

# A Study on Translation Strategies of English Legal Terms----Take Criminal Charges as an Example

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## Abstract

The translation of legal terms is one of the most difficult problems in legal translation. It involves legal cultures and specific legal concepts as well as source and target language. Therefore it is of great significance to study the translation of legal terms to improve the translation quality of legal English. Criminal charges are typical legal terms. This article selects some charges from the American criminal law, and then compares them with some of the crimes in Criminal Law of People's Republic of China. Based on the comparison of different legal cultures between the two countries and under the guidance of Sarcevic's translation theory, this article summarizes some translation strategies for criminal charges.

**Keywords:** Legal terms; terms translation; legal translation.

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## INTRODUCTION

Legal translation is different from ordinary translation, which is highly professional. What can best reflect the professionalism of legal translation is the translation of legal terms. "Legal terms are the refinement and concentration of legal principles and concepts, carrying the concept and spirit of law. It is because of the legal terminology, the expression of legal language will be concise, accurate and professional. The accuracy of term translation directly reflects the authority and impartiality of the judiciary. Accuracy and rigor is the soul of translation of legal terms"<sup>[1]</sup>. Criminal charge is a typical legal term. Legal terminology is attached to the legal system in which it is located, and each legal system gradually forms its unique legal terminology system in the process of its formation and development. Therefore, the accurate translation of legal terms requires not only mastering the source language and the target language, but also understanding the relevant laws of the two legal systems.

## LITERATURE REVIEW

### Literature Review of Legal Terms

The translation of legal terms is not only the conversion between source language and target

language, but also the conversion of legal concepts between two legal systems. Legal terms carry legal principles and concepts. If we do not understand these concepts and the differences between the two legal systems, we will often make mistakes in the translation from the language level.

Every legal system has its own unique set of legal terms. Even in the United Kingdom and the United States, which both speak the same language and belong to the common law system, the connotation of legal terms is different, so we should pay attention to these differences when translating legal terms. Sarcevic<sup>[2]</sup> has noticed these differences. Her in-depth and systematic research has laid a solid foundation for the later translation research of legal terms. Her theory has formed the theoretical framework for many scholars to study later.

Sarcevic's main contribution to the study of translation of legal terms is her deep discussion on the phenomenon of incomplete equivalence of legal terms and their translation. She summed up three kinds of equivalence in legal terms: Natural Equivalence, Functional Equivalence and Alternative Equivalence. According to the degree of equivalence, functional equivalence can be divided into three types: near

equivalence, partial equivalence and non-equivalence. Near equivalence and partial equivalence include two cases of intersection and inclusion respectively, while nonequivalence includes three cases of intersection, inclusion and non-intersection. Near equivalence means that all the essential attributes and most of the additional attributes of A and B are the same (intersection), or A contains all the attributes of B, and B contains all the essential attributes and most of the additional attributes of A. Partial equivalence means that most of the essential attributes and some additional attributes of terms A and B are the same (intersection), or A contains all the attributes of B, while B contains most of the essential attributes and some of the secondary attributes of A. The worst case of equivalence is non-equivalence. Non-equivalence refers to the fact that the terms A and B have few or no essential attributes identical (intersection), or that A contains all the attributes of B, while B has only a few or no essential attributes of A (inclusion), or that the attributes of A and B do not intersect at all (non intersection or exclusion).

Then, Sacevic <sup>[2]</sup> puts forward some remedies for the inconsistency of legal terms, including lexical expansion and descriptive paraphrase and definition. If none of these methods can make up for the inconsistency of terms, alternative equivalents can be used, such as neutral terms, borrowing, or neologism creation.

### Literature Review of Criminal Charges

The equivalence division is of great significance to the translation of legal terms. Under the guidance of this theory, we need to clarify the definition and constitutive elements of a legal concept, and determine which constitutive elements are its essential attributes and which are its additional attributes. The best way to solve these problems is to look for the legal origin of the terms. In the following, we will take the translation of criminal charges as an example to analyze in detail.

