

Turning Gumbo into *Coq Au Vin*: Translating the Louisiana Civil Code

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Abstract

In July of 2016, a project to translate the current Louisiana Civil Code that was enacted in 1870 from English to French was completed, marking the first time that the Code was completely translated. The monolingual version of the 1870 Code differed from the 1825 Code and the 1808 Digest in that both of those were written into French and translated into English, having the official source of law in two languages. Although the French version of the current Code is not an authoritative source of law, the project received an award for its contributions to preserving the French language in Louisiana.

This article provides an overview of the French impact in Louisiana from a language and legal perspective, and then provides an explanation of the two main legal translation theories: the formal equivalency and functional equivalency. The article also examines the role of culture in legal translation and ends by examining how the translators of the Code decided to translate it and provides specific examples. By examining how this translation project was done, future translators can determine which method is best for them in their projects.

I. Introduction

Robert Cavalier, Sieur de la Salle named Louisiana in the late 17th century in honor of French King Louis XIV.¹ The French influence in the state in the United States extends beyond its name. The *fleur-de-lis* is strongly associated to the state and to this day

‘remains a powerful symbol of Louisiana and its French heritage. It was planted three hundred years ago in the garden of our (Louisiana) laws, where it is still cultivated though more as a hybrid than in its original form’.²

The *fleur-de-lis* also demonstrates a contrast between France and Louisiana because, though wearing the *fleur-de-lis* in France today would be *shameful*,³

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¹ See O. Moréteau, ‘Louisiana 1812–2012: 200 Years of Statehood and 300 Years of French Law Influence’ 59 *Louisiana Bar Journal*, 325 (2012) (the official name in French was *La Louisiane*).

² *ibid* 326.

³ F. Servando Teresa de Mier, *The Memoirs of Fray Servando Teresa De Mier* (Oxford: Oxford University Press, 1998).

what used to be a Gallic symbol is still an integral part of New Orleans and of Louisiana.⁴ The different perceptions of the image show that people can perceive the same thing in different ways, which makes the work of legal translators that much harder.

The French language and culture⁵ have influenced Louisiana since its inception. Notwithstanding the French influence for centuries, at least one scholar has declared that French in Louisiana ‘*is dying*’.⁶

In July 2016, the Center of Civil Law Studies at the Paul M. Hebert Law Center, Louisiana State University, published the current Louisiana Civil Code in French, marking the first completed translation of the Code.⁷ Dr. Olivier P. Moréteau, the Director of the Center of Civil Law Studies, coordinated the seven-year project.⁸ Although the French version is not an authoritative source of law,⁹ the project won the John Ashby Hernandez III Memorial Award for Francophone Leadership in 2014 for its contributions to preserving the French language in Louisiana.¹⁰ The translated version of the Code was published in 2017 in Paris, which was the first time that the state’s Code was published outside of the United States.¹¹

There are a number of theories a translator may draw upon when translating a legal text. The decision to translate the Code resulted in numerous questions concerning the best way to achieve that end. The translation of any legal text is difficult¹² because each country has its own unique cultural norms.¹³ Legal translation requires the translators to be fluent in both languages and cognizant of the legal theory and legal systems involved in the project.¹⁴ Two different

⁴ R. Jeanfreau, *The Story Behind the Stone* (La Gretna: Pelican Publishing, 2012), 13.

⁵ C. Trépanier, ‘The Cajunization of French Louisiana: Forging A Regional Identity’ 157 *The Geographical Journal*, 161 (1991).

⁶ J. Degrave, ‘The Economics and Politics of Louisiana’s Latest French Renaissance’ 1 *Transatlantica*, 2 (2013).

⁷ LSU Center for Civil Legal Studies, *Louisiana Civil Code*, available at <https://tinyurl.com/y62pocgk> (last visited 28 May 2019). See the Code in exclusively in French: LSU Center for Civil Legal Studies, *Louisiana Civil Code* (French), available at <https://tinyurl.com/y5st99n2> (last visited 28 May 2019).

⁸ The translation project began in 2009 with the beginning of the translation work and creating a structure and a plan for the project. The translation began in 2011 after two years of planning.

⁹ Interview with O. Moréteau, Director of Translation Project, in Baton Rouge, Louisiana (30 September 2016) (notes on file with author); some of Moréteau’s works include, A. Masferrer, K. Modeer and O. Moréteau eds, *Comparative Legal History* (Cheltenham: Edward Elgar Publishing, 2019); O. Moréteau, J. Romañach and A. Zuppi eds, *Essays in Honor of Saúl Litvinoff* (Baton Rouge: Claitor’s, 2008); O. Moréteau, ‘The Louisiana Civil Code in French: Translation and Retranslation’ 9 *Journal of Civil Law Studies*, 223-258 (2016).

¹⁰ *ibid.*

¹¹ *ibid.*

¹² D. Cao, *Translating Law* (Clevedon: Multilingual Matters LTD, 2007), 13.

¹³ *ibid.* 24.

¹⁴ D.T. Griffin, ‘Lingua Fracas: Legal Translation in the United States and the European Union’ 34 *Boston University International Law Journal*, 355 (2016).

legal translation theories have dominated the legal translation field for the last forty years: the formal equivalency approach and the functional equivalency approach.¹⁵ The translators of the Civil Code wanted to adhere to the Louisiana style of the French language as much as possible and stay faithful to Louisiana's laws, as opposed to translating the laws to sound as if they were from another French-speaking jurisdiction.¹⁶

Part I highlights the rise of the civil law and the French language in Louisiana, specifically from its colonial days to the Cajun Renaissance. Part II describes the legal translation theory and the advantages and disadvantages of its two main methodologies, the formal equivalency approach and the functional equivalency approach. Part III discusses the role of culture in legal translation, both in the abstract and in Louisiana. As Louisiana culture is unique, it provides for unusual discussion regarding the translation of certain code articles. Part IV then provides eight examples in which the translators used the functional equivalency approach and discusses which factors they considered in deciding to use this method. Furthermore, this comment argues that the translators were correct in their decision to use the formal equivalency approach as the default rule but were flexible and utilized the functional equivalency approach when a word, phrase, or entire article justified the switch in approaches.¹⁷

II. Louisiana Civilian History

Louisiana's legal history has been well documented.¹⁸ Although a comprehensive history is outside the scope of this comment, a succinct synopsis will illustrate the importance of accurately translating the Code. Understanding the history of Louisiana demystifies not only the French language in Louisiana but also Louisiana's legal development.¹⁹

¹⁵ S. Šarcevic, 'Coping With Challenges of Legal Translation in Harmonization', in C.J. W. Baaji ed, *The Role of Legal Translation in Legal Harmonization* (Alphen aan den Rijn: Wolters Kluwer, 2012), 102-103.

¹⁶ O. Moréteau, n 9 above.

¹⁷ The focus is on instances in which the translators used the functional equivalency approach to better understand the purpose for not literally translating the text. Therefore, all of the examples are from the use of the functional equivalency approach.

¹⁸ A. Parise, 'A Constant Give and Take: Tracing Legal Borrowings in the Louisiana Civil Law Experience' 35(1) *Seton Hall Legislative Journal*, 3 (2010) ('The history of the civil code of Louisiana has been explored with different degrees of intensity, with the analysis written by Athanassios B. Yiannopoulos being perhaps the most circulated, clear, and didactic').

¹⁹ M. Franklin, 'Equity in Louisiana: The Role of Article 21' 9 *Tulane Law Review*, 485-515 (1935); see also J. Gémar, 'Catching the Spirit of the Law: From Translation to Co-Drafting', in S. Glanert ed, *Comparing Law – Engaging Translation* (Abingdon: Routledge, 2015), 68, stating that Montesquieu 'believed that the law of a country clarify its history'.

