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SUBMITTED 14 March 2025

ACCEPTED 10 April 2025

PUBLISHED 12 May 2025

VOLUME Vol.07 Issue 05 2025

CITATION

Safarova Iroda. (2025). The translation of legal terms: cultural differences and their impact on legal communication. *The American Journal of Social Science and Education Innovations*, 7(05), 67–70.

<https://doi.org/10.37547/tajssei/Volume07Issue05-09>

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The translation of legal terms: cultural differences and their impact on legal communication

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Abstract: This article analyzes the relationship between legal language translation and cultural elements. The author highlights the existence of cultural deficiencies in the process of legal language translation and their significance in cross-cultural communication. The article discusses how cross-cultural differences and cultural elements impact legal language, as well as how to address the cultural gaps that arise in translation. The analysis sheds light on the unique characteristics of legal terminology, their meanings, and the necessity of interpreting them correctly within various cultural contexts. The article also provides recommendations for improving cross-cultural understanding and ensuring effective legal communication in legal translation. This work is of significant importance to professionals in the fields of legal linguistics and cultural studies.

Keywords: Legal language translation; cultural elements; cross-cultural communication; cultural deficiencies; cross-cultural differences; translation approaches; legal terminology; cultural studies; legal communication; cultural gaps.

Introduction: Legal translation is a specialized field that requires not only linguistic expertise but also a profound understanding of cultural nuances and the legal systems involved. One of the main challenges in legal translation is the phenomenon of “cultural default” which arises when concepts and terms in one legal culture do not have direct equivalents in another. This article explores the complexities of legal translation, emphasizing how cultural differences influence the interpretation and translation of legal terms. By examining the interplay between language, culture, and law, it highlights the need for translators to navigate these challenges in order to ensure accurate and meaningful legal

communication across different legal frameworks.

Language and its usage cannot exist apart from culture, according to linguist Wang Zuoliang: The difficulty in translation lies in the fact that things which are self-evident in one culture require explanation in another language. What needs no explanation for native speakers must specifically clarified for foreign language users [1]. This phenomenon is known as cultural 'default', or cultural unfamiliarity. It reflects the unique national culture and customs shaped by the historical processes of a particular people.

Information recipients who do not belong to the same cultural group encounter cultural barriers in understanding the content and context of the original text due to their lack of awareness of the 'cultural default' specific to that culture. In many communicative situations, the meaning conveyed by the information sender is superficial and contains many ambiguous or open-ended details — that is, informational imperfection exists. The components related to cultural unfamiliarity typically have distinct national-cultural characteristics and lie outside the text, creating meaning gaps for readers from different linguistic and cultural environments. This prevents the text from being understood continuously and logically.

In the past two decades, two distinct trends have been observed in translation studies: First, the emergence of communicative theory in translation theory; and second, the growing emphasis on cultural changes, which has led to serious questioning of the traditional dominance of translation approaches based solely on language. In other words, since communication and culture are phenomena centered around humans, the humanistic approach is gaining increasing attention in the field of translation. In the field of translation theory, macro approaches are strengthening, the theoretical and practical scope of translation is expanding, and the cultural integration function of translation activities is being reinforced.

Legal culture is a socio-cultural phenomenon and a form of expression inherent to communities that use legal language as a means of communication.

Legal language is a functional variant of language, which is both the product and carrier of legal culture [2]. Due to the distinctiveness of the legal science and the role of law as a powerful regulatory and normative force in political, economic, scientific, and cultural life over many years, legal language has developed its own specialized stylistic characteristics.

In order to ensure precision and clarity in legal text translation, the translator must not only convey the content of the source text at the lexical and syntactic levels but also reflect its cultural meaning through

linguistic forms. At the same time, the translation must accurately represent the cultural elements specific to both domestic and foreign legal texts, the meanings of legal terms, and their varying pragmatic characteristics. As modern translation theory increasingly shifts its focus from code (i.e., language) transformation to cultural transformation, legal translation is now more often regarded as a 'cross-cultural phenomenon,' and the translator is viewed as a 'mediator of cultural environments.' As the translator plays an active and creative role as the producer of the text, they must take into account not only linguistic factors during the translation process but, more importantly, the socio-cultural context — that is, the legal culture. In particular, the functional purpose of the translated text and the conditions of the target environment directly influence both the content and form of the translation [3]. The unique legal concepts, legal systems, cultural context of legal terminology, and national mentality present in the legal culture of English-speaking countries are key factors contributing to cultural default in legal translation.

