Translation Assessment of Cultural Legal Terms as Translated from Arabic into English

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Abstract
Culture includes knowledge, belief, art, law, morals, customs and any habits acquired by a Man as a member of society. The cultural differences play a pivotal role in the translation between languages. Preserving the SL cultural values in the translated text constitutes a difficult task for the translator.

The present study is a translation assessment of the Arabic cultural legal terms issued by Sharia courts as translated into English. The terms are taken from the book 'The Reliable Guide to Legal Translation' written by Adel Azzam Saqf Al-Hait.

The problem of the study is that the Arabic Cultural legal terms issued by Sharia courts are inherent in the SL (Arabic language) which make it difficult for the translator to render them into the TL (English language).

Keywords: culture, legal terms, translation and culture, source text, target text.

1. Introduction
It is very difficult to provide an adequate and comprehensive definition of the word 'culture' due to its complexity. However, many authors have attempted to define it. Among the first pioneers in the field of anthropology who tackled the concept of culture is the English anthropologist Edward B. Tylor (1832-1917). According to him, the concept of culture is "that whole complex which includes knowledge, belief, art, law, morals, custom, and any other capabilities and habits acquired by a man as a member of society" (Tylor, 1903: 1).

Culture seems to include all facets of life which are acquired by learning rather than being inherited biologically. In this concern, Goodenough as quoted in Wardhaugh says that "the cultural knowledge is socially acquired; the necessary behaviors are learned and do not come from any kind of genetic endowment" (Wardhaugh, 2006: 221).

According to the English Linguist John Lyons, the word 'culture' has two senses:

1. Culture is viewed as civilization, and in its extreme contrast barbarism takes place. In this sense, the adjective 'cultured' refers to the society which "rests upon excellence in art, manner

and social institutions, and literature". The reverse would be a total barbarism.

2. The second sense is almost free from the restricted formula of human progress from barbarism up to civilization. Its implications highlight the classical concept of culture which implies different societies have their own distinct cultures, and different subgroups within a society may have their own subcultures.

(Lyons, 1981: 301-302)

The first sense of the term is a balance between civilization and barbarism in which a society is called cultured when it enjoys the excellencies of art, manner, literature etc. Otherwise, it is a barbaric one. The second sense seems to hold the comprehensive wide view of culture in which the differences between societies are clearly manifested in their religions, values, traditions, habits etc.

However, Katan focuses on the changeability of the meaning of culture by stating, "Originally, culture was simple. It referred exclusively to the humanist ideal of what was civilized in a developed society (the education system, the arts, architecture). Then a second meaning, the way of life of a people, took place alongside. Emphasis at the time was very much on 'primitive' cultures and tribal practices. With the development of sociology and cultural studies, a third meaning has emerged, related to forces in society or ideology" (Katan cited in Munday, 2009: 74).

In touching upon the concept of culture, Haviland emphasizes the point that the member of a certain society must abide to the rules and standards of that society so that what he does is considered proper and acceptable, as it is obvious in the following quotation: "Culture is a set of rules and standards which when acted upon by the members of a society produce behavior that falls within a range of variance that readers consider proper or acceptable" (Haviland, 1975: 12).

According to Duranti (1997) as cited in Thanasoulas, culture is "something learned, transmitted, passed down from one generation to the next, through human actions, often in the form of face to face interaction, and, of course, through linguistic communication" (Thanasoulas, 2001: 8). It is obvious from this statement that language plays an important role in transferring culture between humans and through generations. The relation between language and culture is an important one, which will be the concern of interest in the next section.

2. Language and Culture

According to Newmark, culture is "the way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression" (Newmark, 1988: 94). It is clear

from this statement that culture encompasses certain ways of life of people speaking the same language and a certain culture is reflected by its language. Therefore, when someone learns a new language, he is being introduced to a new culture i.e. every language is a mirror of a certain culture or many cultures.

The relation between language and culture is an interrelated one. Culture cannot exist without the existence of language and language is the carrier of culture in the instant communication between people and through generations. This relation between language and culture is obviously illustrated in the next quotation:

"The first requisite is the existence of symbolic signs in which condensed experience can be handed over from one generation to another. Language is the most important type of such symbolic signs; it does not contain experience; it is rather a system of sound habits, which accompanies the development of cultural experience in every human community and becomes an integral part of this cultural experience.

