

Navigating Through the Minefields. On the Making of an English-Norwegian Dictionary of Law

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Abstract

The translation of legal terminology and phraseology is perhaps the one area that many translators find most difficult, since there will rarely be complete or direct equivalence between concepts in two languages. Even in countries where the legal traditions and the language are the same, like England and Australia, we find considerable differences also in respect of terminology and the legal interpretation of apparently identical concepts.

I shall in this paper look at some of the lexicographic and lexicological problems involved, and by using examples from my *English – Norwegian Dictionary of Law* (Oslo, 2000), indicate ways in which to try to solve these problems. The paper will also look at ways in which a dictionary may assist the user in navigating through the maze of legal concepts to find the information he or she seeks, in terms of semantic information, conceptual discrimination, collocations, definitions, factual (encyclopedic) information, syntactical information, equivalence, register, etc. The paper will also look at the problems involving terminology that does not have any acceptable equivalents in the target language and discuss the principles involved in the "construction" of terms.

The transposition of legal terminology is perhaps one of the most difficult areas of translation, since there will rarely be complete or direct equivalence between concepts in two languages. A number of factors such as statutory law, common law, legal precedent and consuetude, in addition to court practice and procedure, contribute to setting them apart. Even in countries where the legal traditions and the language are the same, like England and Australia, we find considerable differences also in respect of terminology and the legal interpretation of apparently identical concepts. These dissimilarities also exist between English and Scottish (and to a lesser extent Northern Irish) law, especially common law, although much modern statutory law is passed (with minor, necessary variations) for the whole of the UK. This also applies to the USA, where each state constitutes a separate jurisdiction with its own system of law, in addition to the federal judicial system, and there may be considerable disparities in legal terminology and legal practice between states. There is, for instance, no common American definition of concepts like *felony* and *misdemeanor*. It is thus hardly surprising that a number of terms in the Anglo-American common law systems have no equivalents in a civil law country like Norway, and will have to be "constructed".

As a linguist and translator of legal material, as well as an author of several dictionaries on legal terminology, I shall in this paper look at some of the lexicographic and lexicological problems involved, and with the use of examples from my *English – Norwegian Dictionary of Law* (Oslo, 2000), indicate ways in which to try and solve these

problems. The paper will also look at ways in which a dictionary may assist the user in navigating through the maze of legal concepts to find the information he or she seeks.

Arrangement of entries

Placing terms in a hierarchical concept system relative to broader or narrower, coordinate, antonymic or hyponymic terms may be useful from a terminological point of view, but perhaps less so seen from the user's position. Although I believe that a dictionary, in order to accommodate the needs of the user, should be primarily semasiological (*ie* word-based), in some cases an onomasiological (*ie* concept-based) approach would (or could) be helpful, *eg*

liable ansvarlig [*cf.* **accountable**; **responsible**]

The cardholder shall be held liable for loss if he has acted fraudulently – *Innehaveren av kortet vil bli gjort ansvarlig for tap, hvis han har opptrått svikaktig*

civilly liable sivilrettslig ansvarlig

criminally liable strafferettslig ansvarlig, straffansvarlig [*cf.* **doli capax**]

The court held that the employer was criminally liable for several gross violations of the safety regulations – *Retten fant at arbeidsgiveren var strafferettslig ansvarlig for flere grove brudd på sikkerhetsbestemmelsene*

jointly and severally liable solidarisk ansvarlig

legally liable *see* **liable at law**

personally liable personlig ansvarlig

strictly liable objektivt ansvarlig

Hundreds of companies that dumped their waste 20 to 30 years ago could now find themselves strictly liable – *Hundrevis av selskaper som dumpet avfall for 20-30 år siden kan nå oppdage at de er objektivt ansvarlig*

Semantic information

Sometimes the semantic content of seemingly identical terms differs, as in the case of "bankrupt" or "bankruptcy", which in British English is only used for personal insolvency, whereas Norwegian and US law makes no terminological difference between personal bankruptcy and company failure. I believe a dictionary should draw attention to and include this type of information:

bankruptcy konkurs [*cf.* **act of -**; **estate in -**; **personal -**; **voluntary bankruptcy**]

