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## Levasseur, Legal Linguist

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# Levasseur, Legal Linguist

*John Randall Trahan*\*

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## INTRODUCTION

Some, including Professor Levasseur himself, might object to the title of this Essay because, one might argue, this title is potentially misleading. The expression “linguist” is today often reserved for someone who, by dint of specialized academic training, either studies languages scientifically and writes about them as a scholar or serves as a professional translator from one

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language into another. Professor Levasseur, as he himself is happy to acknowledge, has received no such training. Though he is a scholar, and at least in some sense—the sense of “legal science,” as understood in the civil law tradition—a “scientist,” most of his scholarship has been concentrated in the fields of legal history, legal methodology, civil law, and comparative law. He does not now, nor has he ever, earned his living by translating for “hire.”

Still, I think the title is entirely appropriate. To begin with, the expression “linguist” carries a second and more expansive denotation, namely, one who is “master of tongues other than his own.”<sup>1</sup> Professor Levasseur certainly fits this description. The son of a French consular officer, he grew up speaking French at home, of course, but was also exposed to other languages as his father was stationed here and there, including Spain and Brazil. During grade school in France, he studied not only English, but also Spanish, becoming quite fluent in the latter thanks in large part to the assistance of his Hispanophone mother. Upon his graduation from law school, he spent six months at the City of London College, where he first immersed himself in English. The following year, he came to the United States as a graduate student in law. From then until now, English has served as his primary professional language, though he has continued to work in French as well. He is, then, certainly a “linguist” in the broad sense of “master of other tongues.” But even if one were to stick with the narrower denotation of “linguist” noted above, one could still defend the title. Though most of his scholarship has been devoted to other topics, he has still written a number of scholarly articles on the topic of law and language, with a particular emphasis on legal translation. This still-growing *corpus* of work, which now numbers five pieces, includes ones entitled “Discourse on Our Method”<sup>2</sup> and “Our Approach to Translation.”<sup>3</sup> The citations included in these works show that he has

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1. 8 THE OXFORD ENGLISH DICTIONARY 992 (2d ed. 1992) (definition 1).

2. This “Discourse” forms the introductory section of Alain Levasseur & David Gruning, *Version Louisianaise*, in *L’ART DE LA TRADUCTION, L’ACCUEIL INTERNATIONAL DE L’AVANT-PROJET DE RÉFORME DU DROIT DES OBLIGATIONS* 33–35 (Pierre Catala ed., 2011) [hereinafter *L’art de la Traduction*].

3. Alain A. Levasseur & J. Randall Trahan, *Our Approach to Translation*, in GÉRARD CORNU, *DICTIONARY OF THE CIVIL CODE* xiv (Alain Levasseur et al. trans., 2015) [hereinafter *Approach*]. Professor Levasseur’s other three works on legal translation are: Alain A. Levasseur, *Les Maux des Mots en Droit Comparé: L’avant-projet de Réforme du Droit des Obligations en Anglais*, 2008 *REVUE INTERNATIONALE DE DROIT COMPARÉ* [R.I.D.C.] 819 [hereinafter *Maux des Mots*]; Alain A. Levasseur, *Réflexions Introductives*, 68 *LANGUES ET PROCÈS* 9, 68 (2015) [hereinafter *Réflexions*]; Alain A. Levasseur, *Ruminations Around the*

studied most if not all of the pertinent literature—the most prominent works on legal translation, both in French and in English. In addition, either on his own or in collaboration with others, he has now produced translations of at least four books from French into English, including Christian Atias' *Le Droit Civil* and more recently Gerard Cornu's *Vocabulaire Juridique*.<sup>4</sup> Professor Levasseur has also produced translations of at least four legislative documents from French into English, including the French Constitution of 1958, the French Civil Code, and most recently the pending "*Avant-Projet* of the Reform of the Law of Obligations" of France. In the end, then, his only "deficiency" (if that is even the right word) as a linguist in the narrow sense is his lack of formal training in linguistics. But what some people lack in the way of formal training, they often make up through experience. When it comes to linguistics, Professor Levasseur, thanks to his abundant experience, is just such a person.

My aim in this Essay is to provide an exposé of the approach Professeur Levasseur has taken in his work as a "legal linguist"—to be more precise, his method of legal translation. The exposé begins by examining, if only briefly, what one might call the "backdrop" against which he has developed that method—his understanding of the relationship between "legal language," on the one hand, and "legal culture," on the other. Having done that, the exposé examines, in this order, Professor Levasseur's understanding of what legal translation is, what its proper ends are, and what means should be used to attain those ends. Finally, the exposé presents a brief critical valuation of his method.

Before proceeding, I should point out several difficulties facing me that complicate the task to which I've set my hand. The first is that, in all of the scholarship on legal translation that Professor Levasseur has so far produced, none of it contains a comprehensive and systematic presentation of his method. In the place of such a work, one instead finds several works that amount to "defenses" of the approach to or the method of translation that he and his collaborators adopted in undertaking the translation of this or that particular text. The most notable of these defenses are his works on the first *avant-projet* of the reform of the French law of obligations (the so-called *Avant-Projet Catala*) and on the *Vocabulaire Juridique*. Further, all of these works concern the translation of texts that involve one and the same body of law—the French civil law—written in one and the same

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*Dictionary of the Civil Code*, 9 J. CIV. L. STUD. (forthcoming 2016) (manuscript on file with Author) [hereinafter *Ruminations*].

4. GÉRARD CORNU, *DICTIONARY OF THE CIVIL CODE* (Alain Levasseur et al. trans., 2015) [hereinafter *DICTIONARY OF THE CIVIL CODE*]. The *Vocabulaire Juridique* might be thought of as France's answer to Black's Law Dictionary.

source language—French—into one and the same target language—English. Providing the reader with a view of Professor Levasseur’s “method in general” will therefore require that I make some abstractions and extrapolations from these particular works.

A second difficulty that I face is that the works in question are in large part polemical, that is, directed against other translators who have taken a different and, in Professor Levasseur’s judgment, problematic approach to legal translation. The writing in those works, then, includes a good bit of rhetoric, and at points perhaps even hyperbole. When this fact is added to that of the “occasionalness” of the works, it becomes clear that Professor Levasseur, in his writing on legal translation, has been more Martin Luther than John Calvin. The task of exposing the underlying method is accordingly made that much more difficult.

A third difficulty is that most of Professor Levasseur’s works on the topic of legal translation, including the most comprehensive—*Les Maux des Mots*—were written in French, not in English. To the extent that I wish to include quotations of those works in my exposé—and I will, with a vengeance—I must then not only explain but also translate.

The fourth and final difficulty that I face arises not from Professor Levasseur or his work, but rather from me. Though he can claim the title of legal linguist in the narrow sense, I cannot. With one exception that I will mention shortly, I have never—at least not before writing this Essay—written on the topic of legal translation. Nor have I, for that matter, ever made a thorough study of the scholarship on this topic, instead having studied this or that part of this or that work on legal translation as the need might have arisen. I say this to let the reader know up front that I am hardly an expert in or master of legal translation. Nevertheless, as far as providing an exposé of Professor Levasseur’s approach to legal translation is concerned, I am arguably in a better position than most—in fact, than anyone else, save perhaps David Gruning, his long-time collaborator in his work of legal translation—to handle the task. That is because I have had the privilege of serving as one of his principal collaborators on his last three major translation projects—namely, the translation of the *Vocabulaire Juridique*, the entire French Civil Code, and most recently, the new *avant-projet* of the reform of the French law of obligations, which is now pending before the French Parliament. Further, I co-authored with him one of his works on legal translation—one of the introductory sections to our translation of the *Vocabulaire Juridique*, entitled “Our Approach to Translation.” Perhaps the knowledge I have gained “hands on” as I have worked with him on these projects will, at least to some extent, help to make up for some of my other deficits.

I have one final warning for the reader. This Essay is about *Professor Levasseur's* approach to legal translation, not about *my* approach or even “my take” on his approach. For that reason, I plan to let Professor Levasseur, as it were, “speak in his own words,” to the extent that that is possible. The reader should therefore prepare for more than the usual amount of quotations, including extended block quotations. My role will be limited, for the most part, to synthesizing those words, re-presenting them in systematic fashion, and, where appropriate, providing clarifications or expansions of them.

#### I. THE BACKDROP OF THE APPROACH: LAW AND LANGUAGE

For Professor Levasseur, it is a given that within any culture, there is between the “language” and the “law” an intimate and complex connection. Quoting Gerard Cornu with approval, he writes:

Law and language are very close to each other in nature . . . ; if one considers law and language in themselves, together in a given society, their kinship is fundamental. The practice of the language, the practice of the law, both stem from behavior of the people that is cut off from scholarly impulses. [In other words,] law and language are children of custom, which is as much as to say brother and sister . . . . There exists at once a distinctive essence of language and a spirit of the law, brother essences, stemming from and bearers of the same mentality, birth, and destiny . . . . There remains between the language and the law of a people a privileged order of relations that calls for respect. . . . There reigns between a language and a law a *sui generis* natural harmony . . . .<sup>5</sup> [W]hat seals the kinship of law and language is the mediation of a third term, the nurturing milieu that accompanies their blossoming, in a word, the culture from which they stem. Law and language are cultural artifacts . . . .<sup>6</sup>

Thanks to this intimate and complex connection, Professor Levasseur believes that the language of the law in any given culture is shot through with the distinctive elements of that culture—not only the culture at large, but also, and even more so, the legal culture in particular. Quoting Cornu again, he contends that “the language of the law is a cultural language, a bond, a good, a benefit of the legal culture.”<sup>7</sup> Like Paul Roubier, he

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5. *L'art de la Traduction*, *supra* note 2, at 41 (Author's translation).

