Toward a Clarification of the Concept of Cultural Transfer in Legal Translation

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It is widely held in translation studies that translating a text is not merely translating its language but also translating the culture embodied in the text and giving the text meaning. When translating the law from English into Chinese in the run-up to 1997 when Hong Kong was to return to Chinese rule, law translators were confronted with the problem of transferring the culture-specific common law into Chinese language. To transfer the legal culture of the law necessitates a clear understanding of the concept of cultural transfer in translation in the first place. This paper examines the antithesis of cultural transfer vs linguistic transcoding in translation theory and in particular, analyzes Snell-Hornby's view on cultural transfer and Catfords' view on transcoding. It focuses on the clarification of the concept of cultural transfer in translation/legal translation.

Keywords: cultural transfer, translation, law, foreignization

1   Introduction

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. The translation of legal texts has increasingly been regarded as a

communicative act, no longer a mere operation on the technical linguistic elements to achieve verbal and grammatical parallelism as well as equivalence in legal meaning. Moreover, the translator is no longer considered a passive mediator but rather an intercultural operator, whose choices are increasingly recipient-oriented and based not only on strictly linguistic criteria but also on extra-linguistic considerations—first and foremost the function of the translated text in the target culture.

2 Translation Theory: From Interlingual Translation to Intercultural Translation

Traditionally regarded as a sub-field of linguistics, translation was for a long time treated as an important means of interlingual communication. As Jakobson (1959) put it, "translation proper" was the transposition of a text from one language to another; "interlingual translation" as he called it, "involves two equivalent messages in two different codes". However, he conceded that there was no full equivalence between code units (1959, p. 233). Jakobson's view was shared by theorists like Catford and Nida who emphasized transference of meaning across languages and the resultant linguistic equivalence. Fidelity to the original text was considered the most important principle governing translation and the search for best equivalence became its primary goal. Translation studies in this period stressed the textual elements; Catford, for instance, emphasized the correspondence of lexicon and grammar (1965). Nida and Taber classified "formal correspondence" and "dynamic equivalence as two major types of equivalence. "Formal correspondence" is concerned with the message itself and "dynamic equivalence" with the effect (1964, 1982). They acknowledged that there were not always formal equivalents between language pairs. Focusing on the language function and relating linguistic features to the context of both the source and target text, House (1977) set out his notions of semantic equivalence and pragmatic equivalence and proposed that the function of a text be determined by the

situational elements of the source text. A more elaborate discussion of the notion of equivalence can be found in Baker (1992), who examined the notion of equivalence at four different levels in relation to the translation process, i.e. the word level, the grammatical level, the textual level, and the pragmatic level. Taken together, these levels encompass all aspects of translation process.

While characterizing translation as an interlingual rather than a socio-cultural activity, scholars such as Catford and Nida did not lose sight of the role that cultural elements play in the process of translating. Catford drew a distinction between "cultural untranslatability" and "linguistic untranslatability" (1964, pp. 101-03). Nida examined cultural problems in translating (1981). Newmark (1988) in particular examined untranslatable culturally specific items and put them into different categories (p. 95). However, he rejected the "principle of equivalence" underlying Nida's theory of dynamic equivalence and suggested two approaches to translation, namely, communicative translation, which aims to produce on the target reader effects similar to those on the source reader, and semantic translation, which aims to render "as closely as possible the semantic and syntactic structures of the second language" (1988, pp. 39-41). The former gives priority to the response of the target language reader while the latter foregrounds the meaning of the original. The appropriateness of these two methods depends on the text-type and the purpose of the translation.

The cultural dimension is central to both the polysystem theory of Zohar (1990) and Toury's (1980) descriptive approach. The polysystem theory treats any semiotic (poly)system (such as language or literature) as a component of a larger (poly)system or culture. Translated literature is therefore a system operating as a part of larger social, cultural and historical systems of the target culture. The correlations between literature and other cultural systems, for instance language, society or ideology, could be seen as a functional relationship within a cultural whole. By employing the notion of norm in his treatment of translation

criticism, Toury (1980) pointed us in a new direction for translation studies. As he sees it, translation criticism consists in the study of metatexts produced in a given receiving culture under certain discernible socio-cultural constraints. Translation criticism therefore performs the task of reconstructing such constraints as are operative in a particular translation. It sets out to identify constraints of translation behaviour, describe the decision-making process the translator has gone through, and formulate hypotheses capable of being tested by further studies. Toury's idea can be said to have inspired the "cultural turn" in translation studies in the 1990s.

It was around this time, too, that translation theory began to undergo a rather radical transformation. Translation was increasingly seen as involving a conscious act of manipulation that moved the author toward the reader and made texts as palatable in the target language and culture as they were in the source language and culture. The ideals of equivalence and faithfulness were now being seriously questioned. The cultural turn in translation studies shifted away from purely linguistic analysis, redefining translation as intercultural communication and focusing on the socio-cultural and ideological dimensions of translating. For Lefevere (1992), translation was essentially rewriting and manipulation. He remarked:

> On every level of the translation process, it can be shown that if linguistic considerations enter into conflict with considerations of an ideological and /or poetological nature, the latter tend to win out. (p. 9)

Another cultural theorist, Venuti (1995), who drew a distinction between domestication and foreignization, also insisted that translation must take into account the value-driven nature of the socio-cultural framework within which it is carried out. Culture and cultural elements are no longer seen as impediments to successful linguistic transfer. Rather, culture is an encompassing framework within which effective translation operates. The cultural turn widens the scope of translation by

revealing that the translator not only works with the language pair in question, i.e., the source text and the target text, but also with the two cultures, i.e., the source culture and the target culture. Translation is now considered a purposive activity. The outcome or product of translation is understood in a wider context and the factors affecting the translator's decision making process are given special emphasis.

