



# **Lexicological correctness and lexicographic relevance? The inclusion of semantic, encyclopedic, syntactic information in a bilingual dictionary of law<sup>1</sup>**

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## **1. Introduction**

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. I shall in this paper look at some of the lexicographic and lexicological problems involved, and by using examples from my *Norsk-Engelsk juridisk ordbok (English-Norwegian Dictionary of Law)* (Oslo, 2001), as well as the updated – not yet published edition – indicate ways in which to try to solve these problems. The paper will also look at ways in which a dictionary may assist the users in navigating through the maze of legal concepts to find the information they seek, 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.

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. To a certain extent this is also the case between Australian states. 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. 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. 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”.

The following concepts will be dealt with:

## **2. Equivalent terms**

- partial (acceptable) equivalence
- partial (unacceptable) equivalence/absence of equivalence

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<sup>1</sup> This is an abridged and amended version of a paper given at the *Eleventh Euralex International Congress, Euralex 2004*, Lorient, France, July 6-10, 2004

### 2.1 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*

### 2.2 Partial (unacceptable) equivalence/absence of equivalence

See “constructed terms” below.

## 3. Polysemic terms

The various meanings of such terms should, I believe, be clearly differentiated, *eg*

**brief** 1. (Eng) /oppdragsdokumentasjon/ [cf. **backsheet**]

*ie* a document by which a solicitor instructs a barrister, including an abstract of the pleadings, and other case documents – *dvs. et dokument der en «solicitor» engasjerer en «barrister» (på vegne av en klient), omfatter synopsis av prosesskriftene, samt andre saksdokumenter*

2. (Eng) prosessfullmakt

*ie* a barrister’s authority to appear on behalf of a client – *dvs. en «barristers» fullmakt (mandat) til å opptre i retten på vegne av en klient*

3. (US) (skriftlig) saksfremstilling; juridisk betenkning [cf. **appellate brief; trial brief**]

*ie* document setting out the facts, matters, arguments relied on by the plaintiff or the defendant – *dvs. dokument som gir de fakta, saksforhold, argumenter som saksøker eller saksøkte påberoper seg*

4. (gen) mandat [cf. **authority; mandate; remit**]

His brief was limited to the question of tax evasion – *Hans mandat var begrenset til spørsmålet om skatteunndragelse*

5. (obs) see **abstract of title**

6. (coll) = **barrister**

This is especially important with reference to so-called **Janus words** (from the two-faced Roman god), *aka* **antagonyms, contronyms, autoantonyms**, *ie* words with completely different or opposite meanings:

**avslutning** (av kontrakt) 1. formation (of contract)

2. discharge (of contract); termination (of contract)

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.

#### 4. Constructed terms

- descriptive terms
- analogous terms

##### 4.1 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 unhelpful, 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.

##### 4.2 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), since 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).

### 5. Collocational information

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*

**appeal** (*n*) anke; ankesak; klage; påkjæring [*esp* against interlocutory order - *spes. av prosessledende kjennelse*]; (*gen*) appell [cf. **consolidation of appeals; criminal -; frivolous -; interlocutory -; notice of -; sentence -; term of appeal**]

abandon an appeal – *trekke tilbake anke*; allow an appeal – *ta en anke til følge*; bring an appeal – *inngi/fremsette en anke, erklære anke*; deny/dismiss an appeal – *avvise/forkaste en anke*; enter an appeal – *inngi/fremsette en anke, erklære anke*; hear an appeal – *behandle en anke*; lay/lodge an appeal – *inngi/fremsette en anke, erklære anke*; strike out an appeal – *avvise/forkaste en anke*; uphold an appeal – *ta en anke til følge*; withdraw an appeal – *trekke tilbake anke, frafalle anke*

### 6. Definitional information

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*

**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*

**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*

## 7. 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 -; shadow -; 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 some 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*

## 8. 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**]

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

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

**laches** passivitet [*cf.* **acquiescence**]

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*

## 9. Register

- terms of art
- obsolescent/obsolete terms
- colloquial terms

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*]

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.

**misdemeanour** (*obs* or *US*) forseelse [*cf. crime; felony; offence*]

## 10. Concluding remarks

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.

**References**

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