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Research Methods in Legal Translation and Interpreting

Crossing Methodological Boundaries

Edited by Łucja Biel, Jan Engberg,
M. Rosario Martín Ruano, and
Vilemini Sosoni



First published 2019
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Biel, Lucja, 1974– author.

Title: Research methods in legal translation and interpreting : crossing methodological boundaries / Lucja Biel, Jan Engberg, Rosario Martín, and Vilelmini Sosoni.

Description: Abingdon, Oxon [UK] ; New York, NY : Routledge, 2019. | Series: Law, language and communication | Includes bibliographical references and index.

Identifiers: LCCN 2018052675 (print) | LCCN 2018055536 (ebook) | ISBN 9781351031226 (ebook) | ISBN 9781138492103 (hardback)

Subjects: LCSH: Law—Translating. | Law—Language. | Semantics (Law) | Court interpreting and translating. | Law—Interpretation and construction. | Translators—Legal status, laws, etc. | Translating and interpreting.

Classification: LCC K213 (ebook) | LCC K213 .B54 2019 (print) | DDC 418/.0334—dc23

LC record available at <https://lcn.loc.gov/2018052675>

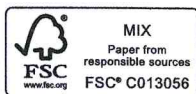
ISBN: 978-1-138-49210-3 (hbk)

ISBN: 978-1-351-03122-6 (ebk)

Typeset in Galliard
by Apex CoVantage, LLC

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- Fairclough, N. (2001). *Language and power*. Harlow: Longman.
- Fairclough, N. (2009). A dialectical-relational approach to critical discourse analysis in social research. In: R. Wodak and M. Meyer, eds. *Methods of critical discourse analysis*. Los Angeles: Sage, pp. 162–200.
- Fairclough, N., et al. (2013). Critical discourse analysis. In: R. Wodak, ed. *Critical discourse analysis. Concepts, history, theory*. Los Angeles: Sage, pp. 79–101.
- Fairclough, N. and Wodak, R. (1997). Critical discourse analysis. In: T.A. van Dijk, ed. *Discourse as social interaction. Discourse studies: A multidisciplinary introduction*, Vol. 2. London: Sage, pp. 258–284.
- Hale, S. (2004). *The discourse of court interpreting. Discourse practices of the law, the witness, and the interpreter*. Amsterdam: John Benjamins.
- Jacobsen, B. (2003). Pragmatics in court interpreting: Additions. In: L. Brunette, et al., eds. *The critical link 3. Interpreters in the community. Selected papers from the third international conference on interpreting in legal, health and social service settings, Montréal, Québec, Canada 22–26 May 2001*. Amsterdam: John Benjamins, pp. 223–238.
- Jansen, P. (1995). The role of the interpreter in Dutch courtroom interaction: The impact of the situation on translational norms. In: J. Tommola, ed. *Topics in interpreting research*. Turku: University of Turku, pp. 11–36.
- Kadrić, M. (2009). *Dolmetschen bei Gericht. Erwartungen – Anforderungen – Kompetenzen*. Wien: Facultas.
- Lee, J. (2009). Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters. *Interpreting*, 11 (1), pp. 35–56.
- Lee, J. (2011). Translatability of speech style in court interpreting. *The International Journal of Speech, Language, and the Law*, 18 (1), pp. 1–33.
- Nartowska, K. (2014). *Rollenhandeln von DolmetscherInnen in strafgerichtlichen Verfahren. Eine diskursanalytische Studie im Ländervergleich Österreich und Polen*. Thesis (PhD). Universität Wien.
- Nartowska, K. (2015). The role of the court interpreter: A powerless or powerful participant in criminal proceedings? *The Interpreters' Newsletter*, 20, pp. 9–32.
- Nartowska, K. (2017). The role of court interpreters in criminal proceedings in the context of the right to a fair trial. In: A. Liimatainen, et al., eds. *Legal translation and court interpreting: Ethical values, quality, competence training*. Berlin: Frank & Timme, pp. 95–123.
- Niska, H. (1995). Just interpreting: Role conflicts and discourse types in court interpreting. In: M. Morris, ed. *Translation and the law*. Amsterdam: John Benjamins, pp. 293–316.
- Pöllabauer, S. (2003). *Translatorisches Handeln bei Asylanhörungen. Eine diskursanalytische Untersuchung*. Thesis (PhD). Karl-Franzes-Universität Graz, Graz.
- Rehbein, J., et al. (2004). *Handbuch für das computergestützte Transkribieren nach HIAT*. Hamburg: Universität Hamburg.
- Titscher, S., et al. (1998). *Methoden der Textanalyse. Leitfaden und Überblick*. Opladen: Westdt. Verl.
- Wodak, R. (2008). Introduction: Discourse studies – important concepts and terms. In: R. Wodak and M. Krzyżanowski, eds. *Qualitative discourse analysis in the social sciences*. Basingstoke: Palgrave Macmillan, pp. 1–29.
- Wodak, R., ed. (2013). *Critical discourse analysis. Concepts, history, theory*. Los Angeles: Sage.
- Wodak, R. and Meyer, M. (2009). Critical discourse analysis: History, agenda, theory, and methodology. In: R. Wodak and M. Meyer, eds. *Methods of critical discourse*

7 How to apply comparative law to legal translation¹

A new juritraductological approach to the translation of legal texts

Sylvie Monjean-Decaudin and
Joëlle Popineau-Lauvray

1 Introduction

Since the 1950's, translation has gained momentum in a newly rebuilt and increasingly globalised world, either because of international reasons linked to WWII or national ones. Countries exchange political views, have trading relationships and share economic, financial and legal ideas, leading to a higher demand for translation. Legal texts are thus translated in different legal contexts and meet the requests of international or national institutions, companies or individuals for specific purposes.