3 The Emergence of Cultural Transfer in Translation Theory

The characterization of translation as cultural transfer is an outcome of the trend mentioned in previous section. According to Vermeer's (1996) skopos theory, translation is a cross-cultural transfer, a form of human interaction determined by its purpose or "skopos". Following Vermeer, Snell-Hornby (1988) denounced linguistic transfer as inadequate, contending that translation should instead be seen as a cross-cultural event. Translation as cultural transfer has become a dominant view resulting from the "cultural turn" in translation theory, and a "shift of emphasis" from "formalist phase" to "broader issues of context, history and convention" (Bassnett, 1998, p. 123). Hatim (2001) also labelled this "influential trend in recent translation studies" as "the cultural model", an approach contrary to the linguistic model which dominated early translation studies in the last century (p. 44). Snell-Hornby (2006) described the "cultural turn of the1980s" as the trend driven by the theoretical impetus from various sources such as descriptive translation studies, skopos theory and deconstructionism (p. 47).

Snell-Hornby (1988) first employed the term "cross-cultural transfer" in subscribing to Vermeer's view that translation was not the trans-coding of words or sentences between languages, but a "cross-cultural transfer" (p. 46). She argued that in traditional linguistic oriented theory "the text was then seen as a linear sequence of units, and translation was merely a trans-coding process involving the substitution of a sequence of

equivalent units" and that the equivalence-centred studies carried out by Jacobson, Nida and Catford were crippled by the very concept of equivalence (pp. 16-19). She contended that the pursuit of equivalence was an incurable illusion based on the false presumption of absolute symmetry between languages, and was thus a distortion of the fundamental problems in translation. Her denunciation of equivalence was best represented by the following remarks:

> In this study the view is also taken that equivalence is unsuitable as a basic concept in translation theory: the term *equivalence* (the author's italics), apart from being imprecise and ill-defined (even after a heated debate of over twenty years) presents an illusion of symmetry between languages which hardly exists beyond the level of vague approximations and which distorts the basic problems of translation. (1988, p. 22)

In explaining the nature of translation, she noted that "language is not seen as an isolated phenomenon suspended in a vacuum but as an integral part of culture" (p. 39). Apart from the definition given by Goodenough and Gohring, Snell-Hornby also subscribed to Vermeer's concept of culture in translation. She remarked:

> This new definition correlates with the concept of culture now prevalent in translation theory, particularly in the writings of Vermeer … and is the one adopted in this study … the concept of culture as a totality of knowledge, proficiency and perception is fundamental in our approach to translation. If language is an integral part of culture, the translator needs not only proficiency in two languages, he must also be at home in two cultures. In other words, he must be bilingual and bicultural (cf. Vermeer 1986). (1988, pp. 40, 42)

According to Snell-Hornby, Vermeer was among the first to argue that the linguistic approach was far from adequate for

understanding the nature of translation and that translation was first and foremost a cross-cultural transfer. In this regard, Vermeer remarked:

> Translation is not the trans-coding of words or sentences from one language to another, but a complex form of action, whereby someone provides information on a text (source language material) in a new situation and under changed functional, cultural and linguistic conditions, preserving formal aspects as closely as possible. (Snell-Hornby, 1990, p. 82)

Rather than giving emphasis to the equivalence of linguistic units such as words or sentences, Vermeer began to view translation as a complicated action in a broader socio-cultural context. In his skopos theory, translation is a form of human interaction determined by its "skopos" or purpose. Following in the footsteps of Vermeer, Snell-Hornby took a cultural approach, abandoning linguistic equivalence as the goal of translation. 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" (p. 42). 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.

The notion of cultural transfer has been given different and even conflicting interpretations in the literature and the range of empirical facts judged to be relevant to the study of cultural transfer varies from theory to theory. In addition, any study of translation must deal with the language pair in question, and translation is always a verbal representation of the source text.

4   Clarification of the Notion of Cultural Transfer

4.1 Cultural Transfer vs Transcoding

Despite years of debate, translation scholars are still wrestling over whether a translation should be literal or free. In traditional theory, literal translation has been characterized as a word-for-word transmission of a text from one language into another. The adequacy of translation has traditionally been judged on the basis of the degree of lexical and grammatical correspondence between the source and target languages. Such correspondence is often defined in terms of equivalence. Thus fidelity to the original text is considered the most important principle of translation and the main task of the translator is to find the best equivalence. On the other hand, free translation has been characterized as a sense-for-sense transmission not constrained by the lexicon or grammar, thus giving the translator absolute freedom as to how to render the source text in the target language. Challenging the rigid dichotomy of word and sense, Snell-Hornby (1988) contended that it was rooted in the "illusion of equivalence" (p. 13), and, as we have already noted, advocated the notion of cultural transfer as a complete break with the traditional theory. She pointed out that this new orientation had in fact already been put forward by several German scholars in the 1980s. She said:

> What is dominant in the three new basic approaches recently presented in Germany … is the orientation towards cultural rather than linguistic transfer; secondly, they view translation, not as a process of transcoding, but as an act of communication; thirdly, they are all oriented towards the function of the target text (prospective translation) rather than prescriptions of the source text (retrospective translation); fourthly, they view the text as an integral part of the world and not as an isolated specimen of language. These basic similarities are so striking that it is not exaggerated to talk of a new orientation in translation theory. (pp. 43-44)

Adopting Vermeer's view that translation is a "cross-cultural event", Snell-Hornby argued that translation was not simply as "a matter of language" but a "cross-cultural transfer"

(p. 46). As has been noted, Vermeer (1996), in his endeavour to establish skopos theory, held that translation was not the trans-coding of words or sentences from one language to another, but a complex form of action. Skopos theory is basically a functional theory and "its concern is the potential functionality of a target-text (translation/translatum) under target-culture ('recipients') conditions" (1996, p. 31). Vermeer emphasized that the target culture constrained the choices available to the translator, urging her to pay special heed to the convention of the target culture and the expectations of the target reader which in turn pre-determine the function of the translation. In refuting the concept of equivalence, he contended:

> It is not the source-text equivalence (or, more loosely, correspondence) requirement which guides the translation procedure but the skopos, e.g. to show target-text recipients how a source-text is/was structured". (1996, p. 51)

One of the main factors in the skopos of a communicative activity is "the (intended) receiver or addressee with their specific communicative needs" (1996, p. 46). He claimed that skopos theory applied to all translations and the function of the translation in the target text could differ from that of the source text. The same text could therefore be translated in different ways depending on its function and the translator's main task was to produce a new text that satisfies the cultural expectations of target receivers.