This article analyzes the phenomenon of cultural default specifically within this context, shedding light on its underlying mechanisms and communicative significance. The legal system, also known as the system of branches of law, refers to a unified and structured whole composed of all the legal norms in force within a given country, organized according to a specific hierarchy and framework.

Each country's legal system has deep political, economic, and cultural roots, and it rarely mirrors that of another nation. Even among countries belonging to the same legal family, significant differences in legal systems can be observed.

These systemic differences—both between legal systems and among their internal branches—further intensify the phenomenon of cultural default in legal translation and contribute to the complexity of translating legal terms. For example, the legal concept of 'set-off' 抵销 [dǐ xiāo], which denotes the act of offsetting or repaying a debt, is interpreted differently across legal systems. In the Anglo-American legal system, set-off is generally not permitted outside formal litigation proceedings. In contrast, the German legal system allows set-off outside court proceedings, but it requires a clear declaration of intent by the debtor. In the French legal system, once the legal conditions for set-off are met, the set-off is considered to take place automatically—regardless of whether the parties are aware of it or recognize that the two claims have mutually canceled each other out [4]. Another example that highlights the complexity of legal terminology is the

significant variation in meaning that certain legal terms exhibit across different branches of law. For instance, the term *dominion* refers to complete ownership in civil law (i.e., codified legal systems), whereas in public international law, it denotes sovereignty.

Similarly, the term *estoppel* conveys different meanings in distinct legal contexts: in contract law, it refers to the principle that prevents a party from acting inconsistently with a previously established position; whereas in criminal procedural law, it is interpreted as the prohibition against recanting earlier testimony (i.e., barring a reversal of confession). Furthermore, it is essential to clearly distinguish between certain near-synonyms. For example, although both *action* and *suit* denote the initiation of legal proceedings, they are used in different legal traditions: *action* is typically employed within the scope of common law, while *suit* is more commonly associated with equity law [4].

Some scholars regard polysemy in legal terminology as a factor that complicates comprehension and even as a threat to the coherence and authority of the legal system. Nevertheless, we are frequently confronted with the inherent tension between the virtually unlimited variety of legal phenomena and the relatively limited set of linguistic signs available. Consequently, the precise meaning of a specific legal term can only be determined through careful attention to context. Additionally, certain legal institutions unique to China do not exist at all within Anglo-American legal systems, which necessitates particular care and precision in rendering them accurately during the translation process. For example, terms such as 劳动教养 [láodòng jiàoyǎng] (indoctrination through labor) and 人民调解 [rénmín tiáojiě] (people's mediation), which appear in Chinese legal language, are specialized legal terms with distinctive traditional-legal connotations.

劳动教养 [láodòng jiàoyǎng] refers to an administrative punitive measure in the form of compulsory education and reform imposed on individuals who have committed minor offenses that do not warrant criminal prosecution.

人民调解[rénmín tiáojiě] is a uniquely Chinese legal practice that involves resolving civil disputes through grassroots mediation and verbal conciliation among the people [5].

Such legal institutions do not exist in the Anglo-Saxon legal system, and their legal language lacks direct equivalent terms. The uniqueness of legal concepts is one of the primary causes of cultural default in legal translation. Legal norms and legislative documents

typically represent the regulations imposed by legislative or judicial bodies as subjects upon objects—namely, citizens or other parties—or they define the relationships of rights and obligations between parties.

During the translation process, attempting to adapt such concepts without a deep understanding of the differences between legal cultures may lead to serious errors, even if the deviation appears minor. Therefore, in legal translation, it is essential to ensure that the translated text faithfully reflects the precise legal meaning and the definitional scope of terms in the source language. This approach helps avoid multiple interpretations or misunderstandings in the target language.

