The Exploration of Anglo-American Legal Terminology Translation Strategies

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[Abstract] Legal Terminology is the most important component of legal language, and the accuracy of its translation manifests judicial impartiality directly. Accuracy and precision are the soul of legal terminology translation. This thesis, combined with legal translation practice, probes into the thinking process of Anglo-American legal terminology translation, provides corresponding translation strategies, and indicates that translators should confront three legal language phenomena: the progress of legal language, the custom of Chinese terminology and the translation of conventions. Chinese legal language literacy is the key to Anglo-American legal terminology translation.

[Keywords] Anglo-American legal terminology, translation, translation strategies

Introduction

The Fourth Plenary Session of the 18th CPC Central Committee has proposed to strengthen foreign legal practice. Judicial system reform in China is at a critical stage. The Anglo-American legal system is one of the most mature legal systems. The study of Anglo-American law has always remained constant in recent years, yet the chaos in the terminology is worthy of attention.

Legal terminology has its own semantics, has a range of application, and calls for specific context. The accuracy of legal terminology is a guarantee for seriousness and fairness. The delivered concepts should be confined within the legal range, and the reflected phenomena and essences ought to be observed and understood from a legal perspective. Therefore, the comprehension and application of legal terminology must be with reference to the entire legal system. As David points out, one of the difficulties is that there are no equivalent legal concepts and classifications in different legal systems (David, & Brierley, 1985). Legal terminology translation is of particular importance.

The Translation Process of Anglo-American Legal Terminology

Legal translation is not only considered as a language transformation process, but also as a communicative activity in the legal mechanism, aiming at the realization of legal functional equivalence. Legal functional equivalence source language and target language are legally equivalent in functions and effects, so that the target language can express the real connotation of the source language exactly. Legal translation in cross-legal communication should pay special attention to the expressions of the legal culture and legal regulation behind the superficial language presentation. China belongs to the Continental law system, while Britain and the United States belong to the Anglo-American law system. The great differences in legal terminology ask for not only proficiency of the two languages and legal knowledge of these nations, but also the familiarity of their connotation and extension. Based on the solemnness and rigorousness of legal language, accuracy and precision are the most fundamental principles in legal translation, and terminology translation is no exception. Anglo-American legal terminology translation generally abides by the following three procedures:

Figure out Accurate Definitions of Anglo-American Legal Terminology; Do Not Translate with Literal Words

"Final judgment" is usually translated as 终审判决, which is an example of literal translation. The English definition: Final judgment refers to a court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment. This is also termed as final appealable judgment or final decision or final decree or definitive judgment or determinative judgment or final appealable order (Garner, 2009, p. 919). A final judgment is the last judgment given by the court in Chinese legal context. China employs a two-tier trial system, that is, the second instance of Intermediate People's Court, High People's Court and Supreme People's Court are all final judgments, as well as the first instance of the Supreme People's Court. A judgment of last resort is unappealable, while a final judgment is appealable. Therefore, "final judgment" should be translated as 最后判决, while "judgment of last resort" should be 终审判决.

Is it correct to translate "personal jurisdiction" into 属人管辖权 or 人事管辖权? Consulting the definition in Anglo-American law: Personal jurisdiction or in personam jurisdiction is the jurisdiction, over the person of the defendant, which can be acquired only by service of process upon the defendant in the state to which the court belongs or by his voluntary submission to jurisdiction. The court must have in personam jurisdiction over a person in order to try a case against that specific individual. In addition to the mandatory requirement of having subject-matter jurisdiction, a court needs to acquire in personam jurisdiction over the respondent/defendant. Any order issued by a judge in the absence of both subject-matter jurisdiction and in personam jurisdiction is void, or of no legal force or effect. A court's power to bring a person into its adjudicative process; jurisdiction over a defendant's personal rights, rather than merely over property interests (Garner, 2009, p. 930).

