

# **The Fourth International Conference on Law, Translation and Culture**

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## Preface

Internationally, there is a growing interest from academia and legal professionals in the study of the interface between language and law. Locally, Language and Law is one of the core postgraduate programs, which can be traced back to the early 1990s at City University of Hong Kong. In recent years, exchanges and collaborations in language and law among universities such as City University of Hong Kong, Aston University, China University of Political Science and Law, Columbia Law School, Georgetown University and Peking University, have been frequent and productive. With Hong Kong, an international city, playing an important role as the meeting point of different cultures and with China being the convergence of various jurisdictions, a new association – the Multicultural Association of Law and Language (hereafter as MALL) was founded in 2009 with Secretariat located in Hong Kong.

The MALL aims to provide a platform for scholars from different jurisdictions and cultures to exchange views on the interface between law and language, with a specific focus on the interdisciplinary and multicultural nature of law, language, and discourse. Affiliated with the MALL, there is an international journal: *International Journal of Law, Language & Discourse* ([www.ijlld.com](http://www.ijlld.com)), and two international conferences: *International Conference on Law, Language and Discourse*, and *International Conference on Law, Translation and Culture*. The Founding President is King Kui Sin (formerly of City University of Hong Kong), who has served on the Bilingual Laws Advisory Committee of Hong Kong and has been appointed MBE (Member of the Most Excellent Order of the British Empire) by the British Government for his contribution to the translation of Hong Kong laws into Chinese.

The executive committee is composed of University President, King Kui Sin (Hang Seng Management College, Hong Kong), Secretary General and Vice President, Le Cheng (Zhejiang University/China University of Political Science and Law, China) and Vice Presidents, Craig Hoffman (Georgetown University Law Center, USA), Lijin Sha (China University of Political Science and Law, China), Joseph G. Turi (International Academy of Linguistic Law, Canada) and Anne Wagner (Université du Littoral Côte d'Opale, France).

The conference, held at East China University of Political Science and Law, is the Fourth International Conference on Law, Translation and Culture. We have had the honor to invite some well-known scholars in relevant fields, including Professor Qinhua He, President of East China University of Political Science and Law (China), Professor Deborah Cao, Griffith University (Australia) and Professor Fernando Prieto Ramos, University of Geneva (Switzerland). These keynote and plenary speeches have greatly inspired our understandings of the translation in law and cultural awareness in legal exchanges, the presentations and discussions in the parallel sessions, and in particular, the roundtable. These speeches have enriched the study in the relevant fields on law, translation and culture. This conference, bringing together around 100 scholars from different jurisdictions and various fields, has been a fruitful and successful one.

With careful review and compilation, almost fifty articles were accepted for this proceeding, covering a variety of aspects of law, translation and culture. There were many well-written articles that covered many topics in Chinese law and legal translation, including the history, practices, and strategies for better understanding of translated works. Some papers also covered actual cases that provided clarification of legal translation techniques and specific strategies, in and out of the courtroom. Many papers discussed the teaching of legal translation, including its methodology, and structuring of university

programs. The culture of China's legal system was often compared to its western counterparts in some papers as well. And all of the papers were very informative and interesting.

This proceeding has been carefully combined so as to be balanced and inclusive, covering a broad range of topics and issues that might hopefully provide insight and thoughts for future research into legal translation, law, and culture.

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## ***Keynote Address I***

### **Information-Based Training of Legal Translators**

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**[Abstract]** *In the general context of legal translation and research, the significance of information transference is often deliberately underestimated or involuntarily neglected. Due to the special features of legal translation, information transference is a factor that can never be ignored, especially in legal translator training, which involves evaluation of translation quality. The present study emphasizes the role discourse information plays in legal translator training and probes into the method of training by examining three aspects: operation of discourse information analysis, management of language, and cultivation of cognitive awareness and automaticity. In this study, a number of relevant theories are examined and selectively adopted to establish a general framework for analysis, the procedures of training are elaborated, and some examples analyzed to demonstrate the application of the method of training. The findings are hoped to cast light on not only training of legal translators but also that of legal interpreters.*

**[Keywords]** *information-based training; legal translation; discourse information analysis; cognitive awareness*

#### **Introduction**

With the increasing social need for legal translation, training of legal translators has become pressing in China. However, it is just in this area that legal language researchers and educationists are bogged down. Legal translator training has not been explored very much, while research in general translation and translator training cannot lend much help to this specialized area. The problems that legal translator trainers face involve translation competence, training procedures, translation quality and quality evaluation, among others. This study tries to tackle the problems of training legal translators, focusing on a solution and the procedures concerned. Translators' awareness of discourse information, their management of language with reference to discourse information, and cultivation of translators' cognition and automaticity are discussed respectively.

#### **Relevant Studies**

##### ***Legal Translation and Quality Evaluation***

The basic features, complexity and difficulty of legal translation have been recognized by researchers (Cao 2007; Harvey 2002; Stolze 2013; Šarčević 1997). Shiflett (2011) has identified a series of difficulties and challenges facing legal translators – linguistic, cultural, social, legal, and terminological. Due to the complexity of legal translation, it is difficult to evaluate legal translation quality. However, functional equivalence (Nida, 1964), skopos theory (Vermeer, 1989) and the Three Principles in China, put forward by Yan Fu (1981), each approach translation quality from a specific perspective which can cast light on legal translation quality evaluation. Some practical models are also offered. Melis & Albir (2001), when discussing assessment of trainee translators, have given three types of assessment: diagnostic, summative and formative. Pym (1992) thinks that a translation error can be defined as a manifestation of a defect in translation and categorizes the errors into binary and non-binary ones.

**Legal translator training.** For translator training, different models have been proposed. In the model of the EMT expert group (2009), translation competence is defined as the “combination of aptitudes, knowledge, behavior and know-how necessary to carry out a given task under given conditions.” To Gile (1995, p. 14), it is desirable to adopt a process-oriented approach in translator training. He gives a list of models used in his training programs, among which are some often ignored by researchers or trainers, such as those about the informational structure of informative sentences. The PACTE group’s model (2005) divides translation competence into a number of sub-competences including the bilingual, extra-linguistic, strategic, instrumental, knowledge about translation sub-competences and the psycho-physiological component. Prieto Ramos (2011) puts forward five competences in his model of legal translation competence. What is strikingly different from the models mentioned above is that the thematic and cultural competence is included in this model to deal with specifically the legal factors in legal translation.

**Cognitive awareness in translation.** A proliferation of research focuses on the process of translation. Process studies, according to Shreve & Angelone (2010, p. 2), “are now rightly seen as a necessary foundation for the future evolution of other important disciplinary concerns...” Cognitive awareness is among many of the concepts of process examined by researchers, e.g., Yolton (1984) and Shaffner & Adab (2000).

Shaffner and Adab (2000) think that the term competence is often linked to knowledge, skills, awareness expertise, among others, which are seen to be requisite for translation, while the ability to make use of and apply (declarative and operative) knowledge is linked to awareness, which could be deemed conscious decision-making or transferring competence.

**Translation, discourse and information.** The interrelationship between translation and discourse is explicitly expressed in Hatim and Mason (1990). “Social occasions” are reflected in genre and genre in turn is expressed in discourse (Hatim & Mason, 1990, p. 71). Hoyle’s (2008) study emphasizes the role played by scenarios in discourse and accentuates not only how the translator can break discourse into units, but also how he can dissect information into chunks. Hvelplund (2011) also emphasizes the cognitive processes of translation and information, and states “allocation of cognitive resources in translation is essentially an information processing task” (Hvelplund, 2011 p. 3).

Discourse Information Theory (DIT) (Du, 2007, 2009, 2012b; Chen, 2011a, 2011b; Xu, 2013; Zhao, 2011), a discourse-based and information-centered theory, has been applied to legal language research, teaching, multimodal discourse analysis, and legal translation study (Du, 2012a) such as legal translation quality assessment. DIT can facilitate legal translator training (Du, 2010). The Macro-view model (Du, 2007) of DIT holds that any discourse has a general information structure and a kernel proposition, which is elaborated, by its subordinate propositions at different levels. Each proposition comprises an information unit having stable relations with the immediately adjacent unit and its own subordinate units, termed as information knots. The micro-view model deals with the internal structure of the information unit and analyzes it into information elements classified respectively to three categories: entity, process and condition.

The studies in legal translator training have touched upon various aspects, but not yet how to process information. Information reflects the interaction between different factors in the translation process and represents what the text conveys. In the following, analyses are focused on trainees’ management of various factors and discourse information, mainly in the light of DIT.

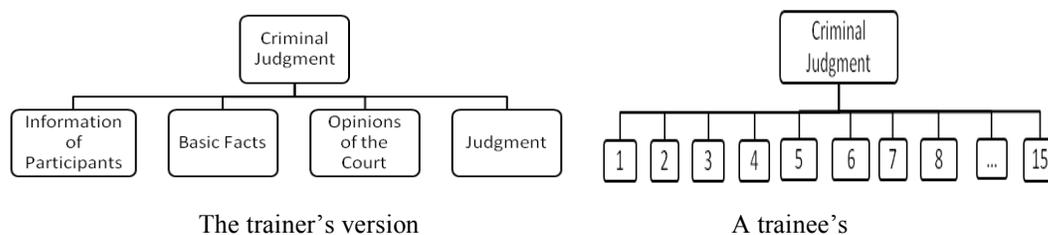
## Translators' Awareness of Discourse Information and Application of DIA

The translator's awareness of discourse information reflects his comprehensive management of all the factors involved in translation. Discourse information is more stable compared with language and is more manageable than other factors such as legal effect, etc., since it can be observed more directly. Such characteristics justify that trainees' awareness and ability of managing discourse information should be deemed the paramount factor in training.

### *Awareness of the Macro and Micro Structures*

Up to now, trainers' attention is often paid, according to the dominant literature, to language such as terminology, expressions, sentences, and occasionally to textual structure. Trainees' awareness of the macro and micro structures of discourse information has not been duly emphasized. To guarantee awareness of macrostructure information, trainees should be encouraged to read the text for information, for example, by taking the following steps: 1) Locating the central information of the text; 2) Determining how the central information is developed at immediately lower levels; 3) Drawing a tree diagram of the relations between the information units determined.

There is often discrepancy between the trainer's and the trainees' analyses of the information structure of a same text, as the data shows (see Figure 1).



**Figure 1. The Trainer's and a Trainee's Analyses of the Same Criminal Judgment**

At the first level of the discourse information structure, the trainer derived four information units (agreed upon by other trainers), whereas the trainee derived 15. The trainee's lack of awareness of the discourse information structure is obvious and should be heeded by trainers. When dealing with microstructure information, the trainee's attention is directed to the information elements within the information unit. The relationship between the elements is interpreted and the salience of each element is assessed accordingly. It is feasible for trainees to consider the arrangement of the information within information units with reference to the macrostructure of information derived. The consideration of information at this level is more intertwined with the trainees' design of the translation with linguistic expressions.

### *Management of the Information Structures*

Management of the information structures runs through different stages of translation. At the initial stage, the trainee has to come to the realization of the structure with the help of the linguistic cues. This requires ability of generalization and judgment. If he cannot directly find the central information of the text, he has to generalize from the specific clues in the text. With the central information determined, he can proceed to the lower levels of information.

The awareness of the macro-structure in the source text influences the trainee's design of the information structures and linguistic realization in the target text. When he finds it necessary to adjust the structures in the target text, he will feel relatively free to do it at this early stage. This will save him much effort at a later stage when managing microstructures of information. Awareness of microstructures of information will mostly take effect in the translator's specific handling of the translation.

The management of microstructure information requires at least the following considerations: 1) Faithfulness; 2) Specific realization of legal meanings; 3) Appropriate language expressions of information; 4) Fine-tuning of information and its structure. Faithfulness requires that the translator should keep to the information to be transferred. Information provides the translator with direct reference for his discretion, for example,

**Table 1. Translation of the Procedures on Rail Transport Operation**

Source text (Chinese)	Translation
市发展改革.....等行政管理部 门.....按照各自职责, <u>协同</u> 实施 本办法。	The municipal administrative department of development and reform...shall, according to respective duties and functions, <u>assist</u> in the implementation of these Procedures.

The translation has to be improved with reference to the original information to be transferred, i.e., “协同” (assist and cooperate). Apparently, the translation by using a single word “assist” incurs lack of faithfulness. Specific expressions of legal meanings are realized through information management at the microstructure level. The trainee has multiple options to express the meanings intended. With information as a criterion, he can be more confident about his selection of linguistic devices. On the other hand, the trainee's detailed examination and fine-tuning of information arrangement is realized through his management of the language. However, the trainee may not be well aware of this, a deficiency that needs the trainer's special attention.

### ***Evaluation of the Operation***

At the early stage of managing information structures, the trainer will find it hard to evaluate the trainee's work. Therefore, it's necessary for the trainer to encourage the trainee to explicitly display his translation process, for example by drawing a tree diagram, so that the trainer can examine the trainee's operation in light of his own experience. At later stages, as the target text gradually takes shape, the trainer can evaluate the trainee's management of information structures more directly. However, checking the management at these stages is less rewarding than the early stages. The trainer's later intervention can hardly take great effect since the trainee can only make minor changes if he wants to maintain the macrostructure of information already set.

Evaluation of trainees' management of information gives the trainer reference for guiding the trainees. For the evaluation, at least three aspects should be considered: necessity, appropriateness and effectiveness. Necessity refers to whether the information the translator actually handles is necessary. Necessity of specific information can be checked in the macrostructure of information. Appropriateness refers to how information should be expressed, for example,

**Table 2. Translation of a Criminal Judgment**

Source text (Chinese)	Translation
(本院认为) ..... <u>不构成</u> 从犯。	A. ...the court denies taking the defendant as an accessory.

The translator correctly takes the court as the actor of the denying, according to the information in the preceding section as indicated by “本院认为” (This court thinks). However, “denies taking the defendant as an accessory” is not an appropriate rendition of the information to be transferred.

Effectiveness is evaluated through checking the treatment of legal factors, mainly legal effects. The desired treatment is often with reference to the requirements to which the translator thinks his translation is subjected. For example, when he is asked to adapt the legal effects in the source text to the target legal culture, his rendering in this manner can be positively evaluated.

### **Translators’ Management of Languages with Reference to Discourse Information**

With reference to discourse information, translators’ management of the target language can be less arbitrary. This helps translators to properly deal with the arrangement of the target text, selection of language means and comprehensive optimization of the translation.

#### ***Management of the Discourse***

When reading the source text, the translator will sometimes encounter problems involving ambiguity of language, conflicts in legal systems and discrepancies in terminology. If he relies only on language, the understanding may be either inaccurate or biased. With reference to information, he can first check his interpretation according to the information structure, the development and the realization. This will help reduce subjectivity in his translation. In planning or actual translation of the text, the translator usually does not have much freedom to change the general structure of the discourse. However, he has the right to fine-tune the discourse structure where the target language requires. The fine-tuning is often achieved in the logical and grammatical arrangements within the information units.

**Table 3. Restructuring Discourse**

<b>Source text (Chinese)</b>	<b>Translation Version 1</b>	<b>Translation Version 2</b>
对运营单位违反本办法的行为，由市交通管理部门按照下列规定予以处罚：	For violation of these Procedures by the operating unit, the municipal administrative department of transportation shall impose punishment according to the following provisions:	Any operating unit that violates these Procedures shall be punished by the municipal administrative department of transportation according to the following provisions:

Version 2, which has been improved on Version 1 by the translator, shows the translator’s discretionary management of the microstructure of the discourse. With this rearrangement, the violator is manifestly emphasized, since this part of the discourse is to define penalty. Translators’ management of discourse, with reference to the information transferred, gives guidelines for handling various problems of translation, which cannot be obtained otherwise.

#### ***Selection of the Language Means***

Selection of language means is where the translator has the most freedom in the process of translation, in contrast with the information to be conveyed. With reference to information, he is in a better position to choose the language means available, such as mood, voice, modals and terms.

**Table 4. Selection of Terms**

<b>Source text (Chinese)</b>	<b>Translation Version 1</b>	<b>Translation Version 2</b>
市交通管理部门.....负责.....轨道交通运营安全监督管理.....	The municipal administrative department of transportation shall be responsible for <u>supervision management</u> of rail transport operation safety...	The municipal administrative department of transportation shall be responsible for <u>supervision and administration</u> of rail transport operation safety ...

“监督管理” in the source text conveys the information that “supervision” is parallel rather than subject to “management,” whereas in Version 1 the juxtaposition of the two terms creates the effect that supervision is subject to management. In the improved version, this is corrected with the conjunction “and” which establishes a parallel relation. Besides, the term *management* is replaced with *administration*. The example shows that discourse information can effectively back up and justify translators’ selection of appropriate language means.

### ***Optimization of Translation***

Optimization of translation is not arbitrary when discourse information is considered. Based on information, the trainee can justify and if necessary readjust his arrangements of the target text, rearrange the detailed information and the language means, and the trainer can easily monitor the translation according to the information-based criteria set for evaluating the translation work.

To get trainees acquainted with the information-based ways of optimization, the trainer can design a set of procedures for trainees’ reference. Some guidelines used in our teaching are: 1) Serial order is to be observed, such as macrostructure checks of the texts prior to microstructure checks, information readjustment prior to language improvement; 2) Every adjustment meets the requirement of conveying information and realizing related functions; 3) Self-evaluation of translation quality is done at different levels, based on information; 4) (Self-)Evaluation results are represented with scores, so that trainees’ performances can be compared.

Checks in the serial order refer to checking individual elements, factors, aspects or levels respectively. For example, while checking information structure, language factor should not be given priority. For (self-) evaluation, scores can be calculated according to trainees’ performance that is mapped to the tree of discourse information. Mistakes located on higher levels of the tree incur more deduction from the total score.

### **Cultivation of Translators’ Cognitive Awareness and Automaticity in Training**

Translators’ awareness of discourse information and capability of managing all the factors can become increasingly automatic with the progress of their translation practice. Thus in the training process, it is essential and feasible to cultivate trainees’ cognitive awareness of discourse information, legal factors and various relations, especially by assigning them relevant tasks.

### ***Discourse Information***

The trainee’s analysis of the general information structure may arise as the preliminary step in planning his translation. Legal translator trainees are often expected to have mastered basic translation skills. Therefore in the initial stage of training, trainees’ attention can be directly diverted to discourse information. This can account for one fourth of the time in the training schedule: 40 percent for Stage I (Cultivation of information awareness); 35 for Stage II (Training of language management); 25 for Stage III (Training of comprehensive improvement), for example.

Cultivating information awareness is better realized through activities of discourse analysis. According to Dale (1969), simulating and performing are the most effective learning means. In the training plan, information analysis tasks can be explicitly prescribed, and kernel proposition determination, macro-structure analysis, presentation and annotation of higher-level information knots may arise as the primary, until trainees’ cognitive awareness of information takes roots. At the later stages

when the trainee examines his translation from the perspectives of language, legal concepts, relations or comprehensive improvement, information still serves as essential reference.

### ***Legal Factors***

Legal factors often bring dilemmas to translators because across legal systems, legal concepts may vary greatly, which cannot easily be interpreted in the target legal culture. Translation of legal terms is a typical example. Legal factors involved in legal term translation range from legal effects to specific objects to be regulated, involving information transference all the time. Information-based consideration of legal factors requires that the trainee be conscious of the content whenever he is dealing with the interaction between different legal systems. For example, to determine the performer of an act or the person liable for an act, analysis has to be conducted based on the information. The trainer's teaching task concerning this is to help trainees come to this awareness by assigning trainees information-oriented exercises in or out of class.

### ***Various Relations***

Relations are not only involving law. They cover a wide range: personal relations (such as author – (translator) – reader relations, interpersonal relations in legal issues), text relations (source text – target text), informational relations (information – language) and structural relations. All such relations are complex and they require operations at the highest level of translation (Du, 2012a). Such relations should be reflected in the language chosen and information transferred in the target text, either explicitly or implicitly. Trainees should not only be conscious of the language expressions, as they often do, but of the information concretization.

Training translators' treatment of various relations at the highest level will exert strains upon the trainer as well, since trainees' operation at this level is usually too inconspicuous for the trainer to evaluate. Some indirect means of measurement can be chosen, such as trainees' verbal report of their translation process, listing of the information that comes to their notice, and explanation of the reasons why they are adjusting the language. Such means of teaching may be turned into trainees' assignments so that their awareness can be consolidated.

## **Conclusion**

This study focuses on the training of legal translators in light of discourse information analysis. First, the fundamental basis provided by discourse information in training is exemplified. Then trainees' management of language based on treatment of information is discussed. These pave the way for considering the cultivation of trainees' cognitive awareness and automaticity in handling all the factors and various relationships involved in translation. This study shows the significant function discourse information analysis plays in both the training process and trainees' self-awareness cultivation. When information is given priority, trainees and trainers can find it easier to manage language skills and general optimization of the translation.

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### **Biography**

Dr. Jinbang Du is a professor of English, PhD in linguistics and applied linguistics, supervisor of PhD students in forensic linguistics, Guangdong University of Foreign Studies, and the president of the China Association of Forensic Linguistics. He has published a book "Forensic Linguistics" and articles on forensic linguistics and linguistics, and is also interested in discourse analysis, discourse information analysis, business Language study and legal translation.

## ***Keynote Address II***

### **The Rhetorical Interpretation of the Fuzzy Expressions in Judgments**

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**[Abstract]** *The language of law takes accuracy as its priority but fuzzy expressions are fairly widespread in legal practice. The use of fuzzy expressions in the judgment can reduce adverse reactions of the audience, especially those directly related to the case, and increase the acceptability of the judgment.*

**[Keywords]** *judgment; fuzzy expressions; interpretation; rhetorics*

#### **Introduction**

In general, the language of law takes accuracy as its priority. However, in legal practice fuzzy expressions are fairly widespread. Partly, this is because laws and regulations are too limited in space to include massive and complicated social phenomenon and relationships; hence, the difficulty, or even the impossibility, of accurately defining the vastly different behaviors and activities that are somehow unpredictable in a society. As such, fuzzy expressions have to be used in legislations to create leeway for such behaviors and activities that are difficult for accurate definitions or descriptions so as to make laws and regulations more flexible for unseen contingencies. In the case of judgments, fuzzy expressions can serve the purpose of judicial decisions to settle conflicts, mediate disputes and seek the convergence of minds. (Zhang, C.2010) Let's see the first example:

#### **Case One**

*With respect to the case of the accused Chi murdering and Chen (Chi's husband) harboring, this collegial panel, after fully considering the comments of the prosecutors, the two accused and their advocates, has made its decision after a serious review, and the judgment is as following:*

*Since the defendant Chi intentionally and unlawfully deprived the victim's life, causing her death, her behavior had constituted the crime of intentional homicide. Thus the Prosecutor's allegation has been proved valid and the Court supports it. The court does not accept the accused persons' comments. The defending opinion of the advocates that the defendant's criminal circumstance is relatively minor is accepted, for the court finds that it was under the influence of the feudal thinking that the defendants intentionally suffocated the newborn baby girl in order to have a baby boy, and the court thus finds that the circumstances are relatively minor. Since Chi did not truthfully confess her crime, with a bad attitude towards guilty plea, she shall be given a relatively severe punishment according to the circumstance.*

*The other accused Chen knew Chi's crime, but still provided a hiding place, money or property to the criminal to help her escape. Chen's behavior constituted the crime of*

*harboring. The allegations of the prosecutor were proved valid. The Court supported it as well. Because the criminal whom Chen harbored was a murderer, and his harboring lasted for more than 3 years, the circumstances shall be deemed as serious.*

*In accordance with Article 45, 47, 61, paragraph 1 of article 72, paragraph 2 and paragraph 3 of article 73 of the CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA, the decision is as follows:*

*The accused Chi committed the crime of intentional homicide and is sentenced to a fixed-term imprisonment of 7 years;*

*The accused Chen committed the crime of harboring and is sentenced to a fixed-term imprisonment of 3 years, put on probation of four years.*

*If the defendants refuse to accept the decision, they have the right to appeal within ten days after receiving the judgment to this court or the Intermediate People's Court of Shiyan City. The accused Chi and Chen are now taken back to custody.*

*The Court is now closed !*

This is an infanticide case, and the specific facts are: the accused Chi has already given birth to a female child. On February 17, 2001, Chi gave birth to a second baby girl in their own home, yet she intended to kill the baby with cruel means of pinching and beating. Seeing the baby was silent, Chi thought the baby was dead and abandoned the baby in the toilet by a river. Learning that his wife killed the baby, Chen asked his mother Xie to hide the truth, and reported to the village committee that the baby was dead when born. The village committee staff rushed to the scene, only to find that the baby was not dead yet, and they immediately sent the baby to the hospital, but later, the baby was pronounced dead. Chi and Chen felt that their crime was going to be uncovered, so, under fear, they successively ran away. They first met in Shicheng County, Jiangxi Province, and then fled to other places in Jiangxi and Guangdong. During this period, Chi gave birth to two children, a boy and a girl. Nearly four years later, they were arrested by the police on November 13, 2004.

In the trial process, Chi denied the allegation of “pinching, and beating” the baby girl, but admitted “touching, patting, and wiping” her. After carefully reading the judgment made by the Appeals Court, we can find that the judgment was quite “fuzzy”.

### **Fuzziness of the Logic**

First of all, fuzziness exists in the logic of the statement. For example, “Since the defendant Chi intentionally and unlawfully deprived a person’s life, causing death, her behavior had constituted the crime of intentional homicide. Thus, the Prosecutor’s allegation has been proved valid and the Court supports it.” The court decided that Chi constituted the intentional homicide; however, “The defending opinion of the advocates that the accused criminal circumstance is relatively minor is accepted, for the court finds that it was under the influence of the feudal thinking that the accused intentionally suffocated the newborn baby girl in order to have a baby boy, and the court thus finds that the circumstances are relatively minor.” Yet the reasons why the advocates claimed that the accused person’s criminal

circumstances were minor, and why the court found the accused person's circumstances were minor, are not clearly explained in the judgment, indicating a degree of fuzziness, or even lack, of logical reasoning. "Since Chi didn't truthfully confess her crime, with a bad attitude towards guilty plea, she shall be given a relatively severe punishment according to the circumstance."

In accordance with Article 232 of the Criminal Law, "one who intentionally commits homicide shall be sentenced to death, life imprisonment or fixed-term imprisonment of no less than 10 years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of no less than three years but no more than 10 years." Then, whether the final verdict that "Defendant Chi committed the crime of intentional homicide and is sentenced to a fixed-term imprisonment of 7 years" is a lesser sentence, or a "discretionary heavier punishment", or what is the degree of discretion, is not revealed.

Chen's judgment is similarly fuzzy. For example, "the accused Chen knew Chi's crime, but still provided a hiding place, money or property to the criminal to help her escape. Chen's behavior constituted the crime of harboring. The allegations of the public prosecution were proved valid. The Court supported it as well. Because the criminal that Chen harbored was a murderer, and his harboring lasted for more than 3 years, the circumstances shall be deemed as serious". Furthermore, according to Article 310 of the Criminal Law of P. R.C, whoever knowingly provides a hiding place, money or property to a criminal, or helps the criminal escape or gives false testimony to protect the criminal shall be sentenced to fixed-term imprisonment of no more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years." From the said charge, the objective conducts constituting the harboring of a criminal is to "provide a hiding place, money or property to a criminal, or help the criminal escape". Since Chen's behavior of harboring the criminal is a serious circumstance, but why the judgment is a less severe one: "The accused Chen committed the crime of harboring and is sentenced to a fixed-term imprisonment of 3 years, put on probation of four years."

### **Fuzziness in Meaning**

We can see that, besides the logical fuzziness, some words in judgments are also fuzzy in meaning, such as "minor", "severely" and "serious" in "minor circumstances", "severely punishment" and "serious circumstances".

### **Social and Cultural Factors**

A second thought will reveal that the fuzzy expressions in this judgment involve certain social and cultural factors. First of all, law is a social norm formulated by the State with the functions of regulating human behaviors. This includes its functions as: (1) Guidelines, which means law clearly stipulates what people could do, should do or should not do in order to guide people in their choice of behaviors; (2) Evaluation, which means that as a standard and measurement of conducts, law has the function to guide people's behaviors by determining and measuring their behaviors; (3) Educational means, which means law enforcement has impact on the future behaviors of the general public in the future. For example, the legal punishment of the illegal behavior has the educational and deterrent impact on the general public. (4) Enforcement, which punishes and prevents illegal behaviors. ("The Functions of Law", 2012)

Since Chi's infanticide behavior is a case of intentional murder, she ought to be punished, and her punishment has educational and deterrent functions. However, as compared with killing adults or others'

babies, killing her own daughter has less social harm, and this is why this case was classified as a minor offense.

### **Case Two**

Yet in another infanticide case, Zhou Xijun, the accused, was sentenced into a much severer term. At 7:20 March 4, 2013, when Zhou saw the owner get off a Toyota RAV4 but leave it unlocked, he got into the car and drove away, unaware that a two-month-old baby was sleeping at the back seat. Ten minutes later, the auto radio station broadcast the parents' call for help and the whole Changchun city knew that a car was stolen with a two-month-old baby in it. At 10:30, the city police were sent to search for the car and the baby, and the police microblog was open for any clue of them. The next morning, the stolen car was found in a residential block in Siping City, but the baby was found missing. At 17:00 March 5, Zhou surrendered himself to the police due to the public pressure. Three hours later, the police announced officially through the microblog that the baby was dead. On May 27, the Intermediate People's Court of Changchun city, Jilin Province, sentenced Zhou to death penalty for stealing the car and murdering the baby (Yang, H. 2013). Here is part of the judgment:

*“The court finds that the accused Zhou Xijun’s crime has been testified by the proofs verified in the court trial and he himself has also confessed guilty. Zhou stole a car worth a large value, with the intent of possessing it illegally; when the baby cried, Zhou was afraid of being caught and brutally throttled the baby and deprived the baby’s life intentionally and illegally; so Zhou’s acts have already constituted crimes of murder and theft, which must be punished cumulatively in accordance to the law. His surrender to the police was due to the circumstance that he had nowhere to escape, and this constitutes self-confession; however, due to the fact the extremely cruel crime of Zhou has incurred great harm to the baby and caused great impact to the public, the court will not consider a lenient punishment. As for the civil action for damages affiliated proposed by the victim’s parents, the funeral expenses totaling RMB 17,098.5 were sustained in accordance with related judicial interpretations.*

*The judgment is as follows: Zhou is sentenced to death for intentional murder, and a five-year-term imprisonment for theft and 50,000 RMB for fine; and combined, Zhou is sentenced to death, deprived of political rights and pays 50,000 RMB fines and 17098.5 RMB for the financial loss of the victim’s parents. (“Zhou Xijun’s first-instance trial judgment”, 2013)*

About the fuzzy expressions in the first judgment, the same is true of Chi's husband's case. The decision said that “the person he was giving shelter is a murderer and the harboring act lasts for more than three years, which shall be deemed to be serious circumstances.”; however, the sentence on Chen is “sentenced to a fixed-term imprisonment of 3 years, put on probation of four years”, instead of a prison term according to the “serious circumstances” of “harboring a criminal”. It is probable that the court was considering the fact that the two defendants had three children to take care of. But this consideration shall not be included as a formal part of the judgment, so the judge had to resort to fuzzy expressions.

## Conclusion

It is acknowledged that in communication, fuzzy expressions can function as a moderating strategy in the pragmatic sense. The use of fuzzy expressions in the judgment can reduce adverse reactions of the audience, especially those directly related to the case, and increase the acceptability of the judgment. However, too many fuzzy expressions can also be a cover for corruption, resulting in the disapproval of the judgment language from the public and the increasing pressure for its reform. For example, Hu Minmin (2004) holds that, taken as whole, the judgments in China usually manifest a result without the process, a conclusion without arguments. (Sheng, 2002) Nearly all the judgments are same in the format: beginning with the pleading case, then the summarizing of the major opinions of each party, and ending with the facts established by the judgment, the law applied and the verdict, without any explanation of the rationality and legitimacy of the judgment. Judges' understanding and reasoning are hidden deep in their minds and are inaccessible to the public and the related parties, leaving an imposing sense of stiffness. (Wang, 2012) The presentation of evidences is merely a list; for example, "the facts are based on the proofs that..." and there is no specific demonstrating, reasoning and testing, denying any access to the reasons for establishing related facts. The legal confirmation of facts is also just a conclusion without arguments supported by reasoning. Second, when legal provisions are invoked, only titles, provisions and contents are quoted, without clarifying the implications of provisions and the applicability of such provisions, leaving the internal relations between facts and provisions ambiguous. Furthermore, the use of discretion by the judge is usually unexplained. The argument part in a judgment is never given its proper due, and is even deliberately ignored. When there are some arguments in a judge, they are either incomplete or weak in logic. Yet a good judgment requires tight argumentation and detailed reasoning, for otherwise the connections between facts and judgments and the processes to establish judgments will be obscured, and the persuasion of judgments and authority of law reduced.

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## Biography

Professor Suqing Yu is a professor and Dean of the School of Foreign Languages in East-China University of Political Science and Law (ECUPL). She was conferred Ph.D. degree of Shanghai International Studies University in 2006 and fulfilled her postdoctoral research in Law in ECUPL in 2012; hence, most of her publications are on forensic linguistics, which include two monographs and over

20 articles. Many of her projects gained the sponsorship from the Shanghai Municipal Education Commission, the National Ministry of Education and the National Social Science Foundation. During Feb. to Jul. 2009, she had been a visiting scholar in the Research Center for Forensic Linguistics based in Aston University, the UK. She was successively elected Vice President of the China Association of Forensic Linguistics in 2008 and 2012. She is now leader of one of the ECUPL's Key Disciplines "Foreign Linguistics and Applied Linguistics (Forensic Linguistics)", and lectures in *English Linguistics*, and *Law and Media* (A Bilingual Course).

