

A Beginner's Course in Legal Translation: the Case of Culture-bound Terms

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Introduction

This paper outlines a course in legal translation, using culture-bound terms (also called 'culture-specific' terms) as a case study. Different types of equivalence are presented, followed by a discussion of their practical and ideological implications.

This course was devised for fourth-year French university students doing a master's degree in applied languages. The students have a firm grounding in general translation but have had only one semester of classes in specialised translation. They have little or no formal training in English or French law.

The translation course consists of an introductory lecture followed by twelve hours of seminars held over one semester. It is complemented by a nine-hour course that presents an overview of the English legal system and some aspects of comparative law. Authentic English-language documents (contracts, guarantees, judgments, summonses etc.) are studied and subsequently used as models for translation into English.

Aims and underlying principles

It would be unrealistic to expect such a short course to produce proficient legal translators, especially since the students will not necessarily go on to specialise in law. The aim is to provide an example of 'best practice' in specialised translation, presenting issues which are sometimes overlooked in traditional 'classroom translation'. These issues can be grouped under the heading of cognitive and communicative elements.

Cognitive elements mean being aware of the socio-cultural context in which both the source language (SL) and the target language (TL) texts are produced and received. The differences between common-law and civil-law systems are of particular relevance for French-English legal translation. Knowledge of these elements is checked at the stage of both comprehension and reformulation: students are asked first to explain potentially difficult concepts in the SL text, and then consult TL documents to be able to reformulate them in accordance with the conceptual and stylistic expectations of the target readership.

Communicative elements include taking into account the intended function of the target text and the nature of the addressee (*see* Gile 1995:21-48). It should be stressed that the function of the TL text may be different from that of the SL text. For instance, is a contract intended to achieve legal effects in the TL, or is it simply being translated for information purposes, e.g. for business people? Is the target reader a lawyer or layman, British, North American, continental European etc? It is not easy to illustrate such strategies in the artificial context of classroom translation,

where the target reader is in fact the teacher and the aim of the translation is not communicative but pedagogical. One solution is to encourage students to identify and justify their chosen strategy with reference to these variables and then discuss the implications of the various possible translations. The underlying assumption is that, once certain basics have been mastered, quality in translation is not a matter of ‘right or wrong’, but of using the appropriate strategy in a given communicative situation.

Principles in practice: translating culture-bound terms

Culture-bound terms refer to concepts, institutions and personnel which are specific to the SL culture. They are a useful means of implementing this approach since the various strategies used to reformulate them involve the cognitive and communicative elements just mentioned. Culture-bound terms thus illustrate aspects of both comparative law and translation techniques.

The introductory lecture outlines the specific nature of legal translation, in particular the fact that, since most legal concepts are the product of a national legal system, the terminology of different systems is ‘conceptually incongruent’ (Sarcevic 1997:232). The different ways of rendering the resulting culture-bound terms are explained and illustrated using examples from either translated or original texts. This is followed by a discussion in class of the advantages and drawbacks of each type of equivalence with reference to an assignment, thus adopting a reasoned approach to translation.

The four main techniques¹ may be placed on a continuum ranging from SL-oriented strategies to TL-oriented strategies (Figure 1), which mirrors the contrast between source- and target-oriented comparative law (Jamieson 1996). The term ‘equivalence’ does not imply one-to-one correspondence, but has the more pragmatic meaning here of a possible translation, the acceptability of which is subject to a number of variables.

1) *Functional equivalence* means using a referent in the TL culture whose function is similar to that of the SL referent.² Examples are: ‘the Cour d’Assises – roughly the equivalent of the English Crown Court’ (Chalmers 1994:15); *intime conviction* = *being satisfied beyond reasonable doubt* (Bridge 1994:173); *hypothèque* = *mortgage* (Bridge 1994:152). There will inevitably be connotational or denotational differences between the SL and TL term; the translator should be satisfied that the referents are sufficiently close for the purposes of the TL text.

Authors are divided over the merits of this technique: Weston describes it as the ‘ideal method of translation’ (1991:23), whereas Sarcevic claims it is ‘misleading and should be avoided in the translation of laws’ (1985:131). Experience shows that learners tend to overuse this device, no doubt because it is aesthetically satisfying and allows them to apply newly-acquired knowledge about the TL system. This can cause them to ignore potential dangers: for instance, the term *tribunal d’instance* can produce anomalies such as ‘Magistrates’ Court’ or ‘County Court’, which sound distinctly odd in the French context.³ This temptation is shared by dictionaries and vocabulary books, which sometimes offer incongruous or erroneous equivalencies such as *Garde des Sceaux* = ‘Lord Chancellor’; *avocat général* = ‘Queen’s Counsel’ (Gusdorf 1993:85).