1. From Its Establishment to State, how French Became the Lingua Franca

The land named by La Salle in 1682 was much larger than the geographical boundaries of present-day Louisiana.²⁰ France enticed its citizens and other Europeans to travel to the French colony with land grants.²¹ A royal edict promulgated on 14 September 1712, mandated that the applicable law in Louisiana would be the Custom of Paris.²²

The groups of people who settled in Louisiana in the eighteenth century arrived either speaking French or learning the language soon after arriving,²³ creating a 'linguistic mosaic'.²⁴ This French speaking population also increased during and immediately after the Seven Years' War.²⁵ During the war, Louisiana 'suddenly became the nucleus about which France would rebuild her colonial empire in America after the peace'.²⁶

a) Spanish Rule of Louisiana

On 3 November 1762, France and Spain signed the Treaty of Fontainebleau, in which France ceded Louisiana to Spain.²⁷ Interestingly, the Spanish never uprooted the French language while Louisiana was under Spanish rule, so '(the) French language continued to flourish in Louisiana'.²⁸ Even though Louisiana, for a period of time, was

'de jure Spanish, Louisiana and its population remained de facto French (...). Even when abandoned by their mother country, French-Louisianans never saw themselves as anything but Frenchmen'.²⁹

Louisiana's resistance to this 'cultural pressure' from Spain for nearly half

²⁰ A.A. Levasseur, 'The Major Periods of Louisiana Legal History' 41 *Loyola Law Review*, 585 (1996). Robert Cavalier, Sieur de la Salle, of France, traveled to New France (Quebec) in 1667, and he discovered what is now Louisiana after navigating and trying to discover the mouth of the Mississippi River.

²¹ R.K. Ward, 'The French Language in Louisiana Law and Legal Education: A *Gémar Requiem*' 57 *Louisiana Law Review*, 1283-1288 (1997).

²² A.A. Levasseur, n 20 above, 586.

²³ J. Johnson, 'The Louisiana French', in A. Valdman ed, *Contemporary French Civilization* (Boston: Springer, 1st ed, 1976), 19.

²⁴ C.A. Brasseaux, *French, Cajun, Creole, Houma: A Primer on Francophone Louisiana* (Louisiana: LSU Press, 2005), 2.

²⁵ V.J. Parenton, 'Socio-Psychological Integration in a Rural French-Speaking Section of Louisiana' 30 *Southwestern Social Science Quarterly*, 188 (1949) (the Seven Years' War, also known as the French and Indian War, was primarily between England and France).

²⁶ A.S. Aiton, 'The Diplomacy of the Louisiana Cession' 36 *American Historical Review*, 701-711 (1931).

²⁷ A.A. Levasseur, n 20 above, 587.

²⁸ R.K. Ward, n 21 above, 1289.

²⁹ *ibid* 1288.

of a century highlights the fact that French was firmly planted in Louisiana and could withstand cultural and governmental changes.³⁰

b) Changing of the Guard Back to France

Napoleon Bonaparte believed that France needed to re-gain possession of Louisiana because its strategic location and proximity to resources could help France's economy.³¹ Spain and France signed the Treaty of San Ildefonso on 1 October 1800.³² The treaty was subsequently confirmed on 21 March 1801, with the Convention of Aranjuez.³³ The deal was not made public until 1803 because France feared that England would try to seize the port of New Orleans if it found out.³⁴ France controlled Louisiana for only twenty days until the Louisiana Purchase went into effect and the United States gained control.³⁵

2. Entering the United States: A Shift to Common Law Characteristics of Louisiana's Sister States

The shift in control from the French to the Americans was complicated. President Thomas Jefferson ordered governor of the Mississippi Territory, William C.C. Claiborne, to New Orleans to take possession of Louisiana on 20 December 1803.³⁶ Governor Claiborne appointed 'as many of the foreigners (people from Louisiana) to public office as possible', which enraged settlers from other parts of the United States.³⁷ If Governor Claiborne opined that these appointments would alleviate the concerns of the citizens of the territory he was wrong because

'(t)he touchy, proud Creoles denounced the American regime for its so-called savage manners, poor selection of officials, intemperate speeches, and for the use of English as the official language'.³⁸

Therefore, the transition from French to American rule was not seamless.

The Louisiana Legislature in 1806 determined that the Territory would use a Civil Code based on the pre-existing law 'in the effort to make the law clearer and more accessible to the French, Spanish, and American inhabitants'.³⁹ Once the drafters of the Digest of 1808 finished, Governor Claiborne ordered the

³⁰ V.J. Parenton, n 25, 191.

³¹ A.A. Levasseur, n 20 above, 593.

³² *ibid.*

³³ J.P. Rodriguez, *The Louisiana Purchase: A Historical and Geographical Encyclopedia* (Santa Barbara: ABC-CLIO, 2002), 9-10.

³⁴ A.A. Levasseur, n 20 above, 593.

³⁵ *ibid.*

³⁶ J.D. Winters, 'William C.C. Claiborne: Profile of a Democrat' 10 *Louisiana History: The Journal of the Louisiana Historical Association*, 189-195 (1969).

³⁷ *ibid.* 196.

³⁸ *ibid.*

³⁹ O. Moréteau, n 1 above, 325.

Digest to be the applicable laws of the Territory, and as a result ‘much of the legal chaos began to dissipate’ from both proponents and critics of the Civil Law.⁴⁰

a) The Code and the Languages in Which It Was Published

The Code was initially written in French, the dominant language of the Territory, and was subsequently translated into English.⁴¹ Despite the bilingual nature of the Code, the French version was the only usable version because

‘the French-language code (was) succinct, lucid, and internally consistent. The English version, on the other hand, (was) riddled with ambiguity, muddled, and inconsistent with its French counterpart’.⁴²

In an 1808 letter, Governor Claiborne opined that the English version should not be used.⁴³

It soon became apparent that the 1808 Digest was no longer effective and needed to be replaced. As with the 1808 Digest, the drafters wrote the 1825 Civil Code in French, which was then translated into English.⁴⁴ This Code, however, differed from the 1808 Digest in one important way. Whereas the French version of the 1808 Digest was the only authoritative source of law, both languages of the 1825 Code were deemed the official law.⁴⁵ Although both versions of the Code were theoretically equal in status, ‘a number of errors’⁴⁶ made the English version ‘spectacularly bad’.⁴⁷ The poor quality of the English translation did not go unnoticed by the Louisiana Supreme Court, which stated that the English version was the ‘greatest defect in the body of (Louisiana) laws’ and questioned the use of the Code in English.⁴⁸

b) The Current Code

The current Code was promulgated in 1870 and was ‘essentially the same’ as the 1825 Code substantively, with the notable exception of slavery.⁴⁹ One

⁴⁰ J.D. Winters, n 36 above, 197.

⁴¹ J.B. Garvey and M.L. Widmer, *Louisiana: the First 300 years* (La Gretna: Pelican Publishing, 2001), 77.

⁴² R.K. Ward, n 21 above, 1303.

⁴³ Letter from Governor Claiborne to the Secretary of State (7 October 1808), in A.A. Levasseur, n 20 above, 628.

⁴⁴ O. Moréteau, ‘The Louisiana Civil Code Translation Project: An Introduction’ 5 *Journal of Civil Law Studies*, 97 (2012).

⁴⁵ A.N. Yiannopoulos, ‘First Worldwide Conference on Mixed Jurisdiction: Salience and Unity in the Mixed Jurisdiction Experience: Traits, Patterns, Culture, Commonalities: Requiem for a Civil Code: A Commemorative Essay’ 78 *Tulane Law Review*, 379, 388-389 (2003).

⁴⁶ *ibid* 389.

⁴⁷ R.K. Ward, n 21 above, 1284.

⁴⁸ Supreme Court of Louisiana, *Egerton v New Orleans*, 1 *Louisiana Annual*, 435-437 (1846).

