

Reconceptualizing Legal Translation: Navigating Cultural Transfer and Ethical Tensions between Domestication and Foreignization

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Abstract: The study analyzes the complex interrelationship among language, culture, and legal systems in the translation of legal discourse. With the enrichment of translation theory beyond the linguistic sphere, cultural transfer has dominated as the primary issue, more so in the area of specialized communication, wherein legal texts require precision, cultural appropriateness, and legal equivalence. The translator acts as a mediator along three interdependent axes: language, legal systems, and culture. There are ongoing controversies between domesticating the text to bring it culturally closer to the target audience and foreignizing it to preserve the source culture intact. This paper studies these opposing views within the ethical framework and real constraints that legal translators work in and points to an indefinite and rather tumultuous present between fidelity from the original and accessibility for the target reader. Special attention is paid to Malcolm Harvey's categorization of legal translation interventions, which offer a useful framework for balancing these demands and effective cultural transfer.

Keyword: Legal translation

Introduction

Culture has long been—and continues to be—a subject of great interest for both classical and contemporary scholars in the fields of social and human sciences. This interest has even extended to other areas such as translation theory, where culture has asserted its significance and can no longer be ignored. As research has moved beyond the purely linguistic dimension of the translation process and begun intersecting with other sciences, theorists have increasingly focused on the interplay between language and culture and their impact on translation. It is impossible to conceive of translation without language, just as discourse cannot exist in isolation from culture. While language is a tool that facilitates communication among humans and allows them to express ideas that reflect their cultures to others, the meanings conveyed by language can vary from person to person. This variation in understanding occurs even within the same language—let alone across two different languages, between which full equivalence is impossible, as emphasized by Nida¹. Some theorists argue that the task becomes even more complex when it involves the transmission of culture within specialized communication, with legal discourse ranking at the top of the hierarchy. In this context, the legal translator's role becomes even more challenging. Their work goes beyond mere linguistic translation from one language to another or from one legal system to another. It also involves cultural transfer, which represents a third crucial dimension of their task. The translator acts as a mediator operating within three

¹ Nida, E. A., & Taber, C. R. (1971). *La traducción: Théorie et méthode*. Alliance Biblique Universelle. p.04.

interconnected frameworks: languages, legal systems, and the cultures embodied by those languages².

As such, translation theorists are increasingly questioning the best methods for transferring culture within legal discourse. Opinions differ: some advocate for adapting the source text's culture to fit the language and culture of the target audience (domestication), while others oppose this approach, seeing it as an erasure of the original culture (foreignization)³. A third, mediating perspective, exemplified by Malcolm Harvey, seeks a pragmatic balance. This theoretical landscape presents a clear research gap. While the polarized domestication/foreignization debate is well-rehearsed, and Harvey's balanced model is recognized, there is a lack of systematic theoretical analysis that critically juxtaposes these perspectives specifically within the stringent context of "legal discourse". The unique demands of legal texts—precision, systemic fidelity, and functional equivalence—create a distinct testing ground that these general theories do not sufficiently address.

Objectives

This paper aims to fill this gap by providing a comprehensive theoretical analysis of cultural transfer strategies in legal translation. It will critically examine the domestication and foreignization paradigms, evaluate the interpretive theory's contribution, and assess the practical utility of Malcolm Harvey's integrative framework. The central research question is: Within the specific constraints of legal discourse, does a rigid adherence to either domestication or foreignization serve the translator's purpose, or is a context-aware, balanced approach, as proposed by Harvey, not merely a compromise but a theoretical necessity?

Method

This research is a qualitative, theoretical study employing a method of comparative theoretical analysis and conceptual synthesis. The objective is not to present new empirical data but to rigorously analyze, juxtapose, and synthesize existing theoretical frameworks to address the problem of cultural transfer in legal translation.

Research Approach and Design

The study adopts a theory-centric, argumentative approach. It is designed as a critical literature review that moves from exposition to synthesis. The analysis progresses logically: first, by outlining the core tenets of the dominant competing paradigms (domestication and foreignization); second, by examining the interpretive theory as a meaning-centered alternative; and third, by evaluating Malcolm Harvey's integrative strategies as a proposed practical synthesis for the legal field.

² See G  mar, J.-C. (2002). Le plus et le moins-disant culturel du texte juridique: Langue, culture et   quivalence. *Meta: Translators' Journal*, 47(2). p.174; V  lceanu, T., & Stoenic   Tanciu, M. G. (2021). Degrees of linguistic and cultural mediation in legal translation. *Romanian Journal of English Studies*, 18(1).

³ de Higes Andino, I., & El Farahaty, H. (2024). Translating cultural references and sensitive elements in Arabic–English translation: A corpus-based study of legal and institutional texts. *SAGE Open*, 14(3), Article 21582440241258293.

Method of Analysis

The core methodological procedure involves a multi-stage textual and conceptual analysis:

1. **Exposition and Thematic Categorization:** Key arguments from seminal and contemporary texts on domestication (e.g., Nida, Gouadec), foreignization (e.g., Berman, Venuti), the interpretive theory (e.g., Lederer), and specialized legal translation (e.g., Harvey, Šarčević) are systematically extracted and categorized based on their stance towards cultural transfer.
2. **Critical Juxtaposition:** The categorized theories are then juxtaposed to highlight their fundamental tensions, philosophical underpinnings (e.g., ethnocentrism vs. ethics of difference), and their proclaimed applicability to legal discourse. Their respective strengths and weaknesses are evaluated against the specific constraints of legal texts, such as the need for terminological precision, systemic coherence, and unambiguous communication.
3. **Synthetic Argumentation:** Finally, the analysis builds a synthesized argument. Harvey's framework is not merely presented as an alternative but is evaluated as a potential synthesis. The paper argues for a context-driven model where the translator's choice is not a binary ideological commitment but a strategic selection from a continuum of strategies (from borrowing to functional equivalence), guided by the text's purpose, audience, and the nature of the cultural-legal concept in question.

