

**Shift in Time and Space:
Translation of a Historical Legal Document**

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ABSTRACT

This paper contains the analysis of the translation of a historical legal document from 19th-century Tuscany, performed by the author. The translation is analysed not only from the perspective of a translational action in the linguistic, cultural and historical space, but also from the perspective of a significant shift between the times in which the source text (ST) and the target text (TT) are meant to function. The difference in function is analysed from the point of view of the different audiences for the ST and for the TT and the specific and different objectives of those audiences in accessing the document. The ST is analysed not only from the perspective of text types and genres, but also through the lens of the translatorial action model. Foreignisation strategies are discussed in their possible application in a TT that has lost its need to provide a legally binding function but has a strong objective of providing insights into the full context of the original document. Above all, it is suggested that Reiss and Vermeer's skopos theory (2014) needs to provide the predominant principles in directing the translator's decisions when confronted by the challenges of the project and in particular in ensuring full readability of the TT in the current space and time.

1 Introduction

This article examines the translation from Italian into English of a historical document from 1838. The document is a notarial deed dealing with the legal management of the estate of a recently deceased property owner in the Tuscan city of Pisa. The deed also contains the detailed description of the estate, including residential and business assets.

The initiators of the translation are the owners of the document, who seek insights into aspects of their family history while trying to support their ancestry research. As well as the importance for the family, the document has an intrinsic historical value that should not be forgotten in the translation process. The author believes that the initiators, or any other target audience, should be provided with appropriate insights into the culture, language and legal realities of the historical context in which the document was drafted.

Producing a target text (TT) that is functionally suitable for the commissioners has been the paramount objective for the author in defining the strategic approach to the translation. In particular, this objective has determined the solution of issues raised by the shift in time between source text (ST) production and TT production and by the shift in space (a metaphorical space that is cultural, traditional and legal even more than geographical).

This article will describe how these specific challenges quickly led the author to rely heavily on the skopos theory (Reiss and Vermeer, 2014), as the hierarchically predominant principle that directed the production of the final version of the TT, while the application of foreignisation techniques (Venuti, 2008) was intended to allow readers to have a view of the historical reality associated with the ST.

2 Project Analysis and Relevant Literature

2.1 Shift in Time

2.1.1 Nature of the Source Text

At first glance, the ST would definitely seem to belong to the realm of what Reiss defines as informative text type (Reiss, 1977/1989). After all, it is a notarial deed and, as such, it focuses on the objective it is intended to achieve: to implement the course of actions necessary to dutifully manage the estate of the deceased person. In doing so, it follows the logical rules imposed by such an objective (precision in identifying people, items and legal procedures). However, the document can also be seen as operative, not because it is trying to convince, but because it is certainly asserting specific actions and “inducing behavioural responses” (Reiss, 1977/1989). Finally, this text also assumes characteristics of an expressive type (having a form that wants to be also aesthetically pleasant), something that would not normally be associated with a legal document, but that is determined by its particular historical nature. However, the register and the discourse structure of our ST are highly characterised by not only the genre but also the age in which the deed was drafted. The tendency at the time to write in a very creative and aesthetically pleasing manner makes for a reading experience (and a translation challenge) that goes well beyond a pure legal document, making it too simplistic to categorize this ST into a specific text type. It seems more appropriate and more useful to examine the ST through a perspective that Morini (2008, p. 40) calls “functional”, meaning a perspective that includes all the pragmatic ways in which a specific text is meant to operate in the real world. For Morini, this implies focusing on three functions: the “locative” (that is the time, the place and the bi-text), the “interpersonal” (the way both ST and TT exercise influence over the readers) and the “performative” (the functions that the texts perform in the world). This paper will look at the importance of the different functions of ST and TT for the analysed document, and in particular how the different locative function (time and place) should determine the way the text is translated. In Morini’s own words: “By being grafted onto another temporal, spatial, and textual plane, the text acquires, evokes and creates new contexts, and these contexts make it act and communicate in novel ways” (Morini, 2008, p. 44).

