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Dictionary of the Civil Code

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GÉRARD CORNU, DICTIONARY OF THE CIVIL CODE
(Alain Levasseur & Marie-Eugénie Laporte-Legeais trans.,
LexisNexis 2014)

Reviewed by Jean-Claude G mar*

Law dictionaries are legion, translations of law dictionaries are few, especially from French into English due to the deep-seated differences between French Civil Law's and Common Law's concepts and systems. Translating is a high-risk activity, all the more so when law and its critical consequences are involved. The phrase *traduttore traditore* continues to undermine the very idea of translation in the eyes of so many. If everything can be translated, many doubt that this translation specialists' dogma can apply to the translation of legal texts. Furthermore, translators must not underestimate how laws are drafted, the style of which can vary, sometimes considerably, from one language to another. This is the case, among many other pairs of legal languages, for English and French: their writing styles differ dramatically, and particularly in the development of their legal texts. Translators are thus faced with the problem of conceptual incongruity between languages. Linguistic scholars believe the congruity of words between languages is purely by chance.

IS LAW TRANSLATABLE?

Such statements suggest that untranslatability would be inevitable. In view of the particular constraints of legal translation, especially when texts of national interest are involved, as in Canada, the question arises whether legal translation is still possible. It is true that if one focuses on the concepts covered by the key terms in the vocabularies of the main legal systems and if one makes a comparative analysis, term for term, one ends up most of the time, for lack of perfect equivalence, at the impossibility of translation. Few specialists—most of them jurists—accept the

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feasibility of translation. They think it does not really produce the claimed legal equivalence. Many reasons or obstacles are put forward, among them the uniqueness of legal systems, of their specific concepts, terms and language. Prejudices, preconceived ideas, not to mention ignorance, increase their impact.

Therefore, one needs a good amount of courage and consistency, possibly a touch of madness, to embark on this odyssey and tread new territory: translating into English Cornu's respected *Vocabulaire juridique* (9th ed., 2011), and, no doubt, the reigning law dictionary in the French-speaking realm. A formidable task, if any, when one considers with Cornu¹ that "the language of the law is, to a major extent, a legacy of tradition,"² and filled with culture-bound terms. Legal notions are sometimes so abstract and singular, so culturally bound to a local system, its traditions and customs,³ that many lawyers and linguists alike question the translatability of law.

However, specialists in comparative law are best placed to deal not only with the problems posed by the language of law, its words, terms and phrases, but also with the concepts and notions they convey when transferred from one legal system to another. It is not surprising one finds among comparativists able specialists in legal translation, as are Professors Alain Levasseur and Marie-Eugénie Laporte-Legeais who, in an international joint venture conducted by *Association Henri Capitant* and *Poitiers' Juriscope*, coordinated and supervised the team who translated the *Vocabulaire juridique* in order to produce the *Dictionary of the Civil Code* under review.

To start with some striking facts and figures, Cornu's *Vocabulaire juridique* (10th ed., 2014) contains over 5,000 entries

1. Professor Gérard Cornu passed away in 2007. He was 81.

2. GÉRARD CORNU, *DICTIONARY OF THE CIVIL CODE* xiii (Alain Levasseur & Marie-Eugénie Laporte-Lageais trans., LexisNexis 2014) [hereinafter *DICTIONARY OF THE CIVIL CODE*].

3. Compare *droits de l'Homme* vs *habeas corpus*, terms not addressed in the Dictionary.

within over 1,000 pages (1,099, to be precise), when the *Dictionary of the Civil Code* contains less than 3,000 (c. 2,800) within 663 pages. The some 2,000-entry difference lies in the notion-based corpus selected, which is composed of some 1,600 essential notions. Not all terms, notions and entries of the *Vocabulaire juridique* were judged relevant and worth being retained to be translated and incorporated in a dictionary of the Civil Code. See for example: *anomal*, *concordat*, *concours*, *consulaire*, *distracted*, *distrat*, *éthique*, *étoc*, *fourrière*, *incoterm*, *litisconsorts*, *mission*, *nouveauté*, *obligataire*, *perquisition*, *préjudiciel*, *réfugié*, *requérir*, *sécularisation*, *soumission*, *staries*, *superficie*, *taille*, *tontine*, *usance*, *ventilation*, *vétusté*, *voluptuaire*, and so on, were retained terms bearing a notion, a legal institution that matter, representing more or less the basic terminology carrying the essential notions of private law, which amounts to some 2,000 terms, as the first edition (1985) of Quebec's *Dictionnaire de droit privé* demonstrated.

