

A Corpus-Based Study on the English Translation of Modal Verbs in Chinese Legislative Texts

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ABSTRACT

From the perspective of speech act theory, based on the self-constructed composite corpora, this paper analyzes the English translation of modal verbs commonly used in Chinese legislative texts. The results show that: the top three modal verbs used in legislative texts of Mainland China are "yingdang (应当)", "keyi (可以)" and "bude (不得)", which are different from those used in Hong Kong and Taiwan; there is basically no problem with "keyi" to be translated into "may", but there are problems with the translation of "yingdang", which is suggested to be translated into "shall" or "should" according to its different legislative meaning. Most of "bude" is translated into the negative form of shall/may, but it's proposed to be translated into the negative form of "may" because of its high modal value. The study points out that modal verbs should be translated accurately according to the illocutionary force of the legislative text, so as to convey the true legislative intention of the original text to the greatest extent, and consequently to improve the quality of legal translation.

Keywords: modal verb, legislative text, corpus, speech act

I. INTRODUCTION

The basic function of law is to impose obligations and endow rights (forces), and therefore deontic modals are widely used [1]. Modal verbs not only implement the functions of "modality" and "modulation" in legislative texts, but also realize the pragmatic intention and legal effect of legislative speech acts [2]. Modal verbs are also widely used in Chinese legislative texts, and the study of English translation of modal verbs is a hot topic in legal translation studies. Both Gao Lijuan and Jiang Ting, based on the parallel corpus of China's legal documents of Shaoxing University of Arts and Science, studied the English translation of modal verbs from the perspective of systemic functional linguistics. The former makes a contrastive analysis of the frequency and characteristics of modal verbs in Chinese and English texts, so as to reveal the ideological meaning implied in them; the latter, according to different modal values, explores the English translation of modal operators in Chinese legislative texts. The common point of the two studies is that both of them take systemic functional linguistics as the theoretical framework and make a comprehensive and detailed statistical analysis of the use of Chinese modal verbs and their English translation, which is of great significance to the improvement of legislative technology and the quality

of legal translation. However, the deficiency is quantitative statistics and ignores qualitative analysis, and too much discussion on details leads to insufficient emphasis. Thus, that the corpus is relatively single, which emphasizes from the perspective of speech act theory, this paper, based on the self-constructed composite corpora, has statistically counted up the modal verbs most frequently used in the Chinese mainland's legislative texts, sorted out and analyzed their usage and translation rules and characteristics, and put forward some suggestions for the modification of the mistranslation, trying to help improve the level of legislative technology and the quality of legal translation.

II. THEORETICAL FRAMEWORK

Speech act theory originates from philosophical thought that language has the function of doing. Its basic proposition can be classified into a sentence: "saying is doing." [3] A complete speech act can be abstracted into three sub acts: locutionary act, illocutionary act and perlocutionary act. The first one refers to the definite propositional meaning of the utterance; the middle, also known as "performative speech act", refers to the utterance having illocutionary force in the communicative context, that is, what the intention is; the last refers to a certain effect on the listener intentionally or unintentionally after specific words for a specific intention are uttered.

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As a whole, a legal norm is a speech act, which expresses the legislator's legislative desire and embodies the will of the country represented by law. When a legislator enacts a law, he expresses a locutionary act, which is presented as a written legal provision; the content of a legal provision is a legal norm, which expresses the legislator's intention, and is an illocutionary act. That people (recipients) adjust their own behaviors according to the legal norms is the perlocutionary act. Therefore, a legislative text as a whole is a master speech act, and the general feature of legislative text is being performative, and the "promulgation procedure" of legislative text contains the action verbs (such as enact, implement, etc.) indicating the claim, which endows the text with the nature of illocutionary act as a whole, and the legal provisions constitute the proposition content of this claim.