Under English law joint-stock companies cannot "go bankrupt" (unlike Norwegian and US law), they are wound up or liquidated (personal bankruptcy vs company failure). However, bankrupt(cy) is sometimes loosely applied also to companies – *Aksjeselskaper kan ikke, ifølge engelsk lov, "gå konkurs" (i motsetning til norsk og amerikansk lov), de blir "avviklet" ("personlig konkurs" mot "aksjeselskaps-konkurs"). Imidlertid brukes "bankrupt(cy)" av og til også upresist om selskaper*

This also means that in my view internal cross-references should be extensively used. Semantic information may be further subdivided into the following categories:

- conceptual discrimination
- collocations
- definitions
- factual (or encyclopedic) information
- register

Conceptual discrimination

Concepts that are completely equivalent or interchangeable, "absolute synonyms", are in my view very rare, if they exist at all. Words/terms may, however, have some connotative similarities (*ie* to a certain extent overlap in meaning), "pseudo-synonyms". These terms can be treated in different ways:

consequential loss følgeskade, ettervirkningsskade, konsekvenstap, avledet tap [cf.

business interruption loss; loss of use]

ie an indirect (pecuniary) loss resulting from direct material damage (to a building, etc)

– *dvs. et indirekte (økonomisk) tap som følge av en direkte materiell skade (på bygning, osv.)*

In the example above the target-language concepts are close, if not completely synonymous, and perhaps best placed under one heading. In the example below, however, describing English and American usage respectively, the source-language terms are not equivalent or closely related, and therefore treated as separate target-language entries:

limited liability partnership (LLP) 1. (*Eng*) selskap med begrenset deltakeransvar

ie a body corporate (with legal personality separate from that of its members); a

member's liability is limited to the amount contributed. The partnership has unlimited capacity. Companies and other LLPs may be members. The LLP does not

pay tax but the members are liable for tax on its income and capital profits. The

partnership closely resembles an American limited liability company (LLC) – *dvs. et*

eget rettssubjekt (selvstendig juridisk enhet uavhengig av deltakerne). En deltakers ansvar er begrenset til det beløpet som er skutt inn. Selskapet har ubegrenset rettslig handleevne. Aksjeselskaper og andre LLP kan være deltakere. Selskapet er ikke eget skattesubjekt, deltakerne er skattepliktige når det gjelder inntekt og kapitalgevinst.

Selskapsformen er svært lik et amerikansk "limited liability company" (LLC)

2. (*US*) ansvarlig selskap uten solidaransvar

ie a partnership in which a partner is not liable for a negligent act committed by

another partner; the scope of financial liability for his/her own negligent acts varies

from state to state. In some states LLP status is available only to professional

partnerships, *ie* lawyers, accountants, etc – *dvs. selskap der en deltaker ikke er*

ansvarlig for en skadevoldende handling foretatt av en annen deltaker/partner;

omfanget av økonomisk ansvar for egen uaktsomhet varierer fra stat til stat. I noen

stater er status som LLP bare tilgjengelig for sivile selskap, dvs. advokater,

revisorer, osv.

Partial (acceptable) equivalence

Let us consider a term like "infanticide", where there is, I feel, acceptable, but not complete equivalence:

infanticide barnedrap

ie under English law, the killing of a child under 12 months by its mother; (US) the act of killing a new-born child, esp by the parents (“new-born” is not defined); it is not classified as a separate offence – dvs. etter engelsk lov, drap på et barn under 12 måneder foretatt av moren; (US) drap på et nyfødt barn, spes. begått av foreldrene (nyfødt ikke definert); ikke klassifisert som en separat forbrytelse

In Norwegian law the concept is defined as follows:

barnedrap infanticide

dvs. etter norsk lov, drap på et barn foretatt av moren under eller inntil et døgn etter fødselen – ie under Norwegian law, the killing of a child by its mother during or up to 24 hours after birth

A term encased in slashes // indicates a constructed term, *ie* there is not any equivalent or near-equivalent concept in the target language, and I believe users should be told as much. Some of these terms are “descriptive”, they describe the realities underlying the source-language concept; others are “analogous”, *ie* constructed by analogy with existing terms.