The legal translator is therefore entrusted with the task of transferring a wide range of legal texts from one language to another, with each of them having specific legal effects based on a specific context. How should the translator deal with a legal text? Should s/he evaluate its level of legal complexity to be able to estimate the issues and stakes in his/her translation? How can s/he assess that s/he has gained enough experience to face the challenges posed by transferring the meaning between the source law and the target law systems? How should s/he deal with it?

Juritraductology (or the science of legal translation) offers a new conceptual framework to translation studies applied to law: this chapter presents it as the basis of a new theoretical and methodological tool for analysing translation and its process. Prior to this, the translator must analyse the legal text to translate, its legal context and assess its level of legal complexity. Juritraductology offers a three-step process in which comparative law plays an important role.

2 Juritraductology: a new conceptual framework in law and translation sciences

Juritraductology is a cross-interdisciplinary field of study that emerged in France in the early 21st century (Monjean-Decaudin 2012). This novel approach differs from Legal Translation Studies, or *traductologie juridique* in French, which mainly focus on the complexity of a legal translation and/or the translation of legal concepts. Legal Translation Studies are a subdivision combining (juri)linguistics and

translation studies and offer various interesting and worthy approaches and solutions. Besides Legal Translation Studies, comparative law specialists have developed their own approach to find solutions when translating concepts of law in a specific legal system.

However, both theories have developed in a distinct way and to a certain extent remain independent: translation theories are disconnected from theories of law.

Juritr ductology, a field of study developed by the CERIJÉ² in 2012, offers a new crossdisciplinarity, building bridges between translation studies and law, but rooted in both fields. Combining theories makes it thus possible to establish the required connection between the legal right to translation and legal translation, which form the bedrocks of juritr ductology. In other words, the juritr ductological thinking is conceived as a science enabling ideas to interact with each other without any disciplinary frontiers. The approach can encompass all laws and all languages, because only a broader approach can help nurture the epistemological debate in this field of study and thus enrich the targeted applications.

Juritr ductology has several epistemological founding principles, as shown in Figure 7.1.

Law and linguistics, which are the two “nourishing” sciences, merge to form legal linguistics. Linguistics is one fundamental pillar in translation studies, which became an independent field of study in the 1970s.

The legal right to translation has its roots in Law. And legal translation has its roots in legal linguistics and translation studies. Both combine and create the two main fields of study in juritr ductology.

The field is undoubtedly a cross-disciplinary area. Two remarks can be made: firstly, juritr ductology does not place disciplines side by side but instead combines them; secondly, law has a determining influence on translation, thus

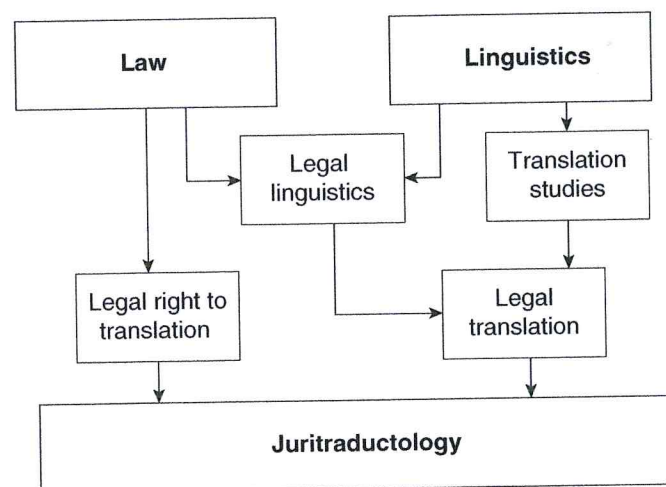


Figure 7.1 Juritr ductology and its epistemological founding principles

explaining the consequences on legal translation, which have remained unexplored up to now.

Juritr ductology as a cross-disciplinary field of study shares common knowledge with the three other areas already mentioned at different levels. Firstly, juritr ductology shares focus and knowledge with linguistics and translation studies. Both build the general framework for the conceptualisation and application phases leading to juritr ductology. A juritr ductological approach does not need to fully put into practice all approaches and concepts used in linguistics and translation studies. Juritr ductology selects particular aspects dealt with in TS which are especially useful for a juritr ductological approach to legal translation.

