

A Study on the Translation of Chinese-English Legal Texts Based on Legal and Cultural Differences

Yanli Gao¹, Zhimeng Zhu^{1,*}

¹Shandong University of Science and Technology, Qingdao, China

*Corresponding author: 1051697920@qq.com

Abstract: Translation of legal texts is a bridge between different legal systems, but there are many factors that hinder the equivalence of translation of legal texts in different languages, and the most important of which is the difference in legal culture. Therefore, in the process of translating legal texts between different languages, translators should pay more attention to cultural factors, understand the connotation and core of different legal cultures, and work hand in hand with culture and language in order to complete the translation of legal texts better. This paper takes the translation of Chinese and English legal texts as the main research object, and seeks appropriate translation principles and translation strategies by exploring the influence of the differences between Chinese and English legal cultures on the translation of legal texts, so as to provide certain guidance and reference for the translation of legal texts and related materials.

Keywords: translation of legal texts; legal culture; cultural differences

1. Introduction

China calls for promoting high-level opening-up and building China into a trading powerhouse. We will foster a market-oriented, legalized and internationalized first-class business environment to promote high-quality development of the Belt and Road Initiative. The related foreign activities have been paid more and more attention. Especially in the international market, participation in trade competition is bound by rules and laws, so the translation of relevant laws of various countries is particularly important. There are many factors affecting legal translation, most of which are rooted in cultural differences. Starting from the influence of legal cultural differences on legal translation, this paper studies the characteristics and connotation of legal language in different countries, so as to better realize the conversion of legal language. Legal translation is considered to be recognised as one of the most widely used and valorised subbranches of translation studies.[1]

Laws are rules made by an authority, such as a government or a legislature, that prescribe or recognize how people may and may not behave in society and in business. Laws are binding or enforceable by a controlling authority, such as a court, and often order particular punishments or civil liability for those who break them.

The American scholar Laurence Friedman, who introduced the concept of "legal culture", sees legal culture as "the values and attitudes closely associated with the legal system that determine its place in the culture of society as a whole." [2]. In a nutshell, the latter is a part of general culture and refers to "those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law and in particular ways". [2] According to the Chinese jurist Mr. Liang Zhiping, "law is used to elucidate culture, and culture is used to elucidate law". It can be seen that although Chinese and foreign scholars have different expressions for legal culture, they all agree that the study of law cannot be separated from the study of legal culture. Therefore, in order for legal translation to be accurate and effective, translators should pay attention to the differences between Chinese and English legal cultures.

In order to have a more intuitive understanding of the current situation of legal English translation research in China, this paper searched "legal English translation" by subject using the CNKI database, and obtained 776 data, updated in June 2022. The research on legal translation practice accounts for about 30%, the research on legal specific vocabulary accounts for about 40%, the research on legal translation personnel training and legal English teaching accounts for about 25%, and the research on legal culture in the context of legal translation only accounts for about 9%. It can be concluded that, at

present, most of the research on legal translation focuses on the practice of legal translation and the training of legal translation talents, and there is less research on the cultural phenomenon behind the translation of legal texts, and even if mentioned in a few articles, it is only in a passing manner, and no in-depth excavation is carried out. This trend of research has brought about milestones in the development of legal translation, and has promoted the significant improvement of legal translation in different languages. However, in order to translate legal texts well, it is more important to start from the hidden cultural background behind the legal texts. This study starts from exploring the cultural differences of different legal texts, examining the causes of cultural differences, as well as the resulting effects on the translation of legal texts and the strategies to solve them, so as to provide new ideas for domestic and foreign research scholars and further promote the long-term development of legal translation.

2. Reasons for differences in legal culture

The differences between Chinese and English legal cultures are mainly reflected in the religious and historical nature of the law, and the principles of law-making and the process of law implementation. The task of translation is to build bridges of communication and exchange between different cultures through the mechanism of language conversion. This is particularly true for the translation of legal texts. Before exploring the methodology of legal text translation, understanding the reasons for the existence of differences in legal culture can better achieve the purpose of translation of such texts.

2.1. The Law System factor

At present, the two most representative legal systems in the world are the common law system and the civil law system. The countries with common law system are mainly English-speaking countries such as the United Kingdom, the United States, New Zealand and Singapore, and they mainly focus on slip law and case law. The operation of the law is to abstract, summarize and compare the existing legal principles in a large number of cases, and finally select the most appropriate legal principles and apply them to specific cases. The civil law system, developed from the Roman private law in France, Germany, Italy and other European countries, belongs to the democratic law system and statutory law. European law uses legal words concerning judicial proceedings, such as disclosure, pleading, etc., which do not have corresponding items and connotations in Chinese legal language. [3] The role of judges is to first select the most applicable content in the existing laws and regulations, and then apply it to actual cases to draw conclusions. Before the end of Qing Dynasty, our country belonged to Chinese law system; The Republic of China began to consciously introduce the western legal system, and the continental law system was the legal reference model at that time.

