Law's social hierarchy can vary from one legal tradition to another – the judge holds court in the common law; the "legislator" is the object of what has been described as a cult in the modern civil law, the scholar stands next to the gods in many religious legal traditions. But most everyone seems to agree on the second-order place reserved for the legal translator. Translation should be, according to conventional wisdom, invisible in law. If the translator intrudes on the exercise of giving meaning to law or, worse still, purports to stand as a figure of authority, his or her work will be considered, in a manner of speaking, *ultra vires*. In this way, law stands apart from other disciplines in the social sciences and humanities where, increasingly, translation is understood as an interpretative act that is fraught with ethical implications. But in law, the translators have small offices and smaller salaries; their work is perceived as a success when source texts, like the translators themselves, are unseen and unheard. Even in a legal culture like that of Quebec, where the travails of translation are, for better or worse, part of the quotidian life of the law, the legal translator is at best a go-between between French and English legal texts and pre-texts. Section 133 of the *Constitution Act, 1867* anoints the user of French and English in the houses of parliament; it recognizes the printers who publish enactments in both languages, but makes no mention of the translators, the unsung heralds of legal bilingualism in Canada.

So why then would a scholar as creative and thoughtful as François Chevrette devote his manifest talents to translating texts of constitutional law and legal theory into French? It is tempting to think that this man of legendary modesty was content to efface himself behind the judicial *dicta* or works of scholarship he translated; one might well think that invisibility suited a personal taste for privacy and an unspoken distaste for the pride of authorship. Yet when one considers how much of his learning is visible in his translations, the idea that François Chevrette hid behind the originals seems very wrong. One cannot help but think that the extraordinary feat of translation in *Droit constitutionnel*,[1] undertaken with his longstanding collaborator Herbert Marx, has been unfairly treated as invisible scholarship.

The authors explained in the book's foreword why, in Canadian public law for which jurisprudence is the "source par excellence" of the law, *Droit constitutionnel* is best understood as a "casebook". This is unduly modest. On closer examination, this collection of *jurisprudence* is most plainly a major work of *doctrine*. The choice of judgments and the manner in which they have been excised, re-ordered and questioned are, in themselves, carefully-made scholarly decisions. Importantly, the short introductory notes introducing each of the heads legislative authority are pithy and substantial explanations of some of the most difficult problems in Canadian constitutional law. Cases excerpted in the 22 chapters of the book are supplemented with learned commentary and questions for readers. Wide-ranging bibliographical references are offered for those inclined to seek out further readings.

But the core of the book is made up of decided cases, many of which were first rendered in English, either by Canadian courts or the Judicial Committee of the Privy Council sitting in appeals from Canada. (There are several cases, including *Liyanage v. The Queen*, [1967] 1 A.C. 259 bearing on the separation of powers under the constitutional of Ceylon, that come from further afield). For years, of course, jurists principally encountered Canadian constitutional case law as "arranged" by Richard A. Olmstead, Q.C. in 1954.[2] Needless to say – yet it need be said – that work appeared under the auspices of the Department of Justice of Canada in English only, including its reproduction of the BNA Act and local statutory texts. *Droit constitutionnel* rendered accessible what the authors considered to be the most important of these materials, as well as others not readily available in French, to a broad readership in Quebec and beyond.

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1 François Chevrette and Herbert Marx, *Droit constitutionnel. Notes et jurisprudence* (Montreal: Pr. U. Montréal/Centre de recherche en droit public, 1982).

2 *Decisions of the Judicial Committee of the Privy Council relating to the British North America Act, 1867 and the Canadian Constitution, 1867-1954* ([Dominion] Queen's Printer, 1954), 3 vol.

Daniel CHÉNARD, dir., Le monde de François Chevrette 1941 à 2012. Montréal, pub privée, 2018 9.