The full knowledge of language is the inevitable correlate of the full attainment of a tribal and cultural status. Language thus is an integral part of culture; it is not, however, a system of tools but rather a body of vocal customs."

(Encyclopedia of the Social Sciences, 1931: 622, 633)

In emphasizing the interrelatedness between language and culture and how it is difficult to deal with one without touching upon or coming across the other, the translation theorist, Bassnett, uses the following metaphor:

"No language can exist unless it is steeped in the context of culture; and no culture can exist which does not have at its center, the structure of natural language.

Language, then, is the heart within the body of culture, and it is the interaction between the two that results in the continuation of life-energy. In the same way that the surgeon, operating on the heart, cannot neglect the body that surrounds it, so the translator treats the text in isolation from the culture at his peril." (Bassnett, 1991: 14)

So, it is obvious that cultural knowledge is as much important as linguistic knowledge and they are intertwined in the sense that one would need a cultural knowledge for a linguistic communication.

Nida is among the translation theorists who link language and culture by acknowledging that they are interrelated in a way which inevitably depends on the distance between them. In his well-known statement, he says, "In fact, differences between cultures cause many more severe complications for the translator than do differences in language structure" (Nida, 1964: 157). However, Newmark stands in an opposite position to that adopted by Nida. Newmark separates

language from culture by stating, "Operationally I do not regard language as a component or feature of culture" (Newmark, 1988: 95). The argument on the relation between language and culture in the field of translation theories seems to be indecisive.

3. Culture-Specific Terms

Culture is highly important in people's life and has impact on human language. An example of this impact is different traditions and beliefs of different cultures for which culture-specific words and expressions are used. Such expressions are called culture-specific items and the need to understand them makes the process of translation complicated, but vital task (Zare-Behtash and Firoozkohi, 2010: 1).

The usage of words and phrases that refer to cultural entities is one manifestation of culture in language. Nord defines culture-specific items as "a cultural phenomenon that is present in culture X but not present (in the same way) in culture Y" (Nord, 1997: 34).

According to Aixela, "in translation a CSI does not exist of itself, but as the result of a conflict arising from any linguistically represented reference in a source text which, when transferred to a target language, poses a translation problem due to the nonexistence or to the different value (whether determined by ideology, usage, frequency, etc.) of the given item in the target language culture" (Aixela, 1997: 59).

On the other hand, Newmark says that CSIs are considered as "separate units, like items in a glossary". Therefore, his statement indicates that despite the context in which CSIs appear, they have meaning and exist independently just like the units of dictionary (Newmark, 2010: 173).

Baker proposes the following definition of CSIs: "The source-language word may express a concept which is totally unknown in the target culture. The concept in question may be abstract or concrete; it may relate to a religious belief, a social custom or even a type of food. Such concepts are often referred to as culture specific". In other words, CSIs are the words that refer to any cultural concept, which is usually familiar to the members of one culture but unfamiliar to the members of another culture (Baker, 1992: 21).

According to Meyer, "translation is an activity which requires making a great number of decisions and consequently carries many risks of making mistakes" (Meyer, 2006: 230).

In what concerns the translation of CSIs, Davies states, "The translator is portrayed as a mediator whose task is to make these various cultural manifestations accessible to the reader of the translation" (Davies, 2003: 68).

4. Two Basic Orientations in Translating Culture-Specific Terms

Venuti's two translation orientations of domestication and foreignization play a pivotal role in the translation of CSIs. Davies states, "treatments for CSIs often invoke the distinction between two basic goals of translation: that of preserving the characteristics of the source text as far as possible, even if this yields an exotic or strange effect, and that of adapting it to produce a target text which seems normal, familiar and accessible to the target audience" (Davies, 2003: 69).

These two orientations of translation usually stand at opposite ends of continuum and they have been named and illustrated by many translation theorists such as Schleiermacher, Harvey and Higgins, and Venuti.

