

Legal Bilingual and Bisystemic Dictionary of Property in Canada

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Abstract: The *Legal Dictionary of Property in Canada* (LDPC) is an interpretative bilingual and bisystemic encoding and decoding tool for Canadian legal texts and notably, for legislative and judicial texts dealing with federal law. It was created to address this specific need. By *bilingual* we mean both of Canada's official languages, French and English; by *bisystemic* we refer to the legal systems in private law matters, Civil Law and Common Law, which coexist within the Canadian federal law. The dictionary's theme is property, and the observation of this phenomenon was conducted through the use of an aligned and bilingual corpus of judicial decisions, mostly originating from the Supreme Court of Canada and, to a lesser extent, the New Brunswick Court of Appeal. Its definitions form a set of necessary and sufficient conditions whose specific consistency constitutes an ontology. As a working hypothesis, its validity is therefore verified according to whether the coverage of the observed field is

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confirmed by the presence of meanings described in the dictionary's definitions and found in the bilingual decisions used to form the corpus.¹

In the first part of the paper, the author provides an outline of the context in which the LDPC was developed. The second part describes the theoretical perspective adopted to observe the object featured in this work: property. Lastly, the paper explains the practical environment through which this theoretical perspective is explored and realized.

The thesis defended by the author is the following: 1) that the translation in the context of official bilingualism is a means for the Canadian constitution; 2) that the LDPC meets the standard of official bilingualism in matters of legal dualism in Canadian private Law; 3) that the LDPC, in an explicit manner, carries out a phenomenological description of property; 4) that the coherence structure imposed upon the LDPC's definitions forms an ontology of the legal rationalities of Civil Law and Common Law; 5) that an epistemology of bisystemism results; 6) that a theory is necessary in order to represent this knowledge; 7) that its implementation is made possible with the use of an ontological engineering environment.

¹ Note: *A tree does not grow all of its roots in the first year.* The implementation of the critical apparatus normally used in a scientific text is incomplete, given the LDPC's novelty. We had to practice a kind of eclecticism that researchers generally do not value highly, which we are aware of and ask the reader's indulgence. If the participation of the Canadian government in this symposium reflects the desire to promote the work initiated by the Department of Justice Canada regarding legal dualism and official bilingualism, this participation equally reflects its goal to encourage researchers to take an interest in these questions – and to take into account the advances made in all the fields of expertise related to its activities. A Moodle collaboration platform will be established in order to foster interaction between Canadian researchers, but it will be open to everyone interested in dualism issues.

Introduction

In Canada, federal law is expressed in both official languages – French and English – with equal authority. Added to this already complex situation is the presence in private law of two systems of legal thought and legal rules: Civil Law and Common Law.² The value of a this dictionary arises from this dualism, given that anyone who needs to interpret federal statutes can benefit from using a dictionary that provides bilingual and bisystemic equivalents. More specifically, this dictionary is designed to facilitate the interpretation of the vocabulary of property in the context of legal dualism and bilingualism.

Not only does the Canadian legal context call for the creation of a tool that facilitates its understanding, but this same tool requires the implementation of a particular methodology to ensure its completion. The use of an aligned and bilingual corpus, shaped by bisystemism, illustrates one of the many facets of the methodology used to build the LDPC.

The Legal Dualism Team consists of four members from different disciplinary backgrounds: law, sociology and linguistics. It should be noted that Volume 1 was developed and edited entirely in-house, with the remaining three volumes pending.

The corpus is comprised exclusively of decisions rendered by Canada’s main appellate courts. It is important to note that we did not try to describe the language of these judgments, rather, we tried to link our definitions to examples that confirm the concept’s presence in the corpus. To do so, our departure point was the search for defining contexts (knowledge-rich content). Our corpus is therefore not a reference corpus built to study the language or the use of the legal corpus on property. It is a

² In French, the feminine is used as it is recommended by the *Office québécois de la langue française*.

specialized language corpus pertaining to a specific area of knowledge: property in Canadian private law.

First version of the dictionary

A first version of the dictionary was prepared in order to gather preliminary feedback. As far as we know, the dictionary's format is completely new. We maintain that it is the model of a prototype, with elements and a structure that constitute a working hypothesis requiring subsequent validation.

Some 400 copies of the dictionary have already been sent to experts in Canada, England, the United States and France for consultation. The feedback has generally been very positive. A report describing the initial results of our consultation will be posted on the dictionary's website (www.dualjuridik.org) in December 2010. Some changes have already been made to the on-line version of the dictionary, including the integration of 900 graphics that illustrate the relationships between the concepts of the dictionary. The expanded and corrected version will incorporate the changes that were made to the dictionary's on-line version since its initial release. Changes to the editorial portions of the dictionary's paper version will also be made for the next publication.

