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笔译实践指南丛书 ⑤

Enrique Alcaraz
Brian Hughes

Legal Translation Explained

法律翻译解析



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**Enrique Alcaraz Varó
and
Brian Hughes**



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导 读

在交叉学科(interdisciplinary subject)领域中,语言和法学或许是联系最为紧密的两种科学,因而有人认为“法律是一种词语的职业”(Austin Sarat, 1996),而“法律问题就是语言问题”。语言是法律的载体,语言是法律思维的工具,语言是法律人的生产资料和生产工具,语言也是法律文化的载体和发展工具。法律文化的精髓,包括法律体制、立法规范、法律价值、人们对法律的信仰和态度、对争议解决模式的选择倾向等,都是借助法律语言方得以张扬和发展。就法律翻译而言,其理论框架必须构建在语言,准确的说是法律语言基础之上,因而法律翻译者能力(competence)之培养,除去学习必要的翻译理论和技能之外,首先要对源语言(SL)和目的语(TL)国家或地区的法律、体制、法律文化、法律语言规律和特征具有一定的了解。由恩里克·阿尔卡拉兹(Enrique Alcaraz)和布赖恩·休斯(Brian Hughes)合著的此本《法律翻译解析》正是为法律翻译人员编写的这样一本入门导读。

该书以法律英语为核心,从语言学、法学以及译学三维角度对法律翻译进行较为全面和系统的诠释,内容涉及法律英语的特征、翻译等值论在法律语境中的适用、普通法体制、司法诉讼和行政裁决、法律文本体裁、词汇、句子翻译技巧以及其他一些常见的法律翻译技法,总体上能够满足法律英语翻译所需知识的基本要求。作为翻译研究理论著述,该书能用英语深入浅出地演绎法律翻译诸多深奥法则与技巧,实在是为母语为非英语之读者量身准备的一本难得的佳作。

该书共分八章,第一章为法律英语语言学指南。作者将法律英语作为专业用途(而非专门用途)英语(EPP)之崛起归因于国际经济、政治、法律的迅猛发展以及全球化趋势,并坦诚本书写作之目的正是为迎合这种情势所需。作者认为,作为复杂的话语体系,法律英语的词汇特征主要在于法律语篇中含有大量拉丁语、法语或诺曼语、规范性语体、中、古英语词汇、介词短语、双叠词或三叠词(doublet or triplet)、行为话语动词

(performative verb) 以及委婉修辞词汇。此外, 法律行话 (legalese) 和简明英语运动 (plain English campaign) 也是本章论述的内容。作者将法律词汇分类为“纯技术术语”、“半技术”或“混合”术语以及法律语篇中的日常词语三类进行分析。至于法律英语句法上的特征则为: 长句、大量使用限制性或修饰性成分、大量使用被动语态、条件和假设成分、司法陈述词法简明、以及法律关系中主动方 (active party) 与被动方 (passive party) 之相互对立等。

第二章涉及到翻译等值论与法律阐释问题。法律英语从创始之初便附属于特殊群体, 即法律人 (lawyer), 其为法律人所操守, 为法律人所垄断, 完全超越了“大众语言”的范畴。法律语言运用过程中的思维、理解、阐释以及表达都为“法律人”所掌控。正如 O.W. Holmes, Jr. 所说, 在运用和理解法律语言时, 必须 “Thinking and speaking like a lawyer”。因此, 法律译者所追求的翻译原则也应当自成体系, 即一种类似法理学中的法律阐释原则体系。实际上, 法律翻译在很大程度上也完全等同于法律阐释。于是, 本书作者便将译者比作法官, 从法官阐释法律的角度, 论述如何应对词义的模糊性 (vagueness), 其中包括词的释义、外延和内涵、指示意义、内涵意义、语体、一词多义 (polysemy) 和语境重要性、同形 (音) 异义、同义词、上义词、下义词、反义词、“假同源词” (false cognates)、比喻以及句法含混等。

第三章为英国法律体制简介。长期以来, 我国法律对外大多借鉴大陆法系国家, 如法国、德国等的法律思想、理念和惯例, 对以判例法为基础的英美法律体系研究则相对不够。事实上, 大陆法系和英美法系之间存在极大的差别, 如果我们以基于大陆法系的固有思维模式和理念去理解和参悟普通法系的法律文化, 且用我们的法律汉语术语去硬套英、美的法律术语, 难免会在法律语言文化交际以及翻译过程中产生错位或谬误。由此, 熟悉英美法律体制便成为法律英语翻译最重要的一个先决条件。作者在本章中对英美法律渊源、普通法、衡平法 (equity)、英国法部门分类、管辖权 (jurisdiction)、法院构建 (包括郡法院、高等法院、上诉法院、具有最高上诉法院司法职能的上议院) 以及程序法中的诸多法律术语的翻译作了较全面的介绍, 其良苦用心正是想让读者能够奠定较为坚实的英美法律文化基础。