An important principle in both Chinese and American criminal laws is Legal principle of crime and punishment. Whether an act constitutes a crime depends on whether it conforms to the constitutive requirements of a crime in the criminal law, and the standard of distinguishing this crime from that crime also depends on the constitutive requirements of the crime. Therefore, when we translate criminal charges, we can divide the constitutive elements of the crime into the essential attributes of the legal concept, and divide some other sentencing circumstances into their additional attributes. On this basis, we can find equivalent terms. For example, when translating a certain crime A in American criminal law, it is necessary to determine whether there is natural equivalent. If there are natural equivalents, they should be translated with natural equivalents; if there is no

natural equivalent, we need to find functional equivalent. If the functional equivalent B is found, it is necessary to analyze the attribute composition of a crime in American criminal law, find out the constitutive elements of a crime, namely its essential attribute, and find out its sentencing circumstances, namely its additional attribute, from these attributes. In the same way, the essential attribute and additional attribute of crime B are determined according to Chinese criminal law, and then compare. According to Sacevitch's method, if it is near equivalence, it can translate A directly with B in the case of no misunderstanding; if it is partial equivalence or non-equivalence, we should make up for it. If we can't make up for it, we should use other alternative equivalents to translate.

### The influence of legal cultural differences on the translation of charges

The United States belongs to the common law system, and precedents and customs play a very important role in legal practice. Holmes O. W. Jr, the great American legal court, once said: "The life of law lies not in logic, but in experience <sup>[3]</sup>". American criminal law, based on pragmatism, adopts a decisive thinking mode, which advocates that every individual case or at least every single problem in academic theory should start from itself and seek solutions to these cases or problems. Under the influence of pragmatism, the American criminal law rejected the construction of systematism, and even thought that the construction of systematism was meaningless, thus forming a theoretical style totally different from that of German criminal law [4]." Therefore, the precedents of judges have become an important source of American criminal law, which is quite different from Chinese criminal law. The main source of Chinese criminal law is the criminal code, namely the Criminal Law of the People's Republic of China. Chinese judges often use the method of deductive reasoning when deciding cases, with relevant legal provisions as the major premise and specific cases as the minor premise, which is completely different from the approach of American judges based on individual cases [5]. The different legal thoughts and ideas in criminal law have a great influence on the translation of criminal charges, so we should pay more attention to them.

### Translation of criminal charges from english to chinese

The following is a translation and analysis of some crime charges in the criminal law of the United States using the above translation methods and principles. It should be noted that the United States has 52 jurisdictions, and each jurisdiction has its own criminal law system [6]. The criminal law of the United States used below mainly refers to the Model Criminal Code of the United States and the criminal law concept commonly used in most states, while the criminal law

of China mainly refers to Criminal Law of People's Republic of China.

#### Example 1. Murder and Manslaughter

In China's criminal law, the most similar charge to murder is intentional homicide, but they are not exactly the same. The crime system of homicide in American criminal law is very complex. The most important distinction is murder and non-premeditated homicide. Murder can be divided into many forms, and can also be divided into different levels according to the plot; while non premeditated murder can be divided into non premeditated intentional murder and non-premeditated unintentional murder. In China's criminal law, there are only two separate charges of homicide, namely, intentional homicide and negligent death [7]. Intentional homicide and murder are both intentional and illegal deprivation of other people's lives. The difference lies in that the constitutive requirements of murder require prior malice, that is, premeditation before killing, so murder should be translated as offence of murder. Manslaughter is a crime of murder without prior malice. So it should be translated as non-premeditated homicide. Manslaughter can be divided into voluntary manslaughter and involuntary manslaughter. These two crimes are not premeditated, but the former is intentional and the latter is negligent, so they can be translated into non premeditated intentional homicide and non-premeditated negligent homicide respectively.