6. *Maux des Mots*, *supra* note 3, at 838 (Author's translation).

7. *Réflexions*, *supra* note 3, at 13 (Author's translation).

maintains that “the words [of a legal language] . . . constitute . . . an important element of juridical technique. The words, in fact . . . are the representation of concepts that epitomize the tendencies of the legal system.”<sup>8</sup> As François Geny, whom he also quotes with approval, wrote:

[W]ords and their arrangements into phrases . . . present themselves, in the course of every juridical elaboration, as a prolongation, one that is practically necessary, of concepts. These are exteriorized and become communicable only by means of language . . . . And, . . . the law presents to us the most clearly-characterized discipline of the life of man in society . . . . The law will draw from current language, which offers to us the common foundation from which all of the channels that cause ideas to circulate through social life are fed. The jurist applies himself to drawing from this common foundation the expressions and the organization of them necessary to make sense, profound and specific, of the precepts of the law. From this [exercise] arises . . . a technical language that is based on the common language . . . .<sup>9</sup>

For these reasons, he agrees with Patrick Glenn that “a different language implies different concepts and [therefore] the conceptual difference between legal systems and legal traditions is important.”<sup>10</sup>

Because of these differences between the legal languages of different legal traditions, there is, between those languages, what Professor Levasseur, following Cornu, calls a “linguistic screen.”<sup>11</sup> Translating from one of these languages into the other requires penetrating that screen. “The opacity of this screen,” he writes, “is more or less penetrable depending upon the nature of the combination of the originality of the languages and of the particularity of the legal cultures that exist on the one side and the other of this screen.”<sup>12</sup> The greater the differences between the languages and the legal cultures in question, the greater is the difficulty.

This understanding of the intimate and complex connection between the law and language of a given culture has significant implications, of course, for the work of legal translation. If the translator is to do his work properly—if he is to “penetrate” the “screen” and do it well—then he must endeavor to the extent possible, Professor Levasseur maintains, to “cause

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8. *Maux des Mots*, *supra* note 3, at 830 (Author’s translation).

9. *Id.* at 831 (Author’s translation).

10. *Réflexions*, *supra* note 3, at 13 (Author’s translation).

11. *Id.* at 12.

12. *Id.* (Author’s translation).

the reader of one certain legal tradition to feel all the cultural subtleties of certain concepts, principles, institutions of another legal tradition.”<sup>13</sup> Expanding on this same point, Professor Levasseur has noted the following:

The words that are identified with a certain language of a people are the outward and visible symbols, images and icons that the culture of that people conveys in an attempt to bring the reader or listener into its depth through the use of that reader’s or listener’s own language. Therefore, it becomes the duty and mission, more than the mere role of the translator-artist to trust in his talent permeated with human feelings and guided by his intellectual skill, to shape the culture of one people, the ‘sender,’ into a work that another people, the ‘receiver,’ can readily understand and accept as being worthy of as much respect and acceptance as its own culture. The language that the translator should use must be ‘transparent’ not opaque, thoughtful and not dismissive so that the reader-receiver will be able to see on his side of the mirror the very message couched in his language that the sender meant to convey on his side of the same mirror.<sup>14</sup>

Now, for the legal translator to enable the reader to “feel the cultural subtleties” of the text he is translating, he must do more than focus his attention on the mere words of the source language that are to be translated and on the mere words of the target language that might serve to render them. Over and above that, he must also consider and take into account the larger legal culture within which those words, on one side as on the other, are embedded and of which they are the expressions. In other words, he must go beyond “denotation” to “connotation,” understanding that the “context” of this connotation includes, in its ultimate extension, the entire legal culture as a whole. In a sense, he must translate not only legal text but also legal culture.

## II. PRESENTATION OF THE APPROACH

Grasping Professor Levasseur’s “approach” to legal translation requires an understanding of his notion of legal translation as well as his understanding of the proper ends and means of legal translation.

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13. *Maux des Mots*, *supra* note 3, at 850 (Author’s translation).

14. *Ruminations*, *supra* note 3 (manuscript at 3).



*A. Legal Translation: What Is It?*

Given the nature of Professor Levasseur's works on legal translation—works that are episodic and polemical—it is perhaps not surprising that he has written little about what, to his mind, legal translation “is.” In one of those works, he did note, if only in passing, that “‘translation’ in the strict sense of the term [is] the written transposition of one language into another.”<sup>15</sup> But beyond that, to the extent he has written anything at all on the subject, he has resorted to metaphor.

In his most recent writing on the topic of legal translation, Professor Levasseur has compared the work of translation to not one but two of the “arts,” in the narrow sense of that word: sculpture and music. Regarding sculpture, he writes:

I felt like a sculptor probably feels when he faces a block of marble out of which he is to carve a statue. Most likely the sculptor sees in his mind and feels in his heart far beyond the block of marble. He can touch the silhouette, the curvature, the profile of the statue before it finds life in his skilled and toned hands. To translate is, in a sense, to practice the art of shaping and carving out all the beliefs, aspirations, ideals and values that are hidden in a given block of words; it is to transform them into words meant to captivate the awareness of the mind and the sensitivity of the heart of the reader.

Of music, he says:

This art and this technique of translating are the same, I believe, as those that one finds in a musical composition that the hands and talent of a pianist must ‘interpret’ or translate into ‘sounds’ with the intent of touching the mind and heart of an audience. Music critics who hear the same Mozart concerto will seldom share exactly or never to the same extent the same views on the pianist’s performance because their hearts and minds will not have heard the same sounds nor felt the same emotions with the same intensity[.]. The translator and the pianist are given a ‘written score’ which is not their creation; yet, somehow, they must attempt to immerse themselves into the person and personality of the author-composer so as to allow and entice the reader or listener to do likewise. A

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15. *Réflexions*, *supra* note 3, at 12 (Author’s translation).

written musical score is under the fingers of a pianist like the words of a text are under the pen of a translator.<sup>16</sup>

For purposes of understanding Professor Levasseur's method of legal translation, the important takeaways from his statements regarding the nature of legal translation seem to be as follows. First, legal translation is less a science than an art. Among the chief implications of characterizing legal translation in this fashion is that whatever techniques, maxims, or rules that the translator may think to use in his work can never be "mechanically" applied. Second, legal translation inevitably involves "interpretation," specifically, interpretation of the legal term to be translated—and, possibly, of the term that has been proposed to render it, at least where that term, too, is a legal term.<sup>17</sup> This work of interpretation, of course, requires not only a knowledge of the field of the law where the term to be translated forms a part, but also an appreciation of and sensitivity to the larger legal culture within which that field of law is set.<sup>18</sup>

### *B. The Ends of Legal Translation*

In contrast to many other legal translators, Professor Levasseur has consistently pursued multiple objectives in his work of legal translation. Under this heading, one can distinguish a "general" objective and several more "particular" objectives.

#### *1. The End in General*

Though Professor Levasseur has never stated what he understands to be the "general" ends toward which legal translation should be directed—no doubt because he believes it to be so obvious—there can be no question that these ends are no different for him than they are for any other legal translator. The point of such translation, in short, is to enable a person who is not conversant with the language in which a certain legal text is written to read it in a language with which he is conversant, and thus to understand it.

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16. *Ruminations*, *supra* note 3 (manuscript at 5).

17. *See Réflexions*, *supra* note 3, at 13–14.

18. *See Maux des Mots*, *supra* note 3, at 822 ("The fundamental question that the reader will be led to ask himself at the end of this article is whether, by his translation of the [text] into English . . . , the translator has succeeded in assuring for the reader that there is an identity and fidelity between the words of the English vocabulary that he has chosen and the background of these words, that is to say, the French civilian legal culture that was incorporated into this [text].") (Author's translation).

## 2. *More Particular Ends*

Beyond this general objective, however, Professor Levasseur has at least two other, more particular, objectives, which he has stated clearly and openly. To understand his approach to legal translation, one must have a firm appreciation of these other objectives, for they have helped to shape that approach in profound ways.

Though recasting each of these objectives (especially the first) in terms that would render them of more widespread applicability might be possible (in other words, to universalize them, without regard to their particular translation context), they are, in the forms in which they have been stated by Professor Levasseur himself, limited to the particular translation context in which all of his translation work has taken place. That is the translation of French civil law materials into English.

### *a. Facilitating Legal Research*

Throughout his work as a legal translator, Professor Levasseur has been concerned, almost before all else, to produce translations that will facilitate—or at least not frustrate—“legal research.” This concern, of course, is entirely reasonable. To be sure, it is certainly possible that the reader of a given translated legal text might have only a “casual” interest in reading it, such that he would never feel the need to look beyond or behind it for additional information. But readers of this kind are undoubtedly rare birds. Much more common is the reader who, upon reading this or that part of the text, would need to find out more about what this or that term that he has encountered in that text means. To do that, the reader would have to look to other sources of information, that is, to conduct legal research.

