THE COUNCIL OF EUROPE'S FRENCH-ENGLISH LEGAL DICTIONARY: AN AMERICAN LAWYER'S ANALYSIS

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Abstract

This article analyzes the Council of Europe's French-English Legal Dictionary from an American standpoint, and points out instances where the solutions given in the dictionary will not work in the U.S. context. It also identifies cases where the dictionary provides a definition rather than a term. Finally, it discusses several entries that are not entirely accurate and suggests ways to improve them.

Résumé

Dans cet article, l'auteur fait l'analyse du dictionnaire juridique établi par le Conseil de l'Europe entre le français et l'anglais en se plaçant du point de vue d'un usager américain. Certaines solutions avancées ne peuvent pas convenir dans le contexte des États-Unis ; dans d'autres cas, le dictionnaire présente une définition plutôt qu'un terme. Pour finir, l'auteur discute plusieurs entrées du dictionnaire qui ne sont pas totalement exactes et suggère des façons d'y remédier.

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The Council of Europe's French-English Legal Dictionary[1] is by far the most comprehensive and most accurate of all currently available legal dictionaries in that language pair[2]. As a result, it is in the interest of American translators of legal French to make it their reference book of first resort. Unfortunately, as the very title of the book suggests, it was written exclusively for the European context, and the introduction even points out that "the English terms are those currently or formerly used in English law." The purpose of this essay is not to criticize the book's exclusive focus (which is obviously justified given the context in which it was written), but to make the book more useful to American translators by pointing out (1) American equivalents of the British terminology found in the book, (2) instances where the dictionary provides a definition of the French legal term instead of an equivalent term in legal English and (3) the rare instances where the dictionary is not entirely accurate.

BRITISH ENGLISH INSTEAD OF AMERICAN ENGLISH

The instances of British spelling should be immediately obvious to American legal translators: "harbouring a criminal" (p. 199), "self-defence" (p. 69), "offence" (p.72), "most favoured nation clause" (p. 210), and "naturalisation" (p. 213). In at least one instance, however, simply changing the spelling from British to American will not result in a suitable translation for the American context: **accostage en voiture** (p. 6) is translated as "kerb crawling." Kerb is spelled "curb" in American English, but the term itself "kerb crawling" is used only in Britain. *The Concise Oxford Dictionary, 10th Edition*, defines it as "the action of driving slowly along the edge of the road in search of a prostitute or in an attempt to entice a passer-by." Some form of that definition will have to be used to translate the term into American English, where "curb crawling" is not used.

Less obvious to American translators than the spelling differences are the syntactical differences between the two versions of English. One instance of this in the legal context is the verb "to appeal," which is intransitive in

1 Frank BRIDGE, *The Council of Europe French-English Legal Dictionary*, Strasbourg, Council of Europe Press, 1994.

2 See my article discussing the superiority of *The Council of Europe French-English Legal Dictionary* over the other bilingual legal dictionaries available on the market: Thomas L. WEST, "French-English Legal Dictionaries: An American Lawyer's Analysis", (2002) 31 *ATA Chronicle* 22.

British English and transitive in American English[3]. Thus, on page 17, **appeler d'un jugement** is translated "appeal against a judgment." In American English the correct phrase is to "appeal a judgment."

Even less obvious are the differences in legal terminology, as explained in the following list:

Abondement (p. 1) is translated as "employer's contribution to a collective savings scheme." As Orin Hargraves points out in *Mighty Fine Words and Smashing Expressions*, "in American English, the word *scheme* often carries the connotation of something deceitful or fraudulent: *a check-kiting/counterfeiting/Ponzi/pyramid scheme*. For this reason, legitimate enterprises that British English would label schemes—*a pension/housing/export scheme, a scheme that will take people off the dole, a scheme to clean up the sewers in Glasgow*—get called *plans* or *programs* in American English: *a savings plan, a housing program*."[4] Therefore, Americans refer to a "retirement savings plan," and would probably translate the French term **abondement** as "employer's matching contribution (to a retirement savings plan)."

Acte de société (p. 9) is translated as "articles of partnership; memorandum and articles of association of a company." American law refers to the latter as the "articles of incorporation and bylaws." Interestingly, what are called "articles of association" in British English are "bylaws" in American English, and "articles of incorporation" in American English are the "memorandum of association" in British (although it would be logical to assume that "articles of incorporation" in one language are "articles of association" in the other).

Acte introductive d'instance (p. 166) is translated as "writ; originating procedure." As the term suggests, an **acte introductive d'instance** is the document that the plaintiff files to commence a civil lawsuit. This is known as a "complaint" in American English[5].

