

Problems in the Translation of Legal Terms from Persian into English

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Abstract

Translation of legal terms is one of the controversial arguments in the history of translation studies. In this article, an attempt is made to identify strategies used by Iranian translators of legal texts. The problems of translating legal terms are considered in four categories. The highest frequency of strategies applied for the translation of legal terms was found to belong to the cultural substitution strategy.

Keywords: *Legal Terms, Problematic Terms, Translation Strategies, Persian*

Introduction

Since misrepresentation and misunderstanding of legal documents would cause damage to the economics and reputation of a nation, legal translators shall be prepared for a painstaking and a meticulous job at the present century. The variety of laws has added to the variety of legal texts and subsequently the demanding job of translation has been traveling a bumpier road to success. Tiersma (2000) in his article titled as "the nature of legal language" lists some features for legal texts. He believes that legal terms are culture-specific terms with special characteristics. Besides, the writing style in legal texts is different from the writing style in other fields of science. Sentences are lengthy and terms sound archaic. In this study we deal with the translation of legal terms from Persian into English. Many of the Persian legal terms are borrowed from Arabic and bear multiple meanings; consequently, terms consisting of one single word cannot be easily translated into one single equivalent in English. Obviously, in the translation of culture-specific terms, non-equivalence is regarded as a major barrier. For the terms which are not found in the target language, the translations would be in the form of dynamic equivalence or a paraphrase to convey the intended meaning. In this article, we attempt to list some of the problems caused by the translator's cultural background. Therefore, effort is made to identify the problems encountered by legal translators in the translation of legal terms.

Modern emphasis on function turned the attention of translation theorists to the pragmatic aspects of texts. As in Vermeer's (1996) Skopos theory, the functional approach requires translators to produce a new text that satisfies the cultural expectations of the target receivers for texts with the intended skopos (1996, pp. 41-45). While trying to remain loyal to the skopos, the translator is free to produce a new text that differs considerably from the source text in form. In the translation of legal texts, the intended skopos shall be conveyed properly. Therefore, legal translators cannot be expected to produce parallel texts that are equal in meaning; they are expected to produce texts that are equal in legal effect (Altay, 2004). To produce a text that leads to the same results in practice, the legal translator must be able to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in the target language.

We can refer to the terms which do not exist in the TL and the translator has to clarify the term by paraphrase with related or unrelated words in order to let the reader understand the exact application of the term in the relevant legal situation. For instance, "عده وفات" (uddeh-ye-vafat) which is translated by Samimi Kia (1994) as "period of abstention in the case of husband's death (4 months and 10 days)" can serve as an example in this regard.

Translation and Culture

In its broadest sense, translation means cross-cultural understanding. The European explorers and travelers to Asia and later the New World always faced the problem of understanding the people whom they encountered. Therefore, the process of translation must involve a certain degree of interpretation on the part of the translator. As Nida (1964) describes, the message in the target language should match as closely as possible with different elements of the SL; constant comparison of the two is also necessary to determine accuracy and correspondence. Therefore, comparative studies such as the present study find importance and are regarded essential for improving the practice. For instance, it is often necessary to supply supplementary information, annotations and the like to translations, i.e. glossing. A good example is the term "سه طهر" (Se-Tohr) translated as "three consecutive monthly periods of a woman" by Badrian (2001) in Article 1151 of the Iranian Civil Code:

Article 1151: The period of "Iddah" for a divorce or for the dissolution of a marriage consists of three consecutive monthly periods of a woman concerned though of child bearing age has no monthly period, in which case the period of "Iddah" will be three months (Badrian, 2001, p.328).

Not surprisingly, Venuti (2000) believes that translation is a process involved with looking for similarities between language and culture but it is constantly confronting dissimilarities. It can never and should never aim to remove these dissimilarities entirely. A translated text should be the site at which a different culture emerges. A translation strategy can best preserve that difference by reminding the reader of the gains and losses in the translation process and the unbridgeable gaps between cultures (Venuti, 2000). In brief, translation cannot overcome the barrier of culture and no bridges can be constructed over the roaring river of culture.