Materials and Sources

The analysis is grounded in a close reading of foundational and contemporary theoretical literature, which serves as the primary "data" for this study. This corpus includes:

- Foundational texts in general translation theory addressing culture (Nida & Taber, Venuti).
- Works on the philosophy and ethics of translation (Berman, Ricoeur).
- Theoretical literature on the interpretive model of translation (Seleskovitch & Lederer).

Cultural Translation through the Translator's Lens: From Domestication to Foreignization

The issue of cultural translation has received considerable attention from translation theorists and scholars. Among the fields that have garnered special focus is legal translation, due to its heavy reliance on culturally loaded terminology—terms that reflect the manifestations of a particular culture in the daily lives of a given group, regulated by legal norms.

Legal language, which embodies both the form and substance of law, inherently conveys meanings drawn from a specific culture. In fact, legal concepts are often best understood by returning to the original social context in which they arose. It is virtually impossible to find complete similarity between legal systems, each of which is

expressed through its own unique legal language. Every legal language develops its own terminology and expressions, which distinguish it from others⁴.

Although the translator possesses a degree of authority over the source text, by virtue of being a qualified expert responsible for the translation task, this authority is limited. The source text does not belong to them, and more importantly, the reader of the translated text ultimately determines its success by demanding clarity and readability. This leads us to question how translators manage the significant cultural load when translating across different languages in specialized discourse—especially when effective communication is urgently needed, as is often the case in legal or informational texts.

In the debate over cultural transfer, some scholars argue that translation aims to bridge the gap between cultures and should not be limited to translating words alone⁵. To ensure effective and accurate cultural transfer in today's rapidly globalizing world, they advocate adapting the text as though it were an original product of the target culture⁶. This approach, they argue, gives the translation a universal character that transcends cultural differences and facilitates communication between diverse peoples.

Conversely, another school of thought believes that the translator, as a cultural communication expert, must be qualified to select the most appropriate and effective tools of cultural mediation in a given cultural context⁷. Umberto Eco, in discussing the issue of cultural transfer in translation, emphasized that translators always face one of two challenges: either guiding the audience to understand the cultural space of the original author, or modifying the text to fit the cultural space of the target audience⁸. This encapsulates the longstanding debate—one that has consumed much scholarly attention for decades—regarding the translation of culture.

Translational Equivalence in Cultural Transfer

Eugene Nida and Charles Taber argue that anything that can be said in one language can also be expressed in another, provided that form is not a decisive factor in the transferred discourse⁹. For them, culture poses no real problem as long as the translator is able to express ideas across different languages. Nida emphasizes that the success of a translation lies in achieving a similar response from the target text's reader as the source text elicits from its original audience. He acknowledges that such responses cannot be identical, but insists that the translator must formulate the message of the source text in a way that aligns with the linguistic needs and cultural expectations of the target audience. The goal is to fully domesticate the original expressions to reflect the spirit of the target language and its culture¹⁰. This is only possible through grammatical, lexical, and cultural adaptation of the source content,

⁴ Focsaneanu, L. (1971). Les langues comme moyen d'expression du droit international. *Annuaire français de droit international*, 16, 262. p.262.

⁵ Locher, M. A., & Jucker, A. H. (2021). Introducing the special issue on the pragmatics of translation. *Journal of Pragmatics*, 180, 199–210.

⁶ Sprung, R. C. (2000). Introduction. In R. C. Sprung (Ed.), *Translating into success: Cutting-edge strategies for going multilingual in a global age*. John Benjamins.

⁷ See Mi-Yeon, J., & Brisset, A. (2006). La notion de culture dans les manuels de traduction: Domaines allemand, anglais, coréen et français. *Meta: Translators' Journal*, 51(2) p. 391; Neumann, S. (2020). The pragmatics of audiovisual translation: Voices from practitioners. *Journal of Pragmatics*, 170, 1–13.

⁸ Eco, U. (2006). *Dire presque la même chose*. Grasset. p.202.

⁹ Nida, E. A., & Taber, C. R. (1969). *The theory and practice of translation*. E. J. Brill. p.4

¹⁰ An, G. (2024). Domestication and foreignisation in translation studies: A bibliometric analysis. *Journal of Intercultural Communication*, 24(4), 1–22.

aiming to reduce the strangeness of the original cultural background and present the message as if it were originally written in the target language¹¹.

In the same vein, Nida's proponents assert that the translator's role extends beyond mechanically conveying the source text while rigidly adhering to its structure¹². In addition to being bilingual, the translator is seen as a creative agent who reformulates the message of the original in a way that is accessible to the target audience. This often involves departing from the source text's linguistic form and moving toward expressions more familiar to the target reader¹³.

To illustrate his point, Nida provides an example from the New Testament: the translation of the phrase "*Lamb of God*." He explains that if the translator aims to provoke a response in the target audience similar to that of the original readers, the translator must draw from the environment of the target audience. In some cultures, certain material concepts do not exist, making literal translation ineffective. For instance, since lambs are not part of the Inuit environment, translating "Lamb of God" literally would be incomprehensible. Therefore, Nida suggested using the word "*seal*" instead, as seals are familiar to the Inuit, serve as a source of food, and are even used in sacrificial rituals¹⁴. Such a translation, he argues, better conveys the intended meaning than a word unfamiliar or nonexistent in the reader's culture. Thus, the target reader's response would more closely resemble that of the source audience, which, according to Nida, is the ultimate goal of translation¹⁵.