Furthermore, we are now putting the final touches on several complementary studies conducted to further elaborate the dictionary's content, notably for on-line publication. For example, the search for definitional contexts led us to catalogue the different kinds of definitions cited in the decisions. In the majority of cases, we found that courts resorted to general language dictionaries.³ A prior market survey was

³ The distinction established by certain authors, Pierre Lerat and John Humbley, for example, between language of specialization and specialized language is used here.

conducted of Canadian university librarians to explore patterns in law students' consultation habits – which also taught us that general language dictionaries were commonly consulted first. Another complement to the dictionary, the results of which are currently being analyzed and which will no doubt be of particular interest to translators, is a comprehensive list of all forms of translation equivalents of dictionary entries identified in the corpus. Lastly, an etymological study of the property field's most characteristic words will be added to the two other studies: *action*, *possession*, *property*, *right*, *accession*, *use*, etc.

To render this project dynamic, a collaboration platform will be established to foster interaction between Canadian researchers, though open to anyone interested in legal dualism issues. Moodle⁴ was selected because of its vast popularity among teaching professionals and its growing use in universities around the world.

Discussion outline

The first part of this paper describes the context in which the LDPC was developed: the bisystemic and bilingual character of the Canadian legal framework in private law matters, on both legislative and judicial levels; the “special” status given to translation; and finally, legal dualism.

The second part explores the premise of property as a phenomenon within a perspective approaching that of Alexandre Kojève in *Outline of a Phenomenology of Right*.⁵ We then examine the notion of *legal ontology* as a mechanism of formal

⁴ Moodle (Modular Object-Oriented Dynamic Learning Environment). See: www.iwebtool.com/what_is_moodle.html

⁵ Kojève, A. *Outline of a Phenomenology of Right*, edited and translated by Bryan-Paul Frost and Robert Howse, Rowman & Littlefield, 2007, 512 pp.

knowledge representation by briefly describing Hozo, an ontological development environment that provides another way of exploring and organizing the hierarchical structure, and a means of representing it in a formalisation language.

I. Developing a bisystemic and bilingual legal dictionary in property law: context

Canada is a federal state and a constitutional monarchy. Legislative jurisdiction is shared between the Parliament of Canada (federal) and the provincial legislatures, with each level of government sovereign in its own respective field of jurisdiction.⁶

Unlike the legislative power, the judicial power is completely independent of the political power. All Canadian courts have the power to interpret Canada's constitutional enactments, given the absence of a judicial forum specifically devoted to this task.

a. Canadian legal bilingualism

We will focus on two aspects of official bilingualism in Canada: the legislative aspect and the judicial aspect.

i. Legislative aspect

Section 18 of the *Constitution Act, 1982*,⁷ which essentially reiterates section 133 of the *Constitution Act, 1867*, states as follows:

⁶ See sections 91 and 92 of the *Constitution Act, 1867* (U.K.) 30 & 31 Vict., c. 3. is reproduced in R.S.C. 1985, Appendix II, No. 5. (hereinafter: *Constitution Act, 1867*).

⁷ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982*, (U.K.) 1982, c. 11, which came into force on April 17, 1982. (hereinafter: *Canadian Charter of Rights and Freedoms*)

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

Since they have the same normative value, each version of federal legislative documents can therefore be used to interpret the other. Reading both versions in conjunction is not always necessary, but it is always recommended.⁸ In fact, when the linguistic versions differ in their respective meanings, the portion of the meaning present in both versions should be retained. If one version is clearer than the other, the meaning of the former should be retained.⁹ To minimize discrepancies, a legislative co-drafting system was implemented over thirty years ago. The French and English versions of federal statutes are drafted simultaneously.

Co-drafting involves drafting the two language versions of a bill together using a team of two drafters. One is responsible for the English version, while the other is responsible for the French. The technique of co-drafting is used to ensure that each language version is properly drafted and reflects both the civil and common law systems.¹⁰

There's a socio-cognitive aspect linked to the interaction. Such theory allows us to recognize a certain level of dynamism associated with the translation process that lies beneath legislation and its development.¹¹

⁸ Sullivan, R. (ed.) *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Lexis Nexis Butterworths, 2002, pp. 77–78.

⁹ *Ibid.*, p. 80 *et seq.*, see also *R. v. Daoust*, [2004] 1 S.C.R. 217.

¹⁰ Legislative Services Branch – Department of Justice Canada, *Legislation Deskbook, Chapter 1: The Process*, 2010.

¹¹ See Viviana Gaballo's work entitled "The Umbilical Cord Cut: English as Taught in Translator-Training Programs", *English in Translation Studies: Methodological Perspectives*, eum x Translation Studies, edizioni universita de macerata, 2009, pp. 48–49.

ii. Judicial aspect

Section 19 of the *Constitution Act, 1982* states as follows:

19. (1) Either English or French may be used by any person in, or any pleading in or process issuing from, any court established by Parliament.

The obligation stated in section 19 must be clearly understood: the right to use “English or French” means that both English and French may be used. This choice enables bilingualism. Where applicable, it is not the principle of the duty of bilingualism that is affected, it is only the systematic nature of its application that varies.

Given that the jurisdiction of Canadian tribunals to hear disputes concerning questions of federal law is not limited to federal¹² courts, but is rather distributed among these courts and provincial¹³ courts, the issue of bilingualism applies to the latter as well. The choice to use one language or the other is only offered before tribunals established by the federal government. For example, when a person appears before a court administered by a province, his or her linguistic rights with respect to access to justice are determined by the province.¹⁴ The most provinces do not recognize the right of a justiciable to choose the trial language. Of course, New Brunswick is the exception, as it is the only province that is officially bilingual under the Canadian Constitution.¹⁵

We must keep in mind, however, that language rights can arise on a case-by-case basis relative to the statute in question, as is the case with section 530 of the *Criminal*

¹² Courts established in accordance with section 101 of the *Constitution Act, 1867*.

