
“The court Awards it and the law doth give it”: Equity, Common Law and the Problems of Translating Legal Texts

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Résumé:

Le but de la communication est d'analyser les problèmes de la traduction des textes juridiques. La discussion sera basée sur un exemple précis, pris dans la pièce de Shakespeare, *Le Marchand de Venise*. Cet exemple illustre l'opposition entre les notions de *Equity* et *Common law*. La communication sera divisée en deux parties. Dans la première j'analyserai les difficultés qui peuvent surgir dans la traduction de la “*Trial Scene*” dans *Le Marchand de Venise* qui est caractérisée par le conflit entre *Equity* et *Common law*. A partir de cette analyse je discuterai quelques problèmes relatifs à la traduction juridique. Ma discussion sera étayée par des références théoriques.

1) Shakespeare and Law

1) Shakespeare's interest in Legal matters

In their analysis of Shakespeare's plays many critics have pointed out the playwright's interest and acquaintance with the legal issues of his country. Shakespeare's knowledge of law as reflected in his plays is so wide that one critic (Rick Laws) has suggested that “with respect to the law: a dedicated scholar can discover a wealth of information on legal issues in Shakespeare's works.” He also added that given Shakespeare's interest in law, “it is not surprising that the interdisciplinary

study of law and Shakespeare has grown into a fully recognized field ... Such interdisciplinary examination has opened for us a new vista of understanding." Hence, if acquaintance with law helps to understand legal matters in Shakespeare's plays it seems that this playwright's genius when dealing with such issues enlightens the study of law.

Shakespeare's interest in law is traceable in almost all his works. Moreover, about twenty of his plays seem to feature a trial scene. However, it is undoubtedly in Measure for Measure and especially in The Merchant of Venice that the legal jargon finds full expression. Indeed because of its "its intricately detailed legal climax" (as reflected in the trial scene), The Merchant of Venice has become the subject of many interdisciplinary critical studies. as Stephen A. Cohen has suggested, "For over a century legal scholars and historians have studied the trial scene's relation to contemporary jurisprudence, debating its verisimilitude and its position in the period's jurisdictional and philosophical disputes, especially the conflict between the common law and equity." as the end of this quotation reflects the trial scene's legal conflict was deeply rooted in the legal practices of the time. In fact, such a conflict was also "firmly connected to the economic and political issues in which the period was embroiled." The Merchant of Venice which was performed twice in 1605 for king James and his court helped, in turn, to avoid legal pitfalls and disputes between the king and Parliament.

2) The Merchant of Venice

Briefly, the plot of The Merchant of Venice which reaches its climax in the trial scene runs as follows. Portia, a wealthy heiress at Belmont is pursued by suitors from all parts of the world, but to win her they must answer the riddle of the

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three caskets. Bassanio, who wishes to try his fortune, asks his friend Antonio, a wealthy merchant, to lend him money so that he can go to Belmont. Antonio's goods are tied up at sea, but he agrees to stand bond for three thousand ducats from Shylock, the Jewish money-lender. "The merry bond" (the contract) Shylock agrees to, if the forfeiture falls due, is a pound of Antonio's flesh. At Belmont Bassanio is successful and Portia seals their marriage with a ring, but Antonio's ships have foundered and his fortune. Upon hearing about Antonio's misfortunes (hence his failure to honour his contract) Shylock suddenly realizes that he has a good opportunity to get rid of Antonio whom he considers as a business enemy. Bassanio tries to free his friend from his bond by offering three times the amount of money. but, Shylock insists upon his pound of flesh. However, Portia disguised as a young lawyer, manages to unravel the knot. She turns the case against Shylock and saves Antonio.

The trial scene opens with Shylock insisting on the enforcement of his bond. He addresses the Duke by stating,

And by our holy Sabbath have I sworn
To have the due and forfeit of my bond
If you deny it, let the danger light
Upon your Charter, and your City's freedom

Shylock insists on the enforcement of his bond because he is aware that the law is on his side, and that law is the foundation of the state of Venice. Even if she starts by pointing out the unusual nature of the pursuit, Portia acting as a judge acknowledges the technical legality of Shylock's claim. Addressing the Jews she states, "Of a strange nature is the suit you follow, / yet in such rule that the Venetian law / cannot impugn you as you do proceed" However, in spite of Shylock's legitimate claim, Portia, whose main concern is to

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save her husband's friend, pleads with the Jew and asks for mercy, "Then must the Jew be merciful". And in order to mitigate Shylock's decision to have his pound of flesh she vents the qualities of mercy, " a divinely inspired form of law,"

The quality of mercy is not stained.
It droppeth as the gentle rain from heaven
Upon the place beneath. it is twice blest;
... It blesseth him that gives and him that
takes.
and earthly power doth then show likest
God's
When mercy seasons justice (IV. I)

Portia's painstaking efforts are left unheard as Shylock sticks his bond. in face of such an intransigence Portia is on the verge of granting Shylock his forfeiture, "A pound of that same Merchant's flesh is thine,/ The court awards it, and the Law doth give it."

However, like Shylock Portia also insists on the strict application of the law. When Shylock happily prepares for his revenge, Portia tells him, "Tarry a little, there is something else, / This bond doth give thee here no jot of blood, / The words expressly are a pound of flesh:" Shylock who wants no less than the enforcement of law is nonetheless surprised by Portia's interpretation of it. He exclaims, "Is that the law," Shylock is all the more surprised as he senses the dangers that such an application of the law would entail for him. Indeed, Portia makes her intent clear,

Then take thy hond, take thou thy bond of
flesh,
But in the cutting it, if thou dost shed

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One drop of Christian blood, thy lands and
goods
are by the laws of Venice confiscate
Unto the State of Venice.