This view is supported by Daniel Gouadec, who states that translation always requires full adaptation of the source document to a group of readers who possess different customs, tastes, ways of thinking, and behaviors. These readers expect to receive a translated document that seems as though it was written by someone from their own culture¹⁶. Gouadec implies that readers are not prepared—and do not need—to be exposed to content that feels foreign to their culture; they are conditioned to understand what aligns with their own cultural norms and linguistic rules. Regarding the issue of fidelity, he notes that loyalty to the cultural transfer of the original discourse and its author belongs primarily to literary translation. In other domains, fidelity shifts toward the target audience rather than the original text or its author. Hence, translation becomes a full adaptation of the original document to the target culture, with the translated text appearing as though written by a member of that same culture¹⁷.

A similar view is shared by Schroth in his discussion of legal discourse translation. He argues that to produce a translated text that yields the same practical outcomes, the translator must understand not only the literal meanings of words and sentences but also the legal implications embedded in the text and how to recreate that legal effect in the target language¹⁸. For this school of thought, the issue goes beyond words and

¹¹ Nida, E. A., & Taber, C. R. (1969). *The theory and practice of translation*. E. J. Brill. p.24

¹² Yee, H. K. (2023). Rethinking dynamic equivalence as a rhetorical construct. *Cogent Arts & Humanities*, 10(1), 2180976.

¹³ Ladmiral, J.-R. (1998). Théorie de la traduction: La question du littéralisme. *Revue de l'Institut catholique de Paris*, 65.

¹⁴ Nida, E. A. (1964). *Toward a science of translating*. Brill.

¹⁵ Li, Y. (2021). Nida's translation theory of "functional equivalence" and its application in Chinese herbal medicine translation. *Advances in Literary Study*, 9(1), 11–15.

¹⁶ Gouadec, D. (1989). *Le traducteur, la traduction et l'entreprise*. AFNOR. p.03

¹⁷ Ibid, p.03

¹⁸ Schroth, P. W. (1986). Legal translation. *The American Journal of Comparative Law*, 34(Suppl. 1), 47–65. p.56

phrases to focus on the legal impact embedded in the text. The translator's freedom does not stop at the boundaries of the source culture; rather, they are expected to mold and adapt the source to align with the norms and standards of the target culture and its legal system.

This idea is reinforced by Gonzalez Matthews, who emphasizes the procedures that legal translators must follow when translating legal texts. She states:

«Le traducteur doit donc connaître les procédés qui lui permettent d'abord de saisir la portée juridique du texte, de saisir le sens de ce texte et, enfin, de réexprimer cette portée et ce sens dans le texte d'arrivée, selon les normes et les usages de la langue et du système juridique de la culture réceptrice. »¹⁹

"The translator must therefore know the procedures that first allow them to grasp the legal implications of the text, understand its meaning, and finally express that legal implication and meaning in the target text, in accordance with the norms and usages of the language and legal system of the receiving culture." (Our translation)

This reinforces the notion that legal translation is not just about linguistic accuracy but also about functional equivalence, particularly in how cultural and legal meanings are interpreted and conveyed.

Reframing Cultural Transfer through the Lens of the Interpretive Theory

The interpretive theory emerged as a reaction to linguistic approaches that centered exclusively on language while overlooking other elements fundamental to communication—most notably the translator²⁰. Within this paradigm, the translator is regarded as the primary agent in the translation act: they interpret the text by drawing on their extra-linguistic knowledge, attribute meaning to it, and select formulations appropriate to the needs of the target text. Consequently, proponents of this theory have concentrated on explaining the translation process from the perspective of its key agent—the translator—viewing translation above all as a mental activity²¹.

According to this theory, translation does not become a mechanical finding of equivalences between the two languages. More precisely, the translator is a human "interpreter" who resorts to intellectual and emotional resources²². Consequently, the translation process was divided into three steps: comprehension, deverbalization, and reformulation. From a pedagogical standpoint, this model significantly helped convince translation students that translation is not about encoding and decoding linguistic signs, but rather about understanding and re-expressing meaning.

Regarding the issue of cultural transfer through translation, Lederer recognized the ongoing debate over whether the translator should preserve the foreign nature of the original text—even to the point of it being lost in translation—or, on the contrary, adapt and naturalize the text to fit the language and expectations of the target audience²³. Lederer acknowledged that one of the key challenges translators face—and a frequent

¹⁹ Gonzalez Matthews, G. (2003). *L'équivalence en traduction juridique: Analyse des traductions au sein de l'accord de libre-échange nord-américain (ALENA)*. p.151.

²⁰ Alwazna, R. Y. (2023). The use of translation theory through reconciling between the original and the target texts. *Frontiers in Psychology*, 13, 1010704.

²¹ Seleskovitch, D., & Lederer, M. (1984). *Interpréter pour traduire*. Didier Érudition. p. 294.

²² Lavault-Olléon, É. (1996). Créativité et traduction spécialisée. *ASp*, 11–14. p.122.

²³ Lederer, M. (1994). *La traduction aujourd'hui*. Hachette-Livre. p.126

topic in academic circles—is dealing with cultural issues, such as clothing styles, eating habits, religious customs, and traditions. The challenge here is not just about finding the right lexical equivalent in the target language, but more importantly, about conveying the implicit world that the source language expresses. This, she argues, is the translator's true responsibility in cultural translation²⁴.