The translation of "personal jurisdiction" into 属人管辖权 or 人事管辖权 is inappropriate, because the implication of 属人管辖权 in China is specific. 属人管辖权(国际管辖权) is that the nation has rights to exercise jurisdiction on every citizen at home or abroad. It is inappropriate also because the connotation of "personnel" is conventional, which is unconformable with its meaning in jurisdiction system. The meaning of "personnel" and "personal" is literally different. 人事管辖权 could be misunderstood as the short form of 人事争议仲裁管辖权 (jurisdiction for arbitration of personnel disputes). Is 对人管辖权 acceptable? There are two jurisdiction bases for defendants in American states. The jurisdiction basis contraposing defendants themselves expressed with "in personam" in Latin, while the other one contraposing defendants' rem. If the jurisdiction basis can be further classified into "in rem jurisdiction" and "quasi-in-rem jurisdiction". The former takes the proprietorship of rem as the jurisdiction basis, and the latter pays off the debts with the rem.

"Personal jurisdiction" is, thus, a general term. From the perspective of parties, it includes the jurisdiction of plaintiff and defendant. As far as defendant's jurisdiction, it incorporates "jurisdiction in personam", "in rem jurisdiction" and "quasi-in-rem jurisdiction", according to the difference in jurisdiction basis. Therefore, it is inaccurate to translate "personal jurisdiction" into "jurisdiction in personam," for it cannot show "personal jurisdiction" is the superordinate concept of "jurisdiction in personam", "in rem jurisdiction" and "quasi-in-rem jurisdiction". Personal jurisdiction, which decides the state where plaintiff is accused, is territorial jurisdiction. If it is translated as 对人管辖权, and taken as the relevant concept of "in rem jurisdiction" and "subject matter jurisdiction", the territorial nature cannot be embodied. It is not legislatively practical in America to parallel "personal jurisdiction" with "in rem jurisdiction" and "subject matter jurisdiction". The juxtaposition of "personal jurisdiction", "subject matter jurisdiction" and "venue" in American legislation are three standards selected by specific courts in American common pleas. Hence, it is appropriate to translate "personal jurisdiction" as 州域管辖权 or 区域管辖权.

There is a very common term, "next friend", in Anglo-American law. Translators cannot interpret it without its English definition. A next friend is someone who, without being formally appointed guardian, acts for the benefit of an infant, married woman, or other person who is unable to act independently (Zhang, 2014, p. 281). A person who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and is not appointed as a guardian (Garner, 2009, p. 1142). We usually translate "next friend" into (未成年人、无民事行为能力人或已婚妇女的） 诉讼代表人, when the connotation is analyzed.

The given concept and meaning of legal terminology is unalterable. Translators should try to seek terms which are equivalent or similar to the source language, with the prerequisite of the exact meaning of the terminology. Take another example of "brief", which is defined in the *Black Law Dictionary* as "It is a document prepared by a counsel as a basis for arguing a case", we could see that it cannot be simply translated into 案情摘要. In American litigation practice, a "brief" refers to a sort of important document submitted by litigators. It includes "trial court brief" and "appellate court brief" and calls for strict format requirements (statement of issue, statement of the case, statement of the facts, summary of the argument, argument, standard of review, and conclusion, etc., are the usual elements). Therefore, it is appropriate to be translated as 案件辩论书. In Britain, "brief" refers to the appointment contract of counsel entrusted by attorney, or 案情摘要 under some specific circumstances.

Attorney-General cannot be translated as 大律师 or 检察长, in a rush. The United States does not have procuratorate, the function of which is merged in the Department of Justice. America is "big judiciary", while China is "small judiciary. Attorney-General is, thus, translated into 司法部长, not the others. "Information" should generally be translated as 公诉书, not 情报. Anglo-American legal terminology translation is supposed to be carried out properly in accordance with the concrete context and definition.

Be Familiar with the Chinese Language and Culture; Do Not Apply Words Mechanically

Anglo-American legal terminology translation calls for the translator's familiarity with Chinese law. There are specific legal semantics in both English and Chinese legal terminology, without any irrational changes. In order to satisfy the functional equivalence legally, translators are asked to seek formal language, which are equivalent or similar to the source language, but not to coin words randomly or apply them mechanically.