⁴⁹ R.K. Ward, n 21 above, 1306.

important change in style, however, was that the Code was written and published exclusively in English.⁵⁰ As a result, the Louisiana Supreme Court grappled with issues related to parties' understanding of English and French in various contexts.⁵¹ Judges continued to consult the French text when determining legislative intent.⁵² The Louisiana Supreme Court would often look to the comparable article in the 1825 Code when a case hinged upon the meaning of a word in the 1870 Code.⁵³ Additionally, the United States Supreme Court heard a case and reached its conclusion by analyzing the Louisiana statute in French since the article was written in French and subsequently translated.⁵⁴ Hence, even if the laws were no longer being published in French, judges and lawyers continued to look to previous articles and legislation in French to better understand the law in English.⁵⁵

3. The Decline of French and French's Impact on the Code

Scholars have described Louisiana as a unique combination of Spanish laws in a French structure with a Caribbean flare.⁵⁶ Louisiana's Code 'is indigenous to (it) soil, that (it) is part of the culture of the people', which requires an understanding of French to truly analyze the Code.⁵⁷ This natural progression of studying the French language ended due to the negative attitudes associated with French-Louisiana speakers.⁵⁸

Pinpointing the exact moment when the use of French began to decline in Louisiana has proven to be a difficult task, evidenced by the different theories surrounding the time at which the French language reached its pinnacle.⁵⁹ People

⁵⁰ *ibid.*

⁵¹ Supreme Court of Louisiana, *Succession of Cauvien*, 46 *Louisiana Annual*, 309 (1894) (the Court examined the ability of the testator to speak French and English, as well as the notary and witnesses in determining the will's validity); *Landry v Tomatis*, 32 *Louisiana Annual*, 113-116 (1880) (the Court heard arguments whether the testator was truly bilingual, as the notary only spoke English, and there was some doubt that she spoke English); *Succession of Rouquette*, 161 *Louisiana Annual*, 155-159 (1926) (the testator was an elderly woman who only spoke French, and upon the advice of an attorney since no notaries fluent in French could be found, had five French-speaking witnesses. The Court had to determine whether the will was valid).

⁵² S.L. Herold, 'The French Language and the Louisiana Lawyer' 5 *Tulane Law Review*, 169-176 (1931).

⁵³ Supreme Court of Louisiana, *Phelps v Reinach*, 38 *Louisiana Annual*, 547-551 (1886).

⁵⁴ Supreme Court of Louisiana, *Carondelet Canal & Navigation Co. v Louisiana*, 233 US, 362-387 (1914) ('(t)he use of 'elle' in the French version is of strong significance. There is no neuter gender in the French language, every noun is masculine or feminine, and the pronoun which stands for it must agree (...) (because) there is more certain indication of the antecedent (in French).').

⁵⁵ R.K. Ward, n 21 above, 1284.

⁵⁶ O. Moréteau, n 44 above, 326.

⁵⁷ S.L. Herold, n 52 above, 171.

⁵⁸ J.J. Natsis, 'Legislation and Language: The Politics of Speaking French in Louisiana' 73 *French Review*, 325-326 (1999).

⁵⁹ W. Boelhower, *New Orleans in the Atlantic World: Between Land and Sea* (Abingdon: Routledge, 2013) (describing the decline in Louisiana as an 'erosion' over two centuries, as opposed

of French origin were proud of their heritage and ‘the name creole (was) dear to them’.⁶⁰ Although the French-speaking population was able to ‘resist’ the use of English for two centuries, ‘even this close-knit community (had) not been able to withstand the onslaught of American English’.⁶¹

The constant erosion of French in Louisiana resulted in few bilingual lawyers, lawyers who only consulted English resources, and lawyers who adopted common law interpretive techniques foreign to the civil law.⁶² The position of the civil law in Louisiana declined to the point where professor Gordon Ireland argued in the 1930s that Louisiana was no longer a civilian jurisdiction.⁶³ The fact that scholars were able to provide a formidable argument that the civil law was dead evidences the withering state of the Code and the prominence of the common law.⁶⁴ If Louisiana were to retain its civil law system, it would need French-speaking lawyers and judges ‘who (would be) able to read the language in which alone may be found the roots and sources of the system which they pretend to practice’.⁶⁵ Needless to say, the French language in Louisiana was declining, first as a cultural shift and later by law that severely restricted its use.⁶⁶

4. A Renewed Interest in French: Discovering the French Flavor from Old Cookbooks

The preservation of the French language in Louisiana began when Cajun soldiers in France during World War II experienced the positive connotations associated with their language.⁶⁷ Upon the soldiers’ return to Louisiana,

to a single point in time of determining the decline).

⁶⁰ R. Van Allen Caulfield, *French Literature of Louisiana* (La Gretna: Pelican Publishing, 1999).

⁶¹ S.J. Caldas and S. Caron-Caldas, ‘Rearing Bilingual Children in a Monolingual Culture: The Louisiana Experience’ 67 *American Journal of Speech*, 290 (1992)

⁶² D. Gruning, ‘Bayou State Bijuralism: Common Law and Civil Law in Louisiana’ 81 *University of Detroit Mercy Law Review*, 437-446 (2004).

⁶³ G. Ireland, ‘Louisiana’s Legal System Reappraised’ 11 *Tulane Law Review*, 585-591 (1937) (Ireland received his S.J.D. from Yale Law School and served as a law professor at different schools, such as at Harvard and at Louisiana State University).

⁶⁴ L. Greenburg, ‘Must Louisiana Resign to the Common Law?’ 11 *Tulane Law Review*, 598 (1937) (opining that the civil law was gone in Louisiana and that ‘from the time Louisiana began to have a judiciary, the bench and bar with very few exceptions had no interest other than an ostentatious one in the civil law’); but see also H.S. Daggett, J. Dainow, P.M. Hebert and H.G. McMahon, ‘A Reappraisal Appraised: A Brief for the Civil Law of Louisiana’ 12 *Tulane Law Review*, 12-13 (1937) (disagreeing with Ireland because, *inter alia*, he treated civil law as if it applied to the entire Louisiana legal system when in fact it is a branch of private law, assumed that any difference between Louisiana law in the 1930s that was different than the Napoleonic Code was only because of common law influence, and said that Louisiana judges look to judicial precedent but not in the same binding way as common law with *stare decisis*).

⁶⁵ S.L. Herold, n 52 above, 176.

⁶⁶ D. Gruning, n 62 above, 445.

⁶⁷ B.J. Ancelet, ‘A Perspective on Teaching the “Problem Language” in Louisiana’ 61 *French Review*, 345 (1988).

‘(d)ance halls throughout South Louisiana once again blared the familiar sounds of homemade Cajun music’,⁶⁸

and a ‘rallying point’ for the ethnicity occurred in honor of the bicentennial of the *Grand Dérangement*.⁶⁹ Since then, there has been a renewed interest in Louisiana culture.⁷⁰

The increased interest in learning about Louisiana culture did not, however, result in an interest in learning Louisiana French because,

‘(although) anti-French-speaking sentiment has all but disappeared in Louisiana, so has the French language among this generation of Cajuns’.⁷¹

Today, the word ‘Cajun’ or ‘Creole’ no longer conjures up the backward-moving, poor, and uneducated people in the Louisiana swamps, but the harm of those previous connotations persists.⁷² With the rise of importance in French across the globe, however, the Louisiana Code’s translation from English to French, the first time it has ever been done, incorporated the history into the translation.

III. Translating Legal Texts

Some scholars suggest that it may be impossible to accurately translate legal texts because of differences in languages that force translators to manipulate the text.⁷³ This critical view is manifested in the Italian proverb ‘*traduttore, traditore*’, meaning translator, traitor.⁷⁴ Pragmatically speaking, however, legal texts must be translated to better help lawyers and judges when they have to interpret and apply laws from other countries.⁷⁵

1. The Effectiveness of Legal Translation: Can It Be Done?

The effectiveness of legal translation is based not on the size or prestige of the project but rather on the degree to which the translated and original work carry the same meaning.⁷⁶

⁶⁸ *ibid.*

⁶⁹ *ibid.* (The *Grand Dérangement* began in 1755 when England began to force French Canadians outside of the conquered territory).

⁷⁰ S. Dubois and B. M. Horvath, ‘Sounding Cajun: The Rhetorical Use of Dialect in Speech and Writing’ 77 *American Journal of Speech*, 264, 269-270 (2002).

⁷¹ S.J. Caldas and S. Caron-Caldas, n 61 above, 291.

⁷² S. Dubois and B. M. Horvath, n 70 above, 270.

⁷³ T.O. Main, ‘The Word Commons and Foreign Laws’ 46 *Cornell International Law Journal*, 219-260 (2013).

