

Domestication and Foreignization in legal
**Domestication and Foreignization in legal
translation: A Lexico-Semantic study**

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ABSTRACT

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This study aims at investigating the most proper strategy to be selected and pursued in translating legal texts and terms especially Islamic Shari'ah terms, which are related to family affairs into English. Whereas the translator has to make a decision based on specific factors instancing the background of the readership, the aim of the target text, the message of the source text along with the client's purpose as to the translating the source text. The question whether the foreignisation and domestication strategies are applicable in translating English legal texts, and if so, which one is the most appropriate in this context thoroughly motivated this study. The instances provided as well as the points of discussion have scrutinized this issue in the context of a specific translation brief. Although it is hard, as I concluded from this research paper, to adhere to one strategy and follow thereof recklessly, but it is inevitable to pursue foreignisation strategy in translating legal and Islamic Shari'ah terms to preserve the peculiarities, uniqueness and specificity of that term.

Introduction

Legal translation refers to the translation of texts within the legal sphere. It entails conveying complex legal information in an accurate manner. Legal translation is therefore hailed as one of the most challenging fields of study, requiring the inventiveness of literary translation with the terminological precision of technical translation. Problems in legal translation, may crop up due to the specificity of legal language and the system-bound nature of legal terminology. (Cao, Deborah, 2007, p. 7). This study investigates which is the best strategy, 'Domestication or Foreignization' when rendering legal and Islamic terms from Arabic into English. We find among these ones, the strategies of domestication and foreignization in translation which are, by no means, deemed to be most important strategies of translation as an extension of all other strategies in the concept and essence. This study, hence, aims at demonstrating the importance of translation as an aspect of legal drafting, namely language drafting.

Revealing and bringing to light the most proper strategies, approaches and methods of translators in dealing with the legal text as well as Islamic legal ones, which can be taken into effect through our investigation in formula of transactions such as sales, marriage contracts and other contracts in the positive law and Islamic Shari'ah. This study approaches and reveals that there are certain problematic issues in translating and drafting a legal as well as Shari'ah texts. The first and main problem is the language factor. The second problem lies in the social one, the third is the problem that has something to do with religion or belief, and the fourth one is the cultural problem. In short, the problems have a close relation to the language and culture. Various aspects have to be considered in such texts, since the cultural and legal background is evident in linguistic aspects at the text level. Actually, translating legal as well as Islamic Shari'ah texts might raise some problems in translation pertaining to the differences between the Source and Target Texts. Thus, it can result in a certain amount of ambiguity with respect to the legal texts, as it belongs to people's beliefs and cultures.

1. Literature Review

1.1 Defining Translation

Etymology of the Word Translation

Translation etymologically refers to, "a carrying across" or "bringing across."

For further clarification, the English word "Translation" is derived from the Latin word translation, which comes from trans, "across" + Ferre, "to carry" or "to bring" (latio in turn coming from latas, the past participle of ferre). Thus, translation is "a carrying a cross" or "a bringing a cross"; in this case, of a text from one language to another. (Kelly: 1979, Pp. 282).

The Word Translation Technical Definitions

There has been a plethora of definitions given by linguists and theorists for translation. This pluralism diversity of the definitions is due to the difference in the attitudes of the theorists in the approach, trend and purpose of the text.

In pursuing another trend by indicating that the translator target should be to reproduce in the receptor language a text which communicate the same message as the reporter language; aiming at idiomatic translation. Larson (1984: 20-21) argues that translation is transferring the meaning of the source language into the receptor language. This is done by going from the form of the first language to the form of a second language by way of semantic structure. It is meaning which is being transferred and must be held constant.

As we behold that Larson stressed on form expounding that so as to translate idiomatically a translator shall be in need to make many adjustments in form.

Newmark (1988: P. 5) maintains that translation is rendering the meaning of a text into another language in the way that the author intended the text.

From the definitions above, translation is based on the purpose of the author. In the same context, Newmark beholds that translation as a complicated, artificial and fraudulent process explaining that using another language signifies that you are pretending to be someone you are not. Henceforward, in different types of text (legal, administrative, dialect, local, cultural) the temptation is to transfer as many S. L. words to the T. L. as possible .