## ***Keynote Address III***

# **Changeableness and Unchangeableness of Texts in the System of Legal Translation**

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**[Abstract]** *Legal Translation, as a system, is the foregrounding of legal factors and their relations in the social organism. By focusing on the basic factors and inter-factor relations, we try to conduct a holistic analysis of the legal translation system. Through discussion on the term TEXT from such perspectives as linguistics, literature, and semiotics of culture, we find that each factor or fundamental element of this system is indeed a TEXT in the sense of cultural semiotics and a legal document is the only text of the system in the sense of linguistics and literature, and the discussion on the factors and inter-factor relations is indeed the discussion of texts and inter-textual relations in the sense of cultural semiotics. Legal translation, as a system, consists of such essential factors as author, translator, reader, legal document(s), sponsor, researcher and the translation environment, and the evolution of this system depends on the relatively harmonious interaction between all these factors. As one core element, a legal document can be viewed as a dynamic subject instead of a piece of dead or static literary work; and it, together with other factors, is actually an informant aiming at current concern and ultimate concern rather than merely a medium for communication. Consequently, any text both in the broad sense and in the narrow sense in the system of legal translation is both changeable and unchangeable, just like a person in a society who is obviously changeable in some certain aspects such as physical forms and behaviors and unchangeable in some other aspects such as spiritual orientation for current concern and ultimate concern. By probing into the nature of texts and inter-textual relations in legal translation system, we may have a fresh understanding of the system's mechanism.*

**[Keywords]** *text; legal translation; organism; cultural semiotics; changeableness; unchangeableness*

### **Introduction**

Up to the present, the research of legal translation, as far as the studies of legal language, legal texts, and translation of legal texts are concerned, has gained much progress with fruitful results. Through the systematic study of legal language, people have a better understanding of the characteristics and nature of legal texts (all kinds of legal documents, to be specific), and the study of legal texts help us know the conversion rules when we change legal texts among different languages. Those results are of academic and actual significance, especially in the determination of legal translation principles and the implementation of those rules in the translation practice. These achievements so far make it possible for our further research. Over the past three decades, with the rediscovery of Karl Marx's theory of social organism, the further research of Yuri Lotman's cultural semiotics, (Schonle, 2006, p. 10) and the permeating of ecological thoughts, scholars have begun to pay much attention to the systematicness and integrity of the legal translation. This paper is based on the following four hypotheses: first, legal translation is a living system having the function of self-renewal; second, essential factors in the system are different from one another but closely linked with one another; third, evolution of the legal translation system is a process of self-renewal; fourth, legal translation system possesses humanity characteristic of both current concern and ultimate concern. The fundamental nature of legal translation system, essential

factors of the translation system and all the relations between these factors is actually the unification of changeableness and unchangeableness.

### **Legal Translation System as an Organism**

As early as the 19th century, some scholars such as Auguste Comte and Herbert Spencer employing a biological analogy for society and referred to a 'social organism' (Simon, 1960, pp. 294-299), of which the basic content is that a society is like a living organism evolving as what Darwinism has described. As the theories of these two scholars contained more or less ideas of "vulgar evolutionism", Karl Marx, based on his studies of these theories about social organism, put forward his own theory of social organism. According to Marx (1995, pp. 277-278), a society, like a living organism (as a person), consists of two fundamental elements, social existence and social consciousness, just as a person consists of both physical body and spirit (and a person is like a single cell of the society he lives in). All people as physical existence and such factors as the products they have produced together form the social existence, just like the physical body of a person; whereas all single spirits of the society combined together form the social consciousness. Evolution of a society is actually the evolution of this social organism, including evolution of social existence and evolution of social consciousness. Based on the dialectical relations between social existence and social consciousness, the evolution of social organism possesses not only common characteristics of any biological organism, i.e. adjusting itself to its living environment, but also its own characteristics, i.e. dynamically react to its living environment through social consciousness actively interacting with social existence.

Generally speaking, translation is a unique cultural phenomenon of human societies. From this viewpoint, we may assume that legal translation is obviously a special genre of translation (or legal translation system is part of translation system). Ever since the coming into being of human society, people have possessed the consciousness of rules and norms, viz. a society ought to observe certain rules and norms for its sustainable survival. These rules and norms could be taken as the embryonic form of laws in the sense of socio-politics. In ancient China before the political entity appeared, these rules and norms largely took the form of Li or rituals. When the state will took its shape, Li gradually evolved into a system of mandatory laws. By analogy, translation is generally taken as a kind of language transformation, an activity of cultural exchange, a bridge of communication, a kind of text activity, or a kind of semiotic activity.

If we perceive translation in this way, we will not be able to grasp the wholeness of translation system, just as Su Dongpo, a well-known poet of the Northern Song Dynasty, once said, "we cannot see the true face of Mount Lu, just because we are in the mountains." If we see translation as only a kind of activity or function, it is like that we are trying to perceive the true face of a mountain by indulging ourselves in the mountain. However, if we see translation as an integration of activities, functions and carriers, translation is endowed with substantive significance having the characteristics of systematicness. In another words, when translation is viewed as a system, the translation system is indeed the social organism by highlighting its features of translation activities and functions in the common sense. The same is true to legal translation.

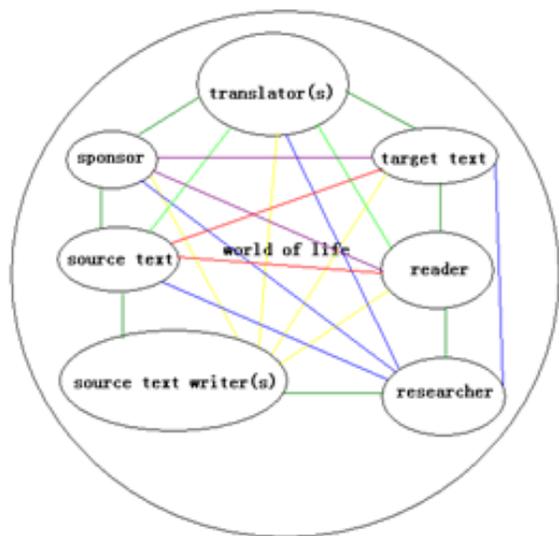
## Legal Texts as Cells of an Organism in the Legal Translation System

Legal texts are cells of the organism of legal translation, whereas humanistic concern is the value orientation of this organism.

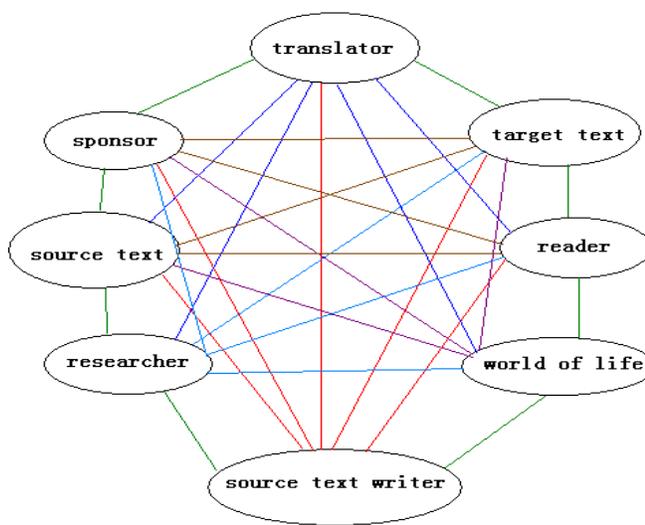
### *Legal Texts as the Cells of the Organism of Legal Translation*

A legal text is usually taken as carrier of messages by way of words or sounds. In English-Chinese (EC) or Chinese-English (CE) translation, a text is an integrated discourse unit for communication. In literary studies, a text is seen as a literary work. However, in cultural semiotics (Kang, 2005; Guo, 2006, pp. 3-9), a text is perceived as any information unit which can, as Yurii Lotman describes, either refer to a small ware, or a nation's culture. Here a text can be seen as any information unit with cultural vitality, being able to communicate with other subjects, and the carrier of a text may take any possible form besides written or oral language – a small ware may be taken as a carrier of information, people and products may be taken as the carrier of a nation's cultural information, and so on. Accordingly, a human being is both a carrier of information and a subject to communicate, viz. an informant, a special type of text in the sense of cultural semiotics. A text in the translation system refers to an informant or a text in the sense of cultural semiotics, and refers to any factor of the system. In other words, a text is a living being with soul and body.

Of the translation system, the essential elements consist of author, source text, translator, reader, legal document, sponsor, as well as researcher; and if we take the world of life as one element of the system of translation just like the inner environment of an organism, we can say that the translational organism as a whole, or to be specific, the organism of legal translation, consists of eight fundamental elements (Ma, & Zhou, 2013, pp. 1-3), illustrated as follows:



**Figure 1.**



**Figure 2.**

As discussed above, in the system of legal translation, there are two types of texts; one is in non-human form and the other in human form. In the sense of natural sciences, only a text in human form can speak and communicate. However, in the world of human culture, non-human text can also speak. In English, there is a saying, “Facts speak louder than words”, implying that anything can speak. Though the word SPEAK is used here metaphorically, the world of meaning in-itself is a world of metaphors as language in-itself is a kind of metaphor. In the sense of metaphor, words in the broad sense and narrow

sense find their common footing. As far as the term TEXT is concerned, a text in the broad sense can take any possible form, whereas a text in the narrow sense takes only the written form or sound form. For convenience's sake, we simply term any text in the narrow sense or in the broad sense as TEXT or INFORMANT. In traditional Chinese philosophy as well as modern western world, a work, literary or philosophical, is often taken as a special SELF of its author. This is another proof we find for taking a text in non-human form as an informant. Consequently, the system of legal translation is an organism (or living being), comprised of the above-mentioned eight essential factors and all the relations between these factors.

### **Humanistic Concern as the Value Orientation of Legal Translation System**

If the study of legal documents, legal language and legal translation is categorized as natural sciences, there would be no humanistic concern in it, because natural sciences refer to knowledge about the objective world and even when they deal with issues of human beings, they take human body as merely an object without taking any human sentiment into consideration. If this study is categorized as social sciences or humanities, humanistic concern turns to be of crucial importance. On the one hand, human beings have a socio-political life with concrete current economic and political issues to cope with; on the other hand, human beings experience a spiritual life with mental or psychological issues to manage, especially in need of pursuing the meaning of the world and life.

As far as the system of legal translation is concerned, its study is no doubt directing to solving legal issues in concrete social life, viz. the value of this system is oriented to current humanistic concern. Meanwhile, the ultimate purpose of this system is to promote healthy development of human society, and then its value is also oriented to ultimate humanistic concern. While dealing with legal issues, the system strives to be both reasonable and sensible, without shirking its possible responsibilities to other social sectors such as ethic and school education. Otherwise, by stressing the mandatory but insensible features of law alone would lead to the destruction of human society.

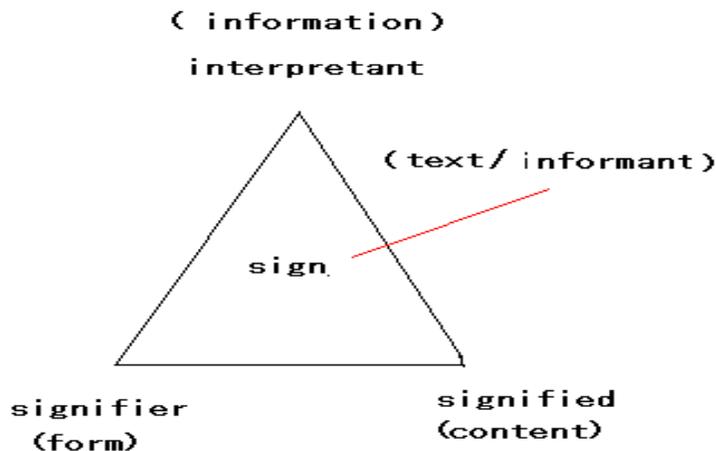
### **Structure of a Legal Text and Interactions between Legal Texts**

Legal texts in a broad sense refer to all elements in the legal translation system, including the legal texts in the material form, written form or sounds, and those in the form of human. It seems quite improper to address human beings as texts. Then we find another term, viz. INFORMANT to represent all these so-called legal texts in the broad sense. In other words, a text is a living informant in the world of meaning and the world of human mentality, rather than a dead thing in the objective world.

#### ***Structure of a Text***

As early as the very beginning of the 20<sup>th</sup> century, Swiss linguist Ferdinand de Saussure (1857-1913), the founder of structuralism and one of the fathers of the 20<sup>th</sup> century linguistics, and whose ideas are collected in *Course in General Linguistics* (1916) (Saussure, 1995) argues that the linguistic unit is a sign which unites, not a thing and a name, but a concept and sound image. He calls the concept "signified" and the sound image "signifier." Later Ogden and Richards presented the classic "semantic triangle", a model of how linguistic symbols are related to the objects they represent. The triangle was published in *The Meaning of Meaning* (1923) by Ogden and Richards. The triangle identifies the distinction between the referent (the person or thing to which a linguistic expression refers) and the symbol (something that represents or takes the place of something else). It is thus able to identify the relationship between these

two and to describe the nature of this. Based on their unique understanding of language, we can also make a similar discussion of texts as manifested in the following diagram.



**Figure 3.**

As to any text or informant, its external form is obvious but its content is expressed (represented or symbolized) in the metaphorical form. The information it carries according to Saussure’s concept of a sign’s dichotomy equates with the content (signified), or no information exists in a sign at all. But according to the semantic triangle, we can say that a text does carry information and we get message by interpreting the text. “Information” is implicit and innate, whereas “message” is explicit and generated. “Information” is in the singular form, but “MESSAGE” usually takes the plural form, “messages”. Information may turn to be many messages in the process of interaction between a text and a subject, just as a person who is indeed informant containing information in general, but when he communicates with different people or the same people at different times or under different situations, he sends out different messages.

***Interactions between Texts***

Texts in legal translation can be classified into two major groups: ones in non-human form and ones in the form of human beings. As to the communication between people, some scholars coined the term “intersubjectivity”. As to the relations between texts in the narrow sense, some scholars coined the term “intertextuality”. Based on cultural semiotics, the concept of texts can be any informants including human beings and materials. In this case, the above-mentioned intersubjectivity can be changed to intertextuality, and the intertextuality in the narrow sense could be integrated into intertextuality in the broad sense. To understand such kind of intertextuality, we ought to give up the dichotomy of the world and take the world as a whole, viz. so-called the objective world, the mental world and the world of meaning are de facto one world, or world of the Being.

According to Heidegger, only Dasein has the ability to perceive the Being of the world, and a human being is just such kind of Dasein. To a human being, his mental world and world of meaning are integrated with objective world. Or, we may think this way: though the world of Being is independent from any specific person, the world of a specific person relies solely on the very existence of that person – when he dies, his very world disappears. However, even when a specific person dies, the relics of his world are still meaningful to other persons who are still alive, as the persons alive may perceive the relics

of the very person as his other selves are still able to communicate with these selves. Therefore, any work or thing related to a person living or dead could be taken as some “self” of the very person. In the system of legal translation, all relations between its elements are in fact intertextuality or subjectivity in the broad sense. Habermas’s theory of conversation and Gadamer’s theory of fusion of horizons offer us helpful guidance to understand such intersubjectivity or intertextuality.

Since we term above-mentioned two groups of texts as informants, there arises one more question: How the implicit information of an informant is converted to explicit messages? To this, we may probably find an explanation with the help of Richard Dawkins’ Meme theory<sup>3</sup>. An informant possesses information, but this information could be manifested itself in form of messages which are in fact generated in the process of communication between this informant and other informants (or interpreters).

As to the principle legal texts (or texts at large) adhere to in their intercommunication, we can employ the famous statement sentence in Plato’s *Republic*: “Justice is the interest of the stronger”. Legal texts (or texts at large) in their communication observe this principle of justice. A specific legal text can be strong or weak under specific situations, and the communication principle is largely formulated by the stronger. However, whether a specific text is strong or weak varies with its living environment. A strong text under one situation might turn to be a weak one under another situation, and vice versa. This principle is just like Darwin’s Jungle Law. Nevertheless, if we treat this law in a moderate way, we will be no social Darwinists. Anyhow, the positive influence of this Jungle Law is to encourage one to continuously strengthen himself but not necessarily to bully others.

### **Evolution of the System of Legal Translation and Its Mechanism of Harmony**

Evolution of a living organism in the biological sense depends upon the substance, energy and information exchanges among its component parts on the one hand, and upon such kinds of exchange between this organism and its living environment on the other hand. The same is true to a social organism. As to the organism of legal translation, such exchanges are largely exchanges of information or messages. Just as a living human body, if it is to stay healthy, all its component parts ought to live harmoniously together and the body as a whole also ought to live harmoniously with its living environment. As to the system of legal translation, all its component parts, i.e. all these texts ought to live harmoniously together and the whole system ought to adjust itself to its living environment. This is called the mechanism of harmony. However, “harmony” is relative and involves tolerable conflicts, as conflicts within certain limits help this system develop or evolve. Otherwise, the system might collapse.

For example, if the author or original text is not qualified, he or it will not be able to arouse the interest of a sponsor or translator; if a translator or his rendered version is not qualified, he or it will be abandoned; if there are no qualified researcher or commenter to offer helpful suggestions, the training of translators will be inefficient; if the social environment does not allow, the translation activity will

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<sup>3</sup> The word “Meme” was first introduced in the book *The Selfish Gene* published by a British Biologist Richard Dawkins, in which the first half discussed biological evolution, using a core term “gene”, while the second half elaborated the evolution of human being, using the core term “meme”. Different versions of the book were published by the Oxford University Press in 1976, 1989 and 2006, respectively. The term has been widely used in translation studies and contemporary language and culture. He Ziran from Guangdong University of Foreign Studies translated the term “Meme” into “Moyin in Chinese” (模因). See He Ziran and He Xuelin. Memetics and socio-pragmatic. *Modern Foreign Languages (现代外语)*, No. 2, 2003. In addition, the term “Meme” are also translated into other versions in Chinese such as “媒母”, “米姆”, “谜米”, “弥母” and “拟子”.

become impossible; if all these factors are sound but their relations are not in harmony at all, it is also difficult for this translation system to evolve smoothly.

### **Changeableness and Unchangeableness of Texts in the System of Legal Translation**

Since we perceive the system of legal translation as a kind of organism, it is clear that to any organism, changeableness is absolute or unconditional. First of all, the whole system of legal translation changes all the time. As legal translation is a special genre of translation at large and translation system is a special genre of social organism, that the continuous self-renewing and self-vitalizing of social organism implies that translation organism is forever renewing and vitalizing itself and it further implies that the system of legal translation is forever renewing and vitalizing itself.

If we accept George Steiner's idea "understanding as translation" (Steiner, 1998, pp. 1-50), we may reach a conclusion that expressing is also translation, in addition to the idea that translation means understanding plus expressing. As expressing, and/or understanding happen all the time in human society, we may conclude that translation exists far and wide in human society. By extending the term "translation" as a system and even an organism, we may claim that translation organism is indeed social organism. Similarly, if we treat legal affairs in the broad sense, we can see that legal affairs exist far and wide in human society and understanding and expressing in legal affairs are indeed legal translation. Then the system of legal translation is indeed the system of translation or translational organism. In the broadest sense, legal translation system=translation system=social organism. However, in the narrower sense, these three types of organism are different from one another as we highlight different features of each of them. Even in the narrowest sense, it is still obvious that the system of legal translation in general changes forever, though specific translation activities appear and cease as assigned missions fulfill. Second, changeableness of the system of legal translation is manifested in occurrence and disappearance of specific legal translation activities – succeeding legal translation activities emerge as existing legal translation activities finish. Third, changeableness of the legal translation system is also manifested in those specific texts in the system of legal translation, in human form or non-human form, as there is no static person or thing in the absolute sense. Fourth, relations between these texts in the system of legal translation change in density and intensity. As mentioned above, changeableness is one basic attribute of the system of legal translation.

If changeableness were the only attribute of the system of legal translation, the system would seem strange and weird to us. However, every one of us is part of a social organism, part of a translation organism, and part of the system of legal translation. In other words, the system of legal translation, just as translation organism and social organism, possesses also the attribute of unchangeableness. First of all, humanistic concern as the value orientation in general of the system is unchangeable, though specific values and the approaches to achieve these values change with different situations. Secondly, specific systems of legal translation are relatively stable in structure, function and purpose for dealing with specific legal affairs instead of legal affairs at large. Third, nature of the texts in specific system of legal translation is stable and tangible. Fourth, relations between the texts of specific legal translation system are relatively concrete and stable and all these texts observe specific rules in their communications.

## Conclusion

Legal translation as a system highlights the legal factors and their interrelations in a social organism. In fact, these elements are texts from the perspective of cultural semiotics. An analysis of these elements and their relations is actually a kind of analysis of texts and their relations. As an integrated living system, the elements of legal translation consist of author, initiator, translator, target text, legal translation researcher, and social context. The evolution of legal translation system depends upon the harmonious relations between the above-mentioned elements and development of these elements. In the system, any legal text is seen as a living subject instead of static physical medium, and all legal texts are informants in possession of humanity characteristic of current concern and ultimate concern, sharing the characteristic of both changeableness and unchangeableness.

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# On Syntax In Legal Discourse

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*“In the best work the style is found and hidden in the matter”*

John Burroughs “Style and the Man” /1902/

**[Abstract]** *Recent developments in the academic/professional genre colony have mainly focused their attention on the study of salient features constituting the particular register of speech, such as special terminology, particular epistemic modes, and intertextual practices. Syntax, in academic speech, as well as in some special languages, hasn't been sufficiently investigated. The present paper analyzes the specificity of syntactic structures of texts belonging to a separate branch of science – Law – and in particular, texts belonging to different subregisters of Law – legislative, judicial, and documentary.*

*The fundamental study of syntactic structures of a big corpus of different text-types on Law endeavors to map the legal genre due to a “specific syntax” inherent in legal discourse, challenging both linguists and lawyers to talk of a special legal register which is present across genres and which distinguishes Language for Law from other special languages.*

**[Keywords]** *legal genre; intertextual practices; specific syntax; special language*

## Introduction

The linguistic research that has been conducted so far in western linguistics, as well as in the former Soviet Linguistic School, has underscored a number of distinguishing features characterizing the Language for Law determined by the history of its development, as well as the specificity of the law itself, as a form of public conscience. The focus of the studies in the research mentioned above has been mainly on the features of the Anglo-American legal terminology, which involves orthographic and morphological uniqueness, and a significant amount of terms borrowed from Latin and French, as well as a large number of lexemes with inflexible semantic volume (terminoids). However, the syntax in the academic speech, as well as in some special languages – the Language for Law in particular hasn't been sufficiently investigated; meanwhile, the specificity of syntactic organization proceeds from the logical nature of the science itself, or its particular field, and is in close connection with it.

Currently, there are different approaches to the differentiation of the legal special speech (Bahtia, 1983; Tierzma, 1999). Summing up the interpretations of different viewpoints and approaches to it, it's possible to assume, that legal (special) speech is mainly maintained through two registers: the register of Law and the register of legal studies that contain texts of several genres or subgenres.

The register of Law, belonging to the official-documentary style of the language, is shaped by judicially mandatory, performative text-types, which possess official character, while the register of legal studies contains informative texts, explaining the essence of breaches, not having legal effect, and thus correspondingly belonging to the scientific style. According to three Sources of Law (normative, legal act, judicial precedent, an agreement with a normative-legal content), the register of Law consists of the three clusters of judicially mandatory texts with different communicative intention, called “subregisters”.

Thus, on the one hand, texts of legislative Acts, Codes, and Constitutions establishing the norms of Law for the society, form the Legislative subregister or genre-group of laws. Genres of Judgments, with the subgenres of Court Opinions, Court Decisions, and the Genre of Court Order with the subgenre of the Writ - constitute the judicial register (or genre groups of Court speech). Contracts, Deeds, Assignments, and Powers of Attorney – which have the legal effect – form the documentary subregister or genre group of documents.

On the other hand, explanations and attachments to Legislative acts form the Legislative subregister (or jurisprudence) of the Register of Legal Studies, while court judgments, and correspondence of lawyers on court proceedings form the judicial subregister of the speech. (See the Appendix).

Since the language for Law is manifested in two registers of speech – the register of Law and the register of Legal Studies, belonging to different styles, we think it's necessary to present some viewpoints concerning the peculiarities of the syntax of both.

### **Overview of Approaches to the Study of Syntax**

As has been mentioned, the specificity (distinguishing features) of English syntax in the scientific style as well as in other functional styles hasn't been sufficiently investigated. Some of the Russian scientists who conveyed a fundamental study of Syntax, assume that Syntax of Science hardly has any distinguishing features (Razinkina, 1989), thus opposing themselves to the viewpoint of Charles Balli who expressed an idea of a "special Syntax in Science" (Balli, 1961). Supporting Balli's viewpoint, we assume that syntactic peculiarities do exist in the scientific speech; they proceed from the logical nature of science itself or its particular field, and are in close in connection with it. Such underlying principles and purports of scientific organization such as judgment, generalization, evidence, and reports, etc. are explicitly expressed in the scientific special texts via the specialized syntactic constructions.

Some research (Aleksandrova, 1984) has studied the distinguishing features of scientific syntax focusing on the expressive abilities of syntactic constructions in scientific prose (e.g. parenthetical intrusions, which convey categories of reference, exemplification, and deliberateness). Expressiveness in the syntax of science is formed by the special use of word order, the syntax of suprasegmental units and paragraphing, as well as some special structures typical of certain genres of the scientific speech.

Researchers also talk of the "intellectual expressiveness" along with "emotional expressiveness" in the syntax of science. The intellectual expressiveness is determined by a rigid and strict expression of a scientific thought, by the convincing style of the scientific narration, which is achieved not only by a matter-of-fact logic of argumentation, but also by a special choice of language means of expression. Both intellectual and emotional expressiveness is achieved by interrogative, exclamatory sentences, (as well as by questions and exclamations) within introductory and so-called "built-in" constructions. As researches claim (Kozhina, 1972), the character of expressiveness, as well as its means in scientific prose, has become strictly functional, i.e. it's determined by the purposes and tasks of communication in the proposed field. Thus, as may be seen, in many studies the functional approach to the analysis of syntactic structures is mainly applied.

In the context of functional stylistic analysis, the goal of the present paper is to study the distinguishing features of legal texts, representing the special language of Law in different subgenres belonging to different functional styles, including the Constitution and notary documents on the one hand, and correspondence of lawyers and explanations to legislative acts on the other.

As is known, syntax is playing a big role in conveying the semantic content to the text, as well as in giving additional stylistic meanings and coloring. Syntactic constructions, widely and commonly used, are of natural character, however their lexico-morphological “filling” may be different according to their stylistic implementation. Consequently, the role of syntactic features should be studied along with their lexical meanings.

In this regard, we should quote the P. Giro’s famous words. ” Syntax – is the soul of the style, the lexis is its flesh” which proves that, when dealing with syntax, it’s important to underscore the stylistic meaning of syntactic structures in the organization of the style as well as the lexical meaning they convey (Guiraud, 1879).

The tightest connection of the Syntax and Style is expressed in the words of William Howard Taft, an American expert on Syntax (1922):

*“It is when words are hooked together and made to work as a unit, when syntax is involved that grammar makes its main contribution to style... it is mainly as syntax that we can know grammar as style (Taft, 1922).*

Syntax hides in itself great stylistic abilities. The style of any piece of work is mainly formed by Syntax.

### **Expressive Abilities of the Syntactic Organization of the Text**

Language, as is known, serves not only for shaping and conveying man’s thoughts, but also for expressing his attitude towards the utterance. No utterance is devoid of at least some expressiveness. Expressiveness is viewed by many prominent linguists as the most important language issue having a direct bond to stylistics. The syntactic organization of even a simple sentence does matter for stylistics. Thus, some researchers distinguish such definitions as “expressive syntax” and “stylistic syntax”. These two concepts differ due to the subject matter of their investigation – the former studies linguistic issues of the expressive speech (expressive syntax), and the latter potential expressive abilities of certain means of the language in use (stylistic syntax). It should be mentioned that whatever the field of the study is called, it’s **syntactic** and open for research.

#### ***Stylistic Devices used for Expressive Syntax***

For the manifestation of the text expressiveness, it’s important to focus on such phenomena as parcellation, parenthesis, syntactic parallelism, climax, antithesis, and inversion, i.e. stylistic devices used in speech. The Soviet School (Aleksandrova, (1984) created the effective system of “syntactic analysis level” which includes a “static” level of syntax (members of the sentence theory), the “dynamic” (the study of the sentence functional perspectives), the level of “parenthetical” intrusions (connection of parenthetical structures with the sentence and the text) and the level of phrasing (connection of contextual syntagms). Special focus is made on the prosody and the punctuation too.

Thus, analyzing the syntactic – stylistic construction of speech, one must focus his attention on the means and ways of giving the speech its highest expressiveness, explore expressive abilities of proper-syntactic structures. As to the most effective investigation tools, we suggest an overall so-called “complex” approach to the functional - stylistic study of the syntax. A “segmented” study can cause an incomplete comprehension of any type of text (be it written or oral) as a product of human’s speech act. It’s the man who is the author of expressiveness, though in the process of uttering a speech he thinks last about using this or that type of syntactic construction, grammatical forms, punctuation, i.e. about the

means that are not merely connecting segments of the utterance, but rather signs assisting the segmentation of the text.

## Experiment

As mentioned above, the goal of the present paper is to discover the specific syntactic and stylistic peculiarities of the special language of Law, analyzing the texts belonging to both functional styles – official documentary (the text of American Constitution along with Magna Carta, the Declaration of Independence, and notary documents) and the scientific (Court judgments, cases, and correspondence between lawyers, etc.).

### ***Official Documentary – Constitution, Declaration of Independence & the Magna Carta***

As to the significance of the documents mentioned above, it's noteworthy to quote what Thomas Jefferson once declared about the Constitution of the USA. .... "It's a good canvas, ... it's a living and breathing document.. intended by our founders to be interpreted in the light of the constantly evolving experience of the American people...." (Peterson, 1984),

As to the Declaration of Independence, it's curious to note that at the end of the 18th century when Thomas Jefferson wrote it in 1776, the oral tradition of law interpretations was dominating. So Jefferson marked the signs in his draft, pointing to where and when you have to make meaningful pauses (syntagms) while reading the document out. However, in the 19th century, the oral tradition retreated, giving way to written texts, introducing and interpreting the Law.

So, speaking figuratively, our task is to take a closer look at those significant "canvases" in terms of functional stylistic analysis to discover the "magic" colors used that make them breathe and sound so eloquent, so proud and powerful.

The Magna Carta is one of the most famous of all legal documents, symbolizing the concept and the "spirit of freedom" in the entire English-speaking world. Thus, the detailed and complex analysis of the texts of significant documents mentioned above, viewed as complete units with a definite communicative-pragmatic intention, allows us to represent them as a strict and vivid structure, where each paragraph serves as a "rheme" (the New information) for the upcoming paragraph in terms of sentence functional perspective theory..

Frequent use of the indefinite article indicates the rheme of the forthcoming utterance, introducing "the new" information about this or that legal act or agreement. See the examples below:

#### *Example 1.*

*"If a man dies owing money to Jews, his wife may have her doner and pay nothing towards the debt from it (Magna Carta, paragraph 11).*

*A person charged in any State with Treason, Felony or other Crime, who shall flee from justice and be found in other State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime (The US Constitution, Article IV, p. 23).*

Also, the close connection of the paragraphs is observed in the texts of these documents where each paragraph serves as a logical and semantic completion of the preceding one.

In the documents mentioned above, somewhat "complex", "specific" for the given professional field statements, and confirmations are made which influence the structural-syntactic composition of the text, often use such means securing the coherence of the text as deixis, ellipsis, substitution, as well as securing

lexical coherence. Thus, for example, discursive deixis expressed by the demonstrative pronouns this/these, that/those, serve as a means bridging the paragraphs within the text for recalling the idea or the statement mentioned above and to avoid its repetition.

**Anaphoric repetitions.** Frequent are the anaphoric repetitions of the 3<sup>rd</sup> person pronoun singular (in the Constitution and Magna Carta) to also avoid repetition and provide coherence of the thought (e.g., “The guardian of the land of an heir who is under age shall take from it only..., customary dues, and feudal services. He shall do this without destruction or damage to man or property.... (Magna Carta, Section IV)

*Example 2.*

*The President shall be the Commander –in-chief of the Army and Navy of the United States,... he may require the Opinion, in writing, of the principal Officer in each executive Departments; He shall have power... (The US Constitution, Article II, Section 2).*

**Repetition.** In Legislative documents, the frequency of such a stylistic-syntactic device as repetition, which promotes the contextual ties, is frequently observed. The repetition is used to secure the linear character of the text since without it the prior idea is lost. Not only separate words, but also collocations are repeated to underscore the concepts and focus the reader’s attention on the information presented.

*Example 3.*

*Each house shall be the judge of the Elections, Returns and qualifications of its own Members...*

*Each house may determine the Rules of Proceedings...*

*Each house shall keep a journal of proceedings... (The US Constitution, Article I, Section V).*

**Inversion.** The inversion (typical of other legal documents), gives a special stylistic coloring, making them sound exact, distinct, and even strict, which is characteristic for the language of Law in general. It also reinforces the expressed statement, marking its priority, imperativeness and lawfulness.

*Example 4.*

*No freeman shall be taken, imprisoned, outlawed, banished or in any way destroyed nor will we proceed against for prosecute him except by lawful judgment of his peers or the law of the land (Magna Carta, p-11).*

*To no one will we sell, to none will we deny or defer, right or justice (Magna Carta).*

**Parallel constructions.** Another frequent device is the use of parallel constructions (parallelism), which make the text sound emphatic, simultaneously demonstrating the equal importance of two or more ideas and statements. It gives a special rhetoric coloring to the text making it sound official, eloquent and even pompous.

*Example 5.*

*“No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen” (US Constitution, Article I, Section 3).*

**Antithesis.** This is the selection and placement of words is also used to reinforce the contrastive character of the statements expressed.

*Example 6.*

*“New States may be admitted by the Congress into this Union, but no State shall be formed or erected within the jurisdiction of any other State... (The US Constitution, Article IV, Section 3).*

**Complicated sentences.** The use of extremely long complicated sentences, staffed with different syntactic constructions, is also typical of legal documents, which contrasts with the universally accepted idea about the language of Law being strict and laconic.

The viewpoint mentioned above is supported by D. Melinkoff who states, that since the language for Law should be available for the public at large, it should be abrupt, laconic and easily comprehended (Melinkoff, 1963). Supporting the viewpoint that the language of law must be accessible for every citizen, we should add that since the two functions of language are maintained here – informative and illocutionary – legal text should be accessible for the widest range of readers, from layman to the top professionals. However, the difficulty of its comprehension in our mind lies not quite in the content, but rather in the stylistic manifestation of the legal text. For the necessity of detailed description of legislative rights and duties complicated syntactic structure are often used with polysyndeton and asyndeton,

#### ***Official Documentary – Notary Documents***

In addition to the documents analyzed above that belong to the official, documentary style of special focus in our research, is the study of notary documents. It is here that we can talk of the uniqueness of syntactic structures signaling the language for law. Presented below is the main set of stylistic devices frequently used in notary documents.

#### **Parallel constructions.**

*In taking a deposition, the notary should first make sure the witness is sworn in. The notary should then personally record or supervise the recording of the testimony of the witness. After the testimony is transcribed the notary should let the witness read and sign the transcribed copy of the deposition. The notary should then certify that the witness was sworn and that this document is a true and record of the witness' testimony. The deposition should be sealed in an envelope and filed with the court or sent to the prothonotary for filing ([http://www.notarybonding.com/sample\\_documents.htm](http://www.notarybonding.com/sample_documents.htm)).*

#### **Subordinate clauses of condition and cause.**

*If the Notary refuses-for whatever reason- to complete the 1-9, please be sure the Notary sees the original of the documentation you will be using; i.e., passport, and types or hand writes a statement on the form to the effect:*

#### **The use of parenthetical “build-in” constructions is also of common use in notary documents.**

*Since you will be a regular full-time Cornell Employee, you will be eligible for a number of fringe benefits, including health and life insurance.*

*We, therefore, need you to complete an Employment Eligibility Verification Form 1-9, and this offer is contingent upon such verification.*

*In witness whereof, I hereunto set my hand and official seal.*

(<http://www.co.washington.ar.us/Information/Chronicle/ChronicleScannedImage.asp?IN=Land-1103-813>)

### **A wide use of detached and close appositions.**

*I. Joe Q. Notary, having been duly appointed and commissioned a Notary Public in and for the Commonwealth of Pennsylvania, do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity. etc.*

([http://www.notarybonding.com/sample\\_documents.htm](http://www.notarybonding.com/sample_documents.htm)).