⁷⁴ J. HC Leung, ‘Translation Equivalence as a Legal Fiction’, in L. Cheng et al eds, *The Ashgate Handbook of Legal Translation* (Abingdon: Routledge, 2014), 57.

⁷⁵ O. Cachard, ‘Translating the French Civil Code: Politics, Linguistics and Legislation’ 21 *Connecticut Journal of International Law*, 41-55 (2005).

⁷⁶ J. HC Leung, n 74 above, 57.

a) The Chef's Secret Ingredients in Legal Translation: A Customized Approach

Translation theory is an area that has been largely neglected by scholars because historically there was only one approach taken – the formal equivalence method.⁷⁷ The increase in the number of translation projects, however, has spurred the advancement of different legal translation theories.⁷⁸ Consequently, classifying translation projects as strictly adhering to a single method does not accurately describe the decisions and combined approaches legal translators use.⁷⁹

2. Competing Views on Legal Translation

There are two main methods which translators may utilize when carrying out legal translation: formal equivalency method and the functional equivalency. The formal equivalence method calls for a literal translation of the text and adherence to the specific words used by legislatures.⁸⁰ The functional equivalency approach occurs when translators look to decipher the underlying rationale and spirit of the text, and not necessarily the text *verbatim*.⁸¹ Thus, the functional equivalency approach requires translators to be more active in the translation process.⁸² Although some may argue that legal translators should not engage in functional equivalency, this approach takes into consideration linguistic and societal changes over time.⁸³

a) The Formal Equivalency Approach

The formal equivalency approach involves taking legal text in its current language and form and creating an equivalent version of the same text in a different language. The goal is that the legal text appears exactly the same.⁸⁴ Under this approach, translators do not interject their own views and interpretations of the text.⁸⁵

Historically, legal translators exclusively engaged in the formal equivalency

⁷⁷ *ibid.*

⁷⁸ S. Šarcevic, n 15 above, 102-103.

⁷⁹ J. Engberg, 'Legal Meaning Assumption – What Are The Consequences For Legal Interpretation And Legal Translation?' 15 *International Journal for the Semiotics of Law*, 375-385 (2002).

⁸⁰ S. Šarcevic, n 15 above, 102-103.

⁸¹ *ibid* 95.

⁸² N. Kasirer, 'Francois Geny's libre recherche scientifique as a Guide for Legal Translation' 61 *Louisiana Law Review*, 331-333 (2001).

⁸³ O. Moréteau, 'Le Code civil de Louisiane en français: traduction et retraduction' 28 *International Journal for the Semiotics of Law*, 155-168 (2015).

⁸⁴ J. Ainsworth, 'Lost in Translation? Linguistic Diversity and the Elusive Quest for Plain Meaning in the Law', in L. Cheng et al eds, *The Ashgate Handbook of Legal Translation* (Abingdon: Routledge, 2014), 43.

⁸⁵ S. Šarcevic, n 15 above, 95.

approach.⁸⁶ The idea of literal translation comes from the overarching notion that translators should remain ‘faithful’ to the text, which is ‘a constraint upon the interpreter’s freedom to fix meaning with other considerations in mind (...)’.⁸⁷ Another scholar noted that translators ‘remain in the shadows’ and do not impose what they believe is correct because a translator’s job is not that of the legislature.⁸⁸

Critics of the formal equivalence approach argue that literal translation often misleads the readers of the translated works because the literal translated may be difficult to understand.⁸⁹ Another critical disadvantage of the formal equivalency approach is the lack of precision of the words used when literally translating text. To illustrate this point, translation under this method has created problems such as ‘passing off a usufruct (usufruct) as a life estate in English’, when in fact there are differences between a usufruct and a life estate.⁹⁰ The use of the formal equivalency approach raises a contradiction: by strictly translating the text of the law, readers have difficulties understanding what the text means, thereby rendering the translation ineffective.

b) Functional Equivalency Approach

Under the functional equivalency approach, translators recognize the maxim ‘*traduire, c’est choisir*’, which means ‘to translate is to choose’.⁹¹ This view recognizes that no two languages are the same, which forces translators to decide on how to accurately convey the substance of the text.⁹² Translators who use functional equivalency approach argue that they are more faithful to the text than are translators who follow the formal equivalency view because the functional approach better captures the law.⁹³ Translators who adopt the functional equivalency approach also believe that this method better helps their translation accurately conveys the meaning of the text for lawyers in a different country.⁹⁴

No one approach has emerged as the best method, and legal translators

⁸⁶ N. Kasirer, n 82 above, 332-333.

⁸⁷ *ibid.*

⁸⁸ R. Correia, ‘Translation of EU Texts’, in A. Tosi ed, *Crossing Barriers and Bridging Cultures: The Challenges of Multilingual Translation for the European Union* (Bristol: Multilingual Matters, 2003), 40.

⁸⁹ G. Peruginelli, ‘Accessing Legal Information Across Boundaries: A New Challenge’ 37 *International Journal of Legal Information*, 276-292 (2009).

⁹⁰ N. Kasirer, n 82 above, 331-332 (author wrote the word ‘usufruit’).

⁹¹ R. Correia, n 88 above, 40 (*traduire, c’est choisir* is the title of a well-known 1967 article by *Pierre-François Caillé* in the journal *Babel*).

⁹² A.N. Adler, ‘Translating & Interpreting Foreign Statutes’ 19 *Michigan Journal of International Law*, 37-46 (1997).

⁹³ P.P. Frickey, ‘Faithful Interpretation’ 73 *Washington University Law Quarterly*, 1085 (1995).

⁹⁴ M.H. Hoeflich, ‘Translation & the Reception of Foreign Law in the Antebellum United States’ 50 *American Journal of Comparative Law*, 753-766 (2002) (italics and repetition of ‘different’ used for emphasis).

recognize that the best approach depends on the specific project and objectives.⁹⁵ An example of translating text from English to French under both the formal equivalency and the functional equivalency approaches are provided in the table below. Under the formal equivalency approach, the translation theoretically makes sense in French, but the translation is awkward and does not effectively convey the true meaning of the text.⁹⁶

Table 1: Formal Equivalency example

Adjudication implies for a judge to decide in a dispute that has been brought, through one means or another, by the parties in the bar of justice.	<i>Juger implique qu'un juge décide un litige que les parties ont porté devant la barre de justice d'une façon ou d'une autre.</i>
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Table 2: Functional Equivalency example

The example below is the French translation to the same text in English about adjudication. A French speaker, however, is more likely to understand the translation below with the functional equivalency of the law in English.⁹⁷

Adjudication implies for a judge to decide in a dispute that has been brought, through one means or another, by the parties in the bar of justice.	<i>Rendre un jugement consiste, pour un juge, à dire le droit dans le litige que les parties ont soumis à la justice.</i>
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The two methods of legal translation highlight that translators must decide which approach to use before translating a document. In the translation of the Louisiana Code from English to French, numerous translators worked on the project at different times, each with a different level of experience and background training.⁹⁸ If each translator interjected his or her own thoughts into the translated article, it would create an incoherent work riddled with inconsistencies – one that would have limited the value and usefulness of the translated Code. While not adopting a strict rule of utilizing the formal equivalency approach, the translators' decision to start with the formal equivalency approach and adjust accordingly was the correct decision for this translation project. Some Louisiana state legislators have expressed interest in making the translated version of the Code an official source of law.⁹⁹ Hence, the text in French cannot deviate to the point where the

⁹⁵ L. Lessig, 'Fidelity in Translation' 71 *Texas Law Review*, 1165 (1993).

⁹⁶ J. Gémar, n 19 above, 70.

⁹⁷ *ibid.*

⁹⁸ O. Moréteau, n 9 above.

⁹⁹ *ibid.*

articles may provide or deprive people of rights that are not in the English version. At the same time, however, modifications ensured that French speakers would understand what the laws actually meant when a literal translation would not suffice.

