MAJOR CHALLENGES IN LEGAL TEXTS TRANSLATION

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Abstract

In a world of swift technological advances in all fields of research, translation studies has to constantly adapt to new methods of text translation. This article focuses mainly on empirical research concerning the translation of legal texts, and not only, by non-experts in the Target Language (TL) – in this case the English language - and by other translation engines, free translation services and other similar translation machines.

The starting point of this article was the analysis, through extensive reading and comparing, of various texts and articles, especially in the legal and economic fields, translated from Romanian (as source language - SL) into English (TL). The triggers for observing the major challenges in this type of translation were the negative results that the non-specialized translations had in the TL. The most important challenges include misunderstanding, misinterpretations, lack or poor of comprehension of the term equivalence, errors and misuse of specific terms or grammatical patters.

The biggest risk of these challenges is that of remaining unnoticed, not analyzed and not corrected or improved. That is why I believe this article can be in its turn a starting point for further research in this type of text translation.

Keywords: *Source language, target language, translation, legal texts, translation challenges.*

JEL Classification: K0

Introduction

The starting point of this article was the analysis, through extensive reading and comparing, of various texts and articles, especially in the legal and economic fields, translated from Romanian (as source language - SL) into English (TL). The triggers for observing the major challenges in this type of translation were the negative results that the non-specialized translations had in the TL. The most important challenges include misunderstanding, misinterpretations, lack or poor of comprehension of the term equivalence, errors and misuse of specific terms or grammatical patters.

Nevertheless, the approach of translation studies in this article focuses on an outline of the most important theories concerning this new field of study in the 20th century and also on a brief historical approach as outlined by the exponent figures in this field. One of these important figures in the field of translation studies is Susan Bassenett who in "Translation Studies" offers an overview of translation studies and according to her, translation studies represent a relatively new field which has received very little formal recognition (nor respect either) until fairly recently. She mentions in her book "Translation Studies" that "André Lefevere proposed that the name of *Translation Studies* should be adopted for the discipline that concerns itself with 'the problems raised by the production and description of translations'" (1). Her book offers an overview of translation studies and according to her, translation studies represent a relatively new field which has received very little formal recognition (nor respect either) until fairly recently. S. Bassnet is concerned primarily with developing a postcolonial understanding of translation, freed from notions of dependencies and hierarchy. She also discusses the role of translation in history and varying theories of what is important in a translation, and whether translatability is possible at all. Little attention is paid to adaptation, but the theories of translation discussed are fairly applicable. The concept of translation dates back to Roman and Greek times, but it has emerged as a new defined field of study only in the 20th century

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due to the extensive work of researchers. S. Bassnett reiterates that translation has been regarded as a "secondary activity, as a 'mechanical' rather than a 'creative' process" (2), and the translator as a "servant" (3).

Theoretical background

When drawing the schema which illustrates the organization of translation studies the question whether applied translation studies should be put under the category of empirical studies came up. Although Holmes focuses more on the descriptive and theoretical translation studies, applied translation studies are also empirical. The main difference between descriptive translations studies (DTS) and theoretical translation studies (ThTS) is that DTS tries to describe the phenomena whereas ThTS formulates principles and tries to formulate a theory how things are being done on a more abstract level. It was suggested to establish a hierarchy from descriptive to theoretical to applied translation studies. But Holmes would have objected to such a suggestion. Since TS is empirical, it cannot be prescriptive.