#### Example 2. Battery and Assault

Battery is related to intentional injury and serious injury caused by negligence in Chinese criminal law. There is subjective intention in the constituent elements of intentional injury crime, but battery does not require subjective intention, it only requires the victim to be infringed due to offensive touch, so the scope of battery is wider than intentional injury crime, including intentional injury and crime of negligence causing serious injury. Battery is generally translated as assault crime, but this translation method is easy to cause misunderstanding, which makes people think that fierce and violent actions are needed to constitute this crime. In fact, battery is far wider than beating, which requires only offensive physical contact in behavior. Battery and intentional injury crime are actually included in partial equivalence. Battery contains all the attributes of intentional injury, and intentional injury includes most of the essential attributes and some additional attributes of battery. Therefore, we can make up for the difference between them by expanding the scope of intentional injury, and translate battery into injury crime.

There is a connection between "assault" and "battery". Assault is an attempt to hurt or a threat to hurt. However, the key difference between "assault"

and "battery" is whether there is actual offensive touching, that is, the former does not cause actual harm to the victim. China's Criminal Law does not have a similar charge for assault, which, according to its concept, can be translated as the defiance and affray crime or the crime of intimidation.

#### Example 3. Burglary and Arson

After a long period of evolution, the constitution of burglary has been decreasing, the scope of application has been expanding, and it has gradually deviated from its original characteristics. From its general translation, the crime of burglary, we can see its original meaning that is, invading other people's houses for the purpose of committing a crime at night. Night is one of the elements of the constitution of crime. But now in the criminal law of the United States, burglary means to invade other people's houses for the purpose of committing a crime, and there is no such time requirement as night [8]. This is very similar to the crime of illegally invading other people's house in Chinese criminal law. The difference between them lies in that the crime of illegally invading other people's house in China does not have the constitutive element of "taking the crime as the purpose", while the crime of burglary in American criminal law is a kind of specific intent crime, and taking the crime as the purpose of invading is its essential constitutive element. Therefore, burglary contains all the attributes of trespassing on others' houses, while trespassing on others' houses contains most of the essential attributes and some additional attributes of burglary, both of which are partial equivalents. It's not accurate to translate "Burglary" into "trespassing on others' houses" directly. To make up for the differences between them, burglary can be translated into a crime of malicious invasion of other's residence.

Arson has a very similar charge in Chinese criminal law --- crime of setting fire. The constitutive elements of them are intentionally causing the object to burn, so they can be regarded as natural equivalents and translate arson into the crime of setting fire.

#### Example 4. Larceny, Embezzlement and False pretenses

Larceny is similar to the crime of stole in Chinese criminal law, both of which take away other people's property for the purpose of permanently depriving the ownership of the owner. So it can be translated directly into the crime of stole.

Embezzlement is similar to the crime of misappropriation in Chinese criminal law, both of which means to illegally occupy another person's property in custody. Both refer to the behavior of converting property into self-possession when one has already possessed it. So it can be translated into the crime of misappropriation.

False pretenses refer to the act of defrauding others of property by means of false statement for the purpose of permanently depriving the owner of the ownership. The similar crime in China's Criminal Law is the crime of fraud. The crime of fraud refers to the act of defrauding a large amount of public and private property by making up facts or concealing the truth for the purpose of illegal possession. It is similar to the constitutive requirement of false pretenses, so false pretenses can be translated as the crime of fraud.

## CONCLUSION

Crime is the core legal term in criminal law, and the accurate and standard translation of crime is a very complicated and difficult process, which needs to be considered from both legal and linguistic levels. It requires not only the comparative analysis of specific Chinese and American legal concepts, but also the guidance of translation theories<sup>[9]</sup>. Based on the theory of imperfect equivalence of terms and relevant principles of criminal law, this article puts forward a method of translating charges based on the constitution of a crime, and takes the charges in American criminal law as an example to show the process of translating charges using this method. This method can be used not only to translate charges, but also to evaluate the quality of the translation of charges. The translation of legal terms in other departments can also refer to this method, combining with the principles and specific

concepts of the department's law to find a suitable method.

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