An Empirical Study on the Differences between Overt Translation and Covert Translation in Legal Text

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ABSTRACT

Currently, it is key to convey precise meanings to readers for translators. Observing expressing habits between different languages is the precondition to make target texts more readable. It is crucial to ensure the exactness and seriousness of legal texts, but it does not mean that translators have to take machined way to leave out and even give up transmitting in-deep cultural implications for the intention of achieving the all-inclusive integrity of target content. It is a correct choice for translators to take overt translation and covert translation in line with traits of source language and target language and differences between civil law system and common law system. The intention of the article is to make an empirical study between overt translation and covert translation.

1. Relevant Concepts

In this chapter, the author will introduce two relevant concepts and the significance about applying two translation strategies, which is a foundation for this article.

1.1 Concepts

Overt translation and covert translation were firstly put forward by an American scholar called Juliane House. Translation quality assessment model put forward by him is a kind of translation taxonomy. Covert translation means that legal translators should not only pay attention to semantic equivalence, but also simultaneously supple necessary implicit information in translation process.

Covert translation means that translators need to deliberately hide conventional, ambiguous and difficult parts in source texts on the basis of not affecting the accuracy and readability of the translation. In the academic circle, some scholars hold the opinion that legal translation is different from other types of literary translation, which pays more attention to the seriousness and accuracy, but the author considers that legal translation is also a kind of culture communication conveying different cultural spirit and meanings between different countries, so scholars hold the opinion that translators can observe this method and model. In translation activities, overt translation and covert translation widely exist in the whole process of the translation [1]. When the source text has a strong connec-

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tion with target culture and exists independently in the society which the source text belongs to, then it tends to overt translation. Overt translation requires translators to strive to reappear the original text rather than try to recreate it. From the perspective of the fourth-order analysis model (function-genre-register-text), the use of overt translation is to achieve equivalence in text genre, register and language or text, but in terms of function, it is still be obtained equivalently, but the nature has changed because the discourse of the original text and the target text is different, the target language realizes the function of the original text through its own independent discourse, so it is also called the second-level functional equivalence. For overt translation, the translator's work is very important. Their main task is to make readers enter from the target language to the original text and experience cultural influence on the original text readers. Covert translation, as the name suggests, is to make readers unable to see that the text is a translation, which is very deceptive. Covert translation includes business, legal, scientific texts, tourist brochures, etc., and enjoys the same status as the original in the target culture. It is not related to a specific culture or reader in the original text, and its function is to reproduce the linguistic and cultural framework and discourse world of the original language in the target text, rather than bringing the target language readers into the discourse world of the original language. From a fourth-order analysis model, covert translation requires complete equivalence in function and genre. The other two will have a changed nature of equivalence, which will be accomplished by the cultural filter defined by House [2]. From the above analysis, we can see that in the final step of translation quality assessment, it is necessary to classify the text. In texts that require explicit translation, functional equivalence in the strict sense is impossible, so a second-level function must be established to comprehensively evaluate the translation; while in texts that require covert translation, functional equivalence is the most important measure.

1.2 Reasons and Significance

The overt translation is not only used to achieve semantic equivalence in legal texts, but also add explanatory phrases or sentences and some conjunctions. Overt translation, from another perspective, is an approach to creatively apply some translation strategies, such as augmented translation, transcreation translation and so on.