For example, the founding principles and the methods used in translation studies seem particularly well-adapted to legal translation. The theories describing general translation problems and the approaches developed in translation studies help define the field of study of juritr ductology.

Secondly, juritr ductology projects itself as an approach strongly connected to law in general and comparative law in particular. Juritr ductology must meet the demanding requirements set by law (law is both a “consumer” and “a producer” of legal translations). Juritr ductology embraces all the linguistic and translational demands contained in law. It aims at describing all legally relevant translation issues and thus expands the scope of legal translation. It covers in principle all branches of international, European and national law. Moreover, the fields of law juritr ductology are closely associated with legal language.

Thirdly, the combined interactions of fields that define the scope of study of juritr ductology is legal linguistics. Legal linguistics assists juritr ductology in the role it may play as an auxiliary branch of law. As it is the case for translation studies, it forms the discursive environment in which juritr ductology is designed. Gérard Cornu uses a metaphor to say that a legal translator picks a word studied by general linguistics as a farmer would pick a tool at a large department store (Cornu 2005, p. 26). Likewise, juritr ductology can choose the most fertile and appropriate fields among the branches of general linguistics and translation studies. Therefore, juritr ductology deals with theoretical and practical questions in legal translations whenever they are of legal interest, among which are questions which have arisen before translating.

3 Steps to be taken before translating in juritr ductology

It is commonly accepted that we translate legal texts for a purpose, which is mainly pragmatic and sometimes mandatory due to a legal context, and for legal specific needs. In most cases, law is translated because a legal situation arises, an act or a deed requires it (Monjean-Decaudin 2010). Juritr ductology aims at exploring the translation carried out in various legal contexts. In addition, it shows the varying levels of legal effect. This approach is a novel approach as it has never been explored before. It highlights the impact of law and its consequences on translation. In practical terms, this approach presents itself as a targeted or

functionalist activity (Monjean-Decaudin 2016) and offers an introductory framework for any translation process.

Before translating, the translator must understand the legal context in which the source text has been written to fully understand the issues involved in the text and its translation. In other words, s/he must (1) understand why, for whom and for what purpose law is being translated in a context, then (2) be able to measure its level of legal complexity, depending on the context.

3.1 *What are the different contexts for translating law?*

There are mainly four legal contexts for which a translation is required.

a. In international public law

Translation is carried out within the framework of institutions and organisations, both at international and regional level. Translating helps create a supranational regime in several languages, for example when drafting an international treaty.

Each international or regional organisation adopts its own language system to determine the official languages it has. The number of official languages determines both the language pairs and the volume of translation.

The language system used in the International Monetary Fund is different from that of the European Union. By declaring English the only official language, the world of finance has deliberately become unilingual at institutional level. Translations carried out by the IMF's language services mainly have an informative role for interstate communication. As a result, these translations do not involve any legal consequences, as evidenced by the introductory IMF disclaimer stating: "While every effort is made to ensure the accuracy of translations, the version of any document used by the IMF is the English version, as American English is the working language of the IMF".

On the contrary, the European Union is a paradigmatic example of institutional multilingualism, soundly described by Umberto Eco in his famous motto: "Translation is the language of Europe". Today, with 24 official languages and 552 language combinations, the European Commission's Directorate-General for Translation is one of the world's largest translation services. The texts written in all the official languages of the Member States are published in the Official Journal of the European Union to produce legal effects in the legal orders of the Member States. The decisions made by the Court of Justice of the European Union are published in all the official languages in order to ensure a uniform law enforcement across the EU (Monjean-Decaudin 2015, p. 95).

b. In international private law

Cross-national exchanges between physical and/or legal persons with different nationalities are governed by private international law. Increased exchanges have led to a dramatic increase in legal translation. Key economic players expand their

trade across borders, people travel and work in a foreign country, they marry foreigners or even commit crimes and offenses abroad: daily life brings about many acts and deeds that need a translation. When you adopt a child abroad you need a translation; when you transfer your patent to a foreign company, you need a translation; when you hire a foreign worker, you need a translation. There are many cases in which translations are needed, be it administrative documents, private deeds or authentic instruments. Under private international law, people need a translation to assert their rights or to acknowledge their status at a local government office in a foreign country (for example, when foreign nationals get married or divorced, when a property located in a foreign country is left to a person, etc.). All these translations have legal effects. However, they are limited to the legal situation of each person involved.

c. In a judicial context

In a globalised world, people subject to trial can travel abroad, where again international justice and legal cooperation is based on translation. In this context, legal translation is most frequently carried out by sworn translators for justice services.

Judicial translation can be used in all types of proceedings, in civil, criminal or administrative matters. Both written and oral translations fulfil two distinctive functions (Monjean-Decaudin 2012).

Firstly, judicial translation is a communication tool for the judicial system. In this case, the translation may circulate or not. When there is a cross-border dispute, the translation travels to the foreign country. It is carried out to help judicial cooperation when exchanging acts and information between judicial authorities. The translation of a European arrest warrant or an international letter rogatory is, by its nature, a "circulating" translation. Where the translation allows the national court to understand the content of a document written in a foreign language, the translation is, in this case, a "non-circulating" one. It is not carried out to be sent to another State but to inform the national judge about the content of a document provided to the court. Documents may be testimonies, contracts, code articles, etc.