"Reckless Driving" is usually translated into 危险驾驶罪, which is seemingly as a precise version. In order to examine the veracity, we ought to know the definition in Chinese law: 危险驾驶罪是指在道路上醉酒驾驶机动车，或者在道路上驾驶机动车追逐竞驶，情节恶劣的行为. Then compare the definition in the source language: Reckless driving is the criminal offense of operating a motor vehicle in a manner that shows conscious indifference to the safety of others. It is the operation of an automobile under such circumstances and in such a manner as to show a willful or reckless disregard of consequences. In such cases the driver displays a wanton disregard for the rules of the road; often misjudges common driving procedures and causes accidents and other damages. It is usually a more serious offense than careless driving, improper driving, or driving without due care and attention and is often punishable by fines, imprisonment, and/or driver's license suspension or revocation. As a general rule something more than mere negligence in the operation of an automobile is necessary to constitute the offense (Garner, 2009, p. 1385).

Through contrast, the connotation of the above two definitions differs a lot, and it is obviously not accurate to translate "reckless driving" into 危险驾驶罪. Is it possible to translate it into the similar 交

通肇事罪 in Chinese law? Translators need to examine the definition of "traffic offence": the actions which violate the transportation management regulations, lead to serious traffic accidents, and result in serious injury, death or great property loss. It is, thus, not so proper to translate it into 交通肇事罪, that we have to coin the new crime 鲁莽驾驶罪 to make it right.

There is another example, we often translate "police power" in the American Constitution as 警察权. Although we are familiar with the three Chinese characters, it is still tough job for us to understand what "police power" means. Please take a look at the definition: In United States constitutional law, police power is the capacity of the states to regulate behavior and enforce order within their territory for the betterment of the health, safety, morals, and general welfare of their inhabitants. Under the Tenth Amendment to the United States Constitution, the powers not specifically delegated to the Federal Government are reserved to the states or to the people. This implies that the Federal Government does not possess all possible powers, because most of these are reserved to the State governments, and others are reserved to the people. Police power is exercised by the legislative and executive branches of the various states through the enactment and enforcement of laws. A state's Tenth Amendment right, subject to due process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments (Garner, 2009, p. 1276).

According to the definition, this so-called "police power" incorporates the rights of safety, health, morality, and education, etc., of the government. In terms of the American Constitution, the state has non-enumeration rights. The federal government has enumeration rights, yet the rights, not enumerated in the Constitution, are left for each state to perform. The Tenth Amendment of the American Constitution protects the state from being infringed by the federal government. The federal government owns the enumeration rights and the extensive implied rights, while other rights belong to the people and the state. The various items from the federal Constitution and the Amendment establish American federal principles. The contents listed in legal documents are restricted, yet social lives involve all sorts of problems confronted by every government, such as, economy, culture, education, safety, sanitation, and welfare, etc. In terms of the federal principles, the management and standards of all the concrete problems are undertaken by each state. Thus, in American constitutional laws, "police power" is the combination of state administrative rights and social rights.

In the Chinese context, there is a concept of 社会治安综合治理, which refers to a systematic project, which prevents the illegal crimes, defuses the unsecure elements, and maintain the stability of public security, through the administrative and legal function, the power of the masses, the various measures, and the enhancement in all the aspects involved. If translators are familiar with Chinese legal culture, it is not difficult to translate "police power" as 社会治安综合治理权.

We usually translate "presumption of innocence" into 无罪推定 or 疑罪从无, which actually differ in a way: 无罪推定 is the general principle and spirit of a criminal lawsuit. It is abstract and applicable to each procedure before judgment, which can be considered as a hypothesis. 疑罪从无 is an operational principle. It is concrete and applicable to the doubtful facts, which can be regarded as a solution. 无罪推定 refers to the suppositional innocence before being judged as guilt, which prevents from the misjudged case and the priority of legal staff, and requires neutral objective case judgment. 疑罪从无 refers to the presumption beneficial to defendants under the circumstances of fact mess, which means releasing criminals rather than treating them unjustly. 无罪推定 belongs to Anglo-American legal terminology, while 疑罪从无 belongs to ours. The Latin "in dubio pro reo" corresponds to 疑罪从无, which could be translated as "innocent until proven guilty".

Another translation of "unjust enrichment" into 不当得利 implies much more than 不当得利 in our *General Principles of the Civil Law*. It includes not only 不当得利 of 92nd Item and 无因管理 of 93rd Item in *General Principles of the Civil Law*, but also the benefits from the violated fiduciary duty and intellectual property. "Agreement" and "Contract" can be translated as 协议 and 合同, which differ very little in Chinese law. According to Anglo-American legal regulations, however, "agreement" must have offers and promises, while" agreement" could be "contact" only when "agreement" is in the written form or supported by consideration.

