

The Development of Legal translation and the Changing Role of Legal Translator

Jianmin Zhao

School of Foreign Languages, Baoshan University, Baoshan, Yunnan Province, China

Keywords: legal translator; role; linguistic factor; culture factor; relationship

Abstract: The changing role of the legal translator is an interesting phenomenon in the history of translation. It is the result of the interaction of both linguistic and cultural factors. The changing role of the legal translator reflects the changing status of the target language compared with the source language as well as the changing relationship between cultures. The present thesis intends to avail of the polysystem theory and the skopos theory to do some research in order to find out in what way the role of the legal translator has changed with the development of society.

1. Introduction

Legal translation is an important phenomenon in human society in which the translator has an important role to play. However, the role a legal translator plays is not fixed or stable, it changes with the times. In this thesis, the author intends to avail of the polysystem theory and the skopos theory to do some research in order to find out in what way the role of the legal translator has changed with the development of society. With this aim in mind, it is necessary to have a glimpse of the history of legal translation first so that the different roles the legal translators have played can be brought to the eye of the researchers interested in this problem.

Legal translation has a history of more than 3,000 years. During over 2,000 years, general translation studies has been dominated by the debate whether a translation should be literal or free. (Sarcevic, 2002) The debate over literal and free translation has been particularly controversial in legal translation because the choice of words raises legal consequences. Legal translation was for most of the time strictly literal or transcoding until the twentieth century when translators of less used official language began to demand equal language rights. At present, the legal translation is done in the method of co-drafting, in which the translator's subjectivity is emphasized.

2. The Development of Legal Translation

2.1 Strict Literal Translation

The first known codified rule on the translation of legislative texts is the East Roman Emperor Justinian's directive set forth in the *Corpus juris civilis*. (Sarcevic, 2002) The *Corpus juris civilis* consists of the Institutes, the Digest, and the Code, among which the Digest is the most important part for the history of western law and legal translation. As a Roman emperor, Justinian upheld the right of the Latin language, as a result of which the *Corpus juris* was basically written in Latin. Justinian issued a directive admitting only translations into Greek that reproduced the Latin text word-for-word in order to preserve the letters of the law. In word-for-word translation, the words of the source text are translated into the target text literally. Even the grammatical order and syntax are retained. Actually, Justinian is modeled on the practice of the Church, which was closely related to the State. In biblical translation, it is believed that the 'word power' of the divine texts will only be retained by word-for-word translation. However, this absolute literal translation has resulted in obscure, awkward and difficult translations in the target language in most cases. And the strict literal translation period was later referred to as 'dark ages' in translation history.

2.2 The Shift to Literal Translation

In literal translation, the basic unit is still word, but it is permitted to change the syntax according to the rules of grammar in the target language, as long as keeping the idea of the source text as

closely as possible, so as to increase the comprehensibility. After the Middle Ages, Latin became the dominant language of international law and the principal diplomatic language until it was challenged by the national languages of a few western countries, namely, France. As a result of the emergent military and cultural and artistic power of France, the French language gained widespread recognition and prestige and gradually replaced Latin as the dominant international language. With the new consciousness of national language, Pierre-Daniel Huet argued that the basic rules of grammar in the target language must be respected, and he proposed a new form of literal translation, that is, to translate words in context, instead of in isolation. However, it was not until the translation of Code Napoleon that the principle of literal translation was confirmed.

2.3 Increased Concession to the Target Language

In the 19th century, hermeneutics was introduced into translation theory, and the hermeneutic approach questioned whether the translator can convey the sense of the source text by literal translation in which the basic unit of translation is the word. With the development of national consciousness and language consciousness, legal translators become more and more interested in the quality of the target text. They were no longer satisfied to provide translation work which was only understandable to the reader of the target language, but to make conscious effort to translate the source text into good French, English, Spanish, and whatever the target language was. Gradually, legal translators began to make greater effort to conform to the rules of the target language.