Action reconventionnelle (p. 11) is translated as "counterclaim; cross-action; cross-petition." In American law, however, a counterclaim is different from a cross-claim. Bryan Garner explains that "[i]n most American jurisdictions, *counterclaim* refers to a claim by a defendant against the plaintiff used as an offset against the original claim; and a *cross-claim* is a claim by one coparty against another, as by one defendant against a codefendant. ... In BrE, *counterclaim* is defined as 'a cross-claim brought by a defendant in civil proceedings that asserts an independent cause of action but is not also a defense to the claim made in the action by the plaintiff'. *Cross-action* is frequently used in BrE for *cross-claim.* These terms are somewhat less restricted in BrE than in AmE, for *cross-claim* [in Britain] may refer either to (1) an action brought by the defendant against the plaintiff, or (2) an action brought by a defendant against a codefendant in the same suit."[6] Therefore, the French term in question, **action reconventionnelle**, can only be translated as "counterclaim" in American English, and an American cross-claim (a concept that does not exist in French law) would be a "demande entre défendeurs" in French.

3 Orin HARGRAVES, *Mighty Fine Words and Smashing Expressions*, New York, Oxford University Press, 2003, p. 234.

4 *Ibid.*, p. 43.

5 U.S. Federal Rules of Civil Procedure, Rule 3: "A civil action is commenced by filing a complaint with the court."

Assurance décès (p. 64) is translated as "(whole) life assurance," but in American English it is called "whole life insurance." Indeed, this very translation is given on p. 21 of the dictionary.

Capacité d'ester en justice (p. 29) is translated as "locus standi." This Latin phrase is not used in American legal English, where the proper term is "standing."[7]

Déposer un amendement (p. 15) is translated as "to table an amendment." This is a case where the meaning of a word in British English ("table") is exactly the opposite of its American meaning. In British English, to "table" something is to present it formally for discussion or consideration at a meeting, whereas in the United States, to "table" something is to postpone consideration of it. Obviously, the meaning of the French phrase in question is to "present an amendment for discussion," and that is how it should be translated into American English.

Déposition (p. 77) is translated as "statement (given in evidence); evidence given by a witness; deposition." In British English, a deposition is a "statement made on oath before a magistrate or court official by a witness

6 Bryan A. GARNER, *A Dictionary of Modern Legal Usage*, 2nd ed., New York, Oxford University Press, 1995, p. 238.

7 *Ibid.*, p. 537, condemning "locus standi" as an "unnecessary Latinism" but admitting that it is "common in Great Britain."

and usually recorded in writing,"[8] whereas in American English, a deposition is either "a witness's out-of-court testimony that is recorded by a court reporter and reduced to writing for later use in court" or "the session at which such out-of-court testimony is recorded."[9] Obviously, the key feature of an American deposition is that unlike the British "deposition" and the French **déposition**, it is taken out of court. Therefore, while "deposition" works as a translation of the French cognate into British English, it should be avoided when translating into American English to avoid suggesting the out-of-court deposition procedure used in the United States. A safer translation into American English is simply "sworn statement" or "sworn testimony."

Droit de visite (p. 101) is translated as (among other things) "right of access." This refers to a parent's right to visit his or her children following divorce, and is most commonly called "visitation rights" in American English.

Excès de pouvoir (p. 121) translated as "abuse (misuse) of authority; acting in excess of authority (jurisdiction); acting ultra vires." This translation is misleading to an American lawyer, who will associate the term "*ultra vires*" with corporate law. Officers and directors are said to be acting *ultra vires* when they act beyond the power allowed or granted by a corporate charter or bylaws. The French term **excès de pouvoir**, on the other hand, is not used in the corporate context. It belongs to the domain of civil procedure, and is defined as "violation de la séparation des pouvoirs : empiètement par une autorité judiciaire sur les attributions du pouvoir législatif (arrêt de règlement) ou exécutif (critique d'une décision administrative) qui donne ouverture à cassation."[10] Therefore, the first two translations given in the Council of Europe Dictionary (i.e., "abuse (misuse) of authority; acting in excess of authority (jurisdiction)") are fine (although perhaps "abuse of judicial authority" would be clearer); only the one using "ultra vires" should be avoided by American translators.

Fin de non-recevoir (p. 132) is translated as "application to strike out on grounds such as one of the following: failure to pursue, disclosing no

8 Elizabeth A. MARTIN, *Oxford Dictionary of Law*, 3rd ed., Oxford, Oxford University Press, 1994, p. 120.

9 *A Dictionary of Modern Legal Usage, supra*, note 6, p. 267.

