expressed in French or the title of the Civil Code of Québec.

For the misuse of the word in the Civil Code of Québec, see Pierre Legrand, *Civil Codes and the Case of Quebec: Semiotic Musings around an accent aigu*, in ROBERTA KEVELSON, CONSCIENCE, CONSENSUS AND CROSSROADS IN LAW 195 (Peter Lang, New York, 1995), cited in Roderick A. Macdonald, *Encoding Canadian Civil Law*, in THE HARMONIZATION OF FEDERAL LEGISLATION WITH QUEBEC CIVIL LAW AND CANADIAN BIJURALISM: COLLECTION OF STUDIES. L'HARMONISATION DE LA LÉGISLATION FÉDÉRALE AVEC LE DROIT CIVIL QUÉBÉCOIS ET LE BIJURIDISME CANADIEN : RECUEIL D'ÉTUDES 135, 137 (Ottawa, Department of Justice Canada, 1997) (hereinafter "*Encoding Canadian Civil Law*"). This choice is provisional and will probably merit further development in future research

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ABSTRACT

L'auteure souhaite, par cet article, présenter la jurilinguistique comme une discipline en croissance pouvant apporter une approche originale à la recherche. Afin d'illustrer son propos, elle étudie les différentes étapes du processus de traduction en espagnol du Code Civil du Québec ayant mené à la publication d'un Code trilingue. Son analyse met en relief les difficultés rencontrées en cours de route par les traducteurs et réviseurs et, plus particulièrement, les spécificités de la traduction d'une loi bilingue vers une tierce langue.

The author seeks, with this article, to introduce jurilinguistics as a growing discipline that could contribute a new and distinct approach to scholarly research. As an instance supporting her remarks, the author studies the different stages in the process of translating the Civil Code of Québec into Spanish, leading to the publication of a trilingual Code. Her analysis

highlights the difficulties encountered along the way by the translators and revisers. It emphasizes in particular the aspects which are specific to translating a bilingual law into a third language.

I. INTRODUCTION

In 2008, Wilson & Lafleur published a trilingual edition of the Civil Code of Québec (the trilingual Code).¹ At first sight, the rectangular “landscape” format of the book’s pages catches the reader’s attention. This shape is due to the fact that a third column with a Spanish version² has been added to the columns of the French and English versions, so commonplace for any jurist familiar with commercial editions³ of the Civil Code of Québec. The Spanish version makes up the left column, the French one the middle column and the English one the column on the right. This order is not followed for the index. The pages of the Spanish index are placed last, those of the English placed in the middle, and those of the French come right after the last article of the Code.

Another point worthy of notice is the existence of seventy-eight translators’ notes.⁴ This is almost the only piece of evidence that the book is a translation. There is just another reference to

1. See JULIO CÉSAR RIVERA, *CÓDIGO CIVIL DE QUEBEC: CODE CIVIL DU QUÉBEC [CIVIL CODE OF QUÉBEC]* (Wilson & Lafleur eds., Montreal, 2008).

In the spirit of this study, trilingualism is a fundamental point of this essay. As it will become clear later, French and Spanish were predominant during the research work of this essay. Consequently, English was the language chosen for this essay. The second choice was to keep quotations in their original language; they will be explained in English but not necessarily translated. Similarly, titles will fluctuate from one language to another.

2. Following the Preface of the trilingual Code, the word “version” will more often but not exclusively be used, in preference to the word “text,” to refer to an instantiation of the Code in one or other of the three languages. For nuances on the use of these terms, see *Preface to the Original Critical Edition, in CODE CIVIL DU QUÉBEC. ÉDITION CRITIQUE. CIVIL CODE OF QUÉBEC. A CRITICAL EDITION* (18th ed., Jean-Maurice Brisson & Nicholas Kasirer eds., Montreal, Yvon Blais, 2010) (hereinafter *Preface*).

3. This is not necessarily the case for non-commercial editions. See *Note to the 2007-2008 Edition, in CODE CIVIL DU QUÉBEC. ÉDITION CRITIQUE. CIVIL CODE OF QUÉBEC. A CRITICAL EDITION XVI, XVIII* (Jean-Maurice Brisson & Nicholas Kasirer eds., Montreal, Yvon Blais, 2007) (hereinafter *Note*).

4. These translators’ comments are marked by an asterisk but not all of them are presented as “N.T.” However, as will be further explained, for ease of reading, they are called here translators’ notes.

translation, in the words of thanks in the *Note de l'éditeur*. Otherwise, the book's presentation does not bear the marks of a translation. All three columns on its pages have similar characteristics (size of characters, paragraphs, etc.). Even the title of the book does not include the word translation, nor does the Preface. The title simply enunciates the content of the book in three languages: "Código Civil de Quebec-Code Civil du Québec-Civil Code of Québec." In the Preface, the Quebec Government refers to the Spanish version of the Code "[qui] s'ajoute à celles de langues française et anglaise."⁵

After this overview, the reader will probably wonder about the use to which this work is destined. This query finds a preliminary answer in the Preface, which proposes the trilingual Code as a tool for legal practice in Quebec "dans l'espace linguistique hispanophone." The Preface also proposes a more theoretical use, as an asset in comparative law, where the trilingual Code "assurera à notre droit civil un rayonnement remarquable dans les milieux juridiques hispanophones" and can serve as "source d'inspiration pour plusieurs législateurs étrangers."⁶ But there seems⁷ to be another possible use, one not mentioned in the Preface but which led to the present essay. This use, and hereafter the goal of this essay, will be presented in the following two sections: 2. A jurilinguistic study . . . 3. . . . of the trilingual Civil Code of Québec. Each section will clarify a part of the paper's title as well as the methodological choices.

II. A JURILINGUISTIC STUDY

Set aside the practical uses and the comparative aspects of the trilingual Code; this study takes a jurilinguistic approach. It is

5. MONIQUE GAGNON- TREMBLAY & JACQUES P. DUPUIS, *Préface*, in CODE CIVIL DU QUÉBEC, *supra* note 1.

6. CLAUDE WILSON & HUBERT REID, *Note de l'éditeur*, in CODE CIVIL DU QUÉBEC, *supra* note 1.

7. As the present text does not seek to be exhaustive, but rather to open debates, the verb "seem" will be much used. For the use of the verb *sembler* when exhaustiveness is not sought, see Jacques Vanderlinden, *D'un paradigme à l'autre. À propos de l'interprétation des textes législatifs plurilingues*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE] 293, 304 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005).

important to note that this is not a work on jurilinguistics theory. It is not a paper on what jurilinguistics is but on presenting different options of doing jurilinguistics. However, since jurilinguistics does not yet have a well-developed and agreed-upon meaning, it seems necessary to mention, mostly in footnotes, the theoretical ideas behind the different possible research venues, here explored.

The methodology for this exploration follows another jurilinguistic work: the Critical Edition of the Civil Code of Québec, published every year by Éditions Yvon Blais (the Critical Edition).⁸ This work records conflicts in meaning between the two official texts of the Code with a dagger symbol and notes “infelicities of language” with an asterisk.⁹ The authors of the Critical Edition indicate conflicts but do not express a preference between the alternatives. However, even pointing out the issue implies an interpretative act and thus a jurilinguistic analysis.¹⁰

The trilingual Code has a parallel to these asterisks: the translators’ notes. By using an asterisk, the translators outline difficult or controversial choices in translation. The comments the translators made this way are called here translators’ notes, whether they have the “N.T.” notation following the asterisk or not. The reason for the existence of the majority of these notes will become clear later.

In similarity with the Critical Edition, this essay seeks, through the analysis of the translators’ notes, to open the way to a different perspective but will not provide a definitive answer or exhaustive study. It revisits each translators’ note and suggests a jurilinguistic approach for the matter.

In this sense, in its guidelines, it proposes a notion of jurilinguistics as a discipline fluctuating within/*entre* two main pillars: linguistics and law, neither prevailing over the other.¹¹

8. *Preface, supra* note 2.

9. *See Preface, supra* note 2, at XXXVI–XXXVIII.

10. *See id.*

11. For studies on law and language and the relevance of their close ties, see generally JEAN-LOUIS SOURIOUX & PIERRE LERAT, *LE LANGAGE DU DROIT* (Presses universitaires de France, Paris, 1975); JEAN-CLAUDE GÉMAR, *LANGAGE DU DROIT ET TRADUCTION : ESSAIS DE JURILINGUISTIQUE* [THE LANGUAGE OF THE LAW AND TRANSLATION : ESSAYS ON JURILINGUISTICS] (Linguatex/Conseil de la langue française, Québec, 1982) (hereinafter “LANGAGE DU DROIT ET TRADUCTION”); CARLES DUARTE & ANNA MARTÍNEZ, *EL LENGUAJE JURÍDICO* (A-Z editora, Buenos Aires, 1995); Nicholas Kasirer,

There is no neat border between them. On the contrary, there is an ongoing communication between the two pillars. Jurilinguistics is a two-way bridge where traffic never stops.¹² This makes for the richness and particularity of the discipline.

Thus, the goal of this essay is to stay within/*entre* both pillars. It is neither a comment on Quebec's *jus commune*¹³ nor a study on a particular legal institution of the Code. It is not a terminological analysis of the language of the Code or of particular

Dire ou définir le droit?, in GÉRARD SNOW & JACQUES VANDERLINDEN, FRANÇAIS JURIDIQUE ET SCIENCE DU DROIT 165 (Bruylant, Bruxelles, 1995); Jacques Vanderlinden, *Du droit et de la langue ou de la langue et du droit?*, in GÉRARD SNOW & JACQUES VANDERLINDEN, FRANÇAIS JURIDIQUE ET SCIENCE DU DROIT 23 (Bruylant, Bruxelles, 1995); Roderick A. Macdonald, *Regards sur les rapports juridiques informels entre langues et droit*, 3 REVUE DE LA COMMON LAW EN FRANÇAIS 137 (1997); ERIK JAYME, LANGUE ET DROIT. XVE CONGRÈS INTERNATIONAL DE DROIT COMPARÉ, BRISTOL, 1998: COLLECTION DES RAPPORTS (Bruxelles, Bruylant, 1999); Jacques Vanderlinden, *Langue et droit*, in JAYME 65; Nicholas Kasirer, *Le real estate existe-t-il en droit civil? Un regard sur le lexique juridique de droit civil de langue anglaise*, in RODOLFO SACCO & LUCA CASTELLANI, LES MULTIPLES LANGUES DU DROIT EUROPÉEN UNIFORME 89 (Torino/Paris, Harmattan Italia/Harmattan, 1999) (hereinafter "*Le real estate existe-t-il en droit civil?*"); Rodolfo Sacco, *Langue et droit*, in SACCO & CASTELLANI, 163; NICOLAS MOLFESSIS, LES MOTS DE LA LOI (Paris, Économica, 1999); Daniel Jutras, *Énoncer L'indicible: Le Droit Entre Langues et Traditions*, 4-2000 R.I.D.C. 781 (2000); EDUARDO ÁNGEL RUSSO & ALICIA C. MOGUILLANES MEDINA, LA LENGUA DEL DERECHO. INTRODUCCIÓN A LA HERMENÉUTICA JURÍDICA (Buenos Aires, Editorial Estudio, 2001); NICHOLAS KASIRER, LE DROIT CIVIL, AVANT TOUT UN STYLE? (Éditions Thémis, Montreal, 2003); Nicholas Kasirer, *Pothier from A to Z*, in BENOÎT MOORE, MÉLANGES JEAN PINEAU 387 (Éditions Thémis, Montreal, 2003) (hereinafter "*Pothier from A to Z*"); DAVID MELLINKOFF, THE LANGUAGE OF THE LAW (Eugene, Resource Pub., 2004); GÉRARD CORNU, LINGUISTIQUE JURIDIQUE (3rd ed, Paris, Montchrestien, 2005); Pierre Lerat, *Le vocabulaire juridique entre langue et texte*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE] 59 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005).