As Vermeer's and Snell-Hornby's proposed new orientation was intended as a revolt against the prevailing linguistic approach, we now need to look back at the major tenets of this earlier turn.

Catford is generally acknowledged to be the founder of the linguistic school in translation theory. In defining translation as "the replacement of textual material in one language (SL) by equivalent textual material in another language (TL)" (1965, p. 20), Catford presupposed the existence of linguistic equivalence

between SL and TL. For him, textual material was not "the entirety of a SL text", but mainly the "grammar and lexis" (p. 20). He further made a linguistic break-down of SL and TL into what he called "extent", "levels" and "ranks", employing equivalence as a key concept throughout (p. 21). He said:

> The central problem of translation practice is that of finding TL translation equivalents. A central task of translation theory is that of defining the nature and conditions of translation equivalence. (p. 21)

Thus, in Catford's view, the central problem and task of translation centre around the concept of equivalence. He further distinguished between "textual equivalence'" and "formal correspondence", two basic translation equivalences in his theory (p. 27). Equivalent units in the TL vary in size from the entire text to any portion of the text, having a wider scope than formal correspondence. In his view, textual equivalence is represented by the occurrence of a TL textual equivalent for a specific SL item, allowing equivalence-probabilities to be established between the two (p. 30).

Thus for Catford, establishing equivalence-probabilities is an ideal goal of translation, as these allow translation to be carried out in a manner similar to mathematics.

On the other hand, formal correspondence, as Catford pointed out, is best exemplified by translation between two languages both of which operate with "grammatical units at (all) five ranks" (for example, English and French). While formal correspondence is harder to achieve as it requires the nearest match between TL and SL grammatical categories and can only be fulfilled through textual equivalence, Catford maintained that the former is still "an essential basis for the discussion of problems which are important to translation theory and necessary for its application" in translation practice (pp. 32-33). Observing that there are always "some departures from the formal correspondence", what he called "shifts", he conceded that formal correspondence can only be approximate in nature. He

further distinguished between two major types of "shifts": level shifts and category shifts. In general terms, they are linguistic units in SL which have TL equivalents belonging to a different linguistic level or category (1965, p. 73). Thus Catford was well aware that "translation equivalence does not entirely match formal correspondence." That is why he resorted to textual equivalence (p. 82). He was also aware that even textual equivalence is not always achievable because of two kinds of untranslatability, linguistic and cultural. Linguistic untranslatability occurs when there is no lexical or syntactical substitute in the TL for an SL item, whereas cultural untranslatability is due to the absence in the TL culture of a relevant situational feature for the SL text.

We are now in a better position to assess Snell-Hornby's critique of Catford's linguistic theory of translation. Her main criticism centres around the foundation of his linguistic approach, which seems to her shaky.

> Catford bases his approach on isolated and even absurdly simplistic sentences of the type propagated in theory of transformational grammar as well as on isolated words; from such examples he drives "translation rules" which fall far short of the complex problems presented by real-life translation. (1988, p. 20)

Anyone who has read Catford carefully can see that this criticism is totally unfounded. According to Catford, translation textual equivalents are discovered by two methods, namely, by consulting the linguistic intuition of competent bilingual informants or translators, or through a formal procedure of commutation and observation of concomitant variation, the latter being "the ultimate test" (1965, pp. 27-28). But Snell-Hornby completely, and *conveniently*, ignores the second method, directing her attack solely on the first:

> Anyone with experience in translation knows all too well, the opinions of the most competent translators can diverge considerably, and the … [first method] is—for a

rigorously scientific discipline—hopelessly inadequate. (1988, p.20)

This criticism fails to do justice to Catford. He made it very clear that consulting the linguistic intuition of competent bilingual informants or translators works only for simple cases, but that for complicated cases, the formal procedure may be used (p. 28). To illustrate this point, let us adapt Catford's examples. Suppose we have the following sentence pair:

1a. 我的兒子六歲.

1b. My son is six.

If we change "兒子" of 1a to "女兒" to obtain

1c. My daughter is six.

then the changed portion of 1b, namely "daughter", can be taken to be the equivalent of the changed portion of 1a, namely "女兒", i.e., "daughter" = "女兒". The method applies not only to lexical words, but also to structural words. Consider the following sentence pair:

2a. 地上有黃金.

2b. There is gold on the ground.

If we change "上" in 2a to "下" to obtain

2c. There is gold under the ground.

likewise, the changed portion of 2b, namely "under", can be taken as the equivalent of the changed portion of 2a, namely "下", i.e., "under" = "下".

Of course, the procedure is not always so straightforward. Finding a translation equivalent may involve the very complicated procedure of comparing a great number of sentence pairs. However complicated, it can nonetheless be carried out rigorously and each of its finding subjected to very strict tests.

