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A Dialogue to Conclude a Conference on Legal Translation: Synthèse à deux voix

Matthias Martin

Olivier Moréteau

Louisiana State University Law Center, olivier.moreteau@law.lsu.edu

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A DIALOGUE TO CONCLUDE A CONFERENCE ON LEGAL TRANSLATION: SYNTHÈSE À DEUX VOIX

Matthias Martin* and Olivier Moréteau[±]

The following dialogue was not presented in the oral form. It was written based on Matthias Martin's conference notes and comments added by Olivier Moréteau.

Keywords: legal translation, letter of the text, spirit of the text

Matthias Martin: “To translate or to not translate, that is the legal question.” This Shakespearian question encapsulates the dilemma regarding the accessibility of foreign laws. Globalization multiplies the need to express legal texts in several languages. Consequently, the question is less in the necessity of legal translation than in the art of good translation. Jurists tend to neglect it, which is somewhat surprising, since they rely on it and should be aware that an error in translation may change the understanding of the law.

Olivier Moréteau: Well, dear Matthias, most jurists believe that legal translation is a mere technical, linguistic exercise, which is purely mechanical and does not deserve their attention. Though this reveals ignorance, our point is not to prove anyone wrong, since comparative law and jurilinguistics are rather schools of learning and humility. What we want is to open new doors, inviting our fellow jurists to pay more attention to the intimate relationship between law and language, following recognized masters like Gérard Cornu, Rodolfo Sacco, or Jacques Vanderlinden, to name but a few.

* Assistant Professor, Université Bretagne-Sud; Associate Researcher, Institut François Génys—Université de Lorraine; Contributing Fellow, Center of Civil Law Studies—Louisiana State University.

[±] Professor of Law, Russell B. Long Eminent Scholars Academic Chair, Director of the Center of Civil Law Studies—Louisiana State University, Director Emeritus of the Édouard Lambert Institute of Comparative Law—Université Jean Moulin Lyon 3.

MM: I am grateful for being able to attend this event, and interact with great leaders of comparative law and jurilinguistics, like Vivian Curran, Jean-Claude G mar, Nicholas Kasirer, Alain L vasseur, Michel S jean, and Anne Wagner. Like you, Olivier, I prudently use the alphabetic order, and have the other participants named further down the road in high esteem. This has been a fascinating learning experience, adding to my modest practice of legal translation and revision of translated texts.

OM: Well, Matthias, you have revised more than a fourth of the translation into French of the Louisiana Civil Code,¹ the very project that motivated the organization of this conference. Jurists need to interact with other social sciences to get a better grasp of their own discipline, which is the reason why I contributed to the creation of *Juris Diversitas* and now lead the organization. I know that you like to cite Jean Carbonnier, the forefather of legal sociology.² All jurilinguists would wholeheartedly agree, particularly Justice Nicholas Kasirer who gave us a gem of a keynote, a most memorable 37th Tucker Lecture in the Civil Law. Regrettably, for our readers, he was not able to send us a text, but the video is accessible to the world.³

MM: I indeed heard Justice Kasirer say that law and translation seem to be an impossible couple: did not he refer to “an elasticity of language,” contrasting its mobility and aptitude to change with legal rigidity, particularly when one addresses legislation? Reducing legal norms to the written form seems to trigger rigidity. Yet, there is complementarity. The fact that translation is in flux reflects the fact

1. Olivier Mor teau, *The Louisiana Civil Code in French: Translation and Retranslation*, 9 J. CIV. L. STUD. 223 (2016).

2. JEAN CARBONNIER, FLEXIBLE DROIT : POUR UNE SOCIOLOGIE DU DROIT SANS RIGUEUR 493 (10th ed., L.G.D.J. 2001).

3. Nicholas Kasirer, *That Montreal Sound: The Influence of French Legal Ideas and the French language on the Civil Law Expressed in English*, 37th John H. Tucker, Jr. Lecture in Civil Law held by Louisiana State University Paul M. Hebert Law Center (April 10, 2014), <https://perma.cc/8MWB-QGS3>.

that the law is also in flux, as it is not meant to be carved in marble forever.

OM: Law changes and evolves, even when the letter remains the same. We must move beyond the tenets of the Exegetical School and embrace the *libre recherche scientifique* promoted by a great master of your home university, Francois Géný. Translation connects with interpretation.⁴ Monuments of world literature, including the Bible, Cervantes, Shakespeare, or more recently Proust, are retranslated periodically, thereby reflecting new perceptions of a text yet unchanged in the original language.

