

An Analysis about the Influence of Culture Transfer on Legal Translation from the Perspective of Intercultural Communication

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ABSTRACT

With the increasingly rapid social development, collusion and integration of different culture around the world, legal translation also becomes an exceedingly important tool in exchanges of laws. Legal translation, in essence, is a non-negligible aspect of intercultural communication, because legal translation is not only a transfer process from one language to another language, but also a study process of various legal cultures. In traditional researches about legal translation, most scholars only have a preference to pay more attention to the faithfulness and exactness of target language, but ignore the significance of cultural elements that are key limitations to the readiness of legal translation. Researchers can take advantage of culture transfer, which is a strategy to avoid misunderstandings in process of legal translation for the intention of improving the quality of legal texts. In this paper, legal translation refers to translation between English legal texts and Chinese legal texts.

1. Introduction

In this section, the author makes a brief introduction about intercultural communication and the relationship between legal translation and intercultural communication, which is the basis of the whole paper.

1.1 Brief History of Intercultural Communication

The conception of intercultural communication firstly flourished in the America, which was put forward by Edwar Hall in his book called *silent language* and was formally established until 1970s. After 1980s, the conception became more and more mature. Another scholar Gudykunst (2003) summarized fifteen theories of intercultural communication, which includes the reduction of uncertainty theory; the negotiation of cultural identity theory; negotiation of face theory; attribution theory; intercultural communication network theory, adaptation

theory and cultural scale theory. In china, some famous scholars such as Wenzhong Hu, Shijie Guan once made many researches about intercultural communication in the most early time.

1.2 Definition of Intercultural Communication

Chinese famous scholar Huwenzhong once defined Intercultural communication as people with different cultural backgrounds engaging in the process of communication^[1]. Some other scholars also refer to intercultural communication between people whose culture perceptions and symbol systems are distinct.

1.3 Relationship between Intercultural Communication and Legal Translation

Sarcevic once believed that legal translation is an intercultural communicative activity within the legal

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mechanism^[2]. Intercultural communication is mainly categorized as verbal communication and non-verbal communication. The author believes that legal translation is a kind of verbal communication. Besides, there are two main legal systems around the world, one is the civil law, the other is the common law. Different legal systems represent different legal cultures and time backgrounds, simultaneously, language is the most carrier and portrayal of culture. Legal translation is an important medium for communicating legal culture of different countries. The conception of legal culture was put forward by one American scholar called Lawrence in 1969, he once supposed that legal cultural refers to the public's understanding, attitude to legal system and model of legal behavior^[3], so people can fully acquire knowledge about different legal culture through legal translation. Famous scholar called Dujinbang believes the key point of legal translation is more than conversion of legal language, but a kind of important legal activity^[4].

2. Culture Transfer in Legal Translation

In this section, the author will mainly introduce the definition of culture transfer, the relationship between legal translation and culture transfer and the implication of culture transfer in legal translation. Scholar called Zuoliang Wang once pointed that translators deal with individual words, but is confronted with two completely different kinds of texts^[5]. The translator uses words, phrases sentence patterns to build a bridge of communication between different cultures, which is the basis of culture transfer^[6].

2.1 Definition of Culture Transfer

Culture transfer refers to the process of passing ideas, experiences, skills and other cultural characteristics from one society to another, from one place to another. Culture transfer also can be named after cultural diffusion or cultural transmission. The culture transfer is on the premise of producing cultural differences, which is divided into positive culture transfer and negative culture transfer. The negative transfer means that mother language will exert an adverse influence on translators, which makes translators exceedingly rely on the rules of mother language to have a wrong grasp of target language. Positive transfer means that using thinking of mother language will promote translators' understanding in target language. The author believes that one communicator may be affected by mother culture when he explores target culture, so culture transfer can be viewed as the psychological process from the mother language to target language and process of thinking and revising^[7].

