

法律文本中“婚姻权利”一词的英译研究

潘琪伟

新东方英联邦项目, 江苏 南京

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摘要

“婚姻权利”是中国法律话语中的重要概念, 本研究基于近十年间现有政府文件中汉英双语文本的检索结果, 以“婚姻权利”5种主流英译为例, 借助参照语料库美国当代英语语料库COCA及英国国家语料库BNC, 考察了不同语境下“婚姻权利”英译的准确性。研究认为, “婚姻权利”英译统一使用“right of marriage”或“marital right”相关表述, 并依据相关讨论对法律术语英译提出四点建议, 希冀为当下法律术语英译提供方法导引。

关键词

婚姻权利, 法律英语, 英译

A Study on the English Translation of “Right of Marriage” in Legal Texts

Qiwei Pan

Yinglianbang Program, New Oriental School, Nanjing Jiangsu

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Abstract

The “Hunyingquanli” is an important concept in Chinese legal discourse. This study examines the accuracy of the five mainstream English translation of “Hunyingquanli” in different contexts based on the results of a search of bilingual Chinese and English texts in government documents over the past ten years with the help of the reference Corpus of Contemporary American English—COCA and British National Corpus—BNC. The study concludes that the English translations of “right of marriage” or “marital right” are correctly used. The study also proposes four suggestions for the English translation of legal terms based on the relevant discussion, with a view to providing a methodological guide for the current English translation of legal terms.

Keywords

Marriage, Legal English, Translation

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1. 引言

“婚姻权利”是调整婚姻家庭法关系的法律，于中国法律体系而言实现着规定亲属扶养义务，为妇女、儿童和老人提供基本生存条件的功能，避免了产制对妇女的实际不公等。婚姻权利主要包括婚姻自由权和财产权，婚姻法律实践主要针对男女平等、婚姻自由、禁止买卖婚姻、禁止童养媳和军婚等问题。已有部分学者对“婚姻权利”一词从法律、社会层面含义进行探究，却未有从英译层面进行的考察。“婚姻权利”等话题频现于各法律类报告，引发社会广泛关注，其内涵准确传译对于阐释中国思想和立场具有重要意义。因此，其英译文应依照内涵变化进行认知演进以契合时代主题。本研究以近十年各类政府文件及其英译文为检索语料，以 COCA 及 BNC 语料库为参照，考察译文是否准确传达“婚姻权利”内涵，厘定“婚姻权利”准确译文，以期为法律术语英译提供方法导引。

2. 研究内容及方法

2.1. 研究目标

- 1) 探究政府法律文件中“婚姻权利”英译特征及其准确性；
- 2) 提出政府法律文件中“婚姻权利”英译建议以及对法律术语英译研究的启示。

2.2. 研究步骤

本文首先以 2001 至 2020 年间现有政府文件中汉英双语文本为研究语料探究“婚姻权利”英译，其次结合中文含义对部分句例中英译用法做出解读，并利用 COCA 及 BNC 语料库检索英译词在英语国家的常用语境及具体语境含义，以比对“婚姻权利”英译词的准确性。

3. “婚姻权利”英译讨论

探讨英译含义前，首先需要完全解读“婚姻权利”的中文含义以更好地明确英译准确性。在我国社会制度中，婚姻家庭法重点在于社会以及国家的干预，干预的内容在于夫妻共同财产的所有权、对老少以及妇女的抚养义务等等诸多问题。因此，概括来说，“婚姻权利”即“调整婚姻家庭法关系的法律”。

2018 年最新修订的《中华人民共和国婚姻法》中，第三十条提及了“婚姻权利”，官方英译为“matrimonial rights”，查询英语国家网站，鲜有“matrimonial rights”单独使用的情况，更常以“matrimonial home rights”或“matrimonial property rights”形式出现，其定义分别为“婚姻住所权利”及“婚姻财产权利”，其指涉内容为无论该房产在谁的名下，夫妻双方自动占有婚姻住所的合法权利，此法条的目的是防止夫妻一方被拥有房产的一方驱逐出家庭住宅[1]。此概念与本文探讨的主要包含“婚姻自由权和财产权”的“婚姻权利”一词对比相对片面，缺少“婚姻自由权”一层含义，即夫妻双方或称婚姻当事人