What is most noteworthy about Catford's second method is that it is an empirical and probabilistic one. Translation equivalence is "an empirical phenomenon, discovered by comparing SL and TL texts" (p. 27). Well aware of the fact that equivalence between an SL item and a TL item is not always a one-to-one correspondence, Catford assigned a probability value

to each equivalent pair, ranging from 0 (zero equivalent) to 1 (one-to-one). The following is Catford's own example:

> [I]n a French short story of about 12,000 words the preposition *dans* occurs 134 times. The textual equivalent of this in an English translation is *in* in 98 occurrences, *into* in 26, *from* in 2, and *about* and *inside* in one occurrence each; there are six occurrences of *dans* where the equivalent is either nil, or not an English preposition. … In terms of probabilities we can state the translation equivalences as follows: *dans* = *in* .73, *dans* = into .19, *dans* = *from* .015, *dans* = *about/inside* .0075. This means that if you select any occurrence of *dans* at random in this text, the probability that its translation equivalent on that occasion is *in* is .73, the probability that it is *into* is .19, etc. (1965, p. 30)

Catford further distinguished between two types of probability value, namely, unconditioned probabilities and conditioned probabilities, the latter being values affected by contextual and co-textual factors (pp. 31-32). He went on to make the following remark:

> Provided the sample is big enough, translation-equivalence-probabilities may be generalized to form 'translation rules' applicable to other texts, and perhaps to the 'language as a whole'—or, more strictly, to all texts within the same *variety* of the language. (p. 31)

Thus, nothing is further from the truth than accusing Catford of deriving translation rules from "absurdly simplistic sentences", as alleged by Snell-Hornby. Quite on the contrary, for Catford, they are derived from a *big enough* sample— a big enough corpus in contemporary linguistic terminology. More crucially, his approach is in all important respects the same as the corpus-based approach in translation studies today, which aims to extract translation rules from a huge parallel corpus of

translated texts. Catford can thus properly be said to be the pioneer of the corpus-based approach in translation studies.

Three further points must be made about Catford's linguistic approach, particularly since it has been so unfairly and widely criticized, even to the extent of making it something of a dead horse in translation studies today.

First, Catford's linguistic approach is by no means built on the "illusion of equivalence". For he expressly states that "the SL and TL items rarely have 'the same meaning' in the linguistic sense" (p. 49), "since every language is formally *sui generis* and formal correspondence is, at best, a rough approximation" (p. 36). Translation equivalence is therefore not based on sameness in meaning, but on functional interchangeability in the same context (p. 49). Put briefly, a TL sentence T is a translation equivalent of an SL sentence S if T and S have overlapping meanings relevant to the context in question (pp. 37-39), such that T "can function in the same situation" as S (p. 49). Accordingly, the aim of translation is, Catford argued, to select TL equivalents "not with the same meaning as the SL items, but with the greatest possible overlap of situational range" (p. 49). Catford's "translation equivalent" looks very much the same as Nida's "closest natural equivalent", but it differs from the latter in one crucial aspect, in that it is invariably context-dependent, whereas the latter can be context-free.

Another equally important point about Catford's linguistic approach can best been seen from the following passages:

> …[A] manifestation of the 'same meaning' or 'meaning-transference' fallacy is seen in the view   that translation is a 'transcoding' process, a well-known example being Weaver's remark: 'When I look at an article in Russian, I say: "This is really written in English, but it has been   coded in some strange symbols. I will now proceed to decode".
>
> This implies either that there is a one-to-one relationship between English and Russian grammatical/lexical items

and their contextual meanings, or that there is some pre-existent 'message' with an independent meaning of its own which can be presented or expounded now in one 'code' (Russian) now in another 'code' (English). But this is to ignore the fact that each 'code' (i.e. each language carries with it its own particular meaning, since meaning … is 'a property of language'.…

…

Our objection to 'transcoding' or 'transference of meaning' is not a mere terminological quibble. There are two reasons why translation theory cannot operate with the 'transference of meaning' idea. In the first place, it is a misrepresentation of the process, and consequently renders the discussion of the conditions of translation equivalence difficult; in the second place, it conceals the fact that a useful distinction can be made between *translation* and another process which we call *transference*. In transference … there is, indeed, transference of meaning, but this is not translation in the usual sense. (pp. 41-42)

Meaning does not get transferred in translation, and translation is not a process of transcoding. This comes out loud and clear in Catford. Translation for him is not a process of code-switching according to rigid, mechanical rules based on one-to-one formal correspondence between SL and TL items, as Nord has alleged (1997, p. 7); nor is it a process of transcoding of pre-existent naked meaning. So the Catford that Snell-Hornby and many others have attacked turns out to be not merely a straw man, but, ironically, also a comrade in arms.

A third important point to note about Catford's linguistic approach is that it is by no means incompatible with the so-called cultural approach. As has been shown, Catford's approach is an empirical and probabilistic one. Its aim is twofold: first, to find TL equivalents (in his sense) by way of comparing actual samples of SL and TL texts, with the resultant TL equivalents serving as translation rules; and second, to set out the conditions

for justifying TL equivalence. Unlike Snell-Hornby and many other theorists, Catford never told us *how to translate*. So in this sense his linguistic approach can be said to be *theory-free*. He only told us *how to find* translation equivalents, which is exactly what corpus linguists do nowadays. A corpus might contain TL texts produced in the light of different or even conflicting theories, but Catford's approach would still be applicable. Accordingly, the cultural approach advocated by Snell-Hornby and others of a similar persuasion is not really a rival approach, and hence there is not much sense in talking about an emancipation from the linguistic theory of translation that Catford represents.

4.2 Vermeer's View of Translation as Cross-cultural Transfer
The tenets of the cultural school as represented by Vermeer and Snell-Hornby can be reduced to three statements:

1. Translation is not simply a matter of language and it does not take place merely between languages;

2. Language is an integral part of culture and hence translation from one   language to another is a cross-cultural transfer; and

3. The source text in itself does not dictate how it is to be translated; what   dictates the translation is the specific purpose in question.

