

## Meta

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*Jurilinguistique: entre langues et droits.*  
*Jurilinguistics: Between Law and Language, Montréal,  
Thémis/Bruylant, 596 p.***

Mairtin Mac Aodha

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# DOCUMENTATION

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## Comptes rendus

GÉMAR, J.-C. et N. KASIRER (dir.) (2005): *Jurilinguistique: entre langues et droits. Jurilinguistics: Between Law and Language*, Montréal, Thémis/Bruylant, 596 p.

*Ubi societas, ibi jus*. This maxim, much favoured by jurists, should have as its corollary *ubi jus, ibi lingua*. For language, law and society form an indissociable trinity. It is precisely the interaction between these three elements: law, language and society that provides the subject-matter of *Jurilinguistique: entre langues et droits: Jurilinguistics: Between Law and Language*. The term *jurilinguistique* was coined in Canada in the 1970's. It denotes the scientific study of the language of the law. Its focus can be general, concentrating on the fundamental relationship between language and law or more specific, drawing on and enriching the language of the law within a given language (e.g. French) or a given legal system (e.g. common law). It can be orientated either towards the lexicon of the law or towards legal style, the way the law is expressed in the legislature, the courts and the legal professions (Snow 2003: 211-212). The relationship between law and linguistics has not always been harmonious. Fajans and Fark (1998) argue that what little exchange there is between lawyers and linguists is at best edgy. George Mounin (1979: 102) was equally skeptical about any potential contribution linguistics could make to the field of law:

(my translation) *The real contribution of our discipline in this instance will not have been to suggest ready-made paradigms capable of being applied immediately to the law, but to have stimulated by its example reflection on key epistemological concepts relating to indicators and to signs, to communication, to linguistic and to non-linguistic communication, to structure and to system – and above all these must be relevant: for one cannot overemphasize that if one extracts irrelevant or statistically unrepresentative data from a corpus and marries them through dubious interpretation one is left with only a pseudo-structure of the corpus, closer to the ideology of the researcher than that of the legal object analysed.*<sup>1</sup>

However, such dissenting opinions are rare. The contribution terminology, lexicology, semantics and pragmatics could make to legal discourse has been gradually acknowledged (Levi: 1982) and was firmly underscored in Canada with the publication some twenty-five years ago of *Language du droit et traduction. Essais de jurilinguistique* under the editorship of Jean-Caude Gémard (1982).

This work distinguishes itself from this earlier tome in the range of legal instruments covered<sup>2</sup>, the diversity of aspects of the relationship between language and law examined<sup>3</sup> and in its international dimension.<sup>4</sup> The positivist tendency to highlight legislation at the expense of other manifestations of the law is less pronounced here. The 1982 work was divided into two parts: *Essais de description du langage du droit* and *Traduction et langage du droit: moyens et techniques*. A bipartite division is also present in *Jurilinguistique*: Part One: *Laws, Languages: Jurilinguistic Perspectives* and Part Two: *Laws, Languages: Jurilinguistics Applications*. These broader divisions are sub-divided into subsections: *Laws, Languages Compared, Languages and Legal Systems reconfigured*, etc. There is a total of 32 articles framed by a Foreword and an Afterword penned by each of the editors. I do not propose here to discuss each article but rather to suggest something of the flavour of the volume by analyzing four representative articles.

In his excellent article “Réflexion autour des dictionnaires de droit civil,” Mathieu Devinat (2005: 321) explores the notion of meaning in civil law dictionaries. He destroys the myth that civil law terminology has a fixed official meaning that is ready to be plucked ‘prêt à cueillir’ (325). He goes on to bemoan the lack of sources cited in civil law dictionaries. He contrasts this situation with the practice in common law dictionaries where “what serves as a definition is sometimes no more than a description of the legal regime in which the term is set, a citation from a judgment, or an extract from a statute” (my translation) (327).<sup>5</sup> The meaning of words is thus tightly bound up with the legal actors who use them. He also points out that language in the hands of legal practitioners is often manipulated for specific purposes. One is reminded of Melinkoff’s observation: “the adversary system has no consistent regard for precision. A lawyer arguing to a jury or to a judge is more concerned with what will persuade than what is precise” (1983-1984: 440). What the author perceives as a strength of Common law dictionaries, i.e., the dynamic and plural nature of meaning in their definitions can, however, also be a vice. Witness the following remark under *contract* in Ballentine’s law dictionary: “nothing less than the whole body of applicable precedent will suffice for the purpose of definition.”<sup>6</sup> Devinat argues that an examination of law in practise reveals that civil terms attract many meanings. The prevailing preference for one official meaning is linked to the particular epistemic and philosophical traditions of civil law. The author concludes on a cautionary note, reminding the reader that legal meaning as found in dictionaries is merely one of many possible definitions. He argues in favour of what Cornu called the ‘potentialité lexicale’ or as another author expressed it “words lose their singular meaning so that all their possible meanings can be explored” (Weis 1987-1988: 972).

