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Review Article

Translation between Internationalization and Localization: On the Example of the Terminological Units Related to the Contemporary Juridical-Economic "Transplants"

Irina Gvelesiani
Ivane Javakhishvili Tbilisi State University
irina.gvelesiani@tsu.ge

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Abstract
The contemporary globalizing processes are oriented to the transformation from local or regional into worldly or international. Technological advancements, elimination of boundaries, innovative economic and political strategies stipulate the emergence of changes in almost all spheres of life. The innovative tendencies appear in the field of translation, which reflects the historical changes connected to the globalizing processes and mediates between the linguistic-conceptual internationalization and localization. The global aspiration towards the unification and integration results in spreading today's *lingua franca* (the English language) and in rendering some concepts or institutions unique to the common law context. The uniqueness of common law can be visualized in the difficulties of transmission of the concepts and translation from English into all other European languages necessitated by the appearance of the legal or economic transplants – the civilian "counterparts" of certain Anglo-American institutions.

The paper discusses some aspects of the translation, which play a crucial role in shaping the contemporary juridical-economic tendencies, but greatly "suffer" from the influence of the emerging paradigm of "transplants". The major emphasis is put on the semantic peculiarities of the terms related to the common law ***trust*** and its Quebecois "counterpart" (***fiducie***).

Keywords: civil law, common law, Quebecoise, translation, trust, trust-like device.

Introduction

"Law relies on language, and language is nothing but the practical use of its constituent words, noted the German philosopher Ludwig Wittgenstein in one of his most famous

philosophical treatises, the Philosophical Investigations" (Vogel, Hamann, & Gauer, 2017, p. 1340). Accordingly, a language is an essence of law, since law is substantially formulated through a language (Goddard, 2004).

During the discussion of the language of jurisprudence, it is necessary to deal with the English term ***legalese*** that means "a juridical style of the speech, which is characterized with non-standard phrases and structures" (Bondarenko, 2016, p. 87). "Legalese encompasses lexical terms, phraseology and syntactic structures that make it incomprehensible to the layperson. Literature reports that the European legal language is also hallmarked by abstruse and archaic words" (Giampieri, 2016). Accordingly, the study of this language becomes inevitable and even compulsory. Moreover, the greatest attention should be paid to the process of translation, which deals with the source and target languages and is deeply interwoven with law.

The paper is dedicated to the problematics of the translation of some terms related to the common law ***trust*** and its Quebecois "counterpart" (***fiducie***). At the first stage of our research, we describe these juridical institutions and single out the concepts related to them. Afterwards, we discuss the problematics of equivalency and different scholars' viewpoints in this respect. At the end, we deal with the problem of the translation of some lexical units and indicate the ways of its solution. As a result, the new terminological units are created.

The Common Law *Trust*

In the common law countries, the ***trust*** is one of the most utilized tools of succession, because of its ease, flexibility and informality (Devaux, Becker, & Ryznar, 2014). Its legal technic is regarded as omnipresent. In general terms, the ***trust***

> "is an equitable obligation, binding a person (who is called a "trustee") to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuis que trust) of whom he may himself be one, and any one of whom may enforce the obligation" (Thévenoz, 2009, p. 6).

More precisely, the ***trust*** is

> "an obligation enforceable in equity under which a trustee holds property that he or she is bound to administer for the benefit of a beneficiary or beneficiaries (a private trust), or for the advancement of certain purposes (a purpose trust)… Trusts are established expressly by a settler in a trust deed or a testator in a will (an express trust) or by implication (a resulting trust). They may also be established by operation of law (a constructive trust)" (Gray, 2004, p. 870).