Schleiermacher is especially concerned with bringing together the ST author and the TT reader. He proposes two translation orientations to achieve this, i.e. bringing the reader towards the author or bringing the author towards the reader. The translation theorist names the former orientation as 'naturalizing' and the latter orientation as 'alienating'. It is important to mention that the theorist is in favor of the former orientation in which the translated text should have the same effect on the reader of the TT as the author's text did on the reader of the ST (Schleiermacher cited in Munday, 2012: 46).

Harvey and Higgins employ different names for the two translation orientations. One orientation is followed when cultural references are brought to the TC with the minimum change or adaptation in which it is called 'exoticism'. The other orientation is followed when CSIs of the SL are substituted with CSIs of the TL in which it is called 'cultural transplantation' (Harvey and Higgins, 1992: 84).

Venuti introduces two different names for the opposite ends of continuum, i.e. 'domestication' and 'foreignization'. According to him, two translation orientations that have emerged since ancient times can be described as "deliberately domesticating in the handling of the foreign text", whereas the other can be described as "foreignizing, motivated by an impulse to preserve linguistic and cultural differences by deviating from prevailing domestic values" (Venuti, 2001: 240-244). In other words, the translator adapts the ST to the target audience by domesticating it or he maintains the strangeness of the ST by foreignizing it.

Hatim states that domestication is "a translation in which transparent fluent style is adopted to minimize the strangeness of the foreign text", while foreignization is "a translation which deliberately breaks target conventions by retaining something of the strangeness of the foreign text" (Hatim, 2001: 229-230).

Baker emphasizes the point that the translator's decision to keep closer to domestication or foreignization may uncover significant information. The translator's decision is based on the purpose of the translation as well as on how much license is given to the translator (Baker, 1992: 31).

Baker also says that the translator's decision reveals the norms prevailing in a certain community on a general level. According to the theorist, "linguistic communities vary in the extent to which they tolerate strategies that involve significant departure from the prepositional meaning of the text" (ibid.).

Davies notes that the usage of a particular orientation, i.e. domestication or foreignization, may be determined by various factors in different cultures and different periods. The theorist provides several reasons that determine the choice of a particular orientation: text type, the nature of the target audience and the relationship between the source and target languages and cultures (Davies, 2003: 69).

Venuti argues that domestication, which includes TC oriented strategies, can be viewed as cultural imperialism. Therefore, in order to avoid this he proposes foreignization as an alternative (Venuti, 1995: 54).

6. Translation Assessment of Cultural Legal Terms as Translated from Arabic into English.

Since the cultural knowledge seems to have a role in the translation of the cultural aspects in Arabic legal documents issued by Sharia courts, the researcher has chosen Venuti's model of translation assessment and some translation strategies accompanied by the said model so as to assess the renditions of these aspects into English.

The researcher is going to assess the translation of the Arabic cultural legal terms in the following document, and suggests an alternative translation if the available translation proves to be inaccurate. The translation is going to be evaluated as adequate if the translator subjects himself to the SL norms.

نموذج (5/3)

بسم الله الرحمن الرحيم

الرقم: ...../...../.....　　　المملكة الأردنية الهاشمية

التاريخ: ...../...../..... هـ　　　قاضي القضاة

الموافق: ...../...../..... م　　　محكمة .... الشرعية

حجة خلو موانع

في المجلس الشرعي المعقود لدي أنا .... رئيس

محكمة .... الشرعية، حضرت المكلفة .... وبعد التعريف

عليها من قبل المكلفين شرعاً .... و .... قررت

.... المذكورة قائلة: إنني بنت بكر عزباء، لم يسبق لي الزواج أو الخطبة،

ولست على عصمة أحد من الرجال لغاية هذا التاريخ، وإنني خالية من أي موانع شرعية أو

قانونية. وطلبت إعطاءها إشهاداً شرعياً بذلك. وأبدت تقريرها بإخبار المُعرفين المذكورين

أعلاه. وبناءً على الطلب، وشهادة الشاهدين المذكورين، وحلف الجميع اليمين الشرعية،

والإخبار والتحقق من صحة تقريرها، وخلوها من الموانع الشرعية والقانونية، فقد تقرر

تسجيله للاعتماد عليه تحريراً في ...../...../..... هـ وفق ...../...../..... م.