¹³ Courts established in accordance with section 96 of the *Constitution Act, 1867* – or in accordance with a provincial statute.

¹⁴ Section 92(14), *Constitution Act, 1867*.

¹⁵ Section 16(2) and Section 19(2) of the *Canadian Charter of Rights and Freedoms*.

Code.¹⁶ In similar circumstances, the province would be required to give effect to a similar provision, regardless of the inconveniences that may arise.¹⁷

Moreover, even without the right to choose the language of the proceedings, the alternative minority language is still taken into account when federal statutes are at issue because these statutes are bilingual. As mentioned earlier, the two versions of the statutes have equal weight. In a unilingual “Anglophone” province, if a French-speaking justiciable refers to the interpretation of the French version of the statutes the court must orient itself upon the requested version accordingly. Thus, in practice, the issue of bilingualism can arise at any time and by extension, the reading of statutes in their two linguistic versions is more than advisable.

b. The “special” status of translation

A special status is given to translation that stems from the constitutional origins of bilingualism, at least between French and English – and has, in essence, become a “means” for the Constitution. Translation is a privileged means that facilitates intercomprehension between linguistic communities.

Though the LDPC’s overall objective was to facilitate bilingual *and* bisystemic drafting of legal texts, this was not the only goal pursued. It was also designed to help jurists explore the other community’s legal culture. The manner in which legal knowledge is created is specific to each one of the epistemic communities of Civil Law and Common Law, and the advantage derived from knowledge of the other system should appear obvious, at least in terms of general legal skill. Given the context of

¹⁶ *Criminal Code* R.S., 1985, c. C-46, section 530.

¹⁷ *R. v. Beaulac*, [1999] 1 S.C.R. 768.

official bilingualism, translation becomes the preferred way to practice the other community's culture. The dictionary takes these aspects of legal knowledge into account in its ability to facilitate the learning of another legal culture.

c. Legal dualism

Prior to the exploration of property as phenomenon, it is worth further examining what we mean by legal dualism. The LDPC's preface specifies the meaning of the terms "*de facto legal dualism*" and "*de jure legal dualism*" by linking these specific designations to two fundamental aspects of legal dualism: the factual coexistence of the Common Law and Civil Law systems and its manifestation within the Canadian legal framework.

By *de facto legal dualism*, we mean the historically-based coexistence of the Civil Law and Common Law systems in Canada.

In this respect, the term *bisystemism* is used to designate the "factual" generality of the phenomenon denoted. It was notably preferred to *bijuralism*¹⁸ because of the different communicative situation (*situation de communication*) at issue: legislative in the case of legislative bijuralism and judicial when observing legal dualism in action. In fact, for the purposes of our work, judicial texts provided the ideal setting for observing the effects of the bisystemism.

With respect to *de jure legal dualism*, its existence comes from the constitutional division of powers. Its influence is embodied and exercised within the structure of

¹⁸ In this regard, we draw our attention to Professor Andrée Lajoie's article in which she accurately situates legislative bijuralism, "bijuridism", within the narrow context of harmonization of federal laws with the Civil Code of Quebec. See: "Possible Means for an Impossible Task: Accommodating Regional Differences through Judicial Design – the Canadian Experience" in A. Le Sueur (ed.), *Building the UK'S New Supreme Court – National and Comparative Perspectives Top Courts: Lessons from Comparative Policy*, Oxford, University Press, 2004, pp. 95–114.

Canadian jurisdictions. Here, the legal systems of Civil Law and Common Law are readily regarded as jurisdictional qualitative properties of the Canadian legal framework.

This “embodiment” is qualitative and the distinction made between *de facto dualism* and *de jure dualism* is strictly methodological. This enables us to contrast the qualitative to the quantitative. Qualitatively-speaking, Civil Law and Common Law are in a whole-to-whole relation; quantitatively-speaking, the systems are factually concurrent within the Canadian legal framework. These notions, as we conceive them, and the terms that represent them are not part of the doctrine and language of law; they belong to the vocabulary used to observe the phenomenon that we are attempting to describe. The legal systems, in other words, are not compared for their own sake; they are opposed so they can be observed through the effects of their reciprocal existential “embodiment”. Here, methodology is used in such a way as to grasp legal dualism.

II. Property as a phenomenon

What do we mean by “phenomenon” and how does one go about studying it? As defined by Alexandre Kojève, whom we discuss later, phenomenology is the observation of a phenomenon in order to discover its essence and to give its experience a universal status. This approach was implemented in the LDPC by focusing on the experience of the intentional *legal* relationship between owners and their property, where “property” denotes the relationship. The approach based itself on the meaning of ownership on the ability to attribute a value to a thing and to reify its existence as the primary legal construct, the “property”: “*Any thing that can be appropriated due to its use or exchange value, whose ownership is opposable to a third party and whose possession is*

prescriptible by law. They are objects of legal commerce” (LDPC). We observe this relationship through four dimensions:

Property: There is no property without an owner and there is no significance in owning a thing *with no value*.