2.2 Relationship between Legal Translation and Culture Transfer

Translation is one of branches of linguistic and legal translation is no exception. Language is the carrier of culture. Legal culture is a network of values and ideas related to law^[8], but most translators are ignorant of effects of culture elements on legal translation characterized by faithfulness and exactness. The author supposes translators make sense of culture transfer to deal with the balance of source language and target language. For example, when translating foreign legal texts into Chinese, translators can choose to take more Chinese culture into consideration to the intention that makes target language conform to Chinese code of thinking and habit of expression. On the contrary, when translating Chinese laws into foreign texts, translators can follow the express style of foreign legal documents. Legal translation is an important communication tool, which plays a role in exchanging and promoting legal culture from different countries and nations, so the culture transfer can be used as a strategy to improve the quality of legal translation. The relationship between legal translation and culture transfer can be viewed as the process that culture limitation or assistance to transfer in legal language^[9].

2.3 Application of Culture Transfer in Legal Translation

The key point in legal translation is how to take advantage of positive culture transfer and avoid negative culture transfer. Simultaneously, the author holds the opinion that the culture transfer has a relationship with the theory of domestication and foreignization in translation put forward by an American scholar called L. Venuti in his book *Translator's invisibility*^[10]. Arguments about adopting the domestication or adopting foreignization has existed until now. The author believes adopting domestication or foreignization is decided by concrete types of translation texts. Translators can learn lessons from the cognition of vocabulary, grammar, sentence pattern of mother language when they translate English legal texts into Chinese texts, In other words, the author can take the attitude of the ethnocentrism to adopt domestication to make source language conform to the value of target language, which is also the mirror of positive culture transfer. On the contrary, translators should choose to adopt the foreignization to accept the expressing style of source language and cultural differences when translating Chinese legal texts into foreign legal texts, which is also the mirror of the positive culture transfer.

3. Culture Transfer in Different Types of Legal Translation

In this section, the author lists some examples to introduce culture transfer in different types of legal translation, which are respectively translation of legal terms, translation of legal vocabulary and translation of legal texts. This section is the core part of the paper.

3.1 Culture Transfer in Translation of Legal Words

There are many legal English words in legal translation. The best way to apply culture transfer to the translation of legal words is to possess the sense of intercultural communication. For example, “lineup” means one person queues up, but translators shall translate it into “queue up and recognize”, because “lineup” in legal translation refers to a method by which police ask eyewitnesses to identify suspects. In this way, the police arranges a group of people to stand in a row, including the witnesses who claimed to have seen the suspect. The police ask the eyewitness to identify the suspect. For another example, “straw man” refers to dummy made of rice straw, but in legal translation, “straw man” in legal translation means the person who makes fake evidence for others. “Discover” means “find out” in common life, but in legal translation, it should be translated into “show somebody legal evidence”. “Action” means somebody takes some measures in common life, but in legal translation, it should be translated into “litigation”, which means somebody is sued for violating laws. “Exhibit” should be translated into “evidence for proving somebody’s crime instead of “show somebody something. “Maritime” should be translated into “maritime business”. In summary, the phenomenon of incorrectly translate legal English words can be attributed to cultural vacancy. There is no way avoiding affects resulting from cultural differences when meeting legal English words, so translators firstly take foreign legal system into consideration to look up specific legal implications and make some semantic complements to deal with cultural vacancy which requires translators to give full play to positive culture transfer^[11].

3.2 Culture Transfer in Translation of Legal Terms

Legal translation is a kind of very professional translation, which needs translators to have a good knowledge of legal terms. For example, the word “will” is usually viewed as model word and means “somebody has a plan to do something”, but in legal translation, it means “a legal document of one person’s disposition of his estate after his death. “Brief” is equivalent with “concise”, which means using few words can convey important informa-