拥有决定自己婚姻的自主权利。结合 COCA 语料库考察, “matrimonial rights” 在 COCA 语料库中共出现 2 次(如图 1), “Adultery ... violating exclusive matrimonial rights between a man and a woman”, (通奸……侵犯了男女之间的专属婚姻权利), 其语境义也未能体现“婚姻自由权”含义, 另一句语境义不完整, 此处不加评析, 因此“婚姻权利”不建议使用“matrimonial rights”译法。

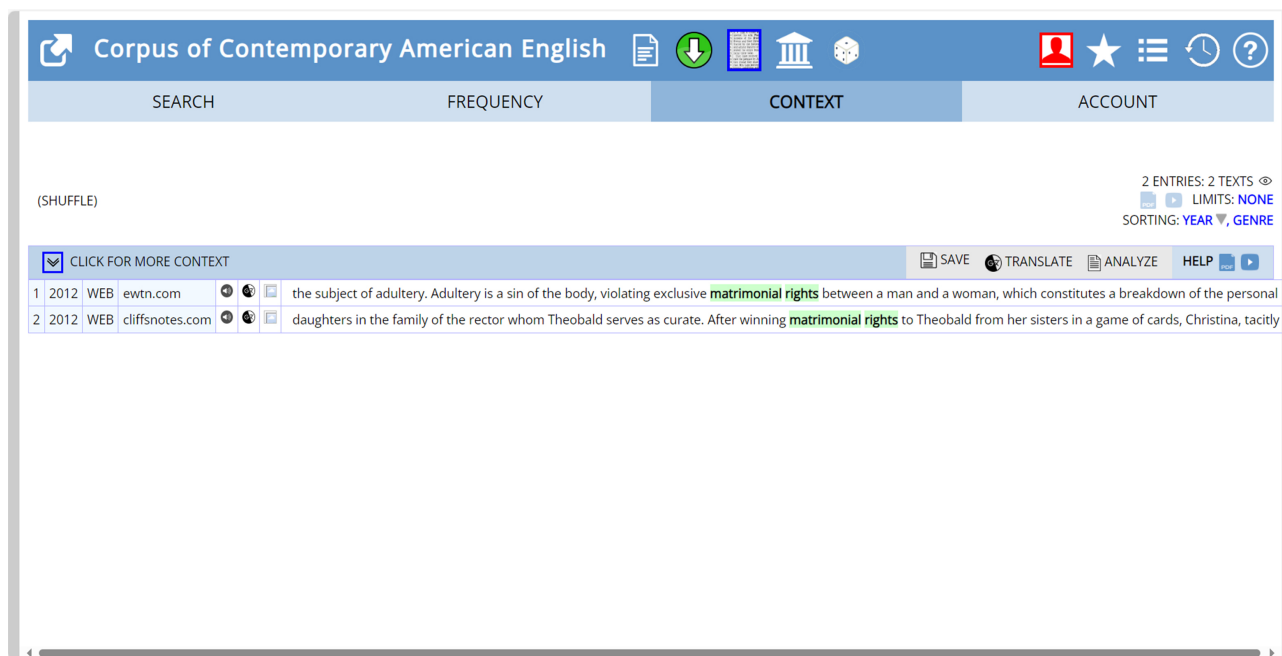


Figure 1. The usage of “matrimonial rights” in the COCA database

图 1. COCA 语料库中 “matrimonial rights” 用法

除去上文讨论到的《中华人民共和国婚姻法》中“婚姻权利”的官方英译法“matrimonial rights”, 按照中国各大主流媒体的双语报道及流行译法, “婚姻权利”有 right to marriage, right of marriage, marital right, marriage right 四种英译, 下文将一一探讨短语本身含义并与中文含义对比, 以确定英译恰适性。