Translation of Legal terms

When selecting a translation strategy for legal texts, legal considerations must prevail (Sarcevic, 2003). For the sake of preserving the letter of the law, legal translators were traditionally forced to be faithful to the source text. As a result, it was generally accepted that the translator's task is to reconstruct the form of the source text as closely as possible. Thus, literal translation was the golden rule for legal texts and is still advocated by some lawyers today.

When dealing with translation of legal terms, a number of issues should be resolved. Principal issues may be listed as follows (Wright, 2002):

- (1) The first and foremost issue is the language and the way the language is used. For example: Should we use a historical or modern language?
- (2) Then we come to terminology, particularly specific legal terms "when should we translate legal terms?"
- (3) The third category is the style and register. Style plays a significant role in the translation of legal terms.
- (4) Finally, we need to note "to be accurate, clear or consistent is of higher value in the translation of legal terms".

Taking these into consideration, the legal translation consists of a number of stages. The stages identified by Wright (2002) include the following:

- (1) Firstly, a legal translator should understand the SL as well as the related legal culture and then start to translate. Concerning the criteria necessary for a good legal translation, Wright (2002) believes that "Translation must be faithful, accurate and complete and it is necessary to do whatever is required to preserve the style and register.
- (2) According to Wright (2002), translation of specific terminology for which no equivalent exists in English depends on translator's objective; either the foreign word can be left untranslated or it can be translated literally. She herself prefers to keep the foreign word, but define it accurately and economically. Wright (2002) believes that a quality translation is one which tends to be

comprehensible, clear and precise, and the style or register should be observed as technical/legal. For example, in the translation of the article 956 of the Iranian Civil Code by Badrian (2001), we face informal words such as “begin” and “end” which are recommended to use “commence” and “terminate” instead because the latter can transfer the formal style of a legal text.

Article 956: The Capacity to possess rights begins with the birth of human beings and ends with his death (Badrian, 2001, p. 267)

- (3) The correct use and appropriate choice of terms in law are important: Which legal term is considered appropriate for a particular occasion in Persian: “قرارداد (qarardad) قولنامه (qowlnameh) or عهدنامه (ahdnameh)”. Variation is generally not appropriate in English legal texts, if a different term is used, we assume that a different thing is being addressed. For instance, for “تمن” (Saman) two translations have been used by professional translators in Persian-English translations, i.e. “price, consideration” (Badrian, 2001) each of which find different meanings in different contexts because we do not have a constant and established term to cater for both meanings in different contexts.

Article 377: Either the seller or the buyer can retain the goods sold or their consideration until the other party is prepared to deliver his part, unless either the object of sale or the consideration thereof is agreed to be delivered at a subsequent date in which case either the object of sale or consideration which has become mature should be surrendered (Badrian, 2001, p.120).

Article 378: The seller, who has voluntarily delivered the object of sale before receiving the price thereof, cannot reclaim the object of sale, except in the case of the cancellation of the transaction of sale assuming that he has the option to do so (Badrian, 2001, p.120)

- (4) Another aspect involves the significance of the chosen term, i.e. what the term means to the English reader. If it refers to a particular national institution, is that institution equivalent to the one referred to in the source text and vice versa? It can be necessary to invent a term, or a combination of terms, in order to avoid inappropriate culture-specific terminology. For example, “شورای نگهبان” (shoraye negahban) in the Iranian legal system is an institution which supervises the enactments of the Majlis (the Parliament) and has been translated as “Guardian Council or Council of Guardians”. For an English reader, it hardly means an organization supervising the affairs of the Parliament. Look at the following definitions for the legal term “guardian” in English Dictionaries:

Guardian: noun one who is formally appointed to look after a child’s interests when the parents of the child do not have parental responsibility for him or have died (Oxford Dictionary of Law, 1998)

Guardian: One appointed to take care of another person, his affairs and property. A guardian may be appointed if the child has no parent with parental responsibility (Curzon, Dictionary of Law, 2002)

However, the “Watchdog Council” seems a more appropriate functional equivalent for the overall duties of “شورای نگهبان” because “watchdog” means:

Watchdog: noun person or group of people whose job is to check that companies are not doing anything illegal or ignoring people’s rights (Oxford Advanced Learner’s Dictionary, 2005).