tion, but in legal translation, it should be translated into lawyer’s defense document”. For another example, “slander” not only means one person says bad words behind somebody to do great damage to reputation, but also refers to oral slander instead of written slander. “Equity” refers to equivalence, but it should be translated into “a kind of legal system-common law”, in legal translation, which was oriented from Britain since the 14th century. “Guardian” should be translated into “somebody who performs the duty of raising children or looking after the old instead of “protector”. “Fruit of poisonous trees “means the evidence through unlawful approaches in legal translation instead of common fruit with poison. “Bargaining” should be translated into “plea bargaining” instead of “transaction”, which means one kind of deal including defense and action. “Next friend” refers to “agent”. “Black-letter law should be translated into “important articles of law. “Access right” should be translated “parent’s right to visit their children” instead of “permission to enter”. “Indecent assault” refers to one kind of unlawful obscene actions instead of “rude abrupt attack”. “Fruit of the crime” is translated into “illegal income from actions violating laws”. “Baby act” should be translated “laws stipulating that minors shall not assume legal responsibility^[12]. In summary, translators are supposed to take a correct attitude to legal culture differences and break culture restrict to legal translation, making each part conform to expression habit of target language.

3.3 Culture Transfer in Translation of Legal Slang

Legal slang widely exists in foreign legal texts, which is originated from some significant and momentous legal events. Only translators firstly refer to some composition and references can make it easy and exact to deal with legal slang. For example, in the 14th century, British people put red herring in places where foxes were present to test the hunting dogs of the ability to testify if they can resist extra smells and continue to find other foxes. British at the end of the 19th century, until the 19th century, British people began to use “red herring” to refer to false clues or fake faces presented by people in order to confuse their opponents. “Fee simple” was in the background of the appearance of the system of land partition in feudal period of England, so it should be translated into “real estate of which heirs have an absolute right to dispose”.^[13] “Friend of the court” should be translated into “office of juvenile’s legal assistance” instead of “friends of court”. It is necessary for translators to have a knowledge of the background of legal allusions, which prove the necessity of mastering the culture transfer.

4. Strategies about How to Utilize Culture Transfer in Legal Translation

In this section, the author mainly introduces some strategies about how to apply cultural transfer to legal translation, which is aimed at improving the readiness and efficiency of information communication of legal translation. It is difficult to understand and translate legal language because translators not only achieve the equivalence of language function, but also achieve the equivalence of legal function^[14].

4.1 Avoidance of Excessive Culture Narcissism in Legal Translation

In any cognitive activity, people are accustomed to take themselves as criterion of judgement. Cultural narcissism refers to people usually judge everything in accordance with their opinions about certain culture. That is to say, anyone always thinks his culture is most advanced^[15]. In legal translation, the author believes the most important thing for translators is to avoid undue culture narcissism and have a respect for foreign legal culture, taking differences in two legal systems into full consideration to explore the balance between source language and target language. In legal translation, the author holds the opinion translators should avoid adopting the Ethnocentrism. Translators are not only advised to pay attention to expressing style and cultural implications of own source legal culture, but also consider the characteristics of target of target legal culture.

4.2 Adoption of Different Translation Strategies in Legal Translation

The author believes translators had better to take corresponding translation strategies according to different legal translation texts, which includes direct translation, creative translation and free translation. Directive translation keeps both the content and the type of the original text. The free translation only keeps the content of the original text and is not limited by form of content. The creative translation means that translators need to play their subjectivity. The author believes that culture transfer is presented in the creative translation and free translation, because these two translation methods are also the mirror of translator's second creation. In most cases, translators can easily find the corresponding Chinese implications in the dictionary when they meet most legal words or terms, such as evidence, arbitrator, civil and so on. Secondly, when confronted with some special foreign legal expressions with specific cultural background, such as "country agent", "halfway house", "caveat" and so on, translators

can adopt the strategy of free translation because these legal expressions are shaped in special backgrounds, which is in accordance with the function of culture transfer. Translators should take concrete contexts into consideration in legal translation to properly expand implications of legal words or terms to make some necessary cultural supplement. In summary, the core of mastering culture transfer is to flexibly adopt different translation strategies.

4.3 Improvement of the Consciousness of Intercultural Communication

Legal translation is not only a simple conversion process from one language to another language, but also a process of translators' second creation and culture communication. Translators should keep the mind that legal translation is a magnificent intercultural communication activity, translators can improve the consciousness of intercultural communication from three aspects, which are respectively elimination misunderstandings of cultural differences, breaking the stereotype of legal translation, avoidance of the ego-ethnocentrism and concentration on the culture shock in the process of legal translation.

