

Improving the Quality of Legal Translation through Cultural Transfer

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Abstract

Legal translation is a special type of Language for Special Purposes (LSP) translation involving cross-linguistic communication in the legal context and it tends to involve more cultural specific components. Since the main functions of legal language are normative and performative, it is important to make sure what the actual purpose of the translation of a legal text is. On the other hand, legal translators are expected to produce not parallel texts but texts that are equal in legal effect. So, they must be able to understand not only the legal concepts and the legal effects they are supposed to have, but also how to achieve those legal effects in the target language, especially when it is based on a different legal system. The vast differences in Persian and English legal systems and legal cultures, and consequently the associated incongruity of terminology, highlight the many challenges in legal translation. This paper aims at presenting a strategy through which we can convey the legal culture of SL (Persian) to TL (English) and while creating similar legal effect in TL, improve the quality of legal translation, relying on the two notions inspired by Venuti (1998), i.e. domestication and foreignization. In this regard we analyzed legal translation of 20 Persian to English Divorce Decrees within the domain of Private law, the study of which has been seldom attempted despite the customary presence of these instruments in the legal routine. As a result of this analysis we can conclude that legal texts in different legal systems are translatable and a similar legal effect can be created in TL provided that the legal genre of the source text is preserved and also functional and conceptual equivalences are employed through foreignization and domestication.

Keywords: Legal Translation - Functional Equivalent - Conceptual Equivalent - Divorce Decree - Legal Culture.

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1. Introduction

Since misunderstanding and misrepresentation of legal documents would cause damage to the economy 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 entitled "*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. Also Persian legal language has somehow the same features. In a research conducted by Aghagolzadeh and Farazandehpour (2014), the most important features of Persian legal language that make it a complex and incomprehensive language were recognized as overuse of abstract legal terms, Arabic expressions and prepositional phrases; vocabularies from standard language with technical legal meaning; long and complicated declarative sentences and overuse of adverbs of time and place as well as passive and impersonal verbs. So, the translation of legal texts requires particular attention, because it consists primarily of abstract terms deeply and firmly rooted in the domestic culture and intellectual tradition and thus entails a transfer between two different legal systems, each with its own unique system of referencing. According to Šarčević (2000): "...law remains first and foremost a national phenomenon. Each national or municipal law... constitutes an independent legal system with its own terminological

apparatus and underlying conceptual structure, its own rules of classifications, sources of law, methodological approaches, and socio-economic principles." This means that in order to translate the terminology of legal texts in different legal systems accurately, it is necessary to understand those systems since the main challenge of the legal translator is the incongruence of legal systems'. Alcaraz and Hughes (2002) insist on the translatability of legal texts depending directly on the relatedness of the legal systems involved in the translation. The Persian legal system is based on Islamic law, i.e. on civil law, and has a civil code, the Civil Code of Iran. The United Kingdom does not have a "written" Constitution and its law is made up of four main parts: statute law, common law, conventions and works of authority. Common law that consists of rules based on common customs and on judicial decisions has therefore very little 'relatedness' to Persian civil law that is created by statute (Shiravi, 2004).

In general, the most important difference that sets off legal language from ordinary language is its lexicon. Legal language makes use of numerous words and terms that are not common in ordinary language or carries an additional meaning different from their ordinary meaning. Legal language utilizes vocabulary from standard language in specialized meanings. Legal texts are usually produced to bear some real-life consequences such as granting rights or imposing obligations. So, the main functions of legal language are normative and performative: legal texts usually contain legal norms and consequently carry an obligation to follow this legal norm, otherwise a punishment might follow. Therefore, it is greatly important to make sure what the actual purpose of the

translation of an individual legal text is. Every translator of legal texts must face and finally try to solve the tension between the need of legal certainty and the fact of linguistic indeterminacy. Knowing the concepts behind the terms is more important in legal translation than in other translational areas.

There have been many opinions on what the ideal legal translator should be like. But, we agree that a competent legal translator must have three prerequisites as proposed by Smith (1995:181 as quoted by Cao, 2007: 37): basic knowledge of the legal systems, knowledge of the relevant terminology and competence in the TL¹ specific legal writing style.

Now what is the main goal of legal translation; producing parallel texts or texts that are similar in legal effect? Can we achieve legal effect in the TL, especially when it is based on a different legal system? Are the translation strategies proposed by Venuti (i.e. Foreignization & Domestication) helpful in this regard? How is it possible?

These are some of the questions that we want to answer in this research. The purpose of this paper is to show that legal texts in different legal systems are translatable and a similar legal effect can be created in TL provided that the legal genre of the source text is preserved and also functional and conceptual equivalents are employed through foreignization and domestication.

2. Cultural Transfer in Translation Studies (Review of Literature)

Since the notion of culture is hard to define due to its multifarious interpretations in the literature, there is no standard definition of

culture. However, sociologically culture is defined as the typical ways of living built up by a people, including the beliefs and attitudes which support them. Culture, under such a treatment, finds its expression on two levels: (1) shared beliefs and values conceived by particular members of society; and (2) the customary behaviors they practice. The studies relating to legal culture cover many aspects, but among them we need to isolate the variables that legal culture can refer to and legal translation has to deal with. Some of the major variables for this concept of legal culture are shared attitudes, values and opinions; legal ideology; shared norms and modes of thinking as well as legal principles representing the spirit of rule of law (Friedman, 1976:75 & Cotterell, 1997:21-22). So, the concepts of legal culture can be categorized in two ways: Legal culture may refer to people's conceptions of law alone or to both people's conceptions and their specific practices of law. Therefore, legal culture, i.e., the conceptual thinking shared by legal professionals, is an essential yet inseparable component of any legal system. The transfer of legal culture can take place when the law of one country is conveyed to another, or when two legal systems come into contact. In traditional translation theory, legal texts were regarded as a species of LSP text, and their translation was accordingly treated as a kind of technical translation. In recent translation theory, a change in perspective has occurred along with the emergence of approaches centered on cultural and communicative factors. Snell-Hornby (1988) first employed the term "cross-cultural transfer" in subscribing to Vermeer's view that