Apprentice translators should double-check both denotation and connotation before resorting to a functional equivalent.

This technique is appropriate for the translation of texts intended for the lay reader (novels, general newspaper articles, political speeches etc.) in contexts where scrupulous accuracy is less important than fluency and clarity. However, in a document intended for lawyers, the technique can be misleading. Most authors do not define criteria for determining the acceptability of a functional equivalent (but see Weston 1991:23; Sarcevic 1985). A straightforward test for learners is back translation: for instance, the term *Crown Court* is potentially ambiguous as it could be back translated as either *Cour d'assises* or *tribunal correctionnel*, hence the need to reproduce the French term in the TL version (as in the example above).

Even where back translation produces the original term, the two referents may be too far removed from a lawyer's point of view: for instance, the powers and importance of the French *juge d'instruction* far outweigh those of an English examining magistrate, however tempting (and, in this case, well-established) the equivalent may seem. Thus, while the functional equivalent *examining magistrate* is acceptable in a text targeted at the layman (Gusdorf 1993:85) and is sometimes used by specialists (Kock & Frase 1988:3; Vogler 1989:8), the 'descriptive translation'⁴ *investigating judge* is generally preferred in a legal context (Weston 1991:132; Dadomo & Farran 1993:69; Bridge 1994:177). Similarly, the concepts of *intime conviction* and 'being satisfied beyond reasonable doubt' reflect different standards of proof (Didier 1991:39; Chalmers 1994:16),⁵ and the civil-law *hypothèque* applies only to 'immovable property' (i.e. real estate) and does not involve transfer of ownership, unlike a mortgage (Lauzière 1979:113).⁶

Conversely, although there are conceptual and procedural differences between apparent equivalents such as *droit administratif* = *administrative law*, *droit constitutionnel* = *constitutional law* or *règle de droit* = *legal rule*, it is unduly pessimistic to conclude that such words are 'untranslatable' (David & Jauffret-Spinosi 1992:273). If this were the case, the same would logically apply to everyday words such as *bread*, *coffee* or *cheese*, which do not evoke the same 'mental image' in English and French. In practice, given the unambiguity of such terms, it seems sensible to use a functional equivalent (see Dickson 1994), mentioning differences in brackets or a footnote where necessary.

Another possible objection to this technique is that a term such as *Crown Court* is meaningful only to a British reader. Similarly, the term *felony*, offered as an equivalent of the French category of *crime* (Kock & Frase 1988:1), is still used in the US but is an anachronism for a British reader (it is also inaccurate in that only more serious felonies would correspond to French *crimes*). Given that functional equivalence in fact consists of substituting one culture-bound term for another, reference to the TL legal system must be adapted to the intended receiver(s), which may prove unworkable if the readership encompasses several nationalities.

There is an ideological and political dimension to functional equivalence in that it implicitly asserts the pre-eminence of the TL culture over the SL culture, presupposing that a foreign legal system is best perceived through the perspective of one's own system. Where the TL is a

dominant language, functional equivalence can be viewed as a form of ethnocentrism or even cultural imperialism, obscuring rather than elucidating the primary source.

Paradoxically, the reverse is true in post-colonial societies, where functional equivalence is a means of affirming national language consciousness. The best-documented example is the bilingual and/or 'bi-legal' provinces of Canada, where official translation services have sought to adapt common-law notions to the civil-law tradition of French whilst at the same time respecting the 'genius' of the French language (Covacs 1982; Bastarache & Reed 1982). Legal translation is seen in this context as a way of emancipating and revitalising a minority language (Gémar 1995:7-28). TL-oriented strategies such as functional equivalence are the preferred method: for instance, the archaic French word *fiducie* has been officially adopted in Quebec and New Brunswick as an equivalent of a trust (Didier 1991:26-7). The Canadian situation is apparently unique in that the courts interpret even functional equivalents in the sense of the SL legal system (Sarcevic 1997:248), reflecting the widespread acceptance of this technique. However, this strategy cannot be adopted wholesale by translators working in a different socio-political and legal context.