10 Gérard CORNU, *Vocabulaire juridique*, 7th ed., Paris, Presses Universitaires de France, 1998, p. 345.

cause of action, lack (want) of standing, limitation, res judicata; objection to admissibility; preliminary objection; ground of inadmissibility; objection to jurisdiction." In general, this type of "application" would be referred to in American English as a "motion to dismiss," while "failure to pursue" would be "lack of prosecution" in U.S. English, and "disclosing no cause of action" would be "failure to state a claim."[11]

Franchise (p. 139) is translated as "franchise; (insurance) excess." The latter is what Americans call a "deductible," and it is highly likely that many Americans would not understand the word "excess" in the context of insurance. Incidentally, another important meaning of the French term "franchise" that is not included in the Council of Europe Dictionary is "rent-free period" under a lease.

Loi sur le repos de dimanche (p. 270) translated as "Sunday Observance Act." A law mandating rest on Sunday is called a "blue law" in American English.

Mémoire en réponse (p. 203) is translated as "memorial in reply; observations in reply," but this would be called a "reply brief" in the United States. Whereas "brief" in American English means "the written arguments of counsel for consultation by the court,"[12] in British English it means "a document by which a solicitor instructs a barrister with an abstract of the pleadings and facts as the barrister prepares to appear as an advocate in court."[13]

Modification statutaire (p. 208) translated as "alteration of the statutes." In American English, this would be called a "bylaws amendment." In the U.S., the term "statutes" refers only to "laws," whereas in British English it is also used to mean what Americans call "bylaws." In British English, "bye-laws" are what Americans call "ordinances" (i.e., regulations made by a local authority, such as a town or railway).

Notaire (p. 213) is translated as "solicitor," with the caution that "this is the general functional equivalent but there are many differences when it comes to details of practice and scope of function; in some contexts 'notary' should be used, but care should be taken to avoid confusion with

11 See e.g. U.S. Federal Rules of Civil Procedure, Rule 12(b)(6), identifying a motion for "failure to state a claim upon which relief can be granted."

12 *A Dictionary of Modern Legal Usage, supra*, note 6, p. 118.

13 *Ibid.*

the considerably narrower English profession of notary public." In American English, a "solicitor" is a person who solicits business or contributions, often going door to door, and would be called a "hawker" or "canvasser" in British English. Obviously, the author of the Council of Europe Dictionary is using "solicitor" in the British sense to mean a member of the legal profession. This will not work as a translation of **notaire** in the United States, and the question becomes whether to use the term "notary" since a U.S. notary is so different from a French **notaire**. There are several schools of thought on this: some argue that the word should be left in French[14], others assert that the best translation is "civil-law notary,"[15] and still others claim that the basic concept of "someone who authenticates" is common to both the French word **notaire** and the English word "notary" and therefore, the latter can be used to translate the former.

Séparation de corps (p. 281) is translated as "judicial separation." This is usually referred to as "legal separation" in American law.

Valeur à revenue fixe (p. 307) is translated as "fixed-interest security," which would be called a "fixed-income security" in the United States[16].

Definitions instead of terms

Translators using a bilingual dictionary seek not only a definition of the term they are trying to understand, but also a more-or-less equivalent term in the target language that can be inserted into their translation. Unfortunately, on several occasions, the Council of Europe Dictionary provides only a definition of a French term when there is actually an equivalent term in English[17].

Acceptation des risques (p. 6) is translated as "volenti non fit injuri." This Latin phrase is not used in legal English in the United States, where

14 See for example Catherine ELLIOTT, Carole GEIRNAERT and Florence HOUSSAIS, *French Legal System and Legal Language*, London, Longman, 1998, p. 105, indicating that there is "n.t." [no translation] for **notaire**.

15 Significantly, Florida and Alabama have created the profession of "civil-law notary." See e.g. Code of Alabama 1975, § 36-20-50.

16 See the glossary at http://moneymanager.smh.com.au/tools/glossary/dict_f.html, which points out that "fixed income is the American term for fixed interest."

17 On the difference between "terms" and "definitions," see Robert DUBUC, *Manuel pratique de terminologie*, 4th ed., Brossard, Linguatech, 2002.

this concept in tort law is simply called "assumption of the risk," defined by *Black's Law Dictionary* as follows: "the principle that one who has taken on oneself the risk of loss, injury, or damage consequently cannot maintain an action against the party having caused the loss."[18]

Bans (p. 25) is translated as "notice of an intended marriage posted on the notice-board of a mayor's office." This is a definition of the "banns of matrimony."