The *Dictionary of the Civil Code*'s entries (pp. 1–591), as is the case with most dictionaries, are presented in alphabetical order. They are preceded by a short Foreword (p. ix), the authors' Approach to Translation (pp. xiii–xiv), the Foreword written by Prof. Philippe Malinvaud for the original edition (pp. xv–xvi) and by excerpts of the Preface of the original edition (pp. xvii–xx) written by Gérard Cornu—all translated by Alain A. Levasseur and J. Randall Trahan—, a list of abbreviations (pp. xxi–xxiii) and by some Instructions for Use (p. xxv). The Dictionary proper (pp. 1–589) is followed by an Index of (English-French) Entries⁴ (pp. 593–657), an Index of Legal Adages (pp. 659–62) and, finally, by a Louisiana Civil Code Bibliography (p. 663).

Since we are dealing here with a translated book, the authors' statements on their translation objectives and strategies are of

4. Each entry is introduced by the French term under consideration; the text of the entry is in English, the equivalent English term(s) follow the definition. Ex: "**Demande** (. . .) En. **Demand, Claim, Action, Request.**"

prime importance to better grasp what they intended to accomplish, the purpose toward which their endeavor was directed. In translation, the German philologist Friedrich Schleiermacher forged the critical alternative, the old and obvious dualism: the translator's task is to move the author to the reader, or move the reader to the author.

SOURCE TEXT-ORIENTED OR READER-ORIENTED?

In law, the issue of equivalence assumes particularly critical importance. Thus arises the question of translating law. Translating a text of a legal nature or significance comes to perform an act of comparative law, but coupled with a translating process (*l'opération traduisante*). In sum, that is the translator's daunting task. Translating does not consist in finding matching equivalents that can be assembled in a chain of words making phrases and sentences and, eventually, a text. If translation is thought to be a word-for-word operation, a translator's search *à tout prix* for a lexical equivalent to the source language in the target language, since linguists claim that no word possesses the exact equivalent meaning in another language, then one should seriously doubt the feasibility of translating.

Nonetheless translating has been going on for thousands of years. Faced with his or her text, the translator has to adopt a strategy with a view to reaching the goal intended, which will depend on principles, and one or several methods that are more or less established and proven. Throughout history, sometimes translators have opted for a literal form of translation, sometimes for a freer approach to translating, without neglecting ways to combine them, including adaptation. Nowadays, in the quest for equivalence, it is the *spirit*, not the letter any more, that is being sought. It reveals a general trend in communication—writing more concise, plainer and simpler texts—that is reaching out to the legal world, where form, *i.e.*, language, is increasingly governing law.

Language-conscious Canada has a long and rich tradition and experience with translation, that *necessary evil* which plays such a decisive part in the smooth running of its institutions. Canada is the country where “functional equivalence”⁵—which may be compared to Nida’s “dynamic equivalence”⁶—has been the privileged method for translating Canadian statutes for decades. The reason?