Lederer also noted that the wider the gap between two cultures, the more likely the translator is to attempt to narrow this gap through clarification. She emphasized that when a translator is able to uncover the “secrets” of the foreign world, they are in a position to reveal them to others who are unfamiliar with it. For her, the principle of clarification is fundamental in translation, which is essentially about discovering and conveying meaning, regardless of language, which is merely a vehicle for thought. In her words:

«La traduction est toujours possible pour celui qui comprend un texte et en exprime le sens» ²⁵(Lederer, 1994, p.128)

“Translation is always possible for the one who understands a text and expresses its meaning.” (Our translation)

Lederer further explained that each individual's knowledge base is unique and does not entirely overlap with that of others. However, there exists a shared human knowledge that creates a common ground, enabling one person to understand a text created by another. While the knowledge base is part of universal human cognition, it remains personalized and varies from one translator to another²⁶.

Supporters of interpretive theory also highlight the creative role of the translator in the translation process. They argue that the translator shows creativity mainly in the reformulation of meaning into expressions of their own making. Lavault-Olléon insisted that this creativity, rather than pertaining only to general texts, also touches upon special texts such as legal, scientific, and technical documents. It is born of the translator's knowledge base and unfolds through the three phases of the translation process as promulgated by the founders of the theory: comprehension, deverbalization, and reformulation. Creativity comes especially into play in the third phase since it is based on the translator's command of the target language and his or her intuitive knowledge of it and on this person's ability to select expressions appropriate for different contexts on the basis of their reasoning and interpretive logic²⁷. Regardless of how complex the task of translating culturally embedded elements may be, the freedom afforded to the translator under this approach—grounded in conveying meaning rather than form—grants them the liberty to deal with cultural specifics in any way they deem most appropriate. This freedom enables them to clarify ambiguities and ensure the complete transmission of the intended meaning in the target text.

Bridging Cultures: from Celebrating Difference to Confronting Ethnocentric Pressures

Berman asserts that translating a people's culture can follow two distinct paths. The first is resistance, where the translator confronts the foreign culture by absorbing and

²⁴ Ibid, p.122

²⁵ Ibid, p.128

²⁶ Ibid, p.38.

²⁷ Lavault-Olléon, É. (1996). Créativité et traduction spécialisée. *ASp*, 11–14. p.132

assimilating it into the target culture²⁸. This approach reflects a rejection or even disdain for the foreign as something inferior—something that must be integrated and made to conform to the norms of the target text's culture. The second path, in stark contrast, is openness to the other. This orientation views cultural translation as a space for dialogue and the acceptance of difference. Berman openly identifies with this second perspective, one that embraces plurality, openness, and hospitality toward the other and their differences²⁹.

He strongly opposes the erasure of the other's cultural identity—a practice often rooted in the belief that the foreign is a negative presence that needs to be tamed or adapted through assimilationist translation³⁰. Such an approach is typically based on preconceived, negative ideas about the other, lacking genuine knowledge or experience of their culture. As a result, it hinders real intercultural encounters, which translation, at its best, can enable at the crossroads of meaning and cultural exchange.

Berman goes so far as to say that any translation act must begin with recognizing and accepting the other as different from ourselves. This recognition forms the basis of any transformative encounter and opens the door to meaningful exchange, dialogue, and cultural blending. For Berman, translation is either a form of communication—or it is nothing at all³¹.

Many translation scholars regard Berman as the major advocate of source-orientation and the cultures it represents, against those dominant currents that view source texts as mere raw materials for the production of translations for the main purpose of pleasing target readers. Such currents often call for the erasure of culturally marked features of the original written in the name of readability and accessibility, thus going into a conformity pattern of tastes, norms, and language of the subject audience. In this regard, Mansour echoes Berman's concerns by calling such translations that favor the reader over the source text ethnocentrism—a cultural arrogance that seeks to erase the source language and its identity³².

Berman's thoughts have received much attention from other scholars; among them, we particularly recognize Venuti. He agrees with the critical stance taken against those translations that cleanse both cultural and linguistic marks of the original. He informs that such translation efforts turn the source text into an object of use for producing a more marketable text in the target language³³. The aim becomes attracting as many readers as possible, giving them a smooth and familiar experience in their own language and culture, free from any challenge or foreignness. According to him, the translated text is often "*tailored like a garment*" to fit the target language and culture, excluding any trace of otherness because strangeness is not welcome. The original is

²⁸ Saed, H. (2024). Intrinsic managing and the English–Arabic translation of culturally-bound expressions in *Chronicle of a Death Foretold*. *Cogent Arts & Humanities*, 11(1), 2371659.

²⁹ Berman, A. (1999). *La traduction et la lettre ou l'Auberge du lointain*. Seuil. p.29.

³⁰ Yi, Y. H. (2021). Antoine Berman and the birth of the translation studies field in France. *The Journal of Translation Studies*, 22(5), 231–269.

³¹ Berman, A. (1984). *L'épreuve de l'étranger: Culture et traduction dans l'Allemagne romantique*. Gallimard. p.16.

³² Mansour, L. (2008). La traduction du dialogue dans *La Trilogie* de Naguib Mahfouz: Une déformation ou un parcours créatif? *CADMO: An International Journal of Educational Research*, 19. Université Roma III.

³³ Venuti, L. (1998b). *The scandals of translation: Towards an ethics of difference*. Routledge.

seen as too unimportant to preserve or highlight. It exists solely to be adapted for the needs of the receiving audience³⁴.