MM: I am anxious to make two comments on this conference. First, I am impressed by the importance of the translation work, which does not appear to me to be neutral. Second, it seems to me that educating and training legal translators is work of primary importance, and is key to a proper recognition of this emerging discipline.

OM: Well, Matthias, since I was in charge of putting this event together and to coordinate the publication—with the help of Jason Maison-Marcheux, Jennifer Lane, and Christabelle Lefebvre—I will rely on your smart analysis to conduct our conversation. Please go ahead, though I will keep reacting to your comments.

MM: Common wisdom has it that to translate means to betray, *traduttore, traditore*, and yet after having heard all the presentations it seems to me that to translate means to redefine, and even to make a choice. Shall I dare to suggest that translation may be understood in three different ways?

Firstly, it may appear like the reflection in the mirror, similar to the original text and yet not exactly a carbon copy. This would indicate that the letter matters more than the spirit. Yet, I cannot forget the experience of distorting mirrors seen at fun fairs. The translation mirror is not always perfectly polished; it is uneven. It seems that this perspective is largely abandoned, and is a distant echo of the

4. INTERPRÉTER ET TRADUIRE (Jean-Jacques Sueur ed., Bruylant 2007).

word by word translations found in the correspondences made by Fortuné-Antoine de Saint-Joseph, so brilliantly described by Agustín Parise.⁵

Secondly, one may think of a painting, where the translator brushes the text the way he or she perceives it, making room to the artist's sensitivity. The painter is not expected to produce a clone of an original piece, but is not totally free however, having to use the canvass and the colors provided for the work. Anne Wagner insisted that translation may not be coherent and efficient without a linguistic framework.⁶

Thirdly, translation may be compared to a photocopy, expected to produce an exact copy, especially where the translated text is meant to be the law in both languages. If this is to be the case, both languages must have the same value and intensity, and this is what one tends to expect from legal translation. Difficulties and deficiencies identified in the source text should be reflected in the translation. However, though this sounds like the ideal translation, it is not practically accessible, due to the complexity of legal languages, and of course of languages in general.

OM: Matthias, I know from our earlier conversations that we share a taste for metaphors, and I will try not to get carried away. Regarding *traduttore, traditore*, we have heard the magnificent presentation by Vivian Curran who brought the cultural and emotional dimensions to the conversation, transcending the maxim.⁷ Yes, translation may, at times, misrepresent the message of the source text and betray the author. Vivian Curran demonstrated, however, that translation may reveal the deeper thought concealed in the source text and bring it to daylight, just like when your words and

5. Agustín Parise, *The Concordancias of Saint-Joseph: A Nineteenth-Century Spanish Translation of the Louisiana Civil Code*, 9 J. CIV. L. STUD. 287 (2016).

6. Anne Wagner, *A Space in-Between—Legal Translation as a 'Third Space'*, 9 J. CIV. L. STUD. 167 (2016).

7. Vivian Grosswald Curran, *Traduction ou trahison*, 9 J. CIV. L. STUD. 127 (2016).

silences betray your own thoughts or intentions. This connects with Anne Wagner's reflections on the space in-between, described as a third-space where the truth is revealed by the translator's work.⁸ Nearly hundred years ago, Walter Benjamin identified the task of the translator with that of an alchemist rather than an exercise in communication. He compared the source text to incomplete fragments of a broken vase, and viewed the translation as the reconstruction of missing fragments, completing the text and bringing it closer to perfection.⁹

These three-dimensional metaphors may move us from painting to sculpture or molding. They describe processes that permeate the mind of the translator of general literature, as well as of legal, doctrinal literature,¹⁰ where we sometimes hear that the translation surpasses the original in quality.¹¹ I would sure love to hear that of our LSU translation into French of the Louisiana Civil Code! And yet, I must resist and move back to your photocopy metaphor, since we were translating legislative work: this may not be art, but is it photocopy? I hope nobody will describe it as the product of distorting mirrors. When translating legislation, all these processes are central to the work of the translators who must visit the third-space, and yet one does not necessarily wish them to be visible in the result, as it must be an exact reflection of the source text.

Indeed, one must not lose sight of the fact that translated legislation is meant to be used by judges and parties. François Xavier Licari pointed to the practical usefulness of the translation into French (and hopefully soon in Spanish) of the Louisiana Civil Code.

8. Wagner, *supra* note 6.

9. Walter Benjamin, *La tâche du traducteur* (1923), in I ŒUVRES 244 (Folio Gallimard 2000).

10. Olivier Moréteau, *La traduction de l'œuvre de François GénY : méthode de traduction et sources doctrinales*, in LA PENSÉE DE FRANCOIS GÉNY 69 (Olivier Cachard, François-Xavier Licari & François Lormant eds., Dalloz 2013).