The contemporary ***trust*** is based on the duality of ownership. The property resulting from a legal estate is divided into the property of a trustee and an equitable interest – the property of a beneficiary. The so-called ***trust instrument***/***trust contract*** is usually created inter vivos or on death at the direction of an individual. It obligates certain persons to administer, use and protect an entrusted property. Accordingly, the ordinary Anglo-American ***trust*** consists of three major elements:

- A ***trustor*** - a person, who creates the ***trust*** (also called a ***settlor***, a ***creator***, a ***grantor***, a ***donor*** or a ***settler***);

- A ***trustee*** - a physical person or legal entity, which holds legal title to the trust property. Trustees have many rights and responsibilities that vary from the ***trust*** to the ***trust***;
- A ***beneficiary*** – a beneficial or equitable owner of the property. A ***grantor/ trustor*** can also be a ***beneficiary***. In this case, the ***trust*** involves a simple delegation of responsibilities.

The major peculiarity of the common law ***trust*** lies in the fact that the English juridical system embraces the non-absolute notion of ownership. Firstly … the English law adopts the system of the relative titles as opposed to the absolute entitlements. Secondly, the recognition that the equitable interests are in some sense "proprietory", leads to the idea of ownership being "split" into the bare legal title and the equitable (or beneficial) interest (Häcker, 2009). As a result, the common law ***trust*** acquires the following characteristics:

- "the assets constitute a separate fund and are not a part of the trustee's own estate;
- title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- the trustee has the power and the duty... to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law" (Convention on the law applicable to trusts and their recognition, n.d.).

The Canadian Trust-like Device

Nowadays, Canada is a unique country "owning" the mixed legal system. According to the generally accepted assumption, the mixed juridical systems are originally the Roman-Civil law systems, which then absorb aspects of the English common law as parts of their structures (Ganado, n.d.).

In case of Canada, "Quebec did not create the trust from whole cloth, but rather imported it from the common law in response to demands from various constituencies within the province" (Lubetsky, 2013, p. 352). The process of "importing" was rather complicated, because the ***trust*** mechanism seemed alien to the civilian reality.

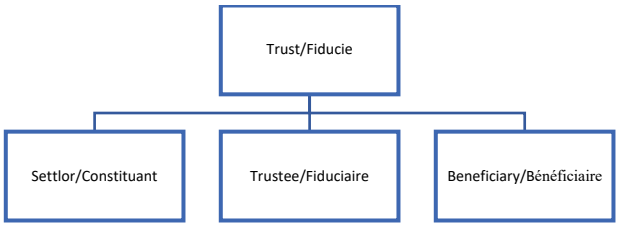
Nowadays, the "Civil Code of Quebec is a vital practical and historic component of the unique fabric of Canadian society" (Lloyd, & Pawley, 2005, p. 164), which presents 38 Articles (from 1260 to 1298) dedicated to the ***trust***. Article 1260 states the following: "A trust results from an act whereby the settlor transfers property from his patrimony to another patrimony constituted by him, which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer" (The Civil Code of Quebec, 1991).

Article 1261 of the Civil Code of Quebec presents a more precise description of the entrusting relationships:

"*Le patrimoine fiduciaire … constitue un patrimoine d'affectation autonome et distinct de celui du constituant, du fiduciaire ou du bénéficiaire, sur lequel aucun d'entre eux n'a de droit reel*"[1] (Lupoi, 2000, p. 308).

[1] Art. 1261. A trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of a settlor, trustee or beneficiary and in which none of them has any real right (Roy, 2010).

These definitions indicate that the Quebecoise ***trust*** was established as the juridical device paralleling the tripartite relationship of the common law ***trust*** sitting quite comfortably within the major principles of civil law. This tripartite relationship presents the following major elements that reflect the contemporary bilingualism – the simultaneous usage of the English and French languages on Canada's territory:



These elements present the contemporary terminological tendency - the ***fiducie*** is the French equivalent of the English ***trust***. As Article 1263 of the Civil Code of Quebec states, the ***fiducie*** is:

"Acte juridique par lequel une personne, le constituant, transfère, de son patrimoine à un autre patrimoine, des biens qu'il affecte à une fin particulière"[2].