2) *Formal equivalence* or 'linguistic equivalence' means a 'word-for-word' translation, e.g. *Conseil constitutionnel* = *Constitutional Council* (Cairns & McKeon 1995:109); *notaire* = *notary* (Dickson 1994:33). A number of formal equivalents are also functional equivalents since they correspond to institutions which exist or have existed in the TL culture (e.g. *Court of Appeal*, *Assize Court*, *police court*). Such 'coincidences' are due to the cross-fertilisation of English and French law over the centuries. In other instances, this process can involve naturalisation of a SL term, e.g. *contraventions*, *delicts* (Kock & Frase 1988:1 *et seq.*).⁷

The merits and demerits of formal equivalence are in many ways the mirror-image of those applying to functional equivalence. In a text intended for the lay reader, such resolutely TL-oriented terms may appear stilted and at times obscure; but the meaning is generally clear to lawyers, especially given the influence of French on legal English. Furthermore, such terms are referentially unambiguous, easily passing the test of back translation. This helps readers recognise the term if they need to consult a SL document or the work of another translator.

Authors differ over the acceptability of instances of formal equivalence, especially when they involve naturalisation. The equivalence *Cour de cassation* = *Court of Cassation* is used by a number of authors (Kock & Frase 1988:4; Dadomo & Farran 1993:82) and justified by Weston on the grounds that the term 'cassation' has existed in English for centuries (1991:30). However, this translation is dismissed as 'totally meaningless to the reader' by Cairns & McKeon (1995:201), who suggest 'supreme court of review within the ordinary legal system'. Their solution can be adopted as a gloss but not as an autonomous term, making it necessary to add the French term.

Since a formal equivalent can be a neologism, apprentice translators should check the term in a reliable source. This will help to avoid calques such as *preventive detention* for *détention préventive*⁸ (*The Economist*, May 15 1999:18) or *Correctional Court* for *tribunal correctionnel* (Kock & Frase 1988:2; Vogler 1989:6).⁹ The other danger of formal equivalence is *faux amis*,

which are legion in French-English legal terminology (Harvey 1997:102-121) and sometimes crop up in specialised works, e.g. *droit commun* = *common law* (Le Docte 1987:241; David & de Vries (1958:91); *Haute Cour de justice* = *High Court of Justice* (David & de Vries 1958:35; Blanc-Jouvan & Boulouis 1972:49).¹⁰

Ideologically speaking, formal equivalence is in keeping with the dogma, long imposed on legal translators, of literal translation or adherence to the letter rather than the spirit (Sarcevic 1997:23-41). This quasi-mystical respect for the word, reminiscent of the original method of Biblical translation, contrasts with the recent move in some bilingual countries towards co-drafting (*see* Covacs 1982; Sarcevic 1997:45-53). It can however be argued that, compared to functional equivalence, formal equivalence implies greater respect for the SL system, presenting it on its own terms rather than superimposing the TL system onto it for the sake of linguistic ‘purity’. The danger is that, if taken to extremes, a source-oriented approach can become a ritualistic incantation of meaningless words rather than a cultural exchange between sender and receiver (Jamieson 1996:122-3).

3) *Transcription* or a ‘borrowing’ (i.e. reproducing or, where necessary, transliterating the original term) stands at the far end of SL-oriented strategies. If the term is formally transparent or is explained in the context, it may be used alone, e.g. ‘Less serious crimes, such as theft, are tried by three judges alone in the *Tribunaux Correctionnels*’ (Sage 1996:35). In other cases, particularly where no knowledge of the SL is presumed in the reader, transcription is accompanied by a gloss or a translator’s note, e.g. ‘an *acte authentique* (an authenticated document usually drawn up by a *notaire*)’ (Dickson 1994:225); ‘the Cours d’assises – the courts that try such serious crimes as murder, rape and robbery)’ (Sage 1996:35). The gloss may point out significant conceptual or procedural differences, e.g. ‘*partie civile* (victim of a crime adding civil action to the criminal proceedings)’ (Cairns & McKeon 1995:220). For reasons of economy, the gloss is usually omitted in subsequent occurrences of the term.

The main advantage of this device is that it is referentially unambiguous. However, the need for a gloss or footnote makes it somewhat stilted and long-winded, and makes the translator’s presence intrusive. Weston disapproves of this strategy on principle, claiming that it ‘admits defeat’ (1991:26). It is best used sparingly in texts targeted at the lay reader, but can be appropriate for the specialised reader who requires a high degree of precision and for whom clarity takes precedence over fluency and conciseness. For instance, it is used consistently in several works describing the French legal system (Dadomo & Farran 1993; Dickson 1994; Cairns & McKeon 1995). The reader should preferably have passive knowledge of the SL, otherwise he may have difficulty recognising the transcribed term when it is used without a gloss, particularly in the case of a minority language (Sarcevic 1985:129).