首先查询“right to marriage”含义: The right to marriage is also stated under Human Rights Charter within the meaning of the right to start a family.即“right to marriage”为“可以组建家庭的权利”, COCA 语料库检索也均为此含义, 而非中文语境下“婚姻权利”的含义(调整婚姻家庭法关系的法律), 因此不适用本文“婚姻权利”英译。

其次“right of marriage”, BNC 没有结果, COCA 有 9 例如图 2, 一一查看语境含义, 发现第一例《Harvard Journal of Law and Public Policy》中的 the protection of the natural right of marriage was deemed an important office of the state(保护婚姻的自然权利被认为是国家的一项重要职责)与我们今天探讨的“婚姻权利”含义吻合。《Harvard Journal of Law and Public Policy》期刊属于 SSCI, 有较强的权威性, 结果可信, 适用本文“婚姻权利”英译。

再次探索“marital rights”, 其在美国网站“lawyers(律师)”中有较为全面的解读: 婚姻权利可能因州而异, 然而, 大多数州承认以下婚姻权利: 开立联合银行账户的能力、能够提交联邦和州的联合纳税申报、在健康、汽车和/或责任保险中获得“婚姻”或“家庭费”的权利、在配偶去世后继承其财产的权利、对配偶的非正常死亡或丧失配偶关系提起诉讼的权利等[2]。此含义即与“婚姻权利”吻合, 初步判

断可行，其次在 COCA 中检索，语境检验，marital rights 在 COCA 中出现频次 27，内容展开如图 3，结合语境，《Harvard Journal of Law and Public Policy》期刊中“... sought to protect the marital rights of individuals against governmental infringement (试图保护个人的婚姻权利不受政府的侵犯)”、“on the public issue of granting equal civil marital rights to same-sex couples (关于给予同性伴侣平等的民事婚姻权利的公共问题)”等均符合“婚姻权利”含义。因此“marital rights”适用本文“婚姻权利”英译。

The screenshot shows the 'Corpus of Contemporary American English' interface. The search results for 'right of marriage' are displayed in a table with columns for Year, Source, and Context. The context column shows various sentences where the phrase is used, such as 'suggestive speech were also uncontroversial, inasmuch as the protection of the natural right of marriage was deemed an important office of the state.' and '157 (2015); Donald H. J. Hermann, Extending the Fundamental Right of Marriage to Same-Sex Couples: The United States Supreme Court Decision in Oberge...'.

Year	Source	Context
2019	ACAD Harvard J Law Public Policy	suggestive speech were also uncontroversial, inasmuch as the protection of the natural right of marriage was deemed an important office of the state.28 As
2016	ACAD Harvard J Law Public Policy	157 (2015); Donald H. J. Hermann, Extending the Fundamental Right of Marriage to Same-Sex Couples: The United States Supreme Court Decision in Oberge...
2012	WEB nmpolitics.net	which are natural or right. # The government decided to grant the right of marriage a long time ago when it started licensing marriage. I personally think it s
2012	WEB scienceblogs.com	is a gay pastor who is black, outspoken about giving gays the right of marriage. # Tell me if news of Warren didn't get out could you imagine
2012	BLOG splcenter.org	Our national Treasury has been depleted by obstructionist politicians, the God-given natural right of marriage has been denied to a large segment of our po
2012	BLOG cornellsun.com	example, if you don't think gay people are entitled to the right of marriage, then you don't have the right to marry me. # How involved
2008	NEWS SanFranChron	David Benkof " Monogamous same-sex adultery " June 26. What does the right of marriage have to do with fidelity in the gay community? Mr. Benkof, I woul
2003	NEWS SanFranChron	cultural views, however deeply felt, have no bearing on the civil right of marriage conferred by government and the hundreds of legal benefits and obligati
1999	FIC FantasySciFi	away. He was merely Earl of Gloucester - and that only by right of marriage - but since Good King Richard was well-known to be a sodomite, John was

Figure 2. The usage of “right of marriage” in the COCA database

图 2. COCA 语料库中 “right of marriage” 用法

The screenshot shows the 'Corpus of Contemporary American English' interface. The search results for 'marital rights' are displayed in a table with columns for Year, Source, and Context. The context column shows various sentences where the phrase is used, such as 'prohibited by our basic charter.' and '226 # Obergefell clearly sought to protect the marital rights of individuals against governmental infringement. After ob...'.