IV. Factoring in Culture with Legal Translation: Incorporating Local Flavors

At first blush, considering cultural differences in translating the law may seem unnecessary because several legal systems use words and concepts that have derived from Latin, French, and English.¹⁰⁰ A legal translation without factoring in the country's culture, however, would not capture the nuances and understandings of each country.¹⁰¹

1. Culture and Its Impact on Legal Translation

The law lies within culture because legislators are shaped by what surrounds them.¹⁰² This means that translators have to look beyond just the text of the law.¹⁰³ Additionally, translators who do little more than translate misrepresent the law because words alone do not reflect the 'unique priorities, preferences, and goals of a judicial, political, or social system'.¹⁰⁴ Furthermore, the use of legal English, specifically in Louisiana, creates additional obstacles for legal translators who follow the formal equivalence approach because Louisiana language contains English words specific to the state.¹⁰⁵ Louisiana had to create its own terms in English to describe civilian concepts.¹⁰⁶

Some translation scholars suggest that culture plays a limited role in translation because law is written, formal, and omits colloquial phrases.¹⁰⁷ Although this is true to a certain extent, the claim fails to consider that culture

¹⁰⁰ T.O. Main, 'The Word Commons and Foreign Laws' 46 *Cornell International Law Journal*, 219-221 (2013).

¹⁰¹ E.J. Eberle, 'The Method and Role of Comparative Law' 8 *Washington University Global Studies Law Review*, 452 (2009).

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ T.O. Main, n 100 above, 221-222.

¹⁰⁵ *ibid.* 226 (stating that *contrat* in French applies to donations and gifts that would not be classified as a contract in English, so the legal Louisiana terminology is not the same as in other English-speaking jurisdictions); Louisiana Civil Code Annual § Art 1468 (2016) ('A donation *inter vivos* is a contract by which a person, called the donor, gratuitously divests himself, at present and irrevocably, of the thing given in favor of another, called the donee, who accepts it').

¹⁰⁶ S. Gualtier, 'The Louisiana Civil Code Translation Project: Enhancing Visibility and Promoting the Civil Law in English' *DipLawMatic Dialogues* (2014), available at <https://tinyurl.com/y205xefd> (last visited 28 May 2019).

¹⁰⁷ D. Stevenson, 'Book Review: Forensic Linguistics: an Introduction to Language in the Justice System' 77 *University of Colorado Law Review*, 257-259 (2006).

engulfs the legislators when drafting and approving legislation.¹⁰⁸ Culture still matters, even in situations where translators focus on two jurisdictions that speak the same language because the vocabularies may not be identical.¹⁰⁹ Hence, in order to accurately translate legal text, the translators must be both scientists and anthropologists.¹¹⁰ Translators must be scientists since translation requires a well-defined plan and precision. Further, they must also be anthropologists because law is local, meaning that a translator will fail without understanding the values of society in that location.¹¹¹

2. Louisiana Culture and Its Impact on Legal Translation

The results and lessons learned from previous translations outside of Louisiana offered insights before the team translated the Louisiana Code into French. In previous translations, French translators generally focused the spirit of the legislation while the English translators generally focused on the letter of the law.¹¹² For example, English has many words associated with law, such as state, legislation, enactment, act, etc.¹¹³ French also has many words associated with the word 'law', such as *le droit* to refer to the entire legal field, *la justice* for the legal system, and *le loi* for legislation passed by Parliament.¹¹⁴ Specifically, *loi* may have either a broad or narrow interpretation, making it difficult to accurately translate because of the culture and connotations associated with the terms.¹¹⁵ If a translator uses phrases and terms other than the ones that apply, there is a loss of context and nuance of a translated text.¹¹⁶

By capturing cultural norms and values into the laws, translators are more accurate, helping to create a bridge connecting different cultures.¹¹⁷ Without understanding the culture of the two jurisdictions involved in a translation, legal translators are unable to successfully translate because they must

'recognize the meaning of the idea or word in its own culture, explain its underlying cultural context, and then translate that meaning as best we can to another legal culture (...)'.¹¹⁸

¹⁰⁸ D. Cao, n 12 above, 33.

¹⁰⁹ *ibid.*

¹¹⁰ E.J. Eberle, n 101 above, 453.

¹¹¹ R. Pound, 'The Influence of the Civil Law in America' 1 *Louisiana Law Review*, 1-2 (1938).

¹¹² N.J. Jamieson, 'Legal Transplants: World-Building and Word-Borrowing in Salvic and South Pacific Legal Discourse' 42 *Victoria University of Wellington Law Review*, 417-423 (2011).

¹¹³ D. Cao, n 12 above, 70.

¹¹⁴ *ibid.* 71-72.

¹¹⁵ *ibid.*

¹¹⁶ H.J. Berman, *Law and Language: Effective Symbols of Community* (Cambridge: Cambridge University Press, 2013), 29.

¹¹⁷ E.J. Eberle, n 101 above, 453.

¹¹⁸ *ibid.*

Knowing that at least some background of a country's culture is required in order to translate its laws, the following section examines whether the Louisiana Civil Code that was recently published in French retains the state's unique history and heritage.

V. Translating the Louisiana Civil Code

The translators of the Louisiana Civil Code recognized that, though a literal translation from English to French would be easier, it would cause the project's objective to fail because an accurate translation would not be achieved.¹¹⁹ Although today English is considered a 'universal second language',¹²⁰ it is not a 'civilian language' like French or Latin.¹²¹

1. How the Translated Code Came out as *Crème de la Crème*

The translators of the Louisiana Civil Code used a customized legal translation approach *by* utilizing the formal equivalency method by looking at the 1808 Digest and 1825 Code as a starting point.¹²² Despite the default rule, however, the translators found themselves, at times, using the functional equivalency approach to better follow the spirit of the law.¹²³

2. Accuracy of Legal Terms

Interestingly, the first word to be translated using the functional equivalency approach was 'law'. The first Art of the current Louisiana Civil Code declares that '(t)he sources of law are legislation and custom'.¹²⁴ The French translation states, '*Les sources du droit sont la loi et la coutume*'.¹²⁵ A cursory glance of this article demonstrates that the word for 'law' is *droit* and the word for 'legislation' is *loi*. However, the distinction between 'law' was not as easy as it may appear to translate.

When comparing the French version of Art 1 of the current Civil Code to the 1808 Digest, there is an apparent discrepancy between the words used for 'law'. The 1808 Digest declares that '(l)aw is a solemn expression of Legislative will, upon a subject of general interest and interior regulation'.¹²⁶ The same article

¹¹⁹ O. Moréteau, n 9 above.

¹²⁰ C.B. Picker, 'International Law's Mixed Heritage: A Common/Civil Law Jurisdiction' 41 *Vanderbilt Journal of Transnational Law*, 1083-1124 (2008).

¹²¹ W. Tetley, 'Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)' 60 *Louisiana Law Review*, 677-731 (2000).

¹²² O. Moréteau, n 9 above.

¹²³ *ibid.*

¹²⁴ Louisiana Civil Code Ann. § Art 1.

¹²⁵ Louisiana Civil Code Ann. § Art 1 (French).

¹²⁶ Louisiana Civil Code Ann. § Art 1.

in French reads '(l) *La Loi est une déclaration solennelle de la volonté législative, sur un objet général et de régime intérieur*'.¹²⁷ Herein lies the first determination that the translators had to make: determining whether the proper word for 'law' was *droit* or *loi*. The answer for the translators came after recognizing the dual meaning of the word and that 'laws are not the law'.¹²⁸ The phrase, 'an unjust law is not law', demonstrates the numerous definitions of the law because the second use of the term 'law' is referring to what the law should be, as opposed to the reality as described in the first use.¹²⁹ In French, *droit* is a more comprehensive term that encompasses *loi* as the legislation, but also goes further to include the rationale of the law: a structure in society that governs fairness and justice.¹³⁰ If the translators were to have used the word *loi* for the Code, then one of the official sources of law, custom, would have been excluded. Additionally, one of the sources of the law would have been the law, and the Code does not have such circular reasoning in its first Article. Therefore, the translators' use of the functional equivalency approach and deviating from the 1808 Digest with regards to *loi* was the correct decision.

Under the formal equivalency method, the translators would have looked generally to previous Code articles, and the formal equivalency approach would have directed them to follow the 1808 Digest and use *loi*.¹³¹ In doing so, the translators would have translated the article in such a way that would not have made since. Therefore, this specific use of the functional equivalency approach was appropriate for the translation of the Louisiana Code.

