

Theoretical Basis for the Study of Legal Translation

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Abstract. This paper provides a review of the functionalist translation theory as well as the literature in the specific field of legal translation. The purpose of doing so is to establish the theoretical basis for the study of legal translation by absorbing essence from earlier studies on the legal translation so as to build up a theoretical framework for legal translation.

Keywords: Functionalism, Skopostheorie, Legal translation.

1. Introduction

As legal services have become increasingly globalized, the need for legal translation is greater than ever. This may explain why there is an ever-growing interest in legal translation by not only linguists but also lawyers. Despite the achievements made so far in this domain, the literature on legal translation falls far short of the large quantity of legal translations produced every day. Though certain researches have been theoretically and linguistically made into this domain, there is still much to be explored and answered.

2. Legal Language and Legal Translation

2.1 Approaches Adopted in Legal Translation

According to Šarčević's NEW APPROACH TO LEGAL TRANSLATION (1997), the first known codified rule on the translation of legislative texts is Emperor Justinian's directive set forth in the Corpus juris civilis. In order to prevent 'distortions' of his monumental codification, Justinian issued a directive prohibiting all commentaries on his enactments. As an additional means of preserving the letter of the law, the directive explicitly permitted only translations into Greek that reproduced the Latin text word for word. This may be the oldest known recorded evidence of legal translation criterion.

This word-for-word translation (often inaccurately called literal translation), also known as form-equivalent translation, refers to a translation approach which attempts to retain the language forms of the original as much as possible in the translation, regardless of whether or not it is the most natural way to express the original meaning. In essence, the word-for-word translation is a kind of strict literal translation, which is distinguished from literal translation. In literal translation, the basic unit of translation is still the word; however, basic changes in syntax are permitted to respect the rules of grammar in the target language.

The strict literal translation was criticized as "primitive", requiring no intellect on the part of the translator. In the 17th century, Pierre-Daniel Huet advocated a "refined" form of literal translation in which words are translated in context, not in isolation (Šarčević, 1997, p.31). In his opinion, the translator must respect the basic rules of grammar and syntax in the target language, yet not 'adulterate' the source text by producing a free translation.

During Napoleon's time, literal translation became the accepted method of translation for legislative text. The German translations of the Code Napoléon made allowances to observe the basic rules of syntax of the target language, yet followed the source text as closely as possible (Šarčević, 1997, p.32).

Translators were instructed to adhere closely to the source text, a tendency which lasted until the 20th century when the rise in national language consciousness in bi-or-multilingual countries such as Switzerland, Belgium and Canada resulted in greater respect for the "genius" of the target language. No longer satisfied to produce a text that was difficult to be understood by their fellow

countrymen, translators began to make a conscious effort to produce a text in a good target language. Without openly rejecting the traditional method of literal translation, legal translators began to make greater concessions to conform to the rules of the target language.

The emphasis on improving the quality of the target language in order to improve comprehension is definitely a move in the direction of challenging the use of literal translation. As the language is seen to be the standard criterion of national identity, it is not surprising that legal translators began to insist that authenticated translations of legal texts be written in the spirit of the target language (Šarčević, 1997, p.36).

As the target text has drawn more and more attention, the literal translation is no longer the only dominant convention for legal translation. Free translation or communicative translation is allowed and actually practiced by some legal translators at least at the syntactic level and occasionally at the discursive level.

2.2 Prior Studies of Legal Translation

The western translation studies can be dated to the third century BC when Bible translation appeared. The tradition of legal translation, however, surpasses even that of Bible translation (Šarčević, 1997, p.23). Although translations of legal documents are among the oldest and most important in the world, legal translation has long been neglected in both translation and legal studies. In traditional translation theory, legal texts have been regarded simply as a special case within the general framework of LSP (language for special purposes) texts, which in turn were considered to fall within the scope of the general theory. Although some translators seem content to apply principles of general translation theory to legal translation, others dispute the usefulness of translation theory for legal translation. The latter view is not surprising since special methods and techniques are required when translating legal texts. Like other areas of translation, the translation of legal documents is receiver-oriented, yet previous studies on legal translation by both linguists and lawyers failed to take account of the receivers. Given this backdrop, Šarčević (1997) published his book *New Approach to Legal Translation*, which attempts to provide a theoretical basis for legal translation within the framework of modern translation theory. Dealing with theoretical as well as practical aspects of the subject matter, Šarčević analyzes legal translation as an act of communication in the mechanism of law, making it necessary to redefine the goal of legal translation.