رئيس المحكمة　　　　　　　الكاتب

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Form (3/5)

In the Name of God, the Compassionate, the Merciful

The Hashemite Kingdom of Jordan   No…../…../…..

Supreme Judge   Date: …../…../….. H

………..Shari'a Court   **Corresponding to: ……….. AD**

Certificate of Eligibility

In the legal council convened in my presence, I, ……………………………, the Head of……………… Shari'a Court, received the legally capable: ……………………………, after being identified by the legal capable ……………………………, and ……………………………, she resolved stating: I am a single virgin girl, I have never been married or engaged until this date, and I am free of any shari'a or legal impediments. She asked to be given a shari'a attestation of this, and her testimony was supported by the testimony of the mentioned identifiers. Upon the request, the testimony of the mentioned witnesses, the legal oath taken by all, the notification, the ascertainment of the validity of her testimony, and her eligibility, it has been decided to register this certificate to act by its virtue.

Issued on : …../…../….. H   Corresponding to …../…../….. AD

Clerk   Head of Court

It is noticed that the translator renders the word of Almighty 'الله' into 'God'. First of all, from the widespread famous translations of the Holy Quran, the words (الله ، الاله ، الرب) are rendered into (Allah, God, Lord) subsequently. Second, what makes the rendition of the translator more problematic is that the word 'God' sometimes refers to Almighty Allah and sometimes it does not because those who go astray believe in the existence of various kinds of Gods.

Third, the word of Almighty 'Allah' is what distinguishes Islam from other kinds of religions and the laws that are stipulated in this document and all the other documents are Islamic laws. Therefore, the appropriate translation of the word of Almighty 'الله' is done by employing the strategy of transliteration and rendering it as 'Allah'. The translator adopts 'domestication' in his rendition because he employs the word that is used in the target culture, thus stripping the sentence from its true spiritual meaning.

Another culture-specific item in this document is the expression 'خلو الموانع' which literally means 'being free of impediments'. According to Quranic Ayas and their interpretations by Muslim jurists, it is clear that there are two kinds of impediments preventing a man from marrying a woman: permanent and temporary impediments. They regulate the life of the Islamic society by imposing restrictions on marriage to protect, preserve and maintain the stability of the Islamic family.

The translator renders the cultural expression 'خلو الموانع' into 'eligibility' supporting his translation with an explanation of this term among a list of definitions of the most important terms used in Sharia certificates, in which the following explanation of the aforementioned term is provided:

"Idiomatically, impediment means the reasons prohibiting a certain act whether at its beginning or its continuity. Eligibility means that there is no legitimate impediment with respect to the marriage of a fiancée; as being still in her legally prescribed waiting period because of being divorced, or being widowed.

This term is defined procedurally as the non-existence of any legal or Sharia impediment preventing the conclusion of marriage contract of the betrothed persons whose marriage is not prohibited."

(Saqf Al-Hait, 2012: 241)

The translator adopts 'foreignization' in his rendition in which the cultural color of the expression 'خلو الموانع' is clearly transferred into the TL. An explanation of the legal cultural expression is provided to make it clear for the TL reader that this expression has a special meaning in the Arab culture. Therefore, the Arabic expression is successfully rendering into the TL by maintaining its cultural color as well as explaining the provision stipulated in the Arabic document.

It is noticed that the translator replaces the two words of the SL expression with a one word in the TL, which is a smart move because he is translating the title of the certificate. 'Eligibility' is the same as 'no impediments' i.e. a positive word equals the negation of a negative word. In translating titles, brevity is a priority and as long as this expression has a strong cultural effect an explanation of the rendered term is required by providing a suitable addition, which is what has been done in the list of definitions.

Looking at the sentence 'ولست على عصمة احد من الرجال', the word 'عِصْمَة' poses itself as a culture-specific item. Linguistically, it has several meanings in the Arabic language: hold, preservation, protection, prevention etc. However, here it is a cultural word related to the way in which a woman is preserved and protected by a man when she gets married to him. The equivalent of this word in the English language is 'bond' i.e. the bond of marriage. According to the Arab Islamic culture, this bond is in the hands of a man, therefore, he is the one allowed to annul the marriage contract and initiate the divorce procedures.