第四章依旧是有关英国法律以及法律制度的介绍。作者重点叙述了民事诉讼。1999 年生效的《民事诉讼规则》(the Civil Procedural Rules) 极大地改革了英国郡法院以及高等法院原有的民事诉讼程序, 因此其成为本书论述的一个重点。同时作者通过对诉权 (right of action)、诉因 (cause

of action)及其他一些程序法基本术语的概述,彰显出法律技术词语在法律翻译中的地位和作用。此外,作者还分别对审判、刑事诉讼以及行政裁决程序、劳资争议法庭(industrial tribunal)、家事法庭的体制和权限等进行了论述,意在加深读者对英国司法体系的进一步认识。

第五章和第六章论及的都是不同体裁(genre)的法律英语文本的翻译问题。按照作者的意思,文本(text)和体裁既可做宏观解释,又可进行微观细分。如广义的文本包括书面文本(written text)和口头文本(oral text)。而判决书则可细分为离婚判决、债务判决、违约判决、上诉判决等。在第五章中,作者讨论了大学文凭、证明、制定法、判例汇编(law report)、判决书以及庭审时的证人诘问、律师辩护词、法官对陪审团的指示等不同法律体裁的翻译问题。其中对制定法、判例汇编以及证人诘问(examination)等部分的阐述尤为详尽,如列举了英国立法的某些具体内容,其中包括短标题(short title)、长标题(long title)、说明立法缘由和目的的导言(preamble)以及立法语言的风格、法律法规的段落、条、款、项、目划分等。对于证人诘问则分别阐述了直诘(direct examination)、盘诘(cross examination)以及再诘问(re-examination)。

在第六章中,作者首先介绍的是合同各部分的内容,其中包括起始句、导言、效力规定(operative divisions)、释义(definition)、对价(consideration)、担保、适用法律(applicable law)、可分割性、见证、签名等。此外,作者还对契据、保险单、遗嘱、授权委托书(power of attorney)、法律专业论文、侦探或法制文学等不同文体的构成内容作了概要论述,旨在帮助读者提高对这些法律体裁的认识和了解。

第七、八章涉及一个共同问题,即法律翻译实践,只是两章论述的角度略有不同。第七章是从法律语言本体出发,探索有关法律词语的翻译问题。作者将法律词语归类为“一词技术术语”、“多词技术术语”、“准技术词汇”、“具有法律意义的日常词汇”、“功能性词汇”进行论述,并从词汇学和语义学的角度,对法律词语的搭配、“假同源词”及仿造词语(calques)等进行了介绍。

第八章则是从一般翻译技巧角度,探讨在法律语境中运用的各种具体翻译手法,如词性的转换(transposition),包括动词变名词、代词变名词、名词变形容词或动词,以及被动语态变主动语态等;扩展(expansion)、调适(modulation)、修饰语(modifier);“双连词”(double conjunctions);变换句子成分为句子主位(thematization);法律话语中词汇重复(repetition)以及同义词等。

作为法律翻译解析,该书关注的重心在于对法律英语的语言特征以

及普通法，尤其是英国法及其法律体制的介绍，同时附有部分翻译实例。尽管书中某些观点，如有关法律英语本体特征的论述等略显陈旧，然而对于该书旨在的主要读者群，即初学法律翻译的学生而言，其内容正好变得通俗易懂。总体说来，可以肯定的是该书应当算是法律翻译论丛中的精品。

宋 雷

西南政法大学外语学院

Foreword

This book is designed principally to cater for the needs of students who are taking their first steps in the translation of legal English. Our aim has been to provide readers with practical guidelines; the emphasis is on the identification and solution of problems that actually arise in this area of specialized translation. With this in mind, we have grouped the contents into four main blocks, each of which is further subdivided into two chapters. Blocks one and two provide a basic introduction to the linguistic and legal backgrounds; blocks three and four suggest methodological approaches to this type of translation.

Block one (Chapters 1 and 2) deals with legal English as a linguistic system and contains pointers to the leading features of that system. The main points discussed are the 'Plain English Campaign', the stylistics of legal language, the classification of legal vocabulary and the analysis of lexical vagueness and syntactic ambiguity, with the needs of the translator uppermost throughout.

The second block (Chapters 3 and 4) is essentially an outline of the specific features of the Anglo-American legal system. It also contains a brief account of the differences between that system and the continental or 'civil law' systems prevalent in most European countries. Among the matters dealt with are the sources of law (common law, equity, statute law and case law), the court structure and the rules of procedure in civil, criminal and administrative cases.

Chapters 5 and 6, which comprise the third block, are devoted to questions of translation method. Here the concept of text genre is first introduced and explained, then applied to an exploration of written and oral genres, specialist legal and professional genres such as judgements, contracts, wills or the examination of witnesses, academic genres like articles on the law published in specialist journals, and popular genres with an indirect bearing on the law, such as thrillers and courtroom dramas.