Source: http://santana.uni-muenster.de/Seminars/TranslationStudies/Protocols/protokoll0305.html
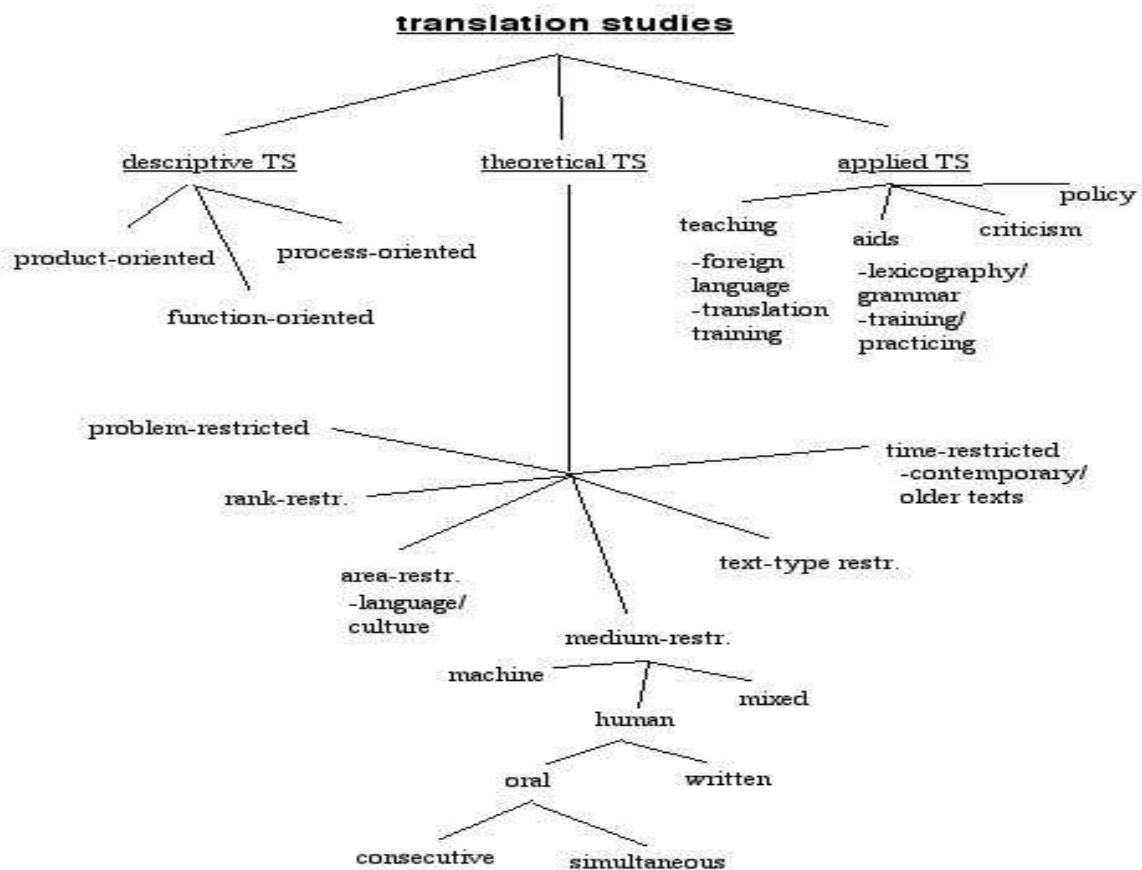
The sub-branches of descriptive translation studies refer to:

- product-oriented DTS: this sub-branch looks at translations, or, in other words, it compares texts and describes what happened in the translation. The product is the actual

translation. Thus, any text-centered approach is a product-oriented one. This can involve the description or analysis of a single ST–TT pair or a comparative analysis of several TTs of the same ST (into one or more TLs). These smaller-scale studies can build up into a larger body of translation analysis looking at a specific period, language or text/discourse type. Larger-scale studies can be either diachronic (following development over time) or synchronic (at a single point or period in time) and, as Holmes foresees, "one of the eventual goals of product-oriented DTS might possibly be a general history of translations – however ambitious such a goal might sound at this time" (qtd. in Venuti 177).

- function-oriented DTS: in this sub discipline the focus is on the context, the social and cultural situation of a translation. It is important to point out that it is not to be mixed up with discourse analysis which concentrates on one text only. The decisions concerning genre and language might determine a country's culture. Because some or most people have no access to a special type of literature (especially a type confined to specialists or native speakers of a language), people might regard their nation to be uncivilized. This area, which Holmes terms "socio-translation studies"–but which would nowadays probably be called cultural studies-oriented translation–was less researched at the time of Holmes's paper but is more popular in current work on translation studies.

- process-oriented DTS: this discipline asks what happens during the act of translating, in the so-called "black-box." In Holmes's framework this is concerned with the psychology of translation, it is concerned with trying to find out what happens in the mind of a translator. Methods to investigate this process are: taking different translators and comparing their texts afterwards or talking with the translators about the process and what they think and feel while translating ("thinking-aloud-protocol"). It is very difficult to analyze this approach empirically. That is why there are only few studies in this field, although it would be interesting to know more about the process of translating.

Before summarizing the sub-branches of theoretical translation studies, it is important to say that there is no general translation theory yet. Any general theory, however comprehensive it might be, would be very complex. In order to have such a theory one day, we have to use partial theories which are all until now restricted. Holmes named six partial theories:

- medium-restricted TTh: one can differentiate between human, machine and mixed translations. This division is needed as humans have a different knowledge from machines. Machine translations, however, also need human assistance; in so far as someone has to program the computer, for example human translations are subdivided into written and oral translations. The latter are more spontaneous and can be done either simultaneously (while hearing) or consecutively (after a short paragraph or a sentence).