Descriptive term:

A target-language term that describes the underlying meaning of the source-language concept, *eg*

conditional fee /resultatavhengig honorar/ [*cf.* contingency fee; success fee; uplift]

conditional fee agreement /avtale om resultatavhengig honorar/ [*cf.* contingency fee arrangement]

ie an agreement between lawyer and client for legal services in litigation to be provided on the basis that payment is due only if the proceedings are successful («no win, no fee») – *dvs* avtale mellom klient og advokat om at honorar/salær for juridisk bistand i rettsak bare betales i tilfelle saken vinnes

On the other hand terms may exist in the target language in non-legal contexts, *eg*

uplift tilleggshonorar, ekstrahonorar [*cf.* conditional fee agreement; success fee]

ie a fee charged by a solicitor above the basic charge for the work involved in cases that are particularly complex, or in which he/she has accepted the work under a conditional fee agreement – *dvs.* honorar som en (britisk) advokat beregner seg i tillegg til standardsatsen for oppdraget i saker som er spesielt kompliserte, eller der vedkommende har påtatt seg oppdraget etter en avtale om resultatavhengig honorar

The two Norwegian terms, which translate as “additional fee”, “extra fee”, albeit having no specific legal significance, will not be marked out as “constructed”.

Since a considerable body of Anglo-American law is based on case law, it is perhaps true that some legal concepts can only be properly understood in the context of the case in which they originally appeared, *eg* “McKenzie friend” (sometimes referred to as “McKenzie man/person”), from the case *McKenzie v McKenzie* (1971). A direct translation incorporating the proper noun would be rather menaningless, whereas a descriptive term may be more helpful:

McKenzie friend (man/person) /ikke-juridisk medhjelper i retten/

ie a lay advisor in court proceedings to a litigant in person – *dvs.* ikke-juridisk rådgiver i rettsforhandlinger for en prosesspart som fører sin egen sak/prosederer selv

In this case the Norwegian rendering basically paraphrases the English definition.

Analogous term:

Whereas the concept "jury" exists in Norwegian law, frequently referred to by its English name, the concept "grand jury" does not exist and has to be "constructed" by analogy with existing terms:

grand jury (US) /tiltalejury/, /storjury/ [cf. indictment]

ie in the USA, at federal and state level, a group of people (normally 23) empanelled to decide whether the prosecution has adduced sufficient evidence for an indictment to be filed. The institution exists in about half the states – *dvs. i USA, på føderalt og delstatsnivå, en gruppe personer (vanligvis 23) tatt ut for å avgjøre om påtalemyndigheten har lagt frem nok bevismateriale til at tiltalebeslutning kan utferdiges. Instituttet eksisterer i ca. halvparten av delstatene*

The two Norwegian terms differ in the sense that the second (and traditional) one is a loan translation (*stor* = great, grand), referring to the fact that a grand jury contains a larger number of jurors than the ordinary trial (or petty) jury, whereas the first one is descriptive, describing the function of the grand jury, *ie* to deliberate whether or not to file an indictment charging a person with a crime (*tiltale* = indictment).

Collocations

I believe information relating to word combinations to be especially important in a dictionary of law, since legal language abounds in restricted or frozen collocations (set phrases), some of which may not spring readily to mind, neither to the foreign user nor to the native speaker (*eg "to lay an appeal to a superior court", "an appeal lies to a superior court", "to lay an information"*), *eg*

contract (*n*) kontrakt, avtale [cf. **adhesion -; agreement; aleatory -; annuity -; barter -; blanket -; charter -; collateral -; commutative -; continuing -; discharge of -; exclusive -; executed -; execution of -; executory -; fixed-term -; implied -; privity of -; sham -; standard-form -; subsidiary -; third-party -; unilateral contract**]