Finally, block four, made up of Chapters 7 and 8, completes the methodological picture with analysis of the linguistic and stylistic resources available to the translator of legal texts. The issues covered in this section include the need for awareness of semantic fields and collocations, ways of dealing with problems of syntax (e.g. thematization, complex noun phrases in English, the use of double conjunctions in legal phraseology), and the practical application to legal translation of familiar techniques such as transposition, modulation and expansion.

We would like to take this opportunity to acknowledge the generous help with technical matters provided by Dr Frank Southworth of the School of Law at the University of the West of England, Bristol. On countless occasions during the writing of this book we have benefited from Dr Southworth's invaluable advice on matters of terminology and have drawn on his lengthy experience as

a barrister and part-time judge to refine on our comments on English law. Any errors of legal definition or procedure that may have crept into the text are, of course, entirely the responsibility of the authors and not of our adviser.

Enrique Alcaraz Varó
Brian Hughes

Alicante, Spain, 2002

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1. Some Pointers to the Linguistics of Legal English

1. Introduction: Legal English and the rise of English for professional purposes

A few decades ago, any non-native speaker of English who progressed beyond training in basic ‘communicative English’ would probably have been offered a course on advanced grammar, vocabulary building and an introduction to some at least of the classic authors of English and American literature. In the universities, the concentration on historical and cultural aspects of English would be even greater, and most specialists would complete their degrees without having taken much, or perhaps any, notice of the major role of English as the international language of trade, marketing, tourism, legislation and policy-making. There was even a certain consensus in academic circles that such matters were beneath the notice of teachers of English in institutions of higher learning, or that they could be learned later if at all.

It would be easy to criticize this attitude as snobbish, impractical or misguided, but to do so would be to overlook the radical change that has occurred in very recent times in the role of universities. When the lines of demarcation between the academy and the market were relatively clear, and the prospects of long-term unemployment were, at least for graduates, comparatively rare, it was natural enough that the people responsible for planning the syllabus of university courses should place the stress on the study of English, or any other subject, for its own sake. Indeed, many teachers express concern at what looks like the increasing Philistinism of the market-driven ‘global village’ so dear to entrepreneurs and university managers alike. To them, it seems more important than ever that universities should continue to offer degree courses in modern languages that place the systematic study of the works of the great authors and of the history of language at the core of the curriculum. All business and no cultural awareness makes Jack a bore as well as a dull boy.

Nevertheless, there is ample scope for developing courses catering for either emphasis, as the recent phenomenal expansion of Applied Languages degrees has shown. It is time to move on from the debate over Shakespeare or shipping documents, Tennyson or technology, Chaucer or the cheese industry, Langland or legal English. The modern world emphatically needs both. The enhanced status of English as the dominant world language has led to an increased demand for the training of competent specialists able to mediate between it and other languages in a wide variety of fields. It is in this context that the prominence recently given in the universities to Translation Studies is best understood.

Over the past two decades, courses in Applied Languages have become increasingly popular in universities. Here in Europe, as the impact of the institutions of the European Union makes itself increasingly felt, universities offer an ever-growing number of degree courses combining the study of modern languages with modules on business studies, economic history, politics and European law. At the same time, universities everywhere have been developing international relations both as a subject area and as a focus for student exchange and recruitment. This has meant an increasing tendency to offer places both to overseas students specializing in combined courses of this type and to those whose area of specialization requires a Modern Languages component.

Naturally enough, given the prominence of English as *the* world language of contemporary communication and trade, there has been a phenomenal increase in the teaching of ‘the other Englishes’, i.e. ‘English for special (or specific) purposes’ (ESP), or ‘English for professional purposes’, as some prefer to call it. Inevitably, this tendency toward greater specialization in the teaching of English, together with the widespread adoption of modularization in the institutions of higher education, has had an enormous impact on Translation Studies, which has blossomed over the same period. General and literary translation remain key areas of these studies, but among students and teachers there is a perception that professional openings for translators are increasingly conditioned by market trends. International organizations and institutions, government departments and agencies, multinational corporations, import-export firms, the media, the film and tourist industries, information technology and the vast web of activities of every kind spun by the Internet all provide opportunities for translators. However, more often than not candidates for jobs in the field are expected to have received training in one or more specialist areas (commercial translation, medical translation, scientific and technical translation, legal translation, and so on).

The legal profession has played an undeniably significant role in the advances made in international cooperation and business. When money moves, lawyers move with it. But that is not all. The drafting and continual modification of international treaties such as those that underlie the European Union provide legal work with obvious multilingual implications. And contemporary protocols governing international cooperation in the clampdown against organized terrorism, drug-smuggling and the impunity of dictators depend to a very large extent on coordinating the efforts of administrative bodies, courts, police forces and lawyers, all of whom depend inevitably on the assistance of competent translators. At this early stage of the new millennium, legal translation is thus a basic requirement in both the public and private sectors of the international community. Further, this international community accords an important place to the English-speaking countries and their systems of law.