Knowledge: The relationship and the terms of this intentional relationship are conditions for knowledge of the phenomenon, where the protagonist is the functional subject of the relationship.

Perspective: Categorical knowledge of legal objects is inseparable from the juridical act or fact. Each legal object is known as it is appropriated, enforced and prescribed.

Legal dualism: Legal dualism exists as it appears in the qualitative opposition between the Civil Law and Common Law systems in the structure of Canadian jurisdictions.

On a theoretical level, the ability to attribute a value to a “thing” is determinate: as an appropriable, property can only be explained according the value attributed to a “thing” for it to become a legal object. On this basis, property gives way to opposable rights, whose deontic character is specific to each legal system of reference, in our case, Civil Law and Common Law.

From the dimensions of the appropriable, the opposable and the prescriptible, we can say that this ability to attribute a value to a “thing” is determined by “*Droit*”¹⁹ – where the “thing” allows itself to be appropriated according to the logic of the system used as a reference.

¹⁹ It is worth noting that in *Outline of a Phenomenology of Right*, the translator used the French “*Droit*” to distinguish “*droit*” (right) from “*loi*” (law), which is normally translated as “*Law*” in both cases.

a. The LDPC and Kojève's "Phenomenology of Right"

Aleksandr Vladimirovitch Kojevnikov, known as Alexandre Kojève, is a Russian-born French philosopher who was born in Moscow in 1902 and died in Brussels in 1968. He is known for being one of the foremost original readers of Hegel's works.²⁰

In *Outline of a Phenomenology of Right*,²¹ which was written in 1943 but not published until much later in 1981, Kojève develops a complete phenomenology of right. Although presented as an outline, the book is nearly 600 pages long.

i. Introduction

According to Kojève, "*Droit*" has an independent origin in the idea of justice, as its own specific essence. It is this essence that is embodied in the phenomenon of "*Droit*" and that we define by describing it.

The ability to judge the value of a legal action in a "disinterested" manner is the human foundation of the legal experience. *Having the right* also means that one enjoys the legitimacy conferred by this ability.

For Kojève, "*Droit*" occurs between legal subjects, never between a legal subject and a thing: all form of utilitarianism is therefore strongly rejected. Our conception of property, defined as *an intentional legal relationship between an owner and property*, would not be entirely rejected by Kojève it would seem. The fact that a thing provokes an interest does not necessarily mean that legal relationships could take place elsewhere than in human relationships. On the contrary, we maintain that "*Droit*" is not only the ability

²⁰ Particularly, *Introduction to the Reading of Hegel*, 1947.

²¹ *Supra*, note 5.

to judge the value of a behaviour but also consists of basing this ability on a theory of intentional value.²² After all, what interest would we have to possess a thing without value? There is a significant unknown in this particular understanding of legal behaviour, at which point Kojève would appeal to behaviourism,²³ though he overlooks the fundamental basis upon which the object possessed is deemed a *legal object* – and not a mere *thing*.

With regards to property, our theory is rooted in the value attributed to a “thing” so as to make it a “property”, thus representing the object at the first level of legal knowledge. The theory, as such, cannot only be based on the ability to evaluate the legal action through “anthropogenic”²⁴ means but also on the ability to evaluate the objectified interest of the thing – which is considered its value.

The following discussion limits itself to a few questions in order to determine Kojève’s phenomenology of right. For simplification purposes, a somewhat unorthodox approach is used in which we conduct a hypothetical interview with the author, asking him about his conception of law as a phenomenon and the issues surrounding the construction of a phenomenology of property.²⁵ This process shortens the argumentative path by stating the author’s position and condensing the vocabulary used to draw out his most essential points.

²² The notion of value will be addressed in a future article regarding “true alterity”, as conceived by Gilles Lane, and reciprocity as discussed in Michel Rosenfeld’s work on pluralism – as a basis for defining “equity” in relation to the idea of justice. On a broader level, we will explore the relevance of connecting the value’s occurrence to an indeterminate reality as a basis – which parallels the conception of “real” as applied to land put forth by Barry Smith and Leo Zaibert (2003) in their article: “Real Estate: Foundations of the Ontology of Property”.

²³ Since Kojève appeals to behaviorism, B.F. Skinner’s theory of “operant conditioning” can certainly add to the discussion on the ability to attribute value as a theoretical basis.

²⁴ For an explanation of the expression “anthropogenic act”, see *supra*, note 5, p. 31.

²⁵ The use of citations affords the opportunity to let the author speak and, more quickly than in a critical paper, to reach the considerations applicable to the phenomenology of ownership to serve as a basis for the LDPC.

ii. Reflections on Kojève's method

Since the word “*Droit*” exists to name its occurrence, the designated phenomenon must exist. For Kojève, we should first define what it is:

Unfortunately, the phenomenon of ‘*Droit*’ has still not found a universally accepted and truly satisfying definition [...] Now, to speak about a thing without being able to define it is basically to speak without knowing what one is speaking about.

[...]