Venuti labels this approach "domestication", where the translation process bends the source to the norms of the target culture. In contrast, he proposes "foreignization", a method that intentionally retains the source text's linguistic and cultural features. Foreignization would be resisting domestication, itself a force of assimilation, in that it taught of the value of difference- while preserving the texture of the original and refusing to impose upon it the majority culture of the readers³⁵. According to Venuti, foreignization is the more ethical and culturally conscious means of translation; it helps to disperse the ethnocentric drift of domestication, which denies the "Other" as a world in its own right, rich and sovereign³⁶.

In this regard, Ricoeur gives one psychological and emotional interpretation of domestication. He assumes that the urge to assimilate the Other's culture into the translated text and its audience proceeds from fear, or even hostility, toward the foreign³⁷. For the translator, the original text is, in a sense, a threatening, inert block-resisting translation; hence the desire to tame and reshape it for the target audience. Such an attitude reflects the ethnocentrism and cultural superiority that translation scholars talk about, where all that is foreign is interpreted as other and inferior. In support of Berman, through his famous book "*The Scandals of Translation: Towards an Ethics of Difference*", Venuti decries the translation practices that efface foreignness for the sake of being comfortable and familiar. He sustains that a proper translation has the capacity of exposing the strangeness of the foreign text so that the readers come to experience it as a real encounter with difference. Thus, the ethical task of the translator is to expose foreignness so that it is visible and known, instead of hiding or disguising it. By doing so, the translator leads readers to another view of the world, another cultural logic, instead of reinforcing their own³⁸.

To clinch matters, Berman and Venuti redefine translation away from a process of assimilation toward one of recognition, where cultural and linguistic differences are acknowledged, preserved, and respected. That is, they state that true translation is one that defies the overwhelming influence of the target culture so that the Other can speak in its own voice—not subaltern but beside as partner in dialogue³⁹.

On the other hand, Venuti described ethnocentric translation as a poor form of translation that seeks to please its audience at the expense of the original text and its culture, by rejecting and ignoring it so that it conforms to the language and culture of the translated text⁴⁰. If a translator adopts this approach, they will be subject to the full range of criticisms brought forth by the new trend in translation, which upholds the principle of welcoming the "other" in the pursuit of intellectual enrichment—by introducing the recipient to what was previously unknown from other cultures and fostering intercultural encounters through translation. One of the most widespread

³⁴ Venuti, L. (1992). *Rethinking translation: Discourse, subjectivity, ideology*. Routledge. p.235.

³⁵ Venuti, L. (1998b). *The scandals of translation: Towards an ethics of difference*. Routledge.

³⁶ Venuti, L. (2008). *The translator's invisibility: A history of translation* (2nd ed.). Routledge.

³⁷ Ricoeur, P. (2004). *Sur la traduction*. Bayard.

³⁸ Venuti, L. (1998b). *The scandals of translation: Towards an ethics of difference*. Routledge. p.11.

³⁹ See Berman, A. (1999). *La traduction et la lettre ou l'Auberge du lointain*. Seuil; Venuti, L. (1998b). *The scandals of translation: Towards an ethics of difference*. Routledge.

⁴⁰ Venuti, L. (1998b). *The scandals of translation: Towards an ethics of difference*. Routledge. p.81.

criticisms directed at such translators is labeling them as racist⁴¹ because they seek to alter foreign texts to conform to their own cultures.

To counter this translation approach, Venuti introduced the strategy of foreignization, which aims to send the reader abroad instead of bringing the writer home—as is the case in domesticated translation⁴². This means that the reader should make the effort, driven by curiosity, to discover the other and their differences. They should not be given a translation that fits neatly within their own mindset and culture, in which they see nothing but themselves. Rather, they should be shaken and stirred to open their eyes to a world beyond their own and gain knowledge that would have been inaccessible without translation.

The history of legal translation has witnessed a long-standing preference among legal experts for literal translation over the centuries⁴³. It was viewed as the optimal means of preserving the spirit of the law—both in form and content—as well as its rigidity, since the law is a fundamental source of supreme authority that governs people and organizes their lives. Therefore, the principle of literalism prevailed for a long time in the transfer of legal texts from one language to another. The golden rule advocating for literal translation dominated: the more the translator adheres strictly to the original legal text, the better the result⁴⁴. Even today, there are still legal professionals who defend this rule—such as the legal scholar Didier Emmanuel, a prominent lawyer in Canada, who calls for literal translation when dealing with legal texts. He affirms this when speaking about how to handle coercive texts, stating that translating legislative and other normative texts requires absolute literalness⁴⁵.

Second in line is Simms, who defended literalness in legal translation from the perspective that law should be perceived as the same law in all cases and in all languages, regardless of the language in which it was written. For him, literalness is essential and necessary because accuracy in semantic substitution within the text is what gives the law its credibility as a unified entity⁴⁶. This credibility cannot be achieved unless all its terms and expressions are transferred with fidelity and precision—qualities that can only be realized through literal translation. Literalness, in turn, guarantees the complete and thorough transmission of any legal vocabulary from one language to another, without omitting a single detail that may affect the content or structure of the text⁴⁷.

Sacco also pointed to this idea when he spoke about the enrichment of legal systems through linguistic exchanges resulting from the transfer of specialized legal terms from one system to another. He emphasized that this process allowed various peoples to benefit from the legal advances of others. He also asserted that legal translation would not have been possible without the flexibility of language, which allowed various legal

⁴¹ Wole, S. (1984). The critic and society: Barthes, Leftocracy and other mythologies. In H. L. Gates Jr. (Ed.), *Black literature and literary theory*. Methuen. pp. 27-29.