In relation specifically to his work translating French civil law texts into English, Professor Levasseur’s research-related concerns have extended to two different groups of researchers. The first he describes this way:

First of all, there is the English-language jurist who is also capable . . . of reading and understanding French, especially legal French, or legal Spanish. By virtue of his knowledge of some civil law, this Anglophone jurist would then be able to conduct research in works of French, Quebec, or Spanish doctrine as well as in collections of French, Quebec, or Spanish jurisprudence.<sup>19</sup>

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19. *Maux des Mots*, *supra* note 3, at 843 (Author’s translation).

Here is his description of the second group of researchers:

Still more important for us was, of course, the case of the exclusively Anglophone jurist who is called upon to conduct research into the civil law in his English language, the only one that he has mastered.<sup>20</sup>

[T]o our knowledge, there are no works of doctrine on the French Civil Code that have been written, as opposed to translated, into English. In the absence of such doctrine, and thinking of a jurist who knows only the English language, a first alternative would be that this reader can turn to some works of doctrine in the English language on the civil law of the brother or cousin legal systems of the French legal system, such as the civil law of Quebec or of Louisiana. And certain works of this kind exist. Thus, by the intermediary of these doctrines that are “sister or cousin” to the French Civil Code, the Anglophone reader would make progress in civil law doctrine and would be instructed in the civilian juridical culture that has been put within his reach in the English language. . . . A second alternative, clearly, would be to have works of French doctrine translated into the English language.<sup>21</sup>

For ease of reference, I will hereafter refer to the first of these groups of researchers as the “multilinguists” and to the second, as the “monolinguists.”

As Professor Levasseur sees it, if legal translation is to meet the needs of these researchers, be they multilinguists or monolinguists, then the translators must write those translations in such a way as to facilitate—and never to frustrate—this research. And if the translation is to do that, then it must, first, be technically accurate and precise, and second, be couched in terms that correspond to terms used in the sources in which that research will be conducted, be they foreign civil law scholarship written in some language other than English, English translations of that doctrine and jurisprudence, or the doctrine and jurisprudence of English-speaking civil law jurisdictions. Oversimplifying somewhat, the reason for this has to do with “indexing.” This scholarship will, of course, be indexed on the basis of the terms used within it. If the translation uses terms other than those “indexing” terms, then the reader of the translation will not find these materials and, by not finding them, will not have the benefit of them.

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20. *Id.* at 844 (Author’s translation).

21. *L’art de la Traduction*, *supra* note 2, at 34 (Author’s translation).

*b. Contributing Positively to the Ongoing Development of "The Civil Law in English"*

Underlying all of Professor Levasseur's work as a legal translator is his realization that every translation he produces is more than "just a translation," that is, a means of meeting the immediate need of members of some audience that speaks a foreign language, in this case English, to understand the particular French text in question. To the contrary, he rightly believes that each of these works inevitably makes a contribution, however humble, to the ongoing development of a new, burgeoning legal language: one that is international in the scope of its usage—the "civil law in English," as he likes to put it. His concern is to assure that the contribution his translations make is at once significant and salutary.

It is as obvious as the nose on one's face that, for better or for worse, English is the new—and still rising—*lingua franca* of the entire world. This includes that part of the world in which the private law is civilian in character, where this new *lingua franca* has already become the predominant language in which people conduct all manner of international communications—those of business, diplomacy, and science, to name just the most prominent. For reasons that can be readily understood, the same is true even of international communications between folks—including lawyers, judges, and legal academics—whose work is related in one way or another to law.<sup>22</sup> At the present time, out in the "real world," increasing numbers of lawyers involved in handling international legal transactions, increasing numbers of judges involved in trying cases with multi-state contacts, and increasing numbers of legal academics involved in the production of legal scholarship are increasingly "talking law" in English.

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22. Here is a concrete example, one with which I am familiar by personal experience. At several recent conferences of *l'Association Henri Capitant* held here in Louisiana on various "civil law" topics, I was granted a dispensation from the association's rule that all presentations be made in French only, so far as my facility for *speaking* (as opposed to reading) French is quite limited, so that I could present in English. After I made one of those presentations, several of the conference delegates who hailed from countries in which French is not the "first language" of the people—notably, the Netherlands and Spain—thanked me for presenting in English, noting that, if they could have had their druthers, they, too, would have presented in English. This was the reason they gave me: English, not French, is their primary "second language," the one in which they are the most fluent. In the conversations among ourselves that followed, we spoke in English rather than in French, not only because that was all but necessary for me, but also because it was much easier for them.

And here's the truly important thing—the “law” that they are increasingly “talking” in English *includes the civil law*.

This new “civil law in English,”<sup>23</sup> of course, has its own distinctive vocabulary. The question is what is the source of such vocabulary. Though there are many sources, certainly translations of foreign civil law materials into English are at the top of the list.

For that reason, Professor Levasseur argues, these translations must be conducted with a great deal of care and sensitivity. On this score, he emphasizes two points in particular: terminological coherence and technical precision. First, translations conducted today should take into account translations that were conducted in the past and, to the extent feasible, should be terminologically consistent with those earlier translations. To do otherwise would, in any given case, be to introduce into the vocabulary of the civil law in English multiple alternative terms for one and the same referent, which would only serve to sow confusion and misunderstanding among those who speak that language. “If that were to happen,” Professor Levasseur writes:

[W]e could then be face to face with insoluble conflicts between one English legal version . . . [and another] translation . . . in another form of the same English language . . . . Would it not be a little disconcerting and fatal for the uniformity of certain concepts of the civil law if, for example, the translation of . . . the same concept of *solidarité* was “joint and several” in one certain legal English version but “solidary” in another English version . . . ?<sup>24</sup>

Second, if this new language is to do the job it is called upon to do, then it must express civil law concepts with clarity, accuracy, and precision. For that reason, translations that incorporate mere “approximations,” even if they are “close,” simply will not do. What is required, in other words, is authentic translation as opposed to mere “paraphrase.” As Professor Levasseur has noted:

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23. Though I have just spoken of the “civil law in English” as a “new” language, that language is “new” only in a relative sense, that is, new to the English and to most Europeans. As Professor Levasseur correctly points out, a “civil law in English” has existed for hundreds of years now. Until recently, however, that language was spoken only in a very few, somewhat isolated venues, such as Quebec and Louisiana (I will take up this point below in connection with my discussion of the first of Professor Levasseur’s “maxims” of translation). What is different today is that *everyone everywhere* is taking up the language.

24. *Maux des Mots*, *supra* note 3, at 845–46 (Author’s translation).

[O]ur translation . . . necessarily had to be cast in “extremely precise language. For the law, the essential objective of which is to establish a firm order capable of protecting all interests, must forcibly seize hold of the social realities and must contain them within rather rigid frameworks, so as to avoid, as much as is possible, uncertainties and hesitations.”<sup>25</sup>

### *C. The Means of Legal Translation*

Just as Professor Levasseur has written little about what legal translation is and what its ends are, so also has he written little about what “means” the translator should use in pursuing those ends—the “how to” of legal translation. Despite this, in his numerous scholarly works on legal translation, he has provided clear indications of what these means are and concrete illustrations of how they should be employed.

Abstracting from these various works of his, one can identify a number of “how to” maxims—or if you prefer, “rules of thumb”—that Professor Levasseur believes should guide the translator and that have guided him in his work as a legal translator. Here, I will present only those that are the most obvious, and to my mind, the most important. There are, no doubt, still others.

To appreciate the place that these maxims occupy in the overall approach to legal translation that Professor Levasseur has adopted, one must recall his conviction that translation is an art, not a science. To look at one side of the coin, these maxims cannot be mechanically applied. To look at the other side of the coin, applying these maxims always requires an exercise of artistic judgment. Sometimes the maxims will point in conflicting directions—one indicating the choice of this term and another indicating the choice of another. In such an instance, one must choose which maxim to follow. Even where all of the maxims point in the same direction, the best course may still be to ignore them and, in so doing, choose a term that is not indicated at all or perhaps is even contra-indicated.

#### *1. Don't Reinvent the Wheel*

Depending on the time and the circumstances within which a translator of legal texts performs his work, he may well find himself on a path that, at least in some sense, others have already trod. If that is the case, then solely as a matter of efficiency, beginning one's work by taking a close

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25. *Id.* at 845 (quoting 3 FRANÇOIS GENY, *SCIENCE ET TECHNIQUE* 462 (1922)) (Author's translation).

look at the work of these “others” makes sense. That is particularly so where these others might be thought to have some particular expertise in performing the translation work in question, for example, a deep knowledge of both the legal source language and the legal target language and, further, of the legal cultures of which those languages are expressions. It is even more so the case if the work of these others has “stood the test of time,” that is, has been found workable by those who have used it over an extended period of time.