This counters the lay view of translation, described well enough by Snell-Hornby as follows:

> … translation is simply a matter of words, or individual linguistic signs, which are replaced by equivalent words, signs or units in the target language. The translator, so it is assumed, therefore needs either simply a good command of the vocabulary in both languages involved, or a good dictionary. (1992, p. 2)

Such a naive, static, and mechanical view is, as Snell-Hornby endeavoured to show, rooted in the false belief in the existence of equivalence   between   languages,   i.e.,   a   one-to-one

correspondence between SL and TL items. Yet her critique of such a notion was directed not so much against lay people as against Catford and other descriptivists, such as Toury and Koller. But it is really hard to see how such a view of translation could be attributed to Catford, who expressly dismissed it as fallacious. We do not want to labour this point, but let us just say this. Vermeer and Snell-Hornby's vehement opposition to the linguistic approach is totally misguided. In place of the false dichotomy of word vs sense, they have ushered in the false dichotomy of transcoding vs cultural transfer. As has already been shown by Catford, there is no such a thing as transcoding. What, then, is cultural transfer?

Vermeer answered the question with a metaphor:

> What does it mean to translate? … Suppose you take a tree from a tropical climate to a temperate zone. Will it not need special care? Will it not be considered something out of the ordinary by whoever sees it? It will never be the same as before, neither in growth or in the eyes of its observers. … With a translation it is not much different. One will have to decide before translating whether it is to be "adapted" (to a certain extent), i.e., "assimilated," to target culture conditions, or whether it is meant to display and perhaps even stress its "foreign" aspect ... One will have to make a choice. In both cases the text will be "different" from what it was in its "normal" source-culture conditions, and its "effect" will be different. Assimilation does *not* necessarily mean making a text look like an ordinary target-culture text(eme), i.e. making it look "as though it were not translation". Assimilation need not take place on the "surface" level alone; paradoxically enough, assimilation on other levels can lead to an "alienation" (*Verfremdung)* on the surface level. (1995, p. 39)

Translation is likened to the transplant of a tree onto foreign soil for a specific purpose. The translated text (the transplanted

tree) has been adapted or assimilated to a culture (foreign soil) different from the original (home soil). One important point to note here is: assimilation can take place on different levels; the target text is not necessarily a completely domesticated text—it may indeed turn out to be *alien* to the target culture. This is a point which has been overlooked or suppressed by Vermeer's followers, who have identified Vermeer's functional approach with domestication. Since the notion of skopos is an all-embracing one, it is in principle able to accommodate all kinds of approach to translation.

> … skopos theory … allows for transferring (or demands the transfer of)* as many features of the source-text surface-structure as possible into target culture surface-structure features in such a way that target-culture addressees can appreciate the literariness of the translation in a way comparable/similar/corresponding to source-culture addressees who are able to appreciate their source-text ... (1995, p. 50)
>
> * [Note in the original: The term "transfer" is not strictly applicable. Nothing is physically transferred.]

The passage is worth noting in two important respects. The original footnote clearly shows that Vermeer was not comfortable with the word "transfer". It would be interesting to see what word he would or could have used in its place. "Transcoding" would have definitely been ruled out as by it he meant translation which takes place merely between languages guided by the principle of equivalence. This is not a trivial observation. For "translation as cultural transfer" was used by him to mark a new orientation in translation studies. So it is legitimate to press the question of what he meant by "cultural transfer". The tree transplanting metaphor cited above suggests that in translation a text is transferred from one culture to another, with the two cultures in question remaining unchanged. This is in line with the definition Vermeer gave in his seminal paper entitled "Translation as a cultural transfer" (1986). However, the passage just cited implies that transcoding, in the sense that

purely linguistic features of the source text are "carried over to" or reproduced in the target text, can be one possible purpose of translation. This seems to defeat the whole purpose of skopos theory, which asserts that "translation is not the transcoding of words or sentences from one language to another" (1986, p. 33). A closer look at his remarks on the "equivalence postulate" of Toury's theory will reveal something even more devastating for skopos theory, however:

> … there is a methodological difference between Toury's approach and that of skopos theory. According to the latter, a 'transfer' (by any strategy) of a great number of source-text phenomena to a target-text still depends on the skopos (purpose) of translating. It is not the source-text equivalence (or, more loosely, correspondence) requirement which guides the translation procedure but the skopos, e.g. to show target-text recipients how a source-text is/was structured (or for some other purpose …) The skopos is hierarchically higher than the equivalence postulate. Such a procedure is then not retrospective (as is the case when taking the source-text structure as the highest element in the hierarchy), but prospective in the sense that the skopos demands a full consideration of source-text structures for a given purpose. In such a case, the difference between Toury's approach and that of skopos theory is one of focus; *in practice, the result may look much the same* (Ibid. p. 51. *Italics mine*).

The passage clearly shows that Vermeer was in fact not really against the equivalence postulate or transcoding, as he expressly stated that the difference between Toury's approach and his is "one of focus", i.e., Toury's focus is on the source-text (retrospective), whereas his is on the target-text (prospective); and that both approaches may lead to much the same target text. We can thus see that the kind of transcoding he deplored was in the final analysis *transcoding without a purpose*, whereas he saw

transcoding with a purpose as both possible and legitimate. His opposition to the linguistic approach turns out to have been overstated.

The fundamental principle of skopos theory, according to Vermeer, is that it "strictly regards translating from the point of view of a text functioning in a target-culture for target-culture addresses" (1990, p. 50). Translation as cultural transfer is therefore translating a text from one culture to another according to a specific function. What is transferred (understood in a figurative sense) is the text, not the culture of the text. But here Vermeer simply failed to see there are situations where "cultural transfer" means "the transfer *of* one culture *to* another", and legislative translation is a typical case of cultural transfer in this sense.