⁴² Venuti, L. (2008). *The translator's invisibility: A history of translation* (2nd ed.). Routledge. p.20

⁴³ Šarčević, S. (1997). *New approach to legal translation*. Kluwer Law International.

⁴⁴ Ibid, pp. 23-25.

⁴⁵ Didier, E. (1990). *Langues et langages du droit*. Wilson & Lafleur. pp. 280-285

⁴⁶ Simms, K. (1997). *Translating sensitive texts: Linguistic aspects*. Rodopi. p.18

⁴⁷ Godfrey, N., Paterson, J., & Rogers, J. (2024). Fidelity in legal coding: Applying legal translation frameworks to statutory interpretation. *The Law Teacher*, 58(3), 267–287.

systems to adopt the vocabulary of others and make it an integral part of their own linguistic repertoire⁴⁸.

On the other hand, Venuti strongly criticized translation theorists who favor a translation methodology based on the language and culture of the target audience in order to deliver the message in a clear and comprehensible way. He labeled this type of translation as the "illusion of transparency" pursued by this group—an illusion that, according to him, leads to a distorted understanding of the text. This distortion arises because the translation is dictated by the language and culture of the receiving audience, rather than being faithful to the language and culture of the source text. The smoother and easier the translation, the more the translator and the act of translation disappear from the text⁴⁹. This means that any trace of the original text's cultural identity also disappears, making it seem as though the translator has authored a new text in another language, rather than having performed a translation in the conventional sense. In doing so, the translator imposes a foreign culture onto the target text and obliterates the identity of the source text for the sake of clear and comprehensible reading. This is exactly what Venuti and his supporters firmly reject.

Difference, according to them, is inevitable, and under no circumstances can texts be said to be equivalent or identical. Such a notion would imply the convergence of cultural identities between peoples, which is impossible. Therefore, the translator should adopt a foreignizing approach in their work in order to place the reader in a position where they are confronted with a foreign reading of the translated text⁵⁰.

This act of foreignization, as Venuti pointed out, limits the violent ethnocentrism of translation by recognizing the linguistic and cultural differences that exist between societies. He even goes as far as to say that this type of translation is a form of resistance—resistance against ethnocentrism, racism, cultural narcissism, and imperialism. For this reason, he did not hesitate to call this strategy one of *resistance*⁵¹.

Between the two camps, one might ask whether the legal translator really needs to adhere to such theoretical positions or show allegiance to either one. Or would it be more practical to provide the translator with a workable methodology that suits their professional needs and spares them the uncertainty of choosing between competing views? Given the practical and immediate nature of legal translation, which does not tolerate hesitation or delay, it becomes essential for the translator to adopt a methodology in line with the demands of their field. This implies following the advice of experts in legal translation who can offer practical tools to facilitate the translator's task and relieve them of the burden of spending too much time deciding the best way to convey cultural aspects of legal discourse.

Malcolm Harvey is one such expert in legal translation. His efforts have led to the development of strategies tailored specifically for legal translation. These strategies synthesize various approaches to cultural transfer and provide legal translators with a balanced path to conveying culture. By applying Harvey's strategies as the situation requires, legal translators can maintain a middle ground in cultural translation.

⁴⁸ Sacco, R. (2005). Aperçus historique et philosophique des relations entre droit et traduction. In *Droit de la traduction et traduction du droit: Actes du colloque international, 15 et 16 octobre 2005*. Faculté de Droit de Poitiers.

⁴⁹ Venuti, L. (2008). *The translator's invisibility: A history of translation* (2nd ed.). Routledge. p.01

⁵⁰ Ibid, p.20

⁵¹ Venuti, L. (1992). *Rethinking translation: Discourse, subjectivity, ideology*. Routledge. p.12

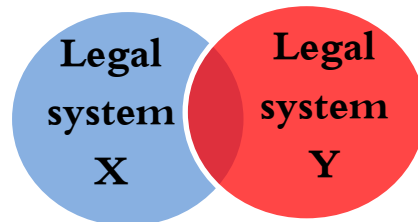
Striking a Cultural Balance: Malcolm Harvey's Integrative Approach to Legal Translation

Malcolm Harvey worked diligently to develop translation techniques that would facilitate the work of legal translators, especially concerning complex terms that have no direct equivalent in the target language or its legal system. Among such terms are those with a strong cultural dimension, specific to legal systems unique to certain communities. Harvey emphasized that the encounter between two distinct legal cultures often reveals a form of contradiction in certain aspects of those cultures⁵². While there may be commonalities between different legal systems, each system's legal culture has its own particularities, resulting in culturally embedded terms that are difficult to render equivalently in the target culture and legal system.

Figure 1.

Diagram by Harvey illustrating the convergence and divergence of two legal systems. p.40.

Harvey, M. (2002). Traduire l'intraduisible. Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA* [online], 3, 39–49. In: <http://ilcea.revues.org/790>.



To address the challenge of translating culturally bound legal terms, Harvey proposed four strategies of equivalence. He noted that the equivalence aimed at through these strategies is not precise equivalence, but rather a possible and acceptable translation in specific cases, depending on the context of the text to be translated. He categorized his strategies into two groups. The first includes functional equivalence and descriptive translation, which represent strategies that lean more toward the target text. The second group consists of formal equivalence and borrowing, which reflect strategies leaning more toward the source text⁵³.