If something is – or has been – called ‘*Droit*’, it is more than likely that this has not been done by chance (p. 29).

Defining a phenomenon means understanding its essence, which is not a “new” project by any means given it was historically undertaken by Plato and Aristotle:

It is a matter of finding the “Idea” (Plato), the “Ideal type” (Max Weber), the “Phenomenon” (Husserl), and so on, of the entity being studied by analyzing a concrete case that is particularly clear, typical, specific, pure [...] And having discovered it – i.e., having found the “essence” (Wesen) of the phenomenon – one must describe it in a correct and complete manner, this description of the essence being nothing other than the definition of the phenomenon in question” (pp. 29-30).

First and foremost, understanding “*Droit*” consists of knowing in what real and unique form it allows itself to be observed. With this in mind, we ask ourselves: What type of synthetic form can we draw from this phenomenon? To determine the essence of the

“*Droit*” phenomenon, according to Kojève, it is sufficient to consider the phenomenon of “having the *droit*” to determine the reason as to whether or not a situation is deemed “juridical”:

One can therefore say: “There is a *juridical situation* or a *relation of Droit* everywhere – and there alone – where one *has the Droit* to do or to omit something” (p. 36, section 6, paras. 3-4).

“*Droit*” is a phenomenon that can be observed only in human behaviour. But how does “*Droit*” become determined? Kojève explains that the phenomenon involves the intervention of a *sui generis* authority that is attached to the role of “judge” as a disinterested third party. This role is “necessarily carried out at the time of an interaction between two human beings, A and B, and which annuls B’s reaction to A’s action” (pp. 39-40, section 8, paras. 1-2). This condition (and quality) is inherent to the manifestation of an idea of “justice”. More specifically, the judge does not embody an idea of justice by virtue of his behaviours in conformity to a given juridical law – rather, a role of judge is constituted by the “active incarnation” of the idea of justice (p. 176, section 27, par. 1). The principle of law, in other words, is rooted in the idea of justice and the application of the principle is driven by the unique *sui generis* motive of embodying it:

One loves to be Judge or Arbiter because one possesses an idea or an ideal of Justice, and because one tends to realize all one’s ideas. Now the idea of Justice is realized by its application to human interactions – that is, in and by the *Droit* that is concretized in and by the action of the Judge. The specific (and specifically human) pleasure that one experiences being

Arbiter testifies to the existence in man of a *sui generis* idea that he tends to realize. And this idea we call the idea of Justice, while its realization is called *Droit* (p. 175, section 27, par. 2).

The idea of justice and the tendency to realize it, are simply universal aspects of human behaviour, thus could be manifested without the actual presence of a disinterested third party. Kojève therefore conceives the role of judge as present in all “litigants”:

Of course, if the “litigants” are spontaneously “just” they can dispense with the Judge. But in this case the Judge remains virtually present because each of the “litigants” is then not only a “party” but also an “impartial and disinterested third.” He takes account of his co-agent, places himself on the same plane as the other, and applies to the interaction the idea of Justice (egalitarian or of equivalence); for this idea implies and presupposes an interaction between (at least) two human beings, and it loses all its sense if one eliminates one of the two. To realize Justice is to apply a legal rule, and this rule is directed not at a single isolated person, but always to (at least) two persons interacting” (p. 193, section 31, par. 3).

It is important to understand that it is only through the intervention of a “disinterested third party” that “*Droit*” can occur: this possibility is based in the human act of judging, and cannot be replaced by law as that which is expressed in rules other than those that are codified for this action. If the act of judging is the sole consideration of a phenomenology of right, how do we explain the role of legislation? Kojève provides an answer in the following excerpt:

The cited cases are enough to show that the phenomenon of “*Droit*” (in the aspect “to have the *droit* to...”) exists every time that the intervention of a disinterested third takes place. As soon as this third annuls the reaction of B, provoked by an action of A, one will say that A has the *droit* to this action, [and] it is of little importance this [action] appears normal and justified, or absurd, revolting, immoral, and so on (pp. 38-39, section 9).

[...]

In other words, *Droit* could be considered an (oral or written) codification of cases when interventions of disinterested thirds had taken place, instead of being interpreted as the collection of principles provoking such interventions (p. 39, section 7, par. 2).

The importance Kojève gives to the act of judging therefore opposes legislation to case law as a source of law, which in a sense, mirrors the distinction between the traditional approaches of Civil Law and Common Law. Actually, however, the role of jurisprudence is often minimized in Civil Law

iii. Kojève’s conception of property

For Kojève, since “*Droit*” is an exclusively human phenomenon, one’s relationship to a thing cannot be deemed “*Droit*” as such. It is only necessary that an action be judged in favour of one party or the other for “*Droit*” to occur.

To avoid any form of utilitarianism, Kojève chose not to objectify the thing as an object of law nor did he award it any value liable to create an interest in it – or to

influence the legal intentionality at issue. The only possible and admissible intent is the voluntary act sanctioned by the intervention of a disinterested third party:

The *droit* of property is not a *droit* in relation to the property (to the animal or thing). It is solely a *droit* in relation to other human beings, who are not owners of the thing or [33] animal in question. The *droit* of property is realized and revealed when there is an interaction not between the thing (or animal) and the owner but between the latter and other human beings” (p. 46, section 10, par. 1).²⁶

Property law is nevertheless about the thing as it is possessed. But if property law is not concerned with the thing, why acquire it then? It is this key aspect that Kojève overlooks in his outline – in his view “*Droit*” can only take place between people.