1 . Abbreviations in this paper:
SL = Source Language (Persian)
TL= Target Language (English)

ST= Source Text (Persian Divorce Decrees)
TT= Target Text (English Translation of Divorce Decrees)

translation was not the transcoding of words or sentences between languages, but a “cross-cultural transfer”. She held that the translator’s cultural knowledge, proficiency and perception underpinned not only his ability to “produce the target text, but also his understanding of the source text” (Snell-Hornby, 1988: 42-46). In other words, understanding of the cultural elements of both the SL and TL was a pre-requisite in translation. However, she did not explain how translation could take place between cultures without taking linguistic equivalence into consideration. Snell-Hornby has in fact adopted a target-culture-oriented position. For her, the source culture is important only for understanding the source text, but the target culture in fact plays a far more vital role since it shapes the target text, which is what actually facilitates cross-cultural communication.

arčević (1997:55) argued that legal translation should no longer be regarded as a process of linguistic transcoding but an act of communication in the mechanism of law. She thus redefined the goal of legal translation as the production of a text with the same meaning and effect as the original text with special emphasis on effect. However, she did not explain how the legal translator could simultaneously achieve the same meaning and the same effect as the source text. The process of translation must involve a certain degree of interpretation on the part of the translator. Venuti (2000) believes that translation is a process involved in looking for similarities between language and culture but it is constantly confronting dissimilarities. We 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).

According to Venuti (1998:240), translation strategies range from Foreignization (SL-oriented equivalents) to Domestication (TL-oriented equivalents) where the former “seeks to evoke a sense of the foreign” while the latter involves assimilation to the TL culture and is intended to ensure immediate comprehension. Domestication has been long present in translation history, at least since ancient Rome. The domestication of a foreign culture could result in misrepresentations of that culture but Foreignization promises a greater openness to cultural differences (Venuti, 1998: 23). Wilss' (1982) distinction that refers to foreignization and domestication of the TT is as follows: “The translator can either leave the writer in peace as much as possible or bring the reader to him, or he can leave the reader in peace as much as possible and bring the writer to him”. “Bringing the reader’ to the ST would require the TT reader to process the translation in its original foreign context, while ‘bringing the writer to the reader’ would mean domesticating the ST in terms of the context familiar to the TT readers and thus making it easy for it to be assimilated by them. In support of foreignization strategy, Koller (1979) insists that full adaptation is not an accepted method of translation in legal texts as it results in semantic distortion.

So, what do we actually do as translators when we come across culture-specific items? If we choose to domesticate, we just need to *find* an item in the target language as a linguistic substitute (i.e. functional equivalent), leaving the target language *as it is*. In contrast, to foreignize means to

import the source culture into the target culture through making linguistic and conceptual adjustments (i.e. creating conceptual equivalence).

In legal translation, many scholars associate legal equivalence with the extent to which the same 'legal effect' can be produced in the TT while maintaining fidelity to the ST. This technique, often referred to as a functional equivalence, is described by Newmark (1988) as a procedure that occupies the universal area between the SL and the TL. He also recommends the use of functional equivalence for the purpose of the legal translation, because it makes the TT both comprehensible to the target reader and faithful to the original ST. According to Šarčević (2000), in legal translations the strategies used must above all focus on one main principle which is fidelity to the source text. He said: "Legal translators have traditionally been bound by the principle of fidelity and they were convinced that the main goal of legal translation is to reproduce the content of the source text as accurately as possible. Both lawyers and linguists agreed that legal texts had to be translated literally. For the sake of preserving the letter of the law, the main guideline for legal translation was fidelity to the source text. Even after legal translators won the right to produce texts in the spirit of the target language, the general guideline remained fidelity to the source text." To maintain the authenticity of the law, the cultural concepts which are specific to the original legal system could not be replaced by functionally equivalent concepts of target language. Thus, cultural transfer by way of domestication is not appropriate in legal translation but cultural transfer as foreignization is best exemplified in the translation of a particular

legal system from one language to another, in this study, the translation of the Persian Civil law into Common Law.

3. Theoretical Framework

The term "equivalence" has been used in the literature to define successful translation or to describe the ideal result of translation. Equivalence has been variously defined in terms of functional equivalence, conceptual equivalence, semantic equivalence, formal equivalence, dynamic equivalence, lexical equivalence, syntactic equivalence, textual equivalence and pragmatic equivalence. The complexity of legal discourse and its pragmatic status help explain why approaches to legal translation have historically been focused mainly on the preservation of the letter rather than on the effective rendering in the target language. Over time, a change in perspective occurred and eventually gave rise to the need to define new criteria for equivalence in legal translation. Thus, the principle of *legal equivalence* emerged Which considers the legal effects that a translated text will have in the target culture (Gemar, 1997: 81-85). Of course, how to achieve it in actual practice has been one of the most widely debated issues, especially during the 1970s and early 1980s among German scholars. Basically, the criterion of legal equivalence is akin to the concept of functional equivalence, endorsed in this specific field by a number of authors.