2.1.2 Nature of the Audiences

The translatorial action model introduced by Holz-Mänttari (1984) looks at translation as a process of transfer between different cultures focusing on the players, their roles and their objectives. All these elements are particularly complex in this project, as visualised in Fig. 1.

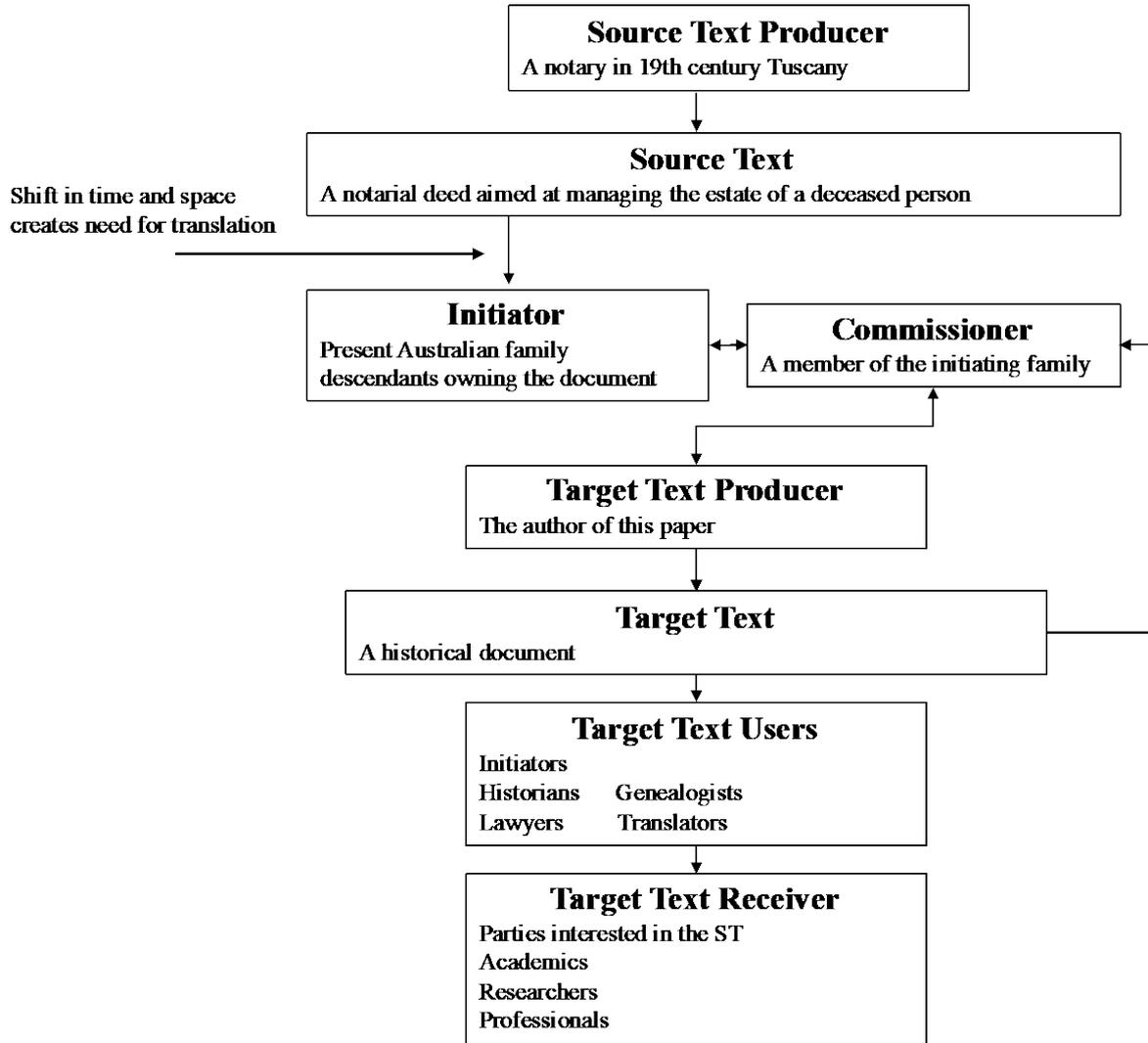


Fig.1 The translatorial action model applied to the project

The marked difference in audiences between the ST and the TT calls for a careful application of a translation-oriented text analysis (Munday, 2016). Recognising that the text under analysis belongs to the category that Nord defines as “documentary” (2018, p. 45), the translator needs to pursue the communication process that allows the source culture to be understood and received by the target audience. It is with this perspective that Reiss and Vermeer’s skopos theory (Reiss & Vermeer, 2014) becomes the overriding principle for the translation. Wherever translation challenges are confronted, the aim or purpose of the translation should be the predominant factor in determining the actions of the translator in pursuing a product that needs to be functionally adequate (Reiss & Vermeer, 2014).

Paolucci (2013) contends that normative texts (that is, texts that have a binding value for the receiver) such as legal documents need to be translated on the basis of what the target audience expects from the document. The peculiar aspect of documents such as the ST we are analysing is that the normative nature of the text is no longer relevant to the target audience, who does not expect to use the document in the binding law effect it had in its original form. Therefore, the translation must of course still transfer the legal content of the ST, but it must also satisfy the needs of the receiving audience that is looking for historical and cultural information.

2.1.3 Nature of the Language

There are significant problems at the word level in translating this ST (old lexical elements and cultural elements as analysed in the examples in the strategies section below). Beyond that, though, it is the form, style and nature of the discourse that present the major challenges, since they are strongly characterised by the time in which the document was drafted. It is beyond the author's ability to perform a full conversion into a type of English language typical of the same age of production of the ST and this was dutifully disclosed to the commissioner. In spite of this, the author has tried to produce a TT that would maintain as much as possible the same type of register and style by using lexis, discourse structure and even formatting similar to those present in the ST.