From an ideological point of view, direct intervention by the translator runs counter to the convention of impersonality in legal discourse (Sourieux & Lerat 1975:44-46).¹¹ A more radical, post-modernist viewpoint is that the notion of authorlessness is a fiction which serves to reinforce power and to mask the indeterminacy of language in general and legal language in particular (the meaning of legal concepts is inherently unstable, being open to official reinterpretation). A

resolutely interventionist approach by the translator, if kept within the bounds of professional acceptability, can act as a useful antidote or ‘countermyth’ (Joseph 1995:33-35).

4) A *descriptive* or self-explanatory translation uses generic rather than culture-bound terms to convey the meaning. Although technically a gloss, it is sufficiently concise to function as a quasi-autonomous term without the need for transcription. For instance, to render the tripartite division of offences in French criminal procedure into *contraventions*, *délits* and *crimes*, it is possible to talk of ‘minor offences, major offences and serious crimes’ (Weston 1991:119) or ‘minor infringements, intermediate offences and serious crimes’ (Cairns & McKeon 1995:147). Similarly, the term *détention provisoire* can be translated as *pretrial detention* (Dadomo & Farran 1993:194) or *custody pending trial* (Cairns & McKeon 1995:34), and *instruction* can be rendered by the term *judicial investigation* (Kock & Frase 1988:3; Dadomo & Farran 1993:192).¹²

This solution has the advantage of being transparent and easy to memorise. It is appropriate in a wide variety of contexts where a formal equivalent is considered insufficiently clear. In a text aimed at a specialised reader, it can be helpful to add the original SL term to avoid ambiguity. Back translation can again provide a convenient acceptability test: for instance, if the term ‘major offences’ is not used alongside ‘serious crimes’, it might be back translated as either *délits* or *crimes*, leading to possible confusion of the two. From an ideological point of view, a descriptive translation can be seen as a compromise solution, avoiding the extremes of both SL- and TL-oriented strategies.

Conclusion

This approach tries to give trainee translators an active role, encouraging them to make reasoned decisions rather than apply ready-made solutions. The decisions are mainly determined by extralinguistic factors such as the needs and expectations of the receiver and the intended function and status of the target text. They are in some cases based on purely legal criteria: for instance, the choice between SL- and TL-oriented strategies when translating a contract will depend on the law governing the contract (Sarcevic 1997:19).

A communicative approach can help transcend the antagonistic nature of traditional translation teaching, where the instructor is presented as both the ideal translator and the target reader. Instead of being passive imitators, trainee translators are encouraged to experiment with and justify different strategies; and by considering the standpoint of the receiver, they are often able to detect inappropriate choices in their own work. This can have a positive long-term impact, for the professional status of the translator is enhanced by becoming ‘an active participant in legal communication’ (Sarcevic 1997:3).

¹ These techniques are adapted from the five ‘procedures’ identified by Weston (1991:19-34): functional equivalence, formal equivalence, transcription, neologism and naturalisation. The use of an existing naturalisation may be considered a sub-category of formal equivalence (as Weston himself acknowledges, 1991:30), failing which

it is a neologism; and although neologism is a valid terminological technique where the need exists in high-status translation (see Covacs 1982:89), it is probably unwise to encourage learners to use it. Cairns and McKeon use the less precise terminology ‘equivalent concepts’, ‘word-for-word translation’, ‘use of the original source language term’ and ‘the creation of new terms and concepts’ (1995:198-203). See also Sarcevic (1985).

² The term is used here in a more restrictive, terminology-based sense than in Pigeon, who initially defines functional equivalence as using a similar TL concept, but at the end of his article widens the scope of the term to mean ‘achieving the required legal effect in the TL version’ (1982:280-281). Gémar uses the term to mean simply conveying the message without regard for matters of style, which he regards as an admission of defeat (1995:142).

³ Several authors suggest the US term *district court* (Bridge 1994:303; Cairns & McKeon 1995:203).

⁴ For a discussion of descriptive translations, see below, category 4.

⁵ A possible solution is to transcribe the French term and add a gloss such as ‘*inner certainty*’ (Dickson 1994:121) or *their sincerely held belief* (Chalmers 1994:16).

⁶ However, this equivalence is sufficiently entrenched in French-speaking Canada for there to be no ambiguity in the mind of a lawyer (Bastarache & Reed 1982:211).

⁷ The term *delicts* is used in civil law, mainly in Scottish law (Cairns & McKeon 1995:63).

⁸ The term now used in French procedure is in fact *détention provisoire*. For suggested translations, see section 4.

⁹ The American term *Criminal Court*, or *regional Criminal Court* (Bridge 1994: 303) is clearer.

¹⁰ These terms can be rendered respectively by *ordinary law* (Weston 1991:57-8) and a gloss such as ‘court hearing criminal charges brought against the President’.