11. This has been said of Tony Weir's English translation from the German of a classic: KONRAD ZWEIGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW (3d ed., Tony Weir trans., Clarendon Press 1998); see preface to the third edition written by Hein Kötz at vi.

It offers an additional model, not for a European Civil Code that he does not approve of,¹² but as “an attractive good on the law market,” offering an additional model to parties to international business transactions, in a choice of law clause.¹³

It is so tempting for the translator to improve the text, and yet one must adamantly resist this temptation. As commentators of our work may one day note, our team was often led into temptation, but did not always resist! We have identified many places where the English original could be improved based on our French text, and it would be great news if our translation work could influence the evolution of our Louisiana Civil Code. Alexandru-Daniel On’s recommendations on this issue should be read by Louisiana jurists.¹⁴ Yet, for this to happen, the Louisiana State Law Institute and Louisiana legislators must join efforts, hold the brush, and paint together!

MM: I am glad that you join me in considering the translator as a painter. It points to the high quality of the work and expected outcome, where translators project talent and personal genius. I had in mind the translation of poems and stories of Edgar Allan Poe by Charles Baudelaire.¹⁵ There is a personal touch in the translator’s work, as much as an effort to convey the original meaning of the text. As Anne-Sophie Hulin said, “translation means conversion,” the translator’s art is meant to convert the reader to the translation: “to convert people!”¹⁶

12. I also expressed skepticism regarding this project: Olivier Moréteau, *A Summary Reflection on the Future of Civil Codes in Europe*, in *FESTSCHRIFT FÜR HELMUT KOZIOL* 1449 (Peter Apathy et al. eds., Jan Sramek Verlag 2010); Olivier Moréteau, *Libres propos sur l’avenir des codes civils en Europe*, in *MÉLANGES EN L’HONNEUR DE SERGE GUINCHARD* 1049 (Dalloz 2010).

13. François-Xavier Licari, *The Louisiana Civil Code Translation Project: A Libertarian View on the Possible Destiny of a Trilingual “Footnote,”* 9 *J. CIV. L. STUD.* 2013 (2016).

14. Alexandru-Daniel On, *Revision and Translation: The Louisiana Experience*, 9 *J. CIV. L. STUD.* 259 (2016).

15. EDGAR POE, *LES PLUS BEAUX CONTES* 324 (Charles Baudelaire trad., Éditions Georges Crès 1925).

16. Anne-Sophie Hulin, *Translating the Charitable Affectation in Private Law*, 9 *J. CIV. L. STUD.* 409 (2016).

OM: Matthias, I love that! The moment a text is in print, it belongs to the reader as much as it did to the author. Readers often find meaning that was unintended by the author, just like in the relationship between the painter and the viewer of her work. What is true in arts and literature happens all the time with laws and regulations, when they come to be interpreted by users and judges: unintended meanings invariably pop up.¹⁷

The translator is a mediator. When I describe my work as a teacher I refer to myself as a *paqueur*, a ferryman, bringing students to the shores of knowledge. The river we cross is the third-space referred to by our friend Anne Wagner.

If we discussed the work of the interpreter, an area where Sylvie Monjean-Decaudin has immense experience,¹⁸ we would no doubt play with musical metaphors and visit the relationship of composer-interpreter-listener. Alain Levasseur invites this idea in his ruminations, comparing the translator to the interpreter of a Mozart concerto.¹⁹

MM: Any legal translation not only reflects the work of the translator but also the national legal system and the legal culture of a particular society. Do we translate words only (I recall your earlier comment on the common prejudice that translation is purely mechanical)? Do we not also translate a language, a spirit, a culture? Words themselves “translate” concepts that belong to a particular society, as exemplified by Enrica Bracchi in her study of the evolution of the notion of education and instruction of children, passing from the French Civil Code to the Italian, and then through successive Italian reforms.²⁰

17. FRÉDÉRIC ZENATI, *LA JURISPRUDENCE* (Daloz 1991).

18. SYLVIE MONJEAN-DECAUDIN, *LA TRADUCTION DU DROIT DANS LA PROCÉDURE JUDICIAIRE, CONTRIBUTION À L'ÉTUDE DE LA LINGUISTIQUE JURIDIQUE* (Daloz 2012).

19. Alain A. Levasseur, *Ruminations Around the Dictionary of the Civil Code*, 9 J. CIV. L. STUD. 427 (2016).

20. Enrica Bracchi, *Les termes comme miroir et loupe d'une société? L'exemple du Code civil italien*, 9 J. CIV. L. STUD. 387 (2016).

