

白山文丛
Baishan Series

STYLISTIC STUDIES IN LEGAL ENGLISH

Huang Yongping

法律英语文体学

黄永平 著



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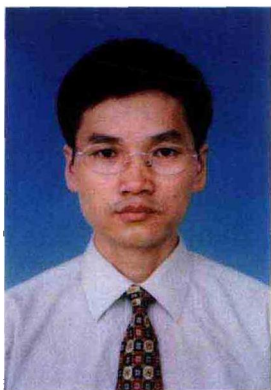
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黄永平，1962年生于海南，分别在江苏和海南读完小学和中学。1980年代中期，参加高等教育英语专业自学考试，并于1989年获得广州外国语学院大专学历。长期在海南一所农场中学担任英语教师。1993年考入山东大学攻读英语语言文学硕士学位，主要研究文体学和英语国家法律语言，并撰写了长达8万字的关于法律英语文体的学位论文，该论文就是本书的雏形。主要学术兴趣为翻译研究、文体学、法律与语言、立法文件翻译和美国研究。现任海南大学英语系讲师。

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In memory of my father
Huang Shixian
(1936-1978),
carpenter, ex-serviceman, and farm worker,
who had superb carpentry and
gave his life for the cause of land reclamation and cultivation
in Hainan in those hard years

and

my poor mother
Wu Xiufang
(1937-2004),
farm worker,
who also contributed a lot to her husband's cause and
in her bereavement supported her family
by hard work and persistent frugality in those hard years

纪念我的父亲黄石贤（1936—1978），
他是一个木匠、复员军人和农场工人，
 他具有精湛的木工手艺，
在那些困难的岁月里，为海南的农垦事业献出了生命。

纪念我可怜的母亲吴秀芳（1937—2004），
 她是一个农场工人，
在那些困难的岁月里，也为海南的农垦事业做出了很大的贡献，
在失去丈夫后，凭借辛勤的劳动和一贯的节俭养家糊口。

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Preface by Peng

Mr. Huang and I are new acquaintances. New as he is to me, I have got to know a lot about him in a hurry, and I am quite impressed by the infoglut of his life story that I have acquired these days by chatting long with him in a Haikou pub and reading intensively about him—I have at hand a voluminous printout of his draft and a hard copy of his 100,000-word web article in memory of his late parents posted on a forum of a Hainan website. Mr. Huang appears to have been through more than an average person's share of sorrow and hardship, which may have helped to foster some of the restlessness, sensitivity, fortitude, and audacity in his character. Some of these qualities may have been instrumental in bringing him up to where he stands. Born in the backwater of Hainan Island, he literally had to slash his way through the jungles. He could easily have been submerged in the sea of poverty and misery, but he endured long and, with painstaking efforts, rose and sailed the sea to heed his heart's call for higher intellectual attainment, for which he went in with exceptional vigor, conscience, and passion.

Years of hard work is about to pay off in the publication of this book. The English for law is indeed a most worthy subject in the domain of English for Special Purposes (ESP). As China swings toward a full-fledged engagement with the outside world, the making, interpretation, and translation of legal documents emerge as some greatest concerns of our time in the academic circles. The rule of the game of the international community comes to China mostly in English, and demands to be well understood by the Chinese so that they may play their role more effectively in the world arena. On the

other hand, China is a socialist country with its own distinct character and a profound cultural heritage that set it off from the mainstream of the world. Foreigners need to understand the Chinese rules if they are to conduct their business fruitfully in China. Both call for increased research in the language of the law.

As China rushes to establish a society of law culture, there are apparently many things that remain to be done or perfected in law making and enforcement. There are many fresh fields in law and at the interface of law and language that are to be explored. This book, being a rarity of its kind, fits in squarely to serve that purpose. Its great scope and depth help to facilitate both a theoretical and practical insight into the subject. As one of ESP's most typical branches, the English for law bears unique features and rests heavily on language grounds, which produces ample reasons for more linguists to dedicate themselves to the study of the interface of law and language. Forensic linguists not only claim their due place in the province of linguistics but also are well equipped to offer their expertise in the courtroom, when they are called upon to help with case investigation and solution. Mr. Huang's book represents such effort, and its value lies in the pioneering survey of the subject matter.

As a product of years of cultivation and accumulation on the subject, the book is double-edged and may serve both learners of general English and specialists interested in the subject. It is of particular interest to students of English, students of law, and legislative drafters and translators. In Chapter One of the book, readers are taken back to the history of the language of the law in England and America. This should be of great benefit to them in their efforts to study legal language in an all-around way. Chapter Two offers an in-depth, well exemplified stylistic analysis of legislative

PREFACE

and contractual language from the angles of lexicon, syntax, rhetoric, graphology, and discourse structure, drawing much on the relevant findings of linguistics. In Chapter Three, the author presents and discusses some leading issues related to legal language, with a focus on the trend of the growth of legal English, which, I believe, will well serve to orient the reader for further studies in the field.