12. The idea of movement is taken from Laplantine and Nouss's thoughts on the notion of *entre* as: "l'interstitialité métisse, qui est le contraire de l'homogène et du compact, ne désigne pas un état situé dans un espace. Elle introduit un devenir. Elle n'occupe pas une place intermédiaire entre deux pôles, elle n'est pas un point situé à équidistance entre les deux, mais un mouvement rythmique d'intermittence." See, FRANÇOIS LAPLANTINE & ALEXIS NOUSS, MÉTISSAGES : DE ARCIMBOLDO À ZOMBI 217 (Paris, Pauvert, 2001).

13. For the role of Quebec's Civil Code as the foundational general law and the use of *ius commune* or *jus commune* in English, see the Code's Preliminary provision comments. See, *Preface*, *supra* note 2, at XXXVI, 1. See also Macdonald, *Encoding Canadian Civil Law*, *supra* star-footnote.

formulations. It is not a study of the Spanish translation itself. It was tempting to take only one of these better known paths and develop it. However, the goal is to present the potential of jurilinguistics as a broad discipline¹⁴ whether autonomous or auxiliary. As a result, there is no particular aspect fully developed but an eclectic palette of research opportunities.

Through the analysis of the translators' notes, this study first focuses on aspects traditionally and largely developed by this growing discipline.¹⁵ It aims to provide the scholar, with new research venues on legal translation, legal language and comparative law (V.A. Necessary translators' notes, V.A.1 Neutral Spanish and V.A.2 Legal Institutions). Second, it presents jurilinguistics as a tool to understanding law (V.B.3 Bilingualism of the Code).¹⁶

14. For new approaches that tend to overcome the exclusive terminological approach that seems to reign in jurilinguistics, see MARCUS GALDIA, *LEGAL LINGUISTICS* 21 (Frankfurt am Main, Peter Lang, 2009).

15. Its main ideas are largely upheld in J.C. Gémar's work. This author's term, jurilinguistics, is kept as a useful way to identify a blooming discipline as well as the professionals practicing it. Also, following this author, legal translation is considered to be at the core of any examination of jurilinguistics. However, J.C. Gémar's vision seems excessively limited to aspects drawn from linguistics. Therefore, it seems useful to keep in mind the more juridical approach upheld by Gérard Cornu, who preferred to use the term *linguistique juridique* instead of jurilinguistics. It is relevant for the present essay that this author pointed out jurilinguistics's role as auxiliary to "la science fondamentale du droit" and to comparative law, as well as its main role in language rights issues. See JEAN-CLAUDE GÉMAR, *LANGAGE DU DROIT ET TRADUCTION*, *supra* note 14; JEAN-CLAUDE GÉMAR, *LES TROIS ÉTATS DE LA POLITIQUE LINGUISTIQUE DU QUÉBEC: D'UNE SOCIÉTÉ TRADUITE À UNE SOCIÉTÉ D'EXPRESSION* (Québec, Gouvernement du Québec Conseil de la langue française, 1983); JEAN-CLAUDE GÉMAR, *TRADUIRE, OU, L'ART D'INTERPRÉTER* (Sainte-Foy, Presses de l'Université du Québec, 1995); Jean-Claude Gémar, *Le langage du droit au risque de la traduction. De l'universel et du particulier*, in GÉRARD SNOW & JACQUES VANDERLINDEN, *FRANÇAIS JURIDIQUE ET SCIENCE DU DROIT* 123 (Bruxelles, Bruylant, 1995) (hereinafter "*De l'universel et du particulier*"); Jean-Claude Gémar, *Langage du droit et (juri)linguistique. États et fonctions de la jurilinguistique*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, *JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS: BETWEEN LAW AND LANGUAGE]* 5 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005); GÉRARD CORNU, *LINGUISTIQUE JURIDIQUE* (3rd ed., Paris, Montchrestien, 2005); GÉRARD CORNU, *VOCABULAIRE JURIDIQUE* (8th ed., Paris, Presses universitaires de France, 2007).

16. This is largely inspired in in the Honourable Nicholas Kasirer's work with respect to jurilinguistics. See Kasirer, *Dire ou définir le droit?*, *supra* note 11; Nicholas Kasirer, *What is vie commune? Qu'est-ce que living together?*, in *MÉLANGES OFFERTS PAR SES COLLÈGUES DE MCGILL À PAUL-ANDRÉ*

Accordingly, this essay aims to explore if and how jurilinguistics, as an “empowered discipline,”¹⁷ can provide the scholar in disciplines with well acquired status with fresh and even new lenses for analysis. It is important to insist that no example will be fully developed but merely presented. The examples chosen outline what can be called jurilinguistics opportunities based on the aller-retour within both pillars of jurilinguistics. This aller-retour reflects an “[état] d’esprit” which opens fresh avenues for research and study.¹⁸ This essay will ask whether a jurilinguist, as mediator between law and language, could have reached different conclusions when facing difficult choices.¹⁹

CRÉPEAU [MÉLANGES PRESENTED BY MCGILL COLLEAGUES TO PAUL-ANDRÉ CRÉPEAU] 487 (Éditions Yvon Blais, Cowansville, Centre de recherche en droit privé et comparé du Québec, 1997) (hereinafter “*What is vie commune?*”); *Preface*, *supra* note 2; Kasirer, *Le real estate existe-t-il en droit civil?*, *supra* note 11; Nicholas Kasirer, *François Gény's libre recherche scientifique as a Guide to Legal Translation*, 61 LA. L. REV. 331 (2001) (hereinafter “*François Gény*”); Nicholas Kasirer, *Portalis now*, in LE DROIT CIVIL, AVANT TOUT UN STYLE? 1 (Éditions Thémis, Montreal, 2003); Nicholas Kasirer, “*Délit interdit! No ‘Offence’!*”, in CENTRE DE RECHERCHE EN DROIT PRIVÉ ET COMPARÉ DU QUÉBEC, COLLOQUE DU TRENTENAIRE. THIRTIETH ANNIVERSARY CONFERENCE: 1975-2005 203 (Éditions Yvon Blais, Montreal, 2005) (hereinafter “*Délit interdit! No ‘Offence’!*”); Kasirer, *Pothier from A to Z*, *supra* note 11; Nicholas Kasirer, *Postface/Afterword. Is the Canadian Jurilinguist – Living entre langues et droits—A Middle Power?*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE] (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005) (hereinafter “*Postface/Afterword*”); Nicholas Kasirer, *L’outre-loi*, in LYNNE CASTONGUAY & NICHOLAS KASIRER, ÉTUDES OFFERTES À JACQUES VANDERLINDEN : ÉTUDIER ET ENSEIGNER LE DROIT: HIER, AUJOURD’HUI ET DEMAIN 239 (Yvon Blais, Cowansville/Bruxelles, Bruylant, 2006).

17. See Kasirer, *Postface/Afterword*, *supra* note 19, at 579.

18. This expression is used by J.C. Gémar when he refers to the different professionals that can have a jurilinguistic approach. See Jean-Claude Gémar, *Avant-propos/Foreword*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE] XV (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005).

19. See the image of Hermes presented by François Ost. See François Ost, *Jupiter, Hercule, Hermès: trois modèles du juge*, in PIERRE BOURETZ, LA FORCE DU DROIT : PANORAMA DES DÉBATS CONTEMPORAINS 241 (Éditions Esprit, Paris, 1991). The legal theories of Ost largely coincide with the theoretical approach of this essay.

In this sense, the legal translator will find in the story of the process of getting to the trilingual Code an interesting tool to enrich the debate on the training required to translate legal texts.²⁰ The essay will also provide the legal terminologist with new examples reflecting on the necessity or even possibility of a neutral language, beyond vernaculars, as well as on other questions of legal language.²¹ Comparatists will find a most interesting

20. For general texts on the training required for legal translation and its difficulties, see generally Kasirer, *Portalis now*, *supra* note 16; Rodolfo Sacco, *Langue et droit*, in JAYME, *supra* note 11, at 223; SUSAN ŠARČEVIĆ, *NEW APPROACH TO LEGAL TRANSLATION* (The Hague/Boston, Kluwer Law International, 1997); Judith Lavoie, *Faut-il être juriste ou traducteur pour traduire le droit?*, 48 META: JOURNAL DES TRADUCTEURS, XLVIII:3 (2003); Roberto Mayoral Asensio, *La traducción jurídica: un enigma para los estudiosos, una tarea para los profesionales*, 1 EL LENGUARAZ. REVISTA ACADÉMICA DEL COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES 15 (2001); Roberto Mayoral Asensio, *¿Cuánto derecho debe saber el traductor jurídico?*, in ESTHER MONZÒ NEBOT & ANABEL BORJA ALBI, *LA TRADUCCIÓN Y LA INTERPRETACIÓN EN LAS RELACIONES JURÍDICAS INTERNACIONALES* 107 (Barcelona, Castelló de la Plana, 2005); Alexandre Covacs, *La réalisation de la version française des lois fédérales du Canada*, in GÉMAR, *LANGAGE DU DROIT ET TRADUCTION*, *supra* note 11, at 83; Gémar, *De l'universel et du particulier*, *supra* note 18; MOLFESSIS, *supra* note 11; MARSHALL MORRIS, *TRANSLATION AND THE LAW* (Amsterdam, John Benjamins Publishing Company, 1995); Susan Šarčević, *Creativity in Legal Translation: How Much is Too Much?*, in ANDREW CHESTERMAN, NATIVIDAD GALLARDO SAN SALVADOR & YVES GAMBIER, *TRANSLATION IN CONTEXT: SELECTED CONTRIBUTIONS FROM THE EST CONGRESS*, GRANADA, 1998 281 (Amsterdam/Philadelphia, J. Benjamins, 2000); Susan Šarčević, *The quest for legislative bilingualism and multilingualism: co-drafting in Canada and Switzerland*, in JEAN-CLAUDE GÉMAR & NICHOLAS KASIRER, *JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE]* 277 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005); Jean-Claude Gémar, *L'interprétation du texte juridique ou le dilemme du traducteur*, in RODOLFO SACCO, *L'INTERPRÉTATION DES TEXTES JURIDIQUES RÉDIGÉS DANS PLUS D'UNE LANGUE* 103 (Torino, L'Harmattan Italia, 2002) (hereinafter "*L'interprétation du texte juridique*").