OM: You bring us back to the flux and to the idea that words and meanings change over time. I was also impressed by Sylvie Monjean-Decaudin's analysis of our Louisiana Civil Code translation project, looking at it as an exercise in history, with our attempt to recapture the original French that was used two hundred years ago whenever legislative change had not tampered with it:²¹ translation can be synchronic or asynchronic (*concomitante ou différée*).²² This brings us to comparative legal history, a discipline that combines the historical-vertical dimension of legal systems, norms, and concepts, with their geographical-horizontal dimension.²³

MM: Translation is a gateway to the way we think, to legal mechanisms strongly connoted by a legal culture, to invisible but legally loaded references. The choice of the words by the translator is extremely important, and should be made carefully, as we want to avoid problematic interferences. The use of a term legally loaded in the target system may deviate from the intended meaning in the source text. Alain Levasseur opposes forcefully the translation of *responsabilité solidaire* by "joint and several liability." He recommends "solidary liability," which at first sight may be meaningless for a common law audience, but forces common law jurists to make the effort of understanding the civil law, substantive law concept of "solidarity" and contrast it with the common law, procedural concept of "joint and several liability."²⁴

OM: Alain Levasseur knows that we are *solidaires* on this issue and I took pride in joining forces with him in producing the Dictionary of the Civil Code.²⁵ Each of us has expressed thoughts on the

21. Sylvie Monjean-Decaudin, *Pourquoi traduire un code, hier et aujourd'hui ?*, 9 J. CIV. L. STUD. 191 (2016).

22. *Id.* at 198-200.

23. COMPARATIVE LEGAL HISTORY (Olivier Moréteau et al. eds, Edgar Elgar, forthcoming 2017).

24. Levasseur, *supra* note 19.

25. GÉRARD CORNU AND ASSOCIATION HENRI CAPITANT, DICTIONARY OF THE CIVIL CODE (Alain Levasseur, Marie-Eugénie Laporte-Legeais eds., Lexis Nexis 2014).

matter,²⁶ and the Journal of Civil Law Studies takes pride in publishing Alain Levasseur's ruminations. Louisiana has greatly contributed to producing a vocabulary of the civil law in French, and Steven Paillot educates us on the rich contribution of Jersey,²⁷ which is less known than the input of Quebec or Scotland. For instance, they use the English "hypothec" (similar to the French "*hypothèque*") rather than "mortgage" as we do in Louisiana, and are in line with the educated remarks of my colleague Randy Trahan on the panel concluding our conference.

Along comparable lines, francophone Acadians of New Brunswick (Université de Moncton) contribute to the elaboration of the "common law en français."²⁸ I proudly wrote a volume to the collection "*La common law en poche*,"²⁹ using a different French than the one I have in my *Droit anglais des affaires*.³⁰

Michel Séjean brought another voice to this dialogue, and due to time constraints, his rich remarks could not make it to this volume. He has translated the European Common Frame of Reference from English to French and the French Code de commerce into English.³¹ Unlike Alain Levasseur who insists on maintaining a distinct civil law voice in civil law texts when translated into the language of the common law, Michel Séjean looks for a middle ground, which favors intercommunication between the systems.

26. Alain Levasseur & Vicenç Feliú, *The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in the English Language; Comparativists Beware!*, 69 LA L. REV. 715 (2009); Olivier Moréteau, *Les frontières de la langue et du droit : vers une méthodologie de la traduction juridique*, 4 REVUE INTERNATIONALE DE DROIT COMPARÉ 695 (2009).

27. Steven Paillot, *Vocabularies of Coûtume and Code*, 9 J. CIV. L. STUD. 437 (2016).

28. JACQUES VANDERLINDEN, GÉRARD SNOW & DONALD POIRIER, *LA COMMON LAW DE A À Z* (Yvon Blais, Bruylant 2010).

29. OLIVIER MORÉTEAU, *LE MANDAT ET LA SOCIÉTÉ EN NOM COLLECTIF* (Yvon Blais, Bruylant 2008).

30. OLIVIER MORÉTEAU, *DROIT ANGLAIS DES AFFAIRES* (Daloz 2010).

31. *See also* EUROPEAN GROUP ON TORT LAW, *LES PRINCIPES DU DROIT EUROPÉEN DE LA RESPONSABILITÉ CIVILE, TEXTES ET COMMENTAIRES* (Olivier Moréteau ed., Michel Séjean trans., Société de législation comparée 2011).