The main difference between common law and civil law systems in terms of their conception of the legal system is the emphasis on experience in the former and reason in the latter. The analysis of legal language must be built on the background of the legal system. Therefore, the difference in legal systems is a major influencing factor in the difference between Chinese and English legal cultures, which has a certain impact on the translation of Chinese and English legal texts.

2.2. Ideological factors

Differences in the overall ideology and values of the country also play a crucial role in the formation and development of legal culture. Due to the differences in social systems, Western countries, especially Britain, consciously promoted the pursuit of wealth and competition among citizens, emphasised the importance of the individual and advocated individual heroism in order to develop a better commodity economy and capitalist markets and to promote the development of capitalism. These ideas, such as "natural rights", "every man and woman on this earth has rights" and "social contract theory", which emphasised freedom, democracy and equality, gave everyone the right to pursue their own interests without outside interference, but which inevitably leads to conflicts, so requires the formulation of rules to regulate clear interests. The vagueness of moral ethics deprives it of the possibility of regulation, and can only rely on compulsory law.

In China, on the other hand, traditional Chinese thought represented by Confucianism still has a profound influence today. Confucianism stresses the importance of "ritual rule" and "moral rule" as its core-"ritual rule" emphasises ethics, honour, the importance of family and state, loyalty and filial piety, and the importance of equality and distinction between nobility and inferiority. "The "rule of virtue" emphasizes that "teaching the people through moral" is more effective than "teaching the people through

punishment". At the same time, ancient Chinese traditional thought emphasised wholeness, the connection between human and human, human and nature, and human and all things, and this holistic view cultivated the ability to observe and perceive things, requiring people to use intuition and sensibility more often than reason and analysis to grasp the whole. Based on this thinking, the requirements of law in China are not as rigid and strict as in the West, but are holistic and general, reflecting perceptual customs and ethics, moral codes and so on.

As can be seen, the deep-rooted ideological differences between China and England have resulted in a range of legal cultural differences which subsequently had a profound impact on the formation and development of law in later generations.

2.3. Historical-religious factors

The laws of each country are closely linked to the history of their country. The history of the development of the West is in fact a history of religious development, and Christianity, for example, as one of the three major Western denominations, has had a huge impact on Western law as a whole. In the United States, for example, Christianity, the largest religion in the country, was the main religion that influenced its founding and the belief in biblical truth was widespread among the founding fathers of the United States. The Christian faith has provided the intellectual background and theoretical foundation for many of America's cultures and values, thus influencing the development and implementation of American law. The values and spiritual content of religious norms were absorbed by the nation's legislators and played a crucial role in the subsequent conception of legislation. The Biblical principle of "honesty and integrity" is also reflected in the observance of the law by citizens, leading to greater compliance with the law and a greater sense of self-awareness.

Throughout the history of China's legal development, starting from the divine right law of the Xia Dynasty and the Shang Dynasty, to the combination of law and patriarchy in the Western Zhou Dynasty, a system of rule of law from the central to the local level was established, which clarified the principle that the law was equally effective for the people and the nobility; then the Change of Law by Shang Yang in the Qin Dynasty was a new milestone in the process of China's legal system, which influenced the history of China's legal system for the next two thousand years. In the late Qing Dynasty and the Republic of China, a modernised legal system based on a constitution was established. It can be seen that the development of Chinese law and the progress of legal culture were inextricably linked to major events, revolutions and uprisings in Chinese history, and that the changes and improvements in Chinese law were in line with the tide of the times.

3. Impact of legal cultural differences on legal translation

3.1. The influence of the polysemy of legal English words on legal translation

The difference of the nature of Chinese and English language is the main embodiment of the difference of Chinese and English legal culture. Polysemy is common in English words but not in Chinese words. The reason is that before real English came into being, the three tribes of Britain used different Germanic dialects. After the tribes merged, they gradually formed Old English, and then English continued to develop. When three languages meet, there will be many synonyms and polysemous words, which is the initial cause of polysemy. For example, pupil (means: student; the apple of one's eye) and coach (means: trainer; four-wheeled lorry) are words that have very little connection between the two meanings, but come from the same language and are generally regarded as polysemous. However, Chinese is not the same. Since ancient China, after the unification of the country, in order to facilitate better governance and inter-regional communication, the unification of language and writing followed, and the meanings of words were relatively fixed. Firth, a representative of the London School of Functional Linguistics, said "Every word in a new context is a new word" [4], which shows that the meaning of English words is more context-dependent, with a wider range of meanings and less independence, so the phenomenon of polysemy is common. The opposite is true of modern Chinese, where the meaning of words is more rigorous and fixed, and the same word does not vary much in meaning even from one text to another. This difference in the nature of the vocabulary is reflected in the legal texts, resulting in the phenomenon of "one-to-many" English legal vocabulary versus Chinese legal vocabulary.