Accordingly, each element of the entrusting relationship can be characterized in the following way:

A settlor (***constituent***) is a creator of the ***trust***, which can be set up in his/her lifetime (an *inter vivos trust*) or upon his/her death (a *testamentary trust*) before the distribution of the property between heirs. A settlor may be a trustee or one of the trustees. Accordingly, he/she should act jointly with an independent trustee;

A trustee (*fiduciaire*) can be any natural or legal person authorized by the law, which may alienate a trust property by an onerous title, change it with a real right, change its destination and make any form of investment (Roy, 2010). A trustee is a "full" administrator of the property via ensuring its maintenance and preservation. He/She is obliged to increase a patrimony and to utilize it for a specific purpose indicated in a ***trust agreement/trust contract***. More precisely, a trustee

> "has neither "legal ownership" of the trust property, […], nor "sui generis ownership" […]. Instead of a proprietary entitlement, the trustee has "powers" (pouvoirs) of administration to be exercised on behalf of the beneficiaries, as opposed to "legal rights" (droits subjectifs) to be exercised in his or her own interest" (Emerich, 2013, p. 35).

A beneficiary (*bénéficiaire*) can be any natural or legal person (even another ***trust***) determinate (or determinable) at the time of the creation of the ***trust.***

During the study of the Canadian entrusting relationships, a special attention should be paid to the ***fiducie***, which cannot present a division of ownership between a creator (having

[2] Juridical act by which a person, a settlor, transfers a part of his or her patrimony to another patrimony and appropriates the transferred property to a particular purpose (The Private Law Dictionary, n. d.).

ownership in law/legal ownership) and a beneficiary (having ownership in equity). Moreover, the Quebecoise law deviates from the rules of the Anglo-American common law. It recognizes a patrimony without a person as its head (an impersonal patrimony) and accordingly, presents a new method of holding/entrusting property - the assets are removed from a patrimony of a ***trustor*** and do not constitute a part of a ***trustee***'s or a ***beneficiary***'s ownership. This method of entrustment results in the creation of an autonomous patrimony, which is named as the ***patrimony by appropriation (patrimoine d'affectation).***

In contrast to the classical conception of a patrimony, the ***patrimoine d'affectation*** comprises "two masses of property: a set of assets impressed with a purpose, and a set of liabilities that arise in the pursuit of this purpose. Within this type of patrimony, the link between the property and obligations is no longer forged by their relation to a person, but rather by their common purpose" (Emerich, 2013, p. 24). Some scholars present the special skeptical approach to the given phenomenon, for instance, Claxton believes that

> "the concept of patrimony is itself a legal fiction invented by classical scholars of legal theory to explain the relationships between persons and property… Prior to reform it was hardly a part of the lexicon of the Quebec practitioner… the concept of the patrimony was mentioned in the former law (the CCLC) only incidentally in the French version to identify the mass of property of a succession" (Claxton, 2002, p. 291-292).

Despite having a prerequisite of a scarce usage of a patrimony, the Quebecoise law adopted the concept of the ***patrimoine d'affectation*** and by means of this concept "the English-inspired trust was 'civilianised' in the sense that it is now expressed within a framework of legal thought with which civilians are familiar" (Roy, 2010, p. 3).

Finally, it is noteworthy that the Quebecoise ***patrimoine*** comprises a non-segregated property, because it does not belong to a person, who has the power of its administration and disposition. Non-segregated assets may comprise any kind of a present or future property: real, personal, movable, immovable, incorporeal, corporeal, etc.

The Linguistic Situation

The major peculiarity of Canada lies in the fact that civil and common laws coexist in both official languages (English and French) throughout its territory. On the one hand, such coexistence reflects the historical development of the country. On the other hand, after the adoption of the Civil Code of Quebec of 1994, the greatest effort has been made to improve the terminological situation. The entrenched and harmonized bijuralism does not mean a simple merge of common and civil legal systems. The specificities of each system should be reflected in the federal law and should be accompanied by the harmonized linguistic tendencies, because a language plays a crucial and a pivotal role in the development of law. The Canadian bijuralism is associated with the bilingualism i.e. the ability of functioning in two languages. However, there are certain difficulties in meeting this challenge. The major problems are caused by practicing common law in French or practicing civil law in English, because certain terms are hardly translated.