On the other hand, translation is a procedural safeguard for suspects/defendants speaking a foreign language. It is more obvious in criminal than in civil matters, and in oral than written translations. However, in all cases, translating a document aims at safeguarding the right to a fair trial to individuals who do not understand the language of the proceedings. The Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings reasserts the importance of the right to interpretation and translation in criminal proceedings (Monjean-Decaudin 2011).

d. In a scientific context

We all live in a multilingual and translated world but we also work in a context of multilingual and translated law. Translation is used to expand legal knowledge

on legal doctrine or normative texts (constitution, code, laws, etc.) and court decisions. Legal translation is carried out when law is imported and exported. We can either know a foreign law or make our own law known to the rest of the world through translation. Translation is also an integral part of comparative law. Examples which prove this include, for example, the translation of the description of major contemporary legal systems into different languages, the drafting of bilingual dictionaries or the publication of the Henri Capitant Law Review (Goré 2011, p. 114).

In this context, the translator is generally both a lawyer and a comparative law specialist (Sacco 2011, p. 23) and the effects of translation are important for law.

Once the context has been clearly defined, let us consider the *degré de juridicité*.

3.2 Le degré de juridicité – the level of legal complexity in a text

All translations do not systematically lead to legal consequences, but all legal translations, *per se*, have some legal complexity. Depending on the context, these consequences are more or less significant. From a methodological point of view, before translating a legal text, the translator must assess the level of legal complexity of a text (Decaudin 2007, pp. 94–95).

To assess this level, s/he must study two distinct indicators. The first indicator takes into account the scope of legal knowledge which is required to understand and translate the text and/or legal concepts. The second indicator identifies the resulting legal consequences when the translation is done. Thus, the more the text contains law and legal concepts – i.e. the more it requires in-depth legal knowledge to be understood – the higher its level of legal complexity. Moreover, the more legal consequences the translation involves – i.e. if the rule or concept contained in the text is binding and has legal consequences – the higher its complexity.

When translating, two cases may arise: the legal text to translate contains only one of the two previously mentioned criteria or it contains both of them. Let us consider examples containing only one criterion.

In a first example, the number of highly specialised terms in the source text requires a sharp law knowledge to understand and translate them. For instance, a book on procedural law written by a law professor contains many legal concepts requiring an accurate knowledge when translating. On the other hand, a university textbook for lawyers (students, teachers, etc.) has no binding force or legal effect and, therefore, the resulting translation has no legal effect. Another example is about translating a holographic will and testament written in French and containing only some words: “Je donne toute ma fortune après ma mort à . . .” [“I leave all my property to . . . when I am gone” (my translation)]. This is an example of a will and testament in France. The French text does not contain legal concepts and is therefore quite easy to translate *at first sight*. While a rather simple vocabulary does not require a sharp legal knowledge or a highly specialised terminology, nonetheless, legal consequences will be effective after translating this will and testament.

Let us now consider texts containing both criteria. In that case, legal effects add up to a highly specialised terminology, resulting in a sharper complexity and the utmost legal value a text may have. Translating laws, court decisions, some agreements and contracts are examples of this. The translator must make sure to transfer the correct meaning of texts while taking into account the challenges and stakes of his/her translation. The legal complexity of a translation will therefore depend on its clients and function. Translating a final judgment of a court has a lower legal complexity than translating a European regulation: the effects of a final judgment concern the parties involved in the trial whereas European regulations will apply to all EU Member states.

From the very beginning of the legal translation process, the series of steps depends on the legal complexity of the text. A methodology specifically designed for legal translation makes it possible to overcome the difficulties shown in legal terms and concepts.

4 How to translate a legal text?

Prior to any other task, the translator must carefully read the text where terms and legal concepts are spotted. S/he will put the text in a specific legal culture (for example, common law culture, Romano-Germanic culture) and in the subdivision of law covered by the source text (e.g. public law, private law, criminal law, civil law). When reading is completed, the comparative-law step takes place, in which the translator simultaneously takes into account the source language and law system, with the aim of translating a text from a source law system to a target law system. As a result, a text may be more or less difficult to translate, depending on the extent of differences to be bridged in the transfer between language and legal systems. Common law and the French law system share common roots. Translating from English into French needs less negotiation of differences than translating from English into Chinese, for example. The lack of common references between two distant law systems may be a further difficulty for the translator (Monjean-Decaudin 2013, p. 6).

Whatever the legal systems concerned, comparative law consists in comparing two systems with a view of performing the translation process of a legal text. Among the different approaches described by authors, comparative law is part of the translation process (Gémar 1979; Šarčević 1997).

More precisely, the methodological approach chosen and developed in legal translation studies (Bocquet 2008, p. 80) is a 3-step approach comprising a semasiological step, a comparative-law step and an onomasiological step. Such an approach has been implemented in translation classes (Popineau *forthcoming*).