An elaborate transition between Kojève’s phenomenology to the ontological representation of knowledge had to be removed from this discussion for length purposes. It outlined the theoretical considerations underlying the model of consistency established between the LDPC’s definitions.²⁷

What does the experience of the totality of *being* correspond to? If we were to create this experience, it would rest upon the consistency we impose on things to keep them within their identity, and this particular unity would constantly have to be re-created. This is known as the phenomenal identity of *being*. It is William James’ take on

²⁶ Kojève re-iterates this view later in the book: “There is a *droit* in property relations only to the extent that there is an effective or possible interaction between two persons regarding a thing possessed” (p. 113, section 19, par. 5).

²⁷ Furthermore, this transition allowed us to explore, in an entertaining manner, questions regarding ontologies – where Aristotle posed as a cognitive engineer, who was preoccupied with the representation of *being understood as being* by illustrating the two approaches of representing *being* (dynamic and static).

pluralism²⁸ that prompts us to conceptualize the identity of *being* – in our case, the consistency structure – as perpetually constructed and reconstructed. In short this transition draws a distinction between two models of representation of the totality as a consistency structure: the first based on the static identity of *being*; the second based on the dynamic identity of *being*.

Since Kojève resorts to behaviorism, knowledge has to be conceived as something without any “metaphysical” exteriority. *Being*, as a totality, can only be represented by its phenomenal identity, which brings us back to our starting point – and William James. In contrast to the monism of the static identity, pluralism offers an ontological representation model of the consistency between the LDPC’s definitions.²⁹

b. The ontology of the LDPC

The ontology which constitutes the nomenclature of the Legal Dictionary of Property in Canada is characterized “*by the specific consistency given to a legal rationality.*” The nomenclature is bilingual and bisystemic; the ontology of the LDPC consists of this dual systemic consistency.

²⁸ James discusses pragmatism as an approach that warrants a sobering allowance of pluralism – as a hypothesis of “a world imperfectly unified still, and perhaps always to remain so” as opposed to an identity of *being* as “a total union, with one knower, one origin, and a universe consolidated in every conceivable way”. His discussion is one that contrasts pluralism with monism: “[i]t MAY be that some parts of the world are connected so loosely with some other parts as to be strung along by thing but the copula AND. They might even come and go without those other parts suffering any internal change. This pluralistic view, of a world of ADDITIVE constitution, is one that pragmatism is unable to rule out from serious consideration. But this view leads one to the farther hypothesis that the actual world, instead of being complete ‘eternally,’ as the monists assure us, may be eternally incomplete, and at all times subject to addition or liable to loss.” See: *Pragmatism: A New Name for Some Old Ways of Thinking*, “Lecture IV: The One and the Many”, 1907.

²⁹ A detour through metaphysics may seem unclear to some, though the question of realism has been addressed in the past. We retained two texts by Barry Smith and Leo Zaibert in the context of ontology design: See “The Metaphysics of Real Estate” (2004) and “Real Estate: Foundations of the Ontology of Property (2003). Due to their scope, we will explore these considerations in a forthcoming article.

Given that this arrangement of the nomenclature is specific to each system and the targeted area of law meets the inherent criteria of consistency, we have used the term *legal ontology* to denote this arrangement.³⁰ Several definitions emphasize various aspects of ontologies, though Tom Gruber’s definition in 1992 is certainly the most cited. We also use it for its brief and effective formulation. According Gruber, “[a]n ontology is a specification of a conceptualization.”³¹

In the case of the LDPC, the coherence structure is very constrained and is associated with empirical verification. We verify “specification” – its coherence specifically – by identifying the presence of the definition’s acceptances in the corpus. The case excerpts added to the dictionary’s definitions reflect this verification method.

From another perspective, Riichiro Mizoguchi maintains that an ontology must be created relative to the objectives of his own method:

An ontology is not just a set of concepts but at least a “well-organized” set of concepts.

An environment is expected to guide the users to a well-organized ontology which largely depends on the environment’s discipline of what an ontology should be rather than an *ad-hoc* classification of concepts or frame representation.

This is why an environment needs to be compliant with sophisticated theory of ontology.³²

Characteristics were selected for the development of the HOZO environment relative to the above objectives. These will be explored further in the next section. This approach is

³⁰ Des Ormeaux, A. and J.-M. Lessard, *Legal Dictionary of Property in Canada*, “Preface”, 2009, pp. ix-x.

³¹ Gruber, T.R., “A translation approach to portable ontologies”, *Knowledge Acquisition*, 5(2): 199–200, 1993.

³² Mizoguchi, R., “Ontology Engineering Environments” in *Handbook on Ontologies*, S. Staab and R. Studer (eds.), 2003, pp. 275–295.

particularly interesting because it can be used to transform the construction of an ontology into an applied theory.