Harvey pointed out that the success of any given strategy depends primarily on its suitability for the communicative situation—that is, the purpose of the text and the identity of its intended audience. He designed a diagram that positions these four strategies according to their proximity to either the source or target text. In this representation, borrowing and formal equivalence are positioned closer to the source text, while functional equivalence lies nearer to the target text⁵⁴. Descriptive translation occupies a middle ground between the source and target texts.

⁵² Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49. p.40

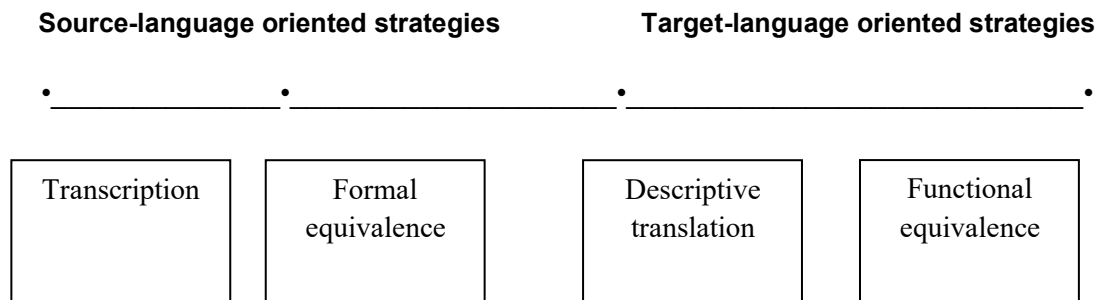
⁵³ Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49.

⁵⁴ Ibid

Figure 2.

Diagram showing the different types of equivalence according to Harvey, p. 46

Harvey, M. (2002). Traduire l'intraduisible. Stratégies d'équivalence dans la traduction juridique. Les Cahiers de l'ILCEA [online], 3, 39–49. In: <http://ilcea.revues.org/790>.



Functional Equivalence Strategy

This strategy consists of finding a counterpart in the target language that performs the same function as the term in the original text. It involves cultural adaptation. The name *Cour d'assises* and *Crown Court* is a good example of adaptation given by Harvey. Harvey comments that this type of conversion is aesthetically satisfying, for a term such as *Crown Court* sits comfortably with an English reader. The use of a term familiar to the recipient confers a bare minimum of understanding—or at least it confers upon the reader the illusion of having understood the general sense of the content.

Harvey also points out that a group of legal linguists have argued that this technique is ideal, especially when the text is intended for non-specialist readers. While often used, this technique has been criticized by some who apply the label ethnocentrism to it, especially where the translator holds the recipient's culture and language superior to those of the source text, thereby converting the idea by employing terms familiar to the recipient's context⁵⁵.

To make this example clearer, we may consider a similar cultural term found in many Algerian legal texts, especially family-law decisions, *khatem al-henna* (خاتم الحنة). This expression appears frequently in court decisions on marriage, divorce, and other sorts of family law. In such contexts, Algeria's translators would take every effort to make this phrase clear to foreign readers since providing literal translations such as *Henna ring* in English or *Bague de henné* in French would only cause confusion and perhaps might even lead to an erroneous interpretation.

In such situations, the translator adopts the functional equivalence strategy to convey the intended meaning more effectively. The translation might then become *Engagement ring* or *Wedding ring* in English, and *Bague de fiançailles* or *Bague de mariage* in French. Here, the translator successfully communicates the idea that the ring in question symbolizes a marital bond, as is commonly understood in most cultures. The cultural specifics of the ring's presentation or the associated traditional rituals become secondary, as long as the essential meaning is conveyed to the reader.

Formal Equivalence Strategy

This refers to a linguistic equivalence in which the translator provides a strictly literal translation of a word or phrase. For example, the French term *Conseil constitutionnel* is

⁵⁵ Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49. pp.42-43

translated into English as *Constitutional Council*. Harvey notes that such translations were once considered examples of functional equivalence used in specific historical periods, but were later abandoned in favor of other terms. One such example is *Court d'appel*, which used to be translated as *Court of Appeal*, among other cases⁵⁶.

On a practical level, we find numerous examples in the Algerian laws that clearly indicate how legal professionals have resorted to formal equivalence in some cases, believing it sufficient to convey meaning between Arabic and French. One notable example comes from the Algerian Family Code in its Arabic and French versions, where this strategy was adopted in translating certain phrases. The most well-known example is the Arabic phrase "*Ṣadaq al-mithl*" (صداق المثل), which is rendered in French as "*Dot de parité*" (Algerian Family code, 2013). Here, we notice complete formal equivalence between the two expressions. Moreover, the reader naturally understands that the phrase refers to a dowry or *ṣadaq* that is comparable or equal to that of others.

This strategy can also be applied to English, especially if the target reader is a native English speaker. The equivalent in this case would be "Parity dowry". Even though this expression may not exist in Standard English usage, it remains understandable and interpretable without difficulty.

Borrowing Strategy

This technique involves reproducing the original term as it is while adding an explanation the first time it appears in the translated text. If the term is already clear or has been explained in the original text, there is no need to include an explanation. Harvey emphasized that this strategy does not mislead the reader or cause ambiguity, as long as the term or expression is not translated. It can be particularly useful for experts who can easily grasp the meaning of the term or expression, especially when accompanied by a clear and comprehensive explanation⁵⁷.

An example of such a term is "*اللّعان*" (*li'ān*), which appears in the Algerian Family Code. It refers to the process through which a husband accuses his wife of adultery or denies paternity of a child. This procedure consists of a series of testimonies exchanged between the spouses, involving a curse from the husband and a declaration of anger from the wife⁵⁸.