Every legal provision is a speech act, that is, legislative speech act uses IFID (intentional force indicating device) to express the illocutionary force of legal norms, especially use some modal verbs to specify rights and obligations, to make directional provisions on acts, and to express the clear intention of legislators. In English legal language, it can be roughly classified as follows: using the modal verb shall to impose an obligation to do something in an imperative language; using the modal verb may to grant rights, privileges or powers in a facultative language; and using the negative form of the modal verb shall/may to prohibit from doing something in a prohibitive language. In other words, the sentences containing the above performative auxiliary verbs in the English legislative text are legal speech acts with illocutionary force to order, permit or prohibit. As the main IFID in legal English, the above modal verbs clearly reflect the characteristics of legal speech acts, while legal texts as speech acts profoundly reflect the nature of law and legal language. [4]

III. METHOD

After more than 20 years of development, corpus-based translation studies have made great achievements. However, the model of single type of corpus can no longer meet the needs of the development of corpus translatology. Even in the study of analogy and parallel corpus, the composition of the corpus used is not quite reasonable. According to the needs of practical research, this paper designs and develops the composite corpora for this study by using the bilingual parallel corpus and the self-constructed monolingual analogy corpus. The parallel corpus originates from the corpora of laws and regulations of Mainland/Hong Kong/Taiwan (the total number of Chinese and English words is 22million) of *A Parallel Corpus of China's Legal Documents* (hereinafter referred to as PCCLD) built by the School of foreign languages, Shaoxing University of Arts and Science. Mainland's 235 legislative texts and their English versions (1427777 Chinese characters and 1067798 English words) are taken

as the main body of the study, while the other two sub corpora of Hong Kong and Taiwan are used as comparison or reference.

Meanwhile, we randomly selected the legislative texts of countries where English is the official language from the official websites, including the *Company Law* of the United Kingdom, the *Constitution*, the *Uniform Commercial Code* and the *Disability Act* of the United States with a total of 502938 words to verify the research results. Using the index tool of KWIC (key word in context) to count the usage frequency of modal verbs, this paper analyzes the rules and characteristics of English translation of modal verbs in Chinese legislation, sorts out the problems existing in English translation, and puts forward corresponding suggestions.

IV. RESULTS

Law is a combination of primary rules and secondary rules. The former regulates people's specific behaviors with obligations, while the latter grants power, including public or private ones. Generally speaking, legal norms include two categories and four sub categories: two categories, namely authoritative guidance and obligatory requirements; four sub categories are divided into two sub categories like the above two categories, the former includes granting rights and granting powers, and the latter is divided into imperative requirements and prohibitive requirements [5]. From the perspective of speech act theory, according to different functions, Chinese legal norms can be divided into authoritative speech acts and obligatory speech acts; the former grants both rights and powers, and the latter can be divided into imperative speech acts and prohibitive speech acts.

The author extracts Chinese modal words from three sub corpora of PCCLD, selects the first modal verbs of each category according to their frequencies of use, and lists their main English translations (see "Table I")

TABLE I. COMMONLY-USED MODAL VERBS IN PCCLD AND THEIR ENGLISH TRANSLATIONS

	Authoritative	Imperative	Prohibitive
Mainland	keyi 可以 /may	yingdang 应当/shall	bude 不得 /negative form of shall/may/must
Taiwan	de 得/may	ying 应 /shall	bude 不得 /negative form of shall/may/must
Hong Kong	ke 可/may	xu 须/shall	bude 不得 /negative form of shall/may/must

It can be seen from "Table I" that there are great differences in the use of modal verbs between the three places. Except that the IFID used for prohibitive speech acts is "bude", the IFIDs of the other two speech acts are

different. Mainland uses "yingdang" as the IFID of imperative speech acts, while Taiwan and Hong Kong tend to use "ying" and "xu" respectively; Mainland uses "keyi" to indicate authorization, while Taiwan and Hong Kong use "de" and "ke" respectively. It is worth noting that although the Chinese diction is different, the English translation is almost the same.