### **Scientific Documentary – Register of Legal Studies**

As to the legal texts belonging to the Register of Legal Studies (scientific style), the following stylistic devices are used:

**Anastrophe.** This is the “turning back” – the inversion of the customary or logical order of words or phrases, especially for the sake of emphasis.

*Example 7.*

*“(Rules we must have) (Jerome Frank, Courts on Trial 411) (1949; repr. 1950).*

**Antithesis.** The placing opposite – a choice or arrangement of words, often in parallel structure, that emphasizes a contrast.

*Example 8.*

*Law must be stable and yet it cannot stand still. (R. Pound. “Interpretations of Legal; History, 1. 1923).*

**Asyndeton.** Not bound together – purposeful omission of conjunctions that ordinarily join related words or clauses.

*Example 9.*

*“There was the lack of agreement on the fundamental principles of the common Law; lack of agreement in the use of legal terms; conflicting and badly drawn statutory professions... (B. Candozo, The Growth of the Law, 3-4 , 1924).*

**Parallelism.** The use of rhythmic effect, of similar constructions in adjacent syntactic units, often giving an equivalent complementary, or antithetic sense).

*Example 10.*

*“The Constitution of the US is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men at all times, and under all circumstances (Davis J. in Ex parte Milligan, 71. US /4 Wall./ 2, 120-21 /1866/).*

**Periodic sentences.** This is a sentence that consists of a number of dependent clauses, depending on a main clause at the end. There are two types of periodic sentences: a) those involving postponed predication; and b) those involving suspended, or interrupted, predication. They have an Asiatic flavor since they lead to a more complicated syntax than is usual (Garner, 2002, p. 161).

1. Postponed predication – The main clause appears at the end of the sentence

*Only when you have worked alone-when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair, have trusted to your own unshaken will-then only will you have achieved (Oliver Holmes, “ The Profession of the Law”, in Collected Legal Papers 29, 32 (1920; repr. 1952).*

2. Suspended (or Interrupted) predication – The main clause begins early in the sentence, but is interrupted by phrasal modifiers. The subject and the verb are typically parted by intervening words.

*All that the Law is, all that it amounts to, all that is made of, all that lawyers know and non-lawyers don't know, is a lot- a miscellaneous and tremendous lot-of abstract principles. (Fred Kodell, Woe Unto You, Lawyers! 109 (1939; repr. 1980))*

A detailed analysis of the texts belonging to the Register of Legal Studies allowed us to assume that although they refer to a more or less “neutral” scientific style, they use a similar arsenal of stylistic devices via a unique syntactic arrangement to create a special Style called “Legal”.

### Conclusion

The study of syntactic structures of a large corpus of different texts on Law, such as the U.S. Constitution, Magna Carta, texts of contracts, deeds, arguments, judgments, court opinion, court decisions, as well as academic articles on Law (using a quantitative and qualitative methods) endeavors to map the legal genre due to a “specific syntax” inherent in legal discourse, challenging both linguists and lawyers to talk of a special legal register which is present across genres and which distinguishes the Language for Law from other special languages.

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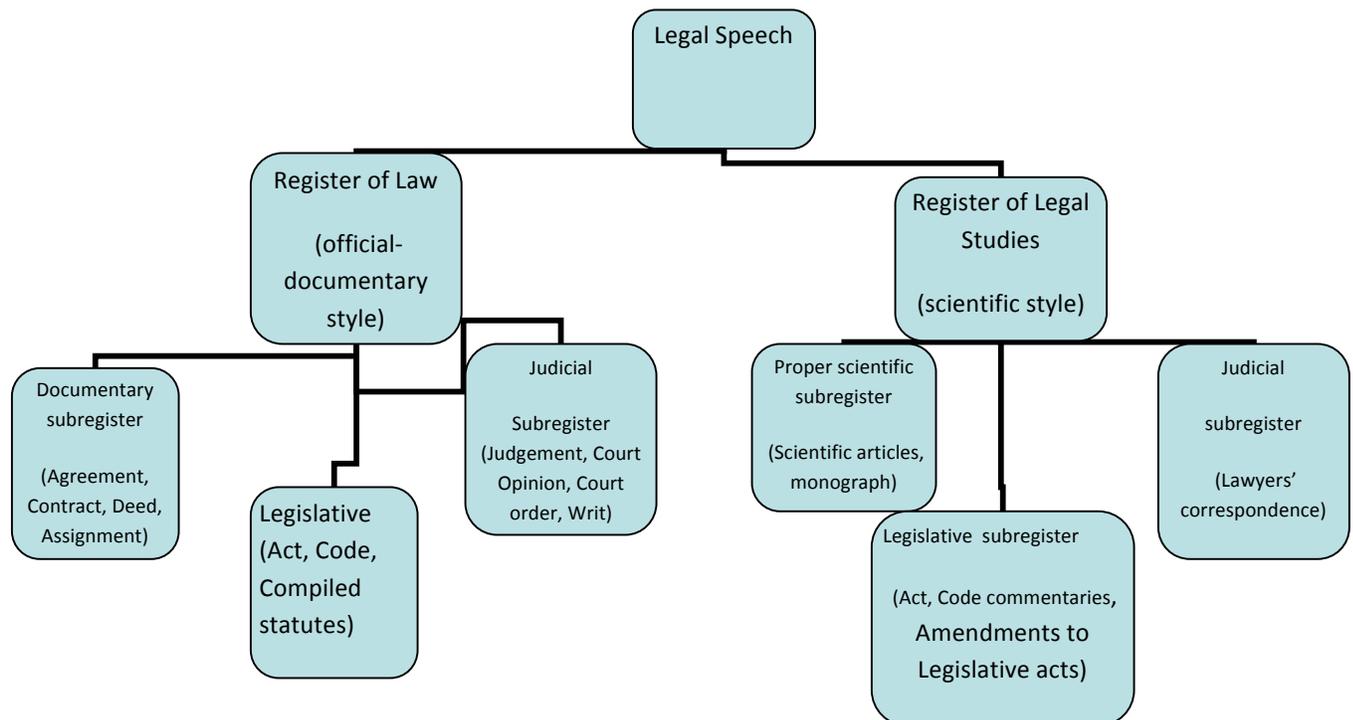
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## **Appendix**



# Overview of Legal Translation History during the Republic of China (1911-1949)

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**[Abstract]** *As an integrated part of legal translation study, legal translation history has not received due attention. Until now, little has been done to systematically analyze the translation phenomenon during the Republic of China, which is the very focus of this paper. Based on the Law Catalogue of the Republic of China, this paper concludes that people with overseas education become major translators and provide a guarantee for high translation quality. Serving legislation, the science of law, and legal education, legal translation substantially promoted the process of China's modernization. Translating Chinese laws into foreign languages is the results and the reflection of China's struggles to revoke extraterritoriality.*

**[Keywords]** *legal translation history; the Republic of China; Law Catalogue of the Republic of China; branch of law; extraterritoriality*

## Introduction

With victory of Xinhai Revolution, the Republic of China was founded on January 1, 1912, and lasted until 1949. During that period, the governments conducted a large range of legislation activities, most of which were borrowed from Western countries. Marks of foreign laws were interspersed, which are closely related to legal translation. To some extent, modern Chinese law could be regarded as “translated law” (He, 2004).

According to Li and Zhang (2006), legal translation history should be an indispensable component of legal translation studies. But in reality, it has long been ignored in China since the rise of legal translation studies. Until now, most attention has been focused on the Late Qing Dynasty, while nothing has been done to systematically and elaborately display legal translation history during the Republic of China, which is the very focus of the paper. Based on the book *Law Catalogue of the Republic of China*<sup>1</sup>, this paper attempts to intuitively recreate that period of legal translation history.

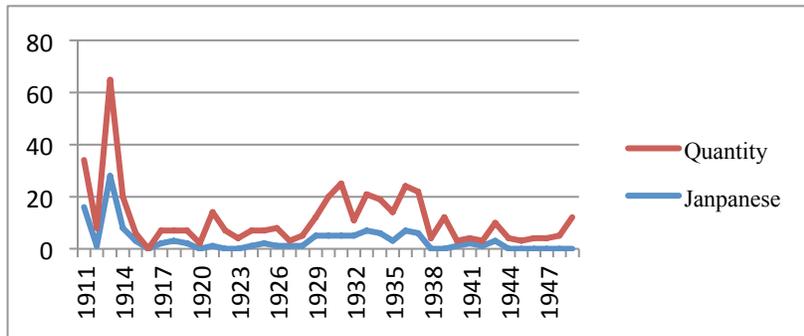
## General History in Time Sequence

Throughout the Republic of China, despite several backups, expectations for the rule by law and the contempt for despotism became the main tendency in society. China was inflicted by instability and political power alternated frequently, with quantities of legislation created. Besides, Chinese law science and legal education were struggling and developing in difficult situations. Against those backgrounds, legal translation prospered. The overall development trend is displayed in Chart 1. It demonstrates that legal translation ebbed and flowed, with a general downhill tendency. In addition, the trend line of books translated from Japanese is roughly similar to that of all books. (Books translated from Japanese account for 44% of the volume).

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<sup>1</sup>The Law Part is among the series *Catalogues of the Republic of China*, which sincerely and comprehensively unfolds an entire picture regarding politics, economy, culture and minds of that period across 38 years. It was initiated in 1978 and lasting for over two decades, compiling working of the series covers books included in in personal collections, Beijing, Shanghai, Chongqing and some minor libraries.

**Chart 1. Trend Chart Across 1911-1949 / Trend Chart of Books Translated from Japanese**



*Note: Since the publication date for 23 kinds of books (volume: 344 kinds) are unknown, the trend chart is made on basis of 321 pieces of valid data. Two points on the y-axis equals to one book.*

### ***First Summit of Legal Translation (1911-1914)***

On January 1, 1912, based on the American model, the Provisional Government of the Republic of China was founded, with Sun Yat-sen elected as the provisional president. The Government then, within only three months, promulgated more than 30 laws and decrees to consolidate the Republic Regime, protect people's rights, and transform social customs. However, Yuan Shikai retained control and succeeded the provisional president on March 10, 1912.

The history then entered into the period of Beiyang Government. The Codification Committee (reorganized in 1914 as Law Codification and Review Committee and reorganized again in 1918 as Bureau for Law Compilation) was established and was in charge for drafting and revising civil, commercial and procedural codes. Legislative activities were then in full swing. Some were based on achievements made by Late Qing Reform, which is far from enough. More laws need to be translated and introduced. Consequently, legal translation from 1911-1914 reached a climax; within German Six Codes, and French Six Codes, various constitutions around the world were translated. Since Yuan Shikai's death in 1916, warlordism divided China into different power zones, then throating China into severer chaos and instability. Legal translation was influenced, with the volume of translated books declining relatively.

### ***Second Summit of legal translation (1927-1937)***

The decade over 1927-1937 is another golden age for legal translation. In 1927, Chiang Kai-shek established the Nationalist Government. By 1928, his army overturned the Beiyang Government and nominally unified the entire nation. In the first decade, the society was in relatively stable situations, which provides advantageous backgrounds for developing social undertakings.

In the field of legislation, imitating the legal system of Six Codes from Civil Law, and succeeding former legislation achievements since the Late Qing Dynasty, the government gradually established Chinese Six Codes, marking the establishment of the Chinese modern legal system. What is more, the decade also witnessed that Chinese law science, having passed through years of transplanting, gradually regained its localized perspective and increasingly took local reality and characteristics into consideration. Legal philosophy was then in need to facilitate the localization process. Additionally, legal education in that period had developed and curriculums were gradually perfected, which inevitably required more foreign laws brought in as teaching materials. All called for the increase of legal translation and thus promoted the introduction of more law books.

In 1937, the Second Sino-Japanese War broke out, inflicting China with continuous wars and social chaos. Given the national crisis, it was the top priority for the then-current government to develop practical technologies, satisfying the needs of the war. Consequently, social science gave way, entering into a depressing stage. Generally, the quantity of books translated declined.

### **Translators and Original Books of Legal Translation**

According to the statistics by the paper, during this period, the Chinese, largely individual with overseas education, became major translators. The original books came from more than 15 languages – mainly Japanese (44%), English (19%), Russian (10%), German (7%), French (5%) and Chinese (10%). In addition, many Chinese laws, regulations, and other legal documents were translated into foreign languages, which is the reflection of China's struggles to revoke extraterritoriality of imperialist powers.

#### ***About Translators***

Completely different from the Late Qing Dynasty, this period saw the rise of Chinese translators. Missionaries gradually descended from the historical stage of legal translation. Chinese individuals, associations and governmental organizations were responsible for almost all legal translation. Individuals with overseas education became the pillars of legal translation cause. Those people, after coming back, entered into judicial organizations, engaged in legal education, or took up administrative work or foreign affairs, committing themselves to legality and rule by law of their country. Meanwhile, inspired by sincere patriotism, they became involved in legal translation, introducing foreign legal systems, legal philosophy and legal spirits into China.

The majority of the translators, once receiving systematic legal education or accelerated education for law and politics, were equipped with legal knowledge and were familiar with foreign laws and their legal cultures. Some of them, like Hu Changqing and Yao Meizheng, later became law masters in their fields. Proficient language skills, coupled with specific knowledge, gave enough of a guarantee to translation quality. Even today, some translated books are still for publication and still play a role.

Some associations and publishing houses, like Oriented Law Association and Editing and Translation Bureau of Commercial Press also participated in legal translation. The governments did not maintain their governing role in the late Qing Dynasty to translate foreign laws, instead, they were responsible for translating Chinese laws into foreign languages.

#### ***About Books Chosen for Translation – In Terms of Language***

During the Republic of China, most legal translation was to introduce foreign laws and thoughts into China. Meanwhile, for the sake of displaying Chinese situations in the law field, many Chinese laws and document were translated.

**Original books of foreign languages.** Since the phase of Law reformation and Statues Amending, for language, cultural and efficiency reasons (He & Li, 2002), there was a strong tendency to translate legal books from Japan. The intent then was to, through the channel of Japan, learn Western laws and thoughts. Between 1911-1949, original Japanese books still amounted for a relatively large proportion, but not with former glory; those of Western countries rose.

During the Republic of China, the Sino-Japanese relationship was so complicated and entangled. On the one hand, the governments sought certain support and assistance from Japan and there was a relative balance of mutual interests (Guo, 2009). On the other hand, when there were substantially sharp conflicts of national interests, Sino-Japanese relations would then collapse, which then inevitably affected domestic

undertakings. For example, in the several years after the issue of “Twenty-One Demands”, the number of books translated from Japanese decreased even to zero.

In addition, in this period, more students studied in Western countries, and then familiarized themselves with foreign languages, cultures and laws. People could not necessarily, by the bridge of Japan, learn from the West; instead, they were able to directly translate Western laws and works directly and acquire first-hand legal materials.

**Original books of Chinese.** According to statistics of the paper, there are more than 80<sup>2</sup> laws and regulations or legal documents that were translated, largely into English and French. The majority of translation workings were done by competent authorities of Beiyang Government and the Nationalist Government.

Translation of Chinese laws into foreign languages could be the result and the reflection of China’s efforts to revoke extraterritoriality. Imperfection of Chinese of legality had long been the excuse for imperialist powers to declare extraterritoriality. At the Washington Conference (1921), Chinese delegates raised expectations to repeal extraterritoriality, which were denied. But a proposal was then raised that every country was to send a representative to establish a committee for investigating Chinese legislative and judicial conditions on the spot, and then based on this, imperialist powers would then decide whether to repeal extraterritoriality. Before the committee came to China, Beiyang Government made sufficient preparations, including translating promulgated laws, regulations and cases into English and French. Later, those translations were submitted for reference to delegates of different countries in the third session of Extraterritoriality Conference in 1926 (Yang, 2005). Despite the final failure, the Conference was still an important link for China’s efforts to repeal extraterritoriality.

In 1930, the government published *Enforcement Regulations for Governing Foreigners in China* (later translated in English by Ministry of Foreign Affairs). In addition, after declaration of repealing consular jurisdiction in 1930, the government had actively negotiated with imperialist powers to withdraw judicial power of the Shanghai Concession. With persistent efforts, agreements were reached separately in 1930 (Chinese-English) and in 1931 (Chinese-French) and Local Courts of Shanghai Special Zone were established, marking the withdrawal of consular jurisdiction of Shanghai.

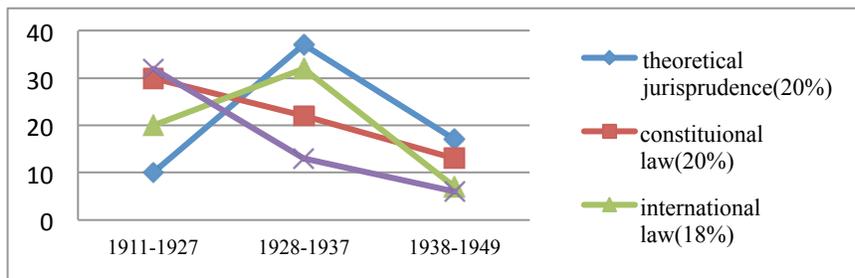
### **The Main Focuses of Legal Translation in Terms of Branch of Law**

The Republic of China is the period when legal translation developed at a full scale and almost all branches of law were covered. Different from legal translation during the Late Qing Reform, with constitutional law and civil law as the focus (Qu & Shi, 2007), that of the Republic period switched some attention to other branches of law, theoretical jurisprudence and international law, which are to be further discussed next (See Chart 2). Those four branches account for nearly three-fourths of the overall legal translation, which can, to some extent reflect, the then current hot issues in law science and legal education.

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<sup>2</sup>There are 31 in Law Catalogue of the Republic of China. The quantity also includes those in the book – *Studies on Legal Literature of China and Foreign Countries* (volume 1) and on the newspaper *Diplomatic Communiqué*, (55), 5-6.

**Chart 2. Trend Chart of Four Branches of Law Over 1911-127, 1928-1937, and 1938-1949**



### ***Theoretical Jurisprudence***

In the early years of the Republic of China, some law departments were still blank. Legal translation mainly served legislation activities. When it came to the Nationalist Government, with more books translated, Six Codes were finished. Then, not satisfied with merely transplanting laws from Western Countries and Japan, legal scholars embarked on summarizing the legislation experiences, pondered upon how to settle Chinese practical issues with introduced laws, and considered establishing Chinese legal system that fit into Chinese cultures and reality. Theoretic jurisprudence, centering on the most fundamental legal issues, further came into the sight of legal scholars, with its abstract, general and universal traits. In addition, during the Republic of China, theoretical jurisprudence had been a subject in colleges of politics and law and law schools in universities. Given those needs, there were a lot more related books translated, most of which were from civil law countries, especially Japan.

### ***Constitutional Law***

With the influence of the Xinhai Revolution, the ideas of democracy and republic had gone down in-depth into peoples' hearts and rule by law had become the trend of the times. Jurists at this time, in whatever school they belonged to, all reached a consensus that the constitution and constitutionalism was a necessity for China (Han, 2010). Whatever the nature of the regime was, the government resorted to the constitution and constitutionalism as a tool of disguise and propaganda, seeking political legality for their control, which invisibly provided a rich soil for developing constitutionalism and perfecting legality. Since the constitution and constitutionalism were so unfamiliar to China and the Chinese people, so many books were introduced. In early Republic of China, almost all of the latest constitutions over the world were translated (including editing and translation). Relevant juristic works were also included, covering Civil Law, Common Law and the Socialist legal system. Throughout the past 38 years, mainly based on legal translation, more than ten constitutions and many constitutional laws and drafts were made.

### ***International law***

Early in the Westernization Movement, many books about public international law were brought in to serve foreign affairs (Qu & Shi, 2007, p. 59). As more and more foreign common people and officials lived in China, how to manage these people was the problem before the governments. In foreign exchanges, for the purpose of safeguarding state sovereignty, commanding international rules were also necessary and indispensable. Only by knowing rules, the rules could be used for the advantage for national interests. What is more, since the Late Qing Dynasty, international law had been the subject of law schools. Given the overall backgrounds, legal translation about international law then strived. It was the same with the Republic of China. During that period, in terms of the volume, books translated of

public international laws overwhelmed those of private international law, and international law in wartime overwhelmed international law in peacetime.

### ***Civil Law***

With the development of industry and commerce, there merged needs for relevant laws and rules to regulate economic activities and settle disputes. Since traditional Chinese law features more emphasis on criminal law, ignorance of civil law and the inclusion of civil rules into criminal code, civil law legislation in modern China almost started from scratch and the quickest way then was to draw upon experiences of foreign countries. Consequently, many foreign books of civil law were translated. Based on translation, many civil laws and regulations were made, including Civil Code, Companies Ordinance (1914), General Principles of Traders (1914), Draft Law of Negotiable Instrument (1925) and Vessel Law (1926), Maritime Law (1929), and Bankruptcy Law (1935).

### **Conclusion and Implication**

Legal translation during the Republic of China maintained the former momentum in the Late Qing Reform and entered into a relatively rational development period, instead of blindly introducing all from Japan. Translators, with proficient language skills and necessary law backgrounds, were responsible for high translation quality. Some Chinese laws or documents were then translated into foreign languages, which were the results and reflections of Chinese' struggles to repeal extraterritoriality. In all analysis, legal translation promoted the process of legislation by reference materials, facilitated the development of law science by continuous introduction of foreign legal systems and legal philosophy, advanced legal education by teaching materials, and assisted Chinese in diplomatic affairs by international rules and regulations, consequently promoting the process of China's modernization.

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# Interpretation of the Legal Language in Slogans for Legal Advocacy<sup>1</sup>

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**[Abstract]** *The slogans issued by public power authorities are intended to publicize and promote new policies and practices. During the development of the social legal system, serious social security problems have led to intensive issuing of slogans for publicizing policies and administrative enforcement of laws. Such slogans, in some ways, reflect public power authorities' ideas of law enforcement, while part of these ideas demonstrate the sticking to and misinterpretations of social values by people at that historical period. This article will interpret the slogans publicizing the legal system in views of legal language.*

**[Keywords]** *slogan; legal language; legal system; enforcement of law*

Slogans are made by authorities and issued by the public power authorities to publicize and promote new policies and practices. Slogans embody the announcement of power and are marks of the power system, power relationship and power ethics. In some ways, they reflect the basic characteristics of the times at different historical stages, and summarize the ideas and policy views of specified governments in a fairly concentrated and distinct manner. Among all types of slogans, the most common ones are those publicizing the legal system and they are closely related to law-abiding behaviors. These slogans undertake the critical tasks of enlightenment of the masses. Meanwhile, they reflect the complicated relationship such as overlapping, dislocation and integration among the words of public power authorities, the rights of acceptance of people, and various legal views.

## Stipulations for the Concept of Rule of Law in Slogan Texts

Chinese slogans have changed considerably through the ages. There have been three important stages in Chinese slogan development since 1949: the 17 years after the founding of People's Republic of China, the 'Cultural Revolution', and the period after commencement of the reform and opening. A study by Chinese scholar Zhu Beilun (2011) showed that the modern political slogans in China have constituted a 'violence system', which is inherent with social stipulations and closely associated with direct violence such as revolution and class struggles. These slogan texts demonstrate a deviation from the traditional 'moderation' philosophy and, instead display more of an aesthetic style of violence. Many articles have discussed the violence, weirdness and soliloquy of slogan text language (Wang, 2007). It shows that the stipulations for the concept of rule of law are important for slogans.

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<sup>1</sup>[Foundation Project] This article is the periodical achievement of the following foundation projects: *Research on issues and Solutions of General Education in Universities from Perspectives of 'Ultra-media Transmission'* (No.2013ZY032, general teaching reform project of Guangdong University of Technology), *Research on Status, Issues and Solutions of General Education Development in Universities from Perspectives of 'Innovative-Education Reform'* (No.2013Y07, general project of Higher Education Research Foundation of Guangdong University of Technology), and *Research on General Artistic Education in Club Models* (No.2013WT03, authorized project).

### ***Slogans Advocating Family Planning – From Bloodiness to Warmth***

In the late 1960s, the state recognized the reality of a large population and began to implement birth control. Various slogans emerged in responding to the policy of family planning, a basic national policy implemented since 1978 (Yang, 2008). Here are some examples of the popular publicity slogans at that time:

*'It is best for a couple to have just one child!'* (Yang, 2008)

*'Getting pregnant and giving birth by right of the certificate.'* (Yang, 2008)

These slogans led the public opinions on both ideas and behavior about birth and made the family planning policy well known. No matter whether people like it or not, they should accept and obey the policy. It means that slogans were not only the mouthpiece of the government, but also powerful execution. They were the equivalents to laws. Their great deterrent was highlighted.

At the end of the 1970s, many local governments carried out the policy of compulsory contraceptive operations. In some cases, a “bare-foot doctor” was allowed to perform the operation to women of childbearing age by forcing them in the fields and with only one scalpel and a bottle of iodine. Publicity slogans in this period were full of “symbolic violence”. For example:

*'Contraceptive ring for women having one child; tubal ligation for women having two children; and abortion for pregnant women with third or fourth children!'* (Yang, 2008)

*'You can abort it through induction of labor, but shall never give birth to it.'* (Zhao, 2004)

Such informal and measure-oriented slogans were overwhelming at that time. They were spread through the Spiral of Silence (Neumann, 1974). People could not afford to resent it. The slogans were orders. They not only used violent language, but bloody violence also harmed the masses, physically and mentally. Law enforcement then was featured with the bitter enforcement process of law enforcers and, more importantly, the irreparable harm to people with unscrupulous law enforcement actions. The slogans advocating family planning in this period were indifferent, tough, bloody, violent and deterrent, just like the following:

*'Either you receive ligation, or we tear down your house; either you abort it, or we lead away your ox.'* (Zhao, 2004)

*'Either you do it right away, or we force you to do it!'* (Yang, 2008)

Many slogans strengthened their violence effect with direct expressions of the results and solutions for non-execution or violation. People felt it difficult to make objections. Slogans were regarded as laws and of great enforcement. In this way ‘symbolic violence’ turned into ‘direct violence’. Moreover, the credibility of law was damaged with unscrupulous enforcement actions. That, in turn, did harm to the image and prestige of Chinese Communist Party among people.

With the enforcement of *Population and Family Planning Law of the People's Republic of China* at the beginning of the 21<sup>st</sup> century, the government promoted family planning in the legal system. The new law strictly prohibited administrative compulsion, intervention and practices violating the rights and interests of citizens, and instead, focused family planning efforts on quality services. It had reversed the long-lasting disadvantages in family planning and led to remarkable improvement in slogans accordingly. Here is an example:

*'For the future happiness of descendants, fewer and healthier birth is your responsibility.'* (Yin, 2011)

For a long time, governmental departments used to publicize a policy in serious style and with deterrence to encourage and unify people. In 2007, the National Population and Family Planning Commission of China (hereinafter ‘Commission’) launched a nationwide campaign to clear up, standardize and update the slogans about population and family planning. One hundred ninety (190) slogans were introduced to local governments (Yang, 2008), such as the following.

*‘Mother earth is too tired and can no longer support too many children.’* (Yang, 2008)

The new slogans discarded the former ways of reprimanding or threats and instead highlighted love, health, life and happiness. This change made people feel more comfortable.

### ***Legal Review of Slogans Concerning Social Security***

Since the reform and opening-up, the state has shifted its focus to economic construction and is paying great attention to social security. However, from some of the slogans for maintaining social security, the enforcers were found to have tough attitudes and stereotyped thinking of “revolution” and “struggle”, applying an outdated management for both national and social affairs. For example:

*‘You may come here to commit a crime if you fear no death!’* (Diao, 2008)

*‘Manhole cover stealers will have their hands chopped off!’* (Diao, 2008)

Slogans are not laws, nor are they the substitutes for laws. It’s not wise to use the expression, “having hands chopped off”, which is obviously against human rights. Publicity of laws can not take the place of justice.

When the Commission was working hard to rectify improper wording in slogans in 2007, a slogan for public security in Haikou City aroused an active debate. The slogan said, ‘Robbers resisting arrest will be shot dead on the spot!’ (Haikou Police, 2007). Some articles and reports made further study accordingly on publicity, enforcement of laws and legislation (Xiang, 2007). Some investigated the different attitudes towards this slogan and found that the masses mostly supported this slogan, the experts did not and the enforcers emphasized legal limits (Hou, 2007). Some scholars argued that this slogan ran counter to the spirit of the rule of law (Ye, 2007). It is true that slogans are not verdicts. The action ‘shooting on the spot’ should be guided with laws, not slogans. It is absolutely not acceptable to take a life so irresponsibly, just depending on only a slogan. The debate identified the differences between publicity and law enforcement. It forced slogan publicity to be governed by laws, and drew attention to the preciseness and standardization of language expressions in slogans from legal perspectives. It was a profound reflection on publicity and law enforcement by the public, experts and enforcers. The debate was a landmark with great significance.

### ***Soliloquy and Interaction of Policy-Publicizing Slogans***

A slogan introduced by public power authorities must go through a process of release, decoding and reception for its publicity purposes. It should not just be the soliloquy of the originator, but also an acceptable object for the public. With functions of dissemination and mobilization, slogans can play an outstanding role in disseminating public information, creating a good environment for public opinions for policies, setting up the public discourse mode and guiding members in society to follow social norms conscientiously (Wang, 2007).

Previous slogans tended to use keywords such as “prohibit”, “shall not”, “crack down”, “oppose” and “punish” in tough tones of order and warning. They had estranged the government from the people and hurt people’s feelings. This brought nothing but disgust and even hostility and confrontation. On the

contrary, slogans should promote publicity and enhance the government's image if they have more concern for receivers, have more emphasis on service and want to be more people-oriented. The following are comparative examples demonstrating the importance of discourse interaction in slogans.

*'Animal killing is prohibited!'* (Zhu, 2011)

*'Animal: Don't kill us any more, please. Do you humans think that your friends are too many?'* (Song, 2013)

*'If you piss here, your whole family will die!'* (Zhu, 2011)

*'Love life, cherish health, care for the environment, start from small things'* (Anran, 2011)

Slogans are unique media that exert distinctive social functions. Various social energies can be found in the dissemination. The language style of slogans is evidence of democracy development, and civilization. It represents the rule of law and the government image. Slogans expression should not be overestimated.

### **Reciprocal Interpretation of Slogan Text and Enforcer Behavior**

The democratization and legalization of public governance are inseparable in a society ruled by law. Publicity, promotion and enforcement of laws are equally important to the formulation of laws and systems. Slogans publicizing legal system are not merely ornaments. More importantly, slogans should be practiced by enforcers, with an all-round implementation from 'thinking' and 'saying' to 'doing'. This is necessary to build a society ruled by law, but it will take long-term painstaking efforts.

#### ***Contradictions Between Harmony in Slogan Text and 'Violence' in Government Enforcement***

On April 21, 2014, Tencent News carried a report entitled 'Urban management officers mobbed up by 1000 people in Cangnan, Zhejiang and about 10 arrested'. The report showed in detail a mass incident in Lingxi Town, Cangnan County, which developed from a dispute caused by an attempt of officers to prevent a passerby from taking pictures. Finally, it turned to be an event with thousands of participants in the county. While most people sympathized with the 'victims' and the 'arrestees', there should be profound thinking as to why such a brutal incident could happen in a place with slogans in every street for being a civilized county. The vanity project of slogans and the shortage of execution behind them should be paid attention by the government. The government's image is not merely an official document, a catchword or a slogan, rather, it should be an act and a service. Compared with the 'verbal violence' of slogans, the 'behavioral violence' of enforcers is even more terrible. It hurts popular feelings and is incompatible with a harmonious society (Tencent, 2014).

Actually, the conflict between law-enforcing urban management officers and peddlers has never stopped. The conflict or head-on confrontation may become even worse if not handled properly and has already become one of the focuses of government work. In the first half of 2013, a warning sign chanting about the invaluable clean government was hung on the door of the Legal Affairs Office of Jianxin County People's Government in Jiangxi Province. This was a focus of the 'harmonious enforcement' promoted by the county in 2013, when the government introduced a series of effective measures to intensify publicity and change the mode of enforcement. The government explicitly requires that enforcers should resort to soft means of enforcement to avoid clashing with people and advocates the use of non-compulsory ways of enforcement such as guidance, recommendations, reminders and persuasion

to build up an image of a humanized government and construct a society ruled by law (Ke & Zhang, 2013).

The establishment and fostering of a society ruled by law never means the indiscriminately stiff, violent and strong acts of enforcers. In public governance, the government should uphold a work tenet of serving in management, change its working style, and eradicate the damage and impact caused by all of the inharmonious factors in the public so that ‘language symbols’ can be integrated with ‘execution’.

### ***Opposition of Power-Based Values in Slogan Texts and Public Opinions***

In the rural areas of China, it has been a longstanding phenomenon that some local administrative personnel with their power spread their authority and ideas through slogans. For example:

*‘Whoever runs counter to the government will come to no good.’* (Song, 2013)

*‘Petitioners will be detained if they bypass local authorities once; sent to reform through labor for second-time bypassing; sentenced to prison term for third-time bypassing.’*

(Song, 2013)

For a long time, China was in a system of the ‘rule of man’. Because of the lack of personnel and ineffective flow of talent, leadership at the basic level was weak overall. Leaders there tended to use their powers subjectively. Such kind of leadership has shown up completely in slogan language that threatened the masses, took away their rights of equality and liberty, and caused confrontation between the government and the public.

Slogans should have been a channel whereby the government could pass on national policies, laws and regulations to the people. However, the image of the government and country has been seriously damaged because of using threats to fulfill tasks and with the thought of regarding slogans as the tools for self-claim. Democracy needs the free airing of views and guidance. It is necessary to encourage legal construction, rule of law and lawful administration for the sake of democracy development.

### ***Changes of Slogan Texts and Democracy Development of Governance***

Chinese slogans have experienced changes at different times. Taking slogans for traffic law enforcement as an example, they demonstrated the development from ‘rule of man’ to ‘rule of law’. The slogan ‘*Go out Happily and Come Back Safely*’ was well know, and impressive in the 1980s. With the decline of bicycles in daily life, it was outdated to use slogan ‘*Wait for Three Minutes Rather Than Seize One Second*’ (Anran, 2011). With the popularity of motor vehicles, traffic pressure increased. Traffic law enforcement is becoming more difficult. Having successful publicity via slogans has become important for the traffic law enforcement department.