We will exemplify each step by giving pairs of English and French terms:

- *Crime* (in English) and *crime* (in French);
- *Copyright* and *droit d'auteur*;
- *Act of God* and *catastrophe naturelle*.

The 3-step approach will answer the following questions: is the English term *crime* an equivalent of the French term *crime*? Can the French term *droit d'auteur* be translated by the English term *copyright*? Are *Act of God* and *catastrophe naturelle* comparable, and therefore translatable?

The 3-step approach requires language in both source and target languages, each step being explained in the corresponding language. Quotations in French and English are part of the demonstration and may not always be translated.

Step 1: the semasiological step

In the semasiological step, the goal is to understand the source text and its building blocks both on semantic and conceptual levels. As these blocks contain legal knowledge, the semasiological step requires in-depth documentary research into the legal system of the source language. Understanding is a dual concomitant process: it implies understanding both source and target languages and systems, conveying a meaning in words. “*Les mots sont un passage obligé pour les concepts juridiques*” [words are a necessary step for conveying legal concepts] (Legeais 2008, p. 267). The abstract approach that is part of legal translation consists in legally defining a concept. To this end, this step consists in carrying out a documentary research to define and put a legal concept into a context.

Let us give a first example: *crime* (in French).

In French law, *crime* is part of a trilogy: *contravention*, *délit* et *crime*. In the first semasiological step, a documentary research leads to finding definitions. In French criminal law, *contravention* is “une espèce d’infraction appartenant à une catégorie située en bas de l’échelle de la gravité” (Cornu 2016, p. 263) [a kind of wrongdoing with a less severe punishment]; a *délit* is a “espèce d’infraction moins grave que le crime et plus grave que la contravention” (Cornu 2016, p. 320) [a wrongdoing less severe than *crime* but more severe than *contravention*]; and finally, *crime* is a “espèce d’infraction pénale appartenant à la catégorie des plus graves d’entre elles” (Cornu 2016, p. 288) [the most severe wrongdoing of the group]. The definitions show that the French term *infraction* is a general hypernym into which *contravention*, *délit* and *crime* fall, with severity being the classifying criterion.

Crime in French is often translated by and compared to *crime* in English. Are they true synonyms? Comparing French *crime* in source law to English *crime* in target language will be carried out in Step 2.

We can also show how significant this step is by giving a second example: *droit d’auteur*.

The same documentary approach is followed. In French law, *droit d’auteur* is defined as

droit de propriété incorporelle exclusif et opposable à tous, qui comprend l’ensemble de prérogatives morales (droit de divulgation, droit à la paternité, droit à l’intégrité de l’œuvre, droit de repentir ou de retrait) et patrimoniales (droit de reproduction, droit de représentation, droit de suite) dont jouit

l’auteur sur son œuvre du seul fait de sa création. [Summary: *Droit d’auteur* comprises two types of rights: a moral right and a patrimonial right].

(Cornu 2003, p. 66)

Droit d’auteur is usually translated by *copyright* into French. Are they true cognates or false friends?

Finally, yet importantly, a documentary research on *Act of God* shows that:

- *Act of God* is “a natural and unavoidable catastrophe that interrupts the expected course of events”.³

When a distributor contract between an English and a French firm needs to be translated, what is the best equivalent of *Act of God* in a French distributor contract?

Once the semasiological phase is completed, once the meaning of a concept in the source language and law is found, the second step is to find a *possible* equivalent concept in the target law and language: the comparative-law step begins.

Step 2: the comparative-law step

“Comparer consiste à établir des rapports de ressemblances et de différences entre les termes d’un savoir, puis à en mesurer l’ampleur, à en chercher les raisons et à en apprécier la valeur” [Comparing is finding how similar and different terms may be in a field of study, evaluating how significant their differences are, explaining the underlying reasons for such differences and finally evaluating them].

(Laithier 2009, introduction)

In this respect, and prior to a correct translation, legal concepts usually require an in-depth comparative study. The legal translator becomes “*le savant exégète qui s’abîme dans les profondeurs du texte écrit*” [a scholarly expert who delves into the depths of the written text] (Ost 2009, p. 111) and who ventures into the legal system and meaning conveyed by the source language. Before any translation, the translator should look for a *possible* equivalent in the target language. This *possible* equivalent should fulfil the first and foremost role of translation: conveying the source text meaning to the audience reading the target translated text.

Let us turn back to our first example: *crime* (in French)

The documentary research carried out in Step 1 shows that *crime* in French belongs to a triplet, with *infraction* being the hypernym in French (Figure 7.2); a severity criterion ranks them from less to more severe punishment.

Let us now turn to the English term *crime*. Is *crime* in English a possible equivalent to *crime* in French or a false friend? Step 2 aims at comparing legal concepts in both source and target language.