Coin Equivalent Terminology Reasonably if There is Not an Appropriate One in Chinese Context

The language environment of Chinese law is a world of foreign languages, which constitute the major common terms of Chinese law. In the last two decades of the 20th Century, many legal works were translated into Chinese. Contract Law enacted in 1999 sees the mixture of German, Latin and English, such as, "exceptionon adimpleti contrattus", "unstable counter-argument right", and "right of subrogation", etc. China needs to get legislative experiences and to quote the relative legal terms from Anglo-American nations, in order to strengthen the foreign legal works and promote reform of the judicial system. Since there are no equivalences in Chinese for the concepts in English, translators could coin them reasonably. Patent, circuit court, and easement, etc. have long been involved in Chinese legal language.

The creativity of legal translation is mainly represented in legal terminology or concept translation. Translators could give legal meaning to general language or the existing terms in other specialized fields and could coin new terms by employing terms in other legal system. The most common method is translating the terms in the source language into the equivalences literally, for example, "reasonable doubt" as 合理怀疑, "Miranda Warning" as 米兰达警告, "fruit of the poisonous tree" as 毒树之果, and "equity court" as 衡平法院, etc. Because there are no concepts like 米兰达警告, 毒树之果 and 衡平法院 in the Chinese legal system, literal translation is a way to coin new terms. Translators should primarily understand the real meaning of the source terms, master the first-hand materials, and coin the new terms prudently. As in the above context, it is a great coinage of "reckless driving" as 鲁莽驾驶罪. Legal translation authority should formulate unified standards, and publish model translation, in order to integrate the new legal terminology translation.

The Confrontation of Legal Terminology with Three Language Phenomena

It is necessary to pay attention to the following three language phenomena, in order to fulfill the task of Anglo-American legal terminology translation:

Pay Attention to the Renewal of Anglo-American Legal Terminology

Anglo-American language is always evolutionary. "Burglary" was once defined as: the common-law offense of breaking and entering of another's dwelling at night with the intent to commit a felony (Garner, 2009, p. 225), which was translated into 夜盗行为 or 夜盗罪. American criminal law has made great revision nowadays: The modern statutory offense of breaking and entering any building—not just a dwelling, and not only at night—with the intent to commit a felony. Some statutes make petit larceny an alternative to a felony for purposes of proving burglarious intent (Garner, 2009, p. 225). The time is not confined to the night, the address is not only restricted to the residence, but also other buildings. American *Uniform Criminal Reports* (1998) even simply defines "burglary" as "the illegal entrance into a certain building for the purpose of committing felony or stealing", no matter whether violence is employed or not. The entrance into others' residence or building (not necessarily employing violence) for the purpose of harming, raping or murdering others, can also be counted as "burglary". Therefore, it is proper to translate "burglary" into 恶意侵入他人住宅罪 rather than 夜盗罪.

"Enterprise crime" cannot be translated into 企业犯罪 literally, for no one could understand what "enterprise crime" really means. Actually "enterprise crime" is originated from "organized crime", which is conventionally understood as gang crime, like the KKK or Sanhe Party, so the Anglo-American legal staff created the new term "enterprise crime" to stand for 有组织的犯罪. Please consult the definition: Enterprise crime is any organized or group of persons engaged in a continuing illegal activity which has as its primary purpose the generation of profits. Beside the main activities being illegal under various state and federal laws, there are also laws which deal with money laundering from organized crime activities. Criminal organizations keep their illegal dealings secret, and members communicate by word of mouth. Many organized crime operations have profitable legal businesses, such as licensed gambling, building construction, or trash hauling which operate alongside and provide "cover" for the illegal businesses (Zhang, 2014, p. 267).

The implication of legal terminology is continuously evolving. "Administrator" has been 管理人, but 法庭指定的破产公司管理人 from the 1980s. Legal translators should pay special attention to the connotation of new words and employ the terms which could deliver the intrinsic meaning precisely. If not, there will be serious consequences. Here is a true case that happened in New York: Australia authority authorized the validity of the "scheidung" judgment between the plaintiff and his spouse and translated the judgment accordingly. "Scheidung" referred to "separation" rather than "divorce" at the time when the judgment was made in 1938 in Australian law. However, the translator chose "divorce", and then the plaintiff was still allowed to get married in New York, although he was only separated with his first wife.