4.3.1 Eliminate Misunderstandings in Expression Differences

Expression differences is one of cultural differences, which are the basis of any kind of translation. For example, native English speakers are accustomed to using passive sentences, which frequently exists in translation of science and technology, because these passive sentences are more objectively describe truth without translators' subjectivity. The same applies in legal translation characterized by exactness and faithfulness, but Chinese native speakers are habitual to use many verbs. Besides, there are also large amounts of complex compound sentences linked by many conjunctions, but in Chinese texts, people usually use many short sentences and four-word phrases. In any kind of English texts, people's attitude and feelings are placed in front of events, but Chinese always firstly list events and then express feelings and ideas. In English texts, there is a phenomenon that pronouns and synonyms are used to replace person or thing mentioned above^[16]. The author believes a qualified legal translator firstly has a comprehensive knowledge about these differences, which will lay a solid foundation in improving the quality of legal translation.

4.3.2 Break the Translators' Stereotype of Legal Translation

The famous scholar called Wenzhong Hu in his writ-

ings once defined stereotype as one kind of belief about attribute of personality and group. In other words, people will shape the first impression on something or somebody affected by the specific culture. In many years of legal translation practice, most translators only view legal translation as a medium of transferring foreign laws, exceedingly emphasize the mechanical equivalence between word and word, sentence and sentence, but overlook the hidden cultural implications and feedback of readers. So it is necessary for readers to break the stereotype from the perspective of intercultural communication.

4.3.3 Avoid Legal Translators' Ethnocentrism

Ethnocentrism is a phenomenon that people get used to understand and measure other cultures in accordance with concept and standard of own culture^[17]. For most legal translators, they all believe own legal culture is superior to other legal culture. It is emphasized that translators should be centered in type of legal texts and demand of target language. The author believes that any qualified translators should show enough respect for bilateral culture, trying their best to get rid of effects on legal translation derived from ethnocentrism.

4.3.4 Pay Attention to the Culture Shock in the Process of Legal Translation

"Culture shock" was firstly put forward by a scholar called Oberg and refers to people's negative feelings or unaccustomed symptoms to certain culture. In legal translation, the author believes the phenomenon of culture shock is presented in the translation of legal slang. Most translators may not make sense of these true meanings of legal slang and only adopt the direction translation according to literal meaning, which gives rise to culture shock and makes readers become confused, surprised, and even disguised, so it is a necessity for translators to improve cognition about legal translation to avoid bringing culture shock to readers.

4.3.5 Explore the Aesthetic in Legal Translation

For any translator, another task is making full use of culture transfer to explore the aesthetic in legal translation. The author believes the key point of aesthetic in legal translation is to express and communicate the principle of justice, humanistic care and feelings. Legal aesthetic covers three aspects, which are the beauty of exactness, the beauty of fuzziness, the beauty of concise^[18]. Translators can adopt different translation strategies and culture transfer to give full play to the aesthetic of legal translation.

5. Conclusions

In this paper, the author creatively supposes that culture transfer has an influence on legal translation from the Perspective of Intercultural Communication. While ensuring the accuracy of legal translation, translators can appropriate some strategies of culture transfer in order to achieve the purpose of communication between different legal cultures^[19]. Situations and contexts in culture affect people's interpretation and transmission of information, which is also suitable to legal translation^[20]. In this paper, the author respectively makes a brief introduction about the intercultural communication, relationship between legal translation and culture transfer, the concrete application of culture transfer in legal translation and strategies about how to utilize cultural transfer in legal translation. To some extent, any translation is an intercultural communication activity. The author believes legal translators should be skilled at mastering all kinds of basic translation strategies and laws of different countries. What is more important, they should gradually improve sense of intercultural communication and study to take advantage of culture transfer to improve the quality of legal translation. The accuracy of legal translation not only refers to the literal exactness, but also emphasize the validity and reliability of intercultural communication result, which is the innovation of the whole paper.

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