As Professor Levasseur has rightly noted, anyone who today undertakes to transpose the language of the French civil law into English finds himself on precisely such a path. To be sure, the French themselves are relatively new to this enterprise. But there are others for whom it is “old hat.” I have in mind jurists in Quebec and, even more so, jurists in Louisiana.<sup>26</sup> In both of these cases, the legal system in question

finds its roots and its foundations in the grand legal traditions of the civil law and the common law of which it is the mixed product by virtue of its history . . . [and, for that reason,] constitutes an ideal laboratory for the evaluation of the possibilities of a mixture of legal cultures by the intervention of the expression of these legal cultures in two languages [French and English], each intimately identified with only one of these two juridical traditions [(such as the French civil law)].<sup>27</sup>

In each of these jurisdictions, the source language was French and the target language English. In the case of Louisiana, the endeavor of creating a “civil law in English” out of French legal materials has been met with “success.” This success is in the sense of providing a workable legal vocabulary of the civil law in English that causes no confusion—for the past 200 years.<sup>28</sup>

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26. Though this is perhaps not so obvious, the Scottish jurists should be added to this list as well. It is well known that Scotland is a “mixed” jurisdiction, and that its private law is rooted as much in the civil law of Europe as in the common law of England. What is not so well known, however, is that Scottish “civil law” has significant connections with and has been, at points, heavily influenced by French civil law. Vernon Valentine Palmer, *Preface*, in 6 MIXED JURISDICTIONS COMPARED: PRIVATE LAW IN LOUISIANA AND SCOTLAND ix–x (Vernon Valentine Palmer & Elspeth Christie Reid eds., 2009).

27. *Maux des Mots*, *supra* note 3, at 822 (Author’s translation). In context, Professor Levasseur, in making this characterization, speaks of the Louisiana legal system only. *See id.* But the characterization fits the legal systems of Quebec and Scotland as well.

28. *Id.* at 822.



For these reasons, Professor Levasseur, in conducting all of his translations of French civil law texts into English, has begun by looking to the “brother—or cousin—juridical systems [to the French legal system] which have themselves been called either to write their civil codes in parallel English–French versions or to translate their law from their national juridical language into another juridical language, English in particular.”<sup>29</sup> In so doing, he has discovered among these jurisdictions a sizeable common French-to-English lexicon. Citing Quebec and Louisiana, he notes that in both jurisdictions, “*solidarité*” is rendered as “solidarity,” “*confusion*” as “confusion,” “*terme*” as “term,” and “*compensation*” as “compensation.”<sup>30</sup> For each of these French civil law terms, Professor Levasseur has incorporated precisely these English renderings into his own translations.

That Professor Levasseur would adopt this maxim—he calls it his “first objective”<sup>31</sup>—for his translation work makes perfectly good sense, given the objectives he seeks to achieve through that work. Recall that those objectives include meeting the needs of “monolingual” researchers who are called upon to conduct research into the meanings of terms used in the texts he translates, but who, because they know only English, would be limited to English-language civil law materials produced in jurisdictions like Quebec or Louisiana. If such a researcher is to have any hope of locating the pertinent materials (thanks to the way in which they will have been indexed), then the English translation of the French text in question must use the terminology that is used in those English-language civil law materials that have already been created. Beyond that, recall Professor Levasseur’s objective of making a significant and salutary contribution to the ongoing development of the “civil law in English.” To that end, the translation must be written so as to cohere terminologically with earlier translations and, moreover, must be technically precise as opposed to merely “approximate.” Using the terminology that has already been used in earlier translations in Quebec and Louisiana furthers that goal. Regarding accuracy and precision, it seems reasonable to assume that if others have already produced a translation that has proven to be workable over an extended stretch of time—in the sense that it has been used time and again without creating confusion or misunderstanding—then that translation is precise enough.

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29. *Id.* at 841 (Author’s translation).

30. *Id.* at 842–43.

31. *Id.* at 841.

2. Use “Legal” Cognates and Even “Common Language” Cognates in the Target Language, Provided They Are Closely Related in Meaning to the Terms of the Source Language

A “cognate” is a word that is “related” to another “by derivation, borrowing, or descent,”<sup>32</sup> and as a result, by morphology. Cognates are often, though not always, related in meaning. For example, the English word “professor,” the French word “*professeur*,” the Spanish word “*professor*,” the Italian word “*professore*,” and the Portuguese word “*professor*” are cognates, having ultimately derived from the Latin word “*profiteri*,” which means to “declare publicly.”

For many legal terms in one language, there are often cognates in other languages. The more closely related the languages, the more likely this is to be. In many instances, these cognates are, like the terms to be translated, legal terms themselves. Examples include the English “contract,” the French “*contrat*,” the Spanish “*contrato*,” the Italian “*contratto*,” and the Portuguese “*contrato*.” Among legal cognates such as these, the meanings of the terms are almost always closely related to each other. For that reason, the choice of such a cognate by a translator is often not only a “safe,” but also the “ideal” choice.

In other instances, however, the cognate is not a legal term at all but rather merely an “ordinary” term—a term of the common “everyday” language. In many instances, the meanings of cognates of this kind may be much the same. Only when their meanings are the same are the cognates worthy candidates for use in translation. And they may even be preferable where, for whatever reason, either no analogous legal term exists in the target language or for some reason the legal term is a less than ideal choice.

In his work translating French civil law texts into English, Professor Levasseur has made frequent use of legal cognates. Beyond that, however, he has often had recourse to ordinary cognates. Examples include the very terms that, in my explication of the first maxim, we found have been used in the English translations of certain French civil law terms in both Quebec and Louisiana.

In each of these instances, Professor Levasseur contends that the close relationship between the meaning of the legal French source term on the one hand, and the ordinary English cognate on the other, helps to justify the choice. As he has stated in defense of his choice of “solidarity” for “solidary,” as opposed to the analogous common law term “joint and several”:

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32. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 241 (11th ed. 2003).

Doesn't the word "solidarity" exist in the ordinary, common, usual English language? We can read the following definition in Webster's New World Dictionary (not a legal dictionary!) of solidarity: "combination or agreement of all elements or individuals, as of a group; complete unity, as of opinion, purpose, interest, feeling, etc.[.]" Notice the simple, common words "agreement of all individuals" and "complete unity, as of purpose, interest"; aren't these word fitting perfectly the civil law understanding of "solidarity"? So why resort to the common law words of "joint" and "several" which are referring to concepts with different legal regimes and different legal effects from the regime and effects of 'solidarité'?<sup>33</sup>

The same could be said of the other common ordinary English cognates he has chosen to use: "confusion," which means the act of mixing up disparate things;<sup>34</sup> "term," which means "limited and definite extent of time"—particularly "the time for which something lasts";<sup>35</sup> and "compensation," which can mean "to offset" or "counterbalanc[e]."<sup>36</sup> In each case, the meaning of the ordinary English cognate matches the meaning of the translated French legal term well.

Given the objectives at which Professor Levasseur has taken aim in his translation work, it is no surprise that he has adopted this second maxim. First, this maxim furthers his objective of assisting the multilingual jurist who finds himself needing to conduct research into the meanings of terms used in a translated French text. He makes this point in relation to the translation of "*solidarite*":

Thus, if, for example, we translate the word "*solidarité*" by "solidarity," this jurist, starting from the word of the current English-language word "solidarity," but a word [also] intentionally juridicized under the same word "solidarity" so as to become the juridical equivalent of "*solidarité*" in the civil law, could very easily find "*solidarité*" in the index of a work of French or Quebec doctrine. His research into French law or Quebec law would then

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33. *Ruminations*, *supra* note 3 (manuscript at 2); *see also Approach*, *supra* note 3, at xiv (singing the praises of the "common ordinary English word 'solidarity'").

34. *See* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *supra* note 32, at 262 (defining "confusion" and "confuse").

35. *Id.* at 1289.

36. *Id.* at 253.

be teleguided and would conduct him logically and directly to his objective.<sup>37</sup>

The same is clearly true of the cognate terms “confusion,” “term,” and “compensation”: for the researchers in question, these terms have the same kind of research-directing utility as does “solidarity.”

Second, this maxim, when judiciously applied, also furthers Professor Levasseur’s objective of making a worthwhile contribution to the ongoing development of the “civil law in English.” As we have seen, one measure of what is worthwhile in this context is “coherence”—that is, that the translation be consistent in terminology with prior translations. So far as prior translations of French civil law terms into English, in particular, those conducted by translators in Quebec and Louisiana, have relied heavily on cognates, the use of cognates by the contemporary translator will tend to promote the desired consistency. Further, because these cognate-heavy translations of the Quebeckers and Louisianans have been used successfully, causing neither confusion nor misunderstanding for many years now, there is at least some reason to believe that contemporary translations that employ these same cognates will be accurate and precise. As we have seen, these contemporary translations must be characterized by accuracy and precision if they are to contribute positively to the ongoing development of the “civil law in English.”

### 3. Look Out for “False Friends”

“False friends” (in French, “*faux amis*”) is the term of art used by linguists to refer to words in one language that bear a morphological resemblance to words in another language but that do not actually have the same meanings. A classic “common language” example is “sensible,” which means “reasonable” in English but “sensitive” in both French and Spanish.

When translating from one legal language into another, one commonly encounters a number of these *faux amis*. Professor Levasseur’s favorite example is the French term “*bonne foi*,”<sup>38</sup> the literal English translation of which is “good faith.”<sup>39</sup> Noting that the translators of both the Louisiana

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37. *Maux des Mots*, *supra* note 3, at 843 (Author’s translation).

38. *Id.* at 848–51; *L’art de la Traduction*, *supra* note 2, at 36–37.