2.4 Letter vs. Spirit: the Swiss Debate

The translation of the German text of the Swiss Civil Code into French and Italian was an occasion on which the debate between 'letter' and 'spirit' was most significant. There were generally two groups of people who held different views on the translating strategies of the text. The traditionalists held that the French and Italian version must follow the German text as closely as possible. In other words, fidelity to the source text was to be achieved by literal translation. The other group held that languages enjoy equal prestige, and that the translation should be produced in the spirit of the target language. (Sarcevic, 2002)

The traditionalists regarded the literal translation of statutes and codes as essential. They demanded strict observance of the syntax and grammar of the source language, allowing for exceptions only where absolutely necessary. They also held that the task of interpretation should be strictly reserved to judges and the translator should not overstep his authority to give his own interpretation.

On the other hand, Rossel, who produced a 'revolutionary' French translation of the German source text, upheld the principle of language equality. He tried to translate German text in idiomatic French in order to emphasize the communicative value of translation. In defending his translation, he said that it is the virtuality that counts, i.e., the effect must be the same. In his opinion, the task of the translator was to convey the sense of the source text, not words in isolation. (Sarcevic, 2002)

3. The Changing Role of Legal Translators

Traditionally, the legal translator played the role of a mediator between the source text producer and the target reader. In the 20th century, the legal translator became to convert the passive role into an active one during the process of legal translation, and they became a text producer with new responsibility. At present, legal translators are encouraged to strive for linguistic independence on the basis of equal authenticity.

The change of the role of the legal translator is not only a historical accident but also the intended effort of translators for generations. The fear that the idea of the source text being tainted by the translator was one of the main reasons for the highly restricted role of legal translators in the past. For this reason, legal translators had limited authority to make decisions concerning linguistic problems. In the time when the translator was not guaranteed to know the exact intent of the text producer, strict literal translation or transcoding was a safe way to fulfill the task of converting the legal text from one language to another. Whether the text receiver would get the true intent of the

original text was not in the concern of the legal translator or beyond their consideration. At least, no one could blame them for not properly transmitting the information of the original text to the target language.

The later emergence of the call for literal and idiomatic translation of the legal text is a sign of the awakening consciousness of the legal translators on the purity of the target language and the importance of their role in the communication process of translation. The legal translator now was more responsible for the text receiver and more faithful to the target language. The translator was no longer satisfied with his role as a translating machine in the communication process between the original text drafter and the text receiver. Instead, they tried to assert his subjectivity in this process whose smooth functioning highly depended on his performance. This improvement in the status of legal translator posed a new question for them, i.e., whether his idiomatic translation of the source text faithfully accomplished the task of transmitting the uniform intent of the single instrument. It demanded the translator have a more accurate understanding of the original text, thus enhancing the importance of the communication between the drafter and the translator. The translator had to have a closer interaction with the text drafter to get the essence of the original text and the uniform intent. The result of the interaction between the drafter and the legal translator is that the legal translator gradually takes part in the drafting process and discusses with the drafter how to express the uniform intent in the source language. In this sense, the translator has been incorporated into the drafting process and becomes a co-drafter of the law text. The method of co-drafting is a great progress in the practice of translation as well as legislation. Instead of passively struggling to get the real intent of the drafter, the legal translator can now actively decide what the source text should be like. This unprecedented power and authority attribute to many factors, among which the principle of language equality is apparently the most important one. It is the result of the efforts of generations of nationalists, linguists and translators who aroused the common consciousness of language purity which is the sign of cultural independence.

4. The Bilingual Legislative System of Hong Kong-

The legal system of Hong Kong was modeled on the basis of common law system of Britain, and the laws in Hong Kong were originally drafted in English. However, the majority of the Hong Kong population speaks Chinese as their first language. This practice has deprived the citizens who are not literate in English of the right to know how. It was also an obstacle to the popularization of laws and regulations.