A less prominent aspect of legal terminology is the subject of Heikki Mattila’s contribution in this volume. The author explores the symbolic function of legal Latin in legal contexts (courtrooms, rhetorics etc) and the role of legal Latin in the communication between lawyers. It is this second aspect that will concern us here. This article is particularly welcome as it comes at a time where opinions on the merit of retaining legal terminology vary greatly. Legal maxims, for example, represent either the legal equivalent of “what a fortune cookie is to philosophy” (Melinkoff 1983-1984: 434) or “fragments of poetry” (Cornu: 437) depending on who one asks. At a time when there is a movement towards the abolition of Latin in both the French and English legal language<sup>7</sup>, increased academic attention and interest amongst comparativists and international lawyers can also be observed.<sup>8</sup> We learn, for example, that legal Latin terminology can vary in meaning from one jurisdiction to another, that Latin phrases take on “national colouring” (Berteloot 1988: 31) The author urges the creation of a compilation of modern legal Latin that would take account of these regional variations and facilitate communication between International lawyers.

Finally, two fascinating articles that could be read with profit in conjunction. Jacques Vanderlinden in “D’un paradigme de l’autre: À propos de l’interprétation des textes législatifs plurilingues” (293) analyzes the solutions adopted in different jurisdictions to problems presented by two or more linguistic versions of legislative texts. These can vary from the consecration of a national language which is to prevail in case of conflict to the most arbitrary of resolutions. An example of the first is provided by Article 25.4.6 of *Bunreacht na hÉireann* (The 1937 Irish Constitution) which provides that in case of conflict the Irish text wins out: “In the case of conflict between texts of a law enrolled under this section, the text in the national language shall prevail.”<sup>9</sup> An example of the second type of solution is found in the South Africa Act where it is provided that the linguistic version of a statute to prevail is the one signed by the governor-general (in more recent times, by the President), this being a pure matter of chance. The author looks at the situation in countries that have been decolonized where recourse is had to the language of action, often that of the former colonizers. He argues that the arbitrary nature of these rules of interpretation runs contrary

to the respect of different cultures and is a symbol of the failure of law to meet the legitimate expectations of parties.

Pierre-André Côté (2005: 127) looks at a different but complementary aspect of the interpretation of legislation. He examines the practice of the Supreme Court of Canada and the European Court of Justice, which insists that the meaning of legal norms cannot be validly established on the basis of only one linguistic version of the law. The Court of Justice, for example, as Berteloot (1988: 27) points out, usually analyzes several language versions all the while defending the need for a uniform interpretation. The principle of equal authority of the linguistic versions, however, the author argues, creates a legitimate expectation amongst unilingual persons that they are to rely on the text drafted in their own language. This paradoxically leads to a situation where the “method of legal expression which aims at making law understandable for unilingual persons gives rise to a method of legal interpretation which disqualifies those very persons from being truly competent interpreters of the law” (127).