It must be stated here that every translation has points of strength and points of weakness and every translation is open to criticism and improvement. This can be crystallized in a quote below (Culler, 1976): “If a language were simply a nomenclature for a set of universal concepts, it would be easy to translate from one language to another.... Each language articulates or organizes the world differently. Languages do not simply name existing categories, they articulate their own” (Cited in Baker, 1992).

Problems of Translating Legal Terms

To appreciate the nature of legal language, one should be familiar with its history. Altay (2004) has classified the problems encountered when translating legal texts into six categories. They are adapted to the subject matter of this study, i.e. translation of legal terms from Persian into English including problems raised due to

- Differences in legal systems,
- Differences in the language systems, e.g. word order in Persian and English,

- Lack of an established terminology in the field of law in Persian,
- Use of particular sentence structures,
- Dated or archaic-sounding terms used,
- Use of common terms with uncommon meanings.

Baker (1992) identified problems in translation which are, to some extent, common with those identified by Altay (2004). The following is a brief account of what Baker (1992) identifies as problems of translating culture-specific terms:

- (1) Culture-specific concepts which include the SL words expressing a totally unknown concept in the target culture.
- (2) A source language concept which is not lexicalized in the TL, i.e. the source language word may express a concept which is known in the target culture but simply not lexicalized, i.e., a target word has not been established to express it. (3) The SL word which is semantically complex and this is a rather common problem in translation. In some cases, a single word which consists of a single morpheme can sometimes express a more complex set of meanings. For example, the legal term “عده” (uddeh) in Persian translated as “period of abstention of a widow or a divorcee before her remarriage” (Badrian, 2001) or “legally prescribed waiting period of a divorced woman or a widow before remarriage” (Mir Mohammad Sadeghi, 1997).
- (3) TL lacks a general word (superordinate);
- (4) TL lacks a specific term;
- (5) Differences in specific meaning, etc.

Although the problems identified by Baker can be considered as the basis for this study, Altay's (2004) categories are more adaptable to Persian-English legal translation because it focused on legal language. Therefore, four categories from the six categories specified by Altay (2004) are the basic framework of the present study. Two categories are omitted because they refer to the problems of legal translation at sentence level which will be included in future studies.

Methods and Materials

As it was said earlier, this study is concerned with the translation of legal terms based on the problems offered by Altay (2004). A sample of two hundred and thirty nine legal terms were selected from the Civil Code of Iran translated by Badrian (2001) to see which terms are problematic for translators. The criterion used for identifying the problematic terms is Altay (2004), who has offered six problems for the translation of legal terms from Turkish into English. Because this is the first study performed on the translation of legal terms from Persian into English, we intended to confine the study to the word level and exclude the categorization at sentence level. Therefore, two categories from her six categories were omitted.

Results

The model chosen for identifying the problems encountered by legal translators in the translation of Persian legal terms in to English was an adaptation from the six categories of problems suggested by Altay (2004). It is worth mentioning that some of the legal terms selected for each category of problems may overlap in some aspects with other categories in terms of the problem they make for legal translators which in this case only one of the aspects have been the focus.

