Legal System and Legal Translation: Juror or Assessor?

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Abstract. This paper tries to deal with the problems encountered in legal translation by legal translators working from Chinese to English. The Chinese legal system is a socialist system of law with Chinese characteristics, which is based primarily on the civil law model. The language of Chinese is far different from English. In addition, the legal system of the two languages is from two different legal families. Therefore, it is necessary to approach the problems from the comparative point of view. Finding an equivalent English translation, not only involves looking for accurate language but also a close look at the legal systems.

1. Introduction

It is not uncommon that translators encounter the problem of terms or concepts in the source language (SL) that do not totally match those in target language (TL). It may due to different factors, mainly linguistic and cultural. Chinese and English are so different that they do not share anything in common as a function of pronunciation, spelling, etc. The disparity between two languages in terms of culture is wide as well. It is no easy job to provide an accurate translation when two countries do not share the same language and the same culture.

Too often, translators confuse “人民陪审员” and juror, treating these two terms equally in their legal discourse, using juror when referring to the two people assisting the judge at trial and completing the trial by deciding on the verdict with the judge in China. Legal translation from Chinese to English not only involves translation from one language to another language, but also “from one legal system into another—from the source legal system into the target legal system” (Sarcevic, 1997:13). Each legal system is based on “cultural principles, a method of organizing and attributing meanings, and a practice of cognitive mapping” (Arditi, 1994:614) The legal system of English-speaking countries, mainly the UK and the US, belongs to common law system. The legal system of the PRC is still an open question. Law scholars haven’t reached a consensus on the characterization of the legal system. However, it is no doubt that the legal system is based primarily on the civil law model.

Therefore, the incongruency of legal systems in the SL and TL becomes a barrier for legal translators. According to David and Brierley (1985:19), each legal system or family has its own characteristics and “a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society.” Therefore, the national legal system is the bottom line to be considered while doing legal translation.

2. The Major Differences Between the Chinese and English Legal System

The English legal system in this paper refers to the legal system of English speaking countries, mainly the UK and the US. The Chinese legal system here refers to the legal system of the PRC.

The most distinctive feature of the Chinese legal system is that its core principles are codified into statute or code books which serve as the primary source of law. The English legal system is characterized by case law, which is law developed by judges through decisions of courts and similar tribunals. Their decisions become the precedents for future cases that are factually similar.

In the Chinese legal system, judges take the lead in the proceedings by bringing charges, establishing facts through witness examination and applying remedies found in legal codes.
Lawyers in China still represent the interests of their clients in civil proceedings, but make presentations to the judge.

As in common law systems, the role of judge seems a bit passive. In the United States legal system, that the jury determines the facts renders the judge a more passive role. The jury is bound to decide the facts based on legal instructions that, given by the judge, are initially proposed by the advocates. The advocates maintain a very active role in legal proceedings in the common systems. Their tasks commonly include advising clients on points of law and preparing legal pleadings for filing with the court, oral argument, in-court presentations and active lawyering in court. Therefore, in the English legal system, the judges are priest-like judges who give the sermon, but the believer-like lawyers have already determined from which part of the Bible the lesson for the day will be taken (Geoffrey, 2006).

As mentioned in the previous paragraph, the presence of jury is a big difference. A comparison between the jury system and the system of “人民陪审员” will be followed.

3. Juror

The jury system originated in ancient Greece and Rome, while the modern jury system originated in Britain. Then, with the colonial expansion of the British Empire, it spread to America, Africa, Asia and other places. Although the modern jury system originated from Britain, it found the most suitable fertile land for its own growth in the United States. In a series of indictments against the king in the 1776 Declaration of Independence, the king was accused in many cases of depriving the colonists of the benefit of the jury system. The jury system was written into the United States Constitution of 1787 as one of the most important rights to be fought for in the American Revolution. The jury system has become a very important part of the American judicial system.

In the case of English legal system, juries are comprised only of laypersons. According to American law, jurors should be citizens of the United States aged from 18 to 70, who pay more than $250 a year in taxes; be able to read and write English. Persons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored, are not allowed to serve as jurors. There was time that women were not allowed to serve as jurors. Some scholars in the United States advocate that jurors should be chosen regardless of wealth, economic status, nationality, etc. The jury convening system was established to ensure the wide coverage. Jurors are appointed by judges and by jury judges or court clerks. They are usually appointed within the jurisdiction of the courts where the cases are heard, selected through different means, e.g., telephone books, voter lists, car registration lists, etc. The purpose of the practice is to give more people the opportunity to participate in judicial democracy by transcending racial and economic prejudices.