39. Another good example, one that is much easier to explain than the example of “*bonne foi*,” is “*l’exécution du contrat*,” which literally translated would be “the execution of the contract.” For most English-speaking common lawyers, the primary signification of “execute” when used in connection with “contract” is to “create,” to “establish,” to “enter into,” or, still more concretely,

Digest of 1808 and the current Quebec Civil Code contented themselves with just this translation, Professor Levasseur offers this critical assessment of that choice:

It would appear that the translator ought to have no problem translating *bonne foi* by good faith and that a common law jurist ought to feel at ease discussing this concept with his civilian colleague, during, say, the negotiation of a contract. Nevertheless, these two jurists will very quickly discover that the English language in current use and, in part, the juridical language of the common law has led them into error.<sup>40</sup>

The cause of this error, as Professor Levasseur goes on to explain, is that the “*bonne foi*” of the civil law and the “good faith” of the common law have rather different significations.<sup>41</sup>

Professor Levasseur founds his defense of this “different significations” thesis on two sources: first, official commentary on the Article of the Principles of the European Law of Contract that pertains to “good faith” and, second, well-known commentary on the common law of contracts. Regarding the former, he writes:

[A] commentary . . . under Article 1:201 of the Principles [states] that “In English, *good faith* designates a state of mind: the will to act honestly and equitably; it is a subjective notion . . . . Fair dealing signifies the fact of acting with loyalty; it is an objective criterion.” . . . And the “note” under this article 1:201 adds, in the same order of ideas, that “the principle of good faith is recognized or at least observed in all of the countries of the European Union to the extent that it defines a model of contractual conduct. There is nevertheless a considerable difference between the different legal systems in that which concerns the extent and the force of penetration of the principle. An . . . extreme situation is constituted by the legal systems (English and Irish) that do not recognize a general duty of the parties to conform themselves to good faith but which, in numerous hypothetical cases, reach, thanks to particular rules, results that good faith also imposes. . . . The Common law

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to “draw up” and to “sign.” For French-speaking civil lawyers, however, the primary signification of “execution” in this context is that of “carrying out” or to “perform.”

40. *Maux des Mots*, *supra* note 3, at 849 (Author’s translation); *see also L’art de la Traduction*, *supra* note 2, at 36.

41. *Maux des Mots*, *supra* note 3, at 849–50; *L’art de la Traduction*, *supra* note 2, at 36–37.

of England and Ireland do not recognize any general obligation to act in conformity with the requirements of good faith in the performance of the contract.”<sup>42</sup>

And these are his remarks on the common law of contracts:

The English authors Cheshire and Fifoot devote only three-quarters of a page to “good faith” and, from the outset, pose this question: “Do the parties owe to each other reciprocally a duty to negotiate in good faith? . . . are they duty-bound to perform the contract in good faith?” Their response, as brief as is their treatment of good faith, is the following: “up until recently, English jurists would not even pose these questions or, if they posed them, they would have responded somewhat cavalierly ‘of course not.’” In “The Law of Contract” by [English common law scholar G.H.] Treitel, good faith does not even appear in the index. . . . The great American comparativist who has recently died, Allan Farnsworth, wrote that the “concept of good faith plays a fundamental role in the law of contract of the civilian legal system. . . . English law, in opposition to the civilians, categorically refuses to recognize such a duty of good faith. The common lawyers at the meeting of UNCITRAL,<sup>43</sup> ill at ease with the civilians’ relatively vague and vast concept of good faith in the performance of contracts, refused to include in the Vienna Convention a disposition that imposed good faith in the performance of obligations. The civilians stood their ground, determined to make their point of view prevail [and ultimately succeeded] . . . .”<sup>44</sup>

Boiled down to its essentials, then, the difference between civil law “good faith” and common law “good faith” can be stated as follows: “[T]he law of the common law makes a distinction between ‘good faith’ and ‘fair dealing,’ whereas in the French civil law tradition the principle of ‘*bonne foi*’ is more equivalent to the ‘duty of loyalty,’ [that is,] ‘fair dealing’ under the law of the common law.”<sup>45</sup>

For these reasons, Professor Levasseur insists that it is “difficult[], indeed, impossibl[e]” for his two hypothetical jurists—the one English-

42. *Maux des Mots*, *supra* note 3, at 849 (Author’s translation); *see also L’art de la Traduction*, *supra* note 2, at 36.

43. Acronym for “United Nations Commission on International Trade Law.”

44. *Maux des Mots*, *supra* note 3, at 850 (Author’s translation); *see also L’art de la Traduction*, *supra* note 2, at 36–37.

45. *Maux des Mots*, *supra* note 3, at 849 (Author’s translation).

speaking and employing the term “good faith,” the other French-speaking and employing the term “*bonne foi*”—“to understand each other.”<sup>46</sup> Thus, “good faith” is a less than optimal rendering of “*bonne foi*.” What would be a better rendering? Professor Levasseur answers that question with another, this one rhetorical: “Should one then translate the ‘*bonne foi*’ of the civilian by the ‘good faith and fair dealing’ of the common law so as to be sure to communicate all of the cultural content of *bonne foi*?”<sup>47</sup>

Professor Levasseur’s use of this maxim of interpretation—avoid false friends—finds its justification in his objective of making a positive contribution to the development of the “civil law in English.” Whatever else such a positive contribution might be, it should be one that is laser-fire accurate and precise. Now, imagining any move in legal translation that could have a more deleterious effect on accuracy and precision than the use of a false friend is difficult; indeed, false friends are, by definition, inaccurate and imprecise. If the goal is to build up the “civil law in English” well, then English translations of foreign language civil law texts must steer wide and clear of them.

#### *4. Use Equivalents, Especially “Rough Equivalents,” with Extreme Caution*

An “equivalent” of a term in one language is a term in another language, that, though different from the former in etymology and morphology—in other words, the terms are not cognates—still has more or less the same meaning.<sup>48</sup> A simple common language example is the English term “book” and the French term “*livre*.”

In many cases, the use of equivalents in legal translation raises no concerns whatsoever. Professor Levasseur himself has made considerable use of equivalents in his own translation work. For example, he has rendered the French civil law term “*vente*” by means of the equivalent English common law term “sale”; the French civil law term “*rente*,” as used in the expression “*rente viagère*,” by means of the equivalent English common law term “annuity”; and the French civil law term “*propriété*” by means of the equivalent English common law term “ownership.”

But there are other cases in which the equivalent makes for a less than ideal translation choice, Professor Levasseur argues. Abstracting from his writings on this matter, one can identify at least three such cases.

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46. *Id.* (Author’s translation).

47. *Id.* (Author’s translation).

48. See 5 THE OXFORD ENGLISH DICTIONARY 359 (2d ed. 1992) (definition B.2).

The first case is that in which the term of the source language in question has cognates in languages other than the target language—languages that may perhaps be more closely related to the source language than is the target language. Those cognates are themselves legal terms used in the law of the jurisdictions in which those languages are spoken. Oftentimes, scholars working in those other languages will have produced works, using those cognates that explain the common legal concept behind them. When that is the case, as Professor Levasseur correctly notes, using the target language equivalent to render that term may produce problems for his “first class of researchers”—the multilinguals.<sup>49</sup> The equivalent term—precisely because it is an equivalent and not a cognate—will not point the way to that research.

The second case where an equivalent is not an ideal choice is that in which the term of the source language in question has a cognate in the target language, earlier translators chose to render the term using that cognate rather than the target language equivalent, and legal scholars, working in the target language, have already produced works using this cognate that explain the concept behind the term. When that is the case, as Professor Levasseur rightly observes, using the target language equivalent to render that term may produce problems for his “second class of researchers”—the monolinguals.<sup>50</sup> In this case as in the first, the equivalent term is an obstacle, not an aid, to legal research.

The third and final case, which is rather different from the other two, is that in which the equivalent of the term to be translated is simply “too rough” an equivalent to do the job. In other words, the variation in meanings between the term to be translated and its equivalent is just “too great.” Determining when the equivalent is “too rough,” as Professor Levasseur acknowledges, is a “judgment call.” But he offers some helpful guidance for making that call. First, if the scope of the equivalent and that of the term to be translated are notably different—for example, if one covers a range of legal phenomena (legal facts or acts) that the other does not—then the equivalent may not be the best choice. Second, an equivalent whose meaning is uncertain—for example, where the term is vague or ambiguous or polysemic—should probably be avoided. Third, if the equivalent has a cognate in the target language, the meaning of which is

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49. Recall that “multilinguals” are those who, after reading the translation in the target language, might have needed to research the concept behind the term by looking to scholarly works that have been written in one of those other languages, works that may use cognates.

50. Recall that “monolinguals” are those who, after reading the translation in the target language, might have needed to research the concept behind the term by looking to those scholarly works that have already been written in the target language.



significantly different from that of the term to be translated, the equivalent should almost certainly not be used. Finally, if concepts that lie behind the two terms—the term to be translated and its equivalent—have fundamentally different natures because each, within the distinctive legal culture of which it is a part, has undergone a radically different line of conceptual development over the course of its history than has the other, then the translator might be well-advised to find a substitute for the equivalent.