3. Non-Legal Words

Another example that highlights the accuracy of the translated Code and provides insight as to why using the functional equivalency approach was correct is the translation of the word 'pregnancy'.¹³²

¹²⁷ 1808 Digest of the Civil Laws of the Territory of Orleans Art 1.

¹²⁸ C.B. Gray, *The Methodology of Maurice Hauriou: Legal, Sociological, Philosophical* (Amsterdam: Rodopi, 2010).

¹²⁹ C.A. Thomas, 'The Uses and Abuses of Legitimacy in International Law' 34 *Oxford Journal of Legal Studies*, 729 (2014).

¹³⁰ C.B. Gray, n 128 above, 105.

¹³¹ O. Moréteau, n 9 above.

¹³² P. Wuteh Vakunta, *Critical Perspectives on the Theory and Practice of Translating Camfranglais Literature* (Cameron: Langaa RPCIG, 2016) (stating that the Pidgin English and French in some African nations have resulted in two words for pregnancy for two different contexts: *bele* for unwanted pregnancies and *tcha*, or 'catch' as a planned/wanted pregnancy); G.N. Herman and J.M. Cary, *Legal Counseling, Negotiations and Mediating: A Practical Approach* (New York: LexisNexis, 2009), 382 (recounting a story of an American who told people in France at a dinner *Je suis plein* to say that he was full and could not eat more food, but he erroneously said that he was pregnant); V.R. Sasson and J.M. Law, *Imagining the Fetus the Unborn in Myth Religion, and Culture* (Oxford: Oxford University Press, 2008), 139 (noting in Hebrew that some people, instead of using the verb for the state of being pregnant, people use the word 'belly').

The word ‘pregnant’ is used in only one current Louisiana Civil Code article. Art 252 states, ‘(i)f a wife happens to be pregnant at the time of the death (...)’.¹³³ The translation reads: ‘(l)orsqu’une femme se trouve enceinte au moment du décès de son mari’.¹³⁴ In the French version, the word for pregnancy is *enceinte*, used in this article concerning a husband passing away while his wife is pregnant.¹³⁵

The 1825 Louisiana Civil Code has an article about a pregnant woman, and it states that ‘(s)i une veuve se trouve grosse au tems de la mort de son mari (...)’.¹³⁶ The word in this article about a woman being a pregnant when becoming a widow is *grosse*.¹³⁷ If the translators of the current Louisiana Civil Code adhered to the formal equivalence approach of legal translation, they would have used *grosse*. The translators, however, made the decision to deviate from literally translating the document from nearly two centuries ago and substitute the word pregnancy. The decision to change ‘pregnancy’ for clarity and modernity purposes stems from the origin of the original term and its change in meaning over time.¹³⁸

The two derivations to refer to an expectant mother include the old French word *preignant*, meaning ‘pressing’, and the Latin word *praegnantem*, meaning ‘fruitful, with child’.¹³⁹ The word origin matters because an explanation for the change of wording by the translation team justifies the decision of the translators to use the functional equivalency approach. At the beginning of the 19th century, the French word used to describe a pregnant woman had its roots in the Latin word *grossus*, which is an adjective that means ‘large, bulky’.¹⁴⁰ Moreover, French language textbooks from that same epoch caution that the placement of the adjective *grosse* can change the meaning of the term.¹⁴¹

The French Civil Code does not use either *grosse* or *enceinte* in references to pregnancy,¹⁴² but the terms are used in its Criminal Code. In the Criminal Code, the word that is used in numerous articles is *grosse*.¹⁴³ The word *enceinte*, however, is used in three articles, and in each case the word refers to a building.¹⁴⁴

¹³³ Louisiana Civil Code § Art 252 (2016).

¹³⁴ Louisiana Civil Code Ann. § Art 252 (2016) (French).

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ O. Moréteau, n 83 above, 168.

¹³⁹ R. Cohen, *Shakespeare on Theatre: A Critical Look at His Theories and Practices* (Abingdon: Routledge, 2015), 37.

¹⁴⁰ A. Brachet and J. Jacques, *An Etymological Dictionary of the French Language* (Oxford: Clarendon Press, 1873), 176.

¹⁴¹ J.V. Douville, *Speaking French Grammar, Forming a Series of Sixty Explanatory Lessons, With Colloquial Essays* (London: William Clowes and Sons, 5th ed, 1835), 264 (placing the adjective after the noun results in the meaning being pregnant, *une femme grosse*, but the adjective after the noun, or *une grosse femme*, describes a stout woman).

¹⁴² French Civil Code (2015) (The code uses the term *grosse*, but for a different meaning, in Arts 605, 606, 1283, 1284, 1335, and 1396, and the word *enceinte* is used in a different context in Art 1019).

¹⁴³ Illustrative list: 212-1(7)(*la grossesse forcee*); 221-4(3)(*a un etat de grossesse*).

¹⁴⁴ Illustrative list: 431-22, 434-35-1, and R645-12.

Additionally, the Haitian Civil Code from 1825 uses *grosse* to describe pregnancy.¹⁴⁵ The fact that two French-speaking civilian jurisdictions still use the same word that Louisiana did in 1825 suggests that the translators *should not* have taken the functional equivalence approach and instead kept the word without changes.

The Quebec Civil Code provides insight into what may be becoming a trend in revised Codes to better reflect the phrasing and vocabulary used today. Whereas the French and Haitian Civil Codes have not been completely changed since the nineteenth century, the current Quebec Civil Code went into effect on 1 January 1994.¹⁴⁶ An interesting word selection from the most recent Code illustrates the decision of the translators of the Louisiana Civil Code to use the word *enceinte* for pregnancy. Under the *previous* Quebec Code, Art 218 used the word *grossesse* when defining the minimum and maximum amount a time that a woman is pregnant.¹⁴⁷ Additionally, Canadian jurisprudence and politicians referred to pregnant women as *grossesse* at that time, and legal dictionaries used the same term.¹⁴⁸ In the current Civil Code and Criminal Code, however, the word *enceinte* is used.¹⁴⁹ Therefore, the evolution of French indicates a shift to *enceinte* for pregnancy. Hence, the decision to deviate from the formal equivalency approach was justified in order to be more consistent with modern French.

4. Impact of Culture: *France French v Louisiana French*

A word that shows a difference in culture is *parishes*, or the governmental subdivisions of the state. Louisiana is the only state that divides its government into ‘parishes’.¹⁵⁰ A parish, according to one non-Louisianan source, is ‘(t)he smallest and most basic realization of the “basic church”’.¹⁵¹ The French word for parish, *paroisse*, comes from the Latin word *paroecia*.¹⁵² Because ‘parish’ has two different meanings, particularly when factoring in that Louisiana’s French did not change over time, the functional equivalency approach was needed in order for foreigners to understand the meaning of the term.

The translators had three options available: (1) change the term ‘parish’ to make it understandable to the audience outside of the United States; (2) literally translate the word and leave the reader to speculate why a term describing the territorial boundaries of a church in the Code; or (3) create a note to explain the

¹⁴⁵ L. Borno, *Code Civil D’Haïti, Annoté*, Art 205 (Paris: A. Giard & E. Brière, 1892).

¹⁴⁶ W. Tetley, n 121 above, 591 (the new Quebec Civil Code replaced the Civil Code of Lower Canada).

¹⁴⁷ Art 218 Civil Code of Québec (1980).

¹⁴⁸ R. Joyal, ‘Adolescentes, avortment et dignité’ 3 *Canadian Journal of Women and the Law*, 234-235 (1989); G. Cornu, *Vocabulaire Juridique* (Paris: Puff, 9th ed, 2011), 496; H. Reid, *Dictionnaire de Droit Québécois et Canadien* (Montréal: Wilson & Lafleur, 2nd ed, 1999), 268.

¹⁴⁹ Civil Code of Québec (1980), SQ 1980, c 218.

¹⁵⁰ US Bureau of Commerce, *History of the 1982 Economic Censuses* (1987), 200 (other states use the word ‘county’).

¹⁵¹ R. McBrien, *101 Questions and Answers on the Church* (Mahwah: Paulist Press, 2003), 7.