There are slogans that aim to slow down motor vehicles. For example: ‘*Over speed is strictly prohibited!*’ (Zhang, 2010). Slogans are a friendly reminder to observe the traffic rules: ‘*Life won’t take two. Safety will bless you whole life.*’ (Zhang, 2010) Some slogans warn people of the danger in driving motor vehicles: ‘*The road ahead has high incidences of accidents. It has taken the life of xx people totally.*’ (Anran, 2011)

In August 2010, at the 16<sup>th</sup> Meeting of the Standing Committee of the 11<sup>th</sup> NPC, the 8th draft of an amendment to the Criminal Law considered a jail sentence for drunken driving for the first time. Now, there are many slogan warning against drunken driving and some of them have maintained the style of “symbolic violence” and are rather shocking. For example:

*‘Drunken driving is a choice of heading toward death and grave.’* (Zhang, 2013)

Although it is important to popularize laws and give warnings, it is inadvisable to have a loose tongue, because such cursing and exaggeration can only result in aversion and refusal to cooperate among people. On the contrary, a slogan will be easier to accept if it preaches in view of care. Slogans should not be coercion and power. They should not lack execution. Instead, they should aim at a harmonious interaction. Here is an example:

*Don't propose toast to a driver at a dinner table: sobriety can ensure safety!*

Nowadays, traffic enforcement slogans can be seen everywhere, and traffic management has carried on in view of traffic safety and personal security. Publicity of traffic laws and regulations has achieved the goal of modifying people's behavior. Under the environment of 'the mass line education', expressions in slogans can have more consideration for the audience's feelings and publicity effects, not just to threaten and punish people. For slogans about traffic law enforcement, it is good to see the achievements of democracy and legislation in China.

### ***Slogans and Ruling by Law***

Development of Chinese slogans is very relevant to the demoralization of P.R. China. The transition and orientation of government roles is important for such development. The government should not be the opposite of the masses, nor should it arrange everything for the public or be headstrong with super power and privileges. On the contrary, the government should be an organization for administration and service. It is a representative of democracy and the legal system. A society ruled by laws needs no 'symbolic violence'. Perfect social rules and laws are more necessary.

As a public discourse, slogans reflect the image of public governance body through their contents. The history of changing Chinese slogans is witness of the shift undertaken by China from rule by man to rule by law, which is a shift of public governance from the use of laws as a tool to the use of laws as a track (Zhang, 2010). For a modern society, rule by law is very important.

In the publicity of public governance, slogans should keep up with the needs of the age by using the simplest and unadorned language to reflect and express the common knowledge of the law or legal provisions that are closely related to people's interests, and strengthen the legal system. Meanwhile, it is necessary to:

- Step up the effective control over government actions,
- Use laws to standardize administrative acts that harm people's rights and interests,
- Intensify the idea of rule by law in public governance,
- Infuse the rule by law philosophy that 'there shall be laws to abide by, everyone should abide by the law, the law must be enforced strictly, and those who violate the law must be dealt with' into the publicity of public policies,
- Give play to the role of slogans in public dissemination and
- Enhance the public image of the government, such as:

*'Guard against the fraud in the form of purposeful chat-up.'*

*'It may seem merciless to punish a rule violator, but it is actually a real mercy.'*

It is critical for legal development to improve the administration level of government departments. Democracy in China should be turned out through the strengthening of the selection and application of talents. Laws depend on the person, but not limited with the latter.

## Conclusion

According to Fox and Miller, ‘the resistance against democratization comes from the control of officers in discourse. Such controls rely on the position advantages of officers during the formulation and implementation of policies. Citizens are hard to get into the bureaucratic system, and even worst, to express their own views (Zhu, 2008).’ In the new period, slogans are no longer the soliloquy of the government, but an interactive discourse pattern that incorporates the aspirations of people. Slogans will continue to play their roles of publicity, promotion, mobilization and solidarity in public governance and encourage government to undertake various responsibilities.

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# Public Participation in Language Legislation – A Case Study of Switzerland and its Stimulations for China

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*[Abstract] Both Switzerland and China are multilingual countries, confronting the spread of English. With a long tradition of participations in decision-making, Swiss people are adjusting their language laws steadily to embrace an era of globalization while maintaining their national identity of linguistic diversity. Mainland China, anxious to achieve the same two purposes, has a lot to learn from the Swiss experiences of public participation despite many obstacles.*

*[Keywords] language legislation; public participation; Switzerland; Mainland China.*

## Introduction

Since the last decade of the last century, Switzerland has been facing the challenges of globalization, which have triggered a demand for a communicative language within and beyond its national borders. The chess-board pattern of Swiss cantonal responses make many believe that the Swiss traditional ways of using subsidiarity and direct democracy to achieve harmonious linguistic diversity no longer work in a process beyond the control of the Swiss government and its people (Grin 1998; Hega 2001; Grin and Korth 2004; Stotz 2006; Hega 2011).

This paper, focusing first on the language situations in Switzerland in the last 15 years and then zooming out on the general development of Swiss society in the new millennium, intends to suggest that public participation is the best possible element in language legislation of a country in an era of globalization, though not necessarily a perfect one. This statement is based on earlier research of participatory democracy theory by advocates such as Linder (2010), Pateman (1970), Fossedal (2001), Benz and Stutzer (2004), and Cai (2009; 2012). Further, the Swiss experience will be used to shed light on language legislation in China.

## Why Switzerland? Linguistic Similarities and Differences

The general linguistic picture of Switzerland resembles that of China. Above all, both enjoy a linguistic diversity. There are four national and official languages in Switzerland, namely, German – used by the majority (63.7% of the whole population), French – used by a larger minority (20.4%), Italian – used by a smaller minority (6.5%) and Romansh – used by a very small proportion of the population (0.5%) (FSO, 2012). China is also multilingual, with the dominant Chinese language used by the Han majority and the two minorities of Man and Hui. What differs is that fact that more than 120 languages of the other 53 minorities are mastered by only about 60% of the minorities with a population less than 100 million (Sun, Hu & Huang, 2007). The overlapping pattern of the dominant Chinese economy and China's advanced economy explains the striking linguistic contrast in China, which is absent from the cutting-across landscape of languages and economy in Switzerland.

The pictures are further complicated into a jigsaw by an astonishing number of dialects, which are normal in people's daily lives at all levels, and sets the limits of memberships in a community. Swiss

German falls into three broad spoken groups: Low Alemannic, High Alemannic and Highest Alemannic. Although people speaking one dialect can understand people speaking another dialect, sometimes there is difficulty (Steinberg 1996, chap. 4). Chinese dialects, given the vast distribution, are traditionally classified into seven principal branches. Each branch, and even some of the sub-branches, are so distinct on their own that might be regarded as separate languages if mutual comprehension is the norm to evaluate. High inner mobility in the two countries intensifies the competitions, either between languages or between language and dialects.

Another reason for this research to decide upon Switzerland for case study is the fact that neither Switzerland nor China was ever culturally connected to Britain in history. But when both countries explicitly endeavor to promote the status and spread of their own languages, Switzerland and China are adopting different attitudes towards English education at schools.

When it comes to language planning, Switzerland is sometimes considered a country with no language planning (Grin, 1994, as cited in Cotelli, 2013) despite the equal status of diverse languages in its oldest constitution and recent language articles that abstractly promote linguistic diversity and provide the disadvantaged minority languages. Three unwritten institutional principles of language territoriality, language freedom and linguistic subsidiarity inferred from these constitutional articles by its Federal Supreme Court demonstrate their powers in daily life (Grin, 1998).

A careful examination of Chinese laws will lead to the same impression. Language articles in the Constitution are scattered and ambiguous. Until 2001 when the *Law of the People's Republic of China on the Standard Spoken and Written Chinese Language* came into force, there had not been any specialized language legislation. No official language exists in China, although the Chinese Constitution decrees in Article 19 that “the state promotes the nationwide use of Putonghua (or mandarin Chinese)”. It is the languages of minorities and the linguistic rights of minorities that the Chinese Constitution and other laws elaborate on. It is a long story to tell why the similar preferential policy fails to promote the linguistic strength of minority languages in China, but at least more can be done.

### **What to Learn? Swiss Participatory Mechanisms in Language Strife**

The above chapter demonstrates that both Switzerland and China are likely to encounter linguistic conflicts. At the turn of centuries, the long existing divide between the *Suisse Romande* (French- and Italian- speaking) and the *Deutschschweiz* (German-speaking) came to the forefront over compulsory foreign language learning in 1998<sup>1</sup>. It was so fierce that Stotz defined it as a “language strife” (2006). Academia (Stotz 2006; Grin 1998; Hega 2001; Grin and Korth 2004; Hega 2011) expressed widespread skepticism over how their existing institutions of subsidiarity and direct might respond to a demand for a communicative tool across different linguistic groups.

From a more detached comparative perspective, the cautious collective wisdom of Swiss people, though sometimes criticized as retarded, has gradually quieted down the bitter quarrels and pushed language legislation forward. This chapter is going to illustrate the role of public participation in striking a delicate balance to maintain their multilingual peace.

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<sup>1</sup>On hearing this conflict during the one-year academic stay in University of Basel, the author searched [www.swissinfo.ch](http://www.swissinfo.ch) and acquired a basic understanding through journalist reports. This divide is empirically supported by a 1989 opinion poll mentioned by Hega (2011): 70% of the Italian-speaking respondents were convinced of a language trench separating them from *Deutschschweiz*, and more than half of the French-speaking respondents saw a barrier between *Suisse Romande* and *Deutschschweiz*, while German Swiss as a whole were quite unaware of a cleavage between language regions (21.6% and 35.6%)

### ***Swiss Language Strife: Origin and Climax***

To fully realize the irreplaceable role of public participation in language legislation, we have to understand the complexity of the language strife. To uphold their national identity as multilingual, Swiss students are required to learn a first foreign language in Grade 4 or 5, and a second one several years later, as recommended by the coordinating body of 26 cantonal education directors at the national level (EDK) in 1975. The first foreign language is usually a national language other than one's mother tongue, like in German-speaking cantons French and vice-versa. Italian-speaking students must choose either of the two. The choice of that first language in primary schools was a very sensitive matter, reflecting the relations between the Swiss language groups. Yet, the prevailing arrangement was questioned from a variety of perspectives, most importantly, the perspective of failing to adapt to globalization (Grin, 1998, Grin cited in Stotz, 2006).

What happened is the same story told by all. The canton of Zurich took the lead in reforms. In 1998, as part of an experimental 5-year project, "early English" was introduced into Grade 1 without consulting the 25 other cantons. Shortly after, the Zurich educational authority decided officially to increase the length of English learning at the expense of a reduced French learning in a new order of the two languages. In 1989, the majority of Zurich voters legally approved their cantonal decision to reject early French learning. Zurich's pioneering reform drew similar plans in many other cantons, which largely determine their own schools' policy after this economically predominant canton. The strife heated up in August 2000, when Zurich was determined to push forward the language education reform and announced that from 2003 on, its schools would be free to teach English, instead of French, as their first foreign language at the primary level (SWI 2001).

This aroused bitter outcries from *Suisse Romande*. They condemned the move as an attack to the French, as well as the Italian, a serious threat to the linguistic peace and even to national unity (Hega, 2011). Representatives of *Suisse Romande* started to demand that something be done about the language diversity. An initiative to keep English out of the classrooms, put forward by the French-speaking parliamentarian Didier Berberat in 2001, echoed the widespread sentiments in the *Suisse Romande*.

At the core of the language strife is the head on clash between national linguistic diversity, as a national identity, and a common communicative tool demanded by high inner mobility, Europeanization and globalization.

### ***Positive Role of Public Participation in Language Legislation***

Switzerland was thus caught in a dilemma: to embrace the English language might hamper its multilingual national identity, whereas to decline the English language would surely undermine its economy, which, in turn, would hamper citizens' confidence in the country in the long run. In the Swiss context, language and education are the two fields that are in charge of cantons under the principle of subsidiarity. Hega (2001) emphasized the special position of the Swiss public in the mechanisms of direct participation with the following words, "At the cantonal level, any change of school laws requires approval by a popular referendum. Through the means of the popular initiative or personal petition to the parliament each citizen-voter has the opportunity to instigate a popular vote on the change of school laws."

Due to limited space, this paper saves the trouble of going into the archives on the official EDK website of countless referendums at various local levels to let the voters decide on the number and distribution of languages in school curriculum. The outcomes of three important referendums will be

employed to demonstrate the participatory competence of Swiss as a whole, which speak louder than more trivial evidence.

First, a considerable change of language articles in the new and present 2000 Constitution<sup>2</sup> reflect that the Swiss still give priority to their traditional linguistic diversity, especially when the article had undergone revision in 1996. Four years are an extremely brief span of time for constitutional changes, especially so in the slowly-responding democratic Switzerland. The original language article 116 was split into two – Articles 4 and 70. Two new paragraphs are included in Article 70. In the second paragraph, the unwritten principle of territoriality is formulated with an articulate statement “to preserve harmony between linguistic communities”. Paragraph Four pays special attention to the plurilingual cantons by stipulating support for them in fulfilling their particular tasks, which are expected to have been threatened by the spread of English more than unilingual cantons. The Swiss public has a strong sense of national identity.

Second, the approval of “educational constitution” reflects their willingness to hand over more power in education to the federal government for the purpose of coordination of compulsory school systems across cantons. Education is argued as among the most decentralized policies in Switzerland’s “decentralized federalism” (Braun, 2003, p. 58). According to Hega (2011), for over a century, the Swiss were unwilling to make any effort towards coordination, but they approved to adapt several constitutional articles concerning education. In the constitutional referendum in May 2006, an absolute majority of Swiss voters (85.6%) and all the cantons approved several constitutional articles, despite a very low turnout (Mueller, 2013). Compared with the failure of a similar referendum in 1973, it is fair to discern the driving force of the language strife. In a field where cantons are no longer qualified, they would agree to grant powers for the federation to step in (Fischer, 2010). This confirms that the Swiss public has the sensibility to assess the situation.

Third, Jura’s adjustments between political idealism and economic realism best reflect the public democratic ability to integrate sense and sensibility. In 2007, EDK reached an inter-cantonal agreement on the unified compulsory schooling (*Harmo S. Konkordat*) after ten years of endeavor. Within three years, twelve cantons ratified this agreement. Among them was the extremely identity-conscious canton of Jura (Cotelli 2013), which once fought desperately for independence for German-speaking Bern and gained autonomy in the federation as a French-speaking ideology (Linder, 2010).

If we hold back to take into consideration a longer span of time, all these outcomes that are discursive in close observation, will point to the same general conclusion of direct democracy’s “educative effects” (Linder, 2010; Pateman, 1970; Fossedal, 2001; Benz and Stutzer, 2004; Cai, 2009; Cu, 2012) that is summarized in the statement “the more the individual citizens participate the better able he is to do so” (Pateman, 1979, p. 25), or the statement, “Direct democracy and the complexity of modern society are not mutually exclusive. On the contrary, direct democracy is an important device for social learning processes which make people politically aware and able to deal with political complexity” (Linder, 2010, p. 124). We can now claim that public participation in language legislation is the best possible element in an era of globalization.

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<sup>2</sup>The English versions of the Swiss Constitution (1996 and 2000) have no binding force. They are available at <http://www.admin.ch/ch/e/rs/101/index.html#id-3-ni8-3>.

## Why and What to Learn? A Possible Way Out of the Linguistic Maze in China

### *Governmental Campaign Against English and the Public Worries*

The phrase, “reforms on the English test in college entrance examination (Gaokao)” frequently appears in the media. On October 21, 2013, a report from News Channel CCTV made the first splash by announcing a reduced role of the English test in Beijing Gaokao in 2016<sup>4</sup>. Afterwards, similar reports came from other provinces, with the Jiangsu plan to phase out the English test as an example and with the Shandong plan to remove listening comprehension out of the English test (Education in China Online, 2014).

Possible changes to the English test provoked heated discussions and even rumors because this examination determines the future of a student in a sense. Putting the divided opinions aside, a large number of people believe that English as a subject will no longer be important for college application since it is going to be moved out of Gaokao.

It is quite likely for the Chinese public to misinterpret these sudden reforms in the context of a recent governmental campaign against the English language. In April 2014, four harmless high-profile American TV series were removed from the popular video websites due to a governmental ban that is somehow denied. In two editorials this April, *People's Daily*, blamed “the overuse of foreign words for hampering communication and damaging purity and vitality of Chinese language”.

Until recently, the Ministry of Education, releasing a draft reform for Gaokao, made it clear that English will be tested more than once each year, not as a test subject, but as a socialized test subject and that only the highest score will count (Wu, 2014). This plan, well meant for equal evaluation and effective learning, is facing complaints from parents who are going to depend more on the socialized teaching organizations and therefore, pay more, with anxieties of students who are hesitant to make their study plans, and with criticisms from experts who worry about many negative implications of the rosy measures. Under the surface of all the hurly-burly are the opinion congestions that are eager to go out, but find no access.

### *Features of Traditional Language Legislation and the Need to Change*

China has a long tradition of bottom-down language planning. From the imperial order of “writing the same characters” by Emperor Qin Shi Huang, to the governmental examination of “Zi Yang Studies” under the reign of Emperor Tang Tai Zong, to the overall education of “national language and riding shooting” in Qing Dynasty, and to the promotions of Chinese Phonetic System and Mandarin Chinese in New China, there were hardly grassroots voices.

The lack of public participation in language legislation no longer functions well today, if it ever did, since legislation in this aspect is of close concern for all interested parties. Inner mobility of migrant workers increases the challenge to properly handle relations between Mandarin Chinese and Chinese dialects; the widening economic gap requires more effective ways to protect minority languages, and globalization intensifies the conflicts between English and Chinese.

In the *Proposals to Formulate the 10th Five-year Plan on National Economy and Social Developments*, the *Report to the Sixteenth National Congress of the Communist Party of China* and the *Report to the Seventeenth National Congress of CPC*, the Chinese government has repeatedly called for public participation in legislation as channels for varied interests. To promote public participation in

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<sup>4</sup>Under the new scheme, the English test will have a total score of 100 points, instead of the present 150 points, which the Chinese test will be promoted to a total score of 180 points instead of present 150 points. The gap between the two language subjects will be extended to 80 points.

language legislation, as an important part, it is vital to “construct a harmonious language ecology” as envisaged in 2009 China Language Situation Report. Language planning, involving everybody in the society, but not a very politically sensitive topic, makes a suitable starting point to set up the institution of public participation.

### Conclusion

The Swiss experiences of public participation in language legislation provide a lot of inspiration for China, in terms of significance and feasibility. Public participation might slow down the decision-making process and lead to fierce debates in the short run, but in the long run, its educative efforts guarantees that legislation is made in the most proper direction. But to ensure effective public participation requires a tailor-made framework and a high quality public. They are no easy tasks for China, which has a long tradition of a centralized system and has an evenly developed vast territory. What will China do to achieve its goal of “a harmonious language ecology”? Anyway, it will not be too optimistic to predict that we are able to rise up to the challenges.

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# Terminology Translation in Chinese Laws: Theory, Strategies, and Case Studies

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*[Abstract] This article starts with a brief introduction of text typology classification and functional equivalent theories for legal translation. It then moves on to illustrate that legal texts based on the function of the language of law can be classified as normative texts, informative texts and persuasive texts. The function of normative texts is primarily prescriptive, the function of informative texts is being descriptive, and the function of informative texts is being persuasive, and accordingly, laws and regulations fall into the normative texts category. It continues to identify strategies and criteria for legal terminology translation in normative legal texts. This article concludes with two case studies of translations of legal terms in Chinese laws and regulations involved in the WTO dispute settlement jurisprudence.*

*[Keywords] text typology theory; functional equivalent; normative legal texts; Chinese law translation; terminology translation*

## Introduction

Law is a profession of words (Sarat & Kearns, 1996, p. 1). Each language of the law is the product of a specific history and culture. Heterogeneity of law languages exists across different cultures and legal systems (Song, 2010, p. 18). Legal language (including legal English and legal Chinese) is often described as a register (Bhatia, Candlin, & Engberg, 2008, p. 200), which is used by lawyers in law-making, administration of justice, and in the course of law enforcement (Song & Zhang, 2010, p. 4). Legal translation now abounds. As early as 1974, the renowned French comparative lawyer L. J. Constantinesco defined legal translation as a dual operation process consisting of both “legal and inter-lingual transfer” (Sarcevic, 1997, p. 12). Chinese-English legal translation is a comprehensive and challenging practice, which involves theoretic guidance from different disciplines and even inter-disciplines, including general and legal translation studies, forensic linguistics, and Chinese-English contrastive legal linguistics – in particular, legal hermeneutics, and comparative jurisprudence, etc.

In legal translations, it is of great importance for translators to classify legal texts according to their respective style so as to apply corresponding translation approaches and strategies. It has to be admitted that legal translation involves one important aspect of legal translation, i.e. the translation of legal terminology, though legal translation is not “a mere mechanical process of trans-coding one language into another” (Sarcevic, 1997, p. 12). This article focus on the prescriptive legal texts and terminology translation therein, by means of conducting three case studies guided by the following introduced legal translation theories and strategies so as to provide empirical support for the relevant legal text translation theory and for the Chinese law translation practice.

## Briefings on Relevant Translation Theories

Law depends on the language of the law for representation, and legal language has been stated as carrying the mission of “embodying the judicial fairness” (Chan, 2007, p. 39). A variety of theorists have put

forward their theories on legal translation. This section of the paper will try to briefly define text typology and functional equivalence theories guiding Chinese legal terms translation into English.

### ***Text Typology Classifications: Normative Texts in Focus***

According to some legal translation experts, translators must recognize the primary function of legal texts before they can render the correct or appropriate translated version of the source legal texts. After a comprehensive and detailed comparison and analysis of different theories on classification of legal texts, Susan Sarcevic presented the view that legal texts, generally speaking, can be divided into three groups according to their major functions. The first group is classified as normative/prescriptive legal texts, including constitutions, degrees, acts, ordinances, statutes, international treaties (such as bilateral investment treaties), and international conventions (for instance the Vienna Convention on the Law of Treaties), which are regulatory and obligatory in nature and prescribe a specific action that shall be followed by a member of the society such as an individual person, an entity or even a sovereign state of the international community. The second group of legal texts is primarily descriptive, but contains prescriptive parts as well, which include judicial decisions and litigation submissions to the court or the tribunal, such as petitions, pleadings, motion papers, and discovery disclosure statements. The third group is called “language of the jurists”, which include law review articles, textbooks, treatises and legal opinions (usually a written explanation by a judge or several judges that accompanies a ruling of a case). The status of authority of the third group of legal texts varies across different legal systems (Sarcevic, 1997, p.11; Song & Zhang, 2010, pp. 14-15).

Similarly, some scholars classify legal texts into discursive writings (i.e. legal literature), litigation writings (including petitions, pleadings, motion papers, and discovery disclosure statements, etc.) and normative writings like laws (Haggard, 2003, p. 10-12). According to the American legal linguist Peter M. Tiersma, legal texts fall into any of the following three groups: (1) operative documents, which create or modify legal relations, including legislations (like acts, orders and statutes), judicial documents (such as pleadings, petitions and judgments) and private legal documents (such as wills and contracts); (2) expository documents (such as lawyers’ letters to their clients, law firm memorandum, and legal articles and treaties); (3) persuasive documents, including mainly lawyers’ submissions to convince the court (Tiersma, 1999, pp. 139-141; Song & Zhang, 2010, p. 15). And Tiersma thinks that the last two categories of legal texts are not “very formal law language” (1999, p. 141).

From the above classifications of legal texts, it is shown that some of them are overlapping and without differences in essence. It is almost without a doubt that laws and regulations, generally speaking, fall into the classification of normative/prescriptive language of law, which means a large degree of constraint binding on translators when compared to legal literature (discursive writings) and litigation writings. Normative language of law (i.e. normative writings) refers to “basic principles accepted by courts and/or embodied in the statutes of a particular jurisdiction”. Most of them are positive and obligatory (Song & Zhang, 2010, p. 14).

The text typology theory and the corresponding well-accepted classification of laws and regulations into the group of normative texts is an important theoretical framework for legal translators to understand the features of the source texts and to raise awareness for paying attention to the high degree of precision required for translation of such texts. The ideal standard or goal for translating normative legal texts can be “reproducing in the target language the closest natural equivalent of the source-language message” (Nida, 2003, p. 12).

### ***Nida's Formal and Dynamic Equivalence Theory***

Among theories concerning the translation of specialized texts, there is the theory formulated by Eugene A. Nida, the pioneer in translation theory and linguistics in the 1970s. The most important element of Nida's theory relevant to legal texts translation is the notion of "equivalence," though the terms coined by Eugene Nida originally were used to describe the translation of the Bible. According to Nida, there are two kinds of equivalence: (1) formal correspondence, which is understood in essence as another expression for literal translation, and which attaches emphasis on fidelity to lexical details and semantic structures of the original text (Nida, 2003, p. 201). Formal correspondence approach aims to translate the content/meanings of individual words in their more or less exact syntactic sequence. (2) Dynamic equivalence, also known as functional equivalence, which is often understood as fundamentally the same as sense-for-sense translation, i.e. translating the content/meanings of phrases or whole sentences, and which aims at achieving complete naturalness of the target text to the receptor. When judging what should be done in specific translation circumstances, dynamic equivalence is given priority over formal correspondence (Nida, 2003, p. 14).

While formal correspondence tends to emphasize fidelity to the lexical details and grammatical structure of the original language, dynamic equivalence, by contrast, tends to favor a more natural rendering of the source text into the target text. For instance, when the comprehensibility of the translation is more important than the preservation of the original lexical and grammatical structure.

Nida's equivalence theory has been most notable, and at the same time, the most controversial contribution to translation theory. The following are some relevant reflections on Nida's theory when applied as guidance for legal text translation.

### ***Relevant Reflections on Nida's Theory from Lawyers and Linguists***

The lawyer W. E. Weisflog holds that formal correspondence applies to legislations and quasi-legislations such as the United Nations Resolutions as well as contracts, Articles of Associations and other business documents (Weisflog, 1987, p. 194). While for translating law textbooks, articles in legal journals and treatises, Weisflog advocates that such translation can be less literal. Similar to Weisflog, the Polish translator claims that formal equivalence/correspondence applies more often in legal texts translation than dynamic equivalence, as notions are the most important elements of legal texts and they are expressed by legal terms, and notions constituting specific contents must be incorporated into the translation. Formal correspondence thus can serve the purpose (Żrałka, 2007, p. 82). Dr. W. Y Poon., the Vice Chairperson of the Hong Kong Institute of Legal Translation points out that "literal translation" has traditionally long been regarded as the most desirable translation method for legislative texts considering the normative/prescriptive nature of this type of legal texts (Poon, 2002, p. 95). She seems to try to blend the advantages of formal and dynamic equivalence approaches. While she emphasizes the priority of "accuracy in meaning" to "style" or "form" that are the main characteristics of dynamic equivalence proposed by Nida, she also advocates that there is no reason why "style" should be discarded if it can co-exist with accuracy in meaning.

However, after a careful examination of Nida's equivalence theory and the reflections on this theory from the lawyers and linguists, the following conclusion can be drawn: a formal correspondence/equivalence translation approach seems to be desirable for translating laws and regulations, which are normative and regulatory in nature, as illustrated above, and which allows little room for free translation; it is not pragmatic in many circumstances. Each language has its own system of

symbolizing meanings. When some legal terms and semantic structures are translated literally, the resulting phrases or structures virtually may not convey the meaning of the original. As the content is the priority consideration in translation, thus the form must be altered in order to preserve the content or the message. “Translationese” should be avoided; that is to say, formal fidelity should not be achieved at the expense of unfaithfulness to the content and impact on the message (Nida, 2003, p. 13). That practically explains why formal correspondence in translation is rarely achievable. In another word, certain formal niceties have to be sacrificed for the sake of the content. The degree of sacrifice of form for content depends on the linguistic and cultural distance between the source and the target languages (Nida, 2003, p. 5). The formal change can be greater when translating from Chinese into English than from English into German. On the other hand, the dynamic equivalence approach, when applied to normative legal text translation, may not satisfy the higher degree of constraint on legal translators for reproducing the target text as closely as possible to the source text, in both terms of the letter and the spirit. The combination of the advantages of the formal and dynamic equivalence approach can serve a better purpose of reproducing the meaning and content of the source normative texts by preserving the grammatical and semantic structures as well.

### **Functional Equivalent for Terminology Translation**

Notions are critical elements of laws and regulations and they are expressed by legal terms. Terminology is based on specific terms. Generally speaking, a legal term consists of one word or a few words, an abbreviation, or a combination of words and symbols that express a notion in the legal text (Žračka, 2007, p. 75).

Each legal system has its own language system of symbolizing notions. As legal terms derive their meaning from particular legal systems, on most occasions, legal terms across different legal systems are “conceptually incongruent”. Legal terms in one system, for example in the Chinese legal system, can have functional equivalents in the Anglo-Saxon legal system, but for most part, only in equivalent ones, not identical ones. “Functional equivalent” is used as a term not only in general translation theory, but also in comparative law. Susan Sarcevic (1997, p. 236) defined “functional equivalent” as a term designating a concept of the target legal system that has the same function as a particular concept of the source legal system.

For authoritative English legislations to be translated to their parallel Chinese texts, the Department of Justice of Hong Kong described “accuracy” and “acceptability” as the two essential requirements for legal terms translation. Accuracy means that the functional equivalent must embody the meaning of its counterpart in the source text, and meanwhile, be consistent with the grammatical rules and semantic customs of the target language. Acceptability means that the translation complies with the grammatical and usage rules of the target language and whether it is comprehensible to the target audience (Poon, 2002, p. 89). These two requirements emphasize both the reproduction of meaning and form. They may be relaxed to a certain degree for translation of legal terms in other normative legal texts other than the authoritative ones, but it can enlighten how to search for ideal functional equivalents for legal terms in normative texts. These two requirements’ strategy is virtually consistent with the above-suggested combination of formal and dynamic equivalence translation approach.

The first tool that a legal translator can resort to will mostly be well-recognized legal terminology dictionaries. A careful examination of the term in the dictionary of both its definitions and usage examples can help search for its functional equivalent. However, the items covered in the dictionaries can

be rather limited. So the translator must conduct a conceptual analysis, including considering the intension and extension of each concept so as to construct the essential and accidental features of the particular legal concept. This same process is repeated for the potential functional equivalent and then based on these, a process of matching up the essential and accidental features of the two terms in the source and the target system are used to decide the degree of equivalence of the counterpart legal terms (Sarcevic, 1997, pp. 238-239). In the absence of a natural equivalent, the concept that performs approximately the same function in the target language may be used even though this might not be the optimal solution (Asensio, 2008, pp. 59-60). Specifically, to compensate for incongruity for “system-bound” concepts, the most effective method is descriptive paraphrase and definitions. When there is no acceptable functional equivalent, neutral terms, namely, non-technical terms can be employed. Besides, borrowings are usually used in the form of italics as a last resort, as suggested by linguists. If legal translators’ hesitate to use borrowings, neologisms can be created as another compensation for zero equivalence. Literal equivalence is the most readily employed method to create neologism in legal translation (Sarcevic, 1997, pp. 252, 255, 259).

To sum up, Nida’s equivalence translation theory has laid a foundation for further critical analysis and development of normative legal text translation for lawyers and linguists. This paper proposes and applies the approach of combination of both formal and dynamic equivalence in searching for functional equivalent for legal terms in Chinese laws and regulations.

### **Case Study of Terminology Translation in WTO Jurisprudence**

The practical realization of theoretical positions is dependent on the understandings drawn from empirical studies. The World Trade Organization has quality and large quantities of dispute settlement jurisprudence, among some of which involve the translation issues arising between the dispute parties concerning some critical legal terms in the respondent's charged legal instruments, such as their laws and regulations. The following section exemplifies how legal term translation issues arise in cases involving China as the respondent and how dispute parties translate the critical legal terms and their acceptability in WTO jurisprudence and makes an analysis of the translation based on the formal and dynamic equivalence approach.

#### ***The Translation Issue Concerning “银联标识”***



**Figure 1. The “Yin Lian/UnionPay” logo**

This section of the paper examines the translation of “银联标识” from Chinese into English in the WTO dispute settlement of the case “*China – Certain Measures Affecting Electronic Payment Services*” (WT/DS413).

**Case briefings.** The dispute between the United States (the complainant) and China (the respondent) concerns various alleged Chinese laws and regulations claimed by the United States to be inconsistent

with WTO obligations that China allegedly assumed. The United States alleged that China permits only a Chinese entity (China UnionPay, the English name for the bank card organization “中国银联” (*Zhong Guo Yin Lian*)) to supply Electronic Payment Services (EPS) for payment card transactions denominated and paid in *renminbi* in China. China also requires all payment card-processing devices to be compatible with China UnionPay system, and that payment cards must bear that company’s logo. The United States further claimed that it has identified Chinese laws and regulations requirements are inconsistent with China’s market access and national treatment obligations.

The case was referred to the WTO panel in February 2011 and in August 2012; the report without being appealed was adopted by the WTO Dispute Settlement Body (DSB). The WTO Panel found that China, through its legal requirements, modified the conditions of competition in favor of China UnionPay (中国银联 *Zhong Guo Yin Lian*), which is contrary to China's WTO commitments. China stated its intention to implement the DSB rulings after the adoption of the panel report.

**The translation issue.** China in its communications to the WTO Panel alleged that the United States had incorrectly translated certain words or phrases, thereby affecting the original meaning of the alleged Chinese laws and regulations. That is to say, China defends that the translation of the critical legal term is not the functional equivalent for the term in China’s legal instruments.

**The translation by the United States.** The United States argues that the correct English translation of 银联标识 is “CUP logo”, because the internet translation engines commonly translate the characters “银联 *Yin Lian*” as “CUP” and because CUP itself refers to its logo as the “CUP logo” or the “CUP label”, or in certain instances as the “UnionPay logo”.

**The translation rendered by China.** China argues that it is incorrect to translate the Chinese term “银联 (*Yin Lian*)” as CUP. The term “CUP” stands for China UnionPay and is an official abbreviation for the company “China UnionPay Co., Ltd.” (CUP). Also, the word “China” is not found in the relevant provisions that use the term “银联标识 *Yin Lian* logo”. China holds that the term “银联标识” in the alleged Chinese laws and regulations should be translated as “*Yin Lian* logo”.

**The translation of the independent translator.** Regarding the different translations between the United States and China, the Panel suggested to select an independent translator to provide expert linguistic advice on the correct translation. UN Geneva’s (UNOG) Conference Services Division, selected an independent translator that suggested translating “银联标识” as “*Yin Lian/UnionPay* logo”.

**Analysis of the case study.** First, the transliteration suggested by China, i.e. “*Yin Lian*” for 银联, has no meaning in English. It simply makes a phonemic transcription of the Chinese characters “银联”, that is to say, representing the Chinese characters by means of English letters. According to the formal and dynamic correspondence theory, the transliteration preserves the form of the term, but in doing so is at the expense of sacrificing the meaning, so it is not an appropriate or acceptable translation. It does not satisfy the accuracy and acceptability requirement for translation of legal term in normative texts. So it is not wise for China to claim that certain terms are bound by Chinese legal system and thus, mean untranslatability of these kinds of terms. Transliteration has proven to not be a good translation and litigation strategy.