Incidentally, according to the principle of legal equivalence, the translation of a legal text will seek to achieve identity of meaning between original and translation, i.e. identity of propositional content as well as identity of legal effect (Sager, 1993:180), while at the same time pursuing the objective of reflecting the intents of the person or body (legislator, lawyer, judge

etc) which produced the ST. In specifically linguistic and translational terms, this corresponds to identity of propositional content, illocutionary and perlocutionary forces, and intentionality (de Beaugrande-Dressler, 1981: 3-11; 113ff). Since legal translation is primarily concerned with the translation of legal concepts, belonging to different legal systems and since it is required to create similar legal effect in the TL, in this study we concentrate on functional and conceptual equivalences.

3-1- Functional Equivalence

According to Groot (1998), the first stage in translating legal concepts involves studying the meaning of the source-language legal term to be translated. Then, after having compared the legal systems involved, a term with the same content must be sought in the target-language legal system. The legal functional equivalent is defined by Šarčević (1988) as a term in the target legal system designating a concept which its function is the same as that in the ST. According to Šarčević (2000) functional equivalence can be categorized into three groups: near-equivalence, partial equivalence and non-equivalence. These groups are described below and are graphically represented by figures where the Persian legal concept (P) is marked by a grey circle and the English legal concept (E) is marked by a bold circle:

- a) **Near-equivalence** (which is very rare) occurs when legal concepts in Persian and English share most of their primary and incidental characteristics or are the same.



Figure 1: Near- equivalence

For example compare the concept of “Adam-e-Ahliyat” in Persian legal system with “Incapacity” in English legal system.

“Adam-e-Ahliyat”: Inability to take legal actions (Roshdiye, 2011: 887)

“Incapacity”: Lack of ability to have certain legal consequences attach to one's action, Incompetency (Garner, 2005: 775)

On the basis of this description, the term “Adam-e-Ahliyat” “is often translated into English legal documents as “Incapacity” and vice versa.

- b) **Partial equivalence** occurs when legal concepts in SL and TL are quite similar and the differences can be clarified, e.g. by lexical expansion.



Figure 2. Partial equivalence

One example that illustrates this type of functional equivalence is the Persian concept of “Nafaghe” which is somehow different from its English equivalent. “Nafaghe” in Persian refers to “An allowance, court ordered or not, that husband pays to his wife whether estranged or not for maintenance and support (Roshdiye, 2011: 1479) “but in English “Alimony” refers to “A court- ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced (Garner, 2005: 80)”. So, we can see that in English legal system, Alimony will be paid upon the court verdict after getting divorced by either of the spouses (husband or wife). On the other hand in

Persian legal system paying “*Nafaghe*” is an obligation for husband to be paid to the wife during their matrimonial life. So, these subtle differences indicate that such terms are partial equivalents and their differences should be clarified in translation process.

- b) **Non-equivalence** occurs when only few or none of the important aspects of Persian or English legal concepts coincide or if there is no functional equivalent in the target legal system for a specific ST concept.

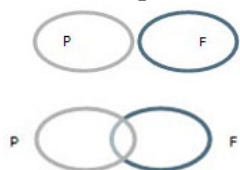


Figure 3. Non-equivalence

One example that illustrates this type of functional equivalent is the term “*Se-Tohr*” in divorce decrees that is a culture specific term and none of its legal aspects exist in English legal system and it is necessary to supply supplementary information, annotations and the like to translate such words. Badrian (2001:328) translated this legal term as: “three consecutive monthly periods of a woman” in Article 1151 of the Iranian Civil Code:

Article 1151: “The period of “Edde” 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 “Edde” will be three months” (Badrian, 2001: 328).

Determining the acceptability of functional equivalents is the most important aspect of the process of legal translation and it frequently depends on the context. Šarčević (2000) suggests that when assessing the acceptability of a functional

equivalent the legal translator should ‘take account of the structure, classification, scope of application and legal effects of both the functional equivalent and its source term’. Therefore, when dealing with legal conceptual voids or partial equivalents, a legal background can be very helpful for the translator. The legal topic must be well researched in order to provide supporting information in the TL. In this paper, non-functional equivalence for which an equivalent should be created, is considered under the title of “Conceptual Equivalence” that is described as follows:

3-2- Conceptual Equivalence

Since legal translation is primarily concerned with the translation of legal concepts, it is “conceptual equivalence” (sameness in legal meaning) that we have to achieve. Conceptual equivalence requires that different language versions of the law must convey the same legal concept(s) in question. Doubts have been raised as to whether conceptual or semantic equivalence can be achieved. If it could be shown that semantic equivalence cannot be achieved, then all legal translations would be groundless. Thus, it is of very importance in legal translation that semantic equivalence be shown to be possible (Šarčević, 2000). We agree that the most effective way of translating legal terms is to use descriptive paraphrases and definitions as these compensate for terminological incongruity by presenting the legal information in neutral language. This method, however, requires a certain degree of research, legal training and relevant background knowledge on the part of the translator. In a situation where a legal text refers to a specific technical term, this lexeme can be used as a borrowing in the TT. As Šarčević (2000) states: “Borrowings

without explanation and any naturalizations & modified phonologically, should be avoided whenever an acceptable equivalent already exists in the target legal system."