Bell (1991: 5-6) seems to have pursued the same approach of emphasis on meaning and style in his definition of the translation as saying, "Translation is the expression in another language (or the target language) of what has been expressed in another, source language, preserving semantic and stylistic equivalence ."

In the interim, the aforementioned definition also pointed up the significance of 'equivalence' in translating .

Bassnett-McGUIRE, S. (1991) upholds that, "Translation involves the rendering of a source language

DR/Talat Muhammad Aly Al Badry

(S.L.) text into the target language (T.L.) so as to ensure that (1) the source meaning of the two will be approximately similar and (2) the structures of the (S.L.) will be preserved as closely as possible but not so closely that the (T.L) structures will be seriously distorted ."

In the light of the above definition, translation involves the transfer of meaning contained in one set of language signs into another set of language through competent use of the dictionary and grammar, the process involves a whole set of extralinguistic criteria also.

Domestication and Foreignization in legal

2. The Concepts of Foreignisation and Domestication

2.1 Historical Overview

Foreignization and domestication (originally introduced and coined by Lawrence Venuti in 1995, 2nd edition from 2008) are techniques which translators can use when translating a text and deciding on how to deal with foreign elements in the text. Further to the concept of translator's "invisibility", Venuti attempts to categorize contemporary translation practice into "domestication" and "foreignisation". These terms essentially are originated from Cicero (first century BCE) and St. Jerome (late fourth century CE), who got under way the terms and sense-for-sense translation respectively (Mundy 2001: Robinson 2001: 125, Wang 2002: 24) :

The translator can either leave the writer in peace as much as possible or bring the reader to him, or he can leave the reader in peace as much as possible and bring the writer to him .

Even though there are two diverse strategies, Schleiermacher himself inclines towards the first strategy where translators "must adopt an

'alienating' (as opposed to 'naturalizing') strategy of translation, orienting himself by the language and content of the ST (source-text). He must valorize and unwaveringly transfer that into the TL (target language)". (Mundy 2001: 28, Venuti 1995: 19-20). Schleiermacher's stance on this issue has greatly influenced Venuti, prompting him into developing his arguments on his "foreignising" and "domesticating" strategies.

It is further important to track the early appearance of domestication and understand from that from the very beginning there was compelling reasons to adopt this approach. As the matter of fact, translators used domestication as early as the first century BCE. Studies carried out on translation practices in the Ancient Mediterranean reveal some early clues as to the beginning of domestication or cultural adaptation.

These studies show us why domestication as a strategy arose so early in Western translation practices and why it has appeared to dominate ever since. McElduff and Sciarrino remind us that the ancient Mediterranean was composed of many cultures and languages, and was a region where translation was a constant necessity. As empires, cultures and peoples jostled against each other, translation was a constant practice and problem. (McElduff, (E.) Sciarrino (edd.))

Early written texts were not just used for number-keeping but contained communication that is more detailed. They took the form of inscriptions such as epitaphs, legal codes and marriage contracts. Inscriptions further preserved hymns and divination texts. These bilingual and multilingual inscriptions reveal that the aim of the translator was to produce “localized texts addressing the needs and interests of each linguistic audience” (Jennifer Larson, 2011) .

Larson explains that there are features of these bilingual inscriptions that are similar to those used in the modern practice of localization. The Localization Industry Standards Association defines localization as “taking a product and making it linguistically and culturally appropriate to target locale (Country/region and language) where it will be used and sold”. The scribes with knowledge (and power) of writing system/s were the translators and their role was to “satisfy the economic and administrative needs of the land, primarily, of course, those of the temple and the palace .”

The scribes localized texts for several reasons- to spread the ruler's decree to a wider audience and to convey “the power and authority of the ruler's culture and language a subject population” and also to achieve certain diplomacy between co-existing languages and cultures. (Pym as cited in Becoming a translator, 2003, p. 170).

Domestication and Foreignization in legal

2.2 Key Concept

Domestication can wholly be defined as adapting a source text in order that it conforms to the language and culture of the target audience. This word, as a matter of fact, has been termed localization, naturalization and adaptation. "Domestication", Venuti explains, refers to translation practice, which "conforms to values currently dominating the target language culture. In converse then, foreignisation is an approach to translation that opts for retaining the "otherness" of the source text on the linguistic and culture prospective.