Secondly, the Chinese characters “银联” are used in Chinese laws and regulations to stand for UnionPay or even, the company CUP, but it is also used as an idiomatic short form meaning “bank card network interoperability”. “银联标识” (*Yin Lian* logo) was approved by the People’s Bank of China (PBOC) in 2001 as a symbol of bank card interoperability. China UnionPay (CUP) Co. Ltd was not established until March 2002. The fact pointed out by China that the logo used by CUP consists of three

parts: (1) the logo for bank card interoperability; (2) the Chinese phrase for China UnionPay (*中国银联 Zhong Guo Yin Lian*); and (3) the English phrase “China UnionPay”. As pointed out by the independent translator and linguistic expert advisor, there is no ready means of distinguishing between these two applications of “银联”. The independent translator further observes that the English term “UnionPay” is itself a convenient, but necessarily approximate, equivalent for “银联 *Yin Lian*” in its application as a term for “bank card network interoperability”. However, as the English term “UnionPay” is also used as shorthand for the concept for the company. In order to avoid the confusion of the two meanings of “UnionPay” in the target text, the form adaptation is proposed to be made by the independent translator, i.e. “*Yin Lian/UnionPay*” to represent the concept of “bank card network interoperability” and “UnionPay” or “China UnionPay” to represent the concept of the “China UnionPay Co. Ltd.” This linguistic and functional adaptation is made in light of avoiding the ambiguity and confusion in the two critical legal concepts and terms. This illustrates how formal correspondence and dynamic equivalent should be and can be accommodated. A functional equivalent accommodating both formal correspondence and dynamic equivalence advantages, i.e. giving priority to accuracy in meaning and taking the form of the translation into account, is a good way to guarantee an appropriate and acceptable translation of the notions and terms in Chinese laws and regulations to the WTO panels.

Third, a few words can be summed up regarding the inaccuracy and unacceptability of the United States’ translation. The translation rendered by the United States seems to confuse the relationship between the referent and the concept, for using the same term CUP to refer to two different objects (one being the entity of *Zhong Guo Yin Lian* (*中国银联*), and the other being the bank card interoperability), thus causing ambiguity and even confusion in reference. In contrast, the translation of the independent translator is a good example for searching for formal and functional equivalence for translation of legal terms. The translation “*Yin Lian/UnionPay*” logo is consistent with the theory of the reference system, avoiding confusion and ambiguity in reference for the two different concepts, and also realizes the effect of formal and dynamic equivalence. In terms of formal equivalence, the English spelling “*Yin Lian*” is an accurate and acceptable counterpart for the Chinese characters “银联”, and the form of italics indicate that this term is a borrowing from the source text, and the English word “UnionPay” is also formally consistent with the English name “China UnionPay” (*zhong guo yin lian*). In terms of dynamic equivalence, “*Yin Lian/UnionPay*” is a functional equivalent for the “*Yin Lian 银联*” logo requirement in China’s alleged legal instruments, indicating and representing the symbol requirement (with the Chinese characters 银联 printed on the relevant bank cards) and the interoperability and UnionPay access requirement in terms of market access and competition conditions imposed.

**Why does the translation issue matter?** Even minor linguistic changes can sometimes unintentionally alter the substance, thereby changing the meaning and/or effect. In legal translation, the translator gives primary consideration to the legal effect (Sarcevic, 1997, p. 171). It is understandable that legal translation may involve the translator’s subjectivity, or even maneuvers, especially in submissions of the parties including the translations of the respondent’s charged laws and regulations in WTO cases that have enormous interest to both parties. But it is worth pointing out that WTO panels and Appellate Body members follow fairly uniform practices and jurisprudences when interpreting the meanings of legal terms. As more and more cases against China have occurred and will be referred to the WTO dispute settlement mechanism, the Chinese laws and regulations may be alleged to violate the WTO covered agreements. China, as the respondent, and the other party, the complainant, may provide different versions of translations for Chinese laws and regulations. It is important for legal translators to get

familiar with the legal hermeneutics of the WTO “judges” and follow the modern legal translation theory governing terminology translation, so as to provide an appropriate translation version acceptable to the judges.

### ***Translation Regarding the Terms Including “Zong Fa Xing” and “Zong Pi Fa”***

In another WTO case between the United States (as the Complainant) and China (as the Respondent) titled, “China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products” (WT/DS363), there have also arisen translation issues regarding some terms in Chinese laws and regulations. The legal terms include “Zong Fa Xing 总发行”, “Fa Xing 发行”, “Zong Pi Fa 总批发”, “Kong Gu 控股”, “Wai Shang Tou Zi 外商投资”, “Fen Xiao 分销” and “Quan Yi 权益”, etc. In particular, the two parties in dispute disagree on the translation of Fa Xing, Zong Fa Xing, and Zong Pi Fa in the Chinese measures at issue. The United Nations Office at Nairobi (UNON) performed the independent translation service for the panel.

**Translation differences.** While the United States translates *Fa Xing*, *Zong Fa Xing*, and *Zong Pi Fa* as “distribution”, “master distribution” and “master wholesale”, respectively, China argues that each of these terms reflects a unique Chinese concept and cannot be translated into English.

As suggested by the independent translator and adopted by the panel, “distribution” is a functional equivalent for the Chinese term “发行” (*Fa Xing*), and “wholesale” is a functional equivalent for “批发” (*Pi Fa*). As for *Zong Fa Xing*, the independent translator notes that the expression is composed of word elements found in the other two terms, namely *Fa Xing* and *Zong Pi Fa*. Accordingly, the translator sees “large-scale distribution” as the best translation for *Zong Fa Xing*. However, the panel decided to use the translations “master distribution” and “master wholesale” suggested by the United States for these two terms *Zong Fa Xing* and *Zong Pi Fa*, even though UNON translated them as “large-scale distribution” and “large-scale wholesale”.

**Analysis.** First, different from the translation issue in the first case, the translation difference in this case is not a substantial one. As pointed out by the panel, the difference in translation of some of the legal terms “has little substantive effect on the Panel’s analysis of the relevant claims”. Second, consistent with the above-illustrated formal and dynamic equivalence theory and strategy on legal terminology, the Panel conducted conceptual analysis of the terms by specifying their activities, as well as using the phonetic symbols of the original Chinese terms when making its assessment so as to provide accurate understanding of the legal terms in the source text and an acceptable translation in the target text. When deciding the final translation of the terms, the Panel also emphasized the legal effect and the function of these terms. It is also worth noting that it is rather hard to persuade the Panel that certain Chinese legal terms are not translatable because they are system-bound terms and are referring to unique Chinese concept.

In the two cases, China seems to provide a literal translation or phonetic symbols for the legal terms. It turns out that this is not a good litigation strategy. With more and more established jurisprudences, China must provide accurate and acceptable translations for the legal terms in Chinese laws and regulations through the involvement of both lawyers and linguists in the preparation of the submissions.

## **Conclusion**

Legal translators must analyze legal texts, identify potential translation pitfalls, strive to compensate for conceptual incongruency (i.e. incongruity) and search for functional equivalents so as to “send proper

signals to the judiciary by using language effectively” (Sarcevic, 1997, p. 121). Legal translation is not a mechanical process of transcoding, i.e., substituting words and phrases, but essentially a process of linguistic, cultural and legal transfer from the source to the target legal text. In terms of accuracy and acceptability of a potential equivalent in legal terms, translation is determined primarily by the legal effect of the concepts and the terms. A legal translator of normative legal texts must strive to reproduce a “close”, if not “full”, linguistic and functional representation of the notions in the source language. The combination and accommodation of formal and dynamic equivalence approach is proposed to be a pragmatic solution to the translation of legal terms in Chinese laws and regulations into English. From the empirical study of the two WTO cases in which China both act as the respondent, the translation of some legal terms provided by China have not been accepted by the WTO Panel. The independent translators’ translation proves to be a good accommodation of formal and dynamic equivalence strategy. This offers legal translators and legal translation learners a good and pragmatic perspective. Both lawyers and linguists must be involved when there is the need for translating Chinese legal instruments in the WTO dispute settlement mechanism so as to avoid losing the battle resulting from inaccurate and unacceptable translations.

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# Literature and Law: Women Question in Dickens' Novels

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**[Abstract]** *The exposure of marital unhappiness and its consequences was a major concern in Victorian literature and law. Charles Dickens presented a vivid picture of women's situations in the Victorian era through a series of legal fictions, in which the legal non-existence of married women, their being traded as commodities, their marital unhappiness, and their tragedies are explored, respectively. To show the gender inequality in marriage, relevant common law is also introduced as cultural background. Then, the legal reform on the law of marriage is outlined. In conclusion, literature at that time was a significant vehicle for a society that redefined the rights of husbands and wives. Dickens undoubtedly contributed greatly in upholding gender equality. As we still face the challenge of equality in relationships today, our search for practices that fulfill our ideals may be assisted by reading the cross-currents of reform in Victorian law and literature.*

**[Keywords]** *law; literature; woman; marriage*

## Introduction

For the common law of England, the Victorian period was at once an age of reform. Faced with the unprecedented social problems created by the Industrial Revolution, the inherited institutions of law could not cope with the demands placed upon them. Reformers started campaigning to have the common law amended by parliamentary statutes. Throughout society, women and men used the written word to bring about legal reform of the family. During that period, Caroline Norton played an important role in the campaign. Since her pamphlets, written from her own bitter experience, were among the most urgent and persuasive writings on law, they helped reform the laws relating to custody, divorce and the rights of separated women, to their earnings. The Norton case proved irresistible to many writers, and the exposure of marital unhappiness and its consequences became a major concern in Victorian literature and law. The submergence of the wife's will in the husband's was justified in many plots of marriage and female nature in Victorian literature. Dickens's fiction undoubtedly offered fertile ground for a case study on women's questions at that time. Here, the paper mainly focuses on his three novels written in the middle period – *Dombey and Son* (1846-48), *David Copperfield* (1849-50), and *Hard Times* (1854), which very typically reflect the true living situations of Victorian women before the legal reform on marriage. Concerning the issues of property rights, matrimonial cruelty, custody of children and the law of separation and divorce, the Woman Question is very important to consider the in the context of Victorian culture.

## The Legal Non-Existence of Married Women

According to Blackstone's *Commentaries on the Laws of England*, "By marriage the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything; and is therefore called in our law – French a *feme-covert*; is said to be *covert-baron*, or under the protection or influence of her husband, her *baron*, or lord; and her condition during marriage is called her *coverture*" (Dolin, 2007, p. 121). It is obvious that the strict enforcement of the principle of coverture in the courts led to manifestly unjust results in the nineteenth

century. “The law’s extinguishing of married women’s legal existence operated over hundreds of years to reinforce in women a sense of incompetence, marginality and worthlessness” (Korobkin, 1998, p. 39).

In *Dombey and Son*, Florence is compared to “a piece of base coin” which is hard to invest in the process of an economic transaction. The complete devaluation of the daughter indicates both her disqualification by gender as a business partner, and her subordination was defined in the male-dominated family. Like her mother with legal non-existence, she has been accustomed to being neglected at an early age. So it is not hard to imagine that submitting meekly to insults, maltreatment was doomed to be the female nature in the context of the Victorian culture. To a great extent, it is similar to the deep-rooted conventional concept in China, that is, “man is superior to woman”.

In *Hard Times*, the alienated and hierarchical relationships demanded by the factory system are also paralleled in the domestic realm. Mrs. Gradgrind is the embodiment of a wife under the system of coverture. She is such an insignificant woman, devoid of light and life, small, feeble, and hard to make out that “nobody minded her”. When she responds to the news of Louisa’s engagement to Bounderby, no one even thinks to ask her what she means. She reveals her own marital miseries and her sense that they may be visited upon Louisa, as well. Although most girls think they are to be envied in the marital ceremonies, yet in reality, marriage is not what they imagined. Her invalid complaint is a response to the emotional repression and the intellectual and economic dominance cultivated by her husband. It is no surprise, then, when she dies, her husband does not even seem to notice that she is gone.

Similarly, nobody denies that the young David Copperfield’s mother Clara is another embodiment of a wife under the system of coverture. She is too childish to judge a man so that she was deceived by the flattering words and superficial care of Mr. Murdstone. After her second marriage, Clara was deprived of all the property, basic rights and freedom, and even the custody of her son. Since by marriage the husband and wife are one person in law, she was in the total control of Mr. Murdstone, and unable to manage her daily life. She died soon after childbirth, mostly for the reason of great mental depression. Just as the name Murdstone suggests, Clara was actually murdered by the marital system and her weakness. Indeed, at that time, “Married women were unable to control their own property, administer their own earnings, or even, on separation, retain control of them. Even more harshly estranged wives were not permitted to keep custody of their children” (Warner, 1986, p. 126).

Ben Griffin has stated on marriage, “all of a women’s personal property passed to her husband when she married, as did any property she subsequently acquired, and the husband gained an interest in any freehold land. The only way around this rule of the common law – the legal doctrine of coverture – was to be found in the courts of equity, where property could be placed in the hands of trustees for the separate use of a woman” (2003, p. 62).

The presumptions about marriage and property enshrined in law supposed that husbands automatically looked after their wives’ interests, and the majority of people were subject to the common law. The high-profile case of Caroline Norton in the early Victorian period helped to expose the vulnerability of wives for she, despite the fact that she was born into the upper class, was unable to prevent her tyrannical husband from appropriating her property and earnings.

### **Women Being Traded as Commodities**

In *Dombey and Son*, Mr. Dombey’s marriage to Edith Granger may be compared to a kind of economic transaction. His absolute identification of the family with the firm finds a parallel in his purchase of Edith since the home was regarded as the marketplace in his mind. The commodification of Edith is indeed a

typical example of the extension of economic activity into the private realm. Like young Paul, whose destiny as the Son of the Firm has deprived him of a childhood, Edith has been subjected to an “unnatural” upbringing by her rapacious mother Mrs. Skewton, who turned her into an object for sale in the marriage market. Since Mrs. Skewton had almost nothing else to live upon but “the reputation of some diamonds, and her family connections” (Dickens, 1999, p. 242), her daughter’s marketing has been the object of all her “pains and labour” (Dickens, 1999, p. 364). All of her accomplishments were acquired with a view to enhancing her exchange value, and Mr. Dombey is her appropriate buyer. Belonging to an impoverished but aristocratic family, Edith offers Dombey the prospect of connecting himself with noble blood, and she is blunt in acknowledging his purchase: He sees her at the auction, and he thinks it well to buy her. When he would have her show one of accomplishments, to justify his purchase to his men, she exhibits it. In Dombey’s eye, he makes the purchase of his own will, and with his own sense of its worth, and the power of his money; and she hopes it may never disappoint him. In the process of the ruthless transaction, we see that women are traded as commodities indeed and have to submit to the financial arrangement – such kind of marital transaction. Similarly in *Hard Times*, marriage is reduced to a matter of rational calculation, in a caricature of Benthamite analysis, when Gradgrind advises his daughter, Louisa, about accepting Bounderby’s proposal.

In the mid-novel *David Copperfield*, David meets Annie Strong, the young and beautiful wife of his teacher, Doctor Strong. While Doctor Strong adores Annie, calling her “the dear lady” and his “contract-bargain,” Annie feels nervous and “unhappy in the mercenary shape” she was made to wear. In fact, what she fears is to be thought she married him for his money. What Annie reflects on is her legal status as property and as conveyor of property.

Lee Holcombe showed that “since property and status went hand in hand in English law, wives were reduced to a special status, subordinate to and dependent upon their husbands” (1893, p. 25). In other words, a wife was regarded in many ways as the property of her husband. Husband also controlled their wives’ property and earning.

### **Marriage as a Prison**

With a passion that may have proceeded from personal unhappiness, Dickens complains, “from the tie of marriage there is no escape to be had, no absolution to be got, except under certain proved circumstances...and then only on payment of an enormous sum of money. Ferocity, flight, drunkenness, felony, madness, none will break the chain without an enormous sum of money” (Dickens, ‘The Murdered Person’, in *Gone Astry*, p. 400, quoted by Dolin, 2007, p. 135). Like Caroline Norton, he uses the body of the victim as a sentimental spectacle, mobilizing reform through the cultivation of pity.

Legal historians believe the divorce law was brought to public attention in 1844 by Mr. Justice Maule, in the unlikely forum of a criminal court. And later, one of the subplots of *Hard Times* concerned Stephen Blackpool, a factory hand whose estranged, alcoholic wife has returned home. Stephen is a conscientious man, but the marriage has long been a source of misery to him. He asks his employer, the pompous and hypocritical Bounderby, if there is any lawful way he can be released from the marriage. Bounderby’s reply clearly echoes Maule’s utterance: “Why you’d have to go to Doctors’ Commons with a suit, and you’d have to go to a court of Common Law with a suit, and you’d have to go to the House of Lords with a suit, and you’d have to get an Act of Parliament to enable you to marry again, and it would cost you (if it was a case of very plain sailing) I suppose from a thousand to fifteen hundred pound” (Dickens, 1999, p. 58)

In *David Copperfield*, there are a series of female narratives throughout the novel: Annie Strong, married to a much older man who comes, wrongly, to suspect her of marrying him for his money and loving her worthless cousin, Jack; Aunt Betsey, divorced since her husband attempted to throw her out a window to get her property; Mr. Dick, whose sister was tortured to death by the husband pursuing her fortunes; Mr. Creakle, the schoolmaster, who earned his claim to be “a Tartar” by ill-using his wife and making away with her money; the fierce Rosa Dartle, disfigured by the young Steerforth when he throws a hammer at her mouth, left with a scar that will catch fire, like a seam, across her face; even Dora herself, who must live with the knowledge that David thinks he has made a mistake in marrying her. The novel that had initially seemed only David’s story now seems a collection of passionate, suffering women. That is the true living situation of married women in Victorian Age.

In May of 1858, in a letter to her daughter Vicky, Queen Victoria wrote, “I think people really marry far too much; it is such a lottery after all, and for a poor woman a very doubtful happiness.” And two years later, in May of 1860, she wrote to Vicky again about the shortcomings of connubial bliss: “the poor woman is bodily and morally the husband’s slave. That always sticks in my throat. When I think of a merry, happy, free young girl – and look at the ailing, aching state a young wife is generally doomed to – which you can’t deny is the penalty of marriage” (Hibbert, 1985, pp. 104-105). These excerpts from her letters to her newlywed daughter reveal that the Queen, the symbolic center of the culture and one of the most public advocates of the domestic sphere and its delights, regards marriage with deep skepticism.

In an era when cases like Caroline Norton’s brought publicity to the unjust fiction of coverture, the need for law reform was advanced both directly and indirectly through the medium of print.

## **Legal Reforms to the Institution of Marriage**

### ***Married Women’s Property Acts***

Among the immediate effects of the Norton case was a campaign to reform the laws relating to married women’s property. Property ownership fosters a sense of identity and rootedness in the world. Indeed, a lack of property rights does not automatically preclude a sense of ownership. Before the passing of the second Married Women’s Property Acts in 1882, women’s relationship towards property was usually based on an illusion of ownership, and most women lost all rights of possession in marriage. The fact was that nineteenth-century women’s relationships with the material world were particularly complex and precarious because of the arbitrariness of marriage custom and law. Because many women could only access feelings of ownership in relation to relatively inexpensive portable items (indeed, few women owned land at this period), they tended to treat objects as property rather than as disposable consumer goods. Although wives were unlikely to be the legal owners of ‘their’ personal property before the passing of the Married Women’s Property Acts, they probably *believed* that they were (Wynne, 2010, p. 15).

The relationship between property, power and identity became subject to scrutiny in the Victorian period with the 1850s debates on the reform of the marriage laws. The passing of the Married Women’s Property Acts of 1870, 1882 and 1893 ended wives’ traditional exclusion from property ownership. Between 1850 and 1900, many novelists emphasized the issue of property ownership by presenting property plots based on the destabilization of gender roles resulting from shifts in economic power. Obviously, property has been imagined as a central component of human identity.

### ***Divorce Act***

Representing herself as the vulnerable heroine of sentimental literature, Norton switches from moral to legal discourse. Accordingly, she wrote to *The Times* and published *English Laws for Women* and *Letter to the Queen*. The pamphlets created great sympathy for her and the debate about the legal position of women. By representing herself in print as a ‘case’ of legalized injustice, Caroline Norton propelled the reform of the divorce laws. The new law reduced the complexity and cost of the divorce procedure and secured the earnings of separated wives, but it kept the sexual double standard in place. (Dolin, 2007, pp. 124-125)

Until the passage of the Divorce Act in 1857, only three other women successfully petitioned parliament for a private Act dissolving their marriages, and they all did so on the grounds of adultery aggravated by bigamy or incest. The Marriage Act of 1836 enabled Britons to marry in a civil ceremony, while in 1857 they were granted the right to obtain a divorce without involving the Church. Various laws were passed between 1878 and 1895 which relaxed the requirements for obtaining a divorce and culminated in the Matrimonial Causes Act of 1923, which allowed women to sue for divorce on the same grounds as men: simple (as opposed to aggravated) adultery (Hager, 2010, p. 33).

This outline not only reveals the sweeping legal reforms to the institution of marriage enacted in the eighteenth and nineteenth centuries, but it also highlights the shifting parallels between the history of the novel and the legal history of marriage and divorce. The changing law of marriage and divorce affects and determines the potential narrative conventions of the English novel.

### **Conclusion**

Novels do not simply reflect life; they do the important cultural work of exploring ideals, aspirations and anxieties. Literature, thus, exposes areas of experience, which cannot be articulated so clearly in other forms of representation. In the broad period that saw the rise and flourish of the novel, marriage was perceived as needing stabilization and, accordingly, the law turned its attention to codifying the institution, to defining what constitutes the beginning, establishment, and to the dissolution of a marriage. In addition to the polemical writings, the legal documents and the reformist utterances in fiction, poetic and prose narratives, broke the seal of oppressive confidentiality by revealing the emotional costs of gender inequality in marriage. Literature at that time became a significant vehicle for a society that redefined the rights of husbands and wives. Dickens undoubtedly contributes a lot in upholding the gender equality. As we still face the challenge of equality in relationships today, our search for practices that fulfill our ideals may be assisted by reading the cross-currents of reform in Victorian law and literature.

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# Legal Translation Practices in Contemporary China

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*[Abstract] The boom of legal translation practices in contemporary China surely is not a self-propelled movement, but one of the activities accompanied with the dramatic social change commencing in the late 1970s, which consequently has had a profound impact on the development of modern China.*

*[Keywords] legal translation practices; contemporary China; significance*

## Introduction

As pointed out, “translation would be what happens when many very different things occur in the same historical place” (Pym, Shlesinger, et al., 2006, p. 5), the boom of legal translation practices in contemporary China surely is not a self-propelled movement, but one of the things accompanied with the dramatic social change commencing in the late 1970s, which consequently has had a profound impact on the development of modern China. In this sense, legal translation plays a significant role to the developing China. On the basis of a thorough investigation of legal translation practices across the last three decades in contemporary China, namely the translation of foreign law books from the 1980s to the early 2010s, the translation of Chinese laws and regulations from the early 1990s to the early 2010s and legal translation before and after the handover of Hong Kong and Macao, I attempt to make an in-depth probe and analysis of the significance of legal translation practices to the developing China. By comparing the legal translation practices in the last three decades with in the later period of Qing Dynasty and in the 1950s after the founding of PRC, I will offer my understanding of the significance of legal translation practices to the development of humankind, hence a proposal to strengthen the studies of legal translation practices across the globe.

## Translation of foreign law books from the 1980s to the early 2010s

Since China implemented the policy of Reform and Opening up in 1978, anything new can be seen taking place every day in this country, including the progress of legal construction and legal science. The Chinese legal community, confronted with the new era, began to learn from developed countries by imitating and transplanting other countries' laws and regulations via translation. The Chinese legal community attached more and more importance to legal translation. The exploration and progressing process of translating foreign law books from the 1980s to the early 2010s can be divided into three stages, namely, the stage of recovery, the stage of transition, and the stage of prosperity (see also Liu 2012, p. 135).

The stage of recovery is from 1978 to 1992, during which legal translation activity started painfully from nothing to something. It was manifested that the legal translation activity at that time carried on many traditions in the 1950s and 1960s, with the distinctive characteristics of giving priority to translating the law books from the former Soviet Union and other eastern European countries, and translating a number of law books on criminal law and criminology. Compared with the new enlightenment in the field of culture and ideology, which stimulated a roaring translation of western academic books into Chinese,

the legal community seems to be not in the swim. But, anyway, legal research and legal translation stepped onto a new stage (Tian 2006).

The earliest translated law books are about legal theory, such as Roscoe Pound's *Social Control Though the Law: the Task of Law*, Hobbes' *Leviathan* and Rene David's *The Main Modern Legal System*. There were also translated law books published as college teaching materials, such as *Civil Law System* and *Compilation on History of Western Legal Philosophy*. At that time, or even earlier, some foreign codes were translated and published, including the famous *Code Civil des France: The Code Napoleon and American Contract Law*. Most translators of these publications were senior scholars, who initiated the learning from the West. They were followed by a lot of young scholars in the late 1980s when many more young scholars were interested and attracted by the inspiring new thoughts in the foreign law books. Later, more foreign law works were translated by young scholars or students. In 1990, the Chinese People's Public Security University Press initiated the publication of the *Collected Translations of Classic Law Books of the World*, which may be the earliest collection of translating foreign law books since 1978. It has a great title, but unfortunately, weak influence on the Chinese legal community (a total of 4 books published).

The stage of transition is from 1992 to 2001, when China launched its second wave of reform and opening up, purporting to transform from plan economy to market economy with a goal of more openness and freedom. In that decade, China was in great need of legal service, and more talented legal translators graduated from institutions of higher learning due to the attention given by the society. The Chinese government explicitly put forward the goal of building up a nation governed by law, which paved the way for furthering the legal construction and generated a drive for a larger scale of translation of foreign law books. In terms of collection of translated foreign law books, the Encyclopedia of China Publishing House launched the project of the *Foreign Law Library*, the earliest influential collection of translation. The *Foreign Law Library* not only has a rich source of the original works, ranging from the United States, Britain, Germany, Italy, and Japan, but also involves nearly every field of legal science, for example, constitution, contract law, property law, criminal law, company law, international law and other classical codes. The most outstanding characteristic at this stage is the emergence of different projects edited by well-known scholars and launched by official publishing houses with high reputations. For example, the China University of Political Science and Law Press launched the project of *Collected Translations of Roman Law* in 1993, and the project of *Collected Translations of Contemporary Classics of Law* edited by Ji Wei Dong, He Wei Fang, and Zhang Zhi Min in 1994, and the Law Press China published the *Danning Works* in 1999.

The stage of prosperity was from 2002 to 2012. At the end of 2001, China entered into WTO, which not only promoted China's economy to be integrated with the world, but it also made the Chinese legal science develop with the world. China's legal system including legislation, law enforcement and judiciary was confronted with an unprecedented challenge hitherto, which gave rise to a new wave of legal reform because of the importance of law in international relations and international affairs. Though the Chinese people were not accustomed to the WTO rules at the very beginning, they made every effort to grasp the spirit of the rules of WTO by translating. Legal translation in China was coming into a new floor. Besides, the previous publishing mechanism was dominated by the official publishing houses, and the translation of foreign law books not only attracted more private and non-governmental forces, which realized the systematization and diversification in language and nationality, but also greatly promoted the development in the direction of specialization, categorization and intensive cultivation.

### **Translation of Chinese Laws and Regulations from the Early 1990s to the Early 2010s**

Since the 1980s, owing to the policy of reform and opening up, foreign tourists flocked into China, with investors following, and a variety of international conferences were frequently held in China. With the purpose of advocating the progress of China's reform and opening up and the excellent Chinese traditional culture, displaying the good image of China among the nations, and assuring the world of the favorable legal environment in China, the competent departments of the Chinese government began to take consideration of the translation of Chinese laws and regulations into other languages.

At the very beginning, the translation of Chinese laws and regulations was running very slowly. Until 1987, the legal affairs office of the Standing Committee of the National People's Congress for the first time organized to translate and compile the *Laws and Regulations of the People's Republic of China (1979-1982)* and *Laws and Regulations of the People's Republic of China (1983-1986)* in English. However, after advancing into the 1990s, some departments of the Chinese government began to attach unprecedented importance to the translation of Chinese laws and regulations. In order to meet every need of the accession to the WTO and strengthen the translation of more departmental and local administrative rules and regulations into foreign languages, the legal office of the State Council drew up the *Notice Given by the General Office of the State Council on a Better Job in Translating and Examining the Administrative Rules and Regulations* in March of 2003. After the issuance of the Notice, many departments and local governments made the translation and examination of administrative rules and regulations on their schedule at the corresponding levels. By the end of 2011, across the country, all departments under the State Council, 28 provinces, autonomous regions and municipalities have established special organizations for the translation and examination of local administrative rules and regulations, equipped with full-time personnel and allocated with special funds. The Shanghai municipal people's government, in particular, grants its legal affairs office the authority to create a scholarly journal – *Legal Documents Translation* to conduct necessary discussions and research. So far, this journal has made great contribution to the unification and standardization in translation and examination of its administrative rules and regulations. Also, there are 18 relatively large cities under the level of provincial government having conducted the work of translation and examination of local administrative rules and regulations (Zhang 2011).

According to incomplete statistics, by the end of 2011, among all of the existing Chinese statutes, besides the Constitution of PRC, more than 230 other laws had been translated into English and published by the legal affairs office of the Standing Committee of the National People's Congress, and 22 compilations of statutes of PRC (English version) were published. In addition, more than 700 administrative rules and regulations have been organized and translated by the legal affairs office of the State Council and 21 compilations of statutes of PRC concerning foreign affairs (Chinese-English) have been published. Furthermore, over 4700 of the total number of 8025 local administrative rules and 8309 administrative regulations have been translated into English by the legal departments of local governments at different levels (Zhang, 2011). Usually, each department under the central government is responsible for translating and examining its own rules and regulations. For example, the Ministry of Land and Resources of PRC has translated all its ministerial rules concerning foreign affairs or the regulations related to the rights and interests of administrative counterparts. In order to build a sound international platform for communication and corporation, it often presents the English text of its rules and regulations on land and resource as a gift to the foreign guests at important occasions, such as the

International Mining Congress hosted by the Ministry of Land and Resources, or in meeting with relevant overseas leaders and experts during its ministerial leader's going abroad for a visit.

So, the years from the early 1990s to the early 2010s witnessed a peak in the history of translating Chinese laws, rules and regulations into other languages, not only in terms the quantity, the range, or the scale, but also in terms of the unprecedented attention received. With the constant support of the Chinese government and the local authorities at different levels, there will be more and more translated versions of Chinese laws, rules and regulations in different languages in the globe market. With convenient access to Chinese laws, rules and regulations, foreign tourists or investors, or international organizations are becoming more and more familiar with the legal environment of China, which is substantially helpful to boost China's global image.

### **Legal Translation Before and After the Handover of Hong Kong and Macao**

On July 1, 1997 and Dec 20, 1999, the former Hong Kong and Macao was handed over from Britain and Portugal to China respectively, and the Chinese government resumed exercising the authority over these two regions since then. Under the guideline of "one country, two systems" and the Basic Law for special administration region, the original lifestyles and legal system in Hong Kong and Macao should remain as before. Before the handover, the Joint Statement signed by the Chinese government with Britain and Portugal Governments stipulated that the Chinese language would be one of the two official languages in the future Hong Kong Special Administration Region (HKSAR) and Macao Special Administration Region (MCSAR). That is to say, HKSAR would use Chinese and English as its official languages, while MCSAR would use Chinese and Portuguese. To prepare for the bilingual legislation, it is imperative to translate the original non-Chinese legal documents into Chinese, or the future Chinese legal documents into non-Chinese. Thus, massive legal translation activities were needed.

#### ***Legal Translation Before and After the Handover of Hong Kong***

For historic reasons, the Hong Kong society had been paying much more attention to English rather than Chinese, and English was the only official language. For example, all acts and ordinances were drafted into English, and even if Chinese emerges on some legal documents or contracts, the English version prevails when there is a discrepancy. Until the end of the 1980s, all Hong Kong acts and ordinances were enacted in English. However, after the signing of the Joint Declaration between China and UK, it was stipulated that Chinese shall become the main language used by Hong Kong government after the handover (Yang, 1997). Thereby, the Hong Kong government revised the Royal Introductions and stipulated that all acts and ordinances should also be enacted in Chinese. For the same reason, the Official Languages Ordinance (Chapter Five) was revised in March 1987, which provided that all acts and ordinances should be formulated in both Chinese and English. The revision in 1987 also introduced another mechanism – providing authentic Chinese texts for the precedent acts and ordinances formulated in English. For this purpose, the Hong Kong government launched the project of translating all the original acts and ordinances into Chinese. In carrying out the project, legal translation practice in Hong Kong was divided into two phases: first, providing authentic Chinese texts for the precedent acts and ordinances formulated in English before 1987; second, all acts and ordinances shall be drafted in both English and Chinese after 1987.

The first phase began in 1987 and ended in May 1997. In this period, under the leadership of the law drafting division of the Department of Justice, hundreds of English acts and ordinances, totaling to over 20,000 pages, were translated into Chinese. The translating process was painstaking. Gu Ying-jia, a

translator of that time, mentioned in his article: “in the process of translating, for the reason that the high-frequency Chinese words are less than that of English, we often had to coin new words as a solution” (Xuan, 2010). After the enactment of the last authentic Chinese legal text on May 16th 1997, all former Hong Kong acts and ordinances became bilingual.

The main task of the second phase was undertaken by the law drafting division of the Department of Justice, who is responsible for drafting all the acts and complementary ordinances that were advocated by the Hong Kong government. The law drafting division consisted of the bilingual drafting team, English drafting team, electoral legislation team, compiling team and an administrative team. The members of the bilingual drafting team were responsible for drafting the versions of ordinances, both in Chinese and English. However, in case that the English version of the ordinances was undertaken by the English drafting team, the Chinese version of ordinances would be undertaken by the bilingual drafting team. Within the division, the lawyers’ work was assisted by the directors of legal translation who were all experts on legal translation. The directors of legal translation also helped the lawyers in material study, especially in the deliberation of the intricacy and subtlety of words.

In the last two decades, Hong Kong has been racing ahead in legal translation, and its more mature and efficient experience is valuable to other regions. First, after years of practice, the drafting members are all competent in drafting Chinese-English ordinances. Second, the concept of “Hong Kong legal translation” is not accurate because the law drafting division of the Department of Justice has achieved its goal of drafting acts and ordinances in two languages, simultaneously. Finally, due to the bilingual legislation system, the popularization of bilingual legal information is widespread, and bilingual legal information is convenient to be accessed and utilized by citizens of Hong Kong and even people in other places.