21. For varieties of legal languages, even when using the same language, see generally EMMANUEL DIDIER, *LANGUES ET LANGAGES DU DROIT : ÉTUDE COMPARATIVE DES MODES D'EXPRESSION DE LA COMMON LAW ET DU DROIT CIVIL, EN FRANÇAIS ET EN ANGLAIS* 209 (Montreal, Wilson & Lafleur, 1990); Kasirer, *Dire ou définir le droit?*, *supra* note 11; Jacques Vanderlinden, *Exercice comparatif au départ d'un sujet convenu. Le droit sud-africain entre principe et réalisme*, in RODOLFO SACCO, *L'INTERPRÉTATION DES TEXTES JURIDIQUES RÉDIGÉS DANS PLUS D'UNE LANGUE* 297 (Torino, L'Harmattan Italia, 2002); Nicholas Kasirer, *Délit' interdit! No 'Offence'!*, *supra* note 19, at 203. Especially for English it is worth remembering the distinction between civil law English and that of the common law. See Alain Levasseur & Vincenç Feliú, *The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in*

empirical work on the well-known relation between language, culture, translation and comparison, not to mention the comparative value of the trilingual Code itself.

But the jurilinguistic approach, as an opportunity for the legal scholar to study legal institutions (in this case, provisions of the Civil Code of Québec) from a different perspective, will be of most interest. Thus, jurilinguistics may allow understanding and interpreting both foreign and vernacular law in a way that they are less foreign and vernacular. Accordingly, the “Other” (the third language, the Spanish column and the foreign law prejudices) will dialogue with and challenge the “Self” (the Civil Code of Québec in its two official languages).²² There is an aller-retour between interpreting via legal translation and understanding via comparison. This seems an innovative jurilinguistic approach to study law.

It is time now to focus on the second part of the title of this study and to better introduce the trilingual Code and its difficulties, as well as other important methodological choices.

III. THE TRILINGUAL CIVIL CODE OF QUÉBEC

In order to better understand the process of preparing the trilingual Code and the attendant difficulties, the strategy of the present study is to let the main actors in the work serve as guides. Their voices can be heard through two main sources: interviews with the professionals involved in the process and the translators’ notes in the trilingual code.

The selection of interviewees was a natural choice as the professionals involved are named in the *Note de l’éditeur* of the trilingual Code. The main actors in the work can be divided into

the English Language; Comparativists Beware!, 69 LA. L. REV. 715 (2009). See also *supra* note 11.

22. For the dialogue between the two official versions, see *Preface, supra* note 4, at XXXIV; for the idea of dialogue between the translation and the original text, see ANTOINE BERMAN, *L’ÉPREUVE DE L’ÉTRANGER : CULTURE ET TRADUCTION DANS L’ALLEMAGNE ROMANTIQUE*, HERDER, GOETHE, SCHLEGEL, NOVALIS, HUMBOLDT, SCHLEIERMACHER, HÖLDERLIN 13 (Paris, Gallimard, 1984).

three classes: the translators, the revisers and the publisher.²³ Accordingly, twelve interviews were conducted in Montreal, Quebec City, Sherbrooke and Buenos Aires between February and May 2009.²⁴ They were done either in French or Spanish, depending on the interviewee's preference. The prominence of these two languages led to choose English as the language used for this article. This way, the presence of all three languages will allow for reflection on a certain trilingualism.

Each interview lasted approximately one hour. They addressed two main topics: the project's background and then the project's methodology and challenges. The first topic was divided between the personal background and goals of the interviewee, and the history of the project itself. The second topic also had two sub-themes: the dynamics of the work and the difficulties encountered in the process. Questions were general and open-textured, in order to give the interviewee the opportunity to freely develop his or her thoughts.

Following the jurilinguistic focus of this study, the legislative bilingualism of the Code²⁵ was a topic of discussion in

23. Following the expression lawyer-revisor/lawyer-reviser or translator-revisor/translator-reviser used in Quebec, the professionals who revised the Spanish version of the trilingual Code will be named revisers.

24. Interview with Robin DeJardin, in Montreal, Quebec (Feb. 26, 2009); Roberto Godoy, in Montreal, Quebec (Apr. 29, 2009); Interview with Denis L'Anglais, in Quebec, Quebec (Apr. 21, 2009); Interview with Rosgarys Mercado-González, in Montreal, Quebec (Apr. 27, 2009); Interview with Elizabeth Patterson, in Montreal, Quebec (Feb. 17, 2009); Interview with Hubert Reid, in Quebec, Quebec (Apr. 21, 2009); Interview with Julio César Rivera, in Buenos Aires, Argentina (Mar. 19, 2009); Interview with Juliana Rodríguez-Anido, in Sherbrooke, Quebec (May 15, 2009); Interview with María Alejandra Tello, in Buenos Aires, Argentina (Mar. 19, 2009); Interview with Elyse Turcotte, in Montreal, Quebec (Mar. 3, 2009); Interview with Marcela Rossana Valdivia, in Montreal, Quebec (Apr. 29, 2009); Interview with Walter Viegas, in Buenos Aires, Argentina (Mar. 19, 2009).

25. The Civil Code of Québec is an Act of the Legislature of Quebec so it has to be printed and published both in English and in French. It is clearly a bilingual legal text. *See Constitution Act, 1867*, 30 & 31 Vict., c. 3. (U.K), s. 133; *Charter of the French language*, R.S.Q., c. C-11, s. 7; Doré v. Verdun (City), [1997] 2 S.C.R. 862, at para. 24-26 (Can.) (hereinafter cited as Doré v. Verdun); Kasirer, *What is vie commune?*, *supra* note 19, at 487; Pierre-André Côté, *La tension entre l'intelligibilité et l'uniformité dans l'interprétation des lois plurilingues*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS : BETWEEN LAW AND LANGUAGE] 127-133 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005); PIERRE-ANDRÉ CÔTÉ, THE INTERPRETATION OF LEGISLATION IN CANADA

every interview. This essay starts from the premise that both of the official texts should be taken into account. There cannot be a trilingual version of the Civil Code of Québec if the translation comes exclusively from one official version. The acknowledgement of a *bilingual* text seems a requirement to get to the *trilingual* text.²⁶

Accordingly, the particularity of the Code's bilingualism as well as the influence of the common-law will guide this jurilinguistic study.²⁷ From these interviews, it became clear that the legislative bilingualism of the Civil Code of Québec, this "distinctive feature of Quebec legal culture," was not fully but only partially considered.²⁸

The translators agreed on the usefulness of the English version. During the interviews, they categorically affirmed that it "ayudó mucho."²⁹ The English version was for them an essential tool in what they considered cases of ambiguity or lack of clarity. However, the status of the English version is left unclear when it is mentioned in the translators' notes. Some of them reflect the idea of the English text as merely a translation of a French original and some others simply refer to the English version, still not clear on

134 (3rd ed., Scarborough, Carswell, 2000); RÉMI MICHAEL BEAUPRÉ, *INTERPRÉTATION DE LA LÉGISLATION BILINGUE* (Montreal, Wilson & Lafleur, 1986); RUTH SULLIVAN, *SULLIVAN AND DRIEDGER ON THE CONSTRUCTION OF STATUTES* (4th ed., Markham, Butterworths, 2002); MICHEL BASTARACHE, *THE LAW OF BILINGUAL INTERPRETATION* (Markham, LexisNexis, 2008).

26. It is not a trilingual text merely because of the presence of three languages (having official status or not). It is not trilingual because one unilingual text has been translated into two languages as is the case, for example, of the trilingual Netherlands Code. The work under study here is trilingual because a bilingual text was translated into a third language. However, the challenges encountered in the case of the Netherlands Code can sometimes be used as a tool for comparison, especially with respect to the role a jurilinguist has to play in such a work. See Ejan Mackaay, *La traduction du nouveau Code civil néerlandais en anglais et en français*, in JEAN-CLAUDE GEMAR & NICHOLAS KASIRER, *JURILINGUISTIQUE: ENTRE LANGUES ET DROITS [JURILINGUISTICS: BETWEEN LAW AND LANGUAGE]* 537 (Éditions Thémis/Bruylant, Montreal/Bruxelles, 2005).

27. See MAURICE TANCELIN, *DES OBLIGATIONS EN DROIT MIXTE DU QUÉBEC* (7th ed., Montreal, Wilson & Lafleur, 2009).

28. *Preface*, *supra* note 4, at XXXVI.

29. See Interview with Riviera, *supra* note 27; see Interview with Viegas, *supra* note 27.

its value as a version; only in a few cases is its official status recognized.

The revisers, on the other hand, did not consider the English version as useful. Some of them stated they had not used the English version at all or only in a very few specific cases. Besides, some of the revisers considered the French version to be the only one with official status and disagreed with the use of the English version by the translators and the inclusion of notes to that effect.³⁰ The reviser's attitude unfortunately reflects the general approach that lawyers who are not sensitive to jurilinguistic matters have towards bilingualism. These different approaches of the two groups will become clearer in the next section: 4. The interviews or *la petite histoire d'un ouvrage de prestige en trois actes*.

IV. THE INTERVIEWS OR LA PETITE HISTOIRE D'UN OUVRAGE DE PRESTIGE EN TROIS ACTES³¹

This story presents the result of the interviews in an Introduction, three Acts and an Epilogue. The introduction sets-out the origins of the trilingual Code. The three Acts describe the three stages in the process: the translation, the revision and the publishing. The Epilogue is sort of a practical lesson drawn from this story and opens the way for further study of the difficulties encountered in the process.

A. *Origins of the Trilingual Civil Code*

The origins of the trilingual Civil Code of Québec go back to 1998. At that time Argentina, intending to reform its Civil Code, passed a bill³² which was to a significant extent inspired by the

30. The priority accorded to the French version seems also present in the publisher's decision with respect to the page layout for the three texts and to the order in which are placed the three indices. *See infra* Part IV, D.

31. Hubert Reid considered the trilingual Code "un ouvrage de prestige" and this was his argument to overcome the reticence of Wilson & Lafleur towards publishing a work which did not have a self-evident audience. *See* Interview with Reid, *supra* note 27.