Considering the seriousness of legal texts and norm and stability of sentence structure in legal texts, translators need to take more overt translation to dig out more covert information to improve the understanding of readers. In other side, covert translation is used to hide some ambiguous and contradictory parts, but considering the completeness and exactness and reducing the fuzziness brought to readers, legal translators should try his best to reduce the use of covert translation. Whether adopting overt translation or covet translation, translators have to put intentions and traits in legal texts firstly. Overt translation and covert translation are used to assess the quality of the translation results. Using covert translation or overt translation is closely related to the characteristics of legal texts. Firstly, there are a considerable number of words derived from English archaic words, Latin, old French in legal English. For example, "hereof" means "about this point" and is kind of English archaic word. "Stare decision" in legal English means "to stand by the decided matters", "bona fide" means "good faith", an important system in property law, "a right over use of the property of another person", is expressed as "easement", a legal term derived from old French. Then the English vocabulary meaning of legal terminology is different from the meaning of common words. For example, "finding" generally means "investigation, discovery", but if it appears in legal documents, it must be understood as "judgment, ruling"; "instrument" generally means "instrument, instrument", but if it appears in legal documents in English, it should be understood as a legal document describing a contractual relationship or conferring a certain right. Lastly, a lot of compound sentences, pronouns and conjunctions, and many "metaphors" exist in English texts when expressing sentence patterns. The style of writing is obviously different from that of Chinese. This difference still exists in the expression of English legal texts, causing great difficulties and obstacles in translation. The word "bench" is usually expressed as "bench", but in some English films and television works, the subtitles will translate it as "judge", on the grounds that in the Middle Ages, British judges would sit on benches to conduct trials, and over time the people became accustomed to it. Since "bench" is regarded as "the person sitting on the bench to referee", "bench" has also become the representative name of the judge. In the process of translating legal texts from Chinese to English, if the translator ignores the harmonious transformation between the original text and the target language in order

to follow the original expression style of legal English, it will lead to the expression of the translated text belonging to "Chinese-style English language", but it is useless for communication and learning.

2. Difficulties and Solutions of Applying Process in Legal Translation

In this part, the author mainly talks about difficulties in using overt translation and covert translation and take corresponding solutions in legal texts.

2.1 Difficulties in Applying Two Strategies

Any type of translation is intended to achieve the communicate target. The key element is how to convey culture elements hiding in source language under the premise of ensuring the accuracy of target texts, and legal translation is no exception. Affecting the legal translation is mainly to achieve the function equivalence and language equivalence. In the process of using the two strategies, how to overcome obstacles in legal system is also a critical point. Translation process and translation result are very important for legal translators. In particular, any translator has no way to achieve textual equivalence when he uses the strategy of overt translation. On the other hand, covert translation is generally used to deal with parts of source text which has no strong bonds with target texts because it is difficult to pass on subtle culture elements, simultaneously, the quality of target is also affected by the translators' subjectivity, which are all uncontrollable factors. How to clean up these obstructions is the key to utilize the overt translation and covert translation.

2.2 Approaches of Solving Above Difficulties

Firstly, it is important to distinguish the 'translation modification and translation creation'. Translation modification refers adding some supplements or delegations to source text, which focuses on making some explaining to make the target texts more complete. Translation creation refers to that translators focus on grasping the persuasion or emotional function that the original text wants to express, so as to rewrite the source language to meet the reading needs of the target language audience, which is a recreation based on existing translation texts, it adap ts the original text with the target language and transmits the information in the original text in a natural and smooth way [3]. As a creative language activity, creative translation adapts the original text to the target language culture. It may be very different from the original text, but it is very suitable for the target language culture and effectively conveys the information in the original text.

3. Concrete Implantation of the Overt Translation and Covert Translation

In this section, the author makes an introduction about the concrete implantation of the overt translation and covert translation by taking some examples.

3.1 Concrete Implantation of the Overt Translation

The key of overt translation is to reappear the original texts to the utmost extent. Firstly, translators need to convey the complete meaning of every legal word. For example, according to Black's Law Dictionary, "property" has two meanings, one is "the right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership to possess, use and benefit from a definite thing (a piece of land or a movable property); ownership", the second meaning is any external thing over which the rights of possession and enjoyment are exercised. From this aspect, it can be seen that the word property in Anglo-American law can also refer to both "thing" and "fight". Secondly, translators should select more proper expressions. For example, in the Contract Law, Article 117...the force majeure referred to... in this law, which can be translated into "an objective situation that cannot be foreseen, unavoidable and insurmountable." The translation by the press is "Force majeure as used herein means objective situations which cannot be foreseen, avoided or over- come." The translation uses the old word "herein" to mean "this law", but in "in this law" was selected in Legal Press. While "in this law", and "he- rein" are both correct translations, but the effect of two expressions is quite different, the latter is obviously more applicable to legal documents, making the writing more concise and clear [4]. Thirdly, translators have to use appropriate model verbs. Modal verbs in legal play an important role in legal texts and can be used to distinguish legal terms with different meanings such as rights, obligations and declarations in legal documents. In legal texts, "shall" is used to denote rights and obligations, indicating mandatory consequences under the law rather than future tense. Legal obligations are different from moral and religious obligations. They are guaranteed by the coercive force of the state and must bear certain responsibilities or obligations. The common terms for implementing legal obligations in China are

