

Non-equivalence in Legal Translation*

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Abstract—This paper investigates the question of non-equivalence in legal translation in terms of lexical meanings, namely, translation of legal conceptual issues and false friends, lack of equivalent legal words, legal synonyms and legal system-bound words. Also, three reasons for non-equivalence in legal translation are analyzed from the perspective of legal system, culture and language. In the final part, this paper puts forward appropriate translation methods to deal with non-equivalence in legal translation like borrowing, coinage, addition and transliteration with annotation. In addition, for legal translators, a basic knowledge of the relevant legal system, a high level of proficiency in two legal languages and a law dictionary are necessary.

Index Terms—non-equivalence, correspondence, legal translation, translation methods, legal translators

I. INTRODUCTION

For the past decades, both translators and legal scholars in China have been thinking about the question of whether ‘fa’ in Chinese is indeed equivalent to ‘law’ in English since it is known that the word ‘law’ in English has four different interpretations in Chinese as *li* (理 in Chinese, means order), *li* (礼 in Chinese, means rites, rules of propriety), *fa* (法 in Chinese, means human-made laws) and *zhi* (治 in Chinese, means control).

Since Jakobson put forward the concept “equivalence” in 1950s, “equivalence” or “correspondence” has been discussed and studied in the legal translation field for a long time. According to Toury (1986), equivalence is a compromise between the source text system and the target text system that are originally incompatible with each other. In the western translation field, “equivalence” or “correspondence” is no less important than the principles of “faithfulness, expressiveness and elegance” in the translation field of China. Thus, it is self-evident that these two translation concepts “equivalence” and “faithfulness, expressiveness and elegance” are like the “king clause” in Civil Law. What’s more, “equivalence” has long been regarded as “empirical and theoretical concept” in the theoretical studies of contemporary translation.

When it comes to legal translation, it refers to a special and specialized area of translational activity. With a view to conform to the translation of the legal language, the “translation of language for special purposes (TLSP)”, one of the three norms for legal translation is offered, that is, equivalence.

However, it is noticed that there exist a number of Chinese and English legal words and legal terms translated in a non-equivalent way. Take a legal concept ‘theft’ for example. ‘Theft’ in English law is different from its equivalent ‘*Diebstahl*’ in German law in terms of concepts, where there are great discrepancies as to what consists of ‘theft’. In accordance with the *Theft Act 1968*, ‘theft’ refers to the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it.¹ While in German Law, ‘*Diebstahl*’ (theft) means the act of taking away movable property belonging to another with the intention of appropriating it or making the third party appropriate it by unlawfully.² It illustrates the fact that the two legal systems define ‘property’ differently and other elements contained in the definitions also differ (Weisflog, 1987:210-211).

Thus, based on the question of non-equivalence in legal translation discussed above, the paper, first of all, analyzes reasons for non-equivalence in legal translation. Secondly, some examples will be presented in terms of its lexical meanings to manifest the non-equivalence in legal translation. Confronted with the difficulties occurring in legal translation, the paper will finally put forward some appropriate translation methods to deal with non-equivalence in legal translation.

II. REASONS FOR NON-EQUIVALENCE IN LEGAL TRANSLATION

In legal translation, the complexity and difficulty of translating legal words or concepts can be attributed to two different languages and legal systems (Cao, 2007:23). Specifically, the reasons for non-equivalence in legal translation may include systemic differences in law, cultural differences and linguistic differences.

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¹ See John M. Scheb & John M. Scheb II: “Criminal Law”, second edition, Wadsworth Publishing Company, 1999:155.

² See German Criminal Code, translated by Xu Jiusheng and Zhuang Jinghua, China Legal Press, 2000 :174-176, 183-188.

A. Different Legal Systems and Laws

Legal language is a specialized language that is closely related to a country's legal system. That is to say, law and legal language are bound by system, which suggests that legal translation involves translation from one legal system into another (Cao, 2007:24). In terms of legal systems, there are several categories of world legal systems or families, such as the Common Law, the Civil Law, and the mixed systems of law. Therefore, it is difficult to translate the elements of source legal system to the target legal system (Sarcevic, 1997:13). Take words from Chinese *Criminal Law* as examples, “劳改”(laogai)、 “徇私经营罪”(xunsijingyingzui)、 “拐卖妇女儿童罪”(kuaimaifunvertongzui)、 “破坏社会主义市场经济秩序罪”(pohuaishehuizhuyishichangjingjizhixuzui)、 “死刑缓期执行”(sixinghuanqizhixing). These words do not exist and do not have corresponding words to match in the Anglo-American Criminal Law. Likewise, many legal concepts or terminologies also have not been brought into Chinese legal system.