For example, the word "order" has a wide range of meanings and is very representative in legal English. In modern English, the most common meanings of the word are "command" and "sequence",

but in legal English, the word "order" has different meanings when combined with different words. However, in legal English, "order" has different meanings when combined with different words. The following is an exploration of the English definitions of "money order", "compensation order" and "back order": (1) A money order is a certificate usually issued by a government or banking institution that allows the stated payee to receive cash on demand. In this sentence, "money order" can be translated into "cash remittance", so the word "order" means "bills" (2) "A compensation order is defined in the Powers of Criminal Courts (Sentencing) Act 2000 to mean an order which requires the offender to pay compensation for any personal injury, loss or damage resulting from the offence." So the meaning of the word "compensation order" is "inform indemnify" and the word "order" here means "command" (3) In the translation of the supply agreement, "back order" is defined as "A back order is an order for a good or service that cannot be filled at the current time due to a lack of available ", it can be concluded that "back order" refers to goods or services that cannot be completed at the current time due to a lack of available supply. "The word "order" in this context can be translated as "order form".

For example, "prejudice" means "bias" in everyday English, but in legal English, "without prejudice to = without affecting". So the sentence, "Seller may terminate the contract by notice in writing without prejudice to any remedy it might have against buyer for the breach of contract..." means "The seller may issue a written notice to terminate the contract without compromising any remedial measures that may be taken due to the buyer's default behavior..."

It can be seen that just a small word in English has so many meanings in legal English. If the meaning difference of words in different positions and different collocations cannot be accurately distinguished, the translation quality will be directly affected by the polysemy phenomenon of the word.

3.2. The impact of differences in legal terminology on legal translations

The differences between Chinese and English legal cultures are also reflected in the different definitions of the meaning of legal terms. Legal terms refer to the words used only in the special field of law or legal profession. They have clear and specific legal meanings, and their meanings are conventional and relatively stable.

In the practice of translation, the phenomenon of taking the words too literally, especially in the process of English translation of legal texts. When translators encounter English terms with the same concept or similar structure with their own legal terms, they are prone to taking the words too literally, resulting in the translated text being very different from the original meaning. For example, when translating the Chinese law, Fan Bu Zheng Dang Jing Zheng Fa, into English, most people would translate it as "Law Against Unfair Competition", which is in fact a case of taking the words too literally. According to research, the expression "Law of Unfair Competition" is the most common and most frequently used expression in English law. Another example is the translation of "unilateral contract" and "bilateral contract", as "unilateral" and "bilateral" look similar to the Chinese terms "Dan Wu" and "Shuang Wu", many legal translators translate the two terms and "bilateral" in Chinese, many legal translators have translated the two terms as "single service contract" and "double service contract" respectively. This seems to correspond to the original text, but in fact it is also a phenomenon of taking the words too literally. In Chinese, the term "Dan Wu contract" refers to a contract in which one of the parties performs its obligations, while the term "Shuang Wu contract" provides for the mutual performance of each other's obligations. In English, however, the term "unilateral contract" refers to a contract in which one party gives a promise and the other party accepts it by conduct rather than a promise, while the term "bilateral contract" refers to a contract in which the parties exchange promises. "Refers to a contract formed by the exchange of promises between the parties. However, from the interpretation of the two, the two English phrases are only related to promises, not obligations, so it is not appropriate to simply correspond to "Dan Wu contract" and "Shuang Wu contract", but rather "single promise contract" and "double promise contract".