This is how Paloposki and Oittinen have defined the two terms (basing it on Robinson 1997 and Chasterman 1997) :

Foreignization generally refers to a method (or strategy) of translation whereby some significant trace of the "foreign" text is retained. Domestication, on the other hand, assimilates a text to target Cultural and linguistic values (Paloposki and Oittinen 2000:374).

According to Hagfors (2003: 119), translators use domestication in order to make it easier for the readers to relate to the translated story. Depending on the strategy chosen by a translator, the translation of cultural elements, such as food items, names and places, can either bring the foreign culture closer to the reader or keep it at a distance. Venuti writes that translators who domesticate their translation can try to pass "the translation off as a text originally written" in the target language (Venuti 1998a:241). Foreignization, in turn, can be seen as a tool to "make the readers conscious of the gap between their own culture and the Other which the original embodies" (Ollis and Oakley... Brown 1998:342) .

In this context, a text can be domesticated through translation using several strategies. Primarily, cultural as well as legal terms can be either replaced or omitted so as to make translation more appealing to the target reader. The foreign tone or style of the original can be replaced by a more "natural"

style so the reader thinks of the translation as an original not as a translation. In the dictionary of translation Studies, domestication is defined as a translation in which a transparent, fluent style is adopted to minimize the strangeness of the foreign text for target language readers, while foreignisation signifies to produce a target text, that deliberately breaks conventions by retaining something of the foreignness of the original (Cowie 1997, 59).

For Venuti, foreignising “entails choosing a foreign text and developing a translation method along lines which are excluded dominant cultural values in the target language”. Instances of foreignising similarly referred to as estranging can implicate retaining cultural references unfamiliar in the TC, respecting the syntax and the rhythm of the original text and consenting the text to be read as a translation.

Domestication and foreignisation then is a choice of how far the translator moves from the original, ST. It is the choice of how faithful the translator chooses to be and what liberties the translator allows himself/herself.

Schleiermacher precisely expresses the Great Debate concisely:

Either the translator leaves the author in peace as much as possible and moves the reader towards him; or he leaves the reader in peace as much as possible and moves the author towards him (Venuti 2012, 49).

Pursuant to Venuti, most translation of prose fiction into English today are only judged based on their fluency (Venuti 2008:2). He believes it to be wrong to make translation look like originals, to make them look like they were originally written in the target language rather than looking like translations.

In other words, he thinks that it should be clearly visible that a translation is a translation, not an original text. Venuti has noted that critics often fail to mention if a book is a translation and quote the text as if it was originally written by the author, not translated by someone else (Venuti 2008:9). He also claims that by domesticating the translators are actually making their own position worse :

Under the regime of fluent translating, the translator works to make his or her work “invisible,” producing the illusory effect of transparency that simultaneously makes its status as an illusion: the translated text seems: natural,” i.e., not translated. (Venuti 2008: 5) .

The translator’s invisibility is thus a weird self-annihilation, a way of conceiving and practicing translation that undoubtedly reinforces its marginal status in British and American cultures. (Venuti 2008: 11).

In other words, Venuti claims that by creating fluent translations the translators making both their own and their translations’ statuses more and more marginal. Venuti further argues that there is an imbalance that has been caused by the fluent translation into English and the fact that English is less translated into than it is translated from :

“British and American publishers, in turn, have reaped the financial benefits of successfully imposing English-Language cultural values on a vast foreign readership, while producing cultures in the United Kingdom and the United States that are aggressively monolingual, unreceptive to foreign literature .(١٢ :٢٠٠٨) ”

One can, however, wonder whether Venuti’s suggestion of non-fluent texts would help make their status less marginal or not: would the effect be the opposite? Why would the masses choose to read non-fluent translations over fluent domestic texts ؟

Venuti's views on foreignization and domestication have been criticised by, for instance, Boyden 2006, Paloposki and Oittinen 2000, and Robinson 1997. Michael Boyden, for instance, has said that the division between the two strategies is too strict, which is why he includes "the domesticating aspects of the foreignizing strategy, and vice versa, the foreignizing potential of domesticating translations" in his analysis (Boyden 2006: 121). This seems to suggest that translators do not use either foreignization or domestication alone, but aspects of both strategies can be found within a single translation. Thus, it seems reasonable to look at the use of both of these strategies in both of the translations in the present study .