B. Cultural Differences

Another reason for non-equivalence in legal translation is cultural differences. Law, expressed through legal language, embodies a specific culture. Thus, legal translation is also characterized by its culture-specificness. The reasons why legal languages differ from each other can be mainly attributed to the existence of different legal cultures and traditions especially when involving two cultures with marked differences, which will further result in difficulties in legal translation. Legal cultures can be investigated and examined by reference to different legal systems. For example, Anglo-American law pays more attention to legal procedure. So there exist many legal words concerning judicial proceedings, such as discovery(证据开示 in Chinese), disclosure (证据披露 in Chinese), pleading (呈送程序 in Chinese), which do not have a corresponding lexical items and connotations in Chinese legal language. On the contrary, Chinese nation attaches more importance to rites, which gives rise to words like *li* (礼 in Chinese)、 *Li Zhi* (礼制 in Chinese) in the history of Chinese Legal Philosophy, also without corresponding English words in an equivalent way.

C. Linguistic Differences

There exist significant linguistic differences in legal language on account of different legal systems, cultures and histories. To meet the requirements for legal systems, legal language has developed its own characteristics. For instance, the early Anglo-Saxons often express legal concepts by using the combination of two semantically identical words that are alliterative as their linguistic tradition. Therefore, it can be seen that two semantically identical words that are often synonyms with alliteration are often used in English legal documents, such as *null and void; power and authority; save and except; obey, observe and comply with; charges and expenses* and so on. Take ‘*null and void*’ as an example. The legal phrase ‘*null and void*’ is translated as *wuxiao* (无效 in Chinese, means having no legal force) into Chinese as one word. This is because there are no two semantically identical words in Chinese to be equivalent to the English counterpart. Although ‘*null and void*’ in English possesses the same meaning as the word ‘*void*’, we may also note that the tone of ‘*null and void*’ is more certain and emphatic than one word ‘*void*’, which can be one of the explanations for frequently-used two semantically identical words with alliteration. Under this circumstance, it is easier to bring out problems of non-equivalence in legal translation, especially when in some languages there do not exist two equivalent words with similar meanings due to different legal languages.

III. NON-EQUIVALENCE IN LEGAL TRANSLATION

The principle of “equivalence” or “correspondence” in legal translation emphasizes the aspect of power in legal language. In other words, legal language in the translated text should possess the same “language power” as that of the original text (Li Kexing, 2010). However, in legal translation, due to factors such as differences in legal system, culture and linguistics, many legal concepts in one language cannot find corresponding words in another language to denote their meaning, causing both linguistic and legal complexities.

There are many cases causing non-equivalence in legal translation, and here we mainly discuss five major manifestations that may pose problems of non-equivalence. These are (1) legal conceptual issues; (2) lack of equivalent legal words; (3) legal synonyms; (4) legal system-bound words; and (5) false friends

A. Translating Legal Concepts

Legal concepts are the abstraction of legal thoughts and rule of law in the legal system (Cao, 2007:54). For instance, due to the development of different legal traditions and legal systems, some concepts in Common Law system are unknown to the Civil Law system and vice versa. In other words, some legal concepts in specific legal cultures are unique to the given legal systems. Take *fanzuiweishui* or *criminal attempt* (犯罪未遂 in Chinese) as an example. In the *Criminal Law of the People's Republic of China*, *fanzuiweishui* or *criminal attempt* (犯罪未遂 in Chinese) refers to a case where an offender has already started to commit a crime but is prevented from completing it for reasons independent of his will.³ While in Anglo-American Law, the definition of ‘*attempt*’ is that a person is guilty of an attempt if he/she does an act which is more than merely preparatory to the committing of the offence.⁴ Major

³ See Article 23 of *Criminal Law of the People's Republic of China* (2017 Amendment)