Problems in Legal Text Translation

Problems considered by Altay (2004) were used as a model in this study while they were adapted to the translation of legal terms from Persian in to English. The problems are as follows:

Problems due to the Difference in the Legal Systems

Every nation adopts a particular legal system as a source of making decision on legal matters. For example, British legal system roots in common law while the French legal system is based on statute law. However, the Iranian legal system is a mixture of common law, statute law and Islamic jurisprudence (*Figh*). Consequently, there are culture-specific terms which are not easily translated and which create remarkable difficulties for legal translators. According to Baker (1992), the strategies adopted by professional translators for translating culture-specific terms are cultural substitution, translation by a loanword or loanword plus explanation and paraphrasing by related or unrelated words. Consider the following example:

Hujb = Exclusion from inheritance (Badrain, 2001)

In the example above, the professional translator prefers to use the legal term "hujb" in the English translation and adds an explanation to make the meaning of the term clear for the target reader. But "hujb" is a legal term peculiar to Iranian legal system and is regarded as a culture-specific item. Therefore, translation by a loan word or loan word plus explanation has been used.

Problems due to the lack of an established terminology

This problem occurs when there is no fixed translation or equivalent for the legal term in question. The target reader assumes that s/he is reading different terms while the two terms carry the same meaning and the translators do not reach an agreement in applying one single term or strategy for transferring the particular meaning of a legal term. For example, "مبيع" (mabee') has been translated in Article 339 of the Iranian Civil Code as "the object of bargain" while in Article 351, the same term has been translated as "goods" but in the context of the article 350, the translator has preferred to use "property" as its equivalent. Thus, it can be seen that for the same Persian legal term, one single English equivalent is not possible. Still other examples may be the Persian legal terms "ارش" (arash) and "عوض" (awaz) which do not convey the same meaning in the Iranian legal system but translators have opted for "compensation" for them. Below, the difference between these two terms will be presented:

Compensation: payment for loss or injury sustained, e.g. compensation for destruction or damaging property of another (Curzon, 2002).

Compensation: monetary payment to compensate for loss or damage. When someone has committed a criminal offence that caused personal injury, loss or damage and has been convicted for this offence or it was taken into account when sentencing for another offence, the court may make a compensation order... (Oxford Law Dictionary, 1998).

As it can be deduced from these examples, the problem occurs when there is more than one correspondence for a single legal term in one language or vice versa.

Problems due to common terms with uncommon meanings

These terms have different meanings in law as well as in the communicative usage of language and the legal translators find them problematic when they are trying their best to convey the meanings of such terms as accurate as possible. For instance, "حدود" (hodoud) which generally means "limits or boundaries" (Emami, 2006), has a different meaning in law and is a kind of "religious punishment". Look at the following translation for hadd and ta'azir: "Punishments of hadd and taazir i.e., a punishment prescribed by Islamic canon law and/or a punishment prescribed by chief Moslem theologian" (Samimi Kia, 1994, p. 18). Another example is "قاصد" (qaased) which generally means "a messenger, a courier" (Emami, 2006) but as a legal term, it refers to a "person capable of forming an intention" (Samimi Kia, 1994, p.276). Article 1136 of the Iranian Civil Code makes what was said above clearer:

Article 1136: the divorcer must be of legal age, must be in possession of his faculties, must intend the act and must be free in his action (Badrian, 2001, p.325).

In short, the strategy number of translation by a cultural substitution is the ultimate attempt of the translators to find a proper functional equivalence for the legal terms in the TL. After cultural substitution which makes up 39.8% of the sample gathered, translation by paraphrase using a related word with 17.08% and translation by a more general word with 12.08% rank the second and the third categories, respectively. These results show that professional translators in Persian-to-English translation of legal texts try their best to produce a natural and clear translation.

Discussion and Conclusion

As it was stated earlier in this study, the main focus of the study was on identifying the problems encountered by legal translators in translating legal terms. Analysis of the data revealed that legal translators prefer the strategy of using paraphrase by related words which suggests that for solving the problem of non-equivalence, legal translators resort to paraphrasing so that they can clarify the meaning of the legal terms for the target reader. The strategy of translation by a loan word or loan word plus explanation and the strategy of translation by a cultural substitution are placed posterior to the strategy of using paraphrase by related words. This means that the second and third choices of legal translators is taking a Persian legal term as a loan word in the target language and support it with an explanation or try to find a cultural substitution for the legal term which does not reflect the total meaning of the term and part of the meaning is lost in translation but translators often prefer to use this cultural substitution in the hope that it has a similar effect on the target reader in comparison with the source language reader.