- area-restricted TTh: these are restricted either to languages or the cultures involved. Holmes makes an important distinction between language and culture: different cultures might have the same language or the other way round. An example is Spain: people speak Catalan or Spanish but they share the same culture, whereas people from Spain and Mexico do not share the same culture but the same language. As the term "culture" is not clearly defined nowadays, we should be careful to avoid misunderstandings.

- rank-restricted TTh: here, texts or discourses are analyzed on the whole but on lower linguistic levels, for example on sentence or word level.

- text-type TTh: they investigate the translations of specific text types such as literary and scientific texts or poetry.

- time-restricted TTh: they concentrate on differences between contemporary and older translations.

- problem-restricted TTh: they deal with specific problems of translating, for example one phenomenon such as metaphors or the translation of names.

The sub-branches of applied translation studies mainly refer to:

- <u>teaching</u>: this discipline concentrates on foreign-language teaching, on translation as a method to test foreign-language acquisition and on translator training.

- <u>translation aids</u>: this area concerns lexicographical and terminological aids, as well as grammars.

- <u>translation policy</u>: we can mention the close relation to the function-oriented approach, in so far as it deals with socio-cultural aspects.

- <u>translation criticism</u>: it is the aim of this branch to compare different translations and make statements about their value.

The term <u>time-restricted</u> is self-explanatory, referring to theories and translations limited according to specific time frames and periods. The history of translation falls into this category. <u>Problem-restricted theories</u> can refer to specific problems such as equivalence – a key issue of the 1960s and 1970s – or to a wider question of whether universals of translated language exist. Despite this categorization, Holmes himself is at pains to point out that several different restrictions can apply at any one time. Holmes seems to be skeptical about the benefit of translation to foreign language teaching. Tt can be mentioned that translating texts is a good method to learn vocabulary and especially differing structures in the foreign language. People also complained that they did not learn useful strategies how to translate. It seems to be a danger that students, especially younger ones, stick too closely to their native tongue, so that the target text becomes unnatural. In contrast to this problem, free translations are in danger to be criticized by teachers. Generally, the act of translating texts in class has become less and less frequent.

The "applied" branch of Holmes's framework concerns: the <u>translator training</u> (teaching methods, testing techniques, curriculum, design); the <u>translation aids</u> (such as dictionaries, grammars and information, technology); <u>translation criticism</u> (the evaluation of translations, including the marking of student translations and the reviews of published translations). Another area Holmes mentions is <u>translation policy,</u> where he sees the translation scholar advising on the place of translation in society, including what place, if any, it should occupy in the language teaching and learning curriculum. The crucial role played by Holmes's paper is the delineation of the potential of translation studies.

S. Bassnett refers to the importance of translation in different cultures and to the fact that is has played a tremendously important role "in the formation of literary systems and the history of ideas" (xii). The important figures who helped develop this notion were the members of the Tel Aviv group – Itamar Evan-Zohar and Gideon Toury – and they pointed out in the 1970s that the "process of absorption of a translated text into a given culture at a given moment in time" can be thoroughly investigated (xii). This emphasizes the idea that translation studies focus on the transfer of texts from one culture into another and that attention is shifted onto the cultural background of the text instead of on the source text. At this point S. Bassnett mentions that "[l]ikewise the translator, who takes a text and transposes it into another culture, needs to consider carefully the ideological implications of that transposition" (xv). In this context translation has also been seen as manipulation, or "one of the processes of literary manipulation," since the translated texts are actually rewritten in "a very clearly inscribed cultural and historical context" (xvii). André Lefevere has pioneered a lot of work in this field of research that focuses on the "intercultural transfer in its linguistic, historical and socio-political aspects" (xvi). As an important exponent of this school of thought (which focuses on "the transmission of texts across literatures"), André Lefevere coined the term "refraction" in order to replace the old term "influence." S. Bassnet further explains that

A reflection involves a mirroring, a copy of an original; a refraction involves changes of perception, and this is an image that is useful to describe what happens when a text crosses from one culture to another. Moreover, refraction theory necessarily involves a consideration of literary evolution and thus places translation in a time continuum, rather than being an activity that happens in a vacuum. (Bassnett xvii)