⁴ See Article 1, Section 1 of the *Criminal Attempts Act* 1981: (1) If, with intent to commit an offence to which this section applies, a person does

differences of ‘criminal attempt’ in Chinese Law and Anglo-American Law mainly lie in a) First, ‘criminal attempt’ in Chinese law is defined as committing a crime, while ‘attempt’ in Anglo-American law emphasizes “the act more than merely preparatory to the committing of the offence”. And whether ‘attempt’ in Anglo-American law can lead to punishments or not depends on the court’s opinions according specific situations. In other words, a person who ‘attempts’ to commit a crime may not be convicted of a crime for some uncertain reasons. b) Second, as to the reason of being prevented from completing a crime, it is independent of a person’s will in Chinese law. However, whether it is independent of a person’s will has not been taken into consideration in Anglo-American law. Therefore, according to the interpretation above, ‘*criminal attempt*’ is not the corresponding expression of ‘*fanzuiweishui*’ (犯罪未遂 in Chinese).

B. Lack of Equivalent Legal Words

As Newmark points out, “Semantic loss is a common translational problem, among which lack of equivalent legal words in translation becomes more obvious.” In the process of translation, many legal people, who under the Civil Law system, are accustomed to use “domestication” translation skill. They focus on conceptual equivalence, but ignore equivalence in connotative or cultural meaning. This non-equivalence problem is that although there exist words in the target law system equivalent to the source law system in terms of linguistics, these words may be partially equivalent to words in source law system or may not be equivalent from the perspective of function. For example, ‘costs’ are often translated as *susongfei* (“诉讼费” in Chinese), but actually the real meaning of ‘costs’ are different from *susongfei* (“诉讼费” in Chinese). In Common Law, ‘costs’ is categorized as “court costs” and “litigation costs”. The former one refers to a small amount of money and the costs of taking a case to court, including filing fees, jury fees, courthouse fees and reporter fees, etc. In a sense, it is just similar as *susongfei* (“诉讼费” in Chinese), while the latter one refers to a large sum amount of money that is spent on compensation for costs or losses incurred by the other party as a result of being engaged in this lawsuit and on retaining an attorney for the other party on a lawsuit, including the expenses of civil actions, criminal charges and other legal matters.⁵ Thus, it is clearly seen that the term ‘costs’ is totally different from *susongfei* (“诉讼费” in Chinese). Also, ‘*juror*’ in English translated as *peishenyuan* (“陪审员”) in Chinese is a good manifestation. Because of the vast difference between Chinese jury system and western jury system, semantic loss is also caused when translating *peishenzhidu* (“陪审制度”) as “*juror*”.

Still, once there has stirred a heat discussion when *jiehunzheng* (“结婚证” in Chinese) is translated as ‘marriage certificate’ and ‘marriage license’. Actually, China is a country that highlights entering to the register or registration, while countries like Britain and America pay less attention to registration than to ceremony and rite. ‘Marriage certificate’ means a document that is signed by the wedding host and submitted to the relevant institutions for filing, proving that the marriage of both parties is legal and effective. And ‘marriage license’ refers to an official written authorized certification issued by legally qualified government officials to the host of a wedding ceremony and is a prerequisite for legal wedding.⁶ Therefore, it is self-evident that ‘marriage certificate’ and ‘marriage license’ are totally different from *jiehunzheng* (“结婚证” in Chinese) that is issued by Chinese marriage registration authority and held by both husband and wife to prove their marriage legal and valid.

C. Legal Synonyms

Another manifestation of non-equivalent translation is that a legal term may have several synonyms, some of which also may be similar with each other, but actually they are totally different in law (Cao, 2007:70). For example, such words relating to law as legislation, statute, order and decree. Obviously, such a feature of Anglo-American legal language can pose a problem in legal translation for having no equivalent words in Chinese. Take the terms ‘custody’ and ‘guardianship’ in the *Australian Family Law* as an example.

In *Australian Family Law 1975*, ‘custodian’ refers to the legal right parents have to take care of and have control of their child on a day-to-day basis in relation to divorce or separation between two parents.⁷ While ‘guardian’ refers to the legal right parents have to make decisions on important matters such as education, medical and welfare for a long period of time on behalf of the child.⁸ The problem of non-equivalence in translation is created when these two terms both ‘custodian’ and ‘guardian’ are translated as “*jianhu*” (“监护” in Chinese). In other words, the two totally different legal terms in Australian law are translated into a same Chinese term “监护”. Thus, it shows us that translators are easily trapped into a dilemma, namely, non-equivalence in legal translation, especially when two synonyms words in English are translated into Chinese.