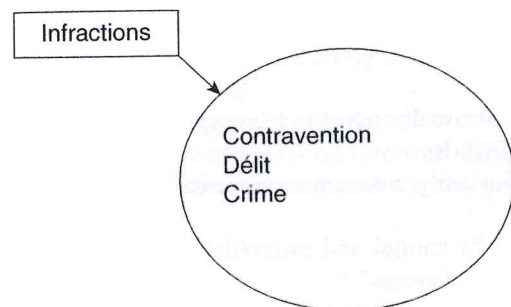


Figure 7.2 What are infractions in French law

Crime in English is “an offense against public law usually excluding a petty violation”. Furthermore, *felony* and *misdemeanour*⁴ are words accompanying the definition: a *crime* can be a *felony* or a *misdemeanour* according to the dictionary. Our documentary research continues with definitions of the previously mentioned words: a *felony* is “a crime that has a greater punishment imposed by statute than that imposed on a misdemeanour” and *misdemeanour* is “a crime that carries a less severe punishment than a felony”; again, severity is a ranking criterion for each word. *Crime* seems to be a hypernym for both words.

Both are hypernyms, into which two terms can be found in English (*misdemeanour* and *felony*) and three terms in French (*contravention*, *délit* and *crime*). If we compare definitions, similarities do appear: severity is a significant criterion for both words; moreover syntax shows comparatives in both English and French (more . . . than . . ., less . . . than . . .; *moins . . . que, plus . . . que*):

Espèce d'infraction moins grave que le crime et plus grave que la contravention
Espèce d'infraction pénale appartenant à la catégorie des plus graves d'entre elles

a crime that has a greater punishment imposed by statute than that imposed on a misdemeanour

a crime that carries a less severe punishment than a felony

Step 2 shows that *crime* in French and *crime* in English share similarities.

Let us take the second example.

Droit d'auteur in French is commonly translated by *copyright* into English. Are they true equivalent concepts?

Firstly, they have deeply different founding principles:

Tandis que le droit d'auteur se consolide en Europe, les Etats-Unis adoptent un corpus législatif d'une autre nature autour de la notion de copyright.

Leurs fondements respectifs sont profondément distincts. [Our translation: While the French droit d'auteur is being strengthened in Europe, the United States is adopting different laws and legal texts dealing with copyright. They have deeply different founding principles.].

(Benhamou et Farchy 2009, p. 22)

Although both are proprietary rights, *copyright* is “utilitariste et économique” [a use-oriented and economic right] whereas “le juridique prime sur l'économique dans le droit d'auteur” [the legal side is heavier than the economic side in French droit d'auteur] (Benhamou et Farchy 2009, p. 23).

Secondly, *copyright* is more restrictive and is “the legal right to have control over the work of a writer, artist, musician, etc”⁵ or in other words, “droits exclusifs du titulaire du *copyright* sur son œuvre” (Cornu 2003, p. 66) [the exclusive rights of the copyright owner on his/her work]. “If you own the copyright on something, it is your intellectual property, and other people must pay you to broadcast, publish, or perform it”⁶ the Merriam-Webster dictionary says, without mentioning any moral rights.

The French *droit d'auteur* is indeed a dualistic right as it comprises two types of rights:

le droit d'auteur français est qualifié de droit dualiste en raison de la coexistence de droits de différentes nature: d'une part le droit moral appartenant à la famille des droits de la personnalité qui conserve à l'auteur un pouvoir de contrôle sur sa création même s'il en a cédé les droits, et d'autre part les droits patrimoniaux qui lui permettent de tirer profit de l'exploitation de son œuvre [The French droit d'auteur comprises two types of rights; on the one side, a moral right belonging to the rights of the personality by which the creator keeps a right of controlling his/her work even if s/he transferred proprietary rights; on the other end, proprietary rights by which s/he can financially profit from his/her work].

(Cornu 2003, p. 67)

Thirdly, The French definition lists many neighbouring rights: “le droit de divulgation, le droit à la paternité, le droit à l'intégrité de l'œuvre, le droit de repentir ou de retrait sont les droits moraux entrant dans la sphère du droit d'auteur; s'y ajoutent le droit de reproduction, droit de représentation, droit de suite”. Translating these neighbouring rights into English is difficult because the French neighbouring rights do not exist in common law and no equivalents are given in comparative-law dictionaries (Cornu 2003, pp. 66, 81).

In this law comparative step, *copyright* appears to be a shortened, truncated French *droit d'auteur* with missing moral rights.

Finally, *Act of God* is commonly translated by *catastrophe naturelle* into French.

In French law⁷ *catastrophe naturelle* is “un agent naturel ayant une intensité anormale”; [sont considérés comme catastrophe naturelle] “les dommages

matériels directs ayant eu pour cause déterminante l'intensité anormale d'un agent naturel, lorsque les mesures habituelles à prendre pour prévenir ces dommages n'ont pu empêcher leur survenance ou n'ont pu être prises" [My translation: a *catastrophe naturelle* is a natural phenomenon whose intensity is beyond normality; [catastrophe naturelle comprises] direct damage whose determining cause is the abnormal intensity of a natural phenomenon, when usual precautions to avoid damage could not prevent it to occur or could not have been taken].

Both definitions mention a natural and unavoidable factor and the terms seem to be exact equivalents.