Since this paper focuses on the English translation of common modal verbs in mainland legislative texts, the Chinese and English-version modal verbs are extracted from the mainland sub corpus of PCCLD, and the top five modal words are selected according to their frequencies of use (see "Table II")

TABLE II. THE TOP 5 CHINESE AND ENGLISH MODAL WORDS USED IN THE MAINLAND SUB CORPUS OF PCCLD

Chinese modal verbs	Frequencies of use	Ranking	English modal verbs	Frequencies of use
yingdang	6071	1	shall	14114
keyi	2811	2	may	3764
bude	1706	3	must	1187
bixu 必须	1410	4	shall not	1012
xuyao 需要	722	5	should	997

According to "Table II", modal words commonly used in mainland legislative texts are "yingdang", "keyi", "bude" and "bixu". According to the definition of the *Modern Chinese Dictionary*, "bixu" is an adverb rather than an auxiliary verb like the other three function words; moreover, the *Legislative Technical Specification (Trial Implementation)* promulgated by the Legislative Committee of the Standing Committee of the National People's Congress in 2009 clearly stipulates the following two words: "yingdang" and "bixu" have no substantive difference. When expressing obligatory norms, law generally uses "yingdang" instead of "bixu". Therefore, in mainland legislation, "keyi" is a typical IFID of authoritative speech acts, "yingdang" and "bude" are typical IFIDs of obligatory speech acts, and their frequencies of use are also the top three. The English translation of these three modal verbs will be discussed in the following part.

V. DISCUSSION

A. "Keyi"

The legislative text endows legal subjects with rights, privileges and powers in the form of permission and authorization. They all use modal verbs with the same meaning: may (English), Kann /darf (German), peut (French) and podra (Spanish), etc. Chinese mainland legislation mainly uses the modal verb "keyi" to grant authorization. After searching and analyzing the word "keyi" in the mainland sub corpus by using the search function of corpus, it's found that its main subjects are: state or government; state organs; and natural persons, legal persons or non-legal entities. This shows that the "rights" granted by authoritative speech acts include not only the "private" rights of citizens or other social subjects, but also the "(public) powers" of state institutions, indicating that people can act, cannot act or require others to act or not. Most of them are translated into "may" except for several of them. As for the meaning of "may", both American rule and ABC rule stipulate that it means "has discretion to, is permitted to". That is to say,

it has two meanings: one is that the subject of the act has the right of self-determination; the other is that the subject has the right of discretion, which is equivalent to "keyi" in pragmatics. Generally speaking, the use and translation of "keyi" in mainland legislative texts are relatively standardized, but there are still some problems, such as:

Example 1.《著作权法》：第五十一条（三）人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。

Article 51(3) The People's Court may order the applicant to provide a guarantee, and shall reject the application where the applicant fails to do so.

It can be inferred from the context of this article that the subject of "rejecting the application" is the same as that of "ordering the applicant to provide guarantee", that is, "people's court". The legislator is to authorize right to it instead of imposing obligation on it through "keyi". Therefore, the translation of this article should be consistent with the original text: omitting the modal verbs, or consistent with the modal verbs already used, that is, replacing "shall" with "may".

The modal "keyi" is the wording of modern legal Chinese, which was traditionally used as "ke", but "de" was used in more ancient times. "De", as well as "ying" and "bude", all originated from the code of China more than 1000 years ago. Taiwan's legislative texts, from the "constitution" in 1947 to the amendments in the 1990s and even other recent legal texts, indicate that "de" has been used for permitting or authorizing, and there is no change up till now. In fact, in the legal texts of the first half of the 20th century in mainland China, "de", as the expression of legal authorization, is synonymous with "keyi" and they can be interchanged. For example, in the *Marriage Law* of 1950, "de" was used for authorization and translated into "may "; while in the *Marriage Law* of 1980, there was a mixture of "ke" and "keyi". "Ke" in Hong Kong's legislation is translated from "may", which reflects a certain degree of classical Chinese color in style. Although this legislative term has changed with the passage of times and in different regions, in translation,

most of them are translated into "may", except for few of them. Therefore, the use of "keyi" in mainland legislative texts is relatively stable and accurate, and its English translation is basically correct.