D. Legal System-bound Words

Legal language and legal translation are characterized by the use of legal terms specific to law, also known as system-bound words (Cao, 2007:60). There are many such words but we will only look at two categories of such words that present non-equivalence in legal translation: (1) words associated with areas of law and institutions; (2) words

an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.

⁵ See *The Compact English-Chinese Dictionary of Anglo-American Law*, 2013:329.

⁶ See *Black Law Dictionary*, 1999:998.

⁷ See *The CCH Macquarie Dictionary of Law*, 1993:47.

⁸ See *The CCH Macquarie Dictionary of Law*, 1993:79.

associated with the legal profession.

1. Words associated with areas of law and institutions

In spite of conceptual similarities within the same legal family, it is not necessarily to mean that the concepts are structurally similar. If we compare the Common Law and the Civil Law in terms of legal institutions and fields, there are many structural differences. For instance, there is the absence of such Common Law concepts as *consideration* or *estoppel* in the Civil Law of contracts (Cao, 2007:66). Besides, take ‘Equity’—a distinct branch of English legal structure as an example. In ordinary sense, the term ‘equity’ refers to fairness and equality. In law, ‘Equity’ refers to a set of legal principles and procedures developed by the Court of equity, attempting to remedy the deficiencies of the Common Law according to the doctrines of fairness and justice.⁹ It is so unique to English legal system that most of legal rules in this branch of law do not exist in other legal systems. In legal translation, the word ‘equity’ is translated as ‘*hengpingfa*’ (“衡平法” in Chinese) by coinage due to the fact that there is no corresponding word in Chinese legal system and legal language. However, the problem of non-equivalence to English term ‘equity’ in semantically and functionally has arisen for having no substantive or practical meaning, and having not been recognized in Chinese legal system before. Therefore, translators are often trapped into the embarrassing situation when translating words relating to law and institution that do not exist in other legal system.

2. Words associated with the legal profession

There are a number of words relating to legal profession. A lawyer is a person who practices law as an attorney, barrister, solicitor, counsellor, etc. The work of lawyers involves the practical application of legal theory and knowledge to address specific problems, or guaranteeing the interests of those who retain lawyers to provide legal services.¹⁰ The names of lawyers vary across countries, such as lawyer, barrister, solicitor, advocate, attorney and counsel. Here, take two kinds of lawyers—solicitors and barristers as an example. A solicitor is a legal practitioner who deals with most of the legal matters in some jurisdictions. He/She is responsible for communicating directly with agents, accepting cases, providing legal opinions and collecting legal fees. A solicitor can only appear in a court other than the high court to plead cases.¹¹ A barrister is another type of lawyer in Britain. He is responsible for the legal issues of cases and appears in the high court to plead cases at the solicitor’s request.¹² In legal translation, ‘solicitor’ is usually translated as ‘*chujilvshi*’, ‘*shiwulvshi*’, ‘*suzhuanglvshi*’ (“初级律师”, “事务律师”, “起诉状律师” in Chinese) and ‘barrister’ as ‘*gaojilvshi*’, ‘*chutinglvshi*’, ‘*dalvshi*’ and ‘*zhuamenlvshi*’ (“高级律师”, “出庭律师”, “大律师”, “专门律师” in Chinese). Or they are collectively called as *lvshi* (“律师”). Obviously, according to the different functions solicitors and barristers play, these expressions in Chinese actually do not correspond to the original terms expressed in English law.

E. False Friends

False friends in legal translation are also manifestations of non-equivalence translation. It means that a word is translated based on its literal meaning, but actually it does not mean that. Examples of common false friends include: “enterprise crime” in legal English is often mistranslated as *qiyefanzui* (“企业犯罪” in Chinese), but actually this word is equivalent to “organized crime”, that is, *youzuzhifanzui* (“有组织犯罪” in Chinese); “injunction” does not mean *jinling* (“禁令” in Chinese) or *minling* (“命令” in Chinese) but *qiangzhiling* (“强制令” in Chinese) or *fayuanqiangzhiling* (“法院强制令” in Chinese) issued by Anglo-American court. On the contrary, such as, “leading case” should mean *shouyaoanli* (“首要案例” in Chinese) while “leading question” should refer to *youdaoxingxunwen* (“诱导性提问” in Chinese); “industrial tribunal” is *laozijiu fencaipansuo* (“劳资纠纷裁判庭” in Chinese).