Of the dangers posed by the use of equivalents in these three kinds of cases, Professor Levasseur offers up two examples: the rendering of the French civil law term “*violence*” as the common law term “duress” and that of the French civil law term “*solidaire*”—adjectival form of “*solidarité*”—as the common law term “joint and several.”

a. “Violence” as “Duress”

The first example involves the translation of “*violence*” into “duress.” One cannot deny that some affinity exists between the French civil law term “*violence*” and the common law term “duress.” No one who has studied both the French law of contracts and the common law of contracts could possibly fail to notice the relationship between the two: the content of the underlying concepts is similar (overbearing of the will of a contracting party) and the effects of the two institutions are largely the same (in the civil law, some kind of “nullity”; in the common law, some kind of “voidness”). For that reason, the two terms are rightly treated as at least “rough” equivalents.

Even so, Professor Levasseur rightly maintains that “duress” is less than the ideal choice—indeed, is a poor choice—for rendering “*violence*.” The common law concept of “duress,” as he correctly notes,

has greatly evolved in the course of the last decades so as to pass from the use of force or of the threat of use of force with the intention of causing some physical harm to the person of the co-contracting party to [include] illegal threats to . . . cause some economic or financial harm to a co-contracting party. [Therefore,] the essential compositional element of the notion of duress is the recourse to physical force or to threats of having recourse to physical force. The common law qualifies this element as coercion which must cause the co-contracting party to be afraid, [that is,] that he be conscious of the fact that he contracts under the influence of fear and not of error.<sup>51</sup>

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51. *Maux des Mots*, *supra* note 3, at 852 (Author’s translation).

The French civil law concept of “*violence*” certainly includes all of this, but also includes a good bit more:

[S]ituations that . . . would be qualified as [involving] harm of a moral [or psychological] order or moral [or psychological] constraint, as is the case with “persons who, be it naturally or be it when they find themselves in certain particular circumstances, present a certain peculiar weakness and can easily be victims of unscrupulous co-contracting parties.” . . . [S]ituations where there would be no threat of recourse to physical force but simply a power of persuasion by one party over another because of the fact that one party is in a position of economic dependence vis-à-vis the other party or in a position of domination by one over the other.<sup>52</sup>

As Professor Levasseur correctly notes, when the common law tradition decided that victims of these “non-threatening” situations should also be protected against the overbearing of their wills, the “equity courts” were tasked with devising the new concept of “undue influence” to do the job, inasmuch as the concept of “duress,” limited as it was, could not do so.<sup>53</sup>

For these reasons, Professor Levasseur argues, some word other than “duress” must be found to render “*violence*.” In his view:

[Translating “*violence*” as “duress” constitutes] at once a betrayal of the concept of violence which is known to the civilian and of the concept of duress which is familiar to the common law jurist. In order to be as close as possible to the legal tenor of the concept of violence in the civil law, the translator would have to associate duress to undue influence by creating a single concept on the basis

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52. *Id.* at 852–53 (Author’s translation).

53. *L’art de la Traduction*, *supra* note 2, at 39; *see also Maux des Mots*, *supra* note 3, at 852–53. There is a second problem with rendering “*violence*” as “duress,” one that, though left unmentioned by Professor Levasseur, still supports his position. That problem is a difference in legal effects. Under the civil law of France (as under that of Louisiana), the sanction for “*violence*” is the “relative nullity” of the contract, a civil law term that corresponds, at least roughly, to the common law term “voidable.” Under the common law, by contrast, the sanction for “duress” is sometimes that the contract is “voidable,” but at other times that the contract is “void,” a common law term that corresponds, at least roughly, to the civil law term “absolutely null.” What makes the difference at common law is the severity of the duress.

of these two words of the legal vocabulary of the common law [for example, “undue threats/influence”].<sup>54</sup>

Professor Levasseur does not, however, recommend such a course of action. To the contrary, following his first and second rules of thumb, he proposes using the ordinary English cognate term “violence,” which is precisely the same term that has always been and still is used in Quebec<sup>55</sup> and was used in Louisiana from 1808 to 1984.<sup>56</sup>

b. “Solidaire” as “Joint and Several”

If Professor Levasseur, in his capacity as legal linguist, has a *bete noire*, it is the translation of the French term “*solidaire*” as “joint and several.” On every occasion on which he has written about legal translation—including even the piece that concerns translating the law of “procedure”—he has not merely spoken against, but often passionately denounced this translative *faux pas*.

Even Professor Levasseur, however, would acknowledge that such a translation is not *entirely* without merit. There are, after all, undeniable linkages between the two terms, especially in the effects that the respective legal institutions which they express produce. For example, whether it’s a case of “solidary” debtors under French civil law or of “joint and several” debtors under common law, the creditor can demand payment of the entire debt from any one or more of the debtors.

But “entirely without merit” is one thing and “ideal” quite another. And in Professor Levasseur’s view, the translation in question—“joint and several” for “*solidaire*”—is far from the ideal. He offers several reasons in support of this opinion.

Part of the problem lies in the constituent elements of the composite term—“joint and several”—that is, in “joint” and in “several.” In the course of the historical development of the common law, each of these terms has become polysemic—in other words, has acquired multiple meanings. On this score, Professor Levasseur quotes at length and with approval the account of these multiple meanings that was once penned by the great Louisiana jurist Justice Albert Tate:

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54. *Maux des Mots*, *supra* note 3, at 853 (Author’s translation); *see also L’art de la Traduction*, *supra* note 2, at 39.

55. *Maux des Mots*, *supra* note 3, at 851, 853.

56. *Id.* at 851.

[T]he common-law concepts of “joint” and of “several” obligation differ distinctively from the Louisiana concepts denoted by the identical terms.

The several obligation of the common law could not only be the legally independent promises of two obligors to perform separate and distinct acts (as with the several obligor of the Louisiana civil law); it could also denote separate promises by two obligors for the same performance (as in the Louisiana solidary obligation). The joint obligation of the common law referred primarily to the ancient necessity to join all joint obligors in the same suit to enforce the obligation (as with Louisiana joint obligors); but it also included the concept that all joint obligors could each be bound for the entire performance to the obligee (rather than only for his proportional part, as with the Louisiana joint obligor).<sup>57</sup>

To render a French civil law term by means of a common law equivalent, the meaning of which is as confused as are those of “joint” and “several,” Professor Levasseur maintains, is to translate badly.

On top of this problem of polysemism, Professor Levasseur notes another issue: for each of these terms, one of its variant significations is fundamentally different from that of the correlative French or English civil law cognate or equivalent. Consider, for example, “joint” in the sense that each of the “joint debtors” is bound for the entire debt to the creditor (the second sense of “joint” in the order enumerated by Justice Tate). In the civil law, the cognate of “joint,” which is “*conjointe*” in France and Quebec or simply “joint” in Louisiana, has a very different connotation. Indeed, one might say the opposite sense, for a “conjoint obligor” is bound only for his *portion* of the entire debt.<sup>58</sup> Next, consider “several” in the sense of “several obligors” who make separate promises to pay the same debt (the first sense of “several” in the order enumerated by Justice Tate). In the civil law, “several,” which is “*separé*” (or “*separatim*”), does not mean this at all, but rather something very different: in “*obligations séparées*,” each obligor is liable separately from the others to pay a debt that is distinctive from that of the others.<sup>59</sup> In Professor Levasseur’s sensible opinion, to translate a French civil law term by means of a

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57. *Wilks v. Allstate Ins. Co.*, 195 So. 2d 390, 397 (La. Ct. App. 1967) (citations omitted). Professor Levasseur quotes this passage from *Wilks* in two of his pieces. *Maux des Mots*, *supra* note 3, at 858; *L’art de la Traduction*, *supra* note 2, at 40.

58. *Maux des Mots*, *supra* note 3, at 856–57.

59. *Id.* at 857–58.

common law equivalent that itself has a civil law cognate or equivalent and beyond that, one that means the opposite of the original French civil law term, is to invite confusion and for that reason alone is undesirable.

These problems are not solved simply by cumulating the two terms in the composite formula “joint and several,” Professor Levasseur contends. To the contrary, the problems are to some degree exacerbated. That is because, depending upon which sense of each term one takes, the conjunction of the two can produce a contradiction. On this point, he quotes with approval from the Private Law Dictionary and Lexicons of the Quebec Research Center of Private and Comparative Law:

[T]he union of the words *joint* and *several* is a contradiction in terms. In fact, “joint obligations” like “several obligations” are obligations in which several debtors are bound among themselves, but in the “joint” obligation, one debtor is bound to execute his part or portion of the obligation, whereas in the obligation called “several” each of the debtors is bound to perform the totality of the obligation.<sup>60</sup>

Professor Levasseur maintains—and on this point, no rational person could disagree—that self-contradictions do not make for ideal translations.

Even if all of these problems with using “joint and several” to render “*solidaire*”—the problems of polysemism and multiple contradictions at multiple levels—could be brushed aside, that choice would still remain problematic, Professor Levasseur insists, because of a reason that is far more fundamental than the others. That reason has to do with what might be called the natures or conceptualizations—of the concepts that lie behind the respective terms “*solidaire*” and “joint and several.” These are natures that, in the case of each of the terms, have been shaped by the unique historical development of each concept within the distinctive legal culture of which it is a part. According to Professor Levasseur:

A comparativist jurist wells knows that . . . solidarity is an institution of the *substantive* civilian subjective law or a “determinative” right and is not at all the equivalent of “joint and several” which forms a part of the sanctionative law, the law of the second degree, the law of procedure and of the courts.<sup>61</sup>

Expanded somewhat, his point is this: on the common law side, the terms “joint,” “several,” and “joint and several” all grew out of the English

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60. *L'art de la Traduction*, *supra* note 2, at 40 (Author's translation); *see also Maux des Mots*, *supra* note 3, at 858 n.122.