Capacité de tester (p. 29) is translated as "capacity to make a will," which is the definition of the term "testamentary capacity."

Compétence en raison de la matière (p. 41) is translated as "jurisdiction ratione materiae (based on the subject matter)." This is the definition of "subject matter jurisdiction" in American English. A synonymous term in French, **compétence d'attribution**, is translated on the same page with the same roundabout language rather than the standard term "subject matter jurisdiction."

Concordat (p. 43) is translated as (among other things) "treaty between a state and the Holy See." This is precisely the definition of the English term "concordat" (used in both Britain and America).

Force probante (p. 136) is translated as "conclusiveness; evidential value; weight as evidence." These are all correct (although as Bryan Garner points out, "evidentiary" is far more common in American English than "evidential," the preferred adjective in British English), but there is a standard term for this in *Barrons's Law Dictionary*: probative value[19].

Juridiction compétente (p. 181) translated as "court having jurisdiction; competent court." These translations are correct, but the most common way of saying this in American legal English is "court of competent jurisdiction," a phrase that is often mistranslated into French as "tribunal de juridiction compétente," when the correct translation is simply the French term in question here.

Mort civile (p. 208) is translated as "civil death. Forfeiture of all civil rights formerly imposed on felons." However, there is a term for this in English: attainder.

18 Bryan A. GARNER, *Black's Law Dictionary*, 7th ed., St. Paul, West Group, 1999, p. 121.

19 Steven H. GIFIS, *Barron's Law Dictionary*, 3rd ed., New York, Barron's Educational Series, 1991, p. 376.

Non bis in idem (p. 212) is translated as the "rule that a person must not be tried twice for the same offence." This is known as the "rule against double jeopardy" in the U.S.

Pacte de quota litis (p. 225) is translated as "agreement authorizing another to pursue an action on one's behalf in return for a share of the proceeds." This is the definition of what is referred to as a "contingency fee agreement" in the United States.

Radiation (p. 257) is translated as "cancellation of an entry; striking out or striking off a list." A concise way of expressing the latter is "deregistration."

Témoin de moralité (p. 208) is translated as "witness to prove character," which is the definition of a "character witness."

Suggestions for improvement

Acte illicite civil (p. 8) is translated as "civil tort." However, *Black's Law Dictionary* defines tort as "a civil wrong for which a remedy may be obtained, usually in the form of damages."[20] By its very definition, therefore, a tort is "civil," and a reference to a "civil tort" is tautologous.

Comme amiable compositeur (p. 15) is translated as "as a mediator; ex aequo et bono; on equitable principles." The translations "ex aequo et bono" and "on equitable principles" are correct, but "mediator" is wrong. Cornu explains that an "amiable compositeur" (the French term is used in English) is an "arbitre auquel la convention d'arbitrage donne mission de trancher le litige en équité, ex æquo et bono, sans être tenu de suivre, sauf si elles sont d'ordre public, les règles du droit (de fond ou de procédure), l'arbitre ayant, dans cette mesure, le pouvoir d'écarter la règle de droit normalement applicable, sans être privé du pouvoir de statuer en droit."[21] In other words, an "amiable compositeur" is an arbitrator who decides a case as seems fair to him, without basing his judgment on the law. He does not engage in "mediation," which Black's defines as "a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution."[22]

20 *Black's Law Dictionary, supra*, note 18, p. 1496.

21 *Vocabulaire juridique, supra*, note 10, p. 50.

22 *Black's Law Dictionary, supra*, note 18, p. 996.

Conseil de surveillance (p. 47) is translated as "supervising board," with an indication that the French term is based on the German **Aufsichtsrat**. However, an examination of the standard German-English legal dictionaries shows that the accepted translation of this term is "supervisory board," not "supervising board."[23]

Contrat unilatéral (p. 52) is translated as "unilateral contract." U.S. law distinguishes between what it calls unilateral contracts and bilateral contracts, and French law distinguishes between "contrats unilatéraux" and "contrats bilatéraux" (the latter are more frequently referred to as "contrats synallagmatiques"). Although the French words literally mean "unilateral contracts" and "bilateral contracts," their definitions are different from those of the cognate terms in English[24]. Cornu defines "unilatéral" in conjunction with "contrat" as follows: "Qui oblige une personne envers une autre ou plusieurs autres sans qu'il y ait, de la part de ces dernières, d'engagement réciproque."[25] A "contrat synallagmatique," on the other hand, is one "qui engendre des obligations réciproques et interdépendantes." In the United States, a contract, by its very definition, must involve reciprocal obligations, for without them, there will be no consideration, i.e., the bargained-for quid pro quo. This means that all contracts in the United States would be considered "contrats synallagmatiques" under French law. A "contrat unilatéral" under French law, i.e., an agreement where only one of the parties assumes an express obligation to perform in favor of the other party, would be unenforceable in the U.S. for lack of consideration. By the same token, a unilateral contract in the U.S. would not be considered a contract under French law because it would lack a meeting of the minds. In the United States, a unilateral contract is a promise in exchange for an act[26]. An example of an offer for a unilateral contract is the