A term like this should be borrowed and included in the translated text, accompanied by an explanatory note, such as:

- *Li'ān (accusation pour adultère)*
- *Li'ān (adultery accusation)*
- *Li'ān (maudire pour accusation d'adultère)*
- *Li'ān (cursing for adultery accusation)*

To clarify the meaning further, a footnote or side explanation should be included, such as:

⁵⁶ Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49. pp.43-44

⁵⁷ Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49. p.45

⁵⁸ Al-Jurjānī, 'A. ibn M. ibn 'A. (1405 AH). *Al-Ta'rīfāt [Definitions]* (I. al-Abyārī, Ed.; 1st ed.). Dār al-Kitāb al-'Arabī. p.246

Li'ān is the way the husband accuses his wife of committing fornication or disclaiming the relationship with the child he has with her as being his legitimate son. Both husband and wife shall be called to testify against each other; the husband by accusing his wife, and the wife by denying his accusation.

Such a procedure makes it clear to the reader—even if they are unfamiliar with the concept—that it refers to the Islamic oath procedure performed between spouses, where the husband accuses his wife of adultery and denies paternity of a child.

Descriptive Translation Strategy

This strategy consists of explaining culturally specific terms using general or easily understood language. For example, French legal terms like *contraventions*, *délits*, and *crimes* are translated into English as *minor offences*, *major offences*, and *serious offences*. According to Harvey, this approach involves providing a brief explanation that functions independently to convey the intended meaning in a way that is smooth and accessible in the target language⁵⁹.

However, Harvey also warns that the drawback of this strategy lies in the difficulty of finding a concise yet unambiguous formulation that fully captures the meaning of the original term. For this reason, he advises translators to include the original term in parentheses as a precaution whenever they are unsure about the adequacy of the translated phrase in its context. In doing so, the translator avoids misinterpretation.

When the translator succeeds in finding a brief and clear expression, this strategy effectively balances accuracy and readability, ensuring that both specialists and non-specialists can understand the meaning. It also represents a compromise between source-language-oriented translation (which preserves cultural features) and functional equivalence (which adapts to the target language and culture).

To illustrate this, consider the Arabic term "فريضة الهالك", which has no direct equivalent in English. The term refers to an official document that details the division of a deceased person's estate among their heirs, specifying each heir's share.

In this case, the descriptive translation strategy is the most suitable, as it allows the translator to accurately convey the meaning and function of the term. Terms such as *Attestation of Inheritance* or *Affidavit*, commonly used in English, do not fully reflect the specific nature of "فريضة الهالك".

- *Attestation of Inheritance* only refers to the certificate that lists the heirs.
- *Affidavit* is a general legal term meaning a written statement made under oath before a judge or notary, as defined by the Merriam-Webster Dictionary:

Definition of affidavit: A sworn statement in writing made especially under oath or on affirmation before an authorized magistrate or officer. Example: The witness's affidavit was presented to the court as evidence.

Given these limitations, a more accurate descriptive translation would be:

Estate Partition Act of the Deceased. This translation clearly indicates that it is a document by which the estate of a deceased person is divided among the heirs,

⁵⁹ Harvey, M. (2002). Traduire l'intraduisible: Stratégies d'équivalence dans la traduction juridique. *Les Cahiers de l'ILCEA*, 3, 39–49. p.46

specifying the share of each. Thus, through this strategy, the translator fulfills their task of clarifying and communicating the intended meaning in a culturally appropriate and legally accurate manner.

Conclusion

Faced with the divergence of theoretical approaches to how cultural elements should be translated within the legal framework, the legal translator is constantly striving to convey the original text with as few deficiencies as possible⁶⁰. This effort takes place under the dual pressure of the authority of the source text and the expectations of the target audience—forces that fall under what is commonly referred to as the ethics of the translator. In response, the translator is expected to adopt a balanced position: neither leaning entirely toward favoring the source text at the expense of the reader, nor yielding completely to the target audience, thereby falling into what Berman termed *ethnocentrism*—a tendency that dominated translation practices for a long time, during which the identities and cultures of many communities were erased for the sake of simplicity and readability.

This was notably seen in the approach of Nida, who aimed to achieve the same effect on the target audience as that experienced by readers of the original text, or in what the Paris School defined as a focus on meaning over form. In contrast, a rebellion against this approach arose, exemplified by Venuti's advocacy of *foreignization*, which treats translation as a means of introducing and bringing cultures closer together. This approach pushes the reader to make the effort to understand unfamiliar concepts from the source text, thereby enriching their own knowledge base.

Ultimately, the translator's freedom remains limited, even when emotion plays a role in shaping the translated text. This is especially true in the case of culturally loaded terms, which are bound to the strategy of foreignization through borrowing—a technique that has historically enriched languages, cultures, and even legal systems. The ongoing efforts by scholars and theorists to develop optimal methods for conveying culture from one language to another, and from one legal system to another, are a compelling testament to the significance of this dimension in legal translation. Among these contributors, Malcolm Harvey stands out for his systematic classification of translation strategies in legal discourse, offering a practical framework that bridges theory and practice. His work, alongside that of other prominent figures in the field, continues to guide translators in navigating the delicate balance between fidelity to the source culture and accessibility for the target audience.

⁶⁰ Duběda, T. (2024). Risk perception and risk management in legal translation: A questionnaire survey. *Perspectives: Studies in Translation Theory and Practice*, 32(4), 615–632.

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