32. HÉCTOR ALEGRÍA ET AL., PROYECTO DE CÓDIGO CIVIL DE LA REPÚBLICA ARGENTINA UNIFICADO CON EL CÓDIGO DE COMERCIO (Buenos

Civil Code of Québec. Members of the reform commission saw the latter as a modern Code, recently enacted, clearly written and an excellent fusion between civil law and common law.³³ After the launch of the text of the reform project, the commission was approached by Denis L'Anglais, the Quebec delegate in Buenos Aires at the time, and the idea of translating the Code into Spanish was born.³⁴ It seemed a very interesting way to export Quebec legal ideas into Spanish-speaking countries. The timing was excellent since this was a decade of re-codification efforts in Latin American countries.³⁵ The project started timidly when Julio César Rivera, a member of the reform commission, began directing the translation work. Rivera practices commercial law and teaches civil law in two Buenos Aires universities. In his academic work, he had translated scholarly articles from French and Italian into Spanish. In this endeavour, he was usually assisted by María Alejandra Tello and Walter Viegas. So when the idea of translating the Civil Code became more concrete, having them assist him was a natural choice. M. A. Tello and W. Viegas are both lawyers and sworn translators, with academic and practical experience in the legal field.³⁶ These three professionals were thus the main actors in the First Act: the translation stage.

Aires, Abeledo-Perrot 1999). The Bill never came into force and Argentina still has its original Civil Code from 1871, including of course the several amendments introduced to it over the years.

33. It is worth pointing out that this view of the Civil Code of Québec is not unanimous in Quebec's doctrine, *See* John E. C. Brierley, *The Renewal of Quebec's Distinct Legal Culture: The New Civil Code of Québec*, 42:4 U.T.L.J. 484, 498-499 (1992). *But see supra* note 32.

34. Contrary to the choice made by the publisher for the "Note de l'éditeur" of the trilingual Code, all professionals participating in the trilingual Code are designated here by their names, omitting any reference to their titles. This is justified because what seem important here are their abilities and qualifications as jurilinguists and not other training these professionals might have. Therefore, in order to avoid confusion, only full names are used.

35. Some of these recodification efforts led to success, including those in Paraguay (1985), Peru (1984) and, more recently, Brazil (2009); some, including those of Argentina and Puerto Rico, never did.

36. It is worth noting that a *traductor público* in Argentina has a very solid legal background. This is particularly the case in Buenos Aires, where Tello and Viegas studied; the degree program there is taught in the Faculty of Law and about 40% of the curricular credits are shared by both programs. The profession is regulated by statute and a society of *traductores públicos*. *See* LEY N° 20.305, COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD

B. Act I or Traduciendo el Derecho Común de Quebec

During the first stage, there was no funding and translation fees were privately arranged between J. C. Rivera and the team of M. A. Tello and W. Viegas. There was no official request from the Quebec Government nor was there a publisher interested in the work.

It took a year and a half to obtain a first draft of the Spanish version. None of the professionals involved worked on it full time. M. A. Tello and W. Viegas did the translation work. They divided the articles of the Code equally between themselves and supervised each other's work in order to achieve a coherent result. Drafts were sent to J. C. Rivera periodically, and he supervised the work. Then, the three of them had fortnightly or weekly meetings to arrive at a consensus on the translation. They deeply believed in this division of tasks: it was necessary that the translation be done by the legal translators and thus the role of J. C. Rivera was to supervise the work with his experienced scholarly eye. He clearly expressed "yo no soy traductor, sólo abogado."³⁷ When they finished the first draft, they allowed themselves another seven or eight months to arrive at a second verified version, including some modifications that the Code had undergone during this period. All along, D. L'Anglais assisted them with his Quebecer's perspective, none of the others having had contact with the Quebec reality.

Once the Spanish version was completed, it gained the interest of no publisher in Argentina. Hence, D. L'Anglais started to "frapper à d'autres portes" in Quebec.³⁸ Even as D. L'Anglais represented J. C. Rivera in the search for a publisher, the former took on a new role as supervisor of the translation's quality; he imposed this role on himself as a condition for a Quebec printing. He was convinced that supervision from a Quebecer's perspective was necessary to get an accurate Spanish version.³⁹ He thus

DE BUENOS AIRES (2010), available at <http://www.traductores.org.ar/nuevoorg/home/ley/?idruta=1&nivel2=8&nivel3=9> (Last visited November 7, 2011).

37. Interview with Rivera, *see supra* note 27.

38. *Id.*

39. In the case of the Netherlands Code's translation these two stages were also present but in the other direction: the expertise in Dutch law was present in

gathered and led a group of ten Quebec lawyers, including himself, with the mandate to supervise the Spanish translation: Jorge Armijo, Robin Dejardin, Adelia Ferreira, Roberto Godoy, Rosgarys Mercado, Elizabeth Patterson, Juliana Rodríguez, Marcela Valdivia, and Elyse Turcotte. *Voilà*, the main actors of the Second Act: the revision stage.

C. Act II or à la Recherche d'un Editeur-la Révision

The decision to gather ten revisers had a practical basis: one for each of the ten Books of the Code.⁴⁰ It was not easy to find ten lawyers fluent in Spanish, who were ready to do the work almost pro-bono and on the side of their regular professional activities.⁴¹ Therefore, the team ended up being quite heterogeneous, while not necessarily being interdisciplinary. They were all members of the Quebec Bar (this was a condition for participation), some of them from the private sector, practicing in different areas of expertise, and others working for the Government in law related areas but not necessarily practicing law.

Evidently, one feature they all had in common was skill in Spanish, though their knowledge of Legal Spanish differed: only a few of them had studied or practiced law in Spanish speaking countries. Actually, even their reasons for speaking Spanish were diverse. Some of them had had formal foreign language training, others learned it from personal life experiences and for yet others it was their mother tongue. Even here there were differences: some learned it in childhood at home in an otherwise French speaking environment, for others Spanish was their only language until they

the translators, and not in the revisors, who were experts in jurilinguistics, *See* Mackaay, *supra* note 26, at 542.

40. In practice, the division did not follow the demarcations of the Code as precisely as this, since some Books are longer than others. Approximately 300 to 350 articles were assigned to each revisor, while always keeping in mind the subject-matter of the articles. Some of the participants said they chose their set of articles with their area of expertise in mind while others, especially those who joined the project later, were assigned their articles.

41. Even though Wilson & Lafleur covered the expenses for this stage, this contribution was only a fixed amount which did not take into account hours involved in the work and which was far from the fees which would standardly have been charged by lawyers.

immigrated to Canada as adults. In general, the Spanish of each bore a strong influence from the Spanish speaking country related to the source of their knowledge.

The background and experience of each in translating legal texts or even revising legal translations was also very different; none of them had any training in legal translation and only a few of them had any experience in it at all. What they all definitely had in common was that they endorsed the project.

At this stage, there was still no support from the Quebec Government but there was a publisher. D. L'Anglais presented the idea to Hubert Reid, of the legal publisher Wilson & Lafleur, who was wholeheartedly enthusiastic. He had tried to initiate a project along the same lines in the past, yet it was now on hold because of the difficulties it involved. When he had discussed the idea with some translators in the past, he was asked "comment les gens pourraient s'entendre sur la traduction."⁴² But, at this point, contrary to this apocalyptic vision of the impossibility of the translation, he had in front of him a complete Spanish translation of the Civil Code of Québec.⁴³

With Wilson & Lafleur's support, the revisers set to work on the assigned articles and they shared their comments in order to arrive at a consensus about the suggestions to be sent to the translators in Argentina. They had long phone conferences and periodic e-mail exchanges. Once there was agreement on the "problematic" terms, the latter were assembled by D. L'Anglais and sent to the translators in Buenos Aires.

There were a couple of exchanges between the revisers—always represented by D. L'Anglais—and the translators about the suggestions. Some of them were accepted, others not. This was a tense moment, natural to any joint effort, but the result had to be published and this exchange could not go on forever. So the publisher intervened and, as H. Reid said, there is one author,⁴⁴ J.

42. Interview with Reid, *see supra* note 27.

43. For the impossibility versus the possibility of translating, *See* DIDIER, *supra* note 21, at 245-247; Gémar, *L'interprétation du texte juridique*, *supra* note 20, at 110-115.

44. For a study on the translator's role as the author, *see* FRANÇOIS OST, *TRADUIRE: DÉFENSE ET ILLUSTRATION DU MULTILINGUISME* 179-191 (Paris, Fayard 2009).

C. Rivera,⁴⁵ so the final decision belonged to the latter. However, the publisher asked J. C. Rivera to add notes describing some of the divergences of opinion.⁴⁶ Once this discussion was closed, it was time to enter the Third Act: the publishing stage.

D. Act III or the Código Civil de Quebec-Code Civil du Québec-Civil Code of Québec

After another year and a half of work, a Spanish version of the Civil Code of Québec was waiting to appear in its first edition. On the basis of the product of this work, Wilson & Lafleur managed to secure support from the Quebec Government to help cover the cost of preparing the book for publication.⁴⁷ It was during this third stage that the Spanish translation of the Civil Code of Québec metamorphosed into the trilingual Code.

After many experiments, and drawing from the experience gained from prior publications, the format of the three columns side by side was settled upon. As has been already mentioned, the Spanish version formed the left column, the French version the middle column, and the English version the column on the right. Probably, the most logical place for the Spanish version would have been the right column (the end of the direction of reading) or the end of the book, since it has no official value. However, the goal was to make it “aussi agréable à lire” as the French version, given that the eye goes more easily from the center to the left side, than to the right.⁴⁸ In the index, the Spanish text is placed last, with the understanding that the Spanish speaking reader would instinctively look for the Index at the end of the book; the English index is kept in the middle and the French one is placed right after the last article.⁴⁹

45. J. C. Rivera explained during the interview that he had obtained non-exclusive copyright to translate the Civil Code of Québec from the Quebec Government. *See supra* note 27. This was confirmed by H. Reid during his interview, *see supra* note 27.

46. This will be the main reason for the translators' notes.

47. *See Preface, supra* note 4.

48. Interview with Reid, *see supra* note 27.

49. It is noteworthy that the Index was entirely translated by R. Mercado and was not part of the translation directed by J. C. Rivera. In this case the process took place in the opposite direction; the translation was done in Quebec and supervised from Buenos Aires.

The metamorphosis from translation to trilingual Code is also emphasized by the title: “Código Civil de Quebec-Code Civil du Québec-Civil Code of Québec.” There is no mention in it of a translation, rather the Code presented in three languages.

The choices made at this moment offer interesting analytical perspectives on the value of the trilingual Code, starting from its physical appearance.⁵⁰ This is particularly the case when it is taken into account that the publisher, in order to preserve the value of the translation, consciously chose not to include an indication of the lack of legal authority of the Spanish version. This was contrary to the revisers’ request.

E. Epilogue

This *petite histoire* shows that both groups had different approaches to legal translation. The relation between law and language was of most importance during the first stage. On the other hand, the translators did not have much experience with respect to Quebec law and its context. Neither did they have access to a lot of material consisting of Quebec scholarly works or cases. At this point, traditional concerns with respect to understanding law both in terms of its textual expression and of its context, always present in legal translation and particularly brought to light by comparative law’s struggles, seem somehow to have been a little neglected.⁵¹

These genuine concerns led, in the second stage, to the requirement that the revisers be members of the Quebec Bar. At this stage, the focus on Quebec juridical training seems to have displaced the one on expertise in translation and on the relation between law and language.

50. For the important influence of publishers’ formatting choices on perception of a work, see Nicholas Kasirer, *Si la Joconde se trouve au Louvre, où trouve-t-on le Code civil du Bas Canada?*, 46 C. DE D. 481 (2005).