23 See for example Clara-Erika DIETL and Egon LORENZ, *Dictionary of Legal, Commercial and Political Terms*, Part II, German-English, New York, Matthew Bender, 1992, p. 80; Alfred ROMAIN, B. Sharon BYRD and Carola THIELECKE, *Dictionary of Legal and Commercial Terms*, Part II, German-English, 4th ed., Munich, C.H. Beck, 2002, p. 85.

24 Roland SÉROUSSI, *Introduction aux droits anglais et américain*, 2nd ed., Paris, Dunod, 1999, p. 102, indicating the following: "Unilateral contract: très différent du contrat unilatéral de droit français (une seule partie a des obligations envers l'autre)."

25 *Vocabulaire juridique, supra*, note 10, p. 858.

26 Roger LeRoy MILLER and Gaylord A. JENTZ, *Business Law Today*, St. Paul, West Publishing Company, 1988, p. 109.

posting of a reward: "I will give $100 to anyone who brings back my lost dog." Instead, French law would likely regard this as an "engagement unilateral," which is defined as follows: "L'engagement unilatéral ne fait naître une créance qu'à partir du moment où il est reçu et accepté par un créancier, ce qui forme le contrat."[27]

donner quitus (p. 256) is translated as "discharge." The French term frequently appears in the phrase "donner quitus aux dirigeants sociaux," which is defined by Cornu as "délibération (vote du quitus) par laquelle les associés, après approbation des comptes présentés par les dirigeants de la société, reconnaissent que ceux-ci se sont convenablement acquittés de leur mission, sans cependant que cette décharge de principe empêche de rechercher ensuite la responsabilité des dirigeants." This is what an American lawyer would call "ratification of the acts of management" at fiscal year end, and he might understand the "discharge" of officers to mean that they had been fired. Indeed, "firing" is among the seven possible meanings of the word "discharge" in the legal context according to Garner, none of which matches the definition of **quitus**: (1) to pay a debt or satisfy some other obligation <Jones discharged all the debts>; (2) to release (a bankrupt) from monetary obligations upon adjudication of bankruptcy <Jones was discharged from those debts>; (3) to dismiss (a case) <case discharged>; (4) to cancel the original provisional force of an injunction or other court order <the T.R.O. was then discharged>; (5) to free (a prisoner) from confinement <the offender was granted a conditional discharge>; (6) to relieve (a jury) of further responsibilities in considering a case <at 6:00 p.m. that Friday, the jury was discharged>; or (7) to fire (an employee) <employers may hire and discharge when they please."[28] Nor do the definitions of "discharge" in the *Oxford Dictionary of Law*, a British dictionary, suggest that the term has any meanings in British English that are similar to "quitus" in French. Indeed, it defines "discharge" as "release from an obligation, debt, or liability,"[29] and "quitus" most emphatically does not mean "release from liability," as the Cornu definition makes clear.

encaisser un chèque (p. 108) is translated as "collect a cheque." Not only do Americans spell the name of the negotiable instrument "check," but they would understand "collect a check" to mean "pick one up" from

27 René SAVATIER, *La théorie des obligations*, Paris, Dalloz, 1979, p. 142.

28 *A Dictionary of Modern Legal Usage*, *supra*, note 6, p. 280.

29 *Oxford Dictionary of Law, supra*, note 8, p. 126.

someone who owes them money, whereas the French expression "encaisser un chèque" means "to cash a check."

moyen pris (relevé) d'office (p. 209) is translated as "point (ground) raised by the court of its own motion (ex officio)." In American English, it is more natural to say "on its own motion," and regardless of the preposition, the phrase does not mean "ex officio" (by virtue of its office) but rather "sua sponte" (i.e., on its own motion).

CONCLUSION

The Council of Europe French-English Legal Dictionary is a model dictionary in terms of its accuracy and completeness. By taking the above considerations into account, American translators will be able to use it with as much success as their colleagues in Great Britain.