The translator adopts 'domestication' in his rendition by ignoring the cultural word 'عِصْمَة' i.e. the bond of marriage. Looking at the TL text, one would find that the translator deletes the whole sentence 'ولست على عصمة احد من الرجال', therefore, he fails to convey the cultural color of the SL text to the TL. The translator employs the strategy of deletion in his translation. It is the process of omitting SL words in order to achieve simplicity and brevity. However, the translator is unsuccessful in employing this strategy here because the deleted sentence is not marginal to the text. In the TL version, the translator sacrifices clarity for the sake of simplicity and brevity, therefore, he distorts the provision expressed in the SL.

It is suggested that the translator employs the strategy of translation triplets because one translation strategy is not sufficient to transfer the meaning of the message from the SL into the TL. At first, the word 'عِصْمَة' is transliterated into 'ismah' due to the lack of a corresponding word in the TL. Then, accompanying the transliterated word with its equivalent in the TL between two brackets: (The bond of marriage). Afterwards, an explanation is needed in a footnote to avoid meaning misinterpretation and achieve further understanding. The footnote runs as follows:

"Ismah is an Islamic cultural word related to the marriage bond in which a woman is preserved and protected by a man when she gets married to him. This bond is in the hands of the man and he is the one allowed to initiate a divorce".

Therefore, the suggested translation of the deleted sentence ' ولست على عصمة احد من الرجال' is ' I'm not under the ismah (the marriage

bond) of any man', in addition to the aforementioned footnote written on the margin of the certificate.

Another cultural expression in this document is 'شهادة الشاهدين' (the testimony of the two witnesses).

Testimony is considered one of the conditions of marriage due to the great significance of marriage in matters related to kinship, affinity, inheritance etc. It results in consequential provisions that stay life long and has a strong effect on the person's life and family.

The translator adopts 'domestication' in his rendition by translating the expression 'شهادة الشاهدين' literally into 'the testimony of the two witnesses'. The strategy of literal translation is employed without any further explanation illustrating the connotation implied behind this expression. Therefore, a TL reader belonging to a different culture will understand the linguistic meaning of this expression but not its cultural connotation.

The suggested translation is to employ the strategy of translation couplets because one translation strategy is not adequate to transfer the cultural flavor of the SL message into the TL. First, the expression 'شهادة الشاهدين' is rendered literally into 'the testimony of the two witnesses'. Then, an addition is added to support the first strategy by providing a brief explanation of this expression in a footnote or in the separate list of definitions. The suggested addition runs as follows:

"In the Arab society, the testimony of the two witnesses is one of the means of affirmation of rights in which witnesses are required to be sane, just, adults and Muslims".

This translation transfers the message in its most accurate sense, providing the TL reader with the full picture.

Conclusions

The differences between cultures play an integral role within the process of translation. The impact of the Arab culture upon the translated versions of the legal terms leads to cultural problems in translation and the translator does not succeed in rendering some words and expressions into the TL. The translator imposes the values of the TL culture, which are known to the TL reader, at the expense of accuracy of expression and faithfulness to the SL text. The lack of concepts and terms in the TL culture reveals the obstacles encountered by the translator owing to the differences between the cultures of both languages. The translator does not succeed in conveying accurate messages when he resorts to the strategy of literal translation and neglects explaining what is alien to the TL reader. It is noticed that a good strategy for translating the cultural words or expressions is the use of the strategy of translation couplets in order to ensure an adequate explanation of the laws provided in the SL.

Bibliography

Aixela, J. F. (1997) "Culture-Specific Items in Translation". In *Translation, Power, Subversion* (R. Alvarez & M. C.-A. Vidal, Eds.). Clevedon: Multilingual Matters, 52-78.

Baker, M. (1992). *In Other Words: A Course Book on Translation*. London: Routledge.

Bassnett, S. (1991). *Translation Studies*. London: Routledge.

Davies, E. E. (2003). "A Goblin or a Dirty Nose? The Treatment of Culture-Specific References in Translations of Harry Potter Book". In *The Translator 6*: 65-100.

Encyclopedia of the Social Sciences. (1931). New York: Macmillan Company.