¹⁵² A. Brachet and J. Jacques, n 140 above, 253.

differences in meanings.¹⁵³ The notes in the translated Code, were used to defend the decision of a translation of a certain word or article or to provide context to the readers.¹⁵⁴ The decision to use a footnote furthered the goal of maintaining the purity of the Louisiana Code. If the translators were to have substituted counties for parishes, this would have been inaccurate. Consequently, by trying to help the audience understand, in reality the translators would have misled the scholars who would be relying on the translated Code. If translators were silent regarding the issue, readers would have been equally confused and may have believed that there was a translation error. Therefore, the translation team kept the term ‘parishes’ and helped the reader understand the meaning. Hence, the team was able to avoid a mutually conflicting situation and accurately promote the civilian tradition in Louisiana by including a footnote and explaining the context of the word ‘parish’.

5. When Louisiana Has a Larger Scope of Law than Other French Jurisdictions

The translators of the Louisiana Civil Code used the functional equivalency approach to translate Art 396, regarding interdiction.¹⁵⁵ In Louisiana, interdiction refers to a legal framework that is the ‘most powerful involuntary legal regimes that may be applied to a person’ in civil matters.¹⁵⁶ Louisiana’s laws of interdiction, which strips a person of powers to dispose his patrimony, ‘is overwhelmingly French’.¹⁵⁷ Louisiana enlarged the concept of interdiction from the French Civil Code by both expanding the rights taken away from interdicted people and the scope of who may be interdicted.¹⁵⁸

Under Roman law, *interdicere*, also known as interdiction, referred to people who, by decree, were prohibited from enjoying the same rights as a non-interdicted person due to a lack of competency.¹⁵⁹ Over time, the definition was further defined to refer to people who, through mental conditions, were judicially or voluntarily constrained from disposing of property and entering into obligations.¹⁶⁰ This definition was codified in Art 394 of the 1825 Louisiana Civil Code as,

¹⁵³ O. Moréteau, n 9 above.

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ W. Reed Huguet, ‘The New Law of Interdiction - Clear and Convincing Revision’ 47 *Loyola Law Review*, 1059-1061 (2001).

¹⁵⁷ J.L. Carriere, ‘Reconstructing the Grounds for Interdiction’ 54 *Louisiana Law Review*, 1199 (1994); G. Cornu, *Dictionary of the Civil Code* (New York: LexisNexis, 2014), 423 (A. A. Levasseur et al translation) (patrimony refers to the aggregate of a person’s assets, claims, and obligations that can be valued in money).

¹⁵⁸ J.L. Carriere, n 157 above, 1200-1202.

¹⁵⁹ A. Berger, *Encyclopedic Dictionary Of Roman Law* (Philadelphia: American Philosophical Society, 1953), 507.

¹⁶⁰ H. Chisholm, *Encyclopedia Britannica: A Dictionary of Arts, Sciences, Literature and General Information* (Cambridge: Cambridge University Press, 14th ed, 1910), 684.

*‘Tous les actes passés par l’interdit dans l’intervalle de la provocation de l’interdiction au jugement définitif qui l’a prononcée, sont nuls’.*¹⁶¹

In the English version of the Code, the same article reads

‘(a)ll acts done by the person interdicted from the date of the filing of the petition for interdiction, until the day when the same is pronounced, are null’.¹⁶²

Currently, the first article about interdiction in the Code is Art 396, which states, ‘A judgment of interdiction has effect retroactive to the date of the filing of the petition for interdiction’.¹⁶³

When translating the Louisiana Code, the translators deviated from the formal equivalency approach and embraced the functional equivalency approach because the article ‘was losing meaning’ with a literal translation.¹⁶⁴ This Art demonstrates one of the few instances in which the 1825 Code in English was clearer than its French counterpart.¹⁶⁵ Therefore, the translated Art states that ‘*(l)e jugement d’interdiction a un effet rétroactif à compter de la date du dépôt de la demande d’interdiction*’.¹⁶⁶ If the translators followed the formal equivalency approach, unnecessary words would have made the article more complicated. The article would have included words like ‘all acts’, referring to obligations that interdicted people entered into, when this is implied in the translated version. Therefore, not only was the translated version of the article clearer, it was the correct decision to break from the previous translations that attempted to convey the same message.

6. When Previous Translations Had Errors: Follow the Error for Consistency or Deviate?

Although the translation of *interdictio* in English was clearer than its French counterpart, several issues arise when translators use the functional equivalency approach to correct the mistakes of previous translators. In cases of apparent translation error, the translation team had to determine whether to correct the mistake or to compound the mistake by including it in the French translation.¹⁶⁷

For example, Art 883 states that

‘(r)epresentation does not take place in favor of the ascendants, the nearest relation in any degree always excluding those of a more remote

¹⁶¹ Louisiana Civil Code Art 394 (1825).

¹⁶² *ibid.*

¹⁶³ Louisiana Civil Code Art 396 (1870).

¹⁶⁴ O. Moréteau, n 9 above.

¹⁶⁵ *ibid.*

¹⁶⁶ Louisiana Civil Code Ann. § Art 396 (2016) (French).

¹⁶⁷ O. Moréteau, n 9 above.

degree'.¹⁶⁸

The source of this article originates in Art 892 of the 1825 Code, which declared that

'(r)epresentation does not take place in favor of the ascendants, the nearest relation in degree always excluding those a degree superior or more remote'.¹⁶⁹

The problem becomes apparent when looking to the same Art in French. The French versions states that

'(l)a représentation n'a pas lieu en faveur des ascendants, le plus proche en degré dans les lignes paternelles ou maternelles excluant toujours ceux d'un degré supérieur ou plus éloigné'.¹⁷⁰

The use of the word *ou*, meaning 'or', demonstrates that the lineage is disjunctive when examining the degrees of relationship when determining who should inherit from intestacy.

Even to a novice in French, the degree of lines is clearly referring to the paternal, *paternelles*, and maternal, *maternelles*. However, the distinction of lines is absent in the English version because of a poor translation.¹⁷¹ The translators favored looking to past translations to adhere to the Louisiana history and French, but the formal equivalency approach would have correctly stated the law, but in so doing would also further the translation mistake.¹⁷² The translators again used the functional equivalency approach and justified their decision by correcting the errors of the 1825 translators.

The translators decided to translate the article as

'(l)a représentation n'a pas lieu en faveur des ascendants; le plus proche en degré dans les lignes paternelle ou maternelle excluant toujours ceux d'un degré plus éloigné'.¹⁷³

A cursory glance of the words proves that the translation team reverted back to the language from 1825 with respect to the two lines of ascendants, but by doing so decided not to use the word 'any' like the Code Art does in English. There are important distinctions between these interpretations and understandings of these two words. Linguistically, 'or' is an example of a word that adheres to the principle of cooperation, which means that the source of a message will use

¹⁶⁸ Louisiana Civil Code Art 883 (1870).

¹⁶⁹ Louisiana Civil Code Art 892 (1825).

¹⁷⁰ Louisiana Civil Code Art 892 (1825) (French).

¹⁷¹ O. Moréteau, n 9 above.

¹⁷² *ibid.*

¹⁷³ Louisiana Civil Code Art 883 (1870).

the most informative word as possible to describe a concept.¹⁷⁴

The accuracy of the translation of the article is from the recognition that, according to Art 883, there are only two options when dealing with ascendants and intestacy.¹⁷⁵ The use of the word ‘any’, which courts have examined when interpreting statutes, suggests that there are more than two options.¹⁷⁶ Therefore, the layperson reading the current Louisiana Civil Code may erroneously believe that there will be more than two options. The same person, however, who reads the Art in French would, as a result of the more precise language used, realize that there were only two options. Therefore, because the wording is more precise and clear, the translation team correctly engaged in the functional equivalency approach for this code article.