In the LDPC's context, using the relationship attached to the *role-concept* and *role-holder* in HOZO, we could reconfigure the hierarchy of our property ontology, based on the function or role played by the protagonists in property relationships and apply our theory of property to this ontology. Protagonists were defined by their function, which, in turn, determined the terms of the relationship. For example, the protagonist of the property relationship can be reduced to the function of "owner", where the terms of this property relationship can only co-occur when the former takes place.

i. Definitions

When we say that our definitions form a set of "necessary and sufficient conditions", we are actually referring to the hierarchical organization of the meanings within the LDPC's bisystemic structure of consistency, as well as the method used to determine their truth value – thus the value we have adopted to calculate the level of entropy in the given system.

The structure is binary and the path taken to explore a tree structure can be easily visualized. The number of possible divisions, multiplied by half of all the tree endings yields the level of entropy. If the tree has 32 leaves, they will have to be divided 5 times by 2 to reach a given terminal element of a tree. Each is distinct from all the others (sufficient condition), with all of terminal elements located within a relevant structure based on criteria specific to this structure (necessary condition).³³

³³ This calculation simply shows how a reasoner would explore the structure of the binary tree.

The classic example uses a deck of cards containing only the 32 highest cards. The next step is determining the number of questions needed to find the value of each card by dividing the initial set in two every time: 16 cards are red, 8 red cards are diamonds, 4 red cards are face cards, 2 face cards are the king and ace of diamonds, and if it is not the king, it is the ace.³⁴

In the LDPC, this structure is shaped by the relationships observed when writing the definitions – that is, when traits are selected to form a set of necessary and sufficient conditions. These are the semantics of the system, or the logic of the relationships between meanings. Two logical axes describe this structure: the vertical line of logical inclusion (conjunction) and the horizontal line of analogous inclusion (disjunction). We will not review the examples provided in the LDPC “User’s Guide” at this time, but we will clarify what we mean by these logical axes.

We associate logical inclusion with conjunction because these elements are subsumed in the structure, in an embedded manner, and because this entire structure is cumulative. A tree contains all of its elements, from the leaves to the trunk, and is always characterized by a hierarchical relationship between generics. Cases of analogous inclusion associated with disjunction involve an adjustment by replacing the categorical label.

³⁴ We obtain a degree of entropy equal to the base 2 logarithm of the number of levels in the tree structure $\log_2(n)$: the base 2 logarithm of 32 is 5. The increase in entropy is arithmetic, while the progression of probability is geometric. Information on the identity of the term increases as the size of the set of probabilities decreases. The truth value of each of the terminals is verified when the term sought is encountered in the path.

c. HOZO

Hozo was created by the MizLab at the *Institute of Scientific and Industrial Research* (ISIR) of the University of Osaka.³⁵ It is an ontology development system that allows users to build and use ontologies. It includes an ontology editor (called Onto-Studio) and a server.

Hozo³⁶ can export ontologies into the following formalisation languages: XML, RDF, DAML+OIL, RDF, RDFS and OWL. This functionality is essential because, in order to complete our property ontology and make it into a formal ontology, it must be represented in such a way that a computer can reason through it.

The three texts used as references in this report were written as an introduction to Hozo that describes the improvements that its creators intended to make over time. Sizeable projects have made use of Hozo, one being the Omnibus project which concluded recently.³⁷

Our interest in Hozo stems from its ability to support role treatment in the construction of ontologies. The difficulty addressed by Hozo is that the role played by a thing (its function) cannot have a theoretical instance given that a role, by definition, does not have a place beyond its existence, and therefore cannot occur in theory. In Hozo, a role is only ever an instance of a role being played by an instance of a role-holder: it is determined based on its existential relationships and not on its essential reality. More

³⁵ Home page of the Mizoguchi Lab (I.S.I.R.), Osaka University, www.ei.sanken.osaka-u.ac.jp/main/index-en.html, 2010. A website devoted to Hozo can be found at www.hozo.jp/.

³⁶ “Ho” means *unchanged truth, laws or rules* in Japanese, and “ontologies” is represented by the word “Zo” which means *to build* in Japanese.

³⁷ The project describes its objective as the following: “The ontology presented here is not a light-weight ontology but a heavy-weight ontology. It is built based on philosophical consideration of all the concepts necessary for understanding learning, instruction and instructional design.” It should be noted that this description is conservative. Its complete form is available at: <http://edont.gee.jp/omnibus/doku.php>.

precisely, if something real and essential exists about the role, this thing is to be sought after based on its occurrence.

For example, if one builds an ontology including “Mr. A is *instance-of* teacher” and “teacher *is-a* human”, then when he quits the teacher job, he cannot be an instance of the class of teacher, and hence he cannot be an instance of the class human, which means he must die. This difficulty is caused by making an instance of **Role** which cannot have an instance in theory.³⁸

In the case of the Hozo environment, the action is based in theory. Its developers looked to the work of John Sowa and Charles S. Peirce. Based on theories that used the notions of “*firstness*,” “*secondness*” and “*thirdness*” of concepts, it became possible to define three categories of concepts for use in Hozo: ***role-concept***, ***basic-concept*** and ***role-holder***, which is an avatar of a ***basic-concept***, which plays the role determined by a ***role-concept***.