Year	Source	Context
2016	ACAD Harvard J Law Public Policy	prohibited by our basic charter." 226 # Obergefell clearly sought to protect the marital rights of individuals against governmental infringement. After ob...
2013	NEWS CSMonitor	, says Carl Cecere, an attorney in Dallas who has represented same-sex couples seeking marital rights. He says that even if the ban is overturned, it may
2012	MAG AmSpect	from pro-abortion politicians)." But on the public issue of granting equal civil marital rights to same-sex couples, you and I disagree.? I look forward to w
2012	WEB gwwhatcnet.com	and access to affordable healthcare, so that my LGBT friends will have the same marital rights that I do, so that the least fortunate in our society will not
2012	WEB ...outsidethebeltway.com	law and custom. As late as the 1960s, American legal codes assigned differing marital rights and obligations by gender. The husband was legally respons
2012	WEB masscases.com	of the gender-specific language alters precisely what the Legislature unambiguously intended to preserve, the marital rights of single men and women. S
2012	WEB thethermccain.com	his affair with biographer Paula Broadwell, is there no one who can defend the marital rights of Holly Petraeus, the general's wife of 37 years, without be
2012	WEB ...ndazza.wordpress.com	prevail. But, the likelihood of real, lasting change in favor of equal marital rights goes up the more politicians and high-visibility people speak out against
2012	BLOG patheos.com	another wife to himself, he shall not diminish the food, clothing, or marital rights of the first wife. And if he does not do these three things
2012	BLOG ...nstitutioncenter.org	are scheduled to take their first look at 10 separate filings on constitutional issues over marital rights for gays and lesbians. Whether Tuesday's state ball
2012	BLOG peroty.com	religious beliefs. # So many people are going to vote against this, stripping marital rights from couples all across the state due to religious beliefs. I ask th
2012	BLOG jointheimpact.com	from Registered Domestic Partners? If our domestic partnership rights in California match those of marital rights in California, what equal protections ar
2011	MAG Parenting	country is still opposed to legalized marriage for gay couples, and the lack of marital rights has a huge impact on financial and legal status once kids are l
2008	FIC Bk:Harrietsabella	openly in the family, but there have been whispers about her refusing Henry his marital rights. What are her secrets? Once Henry told Harriet that Eunice
2007	FIC VirginiaQRev	Alvaro Uribe, would have made Colombia the first Latin American country to accord limited marital rights - health insurance, inheritance, social security-t
2006	ACAD LawPublicPol	California) have developed various types of registered civil unions that recognize and give partial marital rights to same-sex couples, and these often occ
2004	ACAD AfricanHist	it is open to her husband to sue the Court for the enforcement of his marital rights. " 95 # When Dr. Young heard from Asiya that she had been
2004	ACAD AfricanHist	However, the court's rejection of the husband's petitions for the restitution of marital rights and enforcing his duty of maintenance - issues that both car
2003	ACAD ArabStudies	state. Here the woman's " upset " state becomes a mechanism for obtaining marital rights from relatives, not only from the husband. This mechanism se

Figure 3. The usage of “marital rights” in the COCA database

图 3. COCA 语料库中 “marital rights” 用法

最后考察“marriage right”，英语网站“thoughtco”指出，婚姻早已被确立为所有美国人的一项基本权利[3]。此处即将“marriage right”的解读为“可以组建家庭的权利”，近似于上文(3)中 right to marriage，通过 COCA 核查，COCA 中共有 32 条例句，展开如图 4。

进入语境中解读，如“Gay Marriage Right”指的是“同性婚姻权利”，此处指涉内容即“调整婚姻家庭法关系的法律”，“marriage right”含义即为“the fundamental right to marry”，故不符合本文“婚姻权利”英译。