While the detailed contents of the book will have to speak for themselves, it merits a remark that Mr. Huang went out of his way to undertake his work in English. If it were a challenge to him, as he told me and as it is indeed to Chinese scholars wanting to write in a foreign language, he took it with grace and confidence. This can be recognized in the coherence, accuracy, and even the ease of his expression. What can also be made out from the book is his sustained and unyielding dedication to English learning.

On the verge of the publication of this book, my heart is filled with pleasure and comfort, pleased and comforted in that a channel is wide open so that Mr. Huang's voice may reach a larger audience as it so rightly deserves. I am also pleased to see the good job he has done and I have good reasons to believe that he will fare well on a road little traveled by others and make a difference to academic variety in China.

Lotus Pond, Hainan University
May 2004

Peng Xiaohua

前 言

本书的源头是作者 1990 年代中期在山东大学求学期间的硕士研究生学位论文，这次出版时对各个章节作了较大的修改，增写了全书三分之一的内容。1993 年，山东大学外语系英语语言文学专业硕士点在原有的英国文学、美国文学、语言学、翻译等研究方向基础上新设立了“实用英语”方向，设置的课程中也含有不少翻译方向的科目，首届招收了包括作者在内的 4 名研究生，首次开展对非文学语体的研究，这 4 位学生入学后不久根据各自的兴趣和爱好选定一个语体进行学习和研究以便最终获取学位，我选择了法律英语。

法律语言学作为一门尚未确立起来的边缘学科在国内遭遇到了许多尴尬局面，许多关于这方面的研究尚未开展起来。我国法律英语界著名的学者陈忠诚教授在他的部分著作中讲到过这个严重的问题。如他在出版日期相隔 8 年的姊妹书《法窗译话》和《法苑译谭》中几乎相同地说：

我国法律（学）翻译已经有一段历史了。仅从建国以来而言，50 年代翻译苏联法律（学）盛极一时；80 年代改革开放以来，厉行法制，法律（学）翻译又现高潮，盛况空前。这期间，有成绩也有失误，有经验也有教训，都应有所总结、有所介绍，以广交流，以利提高。

但是，有几位法学家或翻译家写过几篇有关法律翻译的文字呢？论法学翻译之专著犹凤毛麟角。哪个地方、哪个部门召开过法律（学）翻译的工作会议或学术会议呢？全国之大，有几个出版单位曾经出版过一本探讨法律（学）翻译的哪怕是小册子呢？是不屑为之呢？还是不能为之呢？对此，每一个得益于或从事于法学翻译的翻译家、法学家、法学翻译家都应作出自己的回答。

（见《法苑译谭》前言，中国法制出版社 2000 年 6 月北京第 1 版）

真的，8 年时间，光阴如箭，全国范围内为了要确立法律语言学作为一门学科而进行的实质性努力似乎并不很大。我国尚无法律语言学的专门刊物供法律语言研究者发表更多的论文，已经出版的关于法律英语和法律语言学的读物大多数为法律教材，真正从语言角度进行深度研究的出版物并不多见。可喜的是，我国 2002 年召开了法律与语言的专题讨论会，参加者不但有英语界的语言学家，而且有不少法律界人士，这说明法律语言已经引起了学术界和其他一些相关行业的更多的兴趣和关注。

当然，陈忠诚教授的话主要是针对法律翻译的现状而言的，而法律翻译恰是法律语言学要深入研究的一个领域。而对法律英语文体的深刻认识是十分有助于法律翻译活动的。拿立法文本的汉译英来说，译者在做翻译前如对法律英语文体特色一无所知，那么他翻译时往往只凭直觉，并不十分清楚自己的译文是否符合英语国家的法律表述风格和习惯；而如果译者在对法律英语特别是立法语言的文体特色作了一些研究以后再做国内立法文件的汉译英，他的行为就会变成一种自觉的有着清晰的文体意识的

行为，他就会清楚自己从源语翻译的立法句子是否符合英语国家的立法表达的习惯和风格，特别是可以跟上英语国家里已经发生或正在发生的立法语言的风格变化。举例来说，关于情态动词 shall 在立法句子中的使用，英语国家的学术界和法律行业其实争论得很厉害，持美国规则（American Rule）的人士赞同保留 shall 来表达“有义务做”（has a duty）这个概念；而持 ABC 规则（ABC Rule）的人士则主张完全放弃 shall，改用 must 来表达“被要求做”（is required to）这个概念。争论的结果对英语国家如美国的立法句子的撰写产生了较大的影响，最近几十年来美国的很多法律如“统一商法典”和“联邦证据法”均不再滥用 shall。美国政府的实务和程序规则常设委员会（the Standing Committee on Rules of Practice and Procedure）下辖的文风小组委员会（the Style Subcommittee）1992 年采用 ABC 规则，而完全不用 shall。该小组委员会自 1991 年以来一直致力于各套联邦法庭规则的修改，此前一年，该小组委员会已经仅用 shall 来表达对动词的主语“赋予某项义务”（imposing a duty）。