It is also quite necessary for us to make a review of legal translation studies in China in the recent years. Frankly speaking, legal translation studies in China have lagged behind those in the western countries to a great extent. With the globalization of legal services, legal translation studies have been attracting much more attention than before. Papers on legal translation begin to appear in some important periodicals and even some master's and doctor's degree theses are devoted to this subject. He Yunfang (2001) seeks to gain some insights into the translation of legal documents and put forward some practicable techniques in translating a Chinese legal document into English by conducting a comparative study of two English versions of a Chinese legal document. Hai Yun (2003) conducts a theoretical study on legal translation from the perspective of style. His paper is designed to probe into two research questions. One is whether legal style is translatable, and the other question concerns with criteria for legal style translation, i.e. how to evaluate a piece of legal translation from the perspective of style. Zhang Changming (2003) has come to the conclusion in his paper that, precision is the ultimate aim of legal translation. Or rather, the precise legal effects of the target text determine all the means and strategies employed in the legal translation process. Yu Lei (2005) conducts a systematic study of legal translation in respect of the legal translator's subjectivity in his decision-making process. She argues that legal translators should always be encouraged and be trusted to make their subjective choices on the basis of objective analysis.

To sum up, given the complexity of the studies on legal translation, the present achievements seem far less than enough whether for the academic or for the practical purpose. More efforts must be dedicated to fill in gaps and blanks remaining so far in this area (Yu Lei, 2005, p.4).

3. Functionalist Approaches to Translation

3.1 Development of Functionalism

We can't discuss the functionalism without mentioning Katharina Reiss, Hans J. Vermeer and Justa Holz Mänttari because they all made great contributions to the development of the functional translation theory.

In 1971, the initiator, German scholar Katharina Reiss advocated in her book *Possibilities and Limitation of Translation Criticism* that the specific purpose of translation action should be treated as a new model for translation criticism. She also put textual functions as a norm for translation theories. At that time, Reiss's theory was based on the theory of equivalence. Therefore, the relationship between the source text and target text was actually the functional equivalence.

In 1978, Hans J. Vermeer, Reiss's student, made a breakthrough by putting forward his famous *Skopostheorie* which is regarded as the landmark of functionalist approaches to translation. Vermeer's *Skopostheorie* is based on the theory of action. Vermeer thinks that translation is a form of translational action based on a source text, which may consist of verbal and /or non-verbal elements (illustrations, plans, tables, etc.) (Nord, 2001, p.11). In *Skopostheorie*, the addressee is one of the most important factors deciding a translation purpose. *Skopostheorie* was developed as the foundation for a general theory of translation able to embrace theories dealing with specific languages and cultures (Nord, 2001, p.12). While Reiss declares that the source text is the measure of all things in translation, Vermeer regards it as an 'offer of information' that is partly or wholly turned into an 'offer of information' for the target audience, which is no longer considered as a confinement for a translator.

Justa Holz Mänttari, a German professional translator went further than Vermeer. On the basis of Vermeer's *skopostheorie*, she expanded the fields of the functionalist translation theory. Her theory is based on the principles of Von Wright's action theory. According to Mänttari, translation is defined as "a complex action designed to achieve a particular purpose and the purpose of translational action is to transfer messages across culture and language barriers by means of message transmitters produced by experts" (Nord,2001,p.13). Mänttari made great contributions to functional translation theory by analyzing the role of the participants (initiator, translator, user, message receiver) and the situational conditions (time, place, medium) in which their activities take place (Nord, 2001, p.13).