The judicial French of Chevrette and Marx sparkles – where appropriate – and rightly reflects the fumbling or dated prose in English when the original author could do no better. A case in point is *Attorney General for Ontario v. Attorney General for Canada*, [1912] A.C. 571, styled by Olmstead as the "Companies' Reference" and usefully presented in by Professors Chevrette and Marx as the "Renvoi sur la validité de la procédure de renvoi" in a chapter dealing with the "contrôle judiciaire de la constitutionnalité". The judgment of their Lordships was delivered in delicious Edwardian prose by Earl Loreburn, L.C. – upon whom Chevrette and Marx confer the title, for the occasion, of "Comte". Whatever history might recall of his Lordship's contribution to Canadian constitutional law, the fullness of his well-embroidered English is conveyed in appropriately ornate French.[3] The dispute, wrote his Lordship, gave rise to "anxious controversy" (an "inquiétante controverse") which had been the subject of "much care and learning" in the courts below and for which the law lords acknowledged a "deep debt" (he wrote, with the assistance of his local editors, that to the Canadian courts "leurs Seigneuries sont profondément reconnaissantes"). Loreburn, L.C.'s extroversions on the unwritten principle of parliamentary sovereignty as part of Canada's Constitution ("une constitution conférant l'autonomie administrative absolue et fondée sur une loi organique telle l'Acte de l'Amérique du Nord britannique") are duly rendered for a Quebec readership, including his Lordship's anachronistic sense of the "manifold evils" (the "nombreux maux") that might follow the inopportune comment, by a judge, of wisdom of an act of parliament. *C'est trop bon*.

Far from invisible, François Chevrette and his careful sense of humour are positively audible as one reads the JCPC's French in *Hodge v. The Queen*, (1882-83) 9 A.C. 177, in which Sir Barnes Peacock – the sometime Chief Justice of the Calcutta High Court – describes the purpose of provincial liquor regulations in Canada as seeking to repress drunkenness "et la conduite désordonnée et tapageuse". For the prose of Sir Montague Smith in *Russell v. The Queen*, (1881-82) 7 A.C. 829 on the same topic – a speech more workmanlike, one might say more temperate – Chevrette and Marx rightly contained their enthusiasms. Naturally, given his significant contribution to the jurisprudence on the division of powers in Canada, Viscount Haldane's French is highly practised in *Droit constitutionnel*. In his famous review of treatment of peace, order and good government in *Toronto Electric Commissioners v. Snider*, (1925) A.C. 396, his Lordship appears to have exploited all the resources of his interests in philosophy and abstract reasoning to consign *Russell v. The Queen* to the dustbin.[4] The mysteries of *Snider* are, to my untrained ear, easier to understand in Chevrette's French than his Lordship's English, confirming the adage that often the original is best revealed in translation.[5]

Here is not the place to explore the full measure of the accomplishment of *Droit constitutionnel*. Other scholars have shared François Chevrette's abiding concern for translating legal sources in English so that they might be accessible to a French-speaking readership.[6] These were the efforts, of course, of great teachers. Translation was, in that connection, part of the act of communication that consumed François Chevrette's professional life and *Droit constitutionnel* represents an important moment in the history of

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[3] Earl Loreburn was Robert Threshie Reid (1846-1923), a Lord Chancellor. In A.W.B. Simpson, ed. *Biographical Dictionary of the Common Law* (London: Butterworths, 1984), it is recorded that "[h]e was not interested in law, and his perfunctory judgments are of no interest to the jurist" (p. 445).

[4] On Viscount Haldane's learning in Hegelian philosophy, see Simpson, *supra*, where it is noted – a surprise to the Canadian reader – that his Lordship "himself recognized that he did not have the passionate interest in the law required of a really good judge" (p. 220).

[5] Help can be found on Viscount Haldane's view of Imperial interests in Timothy Endicott and Peter Oliver, "The Role of Theory in Canadian Constitutional Law" in P. Oliver, P. Macklem and N. Des Rosiers, eds., *The Oxford Handbook of the Canadian Constitution* (New York: Oxford U.P., 2017) 937 at 948.