When scholars discuss the Canadian juridical system, they usually put an accent on four varieties of legal traditions:

- Anglophone common law;
- Anglophone civil law;
- Francophone common law;

- Francophone civil law.

The contemporary bijural legal terminology should include particular lexical units corresponding each tradition in order to ensure a terminological equivalency permitting a successful "circulation" throughout the Canadian legal area. Ensuring a terminological equivalency has raised a lot of debates during the last decades. Moreover, this concept has evolved significantly, inter alia, under the influence of a cognitive science. Firstly, the equivalence forms a continuum and is scalar... By extension, it is no longer regarded as a relationship of identity, but as a relationship of similarity… or an optimum degree of approximation (Biel, 2008). Šarčevic, Nykyri, Cheng and others expressed their opinions in this respect. Nykyri presented one of the most reasonable categorizations of equivalency. She singled out two major types - the semantic equivalence and the pragmatic equivalence. The semantic equivalence "refers more to the theoretical and literal equivalence, which can often be seen in dictionaries, etc. Pragmatic equivalence refers more to the practices and considers whether the given equivalents can be used for similar purposes also in practice" (Nykyri, 2010, p. 23).

Šarčevic introduced the intersection and inclusion as the principles of categorization and singled out the following categories: *near equivalence, partial equivalence* and *non-equivalence*. "Handbook of Terminology" presented the more in-depth analysis of this issue and made distinction between the *exact, partial, broader* and *narrower* types of equivalence. The exact equivalence is considered to occur when the concepts are identical and the terms refer to the same common concept. In case of the partial equivalence, the contents or domains of the concepts differ from each other… If one concept is represented with several concepts in another language, it is a question of the broader and narrower equivalence between different language versions (Nykyri, 2010). The issue of the exact equivalence is broadly discussed in Cheng, Sin and Cheng's work. These scholars believe that it cannot be found in the terms associated with the legal transplants. Accordingly, "the major task of translation in legal transplant is to solve lacunae, discursive gaps between the source text and the target text. In legal translation, a lacuna seems to constitute a factor of untranslatability" (Cheng, Sin, & Cheng, 2014, p. 17).

We believe that the issue of untranslatability is quite debatable, because the problem of the existence of the discursive gaps can be solved via the introduction of new lexical units. However, the process of introduction requires a very careful and reasonable attitude. A creator of a new terminological unit (a linguist or a translator) has to consider its linguistic as well as juridical environment i.e. the specificity and peculiarities of a legal system for which a term is created. Despite the seeming similarities of some EU juridical systems, we have to pay attention to the particular differences, because law and language are state-specific - each language as well as each legal system bears a local stamp of a particular culture and tradition (Bajčić , 2018). It is evident that the Canadian linguistic and juridical realities have been stamped by the UK common law. The influence of the latter seems quite influential, for instance, the UK juridical institution ***trust*** has entered the Canadian space and has peacefully settled in the new soil. The constituents of the new "settlement" required labeling, naming as well as translating from the source language (SL) to the target language (TL).

We believe that the process of a legal translation should rely on the principle of the exact equivalency. Moreover, it should be concept-specific, because a term can be regarded as a label of a concept. Terminology begins with a concept and aims to clearly delineate each concept (Temmerman, 2000). These words of famous terminologist Eugen Wüster correspond to the basic principles of the Vienna School of Terminology founded by him in the 20th century. It is noteworthy that Wüster has often been referred to as a father of terminology. His doctoral dissertation was considered as the pillar of the terminological studies, which established the principles of systematizing working with terms. The principles were oriented to concepts and

their standardization leading to *General Terminology Theory (GTT),* which was focused on the specialized knowledge concepts for the description and organization of the terminological information. Within this framework, concepts were viewed as being separate from their linguistic designation (terms). Concepts were conceived as abstract cognitive entities that referred to objects in the real world and terms were merely their linguistic labels (Benítez, 2009).