B. "Yingdang"

Different from the authoritative speech act, an obligatory speech act is a kind of legal speech act to directly require people to do or not to do certain type of behavior, which is mandatory and cannot be changed or violated at will, otherwise legal responsibility shall be born. According to the way of the subject's action or non-action, the obligatory speech act can be divided into imperative speech act and prohibitive speech act. In mainland legislation, the modal verb "yingdang" is the most frequently used IFID in the former, while the latter mainly uses "bude". The English search lines of the above two words are extracted from the mainland sub corpus to form a small corpus, which is manually labeled and aligned with the word alignment of modal words in the parallel corpus. After a classified search, I found that only 14 of the 6071 "yingdang" were translated into ought to, 86% into shall, and 12.3% into should; nearly 10% of "bude" were translated into the negative form of the verb permit/allow or can/must/should, and the rest were translated into the negative form of shall /may.

In daily life, "yingdang" is a function word frequently used, which is composed of two synonymous auxiliary verbs "ying" and "dang". It is usually used before the verbs of behavior. Its most typical meaning is to indicate that an action should be carried out. In legislation, there are mainly two usages to represent the legislators' wishes and demands for a certain act:

1) *Expressing specific obligations*: Example 2. 《公司法》第九十条 发起人向社会公开募集股份，应当同银行签订代收股款协议。

Article 90 When conducting public share offer, the sponsors shall execute an agreement with a bank for deposit of share proceeds.

This article clearly stipulates the obligations that the promoters shall perform when they offer shares to the public with "yingdang", and conveys the mandatory and obligatory nature of the legal norms; if the parties violate the provisions, they shall bear corresponding legal liabilities. Clauses of this kind account for the vast majority of legal norms, where "yingdang" is usually translated into "shall". According to the *Black Law Dictionary*, in terms of the strict standards for drafting legal documents, the meaning of "shall" is usually unique: "has a duty to; more broadly, is required to..." [6]. As a modal verb, shall is a typical one to express the obligation to be performed, and it is also the best form to convey the illocutionary force of an order: the speaker — the legislator, instructs the hearer to do something and the latter has no choice but to obey [7]. Therefore, it is quite correct that shall is used to translate such pragmatic

"yingdang". However, it should also be noted that the UK legislation has actually replaced shall with must and is/are to. Since the mid-1970s, the frequency of must has increased by about 17 times. This can be verified by the *British Companies Act 2006*, in which the frequency of "may", shall and must is 1721, 331 and 1281 respectively.

2) *Denoting a general rule or principle*: Example 3.《合同法》第五条 当事人应当遵循公平原则确定各方的权利和义务。

Article 5 The parties shall observe the principle of equity in defining each other's rights and obligations.

The verb "yingdang" in this article expresses the legislator's expectation on the behavior of the parties to the contract, and states only "what should be done" rather than "what must be done", because there is no obligation imposed on the "parties" of the contract, and the "parties" may not act in accordance with the "principle of fairness". The "yingdang" here contains the value judgment of legislators, that is, "the principle of fairness is good", which is expected to be followed by the legislative object. The meaning of "yingdang" in this clause is obviously different from that of "yingdang" in the order of expressing specific obligations mentioned above, but both are translated into English as shall. It is suggested that in this context "yingdang" should be translated into "should". Because should is usually subjective, the speaker thinks it is right or predictive, and may not be realized. Different from "shall", "should" expresses "escapable obligation", which is often used to express general rules and principles with strong moral or ethical implications in prescriptive legal texts. [8]

To sum up, when the content led by "yingdang" refers to obligations and orders, it should be translated into "shall"; when it refers to general rules, it into "should".