Step 3: the onomasiological step

A translation is given in this last – but not least – step. It is about deciding which criteria carry the equivalence. The choice consists in deciding on an acceptable term both on the linguistic and legal levels; a large variety of translations can be given.

Let us look at the French trilogy formed by *contravention*, *crime*, *délit*. We are facing a conceptual imbalance. As shown in Steps 1 and 2, three French terms refer to two English terms. The hypernym *crime* can be translated by its French counterpart *infraction*; but the number of hyponyms is different (two against three). The translator is facing a choice: s/he must decide which term s/he would choose or discard to keep a balance when translating.

Two translation strategies are possible:

- *Crime* is translated by the legally correct French term *infraction*;
- The translator decides to introduce an adjective to best describe the severity (*mineure* and *majeure*, minor and major) of the wrongdoing.

The latter seems a satisfactory solution: *infraction mineure* does legally correspond to misdemeanor, which is “defined as an offense punishable only by fines or by short terms of imprisonment in local jails⁸”; and *infraction majeure* does legally correspond to *felony*, which is “typically defined as a crime punishable by a term of imprisonment of not less than one year or by the death penalty”, according to the Merriam-Webster dictionary.

Comparing the French *droit d'auteur* to common law *copyright* shows fundamental conceptual differences between the two words: when comparing both terms, *droit d'auteur* does not sound like a legally acceptable translation for *copyright* into English and vice-versa:

Les mêmes termes de chacun des droits peuvent recouvrir des sens différents. L'exemple classique est le terme “droit d'auteur” qui, pour les Canadiens est la traduction de “Copyright” et qui n'est pas un équivalent du droit d'auteur belge et français. [Similar terms may have different meanings in different law systems. A standard example is the word “Droit d'auteur” which is translated

by copyright in Canada and which is not an equivalent of the *droit d'auteur* in Belgium and in France].

(Cornu 2003, p. 20)

However, the translator must translate, as it is his/her duty and what s/he is being paid for. Borrowing a foreign word is a possible strategy when terms have no equivalent counterparts in target legal languages. Borrowing the French term *droit d'auteur* into English and the English *copyright* into French contracts is a way of both transferring an odd meaning into a text and keeping the legal differences when no equivalent legal concept exists in the target language.

We can finally complete our onomasiological step with our third example: *Act of God* and *catastrophe naturelle*. Is *Act of God* the best possible and legally correct translation for the French *catastrophe naturelle*? It seems both are comparable, and thus translatable. Moreover, they both appear in contracts with long lists of “unexpected, disruptive event[s] that may excuse a party from performing duties under a contract”, for instance in:

[. . .] Company shall not be in default by reason of any failure in its performance under this Agreement if such failure results from, whether directly or indirectly, fire, explosion, strike, freight embargo, *Act of God* or of the public enemy, war, civil disturbance, act of any government, de jure or de facto, or agency or official thereof, material or labor shortage, transportation contingencies, unusually severe weather, default of any other manufacturer or a supplier or subcontractor, quarantine, restriction, epidemic, or catastrophe, lack of timely instructions or essential information from Distributor, or otherwise arisen out of causes beyond the control of the Company,

with the French translation being:

[. . .] La Société ne saurait être tenue pour responsable de l'inexécution du présent contrat, dans le cas où ladite inexécution résulte de façon directe ou indirecte de: incendie, explosion, grève, embargo de marchandises, *catastrophe naturelle*, attentat terroriste, guerre, troubles, fait du prince *de jure ou de facto*, pénurie de matériaux ou de main d'œuvre, aléas liés au transport, conditions météorologiques extrêmes, inexécution émanant d'un fabricant, fournisseur et sous-traitant, mise en quarantaine, contingentement, épidémie ou désastre, défaut d'information en temps et en heure de la part du Distributeur, ou de toute cause indépendante de la volonté de la Société.

“Unforeseeable circumstances that prevent someone from fulfilling a contract”, such as fire, explosion, labour shortage, etc, are the exact definition of the French legal concept *force majeure*, which is

un événement imprévisible et irrésistible qui, provenant d'une cause extérieure au débiteur d'une obligation ou à l'auteur d'un dommage (force de la

nature, fait d'un tiers, fait du prince) le libère de son obligation ou l'exonère de sa responsabilité" [Our translation: in French, force majeure is an unforeseen and compelling event that frees the licensee from his/her obligation or exonerates the person who caused the damage from his/her liability (natural event, act of a third party, or government fiat).

(Cornu 2016, p. 471)

Force majeure is a hypernym into which both *catastrophe naturelle* in French and *Act of God* in English fit.

Therefore, the preceding contract can be translated in a shorter way into both French and English:

[. . .] La Société ne saurait être tenue pour responsable de l'inexécution du présent contrat, dans le cas où ladite inexécution résulte d'un cas de force majeure.

[. . .] Company shall not be in default by reason of any failure in its performance under this Agreement if such failure results from *force majeure*.

Force majeure is a frequent legal borrowing in English contracts, as *force majeure* clauses are acceptable in common law systems such as in the US and in the UK.