Pursuant to Paloposki and Oittinen (2000: 386), foreignization and domestication should always be seen as contextual phenomena; in the context of a specific translation. They state that even though the strategies may seem to be opposed to one another their effects can be similar depending on the context in which they are used. This means that a domesticating strategy in some instances can make the text seem foreign and vice versa. Paloposki and Oittinen go as far as saying that "what may be foreignization is an illusion which does not really exist. Perhaps we should only speak of different levels and dimensions of domestication. They do admit that Venuti's theories can be relevant from the Anglo-American perspective, but that they should not be generalized beyond that without being tested. They believe that "there might be other means of bringing over the foreign qualities than that of non-fluent translation," and thus criticise Venuti's preference for the use of non-fluent language in translation. (2000: Pp. 386-388) .

Even more significantly, the effects of the different strategies on cultures can be similar. Venuti's perspective, as stated, is Anglo-American and he is concerned that the smaller cultures from which texts are translated into English suffer from not gaining visibility because the texts are domesticated. In his opinion, foreignization is the key to promoting these smaller cultures. But if one looks at the situation from the perspectives of translating from Anglo-American culture into one of these smaller cultures (such as Finland), foreignisation will promote American culture and not the smaller one. By domesticating a text when translating into the "smaller" language, the text is brought closer to the target culture and items in the ST are replaced with domestic items, thus meaning less promotion for the "bigger" culture.

Another problem in Venuti's theory is clearly that foreignisation does not necessarily work in the Anglo-American context, either. This is because, foreignized, non-fluent texts, texts where you can clearly see that they are translated, are unlikely to attract readers, least of all masses. Would it not be better to write fluent texts that attract a wider audience but still promote the source culture? This could be achieved, for instance, through domestication, by explaining the foreign elements to the reader. This would make the text fluent and easy to read but would also teach the reader something about the foreign culture. Instead of condemning domestication as "bad", one could try to find compromises, looking for ways of domestication that can keep some of the foreign aspects in the text .

Douglas Robinson (1997) has also presented a critical view of the foreignising and domesticating translation theory theories. In his opinion, "it is not clear that foreignising and domesticating translations are all that different in their impact on a target culture" (Robinson 1997: 109).

3. Types of Domestication and Foreignisation

As a matter of fact, types of the strategies of domestication or foreignization as to translating a target text vary amongst translators, depending on the translator's aim, the client's purpose, the genre of the text and its nature, nevertheless the judgment and vision of the translator are still primary and principal factors. Aixela (1996:52), in his article "Culture-specific Items in Translation", has elaborately grouped those strategies into two categories for the sake of methodological efficacy, according to their nature: conservative and substitutive. It is remarkable that, in TT, the translator did not apply this

strategy, as it applies more to domestication – a matter that contradicts the Skopos of the produced translation *per se* rendering legal as well as Islamic Terminology into English.

3-1 Conservative category

The principal strategy that falls within the conservative category is **repetition**, in which the translator adheres closely to the source text and preserves some of the original references from the original work (Aixela, 1996:61). Although Aixela (1996) states that such manipulation may add exotic and archaic character to culturally specific references in the target text, translators actually find a resort in retention. Davies (2003:72-73) defines this translating option or alternative under the label "preservation" as a decision of the translator to maintain the source text term in the process of translation when encountering with a reference to an entity which has no close equivalent in the target language.

In another manipulation, “**orthographic adaption**” (Aixela, *ibid*: 61), translators opt to alter or change the cultural references pursuant to the target language. The best instance is the orthographical translation of names, such as the prophets' names: Moses, Jesus and Jacob. This procedure is adopted on account of the availability of an equivalent to the source noun, instancing measurement units, or owing to the difficulty of pronunciation in the sounds of the TL. Another conservative option that can be adopted by translators is “**extratextual gloss**” (*ibid*), where an additional clarification is offered in the target text to clarify the meaning for the reader. Such clarifications commonly appear as footnotes,

glossary items or detailed explanations in brackets. A similar manipulation can be thoroughly applied to clarify ambiguities in the translated text: “**intratextual gloss**” (*ibid*), where the additional explanation is added smoothly, without disturbance of the reader's enjoyment. The other major category that features foreignization and domestication strategies is **substitution**; generally speaking, there are certain strategies itemized under this category (*ibid*). From a stylistic basis, “synonymy” occurs as one of the usual strategies to which translators resort, and involves avoiding foreignization and repeating the source language's references in the target text by using synonyms or parallel references.