51. For these concerns, see generally Gerard-René De Groot, *Language and Law*, in JAYME, *supra* note 11, at 333; Erik Jayme, *Rapport Général: Langue et droit* in JAYME 9, *supra* note 11; PIERRE LEGRAND, *LE DROIT COMPARÉ* (Paris, Presses universitaires de France, 1999); Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, 39 AM. J. COMP. L. 1 (1991); JACQUES VANDERLINDEN, *COMPARER LES DROITS* (Bruxelles, E. Story-Scientia/Kluwer éd. juridiques Belgique, 1995).

These different approaches might have contributed to the sometimes tense exchanges during the second stage. As has been mentioned, in view of these divergences and following a request from the publisher, the trilingual Code ended-up with seventy-eight translators' notes. It can be wondered whether the presence of a jurilinguist, as a mediator between these two groups with different approaches, might have led to a different outcome. This question of a possibly different ending to the *petite histoire* leads to the next section (5. The translators' notes or los escollos en el camino del Código civil trilingüe). The translators' notes will allow an analysis there of the difficulties of the process, by employing the jurilinguistic perspective which is proposed here.

V. THE TRANSLATORS' NOTES OR LOS ESCOLLOS EN EL CAMINO DEL CÓDIGO CIVIL TRILINGÜE

As a consequence of their origin, the translators' notes do not conform to a common pattern.⁵² The interviewees gave many examples of issues that did not find their way into a translators' note. Notwithstanding the interest of these examples, for methodological reasons only the translators' notes will be examined here. However, the interviews helped in the choice of which examples should receive the greatest attention in this paper.

Each of the seventy-eight translators' notes is mentioned here, at least in a footnote, and the most relevant examples are briefly examined. Thus, this study is more oriented towards a quantitative analysis than a qualitative one. The analysis will focus on the two main questions driving this essay: one is whether the participation of a jurilinguist would have led to a different outcome; the other question is how this dialogue between the two

52. There are also some typos, e.g., art. 25's footnote: "objecto" and, in particular, art. 132's footnote: "1er," "esta mas," "projectos," "Québec." From the footnotes it is also possible to detect some typos in the text; e.g., where art. 27, when referring to a Quebec Act, does not write the word *ley* with capital "L" as is done in the rest of the text. Since this is the only instance of this lack of capitalization, compared to the many others where translators seem to have chosen the use of the capital L, "ley" seems to have been a typo and not a divergent choice. For the use of the capital in the word "Ley," see MARÍA LUISA OLSEN DE SERRANO REDONNET & ALICIA MARÍA ZORRILLA DE RODRÍGUEZ, *DICCIONARIO DE LOS USOS CORRECTOS DEL ESPAÑOL* (Buenos Aires, Estrada 1997).

official languages and a third language might provide useful material and insights for future research.⁵³

The translators considered the translators' notes to be unnecessary and damaging to the translation because they "debilitan la traducción."⁵⁴ Therefore, the original idea was to limit them to a minimum, and it was only due to their being required by the publisher that the trilingual Code ended up with the notes, or at least with so many of them.

They are a rich first hand source of information on the difficulties encountered in the process. What seems unfortunate about these translators' notes is that they do not reflect the particularities of the Quebec legal system. For instance, there is no reference in the translators' notes to the role of the common law in Quebec. As for the Code's bilingualism, even if the English version had an important role, the French version seems to have been considered the source text and the English version mostly as a translation of it. The interpretation⁵⁵ should have passed between both versions, in order to arrive at a Spanish text, but instead it failed to follow the rules applicable to interpretation of the Code as a bilingual text.⁵⁶

In view of the lack of methodology in the translators' notes, it is imperative to organize them. Therefore, the present study

53. See *supra* note 25.

54. Interview with Viegas, *supra* note 27.

55. For the link between translation and interpretation, see Ost, *supra* note 47, at 110-113; PAUL RICOEUR, *SUR LA TRADUCTION* (Paris, Bayard, 2004). See GÉMAR, *TRADUIRE, OU, L'ART D'INTERPRÉTER*, *supra* note 18; Kasirer, *François Gény*, *supra* note 19; Macdonald, *supra* note 7. It is particularly interesting to note that the role as interpreter of the translator was nuanced somewhat by Pierre-André Côté. This author distinguishes the role of the jurist-interpreter from that of the translator-interpreter. See Pierre-André Côté, *Le traducteur et l'interprète, ou le double sens de la loi*, in YVES POULLET, PATRICK WÉRY & PAUL WYNANTS, *LIBER AMICORUM MICHEL COIPEL* 85 (Bruxelles, Kluwer, 2004). However, these nuances seem to refer exclusively to what he calls *interprétation operative*, where the translator has no role, and to translation from a monlingual source text or to cases of multilingual legal drafting. The questions posed here do not arise from translation between the languages of a bilingual text, but rather from translation of the bilingual source text towards a third language. In this sense, the ideas presented here still seem valid, since the translator of a bilingual text cannot ignore the equal authority of each of the two languages if he is to provide a faithful translation of it as a legal text.

56. For instruction on interpreting bilingual or multilingual legal texts in Canada and in Quebec, see *supra* note 29.

divides them into two groups. The first contains translators' notes which are necessary or at least very useful for any reader, not reflecting the debate between the translators and the revisers (A. Necessary translators' notes). The second group contains notes reflecting these debates (B. Explanatory translators' notes).

These two groups of notes are also sub-divided: the first one into two subgroups (1. Les intraduisibles and 2. Quebec Acts and Governmental Agencies), and the second one into three (1. Neutral Spanish, 2. Legal Institutions and 3. Bilingualism of the Code). The borders in this classification are not self-evident. The overlap increases with respect to the subgroups. Therefore, where a given example should best be placed can be a matter for discussion.

A. Necessary Translators' Notes

This group contains translators' notes that address difficulties which can be encountered in any translation or legal translation effort, apart from the debate between translators and reviser. Even if it is good translation practice to minimize the translators' notes, sometimes these kinds of remarks are imperative. There are, for instance, cases where translation is impossible or ones that force the reader to look for information outside the text, along the lines of what Denis Tallon calls a *renvoi externe*.⁵⁷ The translator then has no choice but to add an explanatory note. The following sections will present some examples of this in the trilingual Code.

1. Les Intraduisibles

In a Code of three thousand one hundred sixty-eight articles there is only one clear example⁵⁸ of impossibility of translation:

57. See the different *renvois* described in MOLFESSIS, *supra* note 11, at 58.

58. If we take the notion in a less technical sense, another example of impossibility of translation is found in article 1161. As its translators' note explains, this article could be included in the category of *intraduisibles* because of the impossibility of translating *troupeau* with one word. The Spanish language has a set of terms, each of which is specific to a grouping made-up one of the types of animals (*i.e.*, *rebaño*, *piara*). In a case of impossibility of translation, a translators' note is required. Thus, this note does not reflect the

the word *coroner* at article 47 (repeated in articles 49, 93 and 127).⁵⁹ The Spanish version keeps the foreign word *coroner*. Where translation is found to be impossible, a note is evidently necessary.

The coroner is a typical example of the institutions of common-law systems not usually present in civil law traditions. It is thus easy to understand that a difficulty in translation appeared when it was necessary make reference to a common-law institution (coroner) in a language (Spanish) usually linked with civil law traditions. This difficulty can be seen as an example of the well-known debate concerning the relation between a language and a legal system.⁶⁰

Unfortunately, the translators' note does not explain the difficulty itself. It does not mention the influence common law has on Quebec's civil law. It simply defines the office of coroner, explains its function and names the professions whose members can hold it.

exchanges between the two groups, but rather seems a necessary translators' note. From a broader viewpoint, however, the necessity of the footnote is not all that obvious; other choices could have been made, for instance translating the term by "conjunto de animales" as explained in the note. Besides, it is possible to question why only the French version, featuring *troupeau*, was examined, and not also the English one, which uses two nouns: "herd or flock." Apart from the possibility of drawing from the English version, this difficulty will be more of interest to a terminologist than to a jurilinguist.

59. Every time a translators' note is repeated with respect to one or more subsequent articles, the number of the latter will be given within parentheses.

60. There are two highly interesting examples in Canada of the coexistence of two languages and two legal traditions: *la common-law en français* and the use of English in civil law. See generally Gérard Snow, *Le style législatif : question de droit ou de langue?*, in MOLFESSIS, *supra* note 11, at 89; DIDIER, *supra* note 21. The first example—*la common-law en français*—is one of the main goals of the Faculty of Law of the Université de Moncton and its Centre de terminologie et de traduction juridiques. An interesting tool, on this subject, is the yearly publication of the *Revue de la common-law en français*, See UNIVERSITÉ DE MONCTON, FACULTÉ DE DROIT, available at <http://www.umoncton.ca/umcm-droit/node/34> (Last visited November 2, 2010). Also, see generally MICHEL DOUCET & JACQUES VANDERLINDEN, *LA RÉCEPTION DES SYSTÈMES JURIDIQUES: IMPLANTATION ET DESTIN* (Bruxelles, Bruylant, 1994). For the use of English in civil law, see generally John E. C. Brierley, *Reception of English Law in the Canadian Province of Quebec*, in *id.* at 103; Kasirer, *Le real estate existe-t-il en droit civil?*, *supra* note 14; Kasirer, *Portalis now*, *supra* note 16; Levasseur & Feliú, *supra* note 21.

2. *Quebec Acts and Governmental Agencies*

Three translators' notes, those of articles 92, 123 (941 and 1464) and 366, seem a case of *renvoi externe*.⁶¹ Without the note, a Spanish reader might have to do further research to properly understand an institution not described in the text itself. In this sense, these notes seem necessary for the reader's comprehension and not related to the debate between translators and revisers. Therefore, they belong to the first group.

The three notes define, respectively, Minister of Revenue, peace officers and Superior Court. Contrary to the former case—coroner—, a translation was found to be possible but doubts could arise about its actual comprehensibility in Spanish. They are, however, close to “coroner” in the sense that they refer to difficulties in translating among different legal systems.

There are also other translators' notes regarding governmental agencies, services related to government⁶² or Acts⁶³ that do not provide an explanation in the note but include an agency or Act's name in French and a citation to an Act's official publication. Even if the necessity of the notes might be arguable, they seem useful to any reader. The French name does not seem all that necessary, once the three versions were placed side to side and a comparative reading became so easy. However, the citation could indeed be relevant and useful in helping the Spanish reader to locate those Acts or institutions. Thus, these notes are placed in the first group, especially since they do not seem to reflect the debate between translators and revisers.

But these notes fail to deal with the Code's bilingualism and Quebec's particularities. Following Section 14 of the Charter

61. MOLFESSIS, *supra* note 11.

62. See art. 21 (564, 699, 2807, 3055) for GAZETTE OFFICIELLE DU QUÉBEC and art. 2799 for LA FINANCIÈRE AGRICOLE DU QUÉBEC AND THE SOCIÉTÉ D'HABITATION DU QUÉBEC.