"have the obligation". In Chinese legal texts, when mandatory obligations are imposed on somebody, "should" is often used instead of "must". The English counterparts often use "shall" and "must". For example: Article 22 of the "Contract Law" refers to the clause concerning "promise", "the promise shall be made in the form of notification...". The translation of Fangzheng Publishing House is "An acceptance shall be made in the form of a notice", while Legal Press adopted "an acceptance may be made by performing an act", in which "should" is translated as "may". Although in legal text, "may" refers to "a license or a right". However, the legal subject has the power to execute or not to execute, and the original legal effect is greatly reduced. Thirdly, translators need to make a voice conversion when they use overt translation. Chinese place an emphasis on subjective voice, but English texts emphasize the passive voice [5]. Using the passive voice is used for free expression of thought. The passive voice can enhance the objective and impartial style of legal English. The general legal relationship among the parties is often emphasized, and the perpetrator is generally not present in the in the article. Therefore, in the process of translation, attention should be paid to the differences between the two languages.

3.2 Concrete Implantation of the Covert Translation

Covert translation is mainly used for passing on culture elements [6]. In other words, covert translation reflects the effects on legal translation from different cultures, which needs translators to adopt transcreation under the premise of not affecting the exactness of legal texts. Cultural differences in legal texts mainly derive from three aspects, which are legal system, the difference between ethics and religion, and differences in the nature of the law [7]. Legal translation involves not only law, translation studies and linguistics, but also involves different national culture and legal culture. The translator will face the collision and conflict between different legal cultures in the process of translating, so it is necessary for the translator to have a better understanding of the relevant legal culture when translating legal texts, which needs translators have a thorough and all-round understanding of a variety of translation methods to make sure legal translation more accurate and streamlined so as to express the most accurate meaning of the original text. Firstly, it is required that translators make use of covert translation to make legal texts more concise and exact, which needs translators to

use minimal English vocabulary to convey the meaning of source texts. Translators need to use pronouns, synonyms, or language variants to refer to the above-mentioned content to avoid unnecessary repetitions. In legal English texts, translators should try to avoid using these referential words because it will confuse the reference and degrade accuracy of the legal text. Therefore, translators should use pronouns as little as possible except in without any ambiguity [8]. For example, in article 402 of the Contract Law The trustee, in his own name, shall sign in contract concluded with a third party within the scope of the principal's authorization, the third party if the agency relationship between the trustee and the principal is known at the time of the contract, the contract shall directly bind the principal and the third party, but there is definite evidence that the contract only binds except for trustees and third parties. In the original text, "trustee", "principal" and the "third person" was misused and the transmit process is frequent. Unquestionably, the frequent use of pronouns will produce ambiguity, so a number of translators chose to use the "the principal", "the agent" and "the third party" to replace pronounces. There is a relatively common problem in translation of legal documents, which is that two structures expressed by the language are different, so it is necessary to add certain sentence components [9]. Augmentation is one of the transcreations, which means that translators appropriately add some supplementary words in the process of translation language in order to express the central idea of the original text more truthfully and smoothly [10], rather than simply meet vocabulary correspondence between the original text and target texts.

4. Conclusions

The translation of legal texts is not a simple process of restoring the original information, but a creative process of conveying the spirit and culture of different legal systems. It requires translators to give full play to their subjective initiative and skillfully use explicit and implicit translation to improve translation quality, which meets the inherent requirements of the quality assessment model.

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