3.2 Limited universalization

Seeking to remain as faithful as possible to the source text, the translator in this sense, employing this strategy replaces a cultural reference item with another from the same source language, primarily when the original item is obscure to the target readership.

3.3 Absolute universalization

This strategy is, like, identical to limited universalization, nonetheless the lack of a convenient equivalent or the longing to delete the foreign item obliges the translator to select a neutral replacement.

3.4 Autonomous creation

Translators hardly ever resort to this strategy, in which familiar proper names are invented so as to avoid exposing the readers to unfamiliar foreign names.

3.5 Deletion

Omission is the ultimate resort for translators when encountering an unacceptable cultural item, possibly due to ideological, religious or stylistic restrictions in the target language or culture.

4- Advantages and Disadvantages of Foreignisation and Domestication Strategies

So as to assess the advantages and disadvantages of each strategy, it is indispensable to comprehend the limits of the act of translation: whether that act is only to convey specific information or to exchange and enrich cultures. Toury (1978:200) affirms that translation is a kind of activity that inevitably involves at least two languages and two cultural traditions. Therefore, translation is more than translating words and terms: it is translating culture, lifestyle and life in every single detail.

Faull's (2004) view, that foreignness and translation are two sides of the same coin, is very interesting: "the history of translation is also the history of the foreign [...] from Cicero to Diderot translation was seen as the way to enrich one's own language and culture with little or no regard for fidelity to the original." Faull draws no barriers between foreignization and translation, and many translation scholars agree with him.

5- Constraints of Domestication and Foreignization

Whereas translation does not exist in a vacuum and occurs in a medium, it is indubitable that it affects and is affected by external and internal factors: “translation is a phenomenon that has a colossal effect on everyday life” (Hatim & Munday, 2004: 3).

5.1 Ethical and religious constraints

Religious and ethical norms can encumber or at least impede using of both foreignization and domestication in translation, particularly if the target readership has a conservative religious nature, instancing Islamic societies in general.

5.2 Stylistic and linguistic constraints

Stylistic and linguistic conventions in languages can truly impose specific constraints on translators where language as well as its limitations have a decisive and crucial role in adopting or rejecting domestication and foreignization strategies. In some cases, the lack of equivalence obliges the translator to foreignise or domesticate in contrast to intended aims. Brislin, R.(1976:33).

5.3 Political and cultural constraints

Culture and politics both affect primarily translation; consequently, thinkers and theorists highlight the significance that each has. Asensio, R. (2003:17).

6. Application of Foreignization and Domestication Strategies in the Translation of Legal and Islamic Shari'ah Texts into Arabic

The numbered instances in the subsequent discussion indicate some cases of foreignization and domestication strategies adopted when translating source text, by which means the text would be publishable and would serve the client's demands. The most problematic points are those relating to sensitive areas such as religion, ethics and cultural differences. Translating idioms is an oriented method and a challenging for translators due to the cultural differences between a source language and a target language. In this regard, this method is a good device for the translator to make their texts more natural and approximate. It is further

such as (judgement, sentence, award, law الحكم, lawgiver المحكوم, objectives of law تصديق به, acknowledgment إقرار, intuition ميثاق, primordial covenant بديهي, capacity for rights and obligations أهلية, الوجب, supreme legislative power السلطة التشريعية العليا, presumptive ظني, will-power اختيار, classification of provisions تقسيم الأحكام, 'defining law الحكم التكليفي, declaratory law الحكم الوضعي, obligatory فرض, forbidden مندوب, حرام, commendable مكره, abominable مباح, adultery الخيانة الزوجية. Paloposki, Outi and Oittinen, Riitta (2000)

7. Conclusion

To conclude, translation unquestionably is "a complex rewriting process which has appeared in many conflicting theoretical and practical situations throughout history" (Aixela,1996:52) The two strategies for translating legal texts – foreignization and domestication – both serve the

found that the idiomatic translation can be employed where there is a sentence in the ST for which there is a proper equivalent in the TT. The proper equivalent, in reality, is the one that is as close as the original one semantically and functionally

DR/Talat Muhammad Aly Al Badry
ultimate goal of the translator, to be precise, handing a readable version to the target readership.

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77