The author paid specific attention to the translation not only as a transfer of the locutionary content of the ST (the legal elements of the deed), but also as an act where the illocutionary force, that is the way people and facts are treated and described in the ST, is maintained and the perlocutionary act has moved from providing legal directives to providing historical knowledge to a contemporary audience (Austin, 1962).

2.2 Shift in Space

2.2.1 Legal Discourse

Beyond what is generally expected in a translation that takes a text from one socio-cultural reality to another, transfer of the legal discourse used in the ST to an appropriate form for the very different environment in which the TT is going to be used seems to be the most peculiar challenge of this project.

Paltridge (2006) observes how written genres, in particular, show variations and similarities across cultures. Italian legal discourse, in the 19th century even more than now, makes use of many devices that would not be common in the English discourse of any historic age. This particular type of discourse creates significant challenges especially when it includes extremely long and convoluted sentences, religious references and particular ways to identify people.

While there is no doubt that some legal knowledge in both original and receiving cultures is needed in the translation of a legal text, what is still debated is the amount and the characteristics of specific knowledge that are required to ensure an effective translatorial action for the informative and operative functions of a legal text (Ordóñez-López, 2015). In any case, there is a need to make the legal implications of the text evident in the receiving culture, but it is also important, especially in a historical situation such as this one, to provide some understanding of the legal structure from which the ST emanates.

2.2.2 The Case for Foreignisation

Concerning the problems resulting from legal concepts and terms in different cultures, Loiacono (2012) proposes to treat them as proper names, which means to treat them as terms that have a unique referent in a specific language and that cannot be detached from the legal system and culture of the country in which they were born (Chromà 2008). Following this

approach, Loiacono suggests approaching legal translations through the application of the concepts of sense and reference (Lyons, 1977). In other words, the translator will have to identify the meaning of the word in relation to other words (sense) as well as to determine the value of the word in its context of use (reference) before attempting the transfer into the target language. However, in many cases the translation will not be appropriate, because it would not have any sense or corresponding referent in the target language (see examples below).