Katharina Reiss, Hans J. Vermeer and Justa Holz Mänttari are regarded as the ones belonging to the first generation of theorists of functionalism. Then came the second generation who turned up in the academic world to push the functional translation theory forward. Among the second generation of functionalist scholars, Christiane Nord is one of the most well-known. She revised the radical functionalism by up building the second pillar to the functionalism, "loyalty", in addition to the first one by Vermeer, "skopos".

3.2 Function Plus Loyalty

Having been shaped through the influence of German functionalist scholars, Nord studied *Skopostheorie* thoroughly and carefully and deep consideration led her to discover the two interdependent limitations to the *Skopos* model. One concerns the culture-specificity of translational models; the other has something to do with the relationship between the translator and the source-text author (Nord, 2001, p.124).

The main idea of *Skopostheorie* could be paraphrased as 'the translation purpose justifies the translation procedures'. This seems acceptable whenever the translation purpose is in line with the communicative intentions of the source text producer. But what will happen if they are not identical? Looking at the history of the translation, we can clearly infer that at different times and in different parts of the world, target readers have had various ideas about what a good translation should be, and so their expectations towards a translation are different. The agents involved in the process may have different ends to achieve, and then which end should be justified as the first priority?

The second problem concerns the relationship between the source-text author and the translator. The source-text authors are likely to insist on a faithful translation of the original text, but how to translate and which method can lead to the desired result is, in most cases, out of the author's mind, for he is rarely an expert in translation. Sometimes, the Skopos of a translation is not in accordance with the author's intentions.

Given this backdrop, Nord proposed her loyalty principle. Loyalty is understood as an ethical concept governing translators' responsibility to their partners in the cooperative activity of translation, beyond 'fidelity' as a relation between the texts. Loyalty limits the range of justifiable target-text functions for one particular source text and raises the need for a negotiation of the translation assignment between translators and their clients (Nord, 2001, p.126).

Vermeer's Skopostheorie turns attention away from ST and towards TT, as the main emphasis is placed on the needs of the target readers. Yet, Nord made more efforts in mediating the source side and the target side by introducing the notion of loyalty. Therefore, it adds two important qualities to the functional approach: firstly, it turns Skopostheorie into an anti-universal model; secondly, it reduces the prescriptiveness of 'radical' functionalism (Nord, 2001, p.126).

4. Conclusion

Through literature review, some problems have been found with the traditional translation approach to legal translation. Given this backdrop, special methods and techniques are required when translating legal texts. The functionalist translation approach, which is developed by German translation scholars, has modernized translation theory by offering an alternative to traditional translation. Adopting a functionalist approach, this paper conducts a systematic study of legal translation by applying the macro-level theories of translation studies. By developing an operable functionalist translation procedure, this paper may make a contribution to the legal translation practice.

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References

- [1]. Šarčević Susan. *New Approach to Legal Translation* [D]. The Hague: Kluwer Law International, 1997.
- [2]. Nord, Christiane. *Translating as a Purposeful Activity* [D]. Shanghai Foreign Language Education Press, 2001.
- [3]. He Yunfang. *A Contrastive Study of Techniques Used in the English Translation of a Legal Document*. Unpublished master's thesis, Shanghai Maritime University, Shanghai, China, 2001.
- [4]. Hai Yun. *A Study on the Translation of Legal Style*. Unpublished master's thesis, Guangdong University of Foreign Studies, Guangdong, China, 2003.
- [5]. Zhang Changming. *On Precision of Legal Translation*. Unpublished master's thesis, Guangdong University of Foreign Studies, Guangdong, China, 2003.
- [6]. Yu Lei. *A Study of the Translator's Subjectivity in Legal Translation Decision-making: A Functionalist Perspective*. Unpublished master's thesis, Guangdong University of Foreign Studies, Guangdong, China, 2005.