5 Conclusion

Proof has been given that translators may avoid usual translation pitfalls when applying the 3-step legal approach. Although the translation strategies suggested in the different cases may differ, the resulting translations are legally correct and consider both source and target legal contexts and systems after comparing them. Translators avoid false friends (*crime* and *crime*) as well, thanks to a complete and well-organised documentary research. Comparative law highlights major conceptual differences and eliminates common mistakes or mistranslations (*copyright* and *droit d'auteur*). Comparable and translatable concepts do exist (*Act of God* and *catastrophe naturelle*) and may sometimes fall into hypernyms to give shorter but still legally correct translations (*force majeure*). The three examples given in this chapter have shown that juritraductology is a legitimate academic discipline in a broader translation approach, which is both well-thought-of and well-suited for legal texts.

Notes

- 1 Thanks to Carol Jagot-Lachaume and Solweig Franzinetti for proofreading this article.
- 2 CERJE (CEntre de Recherche Interdisciplinaire en JuritraductologiE) is the first interdisciplinary research centre dedicated to "juritraductology" (www.cerje.eu/).
- 3 www.memidex.com/.
- 4 www.merriam-webster.com/dictionary/crime#legalDictionary.
- 5 www.memidex.com/copyrighting.
- 6 www.merriam-webster.com.
- 7 www.legifrance.gouv.fr/ – Loi n° 82–600 du 13 juillet 1982.

Bibliography

- Benhamou, F. and Farchy, J. (2007/2009). *Droit d'auteur et copyright*. Paris: Editions la Découverte.
- Bocquet, C. (2008). *La traduction juridique. Fondement et méthode*. Bruxelles: De Boeck (coll. Traducto).
- Cornu, G. (2005). *Linguistique juridique*. 3th ed. Paris: Montchrestien.
- Cornu, G. (2016). *Dictionnaire juridique*. 11th ed. Paris: PUF.
- Cornu, M. (2003). *Dictionnaire comparé du droit d'auteur et du copyright*. Paris: CNRS Editions.
- Decaudin, S. (2007). Les parémies juridiques: Une version en espagnol et en français de leur traduction. In: G. Ruiz Yepes and C. Valderrey Reñones, eds. *Traducción y cultura: La paremia*. Málaga: Libros Encasa, pp. 93–114.
- Gémar, J.-C. (1979). La traduction juridique. *Meta: Translators' Journal*, 24 (1), pp. 35–53.
- Goré, M. (2011). La traduction, instrument de droit comparé. In: M. Cornu and M. Moreau, eds. *Traduction du droit et droit de la traduction*. Paris: Dalloz, pp. 109–115.
- Laithier, Y.-M. (2009). *Droit comparé*. Paris: Editions Dalloz.
- Legeais, R. (2008). *Grands systèmes de droits contemporains: Une approche comparative*. Paris: Litec.
- Monjean-Decaudin, S. (2010). *Approche juridique de la traduction du droit*. Cerije [online]. Available at: www.cejec.eu/2010/01/13/approchejuridique-de-la-traduction-du-droit/ [Accessed 4 Oct. 2018].
- Monjean-Decaudin, S. (2011). L'Union européenne consacre le droit à l'assistance linguistique dans les procédures pénales. *Revue Trimestrielle de Droit Européen*, 47 (4), pp. 763–781.
- Monjean-Decaudin, S. (2012). *La traduction du droit dans la procédure judiciaire. Contribution à l'étude de la linguistique juridique*. Paris: Dalloz (Bibliothèque de la Justice).
- Monjean-Decaudin, S. (2013). Réflexion sur l'inflexion du signifié dans la traduction juridique de Claude Bocquet. *Parallèles*, 25, pp. 19–29.
- Monjean-Decaudin, S. (2015). Multilinguisme et traduction du droit. In: I. Pingel, ed. *Le multilinguisme dans l'Union européenne*. Paris: Pedone, pp. 89–99.
- Monjean-Decaudin, S. (2016). Pourquoi traduire un code, hier et aujourd'hui? *Journal of Civil Law Studies*, 9 (1), pp. 191–204. Available at: <http://digitalcommons.law.lsu.edu/jcls/vol9/iss1/9/> [Accessed 4 Oct. 2018].
- Ost, F. (2009). *Traduire – Défense et illustration du multilinguisme*. Paris: Fayard (coll. Ouvertures).
- Popineau, J. (forthcoming). La juritraductologie comme outil didactique pour la traduction des concepts en français et en anglais. In: B. Franck and S. Monjean-Decaudin, eds. *Aspects théoriques et pratiques de la traduction juridique et économique*. Paris: Garnier (coll. Translatio).
- Sacco, R. (2011). Aperçus historique et philosophique des relations entre droit et traduction. In: M. Cornu and M. Moreau, eds. *Traduction du droit et droit de la traduction*. Paris: Dalloz, pp. 13–27.
- Šarčević, S. (1997). *New approach to legal translation*. The Hague: Kluwer Law International.