C. "Bude"

The prohibition clause is a kind of legal speech act with the force of prohibitive illocutionary expressed with "shall not" in English, "darf/kaut/danc" in German and "ne peut" in French. In Chinese law, "bude zuo" is a direct prohibition, and "bude" originated from ancient Chinese, showing the authority of law. According to the statistics of corpus search, the negative forms of shall, may or must are mainly used in the translation of "bude" in mainland laws and regulations, and their frequencies are 65.6%, 29% and 5.4% successively, which means that most of "bude" are translated in the negative form of shall/may. This is completely consistent with the English translation of legislation in Hong Kong and Taiwan: Taiwan only uses "must not" eight times and uses the negative form of shall/may (about 2/3 and 1/3 respectively) for the others; while Hong Kong mainly uses the negative form of shall, and the negative form of "may" and must is rarely used. In contrast, the *Uniform Commercial Code* of the United States uses "may not" 74 times and "shall not" 2 times, the *Disability Act* of the United States uses "shall not" 41 times and "may not" once, while the *Constitution* of the

United States only uses "shall not" 15 times, but does not use "may not". Generally speaking, the three American legislative texts do not use "must not", some prefer "may not", some prefer "shall not" to express the prohibitive meaning of "bude", while the English version of Chinese legislation prefers to use the negative form of "shall". Is there any difference between the two expressions: "may not" and "shall not"?

According to the American rules, the negative form of shall means "has a duty not to", which denies an obligation. "Thou shall not steal" is tenable, while "No person shall set off fireworks without the prior authorization of the fire marshal." isn't, and here the negative form of "may" should be used, because it means "is not permitted to", and indicates the cancellation of permission rather than the denial of duty. [9] In other words, "shall not" emphasizes the inner self-examination and identification, while "may not" focuses on the external power constraints. As an obligatory standard word of the primary rules in Hart's classification standard, "shall" means the existence of "internal viewpoint", which indicates that citizens or officials' compliance with legal norms is not based on external oppression or coercion, but that law-abiding is a kind of differentiation standard expressing their social attributes from their own point of view, which is consistent with law based on "sense of obligation". Otherwise in Hart classification, "may" is the norm word of the secondary rule, and "may not", as its negation, often does not have the "inner view" contained in "shall not". The reason is that although "may" is a modal indicator of granting "right" and "power", it expresses the legislator's "permission" of rights and powers, and this "permission" is purely determined by the legislator's will. It does not require people's "inner view", but only requires the objective social effect of abiding by the norms. Therefore, the basic meaning of "may not" is to directly show the strong will of legislators. However, neither English legislative texts nor Chinese legislative texts reflect the differences between the two, just reflecting the preference in use.

In a word, the modal verb "bude" is used to express prohibitive norms in mainland legal texts, and it has no semantic and pragmatic differences in the text, just a kind of negation with high modal value to prohibit parties from doing certain behavior. According to modality, "shall not" is a mean value negation, while "may not" is a high value negation [10]. The negative tone of the latter is stronger than that of the former. Therefore, it is more accurate to express the illocutionary force of the law by using the negative form of may rather than that of shall.

VI. CONCLUSION

From the perspective of speech act theory and based on the self-constructed composite corpora, this paper studies the English translation of modal verbs in China's

mainland legislative texts after searching, counting and analyzing them. The conclusions are as follows: the English translation of "keyi" in legislative texts as "may" is basically correct; there are many English translations for "yingdang" and there is a certain confusion in the use, and it should be translated into English as "shall" or "should" according to its legislative meaning; the vast majority of "bude" is translated into the negative form of "shall/may", and it should be translated into the negative form of "may" according to its high modal value.

The general principle of legal translation is to pursue "legal equivalence" to achieve the integration of content (meaning), intention and legal effect [11]. Legal speech acts clearly indicate the nature of speech acts mainly through the use of modal verbs. The legal translation must have the same normative strength as the original text, in order to be faithful to the original legislative intent. So, when translating laws, translators should be cautious about modal verbs in legislative texts, take legal functional equivalence as the highest principle, and select appropriate modal verbs according to the illocutionary force of articles, so as to convey the true legislative intention of the original text to the greatest extent.

Finally, it is suggested that the official agencies or authorities responsible for legal translation should formulate or issue guidelines for the translation of important and commonly used legal terms (including but not limited to modal verbs). In the future legislative translation and its revision, the correspondent translation of legal terms should be used in the same legislative translation, as well as among different legislative versions, even among different languages. The "same name, same meaning, same translation" should be carried out as a legal translation standard to improve the quality of legal translation.

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