The firstness can be roughly defined as a concept which can be defined without mentioning other concepts. Examples include iron, a man, a tree, etc. In a similar, the secondness can be defined as a concept which cannot be defined without mentioning other concepts. Examples include wife, teacher, child, etc. [...]

The thirdness links the firstness and the secondness. Examples include paternity, brotherhood, etc. Based on these theories, we identified three categories for a concept. They are a ***role-concept***, a ***basic-concept*** and a

³⁸ Mizoguchi, R., “Ontology Engineering Environments” in *Handbook on Ontologies*, S. Staab and R. Studer (eds.), 2003, pp. 275–295.

role-holder. A ***role-concept*** represents a role which an object plays in a specific context and it is defined with other concepts. On the other hand, a ***basic-concept*** does not need other concepts for being defined. An entity of the basic concept that plays a role-concept is called a ***role-holder***.³⁹

A ***role-concept*** also includes three elements: the ***role-holder***, which plays the role assigned to it by the context, a ***class-constraint***, which is the category of the role to be played, and a conceptual specification ***context***.

- ***Role-holder***: An entity of a basic-concept that plays the role
- ***Class-constraint***: constraint on a class which an instance playing the role is classified into
- ***Context***: A concept which the role is recognized through a relation with.⁴⁰

i. Application of the Hozo theory to the LDPC

Due to their status as functional subject – the subjects affected by this ***class constraint*** in fact exist only because of the specific role they play – protagonists are perfect ***role-holders***. In regard to property, it is generated in the most generic ***context***, the relationship, whether it is within its dismemberment in Civil Law (*usus, abusus, fructus*) or its division into bundles of rights in Common Law. For example, in Civil Law, the owner is simultaneously the title owner, bare owner, and right holder of his property (*abusus*); optionally, the owner is the *de facto* holder of the benefits resulting from his ownership of other real rights (*usus-fructus*). The semantics of property relationships exercised by different protagonists are quite vast, and ***context dependency*** is increased

³⁹ Sunagawa, E., K. Kozaki, Y. Kitamura and R. Mizoguchi, “Organizing *Role-concepts* in Ontology Development Environment: Hozo”, AI-TR-04-1, received 26 August 2004, p. 1.

⁴⁰ *Ibid.*

tenfold as a result. This is true given the relationships between dictionary definitions, but this is also true because the meanings of these definitions are confirmed in the corpus, specifically in contexts as generic as possible.

As a first attempt, we plan to use Hozo to reconfigure the ontology with protagonists as the starting point, knowing that the environment offers several other analytical features. These features will be explored at a later time.

Conclusion

The LDPC project was conducted in the context of official bilingualism and legal dualism, using a corpus composed exclusively of judicial decisions from Canadian appellate courts. Each of the definitions contained in the LDPC describes an aspect of the overall concept of property, finding in the consistency of all these definitions the essence of the observed phenomenon: the ability to judge not only the value of a legal action in a disinterested manner – as proposed by Alexandre Kojève in *Outline of a Phenomenology of Right* – but in the ability to judge the value of a “thing” to explain the *fact* of the ownership relation that results.

Thus, after considering the facts and the law, we still had to explain the functionality of the theory applied to the logic of judicial discourse, according to a bisystemic epistemology. We used two conceptions of value to explain this *état de choses*: first, the ability to judge was determined by a civilian conception opposing the “allowed” to the “forbidden” and second, the ability to judge was determined by a Common Law conception equating the “allowed” to the “not allowed”. An interpretational gap emerges between these two conceptions, where its emergence is

shaped by the simultaneous presence of these systems. The dialectic, as such, was supported by a pragmatist theory of action.

Finally, we examined how Hozo could be used to reconfigure the ontology of the LDPC based on the role played by the protagonists in property relationships, where the function performed determines the subjective and objective terms of the legal relationship that is represented.

All these considerations lead us to the following question: Is the LDPC really a dictionary? The answer is of little importance if the book is consulted. What we want to convey is a better understanding of the unique circumstances surrounding official bilingualism and legal dualism in Canada. Given the comments we have received on the book, we know it meets a definite need.

In the introduction to their recent book *The Oxford Guide to Practical Lexicography*, the authors paraphrase an argument made by Samuel Johnson in *The Plan of an English Dictionary* (1747):

Crudely paraphrased, this tells us that no amount of theoretical rigor is worth a hill of beans if the average user of your dictionary can't understand the message you are trying to convey.⁴¹

There is no better way to stress the importance of conveying an understandable message, though the authors do not presume that this underlying necessity was a trivial one:

This doesn't imply a superficial concern with 'user-friendliness', but arises from our conviction that the content and design of every aspect of a

⁴¹ Atkins, B.T.S. and M. Rundell, *The Oxford Guide to Lexicography*, Oxford, University Press, New York, 2008.

dictionary must, centrally, take account of who the users will be and what they will use the dictionary for.⁴²

In the case of LDPC, we adopted the following rule: every effort that is asked of the user must be offset by the benefit that can be drawn from the consultation of the book, the ultimate goal being to raise awareness of the Canadian legal dualism, by including it in the very materiality of a bilingual and bisystemic dictionary.

⁴² *Ibid.*

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