One may still ask: "In what way can semantic equivalence be achieved in translation when the languages in question do not contain concepts that are exactly the same or when the meanings or concepts of the source language, which we generally refer to as cultural concepts, are different from or even absent in the target language?" In answering this question, we can talk about the concept of metafunctions. Even if the concept that a certain word designates exists in one language but not in another, it can always be replaced by a word in another language by means of linguistic adjustment in the form of a loan word and a descriptive phrase. In the case of translation, various metalinguistic devices adopted by the translator are often explicitly stated in his/her explanatory notes and it is at the metalinguistic level that conceptual / semantic equivalence is achieved. So, a word in the target language is *defined* as the equivalent for its counterpart in the source language and in this way, two different signs are made to denote one and the same concept.

4. Research Method and Data Analysis

In this study, in order to illustrate our argument, a number of 20 Persian Decrees of Divorce (that are commonly used by the legal profession, but haven't been analyzed yet) together with their official English translations were collected from translation offices of Tehran in 2014.

Since Bhatia (1997) believes that "it is crucial to maintain generic integrity of the intended genre when translating legal texts" and also according to House's (2009: 34-35) basic assumption that "the source text and

its target text should be functionally equivalent" and further to the framework she proposed for analyzing register elements of the original text and its translation in order to determine whether and how they are equivalent, in collecting the aforementioned data, we selected those documents that have generic balance with their English translation. The reason is that we want to show creating functionally equivalent TT and similar legal effect in TL is not just subject to maintain generic integrity of the ST, but also using functional and conceptual equivalents for cultural terms are necessary and essential. Only in this way we can convey the communicative purpose of the source text and create similar legal effect in the target language. In order to fulfill the said purpose first of all it is better to become acquainted with the essential concepts and different types of divorce in civil code of Iran. In this way, we can see that although a divorce decree always is a final judgment in a suit for divorce both in Persian and English legal systems, how much its concepts are culture-specific and different from the same documents in Common Law.

4-1- Dissolution of Marriage in Civil Code of Iran (Badrian, 2001: 321-327)

Marriage may be dissolved by cancellation, divorce or waiver of the remaining period in the case of a temporary marriage (Article 1120). According to Article 1133, "A man can divorce his wife whenever he wishes to do so" (Provided that he pays all financial rights of his wife). Divorce is specially appointed for cases of permanent marriage. "A temporary wife is relieved from marriage by the expiry of the period of marriage or by waiver of the remaining period by her husband" (Article 1139). About various forms of divorce, as is

stipulated in Article 1143, there are two forms of divorce: Baen (Irrevocable) Divorce & Rojee (Revocable) Divorce

a. Baen (Irrevocable) Divorce: After an irrevocable divorce, the husband has not the right to renounce his intention of divorcing (Article 1144). Also according to Article 1145, "a divorce is irrevocable in the following instances:

1. A divorce performed before the occurrence of matrimonial relations ("Gheir-e-Madkhuleh" Divorce).
2. Divorce of a woman in her post-menstruation life. (Ya'eseh Divorce)
3. "Khulla" divorce, in which a wife achieves by giving consideration (Evaz or fedyeh) to her husband and "Mubarat" divorce which is a divorce upon mutual consent of the spouse, as long as the wife has not demanded the return of the consideration. (it should be mentioned both of these are considered by courts as a "Divorce by Consent").
4. A "Third Divorce, performed after three consecutive marriages of the same parties whether by mere renouncement by the husband of his desire to divorce the wife or by a new marriage between the two parties.

On the other hand in definition of "Khulla Divorce", Article 1146 of civil code states that a *Khulla divorce* occurs when the wife obtains a divorce owing to dislike of her husband, against property which she cedes to the husband. The property in question may consist of the original marriage portion or the monetary equivalent thereof, whether more or less than the marriage portion.

"Mubarat Divorce" occurs when the dislike is mutual in which case the compensation must not be more than the marriage portion (Article 1147).

b. "Rojee (Revocable) Divorce": As per Article 1148, the husband has the right to renounce divorce provided the period of "Edde" has not expired. Return to the wife after divorce can be effected by any word or deed which may convey the idea, provided that it is based on an intention to do so. (Article 1149).

One of the important concepts in divorce which is a cultural term is "Edde" (wife's period of waiting). This cultural term is defined in Article 1150 of civil code as "a period during which a woman whose matrimonial bound has been dissolved cannot marry. The period of "Edde" for a divorce or the dissolution of a marriage consists of three consecutive menstrual cycles of a woman concerned though of childbearing age has no monthly period in which case the period of "Edde" will be three months (Article 1151).

Under the subject of divorce, other cultural concepts are as follows:

- "Nafagheh" (marriage portion): According to Article 1107, is defined as cost of maintenance including dwelling, clothing, food, furniture in proportion to the situation of the wife, on a reasonable basis, and provision of a servant if the wife is accustomed to have servants or if she needs one because of illness or defects or defects of limbs.

- "Ojratolmesl": A kind of remuneration that is considered in law to be paid by husband to his wife as a wage in lieu of performing the actions that she was not legally obliged to do and the amount of which will be determined by an expert.

Now that we became acquainted with some culture-specific concepts and different types of divorce, the main problems we encountered in data analysis are categorized in the next part.

4-2- Problems in Translation of legal Texts

Altay (2004:67) has classified the problems of translating legal texts into the following categories: 1- Differences in legal systems, 2- Differences in the language systems, e.g. word order, 3- Lack of an established terminology in the field of law, 4- Use of particular sentence structures, 5- Dated or archaic-sounding terms, 6- Use of common terms with uncommon meanings. In this study three categories were chosen to show the problems of translating Divorce Decrees from Persian to English and two categories were not considered because they refer to the problems at sentence level which is not the subject of our discussion. These problems are as follows:

1- Problems due to Differences 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 (*Fiqh*). Consequently, there are culture-specific terms which are not easily translated and which create remarkable difficulties for legal translators. Consider the following examples: “Se-Tohr”, “Tamkin”, “Edde” and “Olghe-ye-Zojiyat”.