An example from Irish law is perhaps worth citing in the context of these two articles. One example of a clear divergence between the Irish and English texts of the Constitution is found in Article 12.4.1 of the 1937 Constitution. It provides as follows:

*Gach saoránach ag a bhfuil cúig bliana tríochad slán, is intofa chun oifig an Uachtaráin é.  
Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.*

In the Irish text one must be 35 years old to be eligible to election to the office of President. In the English text one need only be 34. Article 25.5.4 explicitly states that in the case of such a divergence, the national language prevails. And clearly, any departure from this constitutional canon of construction would be difficult to justify (Mac Cárthaigh: 217). The solution adopted by the authors of the Irish constitution has the virtue of providing certainty which Pierre-André Côté argues is absent from the Canadian situation. However, it could be argued (although I do not subscribe to this view), that in a perverse way it also embodies the arbitrariness denounced by Vanderlinden, in that by privileging the minority native language at the expense of the coloniser’s language (Irish is spoken by less than 5% of the population on a regular basis) it does an injustice to the linguistic expectations of the majority. It is clear that the advancement of bilingual societies through the expression of laws in two or more languages always involves compromise and is never less than controversial.

The selection of some of the contributions included in this volume is questionable. The inclusion, for example, of articles on legal language and linguistic rights in 21<sup>st</sup> century Spain (Borja Albi: 225) and on the status of African national languages (Halaoui: 245) would seem to ignore Jean-Claude Gémard’s definition of *la jurilinguistique* in the opening article (7, footnote 3) where he expressly precludes linguistic rights from the realm of this discipline. Their concern is with law and rights and not their mode of expression. It would also have been desirable to reflect the growing importance of jurilinguistics as a discipline internationally. The vast majority of contributions are from Canadian (or Canadian-based) scholars (16 out of a total of 32). France has six contributors, Switzerland three, the US two, and Belgium, Croatia, England, Finland and Spain each contribute a single article. It is to be hoped that future volumes will more accurately represent what is now a truly international discipline. But these are minor quibbles and point to a key issue raised implicitly by this publication.

What is the relationship between Canada and the rest of the world in terms of this relatively young discipline? Can it provide ready-made models capable of immediate application in other jurisdictions? Or is it merely a source of inspiration? It would seem that the latter is the more probable. Susan Šarčević (2005: 279) specifically acknowledges a debt<sup>10</sup> as

does Isabelle de Lamberterie (2005: 365). However, as the adage provides: *locus regit actum*. Moreover, as Nicholas Kasirer (365) points out in the postface, the middle ground occupied by Canada, the “Canadian middleness” is predicated “not on dialogue between legal groups and legal traditions but on their separateness.” The middle place occupied by the jurilinguist will continue to be between law and language. All those who are interested in their interaction will find a veritable thesaurus in this magisterial volume.

MAIRTIN MAC AODHA

National University of Ireland, Maynooth, Ireland

#### NOTES

1. The French text reads: «L'apport réel ici de notre discipline aura été, non de proposer des modèles tout faits d'application immédiate au droit, mais d'avoir fourni un exemple stimulant pour réfléchir aux concepts épistémologiquement capitaux d'indice et de signe, de communication, de signification linguistique et non-linguistique, de structure et de système – de pertinence aussi et peut – être surtout: car on ne répétera jamais assez que si l'on extrait d'un corpus des indices non pertinents ou statistiquement non représentatifs, et si on les combine par des interprétations discutables on n'aura construit qu'une pseudo-structure du corpus, plus représentative de l'idéologie du chercheur que celle de l'objet étudié».
2. Note, for example, the addition of articles on the translation of judgments: Weston (445) “Characteristics and Constraints of Producing Bilingual Judgments: the Example of the European Court of Human Rights”; and on contracts: Houbert (505) “La traduction des contrats: état des lieux et perspectives.”
3. See for example the articles on Latin legal terminology and jurilinguistics: Mattila (71) “Jurilinguistique et latin juridique”; on the application of the ethnomusicology to the problems of legal multilingualism: MacDonald and Kehler Siebert (377) “Orchestrating Legal Multilingualism: 12 Etudes” and on the law of copyright and dictionaries and other jurilinguistic works: de Lambertine (363): “Quel droit d'auteur pour les dictionnaires et autres travaux de jurilinguistique?”
4. The internationalization of law is reflected in this work with contributions from a dozen countries including Finland, Spain, Holland, etc. Legal systems as diverse as those of Ireland and the Gabon feature.
5. The French text reads: “[...] ce qui tient lieu de définition n'est parfois rien d'autre qu'une description du régime juridique qui l'encadre, une citation d'un arrêt ou un extrait de loi.”
6. Quoted by Melinkoff (1983-1984: 437).
7. See the recent report of the *Commission du langage judiciaire* discussed in Steiner (2002: 157) and for the hostility towards the persistence of Latin in the English legal language see Elliott and Vernon (2000: 220).
8. See for example Grigorieff (2003), Mattila (2002), and Moréteau (2005).
9. The text in Irish reads: “I gcás téacs Gaeilge agus téacs Sacs-Bhéarla de dhlí a chur isteach ina n-iris faoin alt seo agus gan an dá théacs sin a bheith de réir a chéile, is ag an téacs Gaeilge a bheidh an forlámhas.” For a comprehensive analysis of the Irish text of the Constitution cf. O’ Cearúil (1999). For an interesting comparison of the Irish and Canadian practice with regard to the interpretation and construction of bilingual laws, cf Mac Cárthaigh (2007).
10. Cf. Also Gémar, J.C. (2003): *Art, méthodes et techniques de la traduction juridique: commentaires inspirés par le livre de Susan Sarcevic: New Approach to Legal Translation*. Can be consulted at <[www.tradulex.org/Hieronymus/Hiero-content.htm](http://www.tradulex.org/Hieronymus/Hiero-content.htm)>.