63. These notes do not have the notation “N.T.”. An asterisk follows the Spanish translation of the Act's title, referring the reader to a footnote which gives the Act's title in French and citation. See arts. 27, 132.1 (with two different entries), 415 (with two different entries, one of which is repeated for art. 422), 563, 701, 1339 (with three different entries), 1619 (1883), 1749, 1888 (3042), 1899, 1984, 2714, 3021.6, 3028.1, 3055.

of the French Language, the French name is kept in English with reference to governmental agencies or services related to government (*Gazette officielle du Québec*—art. 21 (564, 699, 2807, 3055), *Société d’habitation du Québec* and *Financière agricole du Québec*—art. 2799). This is also true for Quebec governmental agencies named in Acts, for instance in the *Act respecting the Régie du logement* (art. 1899) or the *Act respecting the Société d’habitation du Québec* (art. 1984). A methodical reading of both versions would have probably led the translators to wonder why the English text kept the French designations. From there, it would seem relevant to raise a query as to the reach of Section 14 of the *Charter of the French Language* when it requires designation of the agencies “by their French names alone.”⁶⁴ Considering that the trilingual Code is published in Quebec, even if the exception of Section 15 of this Charter⁶⁵ were applicable, a point open to debate, it seems appropriate that these names be kept in French in the Spanish version. If the Government, its departments and other agencies are to be designated by their French names alone, this policy should apply in any foreign language and not just for French and English texts.

Perusal of the trilingual text leads the reader to wonder if employing a Spanish version when referring to governmental agencies or services related to government, as well as when giving the names of Acts, is not against the spirit of the Charter of the French Language. Still, the reasonability of such an approach, without even a clear exception for cases outside Quebec, can be open to debate. Thus the three versions, as they are, place the Spanish speaker in a better situation than the protected English minority. The Spanish reader is provided with the name of the institution in his language, but there is no such provision for the English-speaking reader. A debate could be waged here with respect to the appropriate way to designate these agencies and services inside and outside of Quebec and with respect to minority language rights.

64. “The Government, the government departments, the other agencies of the civil administration and the services thereof shall be designated by their French names alone.” *Charter of the French language, supra* note 28.

65. The use of French is not necessary when drawing up and publishing texts and documents for relations with persons who are outside Québec. *Id.*

B. Explanatory Translators' Notes

The notes grouped here reflect the exchange between translators and revisers. Though not a necessity, they can be extremely useful for a reader interested in receiving more information from the translator than just the bare text. Unfortunately, these notes, which could interest the reader, seem incomplete. They usually only reflect a partial view of an issue.

It is worth recalling that the examples given here can have features which lead to an overlap between one group or sub-group and another. They are grouped by considering the main explanation provided by the note. In this sense, if the note mentions Latin American countries or raises issues of linguistic variants (*i.e.*, *autorité parentale*) the example belongs to the first sub-group (1 Neutral Spanish) even if concerns a legal institution—second subgroup—(2 Legal Institutions). On the other hand, if the note mentions the English version, it is kept in the third sub-group (3 Bilingualism of the Code), even if the matter it addresses appears to be more of a linguistic issue (*i.e.*, the examples mentioned in footnote 84).

1. Neutral Spanish

It was during the second stage that the difficulties raised by Spanish variants, that had not *a priori* been a concern, made their appearance.⁶⁶ At that moment, the revisers' different backgrounds in the Spanish and Legal Spanish of particular regions were confronted with the Argentine version of the translation. It was not easy for anybody (neither the translators nor the revisers) to let go of *their* Spanish, to “soltar nuestras expresiones y regionalismos.”⁶⁷ This was the case as much for Spanish linguistic

66. It is interesting to remember that this was the first concern which was raised with H. Reid, as a fundamental factor rendering a Spanish translation of the Code impossible. Maybe the bold stroke of translating it into one variety of Spanish (the Argentinean one), and then trying to internationalize the result, had an important role in getting the work done.

67. See Interview with Gody, *supra* note 27.

constructions as for expressions of Legal Spanish. None of the former found their way into translators' notes but some of the latter did.⁶⁸

The Spanish "neutralization," that appeared in the second stage, seems to have been more a search for a neutral Latin-American Spanish than an international Spanish.⁶⁹ The notes evidently reflect a choice of translation made between different possible words or expressions. The revisers suggested internationalizing the language and the translators agreed. A choice of either possibility would have seemed justifiable, whether keeping a regional Spanish or internationalizing it. The translators were Argentines and they were visibly and expressly named in the Preface. This could have led to keeping the Argentine language and its particularities.⁷⁰ It is important to insist here that this is not a case of dialects or errors, but rather of linguistic variants of the same language or legal language. On the other hand, it also looks like a reasonable choice to give a more neutral aspect to the trilingual Code.

Fourteen translators' notes got their way, in the process of finding a Neutral Spanish.⁷¹ The notes have an element of

68. In the first case, the use of the past participle *inscrito/a-inscripto/a* and *suscrito/a-suscripto/a* was subject to discussion. Both are acceptable in Spanish. The dictionary refers to *inscrito* when defining *inscripto*: "inscripto,ta: p. p. irreg. inscrito," "inscrito,ta: p. p. irreg. de inscribir." A similar reference is found for *suscripto* "suscripto,ta: p. p. irreg. suscrito" and "suscrito,ta: p. p. irreg. de suscribir." See REDONNET & RODRIGUEZ, *supra* note 52 ("inscrito and inscripto" and "suscrito and suscripto"). However, the first one is preferred. In this sense, see REDONNET & RODRÍGUEZ, *supra* note 52 ("inscribir and suscribir"). The converse is the case in Argentina, where the second one is preferred, so prevalently that a non-linguist could consider the first one a mistake. The Argentine version was kept in the trilingual Code, *i.e.*, in the Spanish version of article 58 Civil Code of Québec. See CODE CIVIL DU QUÉBEC, *supra* note 3, at 23.

69. The varieties of Spanish present in Spain, and Spain's Legal Spanish, do not seem to have been taken into account much. However, the revisors may have paid a little more attention to the studies and works on translation with respect to Legal Spanish produced under the auspices of the European Union.

70. Even if the translators asked for a note in the trilingual Code mentioning their Argentinian origin, in the end the Code has no note that acknowledges this explicitly.

71. See translators' notes on articles 25, 50, 523, 597, Section II of Chapter III, Title Two, Book Three (Section III of Chapter III, Title Two, Book Three) 878 (908, 910), 1012, 1041 (1052), 1053, 1470. These notes can also be analyzed from the perspective of equivalence issues in translation. However,

randomness. Sometimes, Argentina is mentioned; in other instances, the note presents a synonym also used in Latin America with no specific reference to Argentina; in still other cases the translators explain that they chose a literal translation instead of the better known Argentine or Latin American version. The first approach is present in the note on article 1053, where *cargas* was kept instead of the more Argentine *expensas* for *charges/expenses*. The second approach is present in the choice to keep the more neutral *autoridad parental*, instead of the probably more traditional *patria potestad*,⁷² for *de l'autorité parentale*/parental authority. An example of the third approach, literal translation, is found in article 878 (908, 910). In this case, even if one word *frutos* would be enough in Spanish (at least in Argentinean Legal Spanish) to translate fruits and revenues, the translators chose to keep two words *frutos e ingresos*.

This randomness in the notes leaves open at least two questions. First, how strong is the link between the law or a legal system and the language of its statutes?⁷³ Second, is a “neutral legal language” (in this case Spanish) possible or even necessary?⁷⁴ These questions are common in translation and do not imperatively require a translators’ note. The notes are clearly the product of the publisher’s requirement. But once they are joined to the text of the Code, they seem partial and incomplete. There are no explanations as to the criteria employed in the choice of notes. A reader eager to obtain more information from the notes is bound to be disappointed. The involvement of a jurilinguist might have led to a more coherent and justifiable approach.

they are exclusively mentioned here in terms of the reflection on issues of linguistic variants.

72. It is notable that while in many other cases the translators' note is repeated for every occurrence, in this particular case the footnote is only present with respect to Title Four of Book II and not with respect to prior articles where the term is used (*i.e.*, art. 14 et seq.).

73. *Supra* note 11, and particularly note 60.

74. *Supra* note 21.

2. Legal Institutions

There is a subgroup of translators' notes, referring to legal institutions, which are clearly a product of the debate between the translators and the revisers. In many cases, the reason for the explanation,⁷⁵ synonymy⁷⁶ or source quotation⁷⁷ seems too vague for a reader seeking information. None of these cases would have merited a note if it were not for that debate. They could have been considered choices of a standard term in a translation. Once again, as a source of further information to the reader the notes seem too partial and incomplete.

In this sense, *fiducie* is probably the best example found throughout the translators' notes.⁷⁸ It was repeatedly mentioned during the interviews and it brings out many very interesting aspects. Besides, *fiducie* has already been analysed in the jurilinguistics literature in Quebec.⁷⁹ Here again the example is a product of difficulties that arose in the translation of a French word into Spanish, with no reference to the Code's particularities.

Discussions as to the translation of *fiducie* are strongly related to difficulties in receiving common law institutions, in this case the trust, in languages usually more closely linked to civil law traditions. The Quebec legislator decided to include the trust in the

75. See the literal translation of *vérification* in Chapter VI of Title Four, Book Three. In art. 1145, why choose *depositario* among other possible options and then explain the risk of confusion? In art. 2387, why explain the meaning of collocation if the choice was accurate? In this case the choice made in the article is not kept later, see art. 2658 and 2680.

76. See article 1719 that uses *certificado de ubicación* and has a footnote which gives the synonym *certificado de catastro*. Article 2511 (2540) is even more intriguing as the expression *pérdida o no pérdida* in the Spanish text is put in inverted commas and the footnote gives as its synonym the English "lost or not lost." This could be explained by the fact that Argentinean Legal Spanish employs many English terms for modern institutions. As an example, see Act nr 25.248 on leasing, B.O., June 14, 2000.

77. Section IV of Chapter XI, Title Two, Book Five *Del secuestro de bienes* presents the only case (with perhaps the partial exception of article 1260) where the source of the translation is presented. Why this sole instance?

78. Translators' note for Chapter II of Title Six Book Four. *Del Fideicomiso. De la fiducie. The trust.*

79. On the linguistic aspects of *fiducie* and *fideicomis*, See Éric Labbé, *Fidéicomis*, 109 R. DU N. 333, 337 (2007); Wallace Scwab, *La fiducie en droit québécois*, in GÉMAR, LANGAGE DU DROIT ET TRADUCTION, *supra* note 11, at 243.

Civil Code; thus this had to be done in English and in French.⁸⁰ The legislator chose to dedicate Book Four, Title Six, Chapter II to the *fiducie* and not to the *fidéicommis*. This way, the traditional civil institution of *fidéicommis* was distinguished in an original manner from the Quebec institution, which is closer to common law ideas of *fiducie*/trust. This was the revisers' strongest argument to support their preference for the Spanish word *fiducia*, instead of *fideicomiso* which had been the term chosen by the translators. There were historical and linguistic reasons to prefer abandonment of the most traditional civilian word. The reasons for the choice of *fiducie* in French could have been taken into account *mutatis mutandi* when choosing the word to use in Spanish.