2- 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 the same terms while the two terms carry different meanings. We can see

in research data that for two different Persian legal terms, one single English equivalent is considered. For example in translating Persian legal terms “Fedeyeh” and “Evaz” which do not convey the same meaning in the Persian legal system, translators have selected “Compensation” for both of them in divorce decrees. Below, the difference between these two terms is given:

- “Fedeyeh”: “The property that the wife grants to her husband in exchange for a compensation to him in Khula divorce” (Jafari Langeroodi, 2013: 495) and “Money demanded or given for the redemption of a captured person” (Roshdieh, 2011: 947)
- “Evaz”: “payment for loss or injury sustained, e.g. compensation for destruction or damaging property of another” (Jafari Langeroodi, 2013: 480) and “consideration or a price paid in money; money payment” (Roshdieh, 2011: 919)
- “Compensation”: “Remuneration and other benefits received in return for services rendered; Payment of damages or any other act that a court orders to be done by a person who has caused injury to another” (Garner, 2005: 301) or “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... (Martin and Law, 2003). So we can say that “compensation” is a partial- equivalent for the word “Fedeyeh”.

It can be deduced from these examples that the problem occurs when there is more

than one correspondence for a single legal term in one language or vice versa.

3- 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 meaning of such terms as accurate as possible. For instance, “Qaased” which generally means “a messenger, a courier” but as a legal term has a different meaning and it refers to a “person capable of forming an intention” (Samimi Kia, 2004:276). Article 1136 of the Iranian Civil Code makes the above definition more clear:

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: 325).

Also the word “Edde” which in ordinary language means “a number of Sth. or Sb.”, has a different meaning in law as: “a period during which a woman whose matrimonial bound has been dissolved cannot marry” (Badrian, 2001: 328) or “Period usually about 100 days, during which a divorced or widowed Muslim woman may not be married to another man” (Roshdieh, 2011: 890).

In this study after distinguishing the lexical problems, we will classify the functional and conceptual equivalents of culture-specific and legal terms in translation of divorce decrees, relying on Venuti's translation strategies, in order to see how legal concepts of ST is conveyed to the TT.

4-3- Legal Equivalent

Generally, in translation process, the nearest equivalent terms are used to give the lexis and terminology of two languages equal meaning and significance and also we try to achieve the similar legal effect based on legal interpretation of the source information. In this study, we have classified Persian legal terms and their English equivalents under three categories: Near Functional Equivalent; Partial Functional Equivalent and Conceptual Equivalent.

a) Near Functional Equivalent

As we have mentioned before, near functional equivalents are those terms that share identical characteristics in SL and TL. Regarding Persian Divorce Decrees, the following words have near-functional equivalents in English legal system:

Table 1- Near Functional Equivalents of Persian legal terms in English legal system

Persian Legal Term	English Near-Equivalent
Eslah-e-Zatolbain	Conciliation (A settlement of a dispute in an agreeable manner; Some jurisdictions, such as California, have Family Conciliation Courts to help resolve problems within the family; Garner, 2005: 1628)
Hezanat NOTE: in Persian it is said primarily of the custody of a child including its maintenance although in literature it may be used in its extended senses; English custody, however, means 1. The care and control of a thing or person for inspection, preservation, or security 2. The care, control, and maintenance of a child awarded by a court to one of the parents in a divorce or separation proceeding ; Roshdiye, 2011: 547)	Custody (In Family law. the care, control, and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision- making authority) and physical custody (care giving authority), and an award of custody usu. grants both rights. In a divorce or separation proceeding between the parents, the court usu. awards custody to one of them, unless both are found to be unfit, in which case the court may award custody to a third party, typically a relative; Garner, 2005: 412)
Hokm-e-Talagh	Divorce decree (A final judgment in a suit for divorce. A divorce decree dissolves the marriage and usu. resolve all matters concerning property and children. Generally, matters concerning children can be modified in a post-divorce action if there has been a substantial change in circumstances; Garner, 2005: 441)
Hokm-e-Ghiyabi	Judgment in default (A judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim; Garner, 2005: 449)
Hokm-e-Gheir-e-Ghat'ee-e-Talagh	Decree Nisi (A court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside; Garner, 2005: 441)
Dadkhast-e- Talagh	Petition for Divorce (A formal written request presented to a court or other official body , Garner, 2005: 1182; the word "petition" is variously used in English legal proceeding, as eg, a petition for divorce(JBS); Roshdiye, 2011: 662)
Geymumat (The office, duty, or authority of a guardian. Also the elation subsisting between guardian and ward, A legal arrangement under which one person (a guardian) has the legal right and duty to care for another (the ward) and his or her property ; Roshdiye, 2011: 1060)	Guardianship (The fiduciary relationship between a guardian and a ward or other incapacitated person, whereby the guardian assumes the power to make decisions about the ward's person or property Garner, 2005: 726)
Adam-e-Ahliyat	Incapacity (Lack of ability to have certain legal consequences attach to one's action ; Incompetency; Garner, 2005: 775)

In translation of divorce decrees under this study, the said equivalents were used without any explanation because these words have the same meanings in TL and it is a kind of "Cultural Substitution" or "Domestication" in Target Language.

b) Partial Functional Equivalent

The analysis of research data shows that each of following Persian legal terms has a corresponding English equivalent that is quite similar with the Persian one but some differences can be clarified in it.