ie a legally binding agreement – *dvs. en rettslig bindende avtale*
 affirm a contract - *bekreft* en avtale/kontrakt; avoid a contract (for default, etc) - *annullere/heve* en avtale/kontrakt (*pga. mislighold, osv.*); award a contract - *tildele* kontrakt; break/breach a contract - *gå fra/bryte* en avtale/kontrakt; cancel a contract - *heve/si opp* avtale/kontrakt; conclude a contract with - *slutte/inngå* avtale/kontrakt med; confirm a contract - *bekreft* en avtale; default on a contract - *misligholde* en avtale/kontrakt; discharge a contract - *avvikle* en kontrakt; enter (into) a contract with - *inngå* avtale/kontrakt med; execute a contract - *oppfylle* en avtale/kontrakt; form a contract - *slutte/inngå* kontrakt; make a contract with - *inngå* avtale/kontrakt med; perform a contract - *oppfylle* en avtale/kontrakt; repudiate a contract - *bryte* en kontrakt; rescind a contract - *heve* en kontrakt; terminate a contract - *heve/si opp* avtale/kontrakt

Definitions

As may be deduced from some of the examples above, in my opinion definitions or illustrative sentences should form an essential part of a dictionary, *eg*

mortgage (*n*) pant, underpant; heftelse; (*tilsv.*) pantelån [*cf.* **blanket** -; **charge**;
chattel -; **first** -; **legal** -; **puisne** -; **second** -; **submortgage**]

ie land (normally) or chattels (occasionally) offered as security for a loan or other debt – *dvs.* (*vanligvis*) *fast eiendom eller (av og til) løsøre stilt som sikkerhet for lån eller annen gjeld*

pickpocket lommetyv

Pickpockets often appear in groups, one who actually picks the pocket (the "picker" or "dipper"), one or more "blockers", who create a diversion, as well as a "runner" who takes off with the proceeds – *Lommetyver opptrer ofte flere sammen, én som foretar selve tyveriet ("fiskeren"), én eller flere "avledere", som avleder oppmerksomheten, samt en "løper", som stikker av med byttet*

grandfather (*v*) (*US*) unnta fra bestemmelser i lov [*cf.* **grandfather clause**]

grandfather clause (*US*) unntaksklausul (i lov)

ie a clause in a statute exempting a class of persons (natural or legal), who have enjoyed specific rights (*eg* in a certain business), from the provisions of the statute which otherwise would have limited those rights, and which new entrants to the field must comply with – *dvs.* *klausul i lov der en gruppe personer (fysiske eller juridiske), som har nytt bestemte rettigheter (f.eks. i en viss type forretningsvirksomhet) blir unntatt fra bestemmelsene i loven, som ellers ville ha begrenset disse rettighetene, og som nye aktører på området må rette seg etter*

Factual (encyclopedic) information

Some might regard the provision of factual information as intrusive rather than helpful, cluttering up a dictionary. A serious drawback is that it tends to become obsolescent more quickly than linguistic information; figures, etc, change rapidly, *eg*

jury jury, lagrette [*cf.* **blue ribbon** -; **civil** -; **deadlocked** -; **grand** -; **hung** -; **inquest** -; **petit** -, **petty** -; **special** -; **trial jury**]

ie a group of lay people, in Norway only used in the Court of Appeal (lagmannsretten) to decide the question of guilt in serious criminal cases, in England also used in a few types of civil cases (*eg* libel); in the USA in most cases, civil as well as criminal. Consists of 10 persons in Norway, 12 in England, 15 in Scotland, and normally 12 in the USA (6 in a few states). A federal American jury usually consists of 12 persons in criminal cases and 6 in civil cases – *dvs.* *gruppe av lekmenn, i Norge bare brukt i lagmannsretten for å avgjøre skyldsspørsmålet i alvorlige straffesaker, i England også anvendt i noen få typer tvistemål (f.eks. injurier); i USA i de fleste saker, sivile som straffesaker. Består av 10 personer i Norge, 12 i England, 15 i Skottland, og normalt 12 i USA (6 i noen stater). En føderal amerikansk lagrette består vanligvis av 12 personer i straffesaker og 6 i sivile saker*

Syntactical information

Syntactical information is indicated sparingly, normally in cases where the syntactical pattern a term is used in differs from standard-language usage, and only indirectly, *eg* to draw attention to the fact that “information” is a count noun in this context:

information tiltale; tiltalebeslutning [*cf.* indictment]

ie in England used for summary trial in the Magistrates’ Court; in the USA filed by the prosecution (as opposed to an «indictment») – *I England brukt ved summarisk saksbehandling i lavere rett (Magistrates’ Court). I USA brukt om en tiltalebeslutning fremmet av påtalemyndigheten (i motsetning til «indictment»)*

lay (bring/prefer) an information against – *fremme/uferdige tiltalebeslutning mot*