[6] An obvious and important parallel might be drawn with the efforts of colleagues of Professor Chevrette, including Jacques Fortin, to teach the first principles of English criminal law in French at the Université de Montréal: see, *e.g.*, Fortin, *Preuve pénale* (Montreal: Éd. Thémis, 1984) where, at p. vi, Professor Fortin explained his efforts to propose, especially for his student readers, "l'emploi du vocabulaire français pour traduire des expressions anglaises habituellement jugées intraduisibles".

teaching of Canadian constitutional law.[7] Yet the translation here is so lively, so accommodating of the styles he was called upon to render, that it is best to think of the work not just as a teaching tool but as fundamentally creative and original scholarship.

Perhaps his great achievement as a translator came much later, however, when he translated a classic 1949 study of the relationship between law and morality written by the great American jurist Lon Fuller.[8] "L'affaire des spéléologues devant la Cour suprême de Newgarth, 4300", published at the Université de Sherbrooke some sixty years after the Fuller original, is an immense achievement.[9] Fuller's examination exposed to his students different judicial attitudes to the interpretation of a moral precept prohibiting murder captured in a seemingly imperfect statute. The Harvard article takes shape as five divergent judicial opinions delivered on the appeal, each reflecting different philosophical approaches to the law. Fuller's paper is electric; so too is Chevrette's translation: the reader of either paper races quickly from opinion to opinion, confronting law's uncertainties, furiously turning pages in a fit of indecision. Which judge is right? What do I believe about law? Fuller and Chevrette present each judicial thesis so compellingly, and in such distinctive voices, that readers change their minds as they read from one fictitious judge to the next. And the reading experiences in French and English are the same in that sense. Yet Chevrette has made the text his own, not just by rendering it in French, but by speaking in his occasionally bemused voice rather than imitating the straight-talking Fuller. They are in fact two papers telling exactly the same story, differently. Lon Fuller's *tour de force* is completely revealed through François Chevrette's account but reading Chevrette also deepens one's understanding of the 1949 paper. Going back to Fuller, the reader recalls hearing nuance differently in French where the first author may have voiced too softly or with an unnecessary edge for today's reader. In some measure, both works are both equally and identically original.

This paper stands as a reminder of Chevrette's ability to engage creatively, through the profoundly interpretative act of translation, with law's highest ideas and their highest form of expression and make them his own. To adapt an idea from a celebrated translator of English poetry into French, François Chevrette's article is a reminder that the translation of legal theory can itself be legal theory.[10] As one of the last major works he wrote, the "Affaire des spéléologues", stands as a powerful symbolic form for Professor Chevrette's life as a teacher, bent on confronting law's most complicated ideas that came from far away, and of his commitment to bringing those ideas home.

Nicholas Kasirer

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7 It has recently appeared in a second edition, edited – an act of fidelity, as befits homage to an expert translator – by one of Professor Chevrette's own students: Han-Ru Zhou, *Chevrette & Marx : Droit constitutionnel*, 2nd ed. (Montreal: Éd. Thémis, 2016)

8 Lon L. Fuller, "The Case of the Speluncean Explorers" (1949) 62 Harv. L. Rev. 616. One of the most studied papers in legal theory in the history of American law, Fuller's essay is a fictionalized account of the appeal of a murder trial. The survivors of a cave exploration, faced with starvation, ate one of their number after the unlucky victim was chosen by lot. They were acquitted of murder despite a statute that "clearly" indicated guilt. Fuller wrote five different opinions of the justices of the Supreme Court of Newgarth, rendering the appeal judgment in the year 4300.

9 (2008-9) 39 R.D.U.S. 389.

10 "[...] la traduction de la poésie est poésie elle-même, et y réfléchir peut éclairer l'activité poétique": Yves Bonnefoy, *La communauté des traducteurs* (Strasbourg: Pr. Universitaires de Strasbourg, 2000) 19.