反观中国国内的立法文件的翻译，我们的译者却还在滥用 shall，而且受对法律文件先入为主的印象的影响用 shall not 来表达 may not 的含义。这是非常糟糕的翻译。这其中的一个例外是 1980 年代早期“中华人民共和国宪法”的英译文，译者基本上没有滥用 shall，仅有几处把 may not 错用成 shall not 和其他一些不尽如人意的翻译。可以说，那个年代的中国宪法英译文较好地体现了前文所讲到的美国规则和当代美国法律文本的语言风格。如果后来的译者在这点上及时认真地效法中国宪法英译文的话，那么国内的立法文件的英译在立法情态的表达方面断不至于像目前这么糟糕。作者观察随后 20 年里的其他立法文件的翻译在情态表

达方面却呈现了严重的倒退现象。其实，译者只要搞懂永存格(essive case)的句子毋须使用 shall，哪怕是施事格(agentive case)的句子也不用 shall，而 shall 一般只用在赋予施事者某项义务的施动性有生性动作性句子(agentive-animate-active sentence) 中，表达授权和禁止的句子不再使用 shall 和 shall not，而用 may 和 may not，另一个情态动词 can 几乎可以排除不用。

这样减少和规范情态动词的使用而造成的有规制的情态表达有什么文体意义呢？本书指出，这一来有助于减少情态动词使用上的混乱，达到情态表达方面有章可循整齐划一的目的，二来有助于立法表达的简易风格的形成。诸如此类的文体陈述在本书中比比皆是。当前，我国法律英语的翻译包括立法文件的汉译英的现状很令人担忧，不仅大量的需要译成英语的法律尚未译成英语，就是译出来的英文本中也有很多词汇和句法层面的错误，不少句子语言上也不够地道，有些表达不符合英语国家立法语言的适宜的行话和习惯。因此本书的一个终极目的就是试图为国内国家和地方的法律的英译活动提供一些理论指导。这是作者写作本书时始终萦绕在脑际的一个想法。目前在中国，出版国家级法律中英双语对照版的出版社据作者所知有 3 家，它们是北京的法律出版社、中国法制出版社和中信出版社，最后一家是去年开始加入的。前两者的英译文的稿子来源据说是国务院法制办公室的翻译人员。他们利用自己的独占地位和垄断资源年复一年地炮制着质量低劣的译文并有机会出版，可是他们在做着这些事情的时候却连说出自己的中文姓名的勇气都没有，这些书籍的版权页上也没有译者或译者机构的名字，使你评论这些译文时不能方便地指出批评的对象。这一方面暴露出国内忽视译者权利的倾向，另一方面也表现出译者和出版机构不敢负责的心态，而是隐身在有中

国特色的“单位”里得到庇护。当这样的单位是中央政府的下属机构时则更难改变这一切。我认为，翻译国家级法律时应该实行全国招标和称职译员的遴选，建立多个三人译员小组，由小组提出某部法律的译文，付诸出版。也可加上审查这个环节，只要审查人员的英文和法律知识结合的水平确系可靠。但原则上，在中国法律英译过程中，应该有更多的英语专家参与到其中，而且甚至应该占据主导地位，法律专家则提供咨询服务。省市的法律翻译也可参照这个办法实行。

此外，国内的法律英语课程的教学似有隔鞋挠痒的倾向。目前国内法律英语的教材均为对英语国家主要是美国的法律的浅层介绍，缺乏对法律语言特色的阐述。学生学完这些简单化的课程后也不会获得法律语言的系统性知识。有鉴于此，作者有意撰写一本关于法律英语文体分析和研究的专著，弥补这些教材的不足之处，为国内的法律翻译活动提供一些理论指导，为政法院校的学生学习“专业英语”和其他大学英语专业的学生提供一本辅助教材，也为对法律英语有兴趣的其他普通读者提供一本关于法律英语文体知识的完整性读物。相信本书为法律语言学这门边缘学科最终在中国的确立添砖加瓦。这也使我不辜负我的导师李玉陈教授在我 1990 年代在山东大学求学期间对我的热情鼓励和殷切期望。

自 1963 年美国律师大卫·美林科夫 (David Mellinkoff) 的著作《法律语言》(*The Language of the Law*) 问世以来，英语国家研究法律语言的人越发多了起来，其中有英国学者大卫·克里斯托尔 (David Crystal) 等人在其《英语文体调查》(*Investigating English Style*) 一书中对一些非文学语体包括法律文件进行了分析。还有一些学者的关于法律语言的论述散见于一些书刊中。但