Or that a comparatively rare term like “laches” preferably takes a singular verb:

laches passivitet [*cf.* acquiescence]

ie a person who stays passive or takes an unreasonable length of time to assert a right, may lose his right – *dvs. en person som holder seg passiv eller bruker urimelig lang tid på å hevde en rettighet, kan miste rettigheten*

The plaintiff’s laches was a decisive element in the judge’s decision to throw out the case – *Saksøkerens passivitet var et avgjørende moment i dommerens beslutning om å avvise saken*

Register

How do you treat terms which are not, strictly speaking, legal concepts as such, but which in everyday, non-technical or colloquial usage cover the same reality as legally defined ‘terms of art’, frequently used by laymen as well as legal professionals? The Norwegian concept, “blotter”, may, for instance, variously be called “exhibitionist” by the medical profession, “flasher” by most people, including legal professionals, whereas he (it is normally a he, I suppose) may be referred to in the indictment as “(the person) charged with the offence of indecent exposure”. In my Norwegian-English Dictionary of Law this is done as follows:

blotter person committing the offence of indecent exposure; person charged with the offence of indecent exposure; (*coll*) flasher; [*spes. medisinsk - esp medically*] exhibitionist

blotting indecent exposure, (the) offence of indecent exposure, (*coll*) flashing; [*medisinsk - medically*] exhibitionist behaviour

However, polysemic words have been generally included in their legal sense(s), so that a term like “infant” only appears in the meaning of “a person under the age of 18”.

Colloquial terms are included rather sparingly and only to the extent that I feel they have a clear legal sense or are frequently used in legal contexts, so that users would expect to find them in a legal dictionary, *eg*

copycat crime (*coll*) /imitasjonsforbrytelse/

ie criminal act copying a recent, much-publicised crime – *dvs. straffbar handling som imiterer en nylig, mye omtalt forbrytelse*

fence (*coll*) heler [*cf.* person handling stolen goods]

fencing (*coll*) heleri [*cf.* handling stolen goods]

rap sheet (*US coll*) *see* criminal record

How do you treat changes in target-language terminology? The label (*obs.*), for obsolete, does not necessarily mean that a word or term has passed out of the language as

such, but that in a legal context it has been replaced by other words, for instance because of statutory changes in the law. A person who received and disposed of stolen goods was in English law formerly called a “person receiving stolen goods” (or “receiver”). In *The Theft Act* of 1968 the term was replaced by “person handling stolen goods” (or “handler”), which does not, of course, only signify that new terminology has been introduced, but also that it has been given a slightly different semantic content; a content which incidentally corresponds very well with that of the Norwegian concept. In American English “receiver (of stolen property)” is still used. Similarly, terms like “felony” and “misdemeanour” have disappeared from modern English criminal law (*cf. The Criminal Law Act* of 1967) and been replaced by various types of offences (arrestable offence, indictable offence, non-arrestable offence, summary offence). The terms are included, not merely because they may have been retained in other jurisdictions, *eg* the USA, but also because users are likely to come across them in past legal decisions, older legal literature, etc.

embezzle (*obs or US*) underslå

embezzlement (*obs or US*) underslag [*cf. defalcation; peculation; theft*]

In English law “embezzlement” has been replaced by “theft”; in the USA the term is still in use – *I engelsk lov er et begrep som “embezzlement” avløst av ordet “theft”; i USA brukes begrepet fortsatt*

embezzler (*obs or US*) underslager [*cf. thief*]

I partly agree with those who maintain that dictionaries should be written with a specific target group in mind. However, in specialist - or segmental - dictionaries, aimed at the informed layman as well as the professional, the native speaker might frequently have the same needs or problems as the non-native user, in terms of definitions, usage levels, encyclopedic information, etc. For people without any professional knowledge of the subject area highly specialised terminology may sometimes seem as esoteric or arcane in their native language as in a foreign language. Definitions or illustrative sentences in both languages may, however, to some extent accommodate both groups.

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