These considerations support the case to follow what Venuti (2008) has defined as foreignisation, which is an approach to the translation of a text that focuses on the transfer of the source culture into the target text. While Venuti states the choice to foreignise is characterised by an ethical attitude to provide the target audience with access to a foreign culture (1995), I would suggest that in this case the choice is not only ethical, but it is also directly dictated by the skopos of the translation process to provide a functional translation to the receiving audiences.

As Paolucci (2013) argues, the difference in the objectives between ST and TT provides the opportunity to pursue translation strategies like foreignisation even in legal texts. I support this view, even though it is somehow in contrast with Bassnet's (2009) assertion that acculturation (i.e. reshaping a text to make it more easily understood in the target culture) is the best practice in the case of non-literary works.

3 Translation Strategies and Obeying the Skopos

As well described by the functionalist skopos theory advanced by Reiss and Vermeer (2014), the objective of a ST never stays untouched in the transfer to another language, but this is taken to the extreme in the case of our document. The scope of the ST is clearly of a specific legal nature and it requires accuracy in providing what the target audience of the time is interested in, which is the details of the legal provisions and the ability to identify precisely the elements of the estate. On the other hand, the TT will be addressed not only to the initiating family, as users, but also to a list of possible receivers (people interested in history, genealogy and art). The objective of today's target readers is to obtain a snapshot not only of a family's history, but also of the specific cultural and historic contexts that are witnessed by the ST. However, above all, the translation quality must meet the objective of satisfactorily and fluently communicating with the target audience (House, 2017).

Even if the shift in space could be considered a much more traditional challenge for the translator, in this case the situation is made more challenging than usual by the legal nature of the ST combined with the fact that the legal framework in which the document originally operated deviates significantly from what is the Anglo-Saxon common law legal tradition. The translation can be constantly at risk of becoming ineffective, cumbersome or obscure because of aspects such as the way people are named and identified, the underlying laws, the specific traditions and a marked local flavour of the lexis and discourse used in the document.

While applying foreignization techniques, it is fundamental to remember that readability for the initiating family and for any other potential reader in today's Australian context is what determines the functional adequacy of this translation project. Therefore, the translation should also give hierarchical predominance to readability over other elements in

Reiss and Vermeer's skopos theory: offer of information (even if not clearly reversible), internal coherence and coherence with the ST (Reiss & Vermeer, 2014).

3.1 Shift in Time

3.1.1 Lexical Challenges

Italy in the early 19th century was not yet a national entity, but a collection of local realities with different political, economic and cultural structures. Even if the document was drafted in Tuscany, which is universally recognised as the modelling basis of the modern Italian language, the text presents numerous lexical and structural components that are not common anymore in the contemporary, national language. In particular, many specialised terms (such as furniture items, fabric materials, location names and so on) required extensive and difficult research to identify exact meanings and functions of the specified items.

Example 1:

ST: Venti aveggi di terra assortiti

Back translation: Twenty *aveggi* of earth assorted

TT: Twenty assorted earthenware vessels

After having determined that the only possible interpretation for the handwriting seemed to be *aveggi*, the only reference to *aveggio* was found in the “Curiosità di Firenze” website (2017). It is there identified as a derivative of the word *veggio*, which was a vessel for hot coals to keep hands or small spaces warm. Treccani (2018), a well-established and recognised authority in the Italian language, defines *veggio* as a short form of *laveggio* and *laveggio* as an earthenware vessel. Because of the lack of any further context, the translator decided for the more generic meaning ‘vessel’ and interpreted ‘earth’ as ‘earthenware’ (Fig. 2).