The importance of the translator is fundamental and S. Bassnett says that the translator "must be concerned with the particular use of *spirit* [or any other word] in the sentence itself, in the sentence in its structural relation to other sentences, and in the overall textual and cultural contexts of the sentence" (20-1). S. Bassnett very well outlined the tasks of a translator when dealing with the problem of what to use in English:

(1) Accept the untranslability of the SL phrase in the TL on the linguistic level.
(2) Accept the lack of a similar cultural convention in the TL.
(3) Consider the range of the TL phrases available, having regard to the presentation of class, status, age, sex of the speaker, his relationship to the listeners and the context of their meeting in the SL.
(4) Consider the significance of the phrase in its particular context – i.e. as a moment of high tension in the dramatic text.
(5) Replace in the TL the invariant core of the SL phrase in its two referential systems (the particular system of the text and the system of culture out of which the text has sprung). (Bassnett 22)

The image of the translator seeks to impose power relations through textual production and access. Postcolonial translation study encourages an equal relationship between the author and translator, greatly elevating the translator as a respected contributor to a text (4). Translation may be seen as a transaction between texts and cultures. This is between space; carrying the burden of meaning of a culture. A set of studies called "polysystems theory" developed by Itamar Even-Zohar and Gideon Toury shifted to a process/system oriented understanding of texts and culture. Translation is not only a communication, but a continuation of a text through time (6). Sherry Simon claims that language does not merely mirror reality, but shapes it; and translation aids in that shaping. Translation studies must challenge ideas of what happens when a text is moved between languages (10).

Translation studies begins to differ in its interpretations as a product vs. a process. The classic feudal metaphor (of the SL) is consistent with colonialism. "There are two positions, one establishing a hierarchical relationship in which the SL author acts as a feudal overlord exacting fealty from the translator, the other establishing a hierarchical relationship in which the translator is absolved of all responsibility of the SL text are both quite consistent with the growth of colonial imperialism in the nineteenth century" (13). Bassnett discusses J.C. Catford's 1965 study on untranslatability. He distinguishes translation and transference. Translation consists of substitution of SL meanings for TL meanings, where in transference, SL meanings are implanted into the TL text. This is a distinctly semiotic take on the situation. The categories of translation studies include the history of translation; translation in TL culture; translation and linguistics; translation and poetics. Translation has the burden of *evaluation* carried with it. Value judgments are implicit in the desire to translate. "For if a translator perceives his or her role as partly that of 'improving' either the SL text or existing translations, and that is indeed often the reason why we undertake translations, an implicit value judgment underlies this position" (18). Bassnett overviews some theorists, among which Sapir, Lotman, Whorf, Jakobson, Nida, Sassure, etc. and their major contributions to the study of translation. Translatability is deeply connected to human experience.

The greatest problem when translating a text from a period remote in time is not only that the poet and his contemporaries are dead, but *the significance of the poem in its context* is dead too. Sometimes, as with the pastoral, for example, the genre is dead and no amount of fidelity to the original form, shape or tone will help the rebirth of a new line of communication, to use Maria Corti's terms, *unless the TL system is taken into account equally*. With the classics, this first means overcoming the problem of translating along a vertical axis, where the SL text is seen as being of a higher status than the TL text. (Bassnett 85-86)

Translation may be used as a device to scaffold new moral/value/cultural systems onto an existing source text. This may be especially interesting when a source text is known and the product is viewed in this context. Such translations may be fairly subversive or revelatory about the nature of such texts (110). In translating prose, Bassnett emphasizes an importance on looking at prose as being part of a larger system of text, whereas naive translators may attempt to plod along linearly. To combat this, Bassnett urges us to think of portions of prose as units. This sounds very reminiscent of unit operations. These originate from Hillaire Belloc, who describes units as means of blocking out translations (117). One of the closing discussions concerns dramatic translations, which are especially interesting due to their cultural, physical, and spectacular nature. Bassnett suggests that it is assumable that there exists a structure of performability that is physical and independent of language (123).

J. Munday very well sketched the most important developments in the field of translation studies since the 1970s. Once again Holmes's map had a huge impact on these developments. Contrastive analysis has fallen by the wayside. The linguistic-oriented "science" of translation has continued strongly in Germany, but the concept of equivalence associated with it has declined. Germany has seen the rise of theories centered around text types and text purpose; while the influence of Halliday concerning discourse analysis and systemic functional grammar, which views language as a communicative act in a socio-cultural context, has been prominent over the past decades, especially in Australia and the UK, and has been applied to translation in a series of works by scholars such as Bell (1991), Baker (1992) and Hatim and Mason (1990, 1997) (Munday 13).