If you ask me where I stand in this debate, I will say that it depends on what you translate. I agree with Michel Séjean that the search for compromise is to be privileged when translating uniform laws and transnational texts: it matters here to develop a metalanguage.³² Yet, the unique voice of a civil code is to be maintained when you translate it from French into English. On this matter, I side with Alain Levasseur, who can take great pride of his work of translating the French Civil Code into English.³³

MM: Education is certainly essential to be able to make the good choice on this and other matters, and this leads me to a most important aspect of this conference. Dominique Garreau insisted on the importance of training future legal translators.³⁴ The Master's program she created in Nantes to train trilingual jurists is innovative in many respects.

OM: Let me put it simply: the translation of the Civil Code in Louisiana would have been impossible without the support of the Nantes's Master in Trilingual Legal Studies. Every year, starting in 2011, we received two to three interns in their final year of the program, spending three months at translating the code. This is part of educating and training these young graduates, and I am so impressed year after year by the quality of the legal and linguistic education they receive at their home university. These young people become true jurilinguists, mastering several languages and several legal systems, and combining law and languages in a multitude of ways. This is a model program, and while we are at it, we should translate Dominique Garreau's paper to make it available in English as well as in French.

32. Olivier Moréteau, *Premiers pas dans la comparaison des droits*, in *JURILINGUISTIQUE : ENTRE LANGUES ET DROITS ; JURILINGUISTICS: BETWEEN LAW AND LANGUAGE* 407, 425-428 (Jean-Claude Gémard & Nicholas Kasirer eds., Bruylant, Thémis 2005).

33. Published on Legifrance, the French government entity responsible for publishing legal texts online.

34. Dominique Garreau, *Pourquoi et comment former des juristes trilingues ?*, 9 *J. CIV. L. STUD.* 403 (2016).

MM: Indeed, as Jean-Claude G mar said in his masterful speech, the legal translator is a “modest messenger of the law” (*un modeste messenger du droit*). Even if regarded as a translator, he is also a jurist, trained in the fundamentals of the civil law and common law traditions.³⁵ It is quite an accomplishment to be a good jurist not only in one’s national legal system, but also in the legal system of the target language. Experience proves that it is best to study foreign languages before embarking into legal studies, to avoid being locked in one legal system and having a hard time grasping others.

OM: You have a point. Fortunately, in Europe, students already know one or several foreign languages when they start legal studies: foreign languages are a substantial part of school education. Sadly, this is not the case in the United States. Here at LSU, we educate students in both the civil law and the common law. We regard it crucial to open the students’ minds in the very first semester, where we teach them Western Legal Traditions. Our students study Contracts (common law) during the same first semester, and the civil law of Obligations the following semester. For many students, the fact of discovering the common law first is like running a common law software into their brain; they have a hard time to accept the civil law software when becoming students of obligations. I try my best, when teaching legal traditions, to partition their mental hard disk, one lobe of their brain for the civil law and the other one for the common law, with of course the possibility of countless connections. Many students struggle. Not surprisingly, those who speak a foreign language or have kept some French as part of their Louisiana heritage have a much easier ride, not to mention first or second generation immigrants who bring multilingual skills and multiculturalism to the classroom.

35. Jean-Claude G mar, *Langages du droit et styles en traduction : Common Law vs. Droit civil : An Odd Couple ?*, 9 J. CIV. L. STUD. 135 (2016).

MM: I see here an invitation to conclude on cross-fertilization. Legal science is no doubt enriched by legal translation.

OM: Matthias, this will be the *mot de la fin*. Without denying the formidable practical implications, a great pioneer of comparative legal studies has indeed presented the science of translation (traductology) as a new ambition of legal science.³⁶

Let us hope that the present dialogue will encourage our readers to visit the full collection of conference papers published in both issues of this Volume 9 and to interact with us in the future, also to produce or to enjoy further legal translation.

CONFERENCE PAPERS

The Louisiana Civil Code Translation Project: Enhancing Visibility and Promoting the Civil Law in English

Baton Rouge, April 10 and 11, 2014

PART 1. TRANSLATION THEORY AND LOUISIANA PERSPECTIVES

Traduction ou trahison

Vivian Grosswald Curran

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The Louisiana Civil Code Translation Project:
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Fran ois-Xavier Licari

36. THE NEW AMBITIONS OF LEGAL SCIENCE: LEGAL ANTHROPOLOGY AND LEGAL TRADUCTOLOGY (Rodolfo Sacco ed., Accademia Nazionale dei Lincei, Rome 2010).

The Louisiana Civil Code in French:
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Alexandru-Daniel On

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