7. When a Word Exists in French but not in English

The last code Art demonstrates the translators shifting from the formal equivalency approach to the functional equivalency approach when trying to define ‘seashore’.¹⁷⁷ In the 1825 Civil Code, Art 442 stated that a ‘(s)eashore is that space of land over which the waters of the sea are spread in the highest water, during the winter season’.¹⁷⁸ The same Art in French reads,

*‘(o)n entend par ravage de la mer, l’espace de terre sur lequel s’endent les flots de la mer, dans la plus grande elevation que les eaux ont en temps d’hiver’.*¹⁷⁹

In the current Civil Code, seashore is defined in Art 451 as

‘the space of land over which the waters of the sea spread in the highest tide during the winter season’.¹⁸⁰

The translators of the Louisiana Code translated the article as, ‘*Le ravage de la mer est l’estrans d’hiver*’.¹⁸¹ In the English version of the Civil Code, the current article is sixteen words, and the French translation is ten words. The explanation for the difference in the amount of words comes from the functional equivalency approach and using a word in French that does not exist in English.¹⁸²

¹⁷⁴ S. Crain, *The Emergence of Meaning* (Cambridge: Cambridge University Press, 2012), 8.

¹⁷⁵ Louisiana Civil Code Art 883 (1870) (note that if the decedent does not have ascendants on other side, this issue is moot since the real and/or personal property would go to the ascendants that are in fact living and can inherit them).

¹⁷⁶ J. Martin and T. Storey, *Unlocking Criminal Law* (Abingdon: Routledge, 2013), 512.

¹⁷⁷ O. Moréteau, n 9 above.

¹⁷⁸ Louisiana Civil Code Art 442 (1825).

¹⁷⁹ Louisiana Civil Code Art 442 (1825) (French).

¹⁸⁰ Louisiana Civil Code Art 451 (2016).

¹⁸¹ Louisiana Civil Code Art 451 (French).

¹⁸² O. Moréteau, n 9 above.

The word *l'estran*, although technically translates to 'foreshore' in English,¹⁸³ is not always translated as such in scholarly articles.¹⁸⁴ The word, however, does not require a definition in French since French speakers know what the word signifies.¹⁸⁵ Notwithstanding these different translations, the translators for the Civil Code adamantly believed that *estran* was the appropriate choice, despite the fact that some scholars questioned the decision.¹⁸⁶ Part of the criticism, Professor Moréteau explains, is that

'(w)e've been radical. We abandoned the original French and adopted a different word, which goes against our system, where instances where the language barely changed and we're using different wording'.¹⁸⁷

Although the translators *abandoned* the way the drafters phrased this same content in the 1825 Code, here the translation using *estran* was more appropriate.

Civil Codes are about using precise language and not inundating the average person with unnecessary words and phrases.¹⁸⁸ Therefore, the use of the more precise term that does not exist in the same way in English was the correct decision; the translators should not be limited when writing in French if a comparable word in English does not exist. The French translation of the French Civil Code is for French speakers, so if this segment of the population understands the content of the article without a definition, the translators effectively translated the code.

8. When the Functional Equivalency Approach Better Fits the Needs of a Code

The functional equivalency approach permits the translator to express the same substance in a way that is easier to understand for the reader.¹⁸⁹ Unlike the abovementioned example in which the English translation was incorrect in its entirety from 1870, there are other occasions where the translation is not per se wrong, but it may be misleading and was not the best translation.¹⁹⁰

Art 2690 of the current Louisiana Civil Code states that, '(d)uring the lease,

¹⁸³ *ibid.*

¹⁸⁴ B.Waeles et al, 'Modélisation Morphodynamique Cross-Shore d'un Estran Vaseaux' 336 *Comptes Rendus Geoscience*, 1025 (2004) (translates the word to 'mudflat'); see also V. Albinet, 'Coastal Bluffs Retreat as Beach Nourishment: A Volumetric Evaluation Along the Coast of la Bernerie and Les Moutiers-en-Retz (Loire-Atlantique, France)' 7 *Géomorphologie: Relief, Processus, Environnement*, 41 (2016) (in which the article translates the word to 'seashore').

¹⁸⁵ O. Moréteau, n 9 above.

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ R. Batiza, 'Sources of the Field Civil Code: The Civil Law Influences on a Common Law Code' 60 *Tulane Law Review*, 799-815 (1986).

¹⁸⁹ M.H. Hoeflich, n 94 above, 766.

¹⁹⁰ O. Moréteau, n 9 above.

the lessor may not make any alterations in the thing'.¹⁹¹ According to the Louisiana State Law Institute, the content of this Art is the same as the 1870 version, which stated in Art 2698 that '(t)he lessor has not the right to make any alteration in the thing during the continuance of the lease'.¹⁹² Although the 1870 Art was only available in English, the provision was the same as the 1825 Civil Code.¹⁹³ The 1825 Art in English was a mere translation from its French counterpart, and the translation was not technically incorrect in terms of the message that was conveyed, but it was not a good translation into English.¹⁹⁴ The sub-par translation created the issue of using the formal equivalency approach and the translators' decision regarding the functional equivalency approach.

The translators decided to use the 1825 French Art for the current Code article: '*(L)e bailleur ne peut, pendant la durée du bail, changer la forme de la chose louée*'.¹⁹⁵ At first glance, this deviation from the adherence of the current Code Art shows the translators not respecting the current Civil Code, which may be the only one that matters since it is the governing source of law. If the translators were to have literally translated the Code article back into English, the actual meaning would have been lost, so the use of the functional equivalency approach and '(f)idelity to the sources led us to revive this language, identical in substance to English but linguistically further away'.¹⁹⁶ The justification for the functional equivalency approach stems from the fact that there are subtle differences between 'may not', 'cannot', and 'must not', and the single approach used by the translators in 1825 did not capture these subtle differences that could have an effect on the outcome.¹⁹⁷

VI. Conclusion

Some authors have commented that the 'persistence of French in Louisiana three centuries after the initial colonization is remarkable'.¹⁹⁸ From a pragmatic standpoint, this is also a tribute to the benefits of the civil law, as Louisiana is the only state in the United States to use a Civil Code. The range of perceptions of the Louisiana Civil Code is a broad: whereas some scholars view the Louisiana

¹⁹¹ Louisiana Civil Code Ann § Art 2690 (2015).

¹⁹² O. Moréteau, 'La Traduction du Code Civil Louisianais, Exercice Historico Linguistique', in E. Bracchi and D. Garreau eds, *Codes, Termes et Traduction* (Milano: Giuffrè, 2017), 7-8.

¹⁹³ *ibid* 8.

¹⁹⁴ *ibid*.

¹⁹⁵ *ibid*.

¹⁹⁶ *ibid*.

¹⁹⁷ See Writing Explained, 'Can v. May: What's the Difference?' available at <https://tinyurl.com/yy3r4upf> (last visited 28 May 2019); see also Modals 1, British Council, <https://tinyurl.com/yxn9kvh5> (last visited 28 May 2019).

¹⁹⁸ M.D. Picone, 'Cajun French and Louisiana Creole', in M. Di Paolo and A.K. Spears eds, *Languages and Dialect in the U.S.: Focus on Diversity and Linguistics* (Abingdon: Routledge, 2001), 196.

civil law as a ‘white elephant’,¹⁹⁹ others perceive Louisiana’s civilian approach as ‘the most perfect child of the civil law’.²⁰⁰

The current Louisiana Civil Code, first promulgated in 1870, is now completely translated into French and available online. Of the two types of legal translation theories, the formal equivalency approach and the functional equivalency approach, the translators used the formal equivalency approach and deviated when there was the need to do so. The use of the functional equivalency approach, when not necessary but instead useful in ascertaining the meaning of the articles, was essential to the accurate translation of the Civil Code. The translation team accurately transformed the Code from English to French by using the functional equivalency approach when it was needed to avoid the loss of meaning with the nuances of the French language in Louisiana.

¹⁹⁹ A.S. Aiton, n 26 above, 701; see also A. Parise, ‘Report on the State of Louisiana to the Second Thematic Congress of the International Academy of Comparative Law’ 31 *Mississippi College Law Review*, 397-398 (2013) (describing Louisiana as a ‘Civil Law island’ surrounded by a ‘sea of Common Law’).

²⁰⁰ J.T. Hood Jr, ‘The History and Development of the Louisiana Civil Code’ 19 *Louisiana Law Review*, 18 (1958).