For the translation of the legal terms with the problems of the second category, namely, lack of an established terminology in the Persian legal language, the strategies used for the translation of such terms is primarily cultural substitution which indicate that the legal translator prefers to carry the legal effect to the target language and make the translation seem more natural for the target reader. According to Nida (1964, cited in Venuti, 2000) one of the characteristics of a good translation is to carry the same effect as the original to the target readers but in legal translation, it is performed at the expense of losing part of the meaning. Therefore, through translation by cultural substitution, part of the meaning is lost in the translation and also different terms used in the target language confuse the target reader because s/he is unable to distinguish between the legal terms they refer to. They would realize them as different legal terms while the legal translator has meant to carry the same meaning in various contexts. The strategy with higher frequency which comes next is using a more general word for the translation of the terms which lack an established terminology. A general word does not convey the meaning adequately and part of the translation is lost in the translation. Using a constant term with specific definition for a situation is of high value and translating the same term in different context with different terms would be confusing.

The data analyzed for the third problem, i.e. translation of dated and archaic-sounding terms show that translators prefer the strategy of translation by a cultural substitution where the translator seeks to produce a legal effect on the target reader. Although the dated and archaic legal terms of Persian are conveyed into English through the current usage of modern language where it may not bring about the appropriate effect, this strategy makes the texts seem natural and clear for the target reader. The Arabic terms in the Persian legal texts bear multiple meanings and finding a single term in the target culture to carry a large part of this meaning seems impossible. Therefore, we can claim that part of the meaning is lost in the translation and the target reader needs to refer to specific sources to find out the true meaning of the legal term or the translator has to use footnotes or interpretive explanations to elucidate the term for the target reader.

For the fourth category, i.e. problems caused due to the use of common words with uncommon meanings, the dominant strategy is the cultural substitution (73.68 %) and this means that the translators opt for the reader's understanding even if some part of meaning is lost in the translation. Common words with uncommon meanings are those words which are used in the current language with a different meaning than the legal language. They cause problems in terms of translators' understanding of the true meaning in the legal text. Translators of the Persian legal terms into English make an attempt to improve the naturalness of the texts while this will lead to a better legal effect provided that the terms chosen in the target language have the closest meaning to the SL legal term although part of meaning is often lost in the translation.

Another disadvantage of using cultural substitution strategy is that many of the common words with uncommon meanings are originally borrowed from Arabic in Persian and as it was said in the part of the problems with archaic sounding terms, they have multiple meanings and conveying the full meaning of such terms is impossible. Therefore, the overall conclusion is that the first and foremost strategy adopted by legal translators in the translation of legal terms is the strategy of cultural substitution (frequency of 38%); then comes paraphrase with related words through which the translators seek to make the text natural and clear. Since cultural substitution is performed in order to make sure that the target reader is able to understand the meaning of legal terms in his/her own culture and tends to avoid confusing the meaning with a concept other than what they have in their own culture. Therefore, para-

phrase with related words is usually done to convey the clear meaning of legal terms while ensuring of the fact that this term is originally from another culture; accordingly, traces of the source language is found in the translation. It is worth mentioning that translation of legal terms is not far from mistranslation errors or the concept of lost meaning, especially with terms which have an aura of culture. This is the common problem in the translation generally, but in legal language which is regarded to be a culture-bound field, it is of utmost importance.

As a limitation to this study, it may be argued that the translated texts used in the present study may not be representative of the legal terms since there is the possibility that the strategies adopted for the translation of legal terms may differ from one legal translator to another. However, the results of this research will be useful for both the translators and trainee translators who will become professional translators.

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