4. Principles and translation strategies of legal texts under the consideration of legal culture

4.1. Principles of translation of legal texts

4.1.1. Accuracy

Accuracy is fundamental to the translation of legal texts. No matter what text is translated, fidelity to the original is paramount, and this is especially true of legal translations. As legal language itself is

strongly professional and normative, even synonymous terms differ in their application in law, for example, "stipulation" and "provision" both indicate regulations, but in terms of specific usage they are very different. When "stipulation" is used, it can only mean a contractual provision, an agreement between two parties; but "provision" is used in a broader sense, it can refer not only to contractual provisions, but also to legal regulations. Similarly, the phrase "may" and "be entitled to" is that both can mean "have the right to do", but "may" is a natural right; but "entitle" has the meaning of "to move", so it means a right that can be enjoyed only after certain conditions are met, for example, "Party A has the right to visit the company within ten years." A has the right to visit the company as long as the two parties have reached an agreement, which can be expressed by "may". However, if a qualification is added in front of it, such as "If Party A has entered into cooperation with Party B, Party A has the right to visit this company within ten days", then "entitle" should be used, which translates as "If Party A has entered into cooperation with Party B, it is entitled to visit the company within ten days".

It can be seen that legal translation requires accurate and rigorous terminology, otherwise it is easy to cause ambiguity and disputes. Accuracy and rigor are the fundamental principles of legal translation.

4.1.2. Normality

The rigor of legal language determines the standardization of legal translation. In legal translation, the translator should have a clear understanding of the expression rules such as legal terms and legal documents and give the most standard translation. Otherwise, even if the content of the translation conforms to the original text but is not a standard legal expression, the translation will be difficult to convince people.

"Shall" is a word that is often misused in legal documents. In addition to being used in everyday English to mean "future" and as a modal verb, the basic meaning of the word in legal English is "to be obliged to". However, the misuse of the word cannot be ignored, for example, "This agreement shall be governed by the laws of China" is incorrectly translated as "This agreement shall be governed by the laws of China", because when we translate the phrase back into Chinese, it means "This agreement has obligation to governed by the laws of China", and the word "shall" in this context is purely absurd. It has been verified that there are only a few cases of "shall" appearing here, which is that the standardization of legal translation is not followed and there is abuse. As a simple declarative sentence, "shall" should be replaced with "is" in this sentence.

4.2. Basic strategies for legal translation

Depending on the type of legal text, translation strategies can be divided into literal translation and free translation. In truth, translators have to analyse the texts to be translated and find working solutions in the process of identifying linguistic and cultural equivalents. [5] The literal translation method applies to words, phrases or sentences where there is a direct reciprocal relationship between the source language and the target language. For example, "Xing Fa - punishment" and "Fan Zui - crime". Such legal terms exist in both civil law and common law systems, so it is only necessary to find the functional equivalent of the source language to translate directly.

The literal translation method is inappropriate in cases where the translator is unable to determine exactly when to use the meaning of an uncommon term or where the English and Chinese cannot be accurately compared. This is where the free translation method can be considered, thus bringing more new ideas to the legal translation and making the translation more accurate and coherent. For example, in the Civil Procedure Law of the People's Republic of China, the term "Lao Dong Jiao Yang", for which there is no equivalent in English. "Lao Dong Jiao Yang" is an administrative measure which means "the compulsory education and reform of criminals or juvenile offenders who are not subject to criminal punishment". Therefore, at present, the translation method with high recognition is "reform through labour", which is a typical free translation method. This method strives to achieve the same effect on both target language and source language by understanding the meaning of the source text and the cultural connotation behind it.

When translating, it is important to analyse the legal source text accurately and to use a combination of literal and free translations in a flexible manner, striving to achieve an accurate translation of the legal text.

5. Conclusion

With the development of The Times and the continuous improvement of translation quality requirements, translation has long been no longer an independent simple subject, and its process has developed from a single language conversion problem to a comprehensive systematic approach involving multiple disciplines and cultures. Under the background of The Times, the translation of legal texts is becoming more and more important. The definition of legal culture expands people's view of legal texts and changes people's understanding that the transformation of legal texts is too simple. Legal culture is the soul of law, so the translation of legal text must pay attention to the accurate transmission of legal culture connotation, in order to better convey legal connotation and promote the communication between China and foreign countries.

References

- [1] Andreea Maria Cosmulescu. *Views on the Complexity of Legal Translation [J]. Romanian Journal of English Studies*, 2021(18): 137-144
- [2] L. Friedman. *Legal Culture and Social Development [J]. Law and Society Review*, 1969, 4(1): 29-44.
- [3] Jiang Ling, Zhuang Yuyan. 2019. "Non-equivalence in Legal Translation". *Theory and Practice in Language Studies* 9(12): 1630-1634.
- [4] Firth J.R. *Papers in Linguistics 2. 1934- 1951 [C]. London: Oxford University Press*, 1957.
- [5] Vilemini Sosoni, Lucja Biel.2018. "EU legal culture and translation". *International Journal of Language & Law* 7: 1-7.