The late 1970s and the 1980s also saw the rise of a descriptive approach that had its origins in comparative literature and Russian Formalism. A pioneering centre has been Tel Aviv, where Itamar Even-Zohar and Gideon Toury have pursued the idea of the literary polysystem in which, amongst other things, different literatures and genres, including translated and non-translated works, compete for dominance. The polysystemists have worked with a Belgium-based group including José Lambert and the late André Lefevere, and with the UK-based scholars Susan Bassnett and Theo Hermans. In this context a very important volume was the collection of essays edited by Hermans, The Manipulation of Literature: Studies in Literary Translation (1985), which gave rise to the name of the "Manipulation School," also briefly discussed by S. Bassnett. This dynamic, culturally oriented approach constituted the basis for much of the following decade, and linguistics looked very serious.

The 1990s saw the integration of new schools and concepts, with Canadian-based translation and gender research led by Sherry Simon, the Brazilian cannibalist school promoted by Else Vieira, postcolonial translation theory, with the prominent figures of the Bengali scholars Tejaswini Niranjana and Gayatri Spivak and, in the USA, the cultural-studies-oriented analysis of Lawrence Venuti, who champions the cause of the translator (Munday 14). Important developments were also discussed by Douglas Robinson in his book, What is Translation? Centrifugal Theories, Critical Interventions (1997), focusing on

new approaches of problems raised by translations (starting from Lawrence Venuti's research), such as "foreignizing translation" and "abusive fidelity." Although dating back as far as Roman times, D. Robinson refers to "foreignizing translation" as "one in which translators refuse to conform to the dominant poetics by developing affiliations with strategies employed within marginalized literary movements" (Douglas xiv). He "adopts such 'foreignizing' strategies as maintaining foreign word order and translating idioms in a word-for-word fashion rather than searching for the English equivalent" (xvi), a fact which he eventually proved as working very well. "Abusive fidelity," as described by Venuti, refers to "importing new literary devices and techniques" (xiv), but opposed to the conservative and traditional translation (which can thus be considered "weak"), "abusive fidelity" translation is "innovative and strong" (xv).

For years, the practice of translation was considered to be derivative and secondary, an attitude that inevitably devalued any academic study of the activity. Now, after much neglect and repression, translation studies have become a well established field of study. Translation and translation studies often continue to take place within the context of modern language departments, and the practice of translation is still often denied parity with other academic research. It was precisely this split between theory and practice that Holmes, himself both a literary translator and a researcher, sought to overcome.

The task of translating any text is a very difficult one. The translation process involves multidisciplinary fields and extensive knowledge both in the terms of source language and target language, as well as in the particular field to which the translated text belongs. In the case of translating legal texts the problems and difficulties are more obvious since without in-depth study of this field there may occur errors at multiple levels: text equivalence, grammar errors – especially in computer-assisted translations(CAT), poor understanding of the differences in the legal systems of different countries or states (which can lead to major difficulties in finding not only similar terms but also similar concepts), the lack of correctly understanding and rendering such key concepts can lead to bad translations or mistranslations which can greatly affect the reception of a ST by the TT readers. Avoiding such cases should be one of the main aims of CAT users and translators who wish to have a reliable translation.

Conclusions

The field of translation studies nowadays involves the multi- or interdisciplinary approach of translation studies, mainly based on the cultural background and context, the intercultural transfer, linguistic, social and political aspects involved in the translation process, activity, acquisition and reception of a translated text.

In a world of swift technological advances in all fields of research, translation studies has to constantly adapt to new methods of text translation.

Some of the strategies that translators can use when dealing with legal texts can be borrowing original terms, naturalizing some specific terms into the TL, use of language calques or use of descriptive translation, which refers to explanations and/or explanatory circumlocutions or footnotes. Yet, such techniques are only available to human translators and the exclusive use of computer-assisted translations leads to huge mistakes and misunderstandings that can go unnoticed.

The analysis of various texts and articles, especially in the legal and economic fields, translated from Romanian (as source language - SL) into English (TL) triggered the observation that the major challenges in this type of translation were the negative results that the non-specialized translations had in the TL. The most important challenges included misunderstanding, misinterpretations, lack or poor of comprehension of the term equivalence, errors and misuse of specific terms or grammatical patters.

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