Give Weight to the Expression Habit of Chinese Legal Terminology

Anglo-American legal terminology translation must pay attention to the expression habits of Chinese legal terminology and the language connotation. As a pair of synonyms, 海商 and 海事 are two frequently employed words in maritime law theory and practice, and should be distinguished from each other in use. With the tendency of international shipping legislation unification, various international conventions employ "maritime law" and "admiralty law" indiscriminately, which makes the two terms gradually similar. Please consult the definition in Anglo-American law: Admiralty law or maritime law is the distinct body of law (both substantive and procedural) governing navigation and shipping. Topics associated with this field in legal reference works may include: shipping; navigation; waters; commerce; seamen; towage; wharves, piers, and docks; insurance; maritime liens; canals; and recreation. Piracy (ship hijacking) is also an aspect of admiralty (Garner, 2009, p. 1055).

According to the convention of maritime law in China, "admiralty" is usually translated into 海事, while "maritime" 海商. Although the two words are almost equal to each other, "admiralty" and "maritime" have derived their own specific implications during the localization process, the most peculiar of which are their comprehension in the narrow sense and broad sense. The narrow "admiralty" refers to the wreckage which leads to the maritime property loss or casualty, including ship crash, perils rescue, wreckage salvage, and general average, etc., while the broad "admiralty" generally refers to activities relative to the sea. The narrow "maritime" refers to commercial activities related with the sea, such as, cargo transportation and passenger transportation, ship chartering, and maritime insurance, etc., while the broad "maritime" refers to the activities relative to marine transportation and ships, which emphasize commercial activity, yet is not confined to commercial category. We need to choose the specific meaning when these two words are put into use. Generally speaking, maritime law refers to the law existing in the form of the statute book, and it is a legal department. Maritime law and admiralty law are two independent concepts, which call for the attention during the translation.

Anglo-American legal terminology translation needs deliberating. Translators should be highly sensitive to Chinese language and make sound choices in the implication of different Chinese characters.

For example: the implication of "black car" and "a car of black color" is different. Is "legal person" 法人, 法定代表人, or 法定代理人, which have their own connotations? It is appropriate to translate "silent partner" into 隐形合伙人, rather than 隐名合伙人 or 隐性合伙人. These examples are too numerous to list one by one. Anglo-American legal terminology translation requires the sound habits of Chinese legal terminology translation.

Show Respect to the Conventional Translation

There are some improper, even incorrect, translation examples in the Anglo-American legal terminology translation process, yet we still have to accept these conventional translations. For example, it is inappropriate to translate "intellectual property" as 知识产权, because it cannot be translated as 知识产权 literally and semantically. As a noun, "intellectual", which has nothing to do with the meaning of 知识, refers to 知识分子. Intellectual in "intellectual property" is obviously an adjective rather than a noun, and 知识分子 is not equal to 知识. From the definition (Intellectual property [IP] is a term referring to creations of the intellect for which a monopoly is assigned to designated owners by law. Some common types of intellectual property rights [IPR] are trademarks, copyright, patents, industrial design rights, and in some jurisdictions trade secrets: all these cover music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs (Garner, 2009, p. 881) "Intellectual Property" should be translated as 智力产权, while it is usually translated as 智慧财产权 or 智力财产权 in Taiwan or Hongkong. We need to accept these kinds of conventional mis-translations. It is not correct to translate "common law" as 普通法, but it is still not necessary to change it into 共同法.

Conclusion

Under the guidance of legal terminology translation principles, translators should actively study the characteristics of legal language, endeavor to improve the legal accomplishments, employ the above translation strategies flexibly, and achieve the Anglo-American legal terminology translation. Chinese legal language achievements are the key element of success. The legal translation field should strengthen the normalization and unification of legal terminology. Only when legal translation is standardized, can we assure the sound judicial communication, promote our judicial system reform, and improve the right of speech in international legal practices. The chaotic phenomena of legal terminology translation must be renovated validly.

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