In legal Chinese, there also exist non-equivalent words or terminologies when being translated into English. This kind of mistranslation may be caused by lack of equivalent English words or ignorance. For example, *leifan* (“累犯” in Chinese) has two meanings in the *Criminal Law* of China: one is the action of committing a crime, the other is a person who commits a crime. Today in Chinese translated text the word is translated as ‘recidivist’ while translated as ‘repeat crime’ in *Legal Dictionary*. According to Black Law Dictionary, recidivist means that one who has been convicted of a crime more than once (repeat offender or habitual criminal), close to essential elements of the *Criminal Law* of China.¹³ But when referring to the action of committing a crime, *leifan* (“累犯” in Chinese) should be translated as cumulative offense (offense committed by repeating the same act at different times). So, ‘recidivist’ in its translated text is not totally equivalent to *leifan* “累犯”. Again, *jianyu* (“监狱”) or *juliushuo* (“拘留所”, or *kanshousuo* “看守所”) in Chinese is often considered to be equivalent to the word ‘prison’. But actually in American legal English, ‘prison’ or ‘penitentiary’ is a building for Confederate or State to keep criminals sentenced to more than one-year imprisonment. Hence, in China, from the perspective of translational equivalence, terminologies of *jianyu* (“监狱”), *juliushuo* (“拘留所”) or *kanshousuo* (“看守所”) in legal Chinese should be translated as ‘prison’ or ‘detention house (center)’ respectively.

From these examples illustrated above, it is obvious that translation based on literal meaning of words cannot realize

⁹ See *The Compact English-Chinese Dictionary of Anglo-American Law*, 2013:483.

¹⁰ See *The Compact English-Chinese Dictionary of Anglo-American Law*, 2013:806.

¹¹ See Curzon, L. B. *A Dictionary of Law*, 1983:341-342.

¹² See *The Compact English-Chinese Dictionary of Anglo-American Law*, 2013:136.

¹³ See *The Compact English-Chinese Dictionary of Anglo-American Law*, 2013:1155.

the effect of equivalence, which sometimes leads to misunderstanding.

IV. CONCLUSION

Legal translation is a process of linguistic transcoding and an activity of communication within the mechanism of law, involving different legal cultures and systems. This paper has discussed the question of non-equivalence in legal translation.

Despite the diverse linguistic and cultural differences between different laws, translation from one particular law to another is not impossible. For example, when it comes to the absence of legal concepts and linguistics and lack of equivalent legal words, we sometimes need to use borrowing expressions from the target language or create new words. For instance, many legal terminologies in China borrow from Japan, including *fa ren* (“法人”legal person), *renquan* (“人权”human rights), *gongzhengren* (“公证人”notary public), *yiwu* (“义务”obligation), etc (Xiao Han, Li Lei, 2015). Also, ‘*fanzuiweishui*’ (犯罪未遂 in Chinese) mentioned above can be translated as ‘uncomplete murder’ and *jiehunzheng* (“结婚证” in Chinese) is translated as ‘marriage registration certificate’ by creating new expressions.

As for legal synonyms, the translation methods of addition and adding annotation are good ways to convey original meanings. For instance, ‘custodian’ and ‘guardian’ can be translated as “日常监护权” and “长期监护权” respectively by adding the two words “日常” and “长期”, or giving additional annotation followed in these two words. With regard to words relating to legal system, transliteration with illustration plays an important role in retaining the semantic meaning of the source language. For example, ‘solicitor’ and ‘barrister’ can be translated as “沙律师” and “巴律师” in Chinese according to their pronunciations or can add some annotations about their specific functions. For the translation of some false friends, translators should possess a basic knowledge and understanding of relevant legal systems and legal languages and a law dictionary is required when encountering difficulties in legal translation.

All in all, regarding non-equivalence in legal translation, translators should not only be familiar with the semantic and pragmatic meanings of legal terms in the respective legal system, but also be flexible to employ appropriate translation methods so as to maximally reduce non-equivalence in legal translation and convey the original legal meanings and spirits to target readers.

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