During the study of the Quebecoise terminological reality, we adhere to the principles of the Vienna School of Terminology and its *General Terminology Theory (GTT).* Accordingly, we pay the greatest attention to the correlation of the terms related to the common law ***trust*** and the Quebecoise ***trust-like mechanism***. The following table depicts the existed reality:

Table 1. The English terms related to common law and the Quebecoise law.

Definition	**Common law (The Anglo-American law)**	**The Quebecoise law (The English version)**
Legal institution	Trust	Trust
A transferor of the property	Trustor / Settlor	Settlor
A transferee	Trustee	Trustee
A person who benefits from the exploitation of the trust property	Beneficiary	Beneficiary

The table reveals that the English terms related to the Quebecoise ***trust-like mechanism*** coincide with the lexical units of common law. This correlation seems impossible due to the fact that the Anglo-American ***trust*** and the Quebecoise ***trust-like device*** have different essences. The common law entrusting relationships are based on the duality of ownership, which is unacceptable to Quebec's law. It merely presents an ownerless patrimony. Accordingly, for the purpose of avoiding the terminological ambiguity, we propose the renaming of the Quebecoise lexical units in the following way:

Table 2. The proposed English terms related to the Quebecoise law.

Definition	**The Quebecoise Law** **(The English Version)**
Legal institution	Quebecoise trust
A transferor of the property	Quebecoise settlor
A transferee	Quebecoise trustee
A person who benefits from the exploitation of the trust property	Quebecoise beneficiary

Another point of interest is the correlation of the terms related to France's ***fiducie*** and the Quebecoise ***trust-like mechanism***. The following table depicts the existed reality:

Table 3. The French terms related to France's law and Quebec's law.

Definition	**France's Civil Law**	**The Quebecoise Law (The French Version)**

Legal institution	Fiducie	Fiducie
A transferor of the property	Constituant	Constituant
A transferee	Fiduciaire	Fiduciaire
A person who benefits from the exploitation of the trust property	Bénéficiaire	Bénéficiaire
An object of entrusting relationships	Patrimoine d'affectation	Patrimoine d'affectation

The table reveals that the French terms related to the Quebecoise ***trust-like mechanism*** coincide with the lexical units related to France's civil law. This correlation seems impossible due to the fact that the French ***fiducie*** and the Quebecoise ***trust-like device*** have different essences. The French entrusting relationships are based on the segregation of property, which is unacceptable to Quebec's law. It merely presents an ownerless patrimony. Accordingly, for the purpose of avoiding the terminological ambiguity, we propose the renaming of Quebecoise lexical units in the following way:

Table 4. The proposed French terms related to Quebec's law.

Definition	**The Quebecoise Law** **(The French Version)**
Legal institution	Fiducie québécoise
A transferor of the property	Constituant québécois
A transferee	Fiduciaire québécois
A person who benefits from the exploitation of the trust property	Bénéficiaire québécois
An object of entrusting relationships	Patrimoine d'affectation québécois

It is noteworthy that a significant ambiguity occurs during the translation of the ***patrimoine d'affectation*** into the English language. Both France's and Quebec's ***patrimoine d'affectation***-s are translated as ***patrimony by appropriation.*** The existence of such English equivalent results in misunderstanding. Accordingly, it would be better to specify the juridical belongingness of the ***patrimoine d'affectation*** via translating it in the following way: the ***French patrimony by appropriation*** and the ***Quebecoise patrimony by appropriation.***

Conclusions

Despite the existence of significant differences between common and civil legal traditions, there is an evident tendency of the convergence between these juridical regimes. The given tendency is caused by the ongoing globalizing processes, mobility of individuals, commercial activities, increased role of foreign investment, etc. One of the examples of the convergence is the existence of the "counterpart" of the common law ***trust*** in Quebec's jurisdiction.

The paper presented an in-depth analysis of Quebec's linguistic-juridical reality and discussed some ambiguities, which exist in the sphere of the legal terminology. The propositions were made regarding the renaming of some concepts related to the Quebecoise entrusting relationships**.** As a result, the new English and French terminological units were

created. We believe that the proposed renaming will "ease" the process of translation and will improve the existed conceptual incompatibility.

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