### ***Legal Translation Before and After the Handover of Macao***

Macao was occupied by Portugal in 1553. With a history of more than 400 years, it enjoyed few self-government rights, and the legislative power of local government was also limited. The courts in Macao were only regional courts under the Portuguese judicial system, and the legal system of Macao was attached to this legal system, which means it was designed, approved and implemented under the guidance of Lisbon’s instruction and mode (Cen, 1999). After the signing of the Joint Declaration of China and Portugal in April 1987, the Sino-Portugal Joint Liaison Group, at the fourth plenary session in April 1989, put the two projects – the official position of the Chinese language in Macao and legal translation – on the regular agenda. As a matter of fact, the purpose of the two projects was, in conformity with the spirit of Article 5 of the Joint Declaration and Article 9 of the Basic Law, to ensure that the system of bilingual legal system would be implemented after Macao’s handover.

Legal translation was the key strategic tool to achieve the above goals and the precondition to perform the Joint Declaration, which specifically embodied the following steps: first, make Macao implement a bilingual legal system; second, make Chinese and Portuguese equally used as official languages in legislative procedure and the courts of Macao.

Before the signing of the Joint Declaration, though the Chinese version of local regulative documents was published in Macao Government Gazette, it was only the translation of the original Portuguese. Besides, it was of informative documents without any legal effect, so it could not be quoted by administrative or judicial organizations. This not only failed to meet the actual requirement of the Joint Declaration, but also did not ensure that acts and ordinances would be known by people in Macao, where

most of its residents use Chinese only. In order to transform the monolingual legal system into a bilingual one before the Joint Declaration's went into effect, especially after Chinese became the official language, the Macao government approved to establish a legal translation office on January 18, 1988. According to the approved annual plan, the newly established legal translation office was responsible for the planning, coordination and performance of translating all the acts and ordinances into Chinese and publishing a handbook of Chinese-Portuguese legal vocabulary. In November 1993, Portugal submitted to China the Chinese version of the Macao Criminal Code, which brought the beginning of the bilingualization and localization of Macao's five main codes. The consultation on the Chinese version of the Criminal Code of Macao started on April 25, 1994. Then the two countries reached a consensus on the Chinese version in the June of 1995. On November 14 of the same year, the Macao Government Gazette enacted its edict No. 58/95/M, officially ratifying the Criminal Code of Macao and stipulating that it shall be effective as of the January 1, 1996. Deeming this as an opportunity, China and Portugal sped up the process of bilingualization and localization for other codes.

In the years of 1989, 1993 and 1998, the Macao government constantly reconstructed and adjusted the legal translation office and the legislative affairs office, aiming to meet the needs of bilingualization and localization for Macao laws during the period of transition. After the handover, the Government of MCSAR merged the legal translation office with the judicial affairs office to establish a new office concerning legal affairs, which was responsible for the research and technique assisting work concerning legal policies, including some specific measures such as drafting of legal instruments, legal translation and legal promotion, etc.

### **Conclusion**

Through the investigation of legal translation practices in China during the last three decades, it is not hard to find what is occurring in contemporary China, for example, the motivation of legal translation, the people and the organizations involved in the outcome result. Specifically speaking, the large-scale legal translation practices in contemporary China results in the progress of Chinese legal science and legal construction with the translation of foreign law works, the boosting of China's globe image with the translation of Chinese laws and regulations into other languages, and the social stability with the legal translation before and after the handover of Hong Kong and Macao. The role played by legal translation in modern China was repeatedly a heated topic in different conferences, seminars or symposiums held in China recently (Li, 2009; Lin, 2010; Ge, 2011), which reminds us of two other important periods of legal translation practices in the history of China – one in the late Qing Dynasty and the other in the 1950s after the founding of the People's Republic of China.

The late Qing Dynasty, the 1950s after the founding of PRC, and the last three decades since the late 1970s are all important periods in the history of China, and are characteristic of dramatic social changes, from the feudal society to the new democratic society, the new democratic society to the socialist society, and the socialist society to the socialist society with the Chinese characteristics. Each new society needed a system of rules and guidelines to govern people's behavior, to shape its politics, economics and culture, and to mediate the relations between people. When other nations' legal culture can be applied and transplanted into the new society, then the demand of legal translation arises. Is it a universal phenomenon around the world? Since the critical role played by legal translation practices in different historic periods of China, in particular, the transitional periods caused by social change, it is really inadequate not to recognize the significance of legal translation practices in our study of translation

history. Are there any similar large-scale legal translation practices occurring in other countries or regions? Is there anyone who has ever given much attention to this significance? I hope my tentative study will be answered by many more case studies from other places or regions across the world.

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# Re-Examining the Dispute Over the Diaoyu Islands' Sovereignty: Exploring an International Law Issue from Media Discourse Perspective

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**[Abstract]** *This interdisciplinary study attempts to approach an international law issue from a media discourse perspective, exploring a new lens to examine traditional international law issues. Adopting a triangulation of both quantitative and qualitative analysis, and making news coverage as the study objects, this paper focuses on the Sino-Japanese dispute over Diaoyu Islands sovereignty and examines the features of media discourse. After comparatively analyzing media discourse about the Diaoyu Islands' sovereignty of both China and Japan, it can be found out that a stark contrast is formed between a strong Chinese government and a weak constructed Japanese government. When it comes to the ways of claiming sovereignty, both of the countries have different channels and hold perspectives to stand up for its own side. However, media discourse in China seems to be not so convincing and persuasive as that in Japan. Therefore, it is advised that channels to claim sovereignty should be multidimensional and perspectives should be enriched so as to win over international support on this issue.*

**[Keywords]** *Diaoyu Islands; sovereignty; media discourse; international law*

## Introduction

### ***The Bilateral Issue Surfacing in the 21st Century***

The issue of the Diaoyu Islands goes back to the first Sino-Japanese War from 1894 to 1895. Before this war, great historical evidence showed that the Diaoyu Islands have been Chinese territory since the Ming Dynasty (1368-1644). Unfortunately, the Qing Dynasty was defeated in the Sino-Japanese War and forced to sign the *Treaty of Shimonoseki*, in which the Diaoyu Islands were taken over by Japan at this time<sup>1</sup>. Until the Second World War ended, two important treaties – *The Cairo Declaration* and *The Potsdam Proclamation* – were signed to shape and maintain modern international order, in accordance with which the Diaoyu Islands and the affiliated islands were required to be restored to China. The waters were muddled by *The Treaty of Peace with Japan*, also known as *The Treaty of San Francisco*, signed between Japan, the United States, and other countries, but without China. This was a partially signed treaty that placed the Ryukyu Islands, known today as Okinawa, under the trusteeship of the United States, which was vague on the question of the Diaoyu islands. What made the situation worse was *The Okinawa Reversion Agreement* signed between Japan and the United States in 1971, which arbitrarily included the Diaoyu Islands and its affiliated islands that the U.S. had held under *The Treaty of Peace with Japan*, should be returned to Japan, based on which Japan claimed sovereignty over Diaoyu Island. Just three years before, *The Okinawa Reversion Agreement* was signed; the affiliated institution of Economic Commission for Asia and Far East (ECAFE) of the United Nations made a prediction for the Diaoyu islands with an abundance of oil energy after a geographical exploration over the East Sea and the South Sea. China and Japan disputed over the Diaoyu Islands' sovereignty until 1972 when the two

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<sup>1</sup> In 1900, Japan changed the name of the islands to “Senkaku Islands”.

countries formally established diplomatic relations and signed *The Sino-Japanese Treaty of Peace and Friendship*, where the former Chinese Leader Deng Xiaoping proposed a makeshift way to handle the problem as “shelving the differences and seeking joint development”.

The issue has been in a dormant state until U.S. President Obama proposed the strategy of “Returning to Asia” in 2009. During recent years, the issue of disputed sovereignty over the Diaoyu Islands, which remained as a bilateral issue in the 20th century, now is gradually securitized<sup>2</sup> and evolved into an international security problem (Fang, 2013, p. 42). The issue itself involves historical facts and international law, and further concerns a triangular relationship of the top three world economic powers. Therefore, this issue is of earth-shattering importance and draws worldwide attention.

## **Literature Review**

### ***Review of Previous Academic Studies***

This bilateral issue was once hotly debated in the 1970s. (Tao, 1974, p.248; Li, 1975, p.151) As the disputes hardened, it began to surface in the 21<sup>st</sup> century and drew the academic attention mainly from three perspectives – world history, international relations, and international law.

Mainly from the perspective of world history, Chinese scholar Zheng Hailin resorted to ancient historical documents like *A Survey of Japan*, *Pictorial Demonstration of Sea Area*, and *Pictorial Demonstration of the General Survey of Three Nations* to argue that China was the first to name and utilize Diaoyu Islands (Zheng, 2012, p. 1). The Sino-Japanese dispute over Diaoyu Islands had negative effects in the bilateral relations in many aspects. The bilateral economic relations were seriously foiled by the Diaoyu Islands dispute. In addition, the Diaoyu Islands dispute seriously impeded the delimitation of maritime boundary between China and Japan (Su, 2004, p. 385; Gao & Pan, 2012, p. 124). Not only did the two nations have dispute over the Diaoyu Islands’ sovereignty, but also controversy over territorial waters and an exclusive economic zone.

International law is the most hotly discussed perspective since sovereignty itself is an international law concept. Tan Xiaohu and Wang Kaiming resorted to five principles of international law to prove China’s sovereignty over the Diaoyu Islands – international treaty, occupation and effective governing, estoppel, prescription, and intertemporal (Tan & Wang, 2004, p. 74). The five-principle framework is borrowed in this research as the analytic categories for the variable of perspectives to claim sovereignty.

Studies on this topic are carried out mainly from the previous three perspectives. This topic is seldom analyzed from the perspective of media discourse.

### ***Why Media Discourse as a Perspective?***

Discourse, an old concept, is generally understood as written and spoken conversation within all contexts. This academic concept of a long history is almost immersed in every discipline of humanity studies only because power is embodied by the discourse. This kind of power embodied by the discourse can fall within soft power initially as raised by Joseph Nye, who attached high priority to a nation’s international influence exerted by the great capacity of opinion shaping instead of military power (1990). As for any international issue, the relevant discourses are important because they determine what can be accepted as true, why that can be defined as true, and how this issue is handled, as well as such a controversial and strategic issue of disputed sovereignty as discussed in this paper.

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<sup>2</sup> Securitization is the verb form for the word “securitization”. This is an academic term in International Security Studies.

Studies on this topic from the media discourse perspective are few. Xu Jieting and Zhang Faxiang carried out a critical discourse analysis on news reports covering the Diaoyu Islands from China, Japan and the United States. This paper undertook the linguistic theoretical framework and paid attention to the choice of words and textual analysis (Xu & Zhang, 2013, p. 111). Taking the method of textual analysis, Wen ZongDuo carried out a qualitative study on foreign reports covering the Diaoyu Islands. The author focused on the amount and content of foreign reports and highlighted the role of international media in solving disputes between two nations (Wen, 2013, p. 30).

Adopting the research mode of Mass Communication, this interdisciplinary study looks into the international law issue of legitimate sovereignty over the Diaoyu Islands. The study can make practical contributions to strengthening China's discourse power in shaping public opinion in the international field. China has ranked as the second economic power, but still not gained a dominant discourse power. At present, China still has obstacles in making themselves known by the whole world in a right way, especially in making stances on some key issues, even in those directly linked to national interests, and persuading others to side with us. As a famous Chinese saying goes, know yourself as well as your enemy. China needs to be aware of discourse from other powers and then transmit well-focused information and gain international support.

## **Research Design**

### ***Research Questions***

How do China and Japan claim its sovereignty through media discourse? What are the discourse features that can be drawn from news reports covering disputed sovereignty over the Diaoyu Islands in the Chinese and Japanese media, respectively?

### ***Methodology***

Data. Data for this paper is comprised of the English news reports on the Diaoyu Islands' sovereignty, both on *Xinhua Net* (English version) and in *Daily Yomiuri* (English version). Since the Diaoyu Islands' sovereignty is an international issue, discourses on this topic target the global audiences. Thus, interaction can only be carried out in English, a dominant global language, in influential national media. As for the English media in Mainland China, *Xinhua Net*, a central key news website hosted by State News Agency, is one of the world's most important news websites that has generated a huge amount of page views.<sup>3</sup> *Yomiuri Shimbun* is one of the three comprehensive national newspapers in Japan. It is very influential with a long history and a wide circulation, which, more importantly, can be accessed by database. Both *Xinhua Net* and *Daily Yomiuri* fall with the mainstream media in its country respectively.

There is a sea of news articles concerned with the Diaoyu Islands, in both the Chinese and Japanese media. Only articles discussing the Diaoyu Islands' sovereignty are subject to the research object. Therefore, the key words "Diaoyu Islands" or "Senkaku" plus "sovereignty" can narrow down the search scope. Even so, the search result was still beyond practicality of operation. The final result was sorted out by relevance without any restrictions to time limits. The sample is 60 news articles closely related to the topic, half from China and half from Japan.

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<sup>3</sup> *China Daily* and *People's Daily Overseas* are the mainstream English media in China. On account of date unavailability, not so much related data can be found for these two main sources. *Xinhua Net* will be an ideal substitute.

**Content analysis.** Content analysis is widely used in media studies. In the current study, it serves as a correct method for a quantitative analysis of news coverage of the Diaoyu Islands' sovereignty from *Xinhua Net* and *Daily Yomiuri*. Each article is defined as a coding unit. The coding scheme has 10 variables – news number, ID of newspapers, date, length, news sources cited, theme, other countries or areas mentioned, perspectives to claim sovereignty, international treaties mentioned, and historical documents mentioned.

**Critical discourse analysis.** Where critical discourse analysis differs most from content analysis is in its deliberate attempt to view texts in their context, digging out the deeper meaning between lines. The purpose of doing discourse analysis is to relate the manifest content of the news reports to external factors through studying the texts.

## Findings

### *Theme*

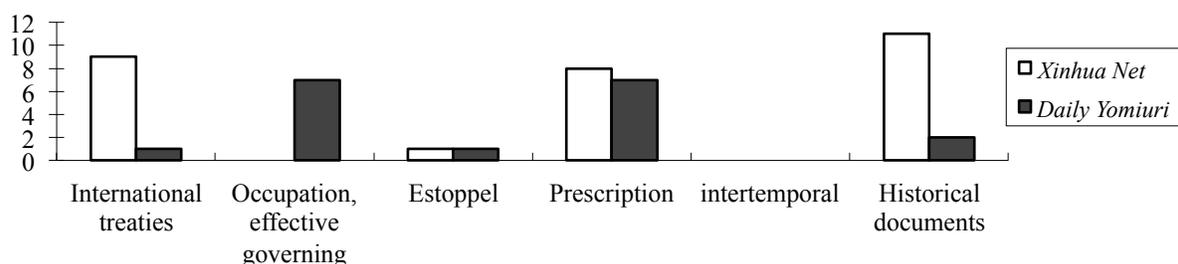
News articles selected from *Xinhua Net* mostly claimed sovereignty from the official stance, occupying 63% of the total 30 reports, more than twice as much as the third category – using other ways to claim sovereignty, while the news reported by Japan claimed sovereignty through other ways only except the official voice. Official claims of sovereignty could not be found in the news reported selected. This was a big contrast.

When news articles from *Xinhua Net* were reporting official claims, the sources mostly cited were officials. When reporting claims by other ways, articles cited experts most, who were mainly experts from the fields of the international law and history.

### *Perspectives to Claim Sovereignty*

Since both sides claimed sovereignty over the Diaoyu Islands, the perspectives to claim it were quite different pictures. As for China's side, *Xinhua Net* referred to different perspectives of international law – international treaties, estoppel, prescription, and historical documents, among which the category of historical documents took up the percentage of 38%, followed by that of international treaties 31% with only one article referring to estoppel, occupying 3% of the total. As for Japan's side, the perspectives of occupation, effective governing and prescription topped the list occupying 39%, followed by the categories of international treaties and estoppel, each representing 6%.

As Figure 1 shows, when the Japanese news claimed its sovereignty, all the perspectives were exploited, but were centralized to occupation, effective governing and prescription. Chinese news claimed its sovereignty mostly from the angles of international treaties, prescription, and historical documents. Prescription was the way both sides commonly adopted when claiming sovereignty. When one side took actions, for example Japan's landing on the Diaoyu Islands, and their proposal to buy the islands, China announced the islands' geographic codes, and conducted marine research by Chinese ships, in which the other side would react promptly, protest against the deeds and reiterate its political stance.



**Figure 1. Perspectives to Claim Sovereignty in Xinhua Net and Daily Yomiuri**

The big differences lies in three perspectives of international treaties<sup>4</sup>, occupation, effective governing, and historical documents.

**International treaties.** Japan referred to international treaties four times altogether. The *Japan-U.S. Security Treaty* was mentioned twice. China referred to bilateral treaties six times and multilateral treaties four times. The *Treaty of Shimonoseki* was mentioned so as to prove the original sovereignty over Diaoyu Islands in ancient times. The *Treaty of San Francisco* and the *Okinawa Reversion Agreement* were mentioned in parallel several times to point out where the disputes came about. The *Treaty of San Francisco* was signed in 1951 between Japan, the United States and other countries, ironically excluding China, one of the heaviest victims of Japan’s all-out invasion, placing the Ryukyu Islands under the trusteeship of the United States. In 1971 Japan and the United States signed the *Okinawa Reversion Agreement*, in which the Diaoyu Islands were arbitrarily included in the territories and territorial waters to be returned to Japan. The *Cairo Declaration* and *Potsdam Proclamation* were referred to in parallel by Chinese news articles to point out that the Diaoyu Islands should be returned to China according to these two international treaties signed by all the major powers in the world, which was the international legal basis of China’s indisputable sovereignty over the Diaoyu Islands.

**Occupation, and effective governing.** This perspective of occupation, and effective governing was one of the most frequently used perspectives by Japanese news to claim sovereignty. What was more important, it was only adopted by the Japanese side. Effective occupation was reflected in the articles by a long history of the Japanese living and working on the islands. “From 1895, when Japan declared sovereignty over the islands, until the end of the Pacific War in 1945, civilians given permission to visit the islands collected albatross feathers, produced dried bonito and engaged in other work there” (*Daily Yomiuri*, 2004, March 27). An article named *Japanese Fishermen Stayed on “Uninhabited” Senkakus* even pointed out by a third party of Japanese fishermen that the Diaoyu Islands were uninhabited places. In the article, these fishermen claimed “they lived and worked on the Senkaku Islands after World War II without any objection from China, a revelation that reinforces Japan’s sovereignty over the islands” (*Daily Yomiuri*, 2012, July 7).

**Historical documents.** There were four articles from *Daily Yomiuri* referring to historical documents, three from Chinese side and one from the third party, Vietnam, while six articles from *Xinhua Net*, four from Chinese side, one from the Japanese side and one from a third party. Japanese news resorted to a Chinese map in 1960, an official letter in 1920, and an official statement issued by the

<sup>4</sup>The variable “International treaty referred” has four analytic categories – bilateral treaties, multilateral treaties, international conventions, and internal laws.

Chinese government in 1958 to prove that China had not claimed sovereignty over the Diaoyu Islands and made no objections to any activities undertaken by Japanese fishermen on the islands either. Although there were more Chinese articles than Japanese articles referring to historical documents, the historical evidence cited could not stand up to close scrutiny, because these historical evidences cited were too crude to be convincing. Some articles just generally mentioned that there was proof from “documents and also books” (*Xinhua Net*, 2012, November 3) and “international documents” (*Xinhua Net*, 2011, December 1) to support China’s sovereignty. In addition, one article only said, “Chinese, Japanese and other foreign maps also show that Diaoyu Dao belongs to China” (*Xinhua Net*, 2012, September 25). Only one article gave out the publication time frame of a Japanese map, which marked the boundary of the Ryukyu Kingdom, labeled the Diaoyu Islands as Chinese territory (*Xinhua Net*, 2012, August 19).

## Discussions

### *A Strong Chinese Government vs. a Weak Japanese Government*

**A strong Chinese government.** First of all, two pictures can be in a sharp contrast as a weak Japanese government in the face of a strong Chinese government. News from *Daily Yomiuri* constructed an image of a strong Chinese government, which could be broken down into an ambitious, tricky, aggressive China.

- *An ambitious China.* Articles from *Daily Yomiuri* attributed China’s claiming Diaoyu Islands to rich oil and gas reserves beneath them. Three articles conveyed that China began to claim its sovereignty after a U.N. committee released a report in 1969 raising prospects for abundant oil and gas deposits contained under Diaoyu Islands (*Daily Yomiuri*, 2012, July 7; 2008, March 27; 1992, March 14). One article even pointed out the Chinese government issued a statement in 1958, which mentioned Nansa and Seisa islands as Chinese territory without including the Diaoyu Islands, and began claiming sovereignty over these islands in the early 1970s when oil and gas energy were discovered by experts (*Daily Yomiuri*, 1992, March 14).
- *A tricky China.* Articles from *Daily Yomiuri* constructed a Chinese government skilled at tactical maneuvers – launching propaganda war, taking retaliatory measures, and eliciting Chinese people’s anti-Japanese feelings. One article pointed out that the Chinese government launched “a large-scale propaganda campaign” to gain international support (*Daily Yomiuri*, 2012, October 13).

On September 14, 2012 China released the geographic coordinates of Diaoyu Islands and their affiliated islets and submitted Diaoyu Islands baseline announcement to the United Nations. The application to the U. N. panel was described as “a retaliatory measure” against Japan’s purchase of three of the Diaoyu Islands in an article from *Daily Yomiuri* (*Daily Yomiuri*, 2012, September 24). Besides the retaliatory measures taken, the Chinese government was also reported in an article to exploit the surge in anti-Japanese feeling among the Chinese people, especially the young; on one hand, taking advantage of the highly run feeling to pose pressure on China, and on the other hand, making use of anti-Japanese demonstrations to call for the release of the captain who was arrested by Japan during the boat collision with two Japan Coast Guard vessels (*Daily Yomiuri*, 2010, September 22).

- *An aggressive China.* Fragments of an aggressive China could be found in these articles selected from *Daily Yomiuri*, mainly through the description of China’s military power getting

stronger and stronger. Two articles reported China's upgrading military weapons which was "attempting to push the U.S. Navy out of the East China Sea" (Daily Yomiuri, 2010, April 8; 2004, March 10). And one pointed out that "the increasing population, emerging economic power and military expansion" posed a potential threat under the name of Russia (Daily Yomiuri, 2010, September 29).

#### **A weak Japanese government.**

- *To avoid arousing disputes.* Standing at the opposite side of a strong Chinese government was the Japanese government's "reluctance" and "inaction". In terms of the disputed sovereignty over the Diaoyu Islands, the Japanese government was too "weak" to arouse disputes and arguments between the two nations, compared with the Chinese government always picking the trouble.

*"Japan had, until recently, been reluctant to internationally air its claims to sovereignty over the islands, over which it denies the existence of any territorial dispute with China. However, the ongoing standoff over the islands has taken on aspects of a propaganda war aimed at the international community, prompting Japan to reverse its policy and appeal to world opinion regarding its claim. ...In response to such Chinese moves, the government is considering a strategy of lobbying for international support by dispatching the Foreign Ministry's top three parliamentary ministers, including Foreign Minister Koichiro Gamba and a special advisor to the prime minister, to relevant countries to explain the Senkaku Islands are an integral part of Japan's territory, both historically and under international law" (Daily Yomiuri, 2013, October 13).*

- *To handle disputes in a coolheaded manner.* Articles said that taking the overall Japan-China relationship into consideration, the Japanese government planned to tackle the dispute in a coolheaded manner so as not to provoke China to deepen the rift and asked China not to react too strongly to the issue (Daily Yomiuri, 2012, July 13). In terms of measures taken to deal with this issue, the Japanese government took "less-than-satisfactory measures" to defend its territory, even "inactions encouraging Chinese to push sovereignty claims", which formed a stark contrast with Chinese government's strong actions.

#### ***Opposite Stances From One Country – The United States***

News reports from both *Xinhua Net* and *Daily Yomiuri*, reported the stance from the United States on this issue. The article from *Daily Yomiuri* quoted a defense policy bill approved by the U.S. Congress, saying "the unilateral actions of a third party will not affect [the] United States acknowledgement of the administration of Japan over the Senkaku Islands" (*Daily Yomiuri*, 2012, December 23). This article reconfirmed the commitment of the U.S. government to the Government of Japan under Article V of *the Treaty of Mutual Cooperation and Security*. The article from *Xinhua Net* quoted a report, "*Diaoyu Islands Dispute: U.S. Treaty Obligations*," released by the U.S. Congressional Research Service, stating that the U.S. government stance on the sovereignty issue was clarified that "the U.S. has never recognized Japan's claim of 'sovereignty' over the Diaoyu Islands" (*Xinhua Net*, 2012, October 10). Strangely enough, it seemed that the United States held opposite stances on the disputed sovereignty over Diaoyu Islands.

#### **Conclusion**

This interdisciplinary study was carried out on news discourse about the Diaoyu Islands' sovereignty, with an aim to approach an international issue from media discourse perspective. Adopting the methods

of content analysis and discourse analysis, the paper selected 60 news articles mostly relevant to the topic of the Diaoyu Islands' sovereignty; half came from *Xinhua Net* in China and *Daily Yomiuri* from Japan to comparatively analyze the discourse features, especially examining how each nation claimed its sovereignty through media discourse and the media discourse features reflected behind this.

Claims were made mainly from an official stance and sometimes by other ways, such as the viewpoints of law experts, scholars and officials on the Chinese side. Claims on sovereignty were made not from the official side, but all by other ways such as the opinions of Japanese fishermen, scholars, and some officials like Japanese Tokyo Governor Ishihara, etc. When it came to the perspectives to claim sovereignty, articles were selected from the Chinese media that preferred international treaties and historical documents, while those of the Japanese side were inclined to refer to occupation and effective governing. The major international treaties resorted to by China were the *Treaty of Shimonoseki*, the *Cairo Declaration* and the *Potsdam Proclamation*, which were to prove that Japan's claim was against the international law. The perspective of historical documents was adopted by China more than by Japan, but seemed less convincing, since the historical documents listed in the news reports from *Daily Yomiuri* were the maps and books of China or third parties, with detailed information, while news from *Xinhua Net* just generally described historical documents as "maps" or "books" without any details.

As for the qualitative part of this analysis, news discourses from the Japanese side constructed a stark contrast of a strong Chinese government and a weak Japanese government. It could be easily depicted that China was ambitious, tricky, and aggressive, while Japan attended to this issue in a sensible manner and avoided arousing bilateral frictions. The motive was to win over international support. News discourses from Japan put the Diaoyu Islands on a par with the issue of Spratly Islands and constructed a threatening China, especially in terms of military equipment, only to win supporters from neighboring countries and Asian countries, as many as possible, standing at their side.

As for China, besides official sources and stances, it is advised that channels to claim sovereignty be multidimensional and perspectives be enriched so as to win over international support. To achieve the influence of discourse is a step-by-step progress. It is of earth-shattering importance since it can shape international opinion, and gain soft power, safeguarding national core interests.

### ***Limitations***

The author did all the coding alone. In order to guarantee a consistent and systematic analysis, repeated coding has been done according to specified rules and categories in advance. Even so, the study cannot be wholly objective and accurate. Personal judgment can never be completely impartial.

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# Feature Analysis of Criminal Language Behavior

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*[Abstract] When a crime is committed, language probably appears as a means of the crime. Criminal language is a social variety of language, with the subject and the receptor involved different from those in a normal language behavior. Criminal language has diversified connotations and manifestations, in such aspects as spoken language, written language, body language, and cyber language, etc. Criminal language behavior has its specificities: in language elements, linguistic behavior, accompanying behavior, feedback, object, language generation and means of expression, as well as contents. Studies on language behavior patterns of various perpetrators aim at discovering the practical results and the variation of employing criminal language, thereby getting to know the criminal's motive, age, education, occupation and other items, and providing clues for investigation and crime prevention.*

*[Keywords] crime; language behavior; feature analysis*

## Introduction

Language is a symbolic system composed of vocabulary combining pronunciation, meaning, and grammar. It is also a social phenomenon and the most important communication tool of mankind. In this sense, as a unique social phenomenon, crime is inextricably related to language. It is safe to say that traces of language exist in almost all cases. Language is evenly used in crimes committed by the deaf-mute (Zhao, 2011). Therefore, in examining criminal language from the perspectives of linguistics, investigation and criminology, we regard it as a form and a special means of committing a crime (Olsson, 2003). The carriers of language are diversified in all sorts of crimes, such as argot and slang, cyber language, letters, slogans, phone calls, and messages, etc.

Criminal language refers to the language that a criminal employs in various criminal cases and activities. It is a genre of social dialects and a unique form of complicated social language phenomena. It is communicative activity where both the subject and the receptor involved are different from those in a normal language behavior (Solan & Tiersma, 2005). Criminal language has multifarious connotations and manifestations, such as spoken language, written language, body language and cyber language, which constitute the application network of criminal language; the regional, social, gender and individual varieties of criminal language portray the internal traits of criminal language; the settings, time, and object, as well as the political, economic and cultural background of criminal language communication comprise the special context of criminal language. The above aspects determine that criminal language exists as an important social phenomenon and that criminal language is an important aspect that police should investigate into.

As criminal language behavior comes from the original language, it is a manifestation of the criminal's language habits and skills, restricted by his/her experiences, educational background, profession, age, personality and so on, and is the criminal's special practice and application of language. To analyze the language behavior from the perspective of criminal language behavior is based on the presumption that the language behavior of a criminal is part of the overall criminal behavior of the

perpetrator and that the language phenomenon occurring in a crime is abnormal. A criminal's language behavior can tell their individual information, like education, age, occupation, experiences, interests, and mind, etc. (Lai, 2013a, 2013b).

### **Perspectives of Criminal Language Behavior Researches**

Criminal language behavior studies the relationship between the criminal's behavior and his language in the process of committing a crime, focusing on various language application problems about the contradictions between the crime and the investigation activities. Consequently, the study of criminal language behavior is part of applied linguistics and is, meanwhile, closely related to disciplines such as behavioral science and criminology investigation.

We can see from the demarcation of applied linguistics and the establishment of a discipline system by scholars like Xia Zhonghua and Zhang Taiyan that applied linguistics includes investigative linguistics in practice. What's more, both the criminals' language application and the study of behavior patterns belong to applied linguistics.<sup>1</sup>

The research objects of criminal language behavior are various criminals, suspects, and people or groups who have broken the law. The research is diversified too, including criminal individual's dynamic habits of language activities, and the corresponding language characteristics of the victim(s). The research subjects of criminal language behavior lie in the linguistic status, characteristics and behavior patterns. We need to focus on the structural characteristics of criminal language itself and give more attention to the practical results and abnormal phenomena that appear in the course of employing criminal language. Finally, we can boil all these down to its essential characters and general rules (Shuy, 1993).

Research into criminal language behavior aims at discussing the relationship between language and the society, language and culture and language and crimes; it investigates the language use from the perspective of investigative studies and criminology, and studies language variety and the criminal's language behavior generated on different conditions of relevant cases.

Our aim is to study what kind of criminal speaks what kind of language on what kind of occasion from the perspective of sociolinguistics, pragmatics and behaviorism by combining theories of criminology and investigative studies. In this way, we can get the characteristics of criminal's language behavior such as his habit in using dialect, multi-language, argot, body language, occupational language

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<sup>1</sup>Xia Zhonghua proposed the discipline of Applied Linguistics in his book *Applied Linguistics Category and Status Quo*. He cited sociolinguistics and other fifteen related disciplines in his research field, including investigational linguistics. According to the *Criminal Law Dictionary* compiled by Zeng Qingmin and published by Shanghai Lexicography Publishing House in 1992, investigational linguistics is defined as "a discipline that studies language materials of cases, discusses the law of the formation and evolution of language and explores the relationship between language materials and related producers by using modern linguistics and theories, principles and methods of criminology, so as to provide an emerging applied discipline for investigating and solving criminal cases." In China, investigating and solving cases by using linguistics can be traced back to ancient times. With regard to modern public security personnel's work, Qiu Daren from National Police University of China is the first person to apply linguistics to detection. He put forward speech recognition in the 1980s and applied it to detection. Mr. Qiu Junfa who is from National Police University of China and is the author's respected mentor initiated speech recognition discipline. He was the first to set up speech recognition course and nurtured professional talents majoring in applied linguistics. Confined by particularity of the discipline of public security and confidentiality of the public security personnel's work, the two masters' works and theories cannot be intimately known by linguists home and abroad, and the research results of applying abundant theories and methods of applied linguistics to investigation by them can only be used as internal teaching materials. As Mr. Qiu Junfa's student, the author focuses on the study of criminal language behavior and also has teaching experience and practical experience about the discipline of public security for more than thirty years. The author takes this book as a reward to Mr. Qiu's tutoring.

and others, as well as his identity, age, education, and so forth, thereby providing clues and bases for investigation.

### ***Characteristics of Criminal Language Behavior***

“Language is the words spoken by members of a particular community... Language is not a simple assembling of marks or titles of the existing things in the world. Each social group live in a society that differs from others; these differences are reflected in cultural compositions of communities. A society may be multilingual; many people speak more than one language; while they adjust language with the changes of the condition, almost without exception” (Guo, 1999).

A study of criminal language behavior aims at analyzing various manifestations of criminal language in cases, and then probing into the relevant criminal state, criminal’s mental behaviors and other accompanying behaviors. In the course of investigating diverse cases, investigation and analysis is mostly a kind of retrospection after the crime is committed. In some cases, the victim has been killed or has been too stimulated to explicitly describe the criminal’s language behavior such as the content and dialect, so investigation is needed. However, considerable criminal behavior is done in forms of open letters by the criminal himself, writing to relevant persons, calling, putting up leaflets, chatting on line, and so forth. Normally, language behavior such as speaking or writing happens at the crime scene. A deaf-mute person may commit a crime with sign language, too. Among these, there are dialogues between the victim and the criminal and/or the companions and or even the criminal’s self talk. Some criminals may write to or call the police, the victim, the victim’s families or the media to provide some information after committing crimes. Criminal language behavior has countless connections with the implementation of the crime as well as the victim’s language behavior.

## **Feature Analysis of Criminal Language Behavior**

### ***Specificities in Language Elements***

Language behavior is often realized through selecting language elements under certain circumstances, depending on the form and needs of the crime. Sometimes, the criminal may adopt multifold phonetics means. Compared with normal language behavior, a criminal’s language behavior has its particularity, no matter in selection of means or the content of the language.

While committing a crime of fraud, some criminals intentionally do not use their own dialects and pretend to be other persons; sometimes their speech contents are false, and their behavior patterns are based on fabricating events, activities or projects.

We may say that what means and methods to adopt when a criminal is committing a crime are determined by the criminal’s language competence. While committing a violent crime, the criminal mostly speaks bluntly with fierce and threatening words. Therefore, a criminal’s language elements are determined by the type of the crime; different crimes may involve different language elements.