Harvey, S., & Higgins, I. (1992). *Thinking Translation: A Course in Translation Method: French to English*. London and New York: Routledge.

Hatim, B. (2001). *Teaching and Researching Translation*. Harlow: Longman.

Haviland, W. (1975). *Cultural Anthropology*. New York: Rinehart & Winston.

Lyons, J. (1981). *Language and Culture: An Introduction*. Cambridge: Cambridge University Press.

Meyer, I. (2006). *Lexicography, Terminology and Translation*. Ontario: University of Ottawa Press.

Munday, J. (2009). *The Routledge Companion to Translation Studies*. Oxon: Routledge.

_____ (2012). *Introducing Translation Studies: Theories and Applications* (3rd ed.). Oxon: Routledge.

Newmark, P. (1988). *A Textbook of Translation*. London: Prentice Hall.

_____ (2010). "Translation and Culture". In *Meaning in Translation* (B. Lewandowska-Tomaszczyk, Ed.). Frankfurt: Peter Long GmbH, 171-182.

Nida, E. (1964). "Principles of Correspondence". In *The Translation Studies Reader* (L. Venuti, Ed.) (2nd ed.). London: Routledge, 153-167.

Nord, C. (1997). *Translating as a Purposeful Activity: Functionalist Approaches Explained*. Manchester: St. Jerome.

Saqf Al-Hait, A. A. (2012). *The Reliable Guide to Legal Translation*. Amman: The House of Culture for Publishing and Distribution.

Thanasoulas, D. (2001). *The Importance of Teaching Culture in the Foreign Language Classroom*. Radical Pedagogy. Retrieved from https://media.startalk.umd.edu/workshops/2009/SeattlePS/sites/default

/files/files/The Importance Of Teaching Culture In The Foreign Language Classroom.pdf, Accessed 27 February 2019.

Tylor, E. (1903). *Primitive Culture* (4th ed.). London: John Murray, Albemarle Street.

Venuti, L. (1995). *The Translator's Invisibility: A History of Translation*. London: Routledge.

_____ (2001). "Strategies of Translation". In *Routledge Encyclopedia of Translation Studies* (M. Baker & K. Malmkjaer, Eds.). London and New York: Routledge, 240-244.

Wardhaugh, R. (2006). *An Introduction to Sociolinguistics* (5th ed.). Cambridge: Blackwell Publishing Ltd.

Zare-Behtash, E., & Firoozkohi, S. (2010). *Culture-Specific Items in Literary Translations*. Retrieved from http://www.bokorlang.com/journal/51culture.htm, Accessed 13 March 2019.

تقييم ترجمي للمصطلحات القانونية الثقافية المترجمة
من اللغة العربية الى اللغة الانكليزية

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الملخص

تشـمل الثقافـة المعرفـة والمعتقد والفـن والقـانون والخُلـق والأعـراف وأيـة عـادات اجتماعيـة يكتسـبها الإنسـان بصـفته عضـواً فـي مجتمعـه. وتـؤدي الاختلافـات الثقافيـة دوراً محوريـاً فـي الترجمـة بـين اللغـات. وتشـكل المحافظـة علـى القـيم الثقافيـة للغـة الاصل في النص المُترجَم مهمة صعبة للمُترجِم.

تقـوم هـذه الدراسـة علـى تقـديم تقيـيم ترجمـي للمصـطلحات القانونيـة الثقافيـة العربيـة الصـادرة مـن المحـاكم الشـرعية المترجمـة الـى اللغـة الانكليزيـة. وأخـذ الباحـث المصـطلحات مـن كتـاب 'الـدليل المعتمـد للترجمـة القانونيـة' للكاتـب عـادل عـزام سـقف الحيط.

تكمـن مشـكلة الدراسـة فـي ان المصـطلحات القانونيـة الثقافيـة العربيـة الصـادرة مـن المحـاكم الشـرعية متأصـلة فـي اللغـة المنقـول منهـا (اللغـة العربيـة) ممـا يشـكل صعوبة للمترجم في ترجمتها الى اللغة المنقول اليها (اللغة الانكليزية).

الكلمات المفتاحية: الثقافة، المصطلحات القانونية، الترجمة والثقافة، النص الأصل، النص الهدف.