To overcome cultural default, it is important for the translator to employ compensation strategies, such as concretization, adding explanatory notes, or explicative expansions. In legal translation, it is essential to clearly distinguish even subtle semantic differences, thereby making the expression more precise and accurate. For example, “*deposition*” is a legal procedure specific to the Anglo-American legal system, in which the parties question each other or their witnesses before trial (pre-trial). This process is part of what is known as discovery. Since it occurs outside the courtroom and prior to the trial, rendering it simply as “*witness record*” or “*evidence collection*” is inadequate, as these translations fail to convey the full scope of the term. Professor Chen Zhongcheng recommends translating it as “(out-of-court) written testimony or statements”, as this version more accurately and explicitly conveys the meaning [6].

Furthermore, there are two terms in English used to express the concept of harming someone's reputation (defamation): “*libel*” and “*slander*”. According to Black's Law Dictionary, “*libel*” refers to defamation in written or other written forms, while “*slander*” refers to spoken defamation. Common dictionaries in China, such as the “Chinese-English Dictionary”, “English-Chinese Dictionary”, “Far Eastern Chinese-English Dictionary” and the “Chinese-English Legal Dictionary” have acknowledged the distinction between these two terms but have translated them as “defamation crime”. In China, there is no specific legal system for certain harmful actions, and these actions are regulated through civil law and criminal law, depending on their severity. Therefore, there is a concept referred to as “defamation crime”.

However, in Anglo-American legal systems, tort law is a significant area of law, and there is no information related to libel and slander in Anglo-American criminal codes and legal literature. However, these terms can be found in tort law. Therefore, these two terms are, in

fact, concepts within the scope of tort law in the Anglo-American system, not related to criminal law. Thus, translating libel and slander as "written defamation" and "spoken defamation" is much more accurate than translating them as "defamation crime" [7].

The similarities between legal systems and the universality of language theoretically justify the possibility of translating legal texts. However, the uniqueness and locality of each language create the issue of cultural default in legal language translation within different cultural contexts.

Therefore, studying the cultural context of legal terms and the specific compensation methods for translating them is crucial in expressing the special social function and practical value of legal texts.

Due to cultural differences, many concepts, principles, or norms expressed by terms in English-American law may not have a complete equivalent in the Chinese system. In such cases, they must be translated based on "similarity". For example, the Chinese term 第三者 [dì sān zhě] (third party) could be translated into English as "lover", "paramour", "mistress" or "extramarital lover". However, these English words do not necessarily carry a negative or positive connotation. Some words, such as "lover" may even have a positive meaning. However, according to the linguistic traditions of the Chinese culture, such terms often evoke the idea of "betrayal" or "immorality" (inappropriate behavior) [8].

In translation, the translator's correct understanding of the source text is closely tied to a proper understanding of the cultural characteristics of the source language. The same objective event or phenomenon can evoke different value judgments in different cultures. If this value judgment becomes a general criterion in the collective consciousness of a nation, i.e., it becomes part of national psychology, it can then rise from potential psychological activity to the general behavior norms of society and ultimately be confirmed in a legal form.

Culture is one of the important factors influencing the functioning of legal language. In different socio-ecological conditions, entirely different legal systems and legal models exist, and much of the law, along with the necessity of addressing cultural deficiencies in translation also highlights the importance of explaining legal culture [9]. However, explaining legal culture is not only about revealing its essence through in-depth study of each legal system, but also about creating a bridge aimed at ensuring communication and mutual understanding between different legal systems.

CONCLUSION

In conclusion, the translation of legal texts is a complex process that requires not only a deep understanding of linguistic structures but also an awareness of the cultural contexts that shape legal terminology. The concept of "cultural default" plays a crucial role in legal translation, as it highlights the difficulties faced when translating terms that do not have direct equivalents in different legal systems. This challenge is exacerbated by the diverse nature of legal cultures, each with its own unique principles, concepts, and traditions. To bridge the gap between these cultural differences, it is essential for legal translators to employ strategies that ensure both the accuracy and the cultural relevance of the translation. Techniques such as compensation, clarification, and the careful consideration of the intended audience are vital for achieving functional equivalence in legal translations. Ultimately, legal translation is not just about conveying the literal meaning of a text but about facilitating cross-cultural communication and understanding between legal systems. By doing so, legal translation can contribute to a more inclusive and interconnected global legal community.

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