### ***Specificities in Linguistic Behavior***

Language skills count for much among human beings’ behaviors. In the original sense, skills are irrelevant to good or evil. Some criminals are villains but they have silken tongues. The reason why a criminal commits a crime and takes language as the tool of crime is related to his life experiences, characters and behaviors. We find that a large proportion of criminals who normally commit crimes by means of explosions are fond of writing letters or keeping diaries. Most of them are paranoiacs,

unsociable and jealous. Their purpose of carrying out explosions is to vent their resentment or profess their abomination to the society. Their linguistic behaviors have the following particularities:

1. Communication with the target victim.
2. Professing their viewpoints and reasons why he did so.

Language is based on sounds and words, by which people express their own and understand others' ideas and feelings. All language forms can be used as criminal. Criminal language is a kind of behavior, by which the criminal expresses and comprehends. This expression and comprehension is usually conducted under abnormal circumstances, such as language in homicide cases, where the criminal commits the crime and controls the victim by language at the same time. While some criminals commit crimes by using abnormal language; this sort of language is often employed by various cheaters. There are certain communication rules among criminals in various sinister and criminal gangs; they use argots or slangs when outsiders are on the scene. Obviously, a criminal's language behavior differs from the daily one. Criminal language behavior has its own special way of expression.

In general, a criminal's language behavior is done through speaking and writing, and it requires listening and reading skills, too. The criminal also needs the victim's expression; for example, sometimes the criminal demands the password of the bank card in burglary or robbery cases. At this time, he listens to the answers before taking further actions. Criminal language behavior also includes reading, like reading confidential documents. Different criminal purposes and different natures of the cases determine what kind of language expression the criminal adopts.

### ***Specificities in Accompanying Behavior***

Circumstances accompanying the language behavior refer to the time, and location, as well as the scene and expression in every sense when some language behavior occurs. Language accompanying circumstances of criminal language has their peculiarities. If the time of committing a crime happens to be late at night, the criminal's language is likely to be kept in low voice. In addition, the location also determines the state of criminal language behavior. Criminal language may well be unscrupulous and the content may flow naturally with criminal language behavior in devious places. The changeable accompanying circumstances may affect the criminal's behavior to some extent.

### ***Specificities in Feedback***

A criminal's language behavior is changeable; the situation in the process of committing a crime differs from a normal one. A criminal's language communication occurs on special occasions at a special time. Because it is a crime, the content and means of language communication is special. In some cases, the criminal makes requests and expresses his intention actively, while in this process, the criminal may change the topic, the method of expression and even the original criminal intention, along with the change of the victim's attitude. For example, a criminal intends to kill a victim at first, but may give up finally because the victim begs piteously.

Besides the information from the crime scene, the relevant time, location and other objects through oral communication, the criminal may leave more information at the scene about his goal, his motive and his identity through notes, letters, signs and goods. We call such behavior paralinguistic behavior.

The victim's feedback skills and language competence may also impact the criminal's subsequent action in the course of committing a crime.

### ***Specificities in Objects***

Language behavior occurs between the criminal and the victim when the criminal is committing a crime. Under most circumstances, the criminal is caught by the police when communicating with the criminal.

### ***Specificities in Speech Production and Means of Expression***

Among criminal language behaviors, what tools the criminals choose to commit a crime and how to produce and make language materials are different, and different crime and criminals take on different characteristics and peculiarities. In order to cover the identity and avoid being caught by the police, criminals adopt various ways to write when they are demanded to write about the crimes. Some criminals choose abnormal writing tools or carriers to write. While at the crime scene, some criminals read the claim loudly or loudspeaker; some even require the media to show up.

Today, the Internet has become the most up-to-date and efficient communication platform. Online people can transcend time and space and talk with whomever anytime they like; people can also set up virtual identities too. Criminals also make full use of the internet and some even commit crimes online. Distinctive cybercriminal language behavior has been formed in this way. Consequently, mobile phones and Internet have become crime tools.

### ***Specificities in Contents***

The content of criminal's language is often antisocial, and anti-human, violating normal language communication patterns, and therefore, the content varies in different crime conditions. Generally, with respect to terrorism or crimes that jeopardize national security, the political nature of language content is prominent; it sometimes reflects the criminal's political views, his standpoint to a certain issue, as well as his terrorist ideas or extreme national sentiments, etc. Heresy criminal language is usually based on religion and criminals often tamper or replenish the language so as to appear mysterious.

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# Some Reflections on Legal Translation – Translation of Vagueness in Meaning in Chinese Judicial Interpretations

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*[Abstract] With its rapid economic growth, the laws in China, as a system of rules, has been increasingly expanded. However, the development of Chinese law, as a whole, lags behind the advance of the society. This is partly due to the time-consuming process of legislation, and partly because of the limitations of language as the carrier of law. In the field of translation, although scholars have made insightful researches on legislated laws, judicial interpretations remains inadequately explored. This paper classifies and analyzes a number of typical cases in vague Chinese judicial interpretations in meaning from the perspective of translation, and proposes corresponding translation techniques.*

*[Keywords] judicial interpretation; vagueness of meaning; translation technique*

## Introduction

With China becoming the world's second largest economy and further integration into globalization, the law of China has been increasingly expanded and systemized, and has been researched by more and more people, both within China and beyond. However, due to the rapid development of the society, Chinese law, as a relatively stable system of rules, generally lags behind the advance of the society. This is partly because of the time-consuming process of legislation drags the promulgation of law, and is partly caused by the limitations of language as the carrier of law.

In the meanwhile, a law-ruled society requires that “a judge cannot escape verdict”. Put in other words, “as a judge, he cannot lay aside his duty to settle disputes on the excuse of absence of applicable rules. Even in circumstances of completely no, or relatively little, applicable legislated rules; a judge cannot refuse to do anything at all. Otherwise, people will lose trust in the courts of law, and further lose trust in the law at large, and then the whole society will fall into complete disorderliness” (Yu, 2006). It so can be said that reality also requires judicial organizations and judges, in circumstances of no applicable legislated law, to creatively interpret the existing legal rules and principles in a manner to make them applicable to the case under trial so as to settle disputes therein. Judicial interpretation generally consists of interpretations made by individual judges in specific cases and formal interpretations are issued by the supreme judicial organization for the particular categories of social and legal phenomenon. For China, given the authority of the interpreting body, the judicial interpretations of the Supreme People's Court (hereinafter called “the Supreme Court”) are undoubtedly the most important judicial interpretations of China, and we shall pay special attention to and intensively research them.

In the field of translation, scholars have made in-depth researches into the legislated law and have put forward plenty of insightful propositions. However, the judicial interpretations of the Supreme Court, as an important supplement to the legislated law, remain inadequately explored from the perspective of linguistics and translation, especially their vagueness in meaning. In this paper, we categorize and analyze a few typical cases of vagueness in meaning in the Supreme Court's judicial interpretations, and therefore, propose corresponding translation techniques.

### **Vagueness in Meaning in Judicial interpretations**

Vagueness essentially means indistinct and unclear. As long as law is concerned, “Vagueness of law means the attributes of law are incomplete. It includes unclear-cutting of boundary between legal concepts, un-matching between facts and legal rules, and non-uniqueness of conclusion of legal inference” (Chen, 2006).

From the perspective of law, vagueness of law is primarily caused by the fact that law, as a relatively stable system of definite rules, can hardly provide prescription for the indefinite and ever-changing social phenomena and relations it regulates. Secondly, legislators may purposely reserve the vagueness in the legislated law, both in the form of content of prescription and legal language used, so that the law can be of higher applicability to future social relations to be regulated. Lastly, language, as the carrier of law, also has limitations and vagueness property in expressing meaning. In other words, the existence of vagueness in law is objective and reasonable.

Similarly, judicial interpretations as a type of legal regulation, compared with the strict process of repeated argumentation, review and revision in legislating laws, are naturally not absent of vagueness, which is a fact we have to live with. On the other hand, the basic and fundamental requirement of modern society over the law is certainly beyond vagueness, which is also the fundamental requirement of human rights. Such requirement undoubtedly goes for judicial interpretations. However, the vagueness of law does not equal the vagueness of legal language. “The vagueness of legal language means the unclear-cutting of semantic meaning of some legal clauses and expressions. It normally refers to circumstances in which the property, scope, degree or amount of the legal facts cannot be clearly specified” (Li, & Cheng, 2004).

As language researchers, we do not necessary have to focus on vagueness in “un-matching between facts and legal rules”, or “non-uniqueness of conclusion of legal inference”, which are essentially legal issues to be left to the legal experts to deal with. Rather, we should explore the vagueness in “unclear-cutting of boundary between legal concepts”, especially the semantic vagueness of legal concepts and the vagueness in logic relations between legal concepts, from the linguistic perspective and cross-cultural translation perspective. This is both the starting point and finishing point of this paper.

Furthermore, with the growing international influence of China, the judicial interpretations of the Supreme Court of China will certainly attract due attention from increasingly more countries. The translation of such interpretations, especially the vagueness in meaning therein is definitely of significant theoretical and practical values.

### **Typical Types of Vagueness in Meaning in Judicial interpretations and Their Translation Techniques**

As already mentioned above, vagueness is a normal objective phenomenon both in law and judicial interpretations. There are various types of vagueness in meaning in judicial interpretations, each of which may require different techniques to translate. In the following section, we will categorize and analyze a number of typical types of vagueness in meaning in the judicial interpretations of the Supreme Court, and propose corresponding techniques for their translation.

#### ***Type One: Vagueness in Meaning in Legal Conceptions***

Some legal conceptions may be vague in meaning because the social reality or subject they describe is vague in meaning. From the perspective of translation, such conceptions generally do not need special

treatment, rather than be simply rendered into the equivalent conceptions as worded in the target language. So, strictly speaking, such type of vagueness is not genuine in nature.

*Example: Interpretation of the Supreme Court and the Supreme Procuratorate over Some Issues concerning Rules to be Applied in Criminal Trial Cases against the Crime of Extortion*

*Translation: Article 4. Where extortion for public or private property falls within any circumstance as prescribed from paragraph three to paragraph seven of Article two of this Interpretation, and where the amount of extortion reaches eighty percent of the “huge amount” or “extremely huge amount” as prescribed in Article one of this Interpretation can be respectively recognized as “other serious circumstance” and “other extremely serious circumstance” as prescribed in Article 274 of the Criminal Law.*

The semantically vague phrases like “**huge amount**”, “**extremely huge amount**”, “**serious**”, and “**extremely serious**” just need literal translation as both source and target languages share such conceptions with equivalent meaning.

Other similar terms, such as “reasonable”, “some/several”, “corresponding/relevant”, “minor/trivial”, “harm not serious”, “obvious”, and “with leniency/leniently”, etc. can be dealt with in the same way by translating them respectively into their equivalent counterparts.

#### ***Type Two: Vagueness in Meaning Caused by Rhetoric Logic between Words***

*Example: Interpretation of the Supreme Court over Some Issues concerning Specific Rules to be Applied in Criminal Trial Cases against Illegal mining and/or damaging mining*

Literal Translation: **Several times illegal mining** and/or **damaging mining** constitute crime, and where such crime shall be indicted pursuant to law, or where **several times illegal mining** and/or **damaging mining** within a year has not been dealt with, the amount of mineral resources so damaged shall be aggregated.

Here, literally speaking, in “**Several times illegal mining** and/or **damaging mining** constitute crime”, we cannot identify for sure whether “**several times**” modifies only “**illegal mining**”, or modifies both “**illegal mining**” and “**damaging mining**”. Theoretically, it is completely valid for both cases that “illegal mining for several times constitutes crime” and that “damaging mining (for once) constitutes crime”. So, semantically, it is impossible for us to judge which case is more reasonable to adopt.

From the prospective of law, criminal law, as the last resort of all laws, is a “cruel weapon” not to be casually applied, unless the civil law or administrative law fails to adequately punish the serious illegal acts conducted. This is evidenced by the provision of a number of grounds for elimination of illegality in the criminal law itself, such as “self-defense”, “act of rescue”, “act of decree”, “act of lawful occupation”, “consent of victim”, “act of self-help”, “act of self-harming” and “conflict of obligations” etc. (Zhang, 2011).

In the first part of this interpretation, it initially prescribes that “**Several times illegal mining** and/or **damaging mining** constitute crime”, and then it prescribes that “where such crime shall be indicted pursuant to law”; here it implies that some “**Several times illegal mining** and/or **damaging mining** constitute crime” is not to be indicted. But still, we cannot conclude for sure that “damaging mining (for once) **does not** constitute crime”.

In the later part of this interpretation, it specifies “where several times illegal mining and/or damaging mining within a year has not been dealt with, the amount of mineral resources so damaged shall **be aggregated**”. Here, we can ascertain for sure that “for several times within a year” modifies both “illegal mining” and “damaging mining”, otherwise “the amount of mineral resources so damaged shall **be aggregated**” would make no sense because we do not need to **aggregate** the amount of mineral resources damaged by only once damaging mining within a year.

Based on the principle of law gives priority to certainty, we can justifiably infer that in the first part of this interpretation, “several times” also modifies “damaging mining” as it does in the latter part. Thus, the interpretation should be translated as follows:

***Illegal mining and/or damaging mining for several times constitute crime, and where such crime shall be indicted pursuant to law, or where illegal mining and/or damaging mining for several times within a year has not been dealt with, the amount of mineral resources so damaged shall be aggregated.***

### **Type Three: Vagueness in Meaning Caused by Different Perspectives of Interested Parties**

Sometimes, a judicial interpretation is definite in purpose and clear in meaning from the perspective of the judicial organization, but still means different things to the interested parties because of their varied positions. For vagueness in such circumstance, we need to learn the background and purpose of, and interests to be protected by the judicial interpretation to achieve accurate translation.

*Example: Provisions of the Supreme Court over Some Issues concerning Specific Rules to be Applied in Trial Cases against Delivery of Goods without Production of the Original Bill of Lading*

*Literal Translation: Article 6. The amount of compensation the carrier who delivers cargo without collection of the original bill of lading shall make to the original bill of lading holder shall be calculated pursuant to the sum of the cargo value **as at the cargo is being loaded onto the vessel**, the freight and the insurance premium combined.*

In the field of shipping, the value of general cargo is relatively easy to ascertain with no big discrepancy. However, for the cargo of oil, the loading of which onto the carrying vessel may take more than 24 hours in some cases, so it is hard to determine its value as the price of oil may change dramatically within the loading period, which could mean tens of thousands of dollars, up or down. So the timing to determine the value of oil is of vital importance to both the oil cargo owner and the vessel owner. For the cargo owner, the basis of his claim for indemnity against the vessel owner in case of any loss to his cargo is the original bill of lading it holds. For the vessel owner, he has no duty to issue the original bill of lading to the cargo owner unless the cargo is loaded onto the vessel. So for both parties, the very time at which the cargo is completely loaded onboard the vessel is of legal significance. So for the “**as at the cargo is being loaded onto the vessel**” in this case, we justifiably translate it into “**as at the cargo is loaded**”, modified by “**on board**” at the same time.

*Article 6. The amount of compensation the carrier who delivers cargo without collection of the original bill of lading shall make to the original bill of lading holder shall be calculated pursuant to the sum of the cargo value **as at the cargo is loaded on aboard the vessel**, the freight and the insurance premium combined.*

#### ***Type Four: Vagueness in Meaning Caused by Lack of Grammatical Components***

Chinese, as a parataxis language, often lacks the grammatical subject or object in some sentences. Judicial interpretations, based on Chinese, naturally inherit such a property, which may cause vagueness in meaning from the perspective of translation.

*Example: Interpretation of the Supreme Court and the Supreme Procuratorate over Some Issues concerning Rules to be Applied in Criminal Trial Cases against Committing Libel through the Internet*

*Literal Translation: Article TWO. Where using internet to libel others falls within any of the following circumstance shall be deemed as “serious circumstance” as prescribed by paragraph one of Article 246 of the Criminal Law:*

*1. A single piece of libel is actually clicked or browsed over five hundred times, or is transmitted over five hundred times.*

Common sense tells us that we ourselves sometimes may check the information we posted online on more than one computer with different IP addresses. Here, the logical subject of “be clicked or browsed” shall be “others” rather than the “libel issuer”.

So the second paragraph should be translated as follows:

*1. A single piece of libel is actually clicked or browsed over five hundred times **by others**, or is transmitted over five hundred times.*

In addition, whether “is transmitted over five hundred times” should include cases of indirect transmission is debatable. For instance, *A* posts libel information online in blogs; *B*, a very influential figure, transmits it onto his own blog, and then 499 fans of *B* transmit the information further onto their respective blogs. Should *A* be so deemed as guilty of libel? Or more complicated, what if *A* deletes such information from its own blog when the first fan of such 499 fans of *B* blogs such information? To answer such questions would need legal expertise of lawyers and judges, and possible even the judicial interpreter. But undoubtedly, it would be beneficial to us to just think about such questions to offer better translations.

#### ***Type Five: Vagueness in Meaning Caused by Semantically Logic Contradiction***

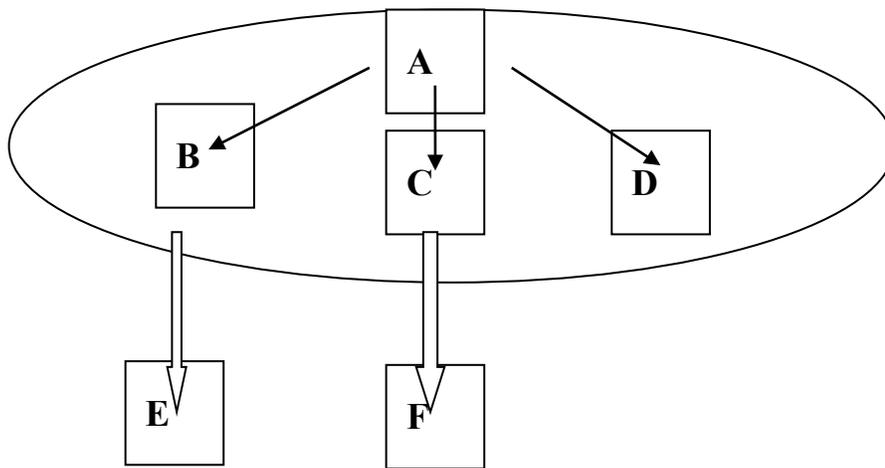
Judicial interpretations may be also plagued with semantically contradicting logic even in a single sentence. It is almost impossible to eliminate vagueness caused by such contradictions by just analyzing the semantically logic relations between its component parts. Rather, we need to explore the relevant background law, or even the whole departmental law at large.

*Example: Interpretation of the Supreme Court over Some Issues concerning the Implementation of the Succession Law*

*Literal Translation: Where several persons with mutual inheritance relationship die in one event, in case the time of death of each person cannot be ascertained, **the person without inheritors** shall be presumed as to die before such other persons. Where each of such persons dead has their own inheritors, and they themselves belong to different generations in their family hierarchy, the person of the senior generation shall be presumed as to die first; Where they themselves belong to the same generation in their family hierarchy, they shall be presumed as to die at the same time, and they do not inherit from each other, but shall be inherited by their respective inheritors.*

In the first part of the first sentence, “Where several persons with mutual inheritance relationship die in one event,” means the relationship between such persons is inheritor and decedent. Whereas, in the latter part of the sentence, “in case the time of death of each person cannot be ascertained, the person without inheritors shall be presumed as die before such other persons” means some of such persons have no inheritor. For a serious instrument like this judicial interpretation of the Supreme Court, how could it be so filled with semantically logic contradiction? How could we translate it?

Here, we need to know that Succession Law is part of the civil law, “the fundamental function of which is to define and protect civil rights” (Wang, 2010) and to exclude over intervention of administrative rights. As long as the Succession Law is concerned, its essential purpose is to protect the smooth succession of the inheritor from the decedent, and avoid the inheritance to be appropriated to the government. For illustration purpose, a diagram is drawn as follows.



**Figure 1. Succession Law Illustration**

Suppose *A* has three children, *B*, *C* and *D*. While *B* has a child *E*, *C* has a child *F*, and *D* is single without offspring. *A*, *B*, *C* and *D* die in one same event. The relations among *A*, *B*, *C* and *D* conform to the “Where several persons with mutual inheritance relationship die in one event,” as provided in the judicial interpretation.

For the latter part of the interpretation, “Where the persons belong to the same generation in their family hierarchy, they shall be presumed as to die at the same time, and do not inherit from each other, but shall be inherited by their respective inheritors” means, in our instance, *B*, *C* and *D* are presumed to die simultaneously, and *B* is to be inherited by *E*, and *C* is to be inherited by *F*.

For the middle part of the interpretation, “if these persons belong to different generations in their family hierarchy, the person of the senior generation shall be presumed as to die first” means, in our example, *A* dies first and so be inherited by *B*, *C* and *D*.

Now, let us now return to the first part of the interpretation, “Where several persons with mutual inheritance relationship die in one event, in case the time of death of each person cannot be ascertained, the person without inheritor shall be presumed as to die before such other persons” means, in our case, for *A*, *B*, *C* and *D*, *D* shall be presumed as to die first and so to be inherited by *A* as inheritor of the first order.

Taking together our above analysis of the middle and later part of the interpretation, it can be seen that for *A*, *B* and *C*, *A* shall be presumed as to die first and so to be inherited by *B* and *C*; and for *B* and *C*,

they do not inherit from each other but to be inherited by their respective inheritor *E* and *F*. In this way, the property of the family is kept within the family rather to be appropriated to the government.

It can be seen from our analysis that the part of the interpretation the most difficult to understand is what “**the person without inheritors**” really means. From our analysis, it is found that logically “**the person without inheritors**” shall mean “**without other inheritors rather than such persons who die with him\her in the same event**”.

The whole paragraph so shall be translated as follows:

*Where several persons with mutual inheritance relationship die in one event, in case the time of death of each person cannot be ascertained, the person without **other inheritors rather than such persons who die with him\her in the same event** shall be presumed as to die before such other persons. Where each of such persons dead has their own inheritors, and they themselves belong to different generations in their family hierarchy, the person of the senior generation shall be presumed as to die first; Where they themselves belong to the same generation in their family hierarchy, they shall be presumed as to die at the same time, and they do not inherit from each other, but shall be inherited by their respective inheritors.*

It can be seen from the above instance that translation, or even comprehension, of the judicial interpretation requires us to understand that the underlying law of the Succession Law primarily protects private rights and properties. Only analysis of semantically logic relations and grammars cannot guarantee us a correct understanding and, least translation. This supports our previous view that language as the carrier of law has its own limitations.

### Conclusion

Vagueness in law is an objective phenomenon with reasonable grounds, for which, vagueness plagued language, as the carrier of law, is partly to blame. Compared with legislated law, the vagueness of judicial interpretations of the Supreme Court is inadequately explored. This paper has empirically categorized and analyzed the typical types of vagueness in judicial interpretations, and tentatively techniques to eliminate it in translation.

With China’s further integration into the globalization, the judicial interpretations of the Supreme Court of China will be increasingly researched by more and more experts, scholars and legal practitioners both within China and beyond. As legal language researchers, judicial interpretations are definitely of high theoretical and practical values to us, especially their vagueness in meaning and corresponding translation techniques required, which is the very starting point and finishing point of this paper. However, given the complexity of judicial interpretations, the research as initiated in this paper still needs to be further deepened and systemized, a work we shall for sure continue in the future.

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# Discussion on the English Translation of Criminal Procedure Law of China

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**[Abstract]** More than one year has passed since the newly-revised Criminal Procedure Law 2012 (CPL 2012) took effect, yet the authority has not issued its official English version. Study on the existing English version of CPL 1996 may serve as a good reference for the new one, facilitate communication between China and western countries, and thus, press ahead with judicial reform in China. This paper points out some misinterpretations such as omission and misunderstanding that exist in the English version of CPL 1996, discusses some relevant terminologies, and finally calls for greater attention to legal translation among legal experts and translators.

**[Keywords]** criminal procedure law; English version; translation; discussion

## Introduction

Many Chinese scholars have devoted much time and energy to legal translation. Some have focused on the Chinese translation of the international standards of criminal justice, such as “*A Study on the Text and Ratification of International Covenant on Civil and Political Rights*” (Yang & Guo, 2013), while others focused on the documents published by the government, “*Discussion on the English Translation of Some Legal Expressions in the White Paper of the Judicial Reform in China*” (Li & Guo, 2013) for instance. These two articles were based on a certain covenant or document related to criminal justice and discussed corresponding translation issues. Also, many other papers are available in the database that researched the various aspects of legal translation, such as the typical characteristics of vocabulary, phrases and modes of expressions (Xiao, 2000), and the factors that influence the translation of legal English (Wang, 2003).

However, few papers could be found on the English translation of the China’s criminal procedure law (hereafter referred to as CPL 1996). In the paper “*An Inquiry into Existing Problems in Translating Legal Terms In the Criminal Procedure Law*”, the author discussed some omissions and mistakes in the English text, such as “*huibi (回避)*”, “*chuanxun (传讯)*”, “*weituo (委托)*” and so on (Jin, 2012). After having a systematic study of the English version of CPL 1996, the authors of this paper found it is also worth while to research some other expressions and terminologies that have been wrongly used in the English version. Those problems may confound foreigners on China’s criminal justice system and relevant mechanisms.

Criminal procedure law is referred as the “constitutional code of criminal procedure” (LaFave, Israel, King, & Kerr, 2009, p. 53), because it mainly focused on the constraint of public authorities during the process of criminal justice. This law is of vital importance in the protection of human rights against illegal infringement. On March 14, 2012, the Fifth Session of the 11th National People’s Congress passed the *Decision on Revising the Criminal Procedure Law* (hereafter referred to as CPL 2012) of People’s Republic of China. The newly revised CPL entered into force in 2013. One year has passed but there is still no official translation of CPL 2012. CPL 2012 incorporated a large number of clauses of the CPL 1996, so it is necessary to conduct a close research on the English version of CPL 1996 so as to better

understand the criminal justice system of China, to ensure accuracy of the new one, and to deepen the communication between Chinese scholars and their foreign counterparts in the field of criminal procedure.

The English version of CPL 1996 was adopted by the books published by the Legislative Affairs Commission of the Standing Committee of the National People's Congress of the PRC (1998), and by the Regulations Publishing Center (2002). This can also be found on the official website of NPC. This version was widely used and referred to as the authentic one, and thus became an importance source for foreigners to have a clearer picture of criminal procedure system in China. So this English version is carefully discussed as below.

### **About “Court Proceeding” and “Criminal Procedure”**

*Article 9: “Citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings.”*

The English version translated “*susong* (诉讼)” into “court proceedings”, which only conveyed the meaning of “the proceedings during the stage of trial”. Article 9 of CPL focused on the principle of “using own languages during the proceedings”. According to the theory of criminal procedure law, criminal procedure includes five stages, namely case-filing, investigation, examination of prosecution, trial, and execution (Chen, 2009, p. 7). Yet the English version meant that only in the court proceedings (stage of trial) can the defendant or other litigant use their own languages. As can be seen, such omission may impair the implementation of people's language rights.

China is a large country with 55 minorities, most of whom have their own languages and dialects. In order to protect the legitimate rights of the minorities and other people who cannot speak and understand Chinese, the CPL (Article 9) also stipulated that where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, court hearings shall be conducted in the spoken language commonly used in the locality, and judgments, notices and other documents shall be issued in the written language commonly used in the locality.

So it is well noticed that the right to use ones' own languages shall be guaranteed through all stages of criminal proceedings. This article is better to be translated into “citizens of all nationalities shall have the right to use their native spoken and written languages through criminal procedures”.

### **About “Court Clerk”**

*Article 31: “The provisions of Articles 28, 29 and 30 of this Law shall also apply to court clerks, interpreters and expert witnesses.”*

In this article, “*shujiyuan* (书记员)” was translated into “court clerk” which meant the “clerk of the court”. It is worth reconsideration on the modifier “court”. Articles 28 to 31 are about the mechanism of withdrawal. The conception of withdrawal comes from the principle of natural justice. This principle can be easily described as “no man shall be a judge in his own case”, aiming to remove bias when handling the cases and forbid the officers relating to the case to take participate in the criminal procedure (Yang & Zhou, 1996, p. 44). In China, there exists a large range of officers subjected to the withdrawal mechanism, such as the judges, the prosecutors and the investigators in the commonsense, the clerks and interpreters included.

In China, clerks can be hired by two authorities: the People's Courts and the People's Procuratorate (Chen, 2009, p. 130). They also differ in the procedure of applying withdrawal (Article 30): if the clerk

serves the court, the withdrawal will be decided by the president of the court; while if the clerk serves the prosecutors, it is the president of the People's Procuratorate who has the authority to order the clerk to quit the case.

All in all, the translation of English version of CPL 1996 ignored that the clerk of the People's Procuratorate can also be withdrawn in criminal procedures, so “*shujiyuan* (书记员)” is better to be translated as “clerk”. Furthermore, if this article wants to include the person who makes the record in the public security organization; it can be translated as “recorder”.

### **About “party”**

*Paragraph 4 of Article 28: “if he has any other relations with a party to the case that could affect the impartial handling of the case.”*

In this article, “*dangshiren* (当事人)” was translated as “party”. In the common law system, the word “party” has special meaning. According to Black’s law dictionary, party is “one by or against whom a lawsuit is brought, a party to the lawsuit” (Garner, 2009, p. 3550). Under the adversary system, the prosecutor, who represents the national authority, and the defendant are both the parties to the case, and should be translated as “*dangshiren* (当事人)”. But the abovementioned explanation will cause misunderstandings under the context of China’s criminal justice system. In CPL, Article 82 made a unique explanation about “*dangshiren* (当事人)”; it includes the victim, the private prosecutor, the suspect, the defendant, and the plaintiff and the defendant in incidental civil actions (Chen, 2009, p. 73), clearly excluding the People's Procuratorate and its officials (prosecutor) from the scope of “*dangshiren* (当事人)”.

If we translate “*dangshiren* (当事人)” into party, the meaning will expand to include more subjects and was inconsistent with the practice in China. For example, if the prosecutor is a close friend of the judge, which is quite common in practice, the defendant cannot apply for withdrawal for the reason abovementioned. “*Dangshiren* (当事人)” under the context of Chinese law, if observed carefully, are persons who participate in the criminal proceedings and whose interests and benefits are greatly influenced by the criminal procedures. Hence, “*dangshiren* (当事人)” is better to be translated into “litigant”. Litigant means “a party to a lawsuit”, mainly referred to the private person, and this translation is consistent with the legislation that the prosecutor and the “*dangshiren* (当事人)” are separated in China.

### **About “Statement” and “Exculpation”**

In the English version of China’s Criminal Procedure Law, the phrase “*Gongshu* (供述)” was translated into “statement” and “*bianjie* (辩解)” was translated into “exculpation”, but these two words fail to remake the meaning of the Chinese version. Article 42 states the type of the evidence in China, and “*gongshu* (供述)” and “*bianjie* (辩解)” are of vital importance in ascertaining facts. “*Gongshu* (供述)” refers to the oral or written statement made by the accused, which states the crimes, and other relevant circumstances committed by him, while “*bianjie* (辩解)” refers to the statement by the accused, which shows his innocence or some mitigating circumstance (Zhang, 2012, p. 232).

The English word “statement” means “a verbal assertion or nonverbal conduct intended as an assertion” (Garner, 2009, p. 1710); obviously, the meaning is broader than “*gongshu* (供述)”. “Exculpation”, on the other hand, means “free from blame or accusation” (Garner, 2009, p. 1710), which

cannot reveal the mitigating circumstance in the Chinese “*bianjie* (辩解)”. After comparison, “*gongshu* (供述)” is better translated into “confession” and “*bianjie* (辩解)” into “explanation”.

Article 46 is another example, which states: “A defendant cannot be found guilty and sentenced to a criminal punishment if there is only his statement but no evidence.” This article focused on the requirement that all the evidences shall be consistent with each other and form an evidence chain. The Chinese word “*gongshu* (供述)” was also translated into “statement”. But if analyzed in the context of this article, “*gongshu* (供述)” refers to the criminal’s statement of committing the crime, and bears the actual meaning of “confession”. Moreover, “*meiyou qita zhengju* (没有其他证据)” is translated into “no evidence”, and “*qita* (其他)” is carelessly left out. The original version also appears to exclude the “*gongshu* (供述)” from the field of evidence, which is quite wrong according to the CPL, as mentioned above. The better translation is: “A defendant cannot be found guilty and sentenced to a criminal punishment if there is only his confession but no other evidence”.

### **About “If the Demand is Rejected”**

*Paragraph 2 of Article 144: “If the public security organ considers that the decision not to initiate a prosecution is wrong, it may demand reconsideration, and if the demand is rejected, it may submit the matter to the People's Procuratorate at the next higher level for review.”*

This article refers to the rights that the public security shall have when the People’s Procuratorate made the decision of not to initiating a prosecution (Wan, 2004, p. 106). The premise is the English version set for the public security organization to apply for a review by a higher level is “if the demand is rejected”, which means that the demand for a reconsideration is rejected by the People's Procuratorate of the same level. This interpretation is obviously aberrant with the Chinese version, and disobeyed the laws and explanations in China. If the public security organization delivered the case to the People’s Procuratorate, but the latter made a decision not to initiate a prosecution; this decision shall be delivered to the public security organization in a written manner. Considering the principle of checking and balancing, the law also authorized the public security organizations with the rights to demand reconsideration by the People’s Procuratorate of the same level and review of a higher level.

According to Article 415 of *Rules of the People's Procuratorate on implementing the Criminal Procedural Law*, if the public security organization demands reconsideration, the People’s Procuratorate shall make the reconsideration by other officers within 30 days and notify the public security organ (Sun, 2013, p. 299). It is quite clear that the People’s Procuratorate cannot reject the demand for reconsideration. Only under such circumstance that the People’s Procuratorate makes the same decision of not to initiate a prosecution can the public security organization apply for a review by a higher level. Hence, “*ruguo yijian bubei jieshou* (如果意见不被接受)” is better translated into “if the decision is upheld”. “Decision” here refers to “the decision of not to initiate a prosecution”.

### **About “Expert Witness”**

In CPL, the terminology “*jiandingren* (鉴定人)” was mentioned 14 times, and in most circumstances, it was translated into “expert witness”. “Expert witness” is frequently used in the Anglo-American legal system, which means “A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue” (Garner, 2009, p. 4947) and referred as “*zhuanjia zhengren* (专家证人)” in Chinese.

According to Article 119 of CPL, “*jiandingren* (鉴定人)” is the person appointed or entrusted by the public authorities for the purpose of solving the special problems and ascertaining the facts. “*jiandingren* (鉴定人)” is not a witness in the context of Chinese law and is quite different from expert witness in western countries. First, the qualifications are different. “*jiandingren* (鉴定人)” must belong to a institute and meet the special requirements of the law and relevant regulations, such as the title of a technical post, the academic diplomas and the ten year above experience (Li, 2007, p. 1), while the expert witness is the person who has a specialized opinion about the case, with less limitations (Christopher & Laird, 1996, p. 695). Second, the stages of participating criminal procedure are different. “*jiandingren* (鉴定人)” can be involved in the criminal case in the investigation stage, while the expert witness only shows up in the courtroom. Third, “*jiandingren* (鉴定人)” was appointed or entrusted only by the public authorities, such as the public security organ, the People’s Procuratorate and the court, while an expert witness can be entrusted by both parties. Therefore, it is inappropriate to translate “*jiandingren* (鉴定人)” into “expert witness”.