Table 2- Partial Functional Equivalents of Persian legal terms in English legal system

<i>Persian Legal Term</i>	<i>English Partial-Equivalent</i>
Ojratolmesl (Rental value; remuneration; fair equivalent remuneration; Roshdiye, 2011: 61)	Quantum meruit (Lat.) (The reasonable value of services; At common law, a count in an assumpsit action to recover payment for services rendered to another person ; Garner , 2005: 1276)
Nafaghe (An allowance, court ordered or not , that husband pays to his wife whether estranged or not for maintenance and support; Roshdiye, 2011: 1479)	Alimony (A court- ordered allowance that one spouse pays to the other spouse for maintenance and support when they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced; Garner, 2005: 80)
Talagh-e-Tavafoghi (Divorce by mutual consent of the spouse ; Roshdiye, 2011: 871)	Uncontested Divorce / No-fault Divorce (A divorce in which the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable difference; Garner, 2005: 516)
Olghe-ye-Zojiyat (Chain of tie of marriage; bond of matrimony; Roshdiye, 2011: 909)	Bond of Matrimony NOTE: "Bond" is defined as "A obligation or a written promise to pay money or to do some act if certain circumstances occur or a certain time elapses; Garner, 2005: 187). So the above expression can be a partial equivalent for the Persian legal term.
Fedyeh (The property that the wife grants to her husband in exchange for a compensation to him in Khula divorce" ;Jafari Langeroodi, 2013: 495; and "Money demanded or given for the redemption of a captured person; Roshdieh, 2011: 947)	Compensation (Remuneration and other benefits received in return for services rendered; Payment of damages or any other act that a court orders to be done by a person who has caused injury to another ; Garner, 2005: 301)
Mahr / Mahriyye / Sedagh/ Kabin (A gift of money or property or service by a man to or for his bride that is either offered to her before or at the time of marriage is being solemnized or at any time demanded by his bride pursuant to marriage; Roshdiye, 2011: 1436)	Marriage Portion NOTE: In English the meaning of "Marriage Portion" is the same as "Dowry" and refers to the money, goods or property that a woman brings to her husband in marriage (Garner, 2005: 530) but in Persian it is vice versa and "Mahriyye" should be paid from husband to the wife. So it is not the exact equivalent but a partial one.

The professional translators' strategy in translating Persian legal terms with corresponding partial equivalent is to use the relevant partial-equivalent together with

a descriptive paragraph or footnote in which the substantial differences between these terms in two legal systems are clarified (as in table 2). It should be mentioned that this strategy is a kind of "Domestication", too.

C) Conceptual Equivalent

For the terms which are not found in the target language, the translation would be in the form of dynamic equivalence or a paraphrase to convey the intended meaning. According to part 3-2, even if a legal concept of SL doesn't exist in legal system of TL that concept can be replaced by metalinguistic devices through linguistic adjustment (i.e. the loanword together with a descriptive phrase or paraphrase). So in this way "Conceptual equivalents" or "non-functional equivalents" will be created (not

found) thorough "Foreignization" and we can make a similar legal effect in the target language. In table 3 there are some Persian legal terms in divorce decrees that do not exist in English legal system and the translators have explained them by paraphrasing with related or unrelated words in order to let the reader understand the exact application of the term in the relevant legal situation.

Table 3. Conceptual Equivalents of Persian legal terms in English legal system

Persian Legal Term	Conceptual Equivalent in English
Edde	Edde (woman's waiting period after divorce) (a period about 100 days during which a divorced or widowed Muslim woman may not be married to another man; Roshdiyyeh, 2005: 890)
Talagh-e-Baen	Baen Divorce (Irrevocable /Permanent divorce) which will not allow revocation by man unless by remarriage with the woman; Roshdiyyeh, 2005: 245)
Tohr-e-Gheir-e-Movaghe'e	Clean Period (between two menses during which sexual intercourse does not take place (Samimikia, 2004: 246)
Talagh-e-Khol'ee	Khula Divorce (Divorce at the instance of wife based on dislike of husband in exchange for a compensation to him that may be equal to , more or less than her marriage portion; Samimikia, 2004: 245)
Talagh-e-Mobarat	Mubarat Divorce (Divorce based on mutual dislike of the spouses in which the wife seeks the divorce in exchange for a compensation to the husband which does not exceed the value of her marriage portion; Samimikia, 2004: 245)
Talagh-e-Roj'ee	Roji Divorce (Voidable/revocable divorce) (Mutually Revocable divorce during the 100 days immediately following its execution; Roshdiyyeh, 2005: 871)
Tamkin	Tamkin (The canonically obligatory sexual resignation of woman to her husband; Roshdiyyeh, 2005: 246)

Thus we can see that foreignization is simply a metalinguistic operation whereby cultural transfer is affected. In this study, conceptual / semantic equivalence is not understood as the one-to-one correspondence between languages, but as a semantic relationship at the metalinguistic level. But simply, conceptual / semantic

equivalence is not *found*, but *created*. It results from a most common metalinguistic operation. It is now clear how a text produced by translation can convey the similar legal meaning in another language. So, concerning the actual relevance of legal culture to legal translation, we can conclude that cultural transfer as foreignization is

best exemplified in legal translation since the goal of legal translation is to reproduce a legal text in the target language which has the same meaning as the source text while also transferring the legal culture of the

source text into the target language text. The legal translator is bound to achieve semantic equivalence in cultural transfer foreignization. In this regard the process of legal translation is as follows:

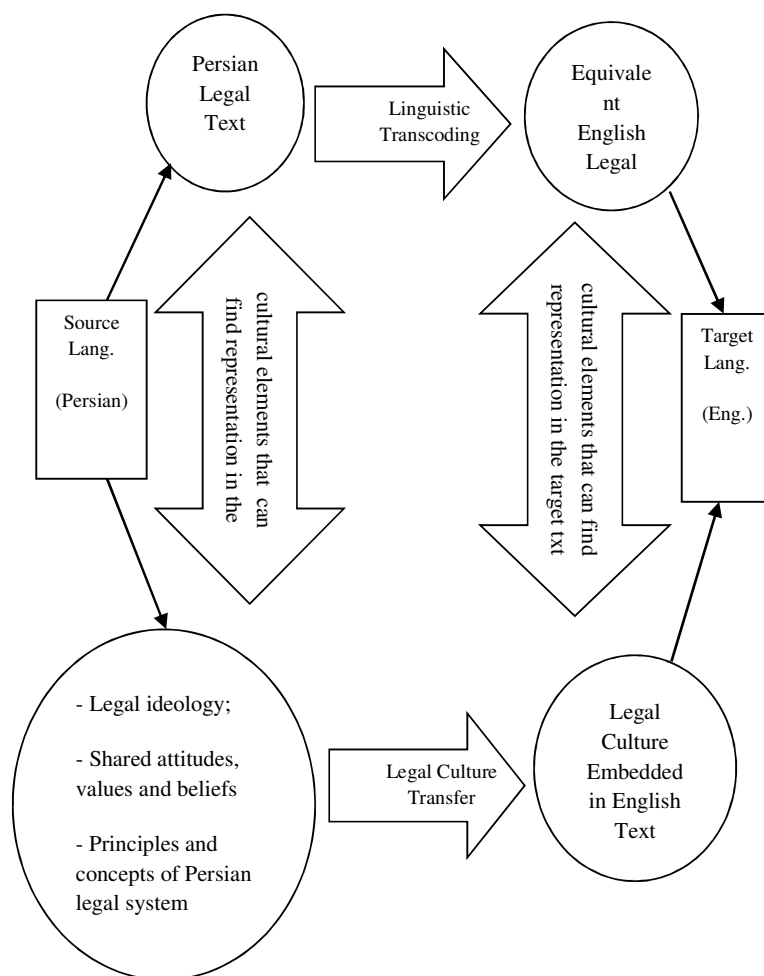


Figure 4: Process of legal translation

The first horizontal level depicts the process of linguistic transcoding where the legal translator represents the source legal text with the equivalent legal text in the target language. In other words, the two end products of legal texts should convey the similar legal meaning. The second horizontal level depicts the process of transferring legal culture. We note that, during the translation process, what should be maintained intact is the source legal culture. This point is emphasized in our previous discussion that cultural transfer as foreignization is the transfer of the source culture into the target language instead of naturalizing the source culture with the overwhelming conventions of the target culture. Obviously enough, what could be transferred are the variables that have the most direct and intimate bearing on the language of the source legal text since the process of foreignization is inseparably bound up with the process of achieving conceptual / semantic equivalence.

5. Conclusion

To produce a text that leads to the similar legal effect in practice, the legal translator must be able to understand not only what the words and sentences mean, but also what legal effect they are supposed to have, and how to achieve that legal effect in the target language. So, in this study we chose Persian Decrees of Divorce and their official English translations as the research data and we dealt with the translation of legal terms from Persian into English. We began our discussion by reflecting on the notion of cultural transfer in translation theory. Translation theorists expended much effort in developing theories centering on linguistic transcoding, especially on linguistic equivalence. The notion of cultural transfer, when employed

to characterize translation as a socio-cultural activity as opposed to a mere act of linguistic transcoding, can be understood in two diametrically opposite senses. On the one hand, it is taken to mean the mapping of cultural elements of the source text onto their equivalents in the culture of the target text. On the other hand, it is taken to mean the conveyance of the source culture into the target culture, which necessitates linguistic and conceptual adjustments of the translating language. Translation as cultural transfer requires that a choice be made between the two basic translation strategies, i.e. domestication and foreignization. The cultural concepts of the source language may be either domesticated in order to facilitate cross-cultural communication or foreignized by making both linguistic and conceptual adjustments of the target language. Translation as cultural transfer is no longer a matter of *finding* linguistic equivalents between languages, but rather an operation of *creating* conceptual / semantic equivalence on the metalinguistic level. Thus, foreignization is simply a metalinguistic operation for cultural transfer and making similar legal effect in target language.

References

- [1] Aghagolzadeh, F. and Farazandehpour, F. (2014). *The Analysis of Stylistic Features of Persian Legal Texts and Presenting Principles for the Development of Plain Legal Language in Iran*, Tehran: Nevisheh Publications
- [2] - Alcaraz, E. and B. Hughes. (2002). *Translation practices explained. Vol. 4: Legal translation explained*. Manchester: St. Jerome Publishing.
- [3] Altay, A. (2004). *Difficulties Encountered in the Translation of Legal*