总结上文，“婚姻权利”的中文含义为“调整婚姻家庭法关系的法律”，本文探讨了“matrimonial rights”，“right to marriage”，“right of marriage”，“marital right”，“marriage right”五种译法，其中“right to marriage”与“marriage right”含义近似，都属于“可以组建家庭的权利”。同时依据国外网站的解释及 COCA 语料库的验证，“right of marriage”及“marital right”均有“调整婚姻家庭法关系”的法律意义，故符合本研究需求。

SEARCH				FREQUENCY		CONTEXT		ACCOUNT	
1	2019	MAG	Slate Magazine	1	1	Q	cry!" she trilled, and he stiff-upper-lipped, and that was their whole marriage right there in that little exchange.) She referred to her time as a		
2	2019	ACAD	Journal of East Asian Studies	1	1	Q	One City Suffered Commitment Strong: Anti-Corruption; School for Poor Children Weak: Gay Marriage Right, Immediate Official Income Transparency T		
3	2016	ACAD	Harvard J Law Public Policy	1	1	Q	, reasoned the Court, states have " contributed to the fundamental character of the marriage right by placing that institution at the center of so many f.		
4	2016	ACAD	Harvard J Law Public Policy	1	1	Q	right to marry," and found that " laws excluding same-sex couples from the marriage right impose stigma and injury of the kind prohibited by our bash		
5	2015	NEWS	WashPost	1	1	Q	colleagues and critics on the right and left that perhaps the next best thing for marriage right now is to widen that target group by focusing on reducing		
6	2014	SPOK	PBS_Newshour	1	1	Q	the great problems. DAVID-BROOKS# If I could just build off that point, the marriage right now between domestic policy and foreign policy seems to m		
7	2012	WEB	prayerrequest.com	1	1	Q	need your help in prayer to ask God for him to show up in my marriage right now lord God, am so so so heart broken but i still believe		
8	2012	WEB	fanfiction.net	1	1	Q	jewelry's been regularly cleaned, but not her wedding ring. State of her marriage right there. The inside of the ring is cleaner than the outside, hence		
9	2012	WEB	huffingtonpost.com	1	1	Q	Scott a commitment bracelet; which is going to have to do in lieu of marriage right now. So it was like a big Kardashian hug to wrap up their		
10	2012	WEB	...vocracy.blogspot.com	1	1	Q	more can I add? - and then I saw a comment that brought my marriage right back to me. My (**39;6482;TOOLONG... husband accused me of being abu		
11	2012	BLOG	vh1.com	1	1	Q	. We were not divorced. " # Usher admitted to having doubts about the marriage right before their 2007 wedding, making many of us on the outside sh		
12	2012	BLOG	usacarry.com	1	1	Q	Please say your post was a joke. # Rpaugh2 # Kind of like gay marriage right Bob # Erajtem # There is nothing gay about homosexuality/sodomy! # CW		
13	2012	BLOG	wtdtps.com	1	1	Q	You have two choices: # a. You can have the Clerk witness your marriage right there in the city or town hall # or # b. You can		
14	2012	BLOG	feministe.us	1	1	Q	me to get a chance at a U.S. citizenship -- oh, and that " marriage right now would hurt his career. " She's a thoughtful, kind lady		
15	2012	BLOG	necolebitchie.com	1	1	Q	God first! # I really do nt think Fab is against marriage -- maybe marriage right now. Also probably marriage with someone else. Emily seems nice and p		
16	2012	BLOG	...omonaz.wordpress.com	1	1	Q	a similar phase.. thank god, no one in my family is thinking about marriage right now. I would just flee somewhere if anyone starts talking about it.		
17	2010	TV	Boston Med	1	1	Q	if we didn't get married... See? That's what's wrong with marriage right there. I would make... Marriage isn't for - - like,		
18	2005	MAG	Cosmopolitan	1	1	Q	and who he'll spend it with. This means he's probably thinking about marriage right now, and he'll want to know everything about you, especially your		
19	2004	NEWS	SanFranChron	1	1	Q	to have. I suppose I personally feel that if gays can get every single marriage right and have it called a civil union and be universal, that's OK		