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HERNÁNDEZ, M. J. y C. CORTES (ed.) (2005): *La traducción periodística [La traduction journalistique]*, Escuela de traductores de Toledo, Ediciones de la Universidad de Castilla-La Mancha, Cuenca, 443 p.

*La traducción periodística*, ouvrage collectif, réunit les travaux et les expériences de onze spécialistes et traducteurs espagnols du domaine. Membres du *Groupe de recherche en traductologie*, les coordinatrices de l'ouvrage, Carmen Cortés Zabornas et María José Hernández Guerrero, accordent à ce genre de traduction le statut de traduction spécialisée. L'ouvrage est composé d'études réparties en quatre parties ou thèmes.

Les auteurs inclus dans la première partie, *Genres journalistiques*, examinent le genre journalistique comme discours spécifique doté de caractéristiques bien définies. José M. Bustos, de l'Université de Salamanque, estime qu'il est difficile de trouver des éléments discursifs communs ainsi que des aspects expressifs spécifiques qui justifient l'usage de la dénomination de texte journalistique, et il considère donc qu'il convient d'abord d'analyser la notion de genre en tant que réalisation linguistique d'une activité sociale. Selon lui, le genre est une modalité discursive conventionnelle de nature synchronique, mais qui peut perdurer dans le temps. Pour définir un texte en tant que journalistique, il faut se fonder sur le modèle de relation entre l'émetteur et le destinataire, ainsi que sur la nature du contenu du texte. Dans cette optique, et après avoir examiné les propositions de plusieurs auteurs, José M. Bustos opte pour la proposition de José Ma Casasús (1991), selon laquelle il existe plusieurs genres journalistiques: informatif, interprétatif, argumentatif et instrumental. Bustos étudie ainsi le sociolecte journalistique et se demande s'il existe vraiment un mode spécifique d'expression propre aux journalistes. L'auteur souligne aussi quelques aspects des nouvelles de presse, notamment leur structure canonique, et il en effectue une analyse discursive.

Ma José Hernández, de l'Université de Málaga, aborde *La traduction des genres journalistiques* en s'appuyant aussi sur la division proposée par Casasús (1991). Selon la directrice de la revue TRANS, ces genres se différencient les uns des autres par le style de langue écrite, l'objectif recherché et la disposition psychologique de l'auteur. Du point de vue de la traduction, Ma José Hernández affirme qu'il faut bien connaître les caractéristiques de ces genres afin d'en déterminer la fonction et les ressources discursives. L'auteure propose une analyse descriptive de traductions d'articles des journaux espagnols d'information générale *El País* et *El Mundo*, étant donné que ces quotidiens utilisent la traduction comme activité courante; Hernández entend ainsi montrer la façon de traduire les différents genres journalistiques dans la presse espagnole. Elle classe donc les genres les plus traduits et en évalue la proportion; elle analyse certains aspects tels que le titre et le sous-titre, la présence de la signature du traducteur, etc.