However, the translators seem to have found themselves in a well-known dilemma: they had to choose between their two *maîtres*.⁸¹ Respecting the source text by following the use of *fiducie/fiducia* seemed like treachery against the target text.⁸² In this sense, *fideicomiso* seemed to the translators a better description of the institution. According to the translators' note, this latter term was used in other Latin American statutes inspired by the common law trust and it reflected the distinction between *fiducia* as generic and *fideicomiso* as a species. Choosing Spanish as *maître* can be a justifiable choice in the painful art of translation.⁸³ The mysterious phrase in the note “[d]e modo que preferimos mantener la terminología propuesta en el original” should probably be read as a justified response of the *maître* Legal Spanish (the translators) to the genuine demands of the *maître* Legal French (the revisers). But this debate remains open.

80. Historical, political and legal reasons ruled-out the option of keeping the word *trust* in the French version, which would have thus categorized it among the terms impossible to translate, even though the term *trust* could perfectly well be considered an example of an *intraduisible*, see Kasirer, *Dire ou définir le droit?*, *supra* note 11, at 192.

81. The idea that a translator has to serve two masters is found in RICOEUR, *supra* note 55, at 9. See also Gémard, *L'interprétation du texte juridique*, *supra* note 20.

82. On the well-known adage “Traduttore, Traditore,” see Alexis Nouss, *Éloge de la trahison* 14 TTR: TRADUCTION, TERMINOLOGIE, RÉDACTION 167 (2001).

83. For the *tristesse* of translation see, *id.* at 179. For the difficulty of these choices see, RICOEUR, *supra* note 55, at Section III, Un “passage:” *traduire l'intraduisible*.

There were strong arguments in defence of a preference either for *fiducia* or for *fideicomiso*. The choice of *fideicomiso*, was difficult but valid. It surely was not the only choice made in this direction but it definitely was the most exhaustively explained one. This reinforces the question of why there is a note for this case and not for others, and supports the point concerning the incompleteness of the translators' notes as a source of information to the reader. Unfortunately, the note only gives the justification for the choice but does not present the doubts that led to it nor the revisers opinion. Mention of the debate as to the choice of term would have enriched the note. This example can inspire the comparatist scholar, whether interested in the trust or in comparative legal linguistics.

3. *Bilingualism of the Code*

As was explained, where the English version is mentioned in the notes, they do not make clear what status the translators attributed to it. The idea of a translation is clearly present in the notes on articles 206 (222, 225, 267, 269), 339, 1534 (1570, 2959) referring to the English version as “versión inglesa de la traducción del Código” or “en su versión en inglés fue traducida.” In a different sense, there are the notes on articles 1022, 1219, 1271, 1374, 1646, the heading to Subsection 3, Section III, Chapter I, Title 2, Book Five and article 2368.⁸⁴ These notes explain the use of the “versión en inglés del Código,” “término en ingles,” “versión en ingles” “texto en inglés” in the choice of a Spanish translation. They refer to the English text as a version, without any reference to the notion of translation, but still do not imply that the French and English would have the same status. The equivalence of the French and English versions timidly appears in the note on article 1470, which refers to “el original del francés . . . y en el del

84. The last three notes mentioned in the text (art. 1646; the heading to Subsection 3, Section III, Chapter I, Title 2, Book Five and art. 2368) deserve a few extra comments. In the note on art. 1646 there is also an issue of Neutral Spanish, with a reference to Argentina. The note for article 2368 is particular to that article, but it should be linked to the one for the heading of Subsection 3, Section III, Chapter I, Title 2, Book Five. They both refer to *enajenación contra el pago de una renta/du bail à rente/alienation for rent*. However, the note for 2368 explains the choice of Spanish translation with much more detail.

ingles.”⁸⁵ But the note on article 3020 seems to be the only one which expressly recognizes the official status of the English version: “versión oficial en ingles.”

Some of these notes could be placed in other groups or subgroups, yet they mention the English version, and so they are all put in the second group, since they belong to the debate between translators and revisers. A general comment on all these notes can be made that if both versions were considered to have equal status, an explanation of which version seemed more useful would not seem necessary. On the other hand, if the notes were meant to provide more information to the reader, the choice whether or not to use expressions linguistically closer to English does not seem to be given a sufficient justification in the short comments which mention this issue. It is particularly difficult to understand why some cases found their way into a note and others did not. Also, in cases where the English version seemed to have been ignored, a thorough and systematic reading of both versions could have suggested alternatives when the translator and the revisers encountered difficulties or divergences.⁸⁶ In short, the

85. This note also refers to the issue of Neutral Spanish with particular reference to Argentina.

86. For instance, the case of the word *notamment* was repeatedly mentioned during the interviews. The Spanish words *principalmente* or *especialmente*, used indiscriminately in the Spanish translation, were not found to be very satisfactory by the revisers. Their idea was that even if within common usage *notamment* conveys the idea of giving special emphasis to one or number of things, out of a larger set, in Quebec's legal realm it means one thing among others, given just as an example. In its ordinary use in French, *notamment* means “d'une manière qui mérite être notée (pour attirer l'attention sur un ou plusieurs objets particuliers faisant partie d'un ensemble précédemment désigné ou sous-entendu),” see, *Le Nouveau Petit Robert*, in *DICTIONNAIRES LE ROBERT* (Paris, 1993). But, in accordance with the use prevalent in Quebec Legal French, the word *notamment* should be translated in Spanish by *entre otros*. When we look at the English version, from the nearly seventy articles pointed out by the revisers, the idea of one among others is only expressed five times: by using the expressions “such as” (art. 801 and 1270), “or otherwise” (art. 2586) and the verb “include” (art. 366, 535.1). The vast majority of the remaining articles use the expressions “particularly” or “in particular,” which seem closer to the dictionary definition of *notamment*. Does this mean that the translators interpreted the norms expressed in the articles by taking account of both versions? It does not seem that this was the case. At least one of the words chosen in Spanish, “principalmente,” conveys an even stronger idea of primacy than “notamment,” “particularly” or “in particular.” *Principalmente* conveys the idea of the first one, also of something “esencial o fundamental,” see *DICCIONARIO DE LA LENGUA ESPAÑOLA*, XXI ed., s.v. *principalmente*. The

notes refer to the English version but missed the opportunity to properly address the bilingualism of the Code. Three examples of this are particularly relevant for the present essay.

The first example is found in article 206's translators' note for the corresponding terms *alliés*/persons connected by marriage. Here, the translators explain that the English version helped them to obtain a more precise translation. Once again, the concerns arose from the translation of a French word: *alliés*. The translators' note explains that *alliés* "puede hacer alusión tanto a personas que son 'allegadas' como a 'parientes afines.'" *Parientes afines* was chosen as a translation by taking into consideration "persons connected by marriage." The English version helped to clarify for the translators what class of persons were addressed by the article. "Persons connected by marriage" does not include *allegados* but it doubtless refers to *parientes afines*. The translators' choice coincides with the doctrinal interpretations and definitions in Quebec, as to the meaning of *alliés*, that refer to "personne unie à une autre par alliance."⁸⁷

But, in their reading of both versions, the translators missed a possible discrepancy flagged in the Critical Edition.⁸⁸ Reading the article in English gives the impression that the quality of closeness is only required of relatives and not of persons connected by marriage. In French, both *parents* and *alliés* seem to have to be *proche* or at least it is possible to argue this. The Spanish version

English version only uses the expression "especially" on one occasion (art. 1696). While in that case the Spanish version did choose the similar "especialmente," this appears to have been more of a chance choice than a conscious one, considering that in those cases where the idea of one among others is present in English, the Spanish version still used "especialmente" and "principalmente." If the English version of the Code had been followed, it might have helped achieve a more faithful rendering to use "en particular" or "particularmente," which are closer to the terms most commonly used in the English, but this only occurs in two articles (36 and 1269) with no explanation. There may also be an error in the Spanish version of article 2814. The indication furnished by "notamment" or "particularly" is lost there, since the Spanish version of the article does not include a corresponding term; this might lead to reading the list of documents mentioned there as exhaustive.

87. *Centre De Recherche En Droit Privé Et Comparé Du Québec, in DICTIONNAIRE DE DROIT PRIVÉ DE LA FAMILLE ET LEXIQUES BILINGUES* (Editions Yvon Blais, Cowansville, 1999) (hereinafter "*Centre De Recherche*").

88. *Note, supra* note 5.

expresses the same idea as the English one: *los parientes cercanos y afines* where *cercanos* qualifies exclusively *parientes* and not *afines*. But the note does not explain the reasons for this choice. Thus, the English version only helped to clarify a doubt, and it did so in a good way. However, the translators, while drawing on this version, missed the opportunity to point out the divergence or even to go further, reflect on the texts, propose an interpretation, and integrate all this into the Spanish.⁸⁹

As the example shows, the translators' approach to the English version is not one which considers the Code as a bilingual source text. They used the English version to clarify a vague term but the note does not show that they engaged in a thorough parallel reading. Besides, in this particular case, the ambiguity could have been dealt with by means of a unilingual reading which relied on Quebec jurilinguistics resources, such as the *Dictionnaire de droit privé de la famille et lexiques bilingues*.⁹⁰ A jurilinguist at the first stage would have used Quebec lexical resources. A jurilinguist at the second stage would have highlighted the Code's bilingualism and probably analysed the possible discrepancy between the texts.

The second example is found in the translators' note on article 1534 (1570, 2959). The note points out a problem in the correspondence between *arrérages* and periodic payments. There is no explanation in the note, which only says: "Tener en cuenta que la locución *arrérages* en su versión en inglés fue traducida por *periodic payments*." The translators chose to translate the corresponding terms *arrérages*/periodic payments with the Spanish term *pagos atrasados*. They briefly, and without much in the way of comments, draw attention to those terms, but do not clarify whether they relied on one or the other version, or on both. Neither do they explain exactly what needs to be taken into account for a comparison or contrast between the terms used in each language version. As a departure point, this essay will conceive of the translators' note as a sign the third language makes to the two other languages, in order to initiate a dialogue; the essay will use this approach in an attempt to examine the sign itself, without aiming to provide an exhaustive analysis.

89. *Supra* note 58.

90. *Centre De Recherche*, *supra* note 87.