Figure 4. The usage of “marriage right” in the COCA database

图 4. COCA 语料库中“marriage right”用法

4. 法律术语翻译建议

法律文本承载着国家法律权威信息，其翻译作为国际交流的关键途径，肩负着传递中国思想精髓的重大责任，仅追求字面对应无疑是以指测河。加之法律表达含蓄精微，文化差异、历史变迁都可能使其语义内涵有所变化，关键词语翻译失之毫厘则谬以千里，其难度之高、作用之重不言自明。基于以上研究结果，参考多位外交部翻译专家已有观点[4] [5] [6]，本文对法律文本中术语翻译提出以下四点建议：

1) 精确内涵，把握分寸。翻译时既要做到对内涵的精确把握，也要做到措辞的恰如其分。如前文所述，若将“婚姻权利”译为“right to marriage”与“marriage right”易导致英语国家读者误解。

2) 立足语料，优化策略。定性研究向来是语言研究的主要路径，随着大数据时代的到来，语料库介入的定量研究与定性研究相结合的研究方法成为语言研究的总体走向和必然趋势。在挖掘法律话语要义、准确把握内涵的基础上，采用语料库手段对文本进行整理、标注，在大型参照语料库的辅助下择选最优

话语表达惯式，从而优化中国话语翻译路径，以冀更好推进中国外交实践。此外，语料库工具对主题词、高频词及词从等典型话语方式及结构的呈现，为文本抓取与语料分析架构桥梁，见证着翻译实践探索与翻译学科研究日新月异。

3) 表意准确、用语规范。准确和规范是一切翻译工作的基本前提和本质要求，法律文件翻译工作必须依靠大量中外专家层层把关，只有在完全把握法律内涵的基础上进行翻译，方能传递理念、方案以实现交流互动。准确规范法律术语翻译，使受众对特定话语形成固定且正确的印象与理解，避免穿凿附会，以成功构建国家话语体系。

4) 创新话语，译法统一。对于外国读者相对陌生的中国特色概念与话语表述，译者宜首先借鉴已有外语表述，深入了解中国国情和外国语言习惯后做出翻译策略抉择。必要时可依据语境进行创新，采取“以我为准” [7] 的传播策略，统一译语表述。同时，做好话语解答工作，避免因翻译不当或文化隔阂造成的误读与偏见，致使交流互动出现阻滞。“三个代表(Three Represents)”即为这一翻译策略下的典型范例，目前已成为国际社会广泛接受并使用。可见，积极创新与译法统一实为必要之举。

平等话语权的建构离不开译者这道桥梁，国家间交流的成功与否取决于能否“通过表述来获得认同” [8]。在中国综合国力显著增强、国际地位稳步提升的关键时期，术语在话语传递过程中的地位举足轻重。我们必须建立“权威、系统、快捷、开放的在线外交术语库” [9]，同时加大与国外合作沟通的力度，以更好地传播中国声音。

5. 结论

本研究对“婚姻权利”含义进行了全方位解读并提供了不同语境下的英译参考，对法律文本英译探讨提供了方法指引。具体而言，首先，本文根据中文语境下的法律含义并结合英语国家语料库逐一探讨了“matrimonial rights”，“right to marriage”，“right of marriage”，“marital right”，“marriage right”五种译法，考察了不同语境下“婚姻权利”英译的准确性。研究发现，“right to marriage”与“marriage right”含义近似，都属于“可以组建家庭的权利”。同时依据国外网站的解释及 COCA 语料库的验证，“right of marriage”及“marital right”均有“调整婚姻家庭法关系的法律”意义，符合本文英译需求。笔者下一步研究目标是建立法律语料库，以进一步探索法律文本的术语英译，构架法律术语英译体系。最后，结合本文研究方法提出四点法律类术语英译建议：1) 精确内涵，把握分寸；2) 立足语料，优化策略；3) 表意准确、用语规范；4) 创新话语，译法统一。

术语英译是法律文本英译中的重点难点，正确的英译策略能够促进法律话语英译质量的提升、促进中国公共外交的发展，同其他各国做到“增信释疑”，以增强我国的文化自信和国家话语自信，从而更好地在国际上构筑话语体系、树立大国形象。

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