Hence, though a legal trick Shylock is defeated. As one critic put it, "Shylock comes to court to seek redress for default of a loan; he leaves the trial bereft of all his property, stripped of his lifelong faith, and very nearly sentenced to death."

From a legal standpoint what is at stake in the trial scene of The Merchant of Venice is the conflict between Equity and Common law that dominates the Elizabethan legal practices. indeed, as has been pointed out, "the principle that Portia applies in reaching her verdict is not the mitigation of the letter of the law by its spirit, but the equally venerable equitable doctrine which holds that Equity may mitigate the unjust results of the law's necessary generality by taking into account the aspects of a specific case of which the law takes no notice." Such a conflict is even traceable to Aristotle's Ethics in which one may read, "all law is universal but about some things it is not possible to make a universal statement which shall be correct ... this is the nature of the equitable, a correction of law where it is defective owing to its universality." Hence, Equity was a corrective "both necessary and necessarily superior to the Common Law, overruling the latter when the application of its general rules to a specific case produced evident injustice."

II) The Merchant of Venice and the Problem of Legal translation

1) The difficulties of translating the Trial scene

Having analyzed the nature of the issue at the heart of the trial scene, I would like to discuss in the second part of this talk the difficulties that may arise when one attempts the translation of such a scene, and mainly the conflict between equity and Common Law. First, it is worth noting that not only does the complexity of the legal jargon characterizing the trial scene entail difficulties in legal translation, but it also poses problems of literary translation. Indeed, even if the translator of theatre texts is acquainted with Shakespeare's plays his lack of knowledge of the legal lexis may cause great losses in the translation process. Such losses may entail in turn distortions of the major features of the play, especially the structural development that leads to the denouement (the trial scene which occurs in Act IV embodies itself the denouement of the play) and the playwright's intent. The reader may indeed fail to perceive how Portia manages to turn the case against Shylock and to save Antonio, and see this solution to the conflict as another proof of Shakespeare's anti-semitism. Moreover, since the primary aim of a theatre is its actability failure to grasp the legal content of the trial scene will also result into difficulties of staging good performances.

Nonetheless, as is the case with the literary translator, the legal translator may find himself at a loss when he renders the trial scene into target language (T. L.). Not only does the difficulty for him lie with the translation of such items as equity and Common Law. he soon realizes that in many cases these words have no equivalents in the target language, and that the legal system of this language has no corresponding legal concept or institution. An illustrative example is Turkish which as has been suggested, has no "words to express some

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of the most elementary notions of British law. The words “common law” and “equity” are two examples.” Moreover, there is no system of “common law” and “equity” in the Turkish legal system.”

In addition, the legal translator of the trial scene also learns that such notions as “common law” and “equity” are culturally and ideologically loaded and that the arising conflict between the two institutions is deeply grounded in such cultural and ideological background. Hence as Stephen Cohen has pointed out in his article, “The Quality of Mercy”: Law, Equity and Ideology in the *Merchant of Venice*”, “behind the ideological trappings of blind – but – strict law and corrective equity, the issue at stake is political power ...” As he also suggested the political battle opposed “two socio-economic factions for the spoils of the nascent capitalist economy ... On one side were the merchants, financiers, landed gentry and even aristocrats who profited directly from the new economy ... their opponents were the large landowners – Crown and older aristocracy ... “. As the link between theatre and the socio-economic and ideological developments in Shakespeare’s times was a strong one, the contemporary legal dispute finds full reflection in the trial scene. The rival factions in the trial battle are Shylock the Jew as a representative of “the socially and politically independent rising class” (common law) and Antonio and his Christian allies who stand for the ruling class (equity). Consequently, the legal translator will certainly face difficulties with the transference of the complexities of the ideological background of Equity and Common Law even if he manages to find equivalent notions in the target language for these two British concepts.

2) Some problems of legal translation

As is the case with any specialized or technical field, the translation of legal texts is not an easy task. It must be

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undertaken by professional translators who in addition to the mastery of languages (S. L. and T. L.) must be acquainted with the legal practices and jargon in order to overcome difficulties. However, knowledge of such matters may prove of little help since the legal translator must be also aware of other aspects in order to avoid pitfalls or mistranslations. Like many other fields law is culture-dependent that is “the source language text is structured in a way that suits that culture and this is reflected in the legal language.” The culturally-loaded legal text may constitute a real impediment for the translator who may discover that the target language lacks any corresponding conventions or institutions. As has Martin Weston suggested, “the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons.” as for Newmark he also states that “a word denoting an object, an institution, or if such exists, a psychological characteristic peculiar to the source language culture is always more or less untranslatable.”

The linguistic differences between the legal systems of the S. L. text and the T. L. text also result in problems of translation or in what J. C. Catford calls “linguistic untranslatability”. In such a case not only is the difficulty caused by the absence of the functional item in the T. L., but it is also related to the differences in syntactic arrangements and sentence structures. Hence in order to remain faithful to the legal niceties of the S. L. text the legal translator has to find functionally relevant structures in the T. L.

Finally the nature and foundations of the S. L. and the T. L. legal systems must be taken into account. for example, as has been suggested, French law lays emphasis “on general concepts rather than specific incidents and on basic principles rather than empirical processes ...” Hence the French

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legislator's "preoccupation is with act rather than with the actor ..." whereas "the English-language legislator, whether British, American or Canadian, focuses on the actor rather than on the act. His preoccupation is with the individual and with the concrete rather than with the principle and with abstract."