61. *Réflexions*, *supra* note 3, at 11 (Author's translation).

law of procedure that was concerned with who must be joined in a lawsuit—what would now be called the law of joinder. Those involved in the development of these notions gave little, if any, thought to the substantive legal relationship obtained by the persons to be joined or the substantive legal rights enjoyed by the “joiner” (in this case, the creditor) or the substantive legal duties that weighed on those who had to be or might be joined (in this case, the debtors). And because no thought was given to these matters, these matters never entered into the conceptualization of the concepts represented by these terms.<sup>62</sup> On the French civil law side, things were much different. The term “*solidarité*” was always a part of the substantive law and had no procedural denotation or connotation. Built into the conceptualization of this term, then, were very precise notions of the substantive relationship among the debtors, of the substantive right of the creditor, and of the substantive duty of the debtors,<sup>63</sup> but not at all any notion of which debtors may or must be joined in the creditor’s suit.

In Professor Levasseur’s view, terms that are this different from each other in terms of their historically and culturally conditioned “natures” should not be used to render each other in translation. Doing so, he insists, is fraught with many dangers. Speaking in particular of the case of translation of French civil law concepts into English, he writes:

We consider that there would be a great danger for the integrity of the civil law if it were to be expressed in an English language that would keep its distance vis-à-vis the juridical concepts of the civil law by introducing some juridical concepts of the common law. That would inevitably lead to some insoluble conflicts . . . . In addition, another great danger would present itself under the form of a common law doctrine and a common law jurisprudence that

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62. In this respect, the concept behind the expression “joint and several” is very much part and parcel of the legal culture of the common law tradition in all of its distinctiveness. Regarding the cultural distinctiveness of that tradition, Professor Levasseur has written these words:

It is known that the juridical culture of the common law, since its formation on the job, on the ground, with its itinerant judges and, above all, . . . [its] writ system . . . , is a culture of procedure that is extremely technical, mechanical, indeed, rigid and very complex. . . . This explains why the legal language of the common law has been and still remains a language of procedure and of the “trial” and why the common lawyer is, before all else, a technician of procedure within the nets of which he seeks to immobilize the adverse party.

*Id.* at 13 (Author’s translation).

63. See *L’art de la Traduction*, *supra* note 2, at 39 (“For the Louisiana civil law, solidarity is concept of the *substantive* law.” (Author’s translation)).

would easily find respectability, for they could then present themselves as imitators of their French civilian pairs so as to be substituted for the these pairs in the eyes and in the minds of all of those would could neither read nor understand the civil law in his original and natural language . . . .<sup>64</sup>

“The danger of the repetition of such errors (which are fundamental because they betray the legal cultures of the two languages in question . . .),” he further writes, “is that, by being repeated, these errors will acquire the force of law under the form of *jurisprudence constante* or under the form of a precedent for our common law friends.”<sup>65</sup>

This methodological maxim—beware analogous legal terms that are mere “rough equivalents”—dovetails with Professor Levasseur’s objectives in legal translation. Consider his special objective of facilitating legal research into the meanings of the terms used in the French legal texts he has translated. Speaking in particular of the needs of his hypothetical “monolingual” researchers, he states:

The notion and layman’s word *solidarité* is, by tradition, civilian. The standard translation of this French word . . . is under the common law terminology of the combined words “joint and several.” Query: Where would an English-monolingual researcher . . . go to find the civil law understanding of “solidarité” if the only access key available to him/her is “joint and several”? What becomes of his access to the scholarly writings in English on the civil law (particularly by Louisiana civil law scholars) when all of these writings use “solidarity” and not “joint and several.” Our “English only or mostly” researcher will be left without any access to all of these civil law writings which are available.

The same is true of the civil law word and notion “*confusion*.” In the hands of common law lawyers, “*confusion*” becomes “merger.” If a researcher is only give the entry “merger,” he will be led to do . . . his research in “corporate law,” in the law of “mergers and acquisitions,”<sup>[66]</sup> but definitely not in the “discipline or field of the

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64. *L’art de la Traduction*, *supra* note 2, at 35 (Author’s translation); *see also Maux des Mots*, *supra* note 3, at 846.

65. *Réflexions*, *supra* note 3, at 11 (Author’s translation).

66. “In the American legal vocabulary, the word ‘merger’ would be equivalent to *fusion* (*corporate merger* or fusion of corporations) and not ‘confusion’ in the sense of the Civil Code.” *Maux des Mots*, *supra* note 3, at 837 n.45 (Author’s translation).

civil law.” As a result, the researcher will entirely miss the scholarly writings in English that have been devoted to the topic of and appear under the heading of “*confusion*.”<sup>67</sup>

Though I do not believe that Professor Levasseur has ever himself made this observation, the use of “rough equivalents” of the target language could also interfere with research by his hypothetical English-language reader who *can* read French or some other “civil law” language. Consider the case of an English lawyer reading through an English translation of a French legal text in which “*obligation solidaire*” has been translated as “joint and several obligation,” the concept underlying which happens to be the very one that he needs to research. Because he can read Spanish, he runs off to José Manresa’s magisterial commentary on the Spanish Civil Code, pulls out the index, and looks for something that strikes him as corresponding in Spanish to “joint and several,” such as “*conjunto y diverso*.” What does he find? Absolutely nothing. And why not? Because the material he is seeking is indexed under “*solidarias*.” The undeniable bottom line is this—using equivalents of the target language to render terms in the source language will often be a research stopper.

This maxim also furthers Professor Levasseur’s other special objective—to help build up a technically accurate and precise “civil law in English.” Like “false friends,” “rough equivalent” translations—especially when they are “too rough”—undermine accuracy and precision. This is because they produce merely “approximate” translations at best and “paraphrase” at worst. If the objective is a translation that hits the bull’s eye in terms of meaning, then “rough” is simply not good enough.

### III. CRITICAL EVALUATION

To my knowledge, no jurist anywhere has offered up any criticism whatsoever of Professor Levasseur’s *approach* to translation, at least not in its broad outlines. That is to be expected, as his approach—again, in its broad outlines—is what one might call “mainstream” and thus largely uncontroversial. His understanding of the relationship between legal language and legal culture, of what legal translations is, of what the ends of legal translation are, and of the appropriate means for realizing those ends is shared by nearly everyone in the field.

That does not mean, however, that Professor Levasseur’s work as a legal linguist has not been criticized. At least some aspects have been criticized. But that criticism has been focused not so much on his *method itself* as on his *application* of that method, in particular, his application of

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67. *Approach*, *supra* note 3, at xiv.



maxim number four—beware analogous legal terms that are mere “rough equivalents”—especially in connection with his application of maxim number two—use “legal” cognates and even “common language” cognates, provided they are closely related in meaning to the terms to be translated.<sup>68</sup>

The criticism to which I refer is directed against the rejection by Professor Levasseur of “joint and several” as a suitable translation for “*solidaire*”—for which he prefers the cognate “solidary”—and to a lesser extent, of “duress” as a suitable translation for “*violence*”—for which he prefers the cognate “violence.” In one case as in the other, the critics charge, Professor Levasseur’s proposed translations fail to perform what is the most basic function of legal translation for them: to communicate to the reader, immediately and without delay, the substance of the meaning of the translated term. As the critics correctly note, neither “solidary” nor “violence” is a technical legal term in the language of the common law, which is to say that, as far as English *legal* language is concerned, they are neologisms. For that reason, the critics say, a common law lawyer, judge, or scholar reading an English translation of a French legal text in which “*solidaire*” is rendered as “solidary” or “*violence*” as “violence” would have no immediate idea what the original text means. To the contrary, to get some such idea, the reader would have to drop the translation for a moment and run off to conduct some sort of research, if indeed the reader would have any idea where to start. On the other hand, if that same reader were to read “joint and several” (for “*solidaire*”) or “duress” (for “*violence*”) in his English translation, then he or she would have some idea, right away and without any need for further research, of what the original text means. Yes, the critics admit, this idea would be only “approximate” because, as they also admit and for the same reasons Professor Levasseur has elucidated, “joint and several” is not the “perfect equivalent” of “*solidaire*” and “duress” is not the “perfect equivalent” of “*violence*.” Still, the critics insist, “joint and several” and “duress” are close enough in meaning to “*solidaire*” and “*violence*,” respectively, to do the job.

Though reasonable minds may perhaps differ on this point, I find this criticism unpersuasive for two reasons. First, though some “research” might be required for the common law reader to make sense of terms like

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68. Some of this criticism, one must acknowledge, might be understood to go so far as to constitute a challenge to maxim number four. My impression, however, is that the elements of the criticism that might lend themselves to this understanding are in fact hyperbole uttered in the heat of polemical battle. Surely no one can object to maxim number four in the abstract. The real point of contention can therefore only be over how that rule is to be applied.