4.3 Snell-Hornby's View of Translation as Cultural Transfer

In line with the central arguments of the new theoretical orientation, which I have just discussed, Snell-Hornby held that translation was a cultural transfer rather than a linguistic transfer and that translation as a cultural transfer was oriented towards the function of the target culture and also facilitated cross-cultural communication. To illustrate this point, Snell-Hornby (1998, pp. 94-5) cited her own experience in India. When walking along the streets of Southern India about twenty years earlier, she was repeatedly approached by local people who asked her a question in their native language which literally means "Where are you going?" in English. She was obviously puzzled by this strange question. Later she found out that it was a local form of greeting when people met in the street. A mere transcoding would yield "Where are you going?" which, in her view, was problematic, because it was likely to cause a communication break-down. She pointed out how this showed the limitations of mere transcoding by neglecting the twin facts that language was dependent on cultural and social norms and that translation was essentially a cross-cultural event. Instead, an appropriate translation would be

"How are you?" as it complied with the conventions of greeting in English, and thus effected a cultural transfer.

The starting point of Snell-Hornby's framework is reasonable in the sense that the pursuit of absolute equivalence or symmetry between languages is futile and it is doubtless the case that cultural elements must been taken into account when doing translation. If her thoughts on the incident lead her merely to the above conclusion, her argument about the cultural account in translation would be sound. However, in analyzing the appropriate translation for the Indian way of greeting, she distinguished two translation methods: one is the mere transcoding and the other is what she called "cultural transfer". In her view, linguistic transcoding and cultural transfer are apparently two distinct methods of translation. Linguistic transcoding is reduced to linguistic transference without any cultural account. By contrast, cultural transfer indicates the rendering of source text smoothly and idiomatically such that the English speaking reader would perceive the translation as conventional and familiar. Thus the important units of translation are seen as products of culture that emerges from their distinctive social settings instead of strings of words or sentences or even whole texts. According to Snell-Hornby, translation should be oriented towards the function of the target text rather than submit to the prescription of the source text. She remarked:

> The text cannot be considered as a static specimen of language (an idea still dominant in practical translation classes), but essentially as the verbalized expression of an author's intention as understood by the translator as reader, who then recreates this whole for another readership in another culture. This dynamic process explains why … the perfect translation does not exist (1988, pp. 1-2).

We shall see from the above that in proposing the translator "recreates this whole for another readership in another culture", Snell-Hornby holds that translation as "cultural transfer" should

conform to the cultural norms of the target language and familiarize the source culture to the extent that target readers could identify it with their own culture. As has been shown, the term "cultural transfer" is used by Snell-Hornby as the antithesis to "linguistic transcoding". It is clear what she means by "linguistic transcoding": a naïve, simplistic, static, and mechanical manner of translation which consists in matching SL and TL words solely by relying on a bilingual dictionary, a view of translation rooted in the false belief in the existence of equivalence (a one-to-one correspondence) between languages. However, it is by no means so clear what she means by "cultural transfer", particularly what she means by "transfer", i.e., what gets transferred in translation.

She regularly stresses two points in her work. First, language is an integral part of culture and also of the world. Understanding a text requires an understanding of its socio-cultural context, and this applies to both the source text and the target text. Second, translation is an act of communication oriented towards the function of the target text, not a mere linguistic operation prescribed by the source text. These two points seem clear enough, but again, what gets transferred in translation is not at all clear.

Her discussion of the translation approach of Hans G. Hönig and Paul Kussmaul (in Snell-Hornby 1988, pp. 45-46; 1990 pp. 83-84), which she endorsed, gives us some idea of what she means.

> Hönig and Kussmaul's starting point is the conception of the text as what they call 'the verbalized part of a socio-culture (1982: 58); the text is imbedded in a given situation, which is itself conditioned by its sociocultural background. The translation is then dependent on its function as a text 'implanted' in the target culture. The basic criterion for assessing the quality of a translation is called the 'necessary grade of differentiation', which represents 'the point of intersection between target text function and socio-cultural determinants'. (1982: 53)

To illustrate this they quote two sentences, each naming a famous British public school:

> In Parliament he fought for equality, but *he sent his son to Winchester.*
>
> When his father died *his mother couldn't afford to send him to Eton any more.*

They then quote two extreme types of German translation:

> …seinen eigenen Sohn schickte er auf die Schule in Winchester.
>
> …konnte es sich seine Mutter nicht mehr leisten, ihn nach Eton zu schicken, jene teure englische Privatschule, aus deren Absolventen auch heute noch ein Grossteil des politischen und wirtschaftlichen Fuhrungsnachwuchses hervotgecht. (Snell-Hornby's translation: "…that expensive English public school which even today produces many of the future leaders in politics and management".)

The first translation is under-differentiated: the mere name "Winchester" does not carry the same meaning for a German reader as for an English one. The second is over-differentiated: however correct the information on British public schools may be, it is superfluous to the text concerned. In the first of the two sentences, it is the double-faced hypocrisy of the father (hence the exclusive, elitist character of public schools) that is stressed, while the second focuses on an impoverished widowed mother (and the expensive school fees). As the necessary grade of differentiation for the texts in question, the authors therefore suggest:

> Im Parlament kampfte er fur die Chancengleichheit, aber seinen eigenen Sohn schickte er *auf eine der englischen Elisteschulten [elite schools].*

> Als sein Vater starb, konnte seine Mutter es sich nicht mehr leisten, ihn auf *eine der teuren Privatschulen [private schools] zu schicken.* (1990, pp. 83-84)

Here Snell-Hornby agrees with Hönig and Kussmaul's approach, which rejects the orthodox demand to preserve as much of the original as possible so as to achieve equivalence in translation. Preserving "Winchester" in the German translation is an under-translation, because for German readers the name "Winchester" would just be the name of a city, perhaps even unable to call up the notion of there being a school there, let alone Winchester College, the oldest public school in England. On the other hand, filling in too much background information is an over-translation, distracting readers from the impoverished condition of the widowed mother. The suggested translations, in which "Winchester" is translated as "one of the elite schools and "Eton" as "one of the expensive private schools", give as much information as necessary for the functions of the two English sentences to allow German readers to understand the socio-cultural meaning of "Winchester" and "Eton". So we are not translating "words", but "words-in-text" (1988, p. 45). What gets transferred in translation should be the socio-cultural meaning of words, not their surface meaning of words.