Jury in America can be mainly group into two, the grand jury and the petit jury. There are differences between these two types of jury.

In terms of the number of the member, a grand jury has 16-23 members, while a petit jury usually 6-12.

The grand jury hears from the prosecutor and tries to establish the existence of probable cause. If a grand jury decides there is not enough evidence, the person will not stand a trial. Unlike a petit jury, defendants and their attorneys do not have the right to appear before the grand jury. The proceedings are not open to the public. Grand jury indictment is one way to bring criminal charges. In the federal system, cases must be brought by indictment. While the states are free to choose either preliminary hearings or grand juries.

In another way, we can say that the grand jury is only responsible for deciding whether a case can be filed, and the petit jury, after the grand jury has made a decision to file a case, hears the evidence and testimony of the prosecution and the defense in the course of the trial, and then makes a decision on the case.

Once a grand jury is formed, it has a certain term of office during which it makes a trial judgment on whether a criminal case is filed within its jurisdiction, so it is often necessary to try many cases. Unlike the grand jury, the petit jury is formed for the case to be tried and will be dismissed when the case is over.
The grand jury participates only in criminal cases, not in civil cases, while the petit jury participates in both criminal and civil cases. In deciding whether to file a case, the grand jury does not need unanimous consent and only considers the majority opinion. While in deciding a criminal case, the petit jury must reach a unanimous consent to decide whether the defendant is guilty or not. There may be exceptions in civil cases, but they are very rare.

4. Assessor

In the strict sense, China does not have the jury system in the sense of common law system. Although, the juror in English is translated into Chinese as “陪审员”. However, it would be inappropriate to translate “人民陪审员” literally as “people’s juror”. Although the concept of “juror” does exist in English legal system, it would be a misinterpretation of the term in the SL.

In China, Citizens who serve as “人民陪审员” shall meet the following requirements: support the Constitution of People’s Republic of China; over twenty-eight years of age; abide by the law and discipline, good-mannered, fair and decent; healthy enough to perform tasks properly. Generally, they should possess a high school diploma.

The newly passed law on “人民陪审员” made a revision on the selection organ, from the former the people’s courts to the judicial administration organ. The purpose is to separate the selection system from the supervision system and improve the credibility and authority of the system. Not only the selection of candidates for “人民陪审员” is random, but also the selection of “人民陪审员” to the pool, as well as the selection of “人民陪审员” to hear specific cases. “人民陪审员”, to some ways, as non-professional judges, participates in the trial of cases and enjoy the same voice and voting rights as professional judges in the collegial bench. The decision of the collegial bench to deal with the cases is voted on the principle that the minority is subordinate to the majority. In this system, there is no functional distinction between judges and “人民陪审员”. They share the same right to judge the facts and legal issues of the case, and to have the rights as judges in the trial and in all judicial activities. When the trial is completed the judge and “人民陪审员” decide on a verdict.

Therefore, the concept of “人民陪审员” used in the Chinese legal system is quite different from the concept of “juror” in the common law system. If we use the word-for-word translation methodology to translate “人民陪审员” as “people’s juror”, it is definitely not appropriate. An assessor is “[2]someone who advises a judge or magistrate about scientific or technical matters during a trial” (Garner, 2009:140). Comparatively speaking, to use “people’s assessor” as the translation of “人民陪审员” will be a much better choice.

5. Conclusion

Some problems in legal translation mostly arises from the legal culture gap due to the different legal system of the SL and the TL. Different from the translation of other genres, legal translators should pay more attention to the legal culture of different legal systems, for making correct choices in choosing expressions which can maintain the original meaning of the SL to the greatest extent. Thus, the legal translation makes enormous demands on legal translators. They should not only be proficient in the SL and the TL, but also be aware of the differences of legal systems and that of legal cultures.

As long as law remains nation-specific and lacks common legal tradition, it is impossible to find the equivalence between the two systems. Therefore, a clear and deep understanding of legal concepts in the SL and in the TL is of paramount importance. For the purpose of accurately transferring the spirit of the SL to the TL, various methods of translation should be adopted in dealing with incongruence in legal translation.
References