¹¹ This is true of legislation (Cornu 1990:279-82) but does not apply to private documents (e.g. ‘Je soussigné Me X, notaire, certifie que ...’; ‘I John Smith hereby will and bequeath ...’) or the language of the courtroom (notably rulings by the House of Lords, where frequent use is made of the first person singular). See Harvey (1997:269-274).

¹² The formal equivalent *instruction* (Vogler 1989:10) could be taken to mean an *order* or a *command*.

Bibliography

BASTARACHE, Michel & REED, David (1982): “La nécessité d’un vocabulaire français pour la *Common law*”, in J.-C. Gémar (1982), pp. 207-216.

BLANC-JOUVAN, Xavier & BOULOUIS, Jean (1972): “France”, in *International Encyclopedia of Comparative Law. Vol 1: National Reports*, Tübingen/The Hague, Mohr/Mouton, pp. 47-87.

BRIDGE, F.H.S. (1994): *The Council of Europe French-English Legal Dictionary*, Strasbourg, Council of Europe Press.

CAIRNS, Walter & MCKEON, Robert (1995): *Introduction to French Law*, London, Cavendish.

CHALMERS, Robert (1994): “Murder on the Riviera”, *The Observer Magazine*, 27 March 1994, pp. 12-16.

CORNU, Gérard (1990): *Linguistique juridique*, Paris, Montchrestien.

COVACS, Alexandre (1982): “La réalisation de la version française des lois fédérales du Canada”, in J.-C. Gémar (1982), pp. 83-100.

DADOMO, Christian & FARRAN, Susan (1993): *The French Legal System*, London, Sweet & Maxwell.

DAVID, René & DE VRIES, Henry (1958): *The French Legal System. An Introduction to Civil Law Systems*, New York, Oceana.

DAVID, René & JAUFFRET-SPINOSI, Camille (1992): *Les grands systèmes de droit contemporains*, 10ème éd., Paris, Dalloz.

DICKSON, Brice (1994): *Introduction to French Law*, London, Pitman Publishing.

DIDIER, Emmanuel (1991): “La Common Law en français: étude juridique et linguistique de la Common Law en français au Canada”, *Revue internationale de droit comparé*, no. 1, pp. 7-56.

GÉMAR, Jean-Claude éd. (1982): *Langage du droit et traduction: essais de jurilinguistique*, Montréal, Linguattech-Conseil de la langue française.

GÉMAR, Jean-Claude (1995): *Traduire ou l’art d’interpréter. Langue, droit et société : éléments de jurilinguistique. Tome 2: Application*, Québec, Presses de l’Université du Québec.

GILE, Daniel (1995): *Basic Concepts and Models for Interpreter and Translator Training*, Amsterdam/Philadelphia, John Benjamins.

GUSDORF, Florent (1993): *Words: Universités*, Paris, Ellipses.

HARVEY, Malcolm (1997): *Les langages juridiques français et anglais: une étude comparative*, thèse, Université Lumière Lyon 2.

JAMIESON, Nigel (1996): “Source and Target-Oriented Comparative Law”, *American Journal of Comparative Law*, no. 44:1, pp. 121-129.

JOSEPH, John (1995): “Indeterminacy, Translation and the Law”, in Marshall Morris, *Translation and the Law*, Amsterdam/Philadelphia, John Benjamins, pp. 13-36.

KOCK, Gerald & FRASE, Richard (1988): *The French Code of Criminal Procedure*, Littleton [Co.], Rothman.

LAUZIÈRE, Lucie (1979): “Un vocabulaire juridique bilingue canadien”, *Meta*, no. 24:1, pp. 109-114.

LE DOCTE, Edgard (1987): *Dictionnaire de termes juridiques en quatre langues*, Anvers, MAKLU Uitgevers.

PIGEON, Louis-Philippe (1982): “La traduction juridique: l'équivalence fonctionnelle”, in J.-C. Gémard (1982), pp. 271-281.

SAGE, Adam (1996): “French Jury System May Be Restricted”, *The Times*, 9 January 1996, p. 35.

SARCEVIC, Susan (1985): “Translation of Culture-bound Terms in Laws”, *Multilingua*, no. 4:3, pp. 127-133.

SARCEVIC, Susan (1997): *New Approach to Legal Translation*, The Hague/London/Boston, Kluwer Law International.

SOURIOUX, Jean-Louis & LERAT, Pierre (1975): *Le langage du droit*, Paris, Presses Universitaires de France.

VOGLER, Richard (1989): *A Guide to the French Criminal Justice System*, London, Prisoners Abroad.

WESTON, Martin (1991): *An English Reader's Guide to the French Legal System*, New York/Oxford, Berg.