In a paper entitled "Translation as a Cultural Shock: Diagnosis and Therapy" (1992), Snell-Hornby describes how erroneous, mechanical matching of equivalents in translation can give rise to interlingual miscommunication and cultural shock. An amusing example reads:

> Nice German business man, 36, wants to become a black woman. Every letter will be answered. (p. 2)

The shock, obviously unintended, is due to matching the German "bekommen" (= get/find) to the English "become". Examples like this abound.

On the syntactic level, following the conventions of the source text would give rise to stiltedness in the target text. Very

often, equivalent syntactic forms are not acceptable in the target language (1990, pp. 6-7). The following are English translations of a hotel advertisement in German. The one on the left is the original translation, which stays close to German syntax, and the one on the right is a rewriting according to English advertising conventions.

To enjoy Vienna's unique atmosphere.	Come and enjoy the unique atmosphere
In one of the city's guesthouses.	of Vienna— and stay in one of the city's finest Pensionen.
University. City hall, Parliament,	A few minutes' walk from the University, City Hall, Burgtheatre and Vortivkirche.
Burgtheatre and Vortivkirche	
In the immediate vicinity.	
…	
…	

The upshot of her discussion is this: "Translation is not a merely a matter of language, but primarily one of knowledge, of which language forms only a part" (p. 7). And translation should free itself from the inexorable grip of words and avoid inflicting

cultural shocks by conforming to the linguistic and cultural norms of the target language. Let us return for a moment to the questions arising from the two approaches to translating the Indian greeting examined by Snell-Hornby, namely linguistic transcoding and cultural transfer. For her, the way to effect cultural transfer is to match the original Indian greetings to an idiomatic expression in English. In this way, the translation actually functions the same way as the original does but may fail to preserve the original patterns and to reflect the real meaning expressed in the original text. In other words, the cultural transfer that Snell-Hornby advocates involves conformity with the conventions of the target culture. In addition, Snell-Hornby only recognizes the importance of the source culture in the understanding of source text. Instead, she places great emphasis on the target culture since she holds that the translator should be oriented towards the target culture, producing translation that is representative of the culture of target language instead of the culture of the source language. Evidently, translation as cultural transfer in this sense involves inadequate transference of the source culture. Cultural transfer is in the final analysis "communication across cultures" (p. 7), very similar to what Newmark called "communicative translation".

4.4 Domestication vs Foreignization

In maintaining translation as cultural transfer, Snell-Hornby is in fact adopting 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. Thus viewed, translation as cultural transfer is in effect cross-linguistic communication at the cultural level, a mapping of the source culture onto the target culture, in other words, a functional assimilation of the source culture into the target culture.

As is well known, such an approach is contrary to the one advocated by Schleiermacher. For him, there are only two

options for the "true" translator: Either to move the reader towards the writer or to move the author towards the writer (Robinson, 1997, p. 229). He opted for the first, remarking:

> To achieve this, the translator must adopt an 'alienating' (as opposed to 'naturalizing') method of translation, orienting himself or herself by the language and content of the ST. He or she must valorize the foreign and transfer that into the TL. (quoted in Munday, 2001, p. 28)

Adopting Schliermacher's categorization of these two translation strategies, namely "alienating" and "naturalizing", Venuti (1992) argues that the former strategy could exert a positive influence on the target culture, while the latter might inhibit innovation on the part of the target language and culture. Having examined past examples of the decisive role of domestication in forming certain foreign cultural identities in the target culture, he had come to realize that translators had tended to achieve the goal of communication by naturalizing foreign texts in order to conform to domestic conventions. However, the domestication of a foreign culture could result in misrepresentations of that culture. Worse still, it could paralyze the ability and willingness of the target reader to accepting new elements from a foreign culture. Venuti came to the conclusion that although translation is bound to be domestication to some degree, foreignization "promises a greater openness to cultural differences" (p. 23). Like Schliermacher, he subscribed to foreignization, which he believed was the proper way to effect the transfer of the source culture as it allowed the target language to be influenced and amplified by the source language and open the way to novelty and innovation in the target language. Thus translation as "cultural transfer" leaves a choice open to each individual translator: Either she chooses foreignization, preserving the alien elements in the target text, or she chooses domestication, ironing these out to make the target text readily comprehensible to the reader. The choice in practice depends on the particular *skopos* that the translator intends.

It is crucially important to understand the opposed notions of "domestication" and "foreignization" very clearly if we wish to understand precisely what is involved in effecting cultural transfer. In an attempt to define translation strategy, Kwiecinski (2001) provided a rather comprehensive definition: "… translation strategy … may be defined…as a textually manifest, norm-governed, intersubjectively verifiable global choice of the degree in which to subscribe to source-culture or target-culture concepts, norms and convention." (p. 120) Despite the complicated modification of the word "choice", one thing we could see clearly is that translation strategy always involves a choice in relation to culture-specific elements.Whether a translation exhibits domestication or foreignization can only be determined where the context reveals cultural asymmetry and is examined as such. In other words, it is only when directly confronted with the problem of translating a culture-specific item that the translator has to make a choice between the two strategies. A common misunderstanding is that the translator is always engaged in make such a choice even when translating items that are not culture-specific. Consider the translation of the two English terms "Internet" and "Sars" into Chinese. For each term we can have at least two translations, *yinte wang* (英特網) and *hulian wang* (互聯網) for "Internet", *shashi* (沙士) and *fei dianxing xing feiyan* (非典型肺炎) for "Sars". It is interesting to note that the linguistic formation of the translated terms *yinte wang* (英特網) and *shashi* (沙士) may seem "foreign" to the Chinese reader and hence are considered as "foreignized" terms. However, both "Internet" and "Sars" are terms which represent non-culture-specific concepts. "*yinte wang* (英特網) and *shashi* (沙士) differ from *hulian wang* (互聯網) and *fei dianxing xing feiyan* (非典型肺炎) only in that they are transliterations rather than semantic translations, a difference solely in translation technique. The question of whether this is foreignization simply does not arise here. Likewise, *hulian wang* (互聯網) and *fei dianxing xing feiyan* (非 典 型 肺 炎), though readily

comprehensible in their linguistic form, are not cases of domestication, because no *foreign* culture is involved here. Put differently, whether a translation is a case of domestication or foreignization cannot be determined by the naturalness or foreignness of its linguistic form alone.