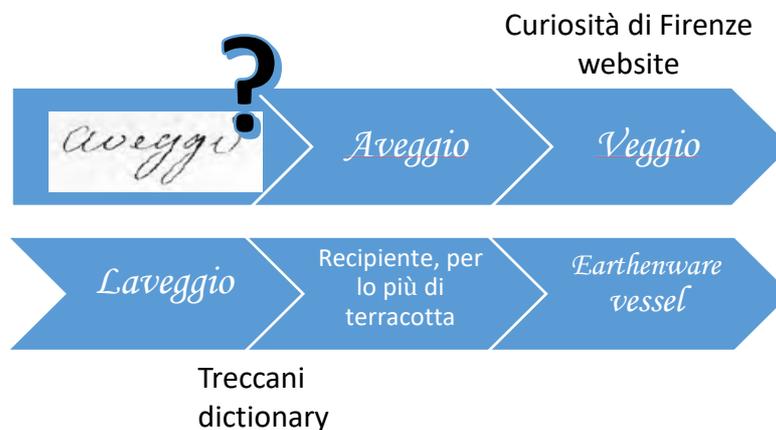


Fig.2 The translation process for aveggi

In this instance, the translator decided to keep the TT fully in English. In other situations, it seemed more appropriate to keep the foreign loan word in the TT. This was applied particularly in cases where the term was quite specific, such as *dobletto*, “an old linen and cotton wool cloth from Naples, woven using French techniques” (Treccani, 2018). Translation by use of a superordinate such as ‘cotton’ would not have conveyed the full information adequately. In cases such this, the author decided to make use of the loan word and add a footnote to explain it. The same approach was used for geographical referents, such

as *Popolo* and *Cura*, terms that are not used any longer in defining physical addresses in the city.

3.1.2 Political and Religious References

The importance of political and religious references in the legal language of the 19th century in Italy is evident throughout the entire document, starting from its introductory lines.

Example 2:

ST: Leopoldo II, Gran Duca di Toscana... a tutti quelli che vedranno le presenti; salute.

Back translation: Leopoldo II, Grand Duke of Tuscany... to all those who will see the present ones; we salute you.

TT: Leopold II, Grand Duke of Tuscany. To all those who will read these pages: we salute you.

The reference to Leopoldo II is here important, in the same way a reference to the Government of Australia would be important in a modern official document. However, the modes of the time required something that is not required today: Leopoldo II needs to ‘salute’ his subjects. In Italian, *salute* has a lexical meaning of ‘health’, but it has also become a greeting (Treccani, 2018), a way of wishing good health to the person you are greeting. For this reason, the translator decided to use the expression ‘we salute you’ (another expression such as ‘health be with you’ could have been used, but it would have made the introductory sentence more cumbersome). Also, the simple ‘salute’ in English did not fit the required register while the requirement of the English grammar for the use of a pronoun (not present in Italian) was better satisfied by ‘we’ more than by ‘I’, since a royal person of the time would have used the majestic plural.

3.2 Shift in Space

3.2.1 Discourse Structure

The Italian language tends to have longer and more complex utterances than the English language. If we add to that the complexity of the legal discourse and the archaic character of 19th century Italian, the problem gets out of control, with the ST at hand having sentences that reach almost 500 words. Keeping in mind the readability skopos described above, the translator aimed to achieve readability whilst changing the structure of the legal document as little as possible. It was often implemented through the conversion of one sentence into a series of items in a list, where each item is a self-standing, meaningful utterance.

Example 3:

ST: Essendoché sotto di diciassette Luglio corrente all’un’ora e mezzo antemeridiana, passasse da questa all’altra vita l’ Illmo Signor Samuel Deakin del fu Signor Samuel Deakin, Oriundo di Sheffield.....

Back translation: Since under seventeen July current at the one and a half hour ante meridiem, the Very Illustrious Mr Samuel Deakin of the deceased Mr Samuel Deakin, original from Sheffield, in the County of.... passed from this to the other life.....