KEEP LAW AND FORM AND DUE PROPORTION

(*Richard II. 3.4.41*)

It is therefore somewhat surprising that the Dictionary’s authors-translators “favored ‘formal equivalence’ [source text-oriented] over ‘dynamic equivalence’ [target text-oriented], which is as much as to say that we have erred on the side of literalism.”⁷ They could not have put it better! But there are sound reasons behind this. According to Levasseur and Trahan, “in all of the writings of Cornu, the meaning of each word and the style of every sentence, far from being independent of each other, are inextricably bound up together.”⁸ This accounts for that. They were not translating any dictionary, they dealt with a work of legal doctrine, which is a magnum opus as far as substance is concerned, and a gem as regards writing and style. You deal with the author of *Linguistique juridique* (Legal Linguistics), a work that is the must-have of every student of the language of law and its texts. You do not translate a great jurist’s words and style the way you do, say, a

5. See Louis-Philippe Pigeon, *L’équivalence fonctionnelle* in *LANGAGE DU DROIT ET TRADUCTION : ESSAIS DE JURILINGUISTIQUE—THE LANGUAGE OF THE LAW AND TRANSLATION: ESSAYS ON JURILINGUISTICS* 271–81 (Jean-Claude Gémard ed., Conseil de la langue française 1983).

6. EUGENE A. NIDA & CHARLES R. TABER, *THE THEORY AND PRACTICE OF TRANSLATION* at xiv (4th prtg., Brill 2003), (which authored the *formal* vs *dynamic* equivalence principle. In their system of priorities, “dynamic equivalence has priority over formal correspondence”).

7. CORNU, *DICTIONARY OF THE CIVIL CODE*, *supra* note 2, at xiv.

8. *Id.*

contract, but rather like what Peter Newmark thought of as “authoritative statements,”⁹ which is what law dictionaries are all about, where every word of each definition tells. One example will demonstrate this. It is a comparison between a definition of *PERSONNE MORALE* from the *Vocabulaire juridique* and its translation in the *Dictionary of the Civil Code*:

<p><i>Groupement doté, sous certaines conditions, d'une personnalité juridique plus ou moins complète ; sujet de droit fictif qui, sous l'aptitude commune à être titulaire de droit et d'obligation, est soumis à un régime variable, not. selon qu'il s'agit d'une personne morale de droit privé ou d'une personne morale de droit public.</i></p> <p>(50 words)</p>	<p>A group granted, under certain conditions, a more or less complete legal personality; fictitious legal/juridical person which, by virtue of the common capacity to have rights and obligations, is subject to a variable regime, depending, in particular, on whether it is a private law moral/legal/juridical person or a public law moral/legal/juridical person.</p> <p>(52 words)</p>
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The “formal equivalence” is obvious. One will also notice the slight difference in the number of words between the French (50) and the English (52) versions, which confirms the fine touch of “literalism” since the translated text is usually longer than the source one—a gap which can reach 300% between English and Italian—,¹⁰ but not between English and French as far as statutes are concerned.¹¹ The legal equivalence of “*personne morale*” and “legal person” reveals, as in the Quebec Civil Code (article 298), the priority given to civil law over common law, while in a

9. Peter Newmark. *The Translation of Authoritative Statements: a Discussion*, 27 *META* 375–91 (1982).

10. See Text size in Translation: <http://www.w3.org/International/articles/article-text-size.en>, consulted on August 20, 2015.

11. In Canada, owing to methods of co-drafting legislation, articles in the French version of a statute are often shorter than the English ones.

common law context it is the term “corporation” that would be appropriate, as indicated in the dictionary of common law produced by the *Centre de traduction et de terminologie juridiques* (CTTJ) of Moncton university Faculty of Law.¹²

LOUISIANA CIVIL LAW: BACK TO THE FUTURE

But another reason behind the decision to translate *Vocabulaire juridique Cornu*, the driving force behind the whole translating endeavor, “was a matter not only of promoting our Louisiana civil law tradition in general by anchoring it in the English language and not just any English language, but an English language different from the English language of the common law.”¹³ It is a manner of going back to the future. After all, the Louisiana civil law has been expressed for centuries in English (from the Digest of 1808 to the Louisiana Civil Code of today), and became, *volens nolens*, “an instrument for the defense of the civil law”!¹⁴ This characteristic feature is constantly brought out by the authors when dealing with major terms and notions; among many other examples, to stick to a few A-terms: *Abandon*, *Abus*, *Acceptation*, *Acte sous seing privé*, *Action rédhibitoire* (and *Rédhibitoire*), *Agrément*, *Amiable (compositeur)*, *Antichrèse*, *Arrhes*, *Authentique*, *Ayant cause*.