Under various considerations and the pressure from the Hong Kong citizens, the Hong Kong government decided to make Chinese another official language in Hong Kong in 1974. In 1986, the Hong Kong government started the bilingual legislative plan. The bulk of this plan was to translate more than 20,000 pages of statutes, which were originally drafted in English and had been promulgated in Hong Kong for decades, into Chinese. The legal texts drafted since 1989 will be in two official languages and the two versions of a single text, once authorized, have the same legal effect. The work of bilingual legislation was of historic importance, but there are also difficulties. Technically, there are many legal terms that cannot find an equivalent in Chinese. Furthermore, it is equally difficult to express the concepts of Common Law in Chinese. Besides, law texts were known for their low readability and even many native Englishmen complain that they cannot understand some English legal texts. For those technical terms and concepts that have no equivalents in Chinese, the translators resorted to the method of creating neologisms, which was a double blessing for the Hong Kong legislation.

Laws made since 1989 were produced in the method of co-drafting. The legal translators and other drafters worked together and discussed on what to say in either language to convey certain intent. The Basic Law of the Hong Kong Special Administrative Region is one of the laws of this kind, which has two equally authenticated versions in both Chinese and English. The importance of uniform intent of the single instrument is also in consideration of the fact that the legislators and judges will have a set of hermeneutic principles to comply with. When there is a dispute between the understandings of the two versions of a single text, the judges will easily find out the real intent

of the text and give proper explanations.

The role of the legal translator in Hong Kong has undergone great changes in the past decades. When Chinese was first deemed official language of Hong Kong, the legal translator was still in favor of English in the translation of legal texts from English to Chinese. In order to retain the original intent of the legal texts, and to some extent, retain the prestige of the English language, the legal translator resorted to the strict literal translation, believing that the original texts were sacrosanct. This has resulted in the difficulties in the translating process as well as in the understanding of the legal text on the part of the readers. As the negotiations between China and UK on China's resumption of sovereignty of Hong Kong were put into agenda, the status of the Chinese language had enjoyed great rise in Hong Kong. The purity of the Chinese language has become a factor that legal translators have to take into account. Thus, the co-drafting method was gradually incorporated into the legislative system of Hong Kong. The changing role of the legal translator in Hong Kong is a manifest sign of the changing status of the Chinese language.

5. Conclusion

The changing role of the legal translator is an interesting phenomenon in the history of translation. It is the product of the interaction of many factors. There are linguistic factors in it. However, it is more than a linguistic phenomenon. The changing role of the legal translator reflects the changing status of the target language compared with the source language. The status of language, however, reflects the status of the culture it represents. In this sense, the rise of the status of the legal translator reflects the changing relationship between cultures. In the translation of texts from a strong culture to a weaker culture, the rights of the weaker culture and its language are usually put in a minor place, and the translator gives more concern to the source text rather than the target text, believing that the 'inferior' culture and its language do not deserve special consideration. However, in the translation of texts from a weaker culture to a stronger culture, the translators, especially from the stronger culture, pay little attention to the cultural phenomena which are special in the original text and their translation usually focus on the language purity of the target language. Legal translation is no exception. In the past, translation of legal texts was usually from a dominant language to languages which were either underdeveloped or regarded inferior. Thus the principle of strict literal translation was dominant for a long time. In recent times, newly emerged powers as well as the world-wide movement of democracy brought prestige to languages which used to occupy positions of minority, thus reforming the translation principles that favored only the source language to the new principles that highlighted the equality between the source language and the target language. In the foreseeable future, the literal translation strategy and the co-drafting method in legal translation will coexist for a long time. It is possible that with the adoption of equal language rights by most languages, the co-drafting method will prevail and the legal translator will have even greater authority in legislation process.

References

- [1] Garzone, G. Legal translation and functionalist approaches: A contradiction in terms. ASTTI/ETI, 2000.
- [2] Lucja Biel. Legal Translator as a communicator[J]. International Journal of Semiotics and Law, 2015.
- [3] Matulewska, A. Socially induced changes in legal terminology. Studies in Logic, Grammar and Rhetoric, 2017(49).
- [4] Nida, Eugene A. Language, Culture, and Translating[M]. Shanghai: Foreign Language Education Press, 1993.
- [5] Sarcevic, Susan. New approach to legal translation[M]. The Hague/London/Boston: Kluwer Law International, 1997.