Other materials translated “*jiandingren* (鉴定人)” into “expert” or “authenticator”. “Expert” means “a person who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder” (Garner, 2009, p. 1744). “Authenticate” is verb form of “authenticator”, which means “verify, to prove something is true” (Xue, 2003, p. 119). Considering that the opinion made by the “*jiandingren* (鉴定人)” was almost accepted by the judge to use as the basis for deciding the fact of the case, the word “authenticator” is better to show the meaning of verifying, and can reveal the important function of “*jiandingren* (鉴定人)” in China. On this regarding, “*jiandingren* (鉴定人)” is better to be translated as “authenticator”.

### **About “Dismiss the Case” and “Rescind the Case”**

In the English version of CPL, “*chexiao anjian* (撤销案件)” was translated into “dismiss the case”, and “*chexiao yuanpan* (撤销原判)” was translated into “rescind the case”. These two expressions are not professional.

Dismiss refers to “termination of an action or claim without further hearing, esp. before the trial of the issues involved” (Garner, 2009, p. 1414). Normally it is used as “the case is dismissed by judge”. “Dismiss” contains the meaning of “*chexiao* (撤销)”, but it is the judge, under the common law legal system, who can make the decision of dismiss the case, aiming at closing the case. While “*chexiao anjian* (撤销案件)”, in the context of China, refers to circumstances where no criminal responsibility shall be pursued (Article 15 of CPL). It is the public security organization or the People’s Procuratorate who can make the decision, aiming at not investigating into the responsibility of the suspect. For the sake of that, “*chexiao anjian* (撤销案件)” cannot be translated into “dismiss”; the word “terminate” is a better replacement.

Also, “rescind” means “to abrogate or cancel (a contract) unilaterally or by agreement” (Garner, 2009, p. 4075). It contains the meaning of “*chexiao* (撤销)”, but it is mainly used in civil law relationships (Jin, 2012, p. 60). The Chinese version keeps an eye on criminal procedure and corresponding legal relationship, so it is not appropriate to use “rescind” in such context. The accurate one is “reverse”, which means “to overturn (a judgment) on appeal” (Garner, 2009, p. 4111). The corresponding English version shall be translated into “reverse the judgment”.

### About “Bill of Prosecution”

In the English version, “*qisu shu* (起诉书)” was translated into “bill of prosecution”. This expression was quite weird, and maybe fabricated by the translator himself. “*Qisu shu* (起诉书)” is a legal concept that has something to do with three terminologies in English: indictment, information and complaint.

In America, the grand jury and the prosecutor share the responsibility of prosecuting criminals. The grand jury normally consists of 23 community members according to the Fifth Amendment, and the charge against the death penalty or infamous crime shall be conducted by grand jury (LaFave, Israel, King, & Kerr, 2009, p. 777). And “indictment” is the ‘the formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person’ (Garner, 2009, p. 2259). While in other common law countries, indictment is used to charge the indictable offence (felony). Another terminology, “information”, refers to “a formal criminal charge made by a prosecutor without a grand-jury indictment.” The “information” is used to prosecute misdemeanors in most states of America, and about half the states allow its use in felony prosecutions as well (Garner, 2009, p. 2281). The “information” is also called the ‘bill of information’ (Jin, 2012, p. 60).

“*Qisu shu* (起诉书)” can be also translated into “complaint”, and used in both the criminal justice law (a formal charge accusing a person of an offense) and the civil law (the initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief) (Garner, 2009, p. 858).

China's prosecution system is quite different from that of United States. There is no grand jury, but both the prosecutors and private prosecutors can initiate the prosecution (Chen, 2009, p. 318). Prosecutors mainly charge the serious crimes and the private prosecutors the minor ones. Therefore, when prosecution is initiated by the People's Procuratorate, “*qisu shu* (起诉书)” can be translated into “information”; if the offense is serious, “indictment” is a good replacement. When prosecution is initiated by private prosecutors, “*qisu shu* (起诉书)” can be translated into “complaint”.

### Conclusion

Accuracy of the legislation is the soul and the life of law (Zhu, 2006, p. 269). Legal translation can be both time- and energy-consuming. Since the translators may lack the professional knowledge of criminal procedure law in China and Western countries, mistakes could be made during the process of translation. Authorities should consult legal experts, scholars and translators, draft the English version carefully, polish it again and again, and then publish the authentic version on the official website.

Discussion on the translation issues on the English version of CPL helps people understand the criminal justice system in China, facilitates the communication on criminal procedure between China and Western countries, and finally carries forward with the judicial reform in China.

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# On Translation of Fuzzy Time Expressions in Legal Text – With A Case Study on Time Expressions of a Sales Contract

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**[Abstract]** *Time expressions are crucial parts in legal text. In particular, the fuzziness in time expressions in a Sales Contract might lead to their misunderstanding and poor fulfillment. Based on the brief analysis of the definition of fuzziness and the fuzziness in time expressions, elaboration will be made in the fuzziness of the time expressions in clauses of Sales Contracts, and then, on the basis of Sarcevic's translation theory, two suggestions are offered as how to translate those fuzzy time expressions in Sales Contracts.*

**[Keywords]** *fuzziness; time expression; sales contract; legal text*

## **Introduction**

Fuzziness is a sort of objective attribute of natural language. Fuzzy time expressions are crucial parts in the clauses of Sales Contract, because the fuzziness in time expressions might lead to misunderstanding and poor fulfillment of the Sales Contract. As a legal document, the Sales Contract is supposed to be precise and concrete, while fuzziness does exist in time expressions. The main purpose of a Sales Contract translation is to facilitate its fulfillment. In this paper, we will analyze how we shall translate those fuzzy time expressions in Sales Contracts to facilitate their fulfillment.

## **Fuzziness in Time Expressions**

### ***The Study of Fuzziness***

As an inherent characteristic of language, fuzziness exists widely in many aspects of human language. According to Oxford Advanced Learner's Dictionary, the definition of "fuzzy" means "blur or indistinct, especially in shape or outline." Fuzziness is a term used by some linguists to indicate the indeterminacy involved in the analysis of a linguistic unit or pattern.

The original study on fuzziness in the western countries might trace back to the days of Plato. It was Plato who laid the foundation for what would become fuzzy logic, indicating that there was a third region (beyond True and False). It was not until relatively recently that the notion of an infinite-valued logic took hold. American linguist and anthropologist, E. Sapir, once described the fuzzy area of words as the "blend area". He argued that there is no exact norm, but a blend area between the opposite words, such as good or bad, as well as far or near.

In 1965, Lotfi A. Zadeh, professor at University of California, Berkeley, published 'Fuzzy Set' in the magazine of *Information and Control*, which described the mathematics of "fuzzy theory", and developed it as "fuzzy logic". Zadeh pointed out in his book that it is very frequent that there are no clear boundaries among the objects we meet in the real world. This kind of indefinite boundary plays a significant role in logic, identification of modes and transference of information of human beings (Zadeh, 1965, pp. 338-353).

In China, the original discussion about fuzziness was found in the *Book of Changes* and *Lao Tzu* during the Spring and Autumn Era. The pioneer of fuzzy linguistics is Wu Tiejing from Beijing Normal

University. His influential article “Preliminary Study of Fuzzy Language” in 1979 indicated the start of the systematic study of fuzzy linguistics in China. Since then, many other Chinese scholars including Shi Anshi (1988) and Jiang Youjing (1991) have contributed greatly to this field. Zhang Qiao published his study of fuzziness in the area of semantics, in a book known as *Fuzzy Semantics* in 1999. Su Li (2001), and Chen Yunliang (2002) have researched fuzziness in its classification and rule in legal text. Shen Mingrong (2000) analyzed the unavoidable fuzziness in his book, *The Limitation of the Law*. Later on, a series of new independent linguistic approaches began to come onto the stage such as fuzzy mathematics, fuzzy logic, fuzzy linguistic, fuzzy psychology and fuzzy rhetoric.

The theory concerning fuzziness of language is based on that there is a limitless world and finite words in language. Compared with boundless objective rules, a human being’s knowledge is quite limited. When people try to express the limitless world with their limited words, the fuzzy expressions come into being. Chen Zhian (1997, p. 36) argued that linguistics fuzziness originated from the fuzziness existing in objective things in the world; it originated from the limited, uncertain capability of man’s understanding of the objective world; it originated from the contradiction between the limitation, dispersion of linguistic symbols and the continuum of some objective things; it originated from the different understanding of the meaning of words, sentences, and the changing of context; it is a necessary request for thinking and communication. In a general sense, it refers to the language phenomenon of indeterminacy without a clear boundary. As a most important means of communication, language is supposed to be precise and concise to achieve people’s mutual understanding (Channell, 2000, p. 1). While, the fact is, in daily life, there is an abundance of fuzzy words and expressions. In this paper, we would like to focus the fuzzy expressions about time only.

### ***Fuzziness in Time Expressions***

Time expression is defined as an expression that combines numbers and one or more symbols to illustrate time. Time expressions can be found easily in every country and in every culture because of its importance in human’s life. Time expression is a fuzzy concept not only in its special cultural impacts and implications as shown in various idioms, but also in its aspect of expression of some specific time. When people choose different symbols to represent various kinds of objects in Nature, the arbitrary result might occur between symbols and objects. Different countries might be different in time expressions.

Time expression is a fuzzy concept as shown in some idioms. For example, there are some Chinese idioms about time, such as “YI RI BU JIAN, RU GE SAN QIU” (Its meaning is “One day apart seems like three years.”), “YI CUN GUANG YIN, YI CUN JIN” (which means “An inch of time is an inch of gold”), “XIA LIAN SAN FU, DONG LIAN SAN JIU” (Its meaning is “To prove to be strong-willed, you should continue your practice even in the extremely hot weather in summer and coldest days in winter”), and “YI PU SHI HAN” (It means “To work by fits and starts”), etc. While there are also some fuzzy time expressions in English idioms such as “An hour in the morning is worth two in the evening”; “A single flower does not make a spring”; “A snow year, a rich year”; “A year’s plan starts with Spring”; “Better late than never”; “Don’t put off till tomorrow what should be done today”; “Envy has no holidays”; “Every day is not Sunday”; “Every dog has his day”; “Every minute counts.” and so on. In those idioms, the numbers used in expressing time are not as clear and concrete as what we have when we do the math calculation. In addition, those idioms express a vague concept of time; there are fuzzy time expressions in Sales Contract and other legal texts.

## Fuzzy Time Expression in Legal Text

Fuzziness of legal text refers to the semantic indeterminacy that is shown in some legal articles or documents, which mainly are the result of the indeterminate circumstances concerning the legal facts. The most obvious fuzziness in legal text is shown at the lexical level. Some fuzzy time expressions are achieved by adding some words or phrases to the original concept, such as “about”. Because of its nature function to “blur,” the exact meaning of other words or word combinations that are otherwise precise, we might safely say they are intrinsically fuzzy. Other fuzzy time expressions might be achieved through adding those words such as “reasonable” to achieve semantic fuzziness. An example from Contract Law of P.R China adopted and Promulgated by the Second Session of the Ninth National People’s Congress on March 15, 1999, shows there are relevant stipulations about fuzzy time expressions such as:

*Article 69 “Notification upon Suspension of Performance; Termination*

*If a party suspends its performance in accordance with Article 68 hereof, it shall timely notify the other party. If the other party provides appropriate assurance for its performance, the party shall resume performance. After performance was suspended, if the other party fails to regain its ability to perform and fails to provide appropriate assurance **within a reasonable time**, the suspending party may terminate the contract.”*

The concept of “reasonable time” is also mentioned in Article 95. As in this law, we might find Article 29 stipulates “... **in due time** under normal circumstance.”

### *A Case Study of Sales Contract*

The sales contract consists of three parts, including the Preamble, Body and Witness Clauses. The Sales contract is supposed to be precise and exact, while fuzziness exists in its clauses. In this section, we choose those examples from *International Trade Practice* (Zhou, Wang, & Xu, 2011).

**Shipment clause in the Sales Contract:** The Shipment Clause, for instance, is a very important clause in the Sales Contract as any delay or advance of delivery constitutes a violation of the contract. The shipment clause in a sales contract usually includes stipulations concerning time of delivery (time of shipment), port (place) of shipment and port (place) of destination, partial shipments, trans-shipment, or lay days, demurrage and dispatch money.

Shipment: To be shipped **on or before September 31, 2010** is subject to acceptable L/C reaching the **SELLER by the end of September 15, 2010**, ... (Zhou, Wang, & Xu, 2011, p. 139).

**Inspection clause in the Sale Contract:** The inspection of the goods can be conducted at various stages of the trade process. It is important to make clear when and where inspections should be conducted. Inspection clauses in international sales contract usually contain stipulations on the inspection rights, the time and place of inspection or re-inspections, the re-inspection body, the inspection items and the inspection certificated. An example of inspection clause in the sales contract is as follows:

*“It is mutually agreed that the Certificate of Quality and Quantity/Weight issued by the Manufacturer shall be part of the documents for payment under the relevant L/C. In case the quality, quantity or weight of the goods are found not in conformity with those stipulated in this contract after re-inspection by the China Exit and Entry Inspection and Quarantine Bureau **within... days** after discharge of the goods to or lodge a claim against the Sellers for compensation of losses upon the strength of Inspection Certificate issued by the said Bureau, with the exception of those claims for which the insurers or the carrier are liable...”* (Zhou, Wang, & Xu, 2011, p. 301).

**Claim clause in the Sales Contract.** As is well known, disputes are very common in international trade and are detrimental to the business relationship between the buyer and the seller. To avoid or to properly handle future disputes, it is necessary to include a claim clause in the contract. Normally, there are two ways to stipulate the claim clause in the contract: Discrepancy and Claim Clause. and Penalty Clause.

A Discrepancy and Claim Clause normally stipulates the relevant evidence or proofs to be presented and the relevant authoritative body for issuing the certificate. The evidences or proofs provided should be complete and clear, and the authority should be competent in issuing the relevant certificates. In addition to the evidence presented, this clause shall also include a period within which a claim is lodged. Technically, the period for claim refers to the effective period in which the claimant can make a claim against a party for breach. Claims made after the agreed-upon period can be refused by the party in breach.

Claim: Any claim by the Buyers regarding the goods shipped shall be filed **within 30 days after** the arrival of the goods at the port of destination...

The penalty clause is stipulated in the sales contract in case one party fails to implement the contract such as non-delivery, delayed delivery, or delayed opening of L/C, etc.

**Penalty Clause regarding seller's delay in delivery.** Should the seller fail to make delivery on time as stipulated in the contract, the Buyers shall agree to postpone the delivery on condition that the Sellers agree to pay a penalty... The rate of penalty is charged at 0.5% of the total value of the goods whose delivery has been delayed for every seven days, odd days than seven days should be counted as seven days. ... In case the Sellers fail to make delivery ten weeks later than the time **of shipment stipulated in the contract, the Buyers shall have the right to cancel the contract...**

**Penalty Clause regarding the buyer's delay in opening of L/C.** Should the Buyers, for their own sake, fail to open the Letter of Credit **within the time stipulated in the contract**, the Buyers shall pay a penalty to the Sellers. The penalty shall be charged at the rate of...**for every ten days** of delay in opening the letter of credit... Any fractional days **less than ten days** shall be deemed to be **ten days** for the calculation of penalty.

**Force majeure clause.** "... the seller shall ...and furnish the latter within 15 days by registered airmail ..." (Zhou, Wang, & Xu, 2011, p. 307).

From the above examples, we might ask, "May the seller/ buyer exercise its right on the exact date stipulated in the Sales Contract? When is the real deadline, including that day or just including the day before?" Those time expressions bear the feature of fuzziness owing to its blur boundaries. The next question we need to probe is how to translate those fuzzy expressions about time.

### **Translation of Fuzzy Time Expressions in Sales Contract**

Translation is inter-cultural communication, and also is regarded as a cross-cultural activity. The legal text on the lexical level should be special and exclusive, especially in the meanings of legal terms. The different approaches to legal translation arouse many researchers' interests, Some scholars argue for the importance of "literal translation", while others might prefer "free translation"; some insist on "semantic translation", while others prefer "communicative translation"; some suggest "foreignization", while others would like to choose "domestication". Nowadays, many scholars agree on the idea of cultural translation. They think that the translator's cultural background exerts a great influence over translation. As a cultural mediator, the translator has to be flexible in switching his cultural orientation and develop a high degree

of intercultural sensitivity. The translator should be not only bilingual, but ideally, bi-cultural as well. A cultural mediator is a person who facilitates communication, understanding, and action between persons or groups who differ with respect to language and culture. Thus, a mediator must be to a certain extent bicultural (Taft, 1981). Eugene Nida argued that for truly successful translating, biculturalism is even more important than bilingualism, since words only have meanings in terms of the cultures on which they function.

However, as far as the translation of Sales contract, the main core task for the translator is to facilitate the fulfillment of Sales Contract. The translator must take into account the purpose of translation and the target reader when choosing a strategy. It is required to achieve the matching equivalence between the SL and TL in functions. If a translation of the legal texts (parallel text) reaches the same legal effects, it means that it reaches purposes of the legal equivalence. Make the authority of translation not only in the sense, but also in the legal effect is the same (Sarcevic, 1997, p. 48). Sarcevic (1997, pp. 71-72) also argued that the legal translator's main task is to translate a text that is of the same legal effect as the original text, under which circumstances the translator should not only understand the meaning of the words, and sentences but also know how to realize such a sort of legal effect in the target language. Hence, when we translate the Sales Contract, we should exert our efforts to facilitate its smooth fulfillment.

### ***Matching Equivalence of Functions in Legal Texts from SL to TL***

Matching equivalence of functions means we might use paraphrasing skills to interpret fuzzy time expression (SL), by using phrases or attributive clauses to identify a clear time limit. The process of legal translation is actually a process to explain the original texts, as the Richard A. Posner, an American jurist said in his *Overcoming Law* that “interpretation as translation (translation of the interpretation), the desire to translate the original meaning of the works also attracts the interest of the target audiences and makes them happy and excited, or they even just weigh the value between it and saving their time” (Posner, 2002, p. 335).

Find the relevant Chinese Counterpart for those prepositions related with the time expression as shown in the above examples, to make it clear the nature meaning of the preposition so as to judge whether or not the time (date, month or year) is involved, if not, including a clear time limit.

For example,

**...on or before September 31, 2010...**

Should be translated as “JIE ZHI 2010 NIAN 9 YUE 31 RI (BAO KUO 9 YUE 31 RI) in Chinese character.

**...by the end of September 15, 2010,**

Should be translated as “JIE ZHI 2010 NIAN 9 YUE 15 RI (BAOKUO 9 YUE 15 RI)

**...within...days after**

Should be translated as “ZAI ...ZHIHOU...TIAN NEI (BU BAO KUO...)

**...every seven days, odd days than seven days should be counted as seven days.**

Should be translated as “MEI 7 TIAN, CHAO GUO 7 TIAN AN ZHAO 7TIAN JISUAN.”

**... ten weeks later than the time of shipment** stipulated in the contract...

Should be translated as “ZHUANGYUN HOU SHI GE XING QI HOU (BU BAOKUO...”

...Any fractional days **less than ten days** shall be deemed to be **ten days** for the calculation of penalty.

Should be translated as “REN HE SHAOYU 10 TIAN DE, YINGGAI ANZHAO 10 TIAN LAI JISUAN FAJIN.”

Those clear time limits are easier for the relevant staff to make up the Sales Contract, and thus, the disputes about time limits might be avoided, a smooth cooperation between two parties might be achieved.

### ***Applicability of the Relevant International Rules***

The translation of a sales contract involves more than just finding the exact word expression on the basis of the lexical level. The main purpose is to attain the mutual understanding between the two parties. Just as Deborah Cao (2008, p. 7) argues in her monograph *Translating Law* that “Due to the fact that legal translation involves law, and such translation can and often does produce not just linguistic but also legal impact and consequence.” As a result, In the international trade, the application of certain legal rules should be expressly indicated in the sales contract or Letter of Credit and other relevant legal documents for later negotiation, as the following example shows: The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (“UCP”) are rules that apply to any documentary credit (“credit”) (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit.

When we translate the clauses in the Sales Contract, for instance, we might find the shipment clause is expressed in the following ways with fuzzy time expressions. Such a fixed period of time or a dead line is shown in the contract as

Shipment is to be made **during** March/April 2014.

**from... to...**

**in the beginning of...**

**in the first half of...**

**in the second half of...**

**in the middle of...**

**in the end of ...**

**on or about...**

Shipment is to be made **at or before the end of** June 2014.

**not later than**

**on or before**

Latest Time of shipment: **until/ 'til** June 2014.

Or a time period upon receipt of L/C is shown in the Sales Contract, such as:

Shipment is to be made **within 30 days after** receipt of L/C. The relevant L/C must reach the seller **not later than** April 2014.

Before the translation task is done, the translator should, first of all, consult relevant International Legal rules, UCP600, for instance, in this case. As in the UCP600, we might find the following clear indication to solve the puzzle caused by the fuzzy time expressions in Sales Contract.

The expression “on or about” or similar will be interpreted as a stipulation that an event is to occur during a period of five calendar days before until five calendar days after the specified Time, both start and end Times included.

The words “to”, “until”, “’til”, “from” and “between” when used to determine a period of shipment include the Time or Times mentioned, and the words “before” and “after” exclude the Time mentioned. The words “from” and “after”, when used to determine a maturity Time, exclude the Time mentioned. The terms “first half” and “second half” of a month shall be construed respectively as the 1st to the 15th and the 16th to the last day of the month, all Times inclusive. The terms “beginning”, “middle” and “end” of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20<sup>th</sup>, and the 21st to the last day of the month, all Times inclusive.

Therefore, we suggest the relevant international rules should be cited in the Sales Contract, and in this case, it is advised to cite UCP600 in the translation. Thus, a clear understanding about this fuzzy time expression in the Sales Contract should be shown in its translation, which is to facilitate the fulfillments of the contract. When the translation of Sales Contract is done, it is not just a piece of translation on the basis of lexical level, but a guideline as how to fulfill the contract as well as the reference of some international rules.

### Conclusion

The above analysis reveals that time expressions are crucial parts in the Sales Contract. Based on Sarcevic’s translation theory, the legal translator’s main task is to translate a text that is of the same legal effect as the original text, under which circumstances the translator should not only understand the meaning of the words, and sentences, but also know how to realize such a sort of legal effect in the target language. The main purpose of translation of a Sales Contract is to make sure the smooth fulfillment of the contract, so the translator plays a vital role in dealing with the fuzzy time expression because it is an important guideline for the business person to prepare the documents for negotiation with the bank. Here, the translator is more than just a translator but a bilingual communicator to match equivalence of functions in legal texts from SL to TL and also illustrate a clear applicability of certain international rules to interpret those fuzzy time expressions in Sales Contracts.

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# A Study on Logic in Translating Criminal Law of the PRC

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*[Abstract] Logic is the science of thinking; its role in legal translating can never be underestimated because logic directs translators' mental operations during the entire process of legal translating. It plays an important role in helping translators simplify lengthy sentences, avoid ambiguity, and find equivalents.*

*[Keywords] logic; criminal law; legal translating; ambiguity; lengthy sentence; equivalents*

## Introduction

There is no doubt that there exists an intimate relation between logic and law, because logic helps build up the inner structure of laws (Lucas, 1998, p. 233). Logic, or reason, has been claimed by philosophers both as the special possession and the principal foundation of law since the time of Aristotle (Loevinger, 1952, p. 471). People who have made and administered the law, and those who have sought to understand it, have come directly or indirectly under the influence of logic (Patterson, 1998, p. 287). Therefore, legal translators, who spare no efforts to reproduce and transfer legal ideas from the source texts to the target culture, can never do a good job without logic, because translators may bring in ambiguity, misunderstandings and other unimaginable consequences that may cause failure of communication. Chinese scholars have realized the importance of logic for a long time. He (1997) pointed out that the maker and translator of legal texts should be able to command logic, understand legal concepts, and know how to judge, reason and prove. Li and Zhang (2006) argued that legal translators must be able to understand various logical relations among legal texts if they want to have an accurate and thorough understanding of the source texts. Thus, it would hardly be too much to say that the one single point on which all thinkers of legal translation agree is the necessity for the use of logic in the whole process of legal translating. This paper, through analyzing the text of Criminal Law of the PRC and its Amendments (hereafter referred to as the text), explores the application of logic in helping translators to unpack tortuous syntax, exclude ambiguity, and find equivalents during the process of translation.

## The Text of Criminal Law of the PRC

The text analyzed here is the legal text whose function is primarily prescriptive. Such text is regulatory instruments containing rules of conduct or norms (Šarčević, 1997, p. 11). It defines crime and imposes corresponding punishment. Due to criminal law's unique role played in the legal system, the text values much more precision, clarity, unambiguity and all-inclusiveness. While the efforts of legal draftsmen made to achieve these features force them to employ various linguistic devices. It can be found that articles within the text, in order to be precise and all-inclusive, prefer to use parallel structures and complex appositional structures. Pan (1985) indicates that the adoption of parallel structure in legal Chinese is an effective way of achieving accuracy and all-inclusiveness. Indeed, it works, but such adverse consequences as ambiguity and difficulty in comprehension also have been caused at the same time. What should the translators do to overcome these difficulties? Logic comes into play, and the following parts will explore the role of logic played in detail.

## Application of Logic in Criminal Law Translating

### *Logic in Helping Unpack Lengthy Sentences*

Bhatia (1994) points out that legislative writing in English has been long criticized for its obscure expressions, long-winded involved constructions, and tortuous syntax. Although the current situation of Legal Chinese has not gone so far as that of legal English, and the the complexity of lengthy sentences, indeed, it sometimes has made it difficult for translators to grasp the essence of provisions.

The text is composed of two parts: General Provisions and Specific Provisions. Most of the Specific Provisions are declarative statements that share the same Chinese structure “...的, 处.. (...*de1, chu4...*)”. For example: “投敌叛变的, 处三年以上十年以下有期徒刑 (Whoever defects to the enemy and turns traitor shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years)”. In fact, the Chinese structure “...*de1, chu4...*” equals to “if A then B” in English. “If” there is not only refers to the word “if”, but also includes “whenever”, “whoever”, and “wherever” etc. In logic, a sentence of the form “if A then B” [in symbols,  $A \supset B$ ], is called a hypothetical proposition (Encyclopedia Britannica, 2013) which most of the provisions within the text belongs to. Some provisions are simple ones, just like the example mentioned above; while some other are much more complex ones which cause translators lots of troubles in understanding. For example:

*第一百五十八条 申请公司登记使用虚假证明文件或者采取其他欺诈手段虚报注册资本, 欺骗公司登记主管部门, 取得公司登记, 虚报注册资本数额巨大、后果严重或者有其他严重情节的, 处三年以下有期徒刑或者拘役, 并处或者单处虚报注册资本金额百分之一以上百分之五以下罚金。*

*Article 158 Whoever, when applying for company registration, obtains the registration by deceiving the competent company registration authority through falsely declaring the capital to be registered with falsified certificates or by other deceptive means shall, if the amount of the falsely registered capital is huge, and the consequences are serious or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than one percent but not more than five percent of the capital falsely declared for registration.*

Article 158 (Chinese version) is hard to understand because the sentence is long and has lots of connectives, such as “或者 (*huo4zhe3*)”, the equal of “or” in English, and “并 (*bing4*)”, the equal of “and”. In logic, these words are called propositional connectives that determine the logical relations between simple sentences that are part of a compound sentence (Allwood, Andersson, & Dahl, 2006). This sentence is a multiple compound proposition from the perspective of logic. At the highest level, the sentence as a whole is a hypothetical proposition, resulting from the adoption of “...*de, chu...*” structure, the equal of “if A then B”. While within the sentence, conjunctive propositions (connective: *bing4*) and disjunctive propositions (connective: *huo4zhe3*) also exist and are combined together. Therefore, in order to properly unpack this sentence and clearly show the logic relations among different constitutes, various parts at different levels should be identified and marked with letters. The sentence can be unpacked as follows:

**Table 1. Breakdown of Article 158 Sentence**

Constitutes		Literally translated as		Marked as
申请公司登记使用虚假证明文件	虚报注册资本，欺骗公司登记主管部门，取得公司登记	Apply for company registration+ use falsified certificates	Falsely declare the capital to be registered+ deceive the competent company registration authority + obtain company registration	p
huo4zhe3 采取其他欺诈手段		or use other deceptive means		q
虚报注册资本数额巨大、后果严重的		If the amount of the falsely registered capital is huge, and the consequences are serious		r
huo4zhe3有其他严重情节的		or if there are other serious circumstances		s
处三年以下有期徒刑		be sentenced to fixed-term imprisonment of not more than three years		t
huo4zhe3处以拘役		or be sentenced to criminal detention		u
bing4/huo4zhe3处以虚报注册资本金额百分之五以上百分之五以下罚金		and/or be fined not less than one percent but not more than five percent of the capital falsely declared for registration		v

In accordance with the principle that logic relations are determined by the connectives, the structure of this sentence can be shown via mathematical formula:  $(p \vee q) \wedge (r \vee s) \rightarrow [(t \vee u) \wedge v] \vee v$  ( $\wedge$  means conjunction (and),  $\vee$  means disjunction (or), and  $\rightarrow$  means implication). The formula clearly shows the logic relations of different parts within Article 158, which is of great help for translators to collect their thoughts, making the provision look simpler and clearer. Thus, Article 158 can be translated as shown above.

### **Logic in Helping Exclude Ambiguity**

Although unambiguity is the common goal of all legal draftsmen, the meanings of words found in some legal texts are not always clear and unequivocal. They may be capable of being understood in more ways than one, they may be doubtful or uncertain, and they may lend themselves to various interpretations by different individuals (Schane, 2002, p. 167).

When language is capable of being understood in more than one way by a reasonable person, then we say ambiguity exists. If the ambiguity is obvious, it is called “patent,” and if there is a hidden ambiguity it is called “latent” (Lehman, & Phelps, 2005). A patent ambiguity is one that appears on the face of a document or writing because uncertain or obscure language has been used. Typical examples are characters like “以上 (more than)”, and “以下 (less than)”, whether the number before “以上 (more than)” itself is included or not. Controversy arises. Sometimes, even the punctuation mark may also cause ambiguity, and how to understand it will determine the translation. Here is an example:

第三十九条 盗窃公私财物，数额较大的，或者多次盗窃、入户盗窃、携带凶器盗窃、扒窃的，处三年以下有期徒刑、拘役或者管制，并处或者单处罚金；……《刑法第八修正案》

*Article 39 Whoever steals a relatively large amount of public or private property, commits thefts many times, commits a burglary, or carries a lethal weapon to steal, or picks pockets shall be sentenced to imprisonment of not more than 3 years, criminal detention or control and/or a fine; ... (Amendment VIII to Criminal Law of the PRC)*

Ambiguity in Article 39 (Chinese version) comes from the phrase “携带凶器盗窃，扒窃” (literally translated: carry a lethal weapon + steal + pick pockets). Some legal practitioners hold the view that the

behavior of picking pockets is not a crime and cannot be punished by Criminal Law unless a lethal weapon is carried when this behavior is committed. They believe that “盗窃 (steal)” and “扒窃 (pick pockets)” share the same modifier “携带凶器 (carry a lethal weapon)”, resulting from that “盗窃 (steal)” and “扒窃 (pick pockets)” are two phrases connected by the punctuation mark”, which, being unique to the Chinese language, is called *dunhao* in Chinese. Being similar to the comma in English, *dunhao* is a slighter pause mark, which usually used to set off items in a series, therefore, phrases connected by it are parallels and the act of “扒窃 (pick pockets)” will be punished only when a lethal weapon is carried. However, some other law experts do not agree. Professor Tian Wenchang points out that “携带凶器 (carry a lethal weapon)” is the modifier of “盗窃 (steal)”, but not “扒窃 (pick pockets)”, because the latter parallels the previous phrases in a higher level, which is also connected by *dunhao*, thus “扒窃 (pick pockets)” will have imposed criminal punishment without certain restrictions (Xiao & Lu, 2011, p. 4).

Ambiguity here seems to be caused by the punctuation mark *dunhao*, but as a matter of fact, the deep reason roots in the confusion about the sentence structure of Article 39. How to analyze the sentence structure is of paramount importance, for it determines the interpretation of provisions and decides what kind of pick pocket will be punished by the Criminal Law. At this moment, logic can help translators analyze the sentence structure and exclude ambiguity. In logic, as well as in linguistics, it is of great importance to know how any sequence of symbols is structured, what things go together and what things do not (Allwood, Andersson, & Dahl, 2006). Based on what was mentioned above, Article 39 is also a hypothetic proposition that can be unpacked and marked as follows:

**Table 2. Breakdown of Article 39**

Constitutes	Literally translated as	Marked as
盗窃公私财物	steal public, private property	o
<i>bing4</i> 数额较大的	a relatively large amount	p
<i>huo3zhe4</i> 多次盗窃	commit thefts many times	q
<i>huo3zhe4</i> 入户盗窃	commit a burglary	r
<i>huo3zhe4</i> 携带凶器盗窃	carry a lethal weapon to steal	s
<i>huo3zhe4</i> 扒窃	pick pockets	t
处三年以下有期徒刑	be sentenced to imprisonment of not more than 3 years	u
<i>huo3zhe4</i> 处以拘役	be sentenced to criminal detention	v
<i>huo3zhe4</i> 处以管制	be sentenced to public surveillance	w
<i>bing4/huo3zhe4</i> 处以罚金	be sentenced to a fine	x

With formulas, we write:  $(o \wedge p) \vee (q \vee r \vee s \vee t) \rightarrow [(u \vee v \vee w) \wedge x] \vee x$ . This formula shows that the constitute structures represented by q, r, s, t are all equals; thus, “扒窃 (pick pockets)” is not modified by “携带凶器 (carry a lethal weapon)”, and this Article can be translated as shown above.

### **Logic in Helping Find Equivalents**

Apart from helping translators to simplify sentence structures and exclude ambiguity of provisions, logic is also of great use in helping translators find the equivalents during legal translation, because most legal provisions around the world in nature, from the perspective of logic, share the same logic structure even though they can have different forms. Both legal Chinese and legal English are no exception. Thus, similarities make it possible for translators to find the equivalents during translation. While of course, because of great difference in culture and history, legal concepts in different legal systems can never be the same. But we explore the possibility of finding equivalents in terms of expression patterns.

In legal Chinese, Liu (2005) indicates that the structure of legislative provisions consists of three parts: condition, action and sanction. Take Article 103 Criminal Law of the PRC as example:

**Table 3. Structure of Article 103 Criminal Law of the PRC**

Chinese Version	English Translation	
煽动分裂国家、破坏国家统一的	whoever incites others to split the State or undermine unity of the country	condition
处	shall be sentenced to	action
五年以下有期徒刑、拘役、管制或者剥夺政