In many entries the team dealt with appears in one or several articles of the Louisiana Civil Code, the Penal Code or a Louisiana statute, which clearly reflects the underlying common language identity and culture of the French civil law and Louisiana’s, at least since the *Code Napoléon* and, before that, the reminders of *lois civiles* (civil laws) of yesteryear. The cousinage between both civil laws stands out particularly with a term like *FAUTE/FAULT* and its so important notion of *obligation*. Let us compare what both Codes say about it.

12. JACQUES VANDERLINDEN, GÉRARD SNOW & DONALD POIRIER, *LA COMMON LAW DE A À Z* at 382 (Yvon Blais-Bruylant 2010).

13. CORNU, *DICTIONARY OF THE CIVIL CODE*, *supra* note 2, at xiv.

14. *Id.* at xiii.

<i>Louisiana Civil Code, 2011</i>	<i>Code civil, 2015</i> (enacted on Feb. 19, 1804)
Article 2315. A. Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.	<i>Article 1382 Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.</i>

Once more, the original French article (1804) may be found, translated word for word, in the Louisiana Civil Code, illustrating the deeply-rooted French civil law culture and tradition perduring in the only U.S. state still maintaining a civil code.

Each entry of the Dictionary reproduces the rich information compiled and skillfully synthesized by Cornu and his expert team on every term they chose to enter into the *Vocabulaire juridique*. Many general entries present subentries constituted of the family of words comprising the key term, which at times can be numerous, as is the case with *LOI* (9 terms) *FAMILLE* (13 terms), or *DROIT* (43 terms!). This is in line with other dictionaries, *Black's Law Dictionary* for example, where the entry *SUCCESSION* contains nine subentries devoted to “Civil Law and Louisiana.” Like Garner’s dictionary,¹⁵ but to a lesser degree, Cornu’s *Vocabulaire juridique* also gives linguistic information about the term, its etymology, synonyms, antonyms, semantic relations (See, Comp., etc.), and other useful specifications (adages, classical/dominant interpretation, strict/broad sense, usage), and, sometimes, a warning : **Avoid**, as for the controversial common law term “Joint and several.”¹⁶ This information is part of the translated entries.

15. B.A. GARNER, *DICTIONARY OF MODERN LEGAL USAGE* (3rd ed., Oxford Univ. Press 2011).

16. See CORNU, *DICTIONARY OF THE CIVIL CODE*, *supra* note 2, at xiv (the authors’ remark on the civil law term *solidarité*, when “the only access key available [to understand the civil law concept of *solidarité*] is ‘**joint and several**’”). See also “**Joint and several liability**” in BLACK’S LAW DICTIONARY.

The authors of the Dictionary even went to the lengths of dealing with and translating the definition of older term significations. See, for instance, *héritage* (estate), the third signification of which (c. 1228) has been used “to refer to an immovable by nature.”¹⁷ Conveying that obsolete signification, this term is still present in the French *Code civil* (article 637) and was one of Cornu’s favorites (much used in the ages of Montaigne and Balzac).

As regards translation, the translators of *Vocabulaire juridique* have accomplished a remarkable feat. As said before, translating a dictionary is no easy task. Some even think it is a useless, if not impossible, endeavor as far as law is concerned. In the case of the *Dictionary of the Civil Code*, this task turned out to be not only feasible but successfully accomplished, despite the fact definitions do not follow the same path in English and French general lexicographical traditions. These traditions are based upon linguistic theories and principles that vary from time to time in the manner in which a dictionary will define and inform users. In law, however, the difference between English and French ways of defining words and informing readers in law dictionaries is as large as the gap separating common law and civil law. Where French lexicographers (Capitant, Cornu) favor semantic definitions based on Aristotelian logic, English lexicographers (Black, Garner, Jowitt) lean towards pragmatics (an area of linguistics): they recognize there is no linguistic meaning outside of usage. Bathing in a written law, codified system, French jurists, unlike common-lawyers, think the “real meaning” of a word does not, or very slowly, fluctuate. *Lex non scripta*, common law was not developed by legislators but almost daily, case by case, by courts. Therefore, the meaning of its words and terms is not cast-in-stone law, it does fluctuate over the course of time.