“solidary” or “violence” that he or she might find in a translation of a French legal text, that research could hardly be considered onerous or time-consuming. As I was writing up this part of this Essay, I decided to take a break to conduct a little experiment: sitting here in my study, with nothing at hand but my laptop to help me, how long would it take me to get a good idea of what “solidary obligation” means? So I got online, opened up “Google,” and typed in “solidary obligation.” At the head of the results, which were available to me in 0.49 seconds, I found a dictionary-type definition of “solidary obligation”—one that was fairly good as far as it went. I then “clicked” on the first result—a Wikipedia entry for “solidary obligation.” There then instantly opened up a page that provided a detailed, but manageably brief, account of the institution of solidarity—based, interestingly enough, mainly on Louisiana law source materials—that covered not only the concept itself but also most of its legal effects. I have to believe that our hypothetical common law reader, upon reviewing the information included on this webpage, would have in very short order gained a good grasp of “solidary obligation” and would have come away saying to himself, “Well, this is a lot like my ‘joint and several obligation’ in many ways, but in some other ways, subtly different.” And that, of course, is precisely the result to which Professeur Levasseur, through his rendering of “*solidaire*,” would want to lead his reader.

Second, though the translations touted by the critics—“duress” for “*violence*” and “joint and several” for “*solidaire*”—might be sufficient for some purposes, they are simply incapable of achieving the objectives that Professor Levasseur has set for his work of legal translation. Consider the first objective: facilitating legal research by the reader. As demonstrated earlier, translation filled with non-cognate, rough equivalent renderings like “duress” and “joint and several” will lead that reader to a blind alley. Consider the second objective: making a coherent, technically accurate, and precise contribution to the ongoing development of the “civil law in English.” Again, I have already shown beyond any doubt that a translation filled with non-cognate, rough equivalent renderings offers its users terms that, because they are approximations, fall short of providing the degree of technical accuracy and precision that speakers of the “civil law in English” require. For example, if some English lawyer, perhaps kicked back in his study somewhere in Oxford, sipping his evening brandy, just wants a “general idea” of what this or that passage in the French Civil Code means, then a duress-and-joint-and-several type translation—in other words, a paraphrase—will probably be good enough. If, on the other hand, an English lawyer in London who, in relation to some matter that arises at work, needs to know precisely what that same passage means so

that he can complete that work and cannot gain that knowledge without conducting some research, then a paraphrase will simply not suffice. Not only will the paraphrase fail to point the lawyer in the right direction with respect to that research, but it may also leave him or her with a false—at least in the sense of not being completely accurate—impression of the meaning of the passage. Professor Levasseur has designed his translations for precisely such “serious” (as opposed to “casual”) readers of French civil law texts—readers who need to conduct research or need to get at the precise sense of the original French text.

With that, we have taken care of the only criticism that, to my knowledge, has ever been lodged against Professor Levasseur’s approach to legal translation. But that, however, is not necessarily the end of the matter. Alongside the first group of critics, whose position might be characterized by saying that they believe Professor Levasseur has gone too far in his applications of the second and fourth maxims, it is possible to imagine another group of critics, very much opposed to the first, whose position might be characterized by saying that they believe he has not gone far enough. The charge, in short, would be this: Professor Levasseur has sometimes settled for a “rough” common law equivalent when he should instead have found some alternative, perhaps a cognate. Two possible illustrations spring to mind.

To render the French civil law term “*bail*,” Professor Levasseur has chosen the English common law equivalent “lease.” One might question this choice on the ground that in terms of their respective natures (or conceptualizations), *bail* and lease are very different beasts because each has undergone, within the distinctive legal system in which it came to be, a very different historical development from the other. Though there are other differences—for example, differences in legal effects—the most profound and perhaps best known is as follows: whereas *bail* creates between the parties what a civilian would call merely “personal” rights, lease creates between the parties what a civilian would call “real” rights. In other words, whereas lease gives the lessee a right in the thing leased, *bail* does not. It could be argued, then, that “lease” is simply “too rough” an equivalent of “*bail*,” and for that reason some other rendering should be found.<sup>69</sup>

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69. The reader may be surprised that, in conjuring up the case against rendering “*bail*” as “lease,” I did not include something along the lines of “such a rendering could interfere with the research that some of the researchers with whom Professor Levasseur is concerned—the multilinguists—might have wished to conduct in other foreign civil law languages.” That is because, in this instance, that argument will not fly, because the terms used in those other languages to render “*bail*” are not cognates but equivalents of it: in Spanish, “*arriendo*”; in

In translating the French civil law term “*société*,” Professor Levasseur has chosen the English common law equivalent “partnership.” This choice can be challenged, first of all, on the same ground as can the choice of “lease” for “*bail*,” namely, that the two have rather different natures or conceptualizations. In addition, the choice can be challenged on at least two other grounds. First, the two terms are different in terms of scope and, beyond that, “*société*” is, depending on how one chooses to look at it, either ambiguous or polysemic. In the common law, a sharp distinction—in terms not only of conceptualization, but also and even more so in terms of effects—is drawn between partnerships and corporations. Depending on how it is used and the context, the French civil law term “*société*” may refer to either a partnership or to a corporation or to both at the same time. Professor Levasseur’s own rendition of that term in his translation of *Vocabulaire Juridique*—“En. 2. Corporation, partnership, company”<sup>70</sup>—indicates as much. Second, rendering “*société*” as “partnership” could interfere with the research that some of the researchers with whom Professor Levasseur is concerned—the multilinguists—might have wished to conduct in other foreign civil law languages. That is because, in those other languages, legal scholarship pertaining to the concept that lies behind the French term “*société*” is written and indexed in terms of cognates of that term—for example, “*sociedad*” in Spanish—that bear no resemblance to “partnership.” Because that is the case, one could argue—along much the same lines as those given by Professor Levasseur for rejecting “duress” as a proper rendering of “*violence*”—that one should abandon the equivalent “partnership” in rendering “*société*” in favor of something else, perhaps the ready-made English language cognate “society.”

Like the first criticism, this one can also be answered. Professor Levasseur is hardly the only translator to have chosen to render “*bail*” as “lease” and “*société*” as “partnership.” To the contrary, every other translator who has faced that decision has made the same choice, including the translators of the first Louisiana Civil Code (the Digest of 1808) and of the Quebec Civil Code. As a result, the English language literature on the subjects of “*bail*” and “*société*” that has been produced in those two jurisdictions is all indexed under “lease” and “partnership,” respectively. Thus, to the extent that Professor Levasseur wishes to produce a translation that will direct researchers—in particular, the monolingualists—

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Italian, “*affitto*”; in Portuguese, “*arrendamento*.” Thus, even if Professor Levasseur had used, say, some English cognate of “*bail*” to render that term, it would have been of no help to this group of researchers.

70. DICTIONARY OF THE CIVIL CODE, *supra* note 4, at 527.

to pertinent English-language research materials, “lease” and “partnership” are good choices.

Still other considerations weigh in favor of Professor Levasseur’s renderings of “*bail*” and “*société*.” With respect to “*bail*,” whether there is an alternative rendering that might even be feasible is unclear. To be sure, cognates for “*bail*” exist in the English language namely, “bail” and “bailment.” Those cognates, however, have radically different meanings from “*bail*.” In the language of the common law, “bail” refers to “[a] security such as cash, a bond, or property; esp., security required by a court for the release of a criminal defendant who must appear in court at a future time”<sup>71</sup>—a criminal law concept. “Bailment” refers to “[a] delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose, usu. under an express or implied-in-fact contract”<sup>72</sup>—what a civil lawyer would call “deposit”—which, though a kind of contract at least, nevertheless is one that has only a superficial relationship to “lease.” With respect to “*société*,” Professor Levasseur has been careful to render it as “partnership” only where the term has been used in that context, as opposed to that of “corporation.” Where, in context, the term has been used instead in the sense of “corporation,” he has chosen that rendering instead.

In these two examples, we see displayed some of the inherent difficulties involved in practicing the “art” of legal translation. In relation to both “*bail*” and “*société*,” one can point to one or more of his “maxims” of legal translation to build a case for using something other than the common law equivalent, such as a cognate. At the same time, however, following those maxims to that conclusion could ultimately frustrate one or more of the particular objectives he hopes to achieve through legal translation. In such a case, the artist must make a judgment. In the two instances in question, the artist—Professor Levasseur—has chosen to go with his particular objectives. And I believe he has made the right call.

## CONCLUSION

This Essay has endeavored to provide an exposé of the approach that Professor Levasseur has taken to legal translation, an effort in which I dare to hope I have in some measure succeeded. This exposé has led the reader through the various elements of that approach: the understanding of the deep and intimate relationship between law and language that underpins his method of translation; his understanding of what legal translation is; the method itself, including his understanding of the proper objectives of

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71. BLACK’S LAW DICTIONARY 167 (10th ed. 2014).

72. *Id.* at 169.

legal translation, especially in the context of translations of French civil law texts into English; and his view of the proper means for pursuing those ends, which I have re-presented in the form of various “how to” maxims. Along the way of this exposé, I have shown that every single one of these elements of his approach is sound—that it rests on a foundation of clear thinking and prudent judgment—and that the application of his method in the course of many real-world translation exercises has produced laudable tangible results. For these reasons, Professor Levasseur very much deserves the title “legal linguist” in the most exalted sense of that term.