TT:

Inasmuch as

- Most Illustrious Mr. Samuel, son of the deceased Mr. Samuel Deakin, passed from this life to the next on the seventeenth of the current July, at one thirty ante meridiem [am]
- he was originally from Sheffield, County of.....
-

3.2.2 Legal Structures

Legal structures are significantly different between the Roman law model and the Anglo-Saxon common law model and there is no doubt that no complete correspondence of legal terms from one legal system to the other is possible. In the example below, directly translating *Forma Tactis Scripturis* into the TT as ‘with hand on the Bible’ would be a simplification that would not take into account the fact that the name refers to one of those legal and cultural items that, being unique and non-transferable, need to be treated as a proper name (Loiacono, 2012). The proper name has been maintained in the main text and the approximate meaning is described for the reader in a footnote.

Example 4:

ST: Asserisce per mezzo di suo speciale giuramento, da me deferitogli, e da essa preso in Forma Tactis Scripturis....

Back translation: She states through a special oath, submitted by me to her, and by her taken in Forma Tactis Scripturis....

TT: She made an affirmation by a special oath, which I submitted to her and that she took in Forma Tactis Scripturis

3.2.3 Proper Names

In the old Italian culture, people are often identified by their relationships, so expressions such as ‘son of the deceased Mr. X’ are not only descriptive figures, but real legal ways to identify a person. In translating the document, one of the many challenges of this kind is represented by the convention to identify the wife of a deceased person as ‘Widow X’, in a similar way in which ‘Ms. Y’ would be normally used in English. After some research, it appeared that such an expression would not sound natural (and would possibly not be easily understandable) in the Australian context. Therefore, the translator has chosen to implement some minor insertion to make the TT idiomatic and understandable.

Example 5:

ST: ...[del]la tutela legittima ...a favore della prelodata Signora Giuseppa Michelucci, Vedova Deakin...

Back translation: ...[of] the lawful guardianship...in favour of the aforepraised Mrs. Giuseppa Michelucci, Widow Deakin...

TT: The lawful guardianship of the aforepraised Mrs. Giuseppa Michelucci, widow of [Samuel] Deakin, ...

It was not judged appropriate to remove the expression, because of the relevance of this type of description as discussed above. Also, introducing appropriate elements of foreignisation in the target text can provide the target audience with a more rounded appreciation of the

geographical, historical and cultural realities of the context in which the document was produced and was intended to function.

3.2.4 Ambiguities

Lastly, a historical ST presents the difficulty of a lack of access to the original author to help in solving ambiguities. The translator is left alone with the context of the document to solve them. In the following example, it is not clear in the Italian expression whether the items are not included in the valuation because ‘they are (being) used’ or because ‘this is the convention’. The translator, considering that many other actively utilised items are included in the valuation, has decided to interpret the expression in the latter form.

Example 6:

ST: ...quali essendo d’uso non si valutano.

Back translation: ...which being of use are not valued.

TT: As per convention, these have not been valued.

4 Conclusion

The nature of the document that has been translated means that it defies easy categorisation into a specific genre, sitting as it does right in the centre of what Munday describes as the triangle of text types and genres as defined by Reiss (1977/1989), creating an extremely interesting hybrid.

This study has highlighted the challenges posed by the translation process of a ST that is fundamentally different from the TT not only in language and culture, but also in the time in which the two texts are functional. The fundamental difference between the receiving audience of the ST and that of the TT challenges the translator to transfer the values of the ST into the TT in a manner which provides foreign information for the target audience, but remains at the same time understandable and significant. Even the legal character of the text must be considered in light of the fact that the receiving audience is no longer interested in the legally binding effect of the text, but rather in the insights that the document can provide into family, cultural and historical data.

These considerations open up the possibility to use foreignisation techniques to preserve the cultural and historical value of the text for the receiving readers. However, the skopos of readability for the target audience should remain hierarchically predominant and ultimately it has to determine the translator’s choices. The application of foreignisation strategies should not interfere with providing the target reader with the required reliability that avoids literalism and foreignism and maintains fluency (Robinson & Kenny, 2012). There are two contrasting needs of expressing the foreign culture and maintaining readability for the target audiences. It is in trying to balance these needs that the translator found the major challenges in developing this stimulating and captivating project.

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