Entering upon this exercise requires some methodological remarks. The translators' note was not repeated in article 1573, where the corresponding terms *arrérages*/periodic payments can also be found. This oversight could have probably been avoided by systematically reading both versions. The question of cross reference between existing translators' notes is more complex. In article 2959 (the second article where the note is repeated) the corresponding terms are not *arrérages*/periodic payment. In this case, there are two different corresponding terms in two different sentences: *redevances*/periodic payments (translated by *ganancias*) and *arrérages*/arrears (translated by *pagos atrasados*). Thus, the problem of correspondence between *arrérages* and periodic payments was not present in this article; *arrérages* is made to correspond to arrears, and periodic payments is made to correspond with *redevances*. Therefore, the note does not seem relevant. However, the choice of term for the Spanish version seems to indicate that in article 1534 the translators relied on the French *arrérages* when choosing *pagos atrasados*. In article 2959, *pagos atrasados* corresponds to the term *arrérages* and not periodic payments. This then was probably also the choice the translators made with respect to article 1534.

On the topic of the French term *arrérages*, two other articles without translators' notes need to be mentioned. First, in article 596, *arrérages*/arrears was translated into Spanish with the term *atrasos*. Second, in article 2960, the same corresponding terms were translated as *pagos atrasados*. A terminological analysis would be possible with respect to the difference between *atrasos* and *pagos atrasados* and the degree of equivalence of each term to *arrérages*/arrears. But what seems beyond doubt, from the repeated use of the term *atraso*,⁹¹ is that the translators always considered the idea to be present of a date that had expired, in every case where *arrérages* appeared in the French text.

As a last element in this puzzle, another article, also without a translators' note, opens the issue even more. Article 2933 abandons the correspondence of *arrérages* with either periodic

91. From the verb *atrasar*: "Fijar un hecho en época posterior a aquella en que ha ocurrido," see *DICCIONARIO DE LA LENGUA ESPAÑOLA*, *supra* note 86 ("atrasar" see also s.v. "atraso," "atrasado").

payments or arrears; instead, the term “instalments” appears. Considering the synonymy this establishes between periodic payment and instalment,⁹² it is permissible to ask why there is no note pointing out the possible discordance, along the lines of the note on article 1534.⁹³ In this last case—article 2933—in accord with the other occurrences in the French text of *arrérages*, for example article 596, the Spanish version uses the term *atrasos*.

The puzzle created by the exercise of translating these terms into Spanish could help to show how greater precision is required where the terms *arrérages*, *arriérés*, periodic payments, arrears, and instalments appear in the Civil Code of Québec.⁹⁴ Indeed, the use of these terms seems a bit vague in light of the Code’s Spanish translation.

In Quebec private law, both the term *arrérages* and the term arrears have two meanings. *Arrérages* refers to “redevance

92. See QUEBEC RESEARCH CENTRE OF PRIVATE & COMPARATIVE LAW, PRIVATE LAW DICTIONARY AND BILINGUAL LEXICONS: OBLIGATIONS (Editions Yvon Blais, Cowansville, 2003) (“instalment”).

93. Following-up the term instalment can add even more pieces to this puzzle and leads to another translators’ note mentioning the English version (art. 1374). In articles 411 and 2442, where instalment is made to correspond to *versement*, the Spanish version reads *cuota*. The Spanish *cuota* is also present in the Spanish version of article 1953, where arrears is made to correspond to *arriérés*. Besides this, the word *cuota* appears in article 2933, where *arrérages* is made to correspond with instalment, but it is not used there as a translation of those French and English terms, instead this Spanish term is used to translate *quotité*/amount. As if there were not enough pieces in this puzzle, the term *quotité* leads to a mysterious translators’ note with respect to article 1374. In this case *cantidad* was chosen for *quotité*/quantity. It is of note that the trilingual Code makes an error in its French version of this article: it has “*quantité*” instead of the “*quotité*” which is in the official French text. A reader who is not aware of this error will find the translators’ note mysterious since there can be little confusion in a correspondence between *cantidad-quantité-quantity*. However, if the reader is aware of the correct French text, the translator’s preference for *cantidad* as a translation of the legal terms *quotité*/quantity seems to be a too literal translation. *Cuota* could have been a better option as when it was chosen for article 2933, where *quotité* was present. However, it seems that *monto* would have been the best choice, in line with the idea of amount and *montant* given by the dictionary in reference to quantity and *quotité*. See *id.* (“quantity”); CENTRE DE RECHERCHE EN DROIT PRIVÉ ET COMPARÉ DU QUÉBEC, DICTIONNAIRE DE DROIT PRIVÉ ET LEXIQUES BILINGUES: LES OBLIGATIONS, (Editions Yvon Blais, Cowansville, 2003) (“quotité”).

94. This could also be the case for *versements* and even *quotité*-amount-quantity. QUEBEC RESEARCH CENTRE OF PRIVATE & COMPARATIVE LAW, *supra* note 92.

périodique d'une rente" and it is a synonym of "arriéré."⁹⁵ In the same sense, arrears are the "periodic payments of an annuity" or "payments for which the due date has expired."⁹⁶ These definitions should not be confused with each other.⁹⁷ The first definition does not necessarily include the notion of a date that has expired. These two meanings, that could lead to ambiguity when translating in Spanish, do not seem present in Legal French or Legal English outside Quebec.⁹⁸ Consulting dictionaries from France and the US shows that the idea of a period of time which has expired is always present in their definitions of *arrérages* and arrears. In line with these understandings of them, using these terms interchangeably with periodic payments does not seem reasonable. So, the translators might have detected a situation worth taking note of between both versions, by taking into account the meanings of the terms *arrérages*/periodic payments given by definitions from outside Quebec.

This exercise shows that the Code's use of terminology in this area could be improved and that translation into the third language, due to the difficulties which it brings out, could lead the way for this task. The translation can bring ambiguities to light and show the need for a more precise term.

The third example relates to the translators' dilemma of how to express *fait*/act or omission in Spanish. The note on article 3020 explains that the translators' choice was *acto u omisión* considering "como base su versión oficial en inglés." The Spanish

95. See *supra* note 93 ("arrérages").

96. QUEBEC RESEARCH CENTRE OF PRIVATE & COMPARATIVE LAW, see *supra* note 92 ("arrears").

97. In this sense, "la redevance est également désignée sous le nom d'*arrérages*, lesquels ne doivent [pas] être confondus avec les arriérés, qui sont des dettes dont l'échéance est passée" and "the dues payable under an annuity may also be called arrears, which must not be confused with another meaning of arrears, debts whose due date has expired." See *supra* note 93 ("rente -Rem. 3"); QUEBEC RESEARCH CENTRE OF PRIVATE & COMPARATIVE LAW, *supra* note 92 ("annuity" -Obs. 3-°).

98. In France *arrérages* implies the idea of "termes échu" and it is not considered a synonym of *arriéré*. See CORNU, VOCABULAIRE JURIDIQUE, *supra* note 18 ("arrérages"). In English, the idea of a time which has expired is present in the three definitions of arrears. See BRYAN A. GARNER, BLACK'S LAW DICTIONARY (St. Paul, West Group, 7th ed., 1999) ("arrear"). Thus this example can also be included in the debate on differences between legal languages within the same language, *supra* note 21.

version followed the nuance of the English text, and the need it revealed that there be a clarification of both positive and negative aspects of the more generic French term *fait*.⁹⁹ Hence, the inclusion of *u omisión*.

But, once again, the loneliness of this note reflects the lack of systematic parallel reading. In another five articles (876, 889, 1151, 1462, 1624) where the same corresponding terms—*fait/act* or *omission*—are present, the translators chose *hecho(s)* instead of *acto u omission*.¹⁰⁰ The translations of these articles forget the nuance between positive and negative.

Moreover, the discussion about including the positive and the negative aspects of *fait* in the English version can be enlarged to several other articles¹⁰¹ where *fait* was mirrored by *act* and not by *act or omission*.¹⁰² Unfortunately, the note is only present for one article, as opposed to the approximately thirty other cases where this might have been considered an issue worth analyzing.

Reflecting on the need (or lack of need) to indicate in Spanish the positive and the negative aspects of the concept expressed in French by the term *fait* might have opened an interesting dialogue among the three languages. Spanish could have “prêté l’oreille”¹⁰³ and thus might have enriched the interpretation of these provisions of the Civil Code of Québec. Even if this exercise might be considered to exceed the legal

99. The French word *fait* can express either of two concepts, one of which is expressed in English with the word *fact*, the other, “dans le droit de la responsabilité civile,” with the expression *act or omission*, see CENTRE DE RECHERCHE EN DROIT PRIVÉ ET COMPARÉ DU QUÉBEC, *supra* note 93 (“fait”). The latter concept is what the English version is referring to in these examples.

100. This lack of uniformity, besides reinforcing an impression that the notes are incomplete, can open up a discussion on the differences between *hecho* and *acto*, which could itself be the subject of a study with respect to legal language. In Quebec, See Benoît Moore, *De l’acte et du fait juridique ou d’un critère de distinction incertain*, 31 R.J.T 277 (1997).

101. See *Preface*, *supra* note 2, art. 874, 1020 (this article is not mentioned in the Critical Edition but the corresponding terms *fait-doing* seem subject to similar considerations), 1457, 1459, 1460, 1461, 1465, 1480, 1514, 1531, 1562, 1732 (in this case the terms are “hechos personales,” “faits personnels” “personal fault”), 1860, 2072, 2365, 2386, 2396, 2474, 2499, 2704, 2885, 3125, 3126, 3148.3, 3168.3.

102. See *Preface*, *supra* note 2, art. 1457.

103. Ost uses this expression when referring to the importance of translation. See Ost, *supra* note 44. See also Lévassieur & Feliú, *supra* note 21.

translator's task,¹⁰⁴ at least there should be an indication to the reader that an issue exists, in a note for each article where the issue arises, and not merely in an isolated note.

VI. CONCLUSION

It seems important not only to refer to the history of the trilingual Code but also to its future. There are two aspects that seem relevant when thinking of the future of this work: its improvement and its updating.

Regarding the first aspect, D. L'Anglais called the trilingual Code a "work in progress." As becomes clear in light of the examples, it is true that the Spanish version can be improved. There is no concrete project to revise the published Spanish version, but many interviewees considered this to be necessary and expressed their willingness to participate in this work. They also suggested ways to go further in the analysis by completing a glossary or even a bilingual or trilingual civil law dictionary. Some of the unpublished translators and revisers' research could be a solid start.

As for the second aspect, updating, J. C. Rivera is engaged in translating into Spanish any changes to the Code. If the revision work were in progress, future reforms or linguistic revisions¹⁰⁵ could present a good opportunity to enhance the Spanish version in future, revised, editions.

Last, but not least, the idea of "to be continued" implied by the present conclusion reinforces the goal of opening avenues for research. The jurilinguistic approach proposed here showed how ongoing debates could find new examples from the translation of a bilingual legal text into a third language. Also, it presented in a preliminary fashion some lenses for analysis and avenues for

104. *Supra* note 58.

105. It is of note that the Minister of Justice now has the power to make "minor corrections [to legislation] with a view to reconciling, among other things, the French and English versions," if the corrections do not alter "the substance of any text." *See* An Act respecting the Compilation of Québec Laws and Regulations, R.S.Q. c. R-2.2.0.0.2, S. 3(4).

research which have yet to be pursued by professionals focused either in the legal or the linguistic pillar.