- Texts. *Journal of Diplomatic Language*, 1(4), 1-10
- [4] Badrian, F. (2001). *Translation of Civil Code of Iran*. Tehran: Rahnama Publication.
- [5] Beaugrande, R. de and Dressler, W. (1981). *Introduction to text linguistics*, London: Longman.
- [6] Bhatia, Vijay K. 1997. Translating legal genres. In: A. Trosborg, ed. *Text Typology and Translation*, Amsterdam/Philadelphia: John Benjamin Publishing Company.
- [7] Cao, D., 2007. *Translating law* (Vol. 33). Multilingual Matters.
- [8] Cotterrell, R., 1997. *The concept of legal culture*. In D. Nelken (Ed.). *Comparing legal cultures*, Aldershot: Dartmouth.
- [9] Martin, E.A. and Law, J. 2003. *Dictionary of law*. Oxford: OUP
- [10] Friedman, L.M., 1975. *The legal system: A social science perspective*. Russell Sage Foundation.
- [11] Garner, B.A. 2005. *Black's law dictionary*, 8th Ed., U.S.A: Thomson West Publishing Co.
- [12] G  mar, J.C., 1995. Traduire le Langage du droit en contexte bilingue et bi juridique. Le Canada: un cas d'esp  ce. Schena, Leo (a cura di): *La Lingua del diritto. Difficolt   traduttive. Applicazioni didattiche. Atti del Primo Convegno Internazionale*, Milano, pp.5-6.
- [13] De Groot, G.R. and Hondius, E.H., 1998. Language and law. *Netherlands reports International Association for Comparative Law*, pp.21-32.
- [14] House, J., 2009. *Translation*. Oxford: Oxford University Press.
- [15] Jafari Langeroodi, M.T. 2013. *Legal terminology*, Tehran: Ganj Danesh.
- [16] Koller, W. (1979). *Einfuhrung in die Ubersetzungswissenschaft*, Hedelberg Wiesbaden: Kulle und Meyer.
- [17] Newmark, P. 1988. *A textbook of translation*. London: Longman.
- [18] Rafiee, M. T. 2004. *Dictionary of legal terms English – Persian*. Tehran: Majd Publications.
- [19] - Roshdiye, H. 2011. *A descriptive and comparative dictionary of law*, Vol. 1 & 2, Tehran: Nourbakhsh.
- [20] Sager, J.C., 1993. *Language engineering and translation: consequences of automation* (Vol. 1). John Benjamins Publishing.
- [21] Samimikia, M.A. 2004. *Persian-English law dictionary*, Tehran: Dashtestan.
- [22] Šarčević, S. 2000. *New approach to legal translation*. London: Kluwer Law International.
- [23] Šarčević, S., 1991. Bilingual and multilingual legal dictionaries: new standards for the future. *Meta: Journal des traducteurs Meta:/Translators' Journal*, 36(4), pp.615-626.
- [24] Shiravi, A. 2004. *Legal texts (I): Contract law*. Tehran: SMAT Publications.
- [25] Snell-Hornby, M. (1988). "Translation studies: An integrated approach." Amsterdam: J. Benjamins.
- [26] Tiersma, P. (2000). *The Nature of Legal Language*. Retrieved 18 August 2011 from <http://www.languageandlaw.org/NATURE.HTM>
- [27] Venuti, L. 2000. *The translation studies reader*. London: Routledge.
- [28] Venuti, L., 1998. Strategies of translation. *Encyclopedia of translation studies*, pp.240-244.
- [29] Wilss, W., 1982. *The science of translation: problems and methods*. T  bingen: G  nther Narr.

ارتقاء کیفیت ترجمه حقوقی از طریق انتقال فرهنگی

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ترجمه حقوقی، نوعی ترجمه برای هدف خاص است که ارتباطی بین زبانی در بافت قانون تلقی می شود و عناصر فرهنگ وابسته دیگری را نیز دربر می گیرد. از آنجا که زبان حقوقی کارکردی تجویزی و کنشی دارد، بنابراین آگاهی از هدف اصلی ترجمه متن حقوقی حائز اهمیت است. از سوی دیگر مترجمان حقوقی می بایست متونی را تولید کنند که در زبان مقصد تاثیر حقوقی مشابهی داشته باشد. بنابراین علاوه بر آشنایی با مفاهیم حقوقی و تاثیر آنها در نظام حقوقی مربوطه میبایست قادر به انتقال این مفاهیم و ایجاد تاثیر حقوقی مشابه در زبان مقصد باشند. تفاوت فراوان میان نظام و فرهنگ حقوقی ایران و انگلستان و بالطبع ناهمخوانی در اصطلاحات و مفاهیم حقوقی آن حاکی از وجود چالشهای متعددی در ترجمه حقوقی است. لذا در این مقاله می کوشیم تا با ارائه راهکاری ضمن انتقال فرهنگ حقوقی زبان مبداء (فارسی) به زبان مقصد (انگلیسی)، با اتکا بر روشهای ترجمه ونوتی (۱۹۹۸)، غرابت زدایی و آشنایی زدایی، بتوان تاثیر حقوقی مشابهی را در زبان مقصد ایجاد کرده و کیفیت ترجمه حقوقی را ارتقاء داد. به همین منظور در حوزه حقوق خصوصی تعداد ۲۰ طلاقنامه و ترجمه انگلیسی آن که علی رغم کاربرد فراوان در جامعه، تاکنون مورد بررسی قرار نگرفته به عنوان پیکره دادهها انتخاب شد. در نهایت تحلیل داده ها نشان داد که متون متعلق به دو نظام حقوقی متفاوت قابل ترجمه اند و همچنین می توان تاثیر حقوقی مشابهی را در زبان مقصد ایجاد کرد به شرط آنکه ضمن حفظ ژانر حقوقی متن مبداء، برای ترجمه مفاهیم حقوقی و فرهنگ وابسته به طریق غرابت زدایی از "معادل نقشی" و به طریق آشنایی زدایی از "معادل مفهومی" استفاده شود.

واژگان کلیدی: ترجمه حقوقی، معادل نقشی، معادل مفهومی، ذ طلاقنامه، فرهنگ حقوقی.

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