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, leaving the target language *as it is*. For example, translating the English idiom "there is no smoke without fire" into *wufeng buqi lang* (無風不起浪) (no waves without wind), actually replaces the English idiom with a similar one in Chinese; both mean that there must be a reason for the result. No linguistic and conceptual adjustment on the part of the target language is required. Any peculiarity in this way of expressing causality in English is no longer discernible in the translation, i.e., the cultural meaning of the source language has been domesticated or naturalized.

In contrast, to foreignize means to import the source culture into the target culture. This can be achieved in two ways. One is to foreignize at both the linguistic and conceptual levels, i.e., calling on the target language to make both linguistic and conceptual adjustments. Take the example of the English translation of the Chinese term *li* (禮), one of the key concepts in Confucianism. When it is translated as *li* (禮), using the technique of transliteration (direct borrowing), it evidently introduces to the target reader a new linguistic form. Adjustment also needs to be made on the conceptual level so that the English reader can understand the cultural meaning of the coined English term *li* in the light of Confucianism. The other way is to foreignize only at the conceptual level, i.e. without involving any linguistic adjustment. In the same example, when *li* (禮) is translated as "morality", "propriety" or "ritual", the translator uses an existing English word as its equivalent. However, when the translator makes it clear to the English reader that "morality", "propriety" or "ritual" should not be understood in their usual

senses in English but should be re-defined and understood with reference to Confucianism, an intention to foreignize is revealed. We can see that in either case conceptual adjustment is a must while linguistic adjustment is not really essential. However, there are, as will be shown, cases when where a particular linguistic structure in the source text may embody the culture of the source language. In such cases, the translator has to preserve the linguistic features of the source text and linguistic and conceptual adjustments of the target language are required. In a nutshell, cultural transfer as foreignization requires the translator to import the culture-specific elements into the target culture regardless of whether the foreignness is reflected in the linguistic form of their translations.

5. Reconstruction of the concept of Cultural Transfer in Legal Translation

It is now clear that "cultural transfer", when employed to characterize translation as a socio-cultural activity rather than a mere act of linguistic recoding, has in fact been understood in two diametrically opposite senses. On the one hand, it has been taken to mean the mapping of the cultural elements of the source text onto their functional equivalents in the culture of the target text, an approach which aims to facilitate cross-cultural communication without making any linguistic or conceptual adjustment on the part of the target text by way of domestication. On the other hand, the term "cultural transfer" has also been taken to mean the importation of the source culture into the target culture, an approach which requires linguistic and conceptual adjustments on the part of the target language.

When Hong Kong became a British colony in 1842, the British brought along a whole lot of "culture-specific" things, tangible and intangible, of which the common law was one. With a clarified notion of cultural transfer in translation, it is sufficiently grounded to further clarify the notion of cultural transfer in legal translation. Legal translation in Hong Kong is

just a case in point. First, the transplant was not from one jurisdiction to another—it was carried out within the same common law jurisdiction as Hong Kong became a common law jurisdiction the moment the British flag was hoisted (or legally, even earlier). Second, for nearly a century and a half, the law was in the same language as its home state, namely, English. Third, the law was administered and practised by professionals from its home state, or from other common law jurisdictions, or from the local community who spoke and were trained in the same language of the law. In a word, except for some adaptations in areas such as marriage and succession, the common law was transplanted to Hong Kong *en bloc.* Thus, the legal culture, however estranged it was from the majority of citizens who were Chinese-speaking, was unmistakably a common law culture.

The translation of the common law into Chinese was therefore by no means carried out in an alien culture from the outset. Rather it was carried out in the transplanted culture of the common law. There was no sharp distinction between source and target cultures in the first place.

Under the bilingual legislation system of Hong Kong, the English text and its Chinese counterpart must fulfill two conditions. First, they must have equal legal status. Second, they must convey the same legal meaning. The first condition must be, and was in fact, met by legislative measures. However, how the second condition can be met is still not clear to many translation scholars and practising law translators. Some, like Snell-Hornby, have contended that equivalence in meaning is a chimera, an illusion, or an unattainable goal. Thinking along the line of Vermeer's skopos theory, we have a definitive purpose here: whatever we do, and however we do it, the Chinese text must convey the same legal meaning as the English text; in other words, the two texts must be equivalent in legal meaning. If equivalence were indeed an illusion, then no multilingual legal system would be viable.

Legal translation is certainly among the varieties of translations where the translator is subject to stringent semantic

constraints at all levels due to the peculiar features of the language of English law on the one hand and the culturally mediated nature of legal discourse on the other. 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 the Chinese language. Thus cultural transfer by way of domestication is not appropriate in legal translation. The authoritative status of legislation dictates that the goal of legislative translation is to reproduce a legal text in the target language which conveys the same legal meaning as the source text. It requires the legal translator to adjust the target language in such a way that the legal meaning of the source text could be expressed by the target language. Cultural transfer as foreignization is thus best exemplified in the translation of a particular legal system from one language to another.

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