Comparing Cornu’s and Black’s (Garner’s, in fact) ways of defining a term will exemplify those differences. Choose a term

17. *Id.* at 281.

like *DOMICILE*, for instance. In Cornu's *Vocabulaire juridique*, the definition will refer you to an article of the *Code civil* (article 102), whereas *Black's Law Dictionary*, like most English law dictionaries (see Curzon, PAJLO, Stroud), refers the reader to one or several cases: "*Smith v. Smith*, 206 Pa.Super., 310, 213 A.2nd 94," and other law dictionaries may add statutes to case law references. It says it all: in civil law, legislation surpasses case law. And vice versa: in common law, "remedies precede rights" affirmed René David, the great French comparativist.¹⁸ As said before, the authors of *Dictionary of Civil Code* opted for a quasi-literal translation of Cornu's definitions. This is well illustrated in *DOMICILE*: "Place where a person has his principal establishment (Frch. civ. C. a. 102; La. civ. C. a. 38)." Compare with Louisiana Civil Code (article 38): "The domicile of a natural person is the place of his habitual residence." Definition followed by the usual references: [Acts 2008, No. 801, §1; Acts 2012, No. 713, §2, eff. Aug 1, 2012]. Two different ways of informing, two different spirits of laws.

As for translation, a last example from the *Dictionary of the Civil Code* will help in understanding the kind of difficulties a translator might encounter when translating certain terms, as is the case for *VALABLE* and *VALIDE*. Based on what general dictionaries indicate, many French-speaking persons (and a great number of others) think these words are synonyms. This might be true, in certain cases, for the general language, where *valide* and *valable* can both be translated in English by **valid**, but is not the case with law, where the latter, not the former, may also be translated by **lawful**. This is a source of ambiguity, all the more so as *valide*, in reference to a juridical act, may apply to either a *negotium* "Ex. marriage clear, in its formation, of any ground of nullity. Syn. *valable* (sense 1),"¹⁹ or an *instrumentum* "Ex. passport in the

18. RENÉ DAVID, LES GRANDS SYSTÈMES DE DROIT CONTEMPORAINS 330 (6th ed., Dalloz 1974).

19. CORNU, DICTIONARY OF THE CIVIL CODE, *supra* note 2, at 572.

process of being validated. Comp. *valable* (sense 2),”²⁰ therefore conveying a critical semantic nuance, a difference that might blot out underlying similarities.

TRADUTTORE TRADITORE?

This and other obstacles on which translators may stumble along the translating process did not deter nor hamper the bold translators of *Vocabulaire juridique* into English. The translated text is faithful not only to Cornu’s letter but also to his spirit, a feat in itself considering his high legal expectations and his writing style. It is in a class all by itself and sets the bar very high for future candidates envisaging to engage into such a hazardous endeavor: translating a law dictionary, whatever the language, without keeping in mind that translation cannot live forever if it is not assigned extreme, even impossible, challenges. This labor of Sisyphus that produced an English version of *Vocabulaire juridique* should captivate law students and professors, judges and attorneys, jurilinguists and translators, whether English or French-speaking, in Louisiana and elsewhere in the legal sphere, interested in one way or another by civil law, its terms and notions, and by its unique way of expressing them. They will, no doubt, welcome and appreciate this great piece of inspiring translated doctrinal work, which, on top of that, is presented in the user-friendly format and text of Cornu’s *Quadrige* source text. Last but not least, they might get Cornu’s embedded message also carried by the translators of the *Dictionary of the Civil Code*: “remember the [civil law] style.”²¹

20. *Id.*

21. Boyet: “I am much deceived but I remember the style” (*Love’s Labour’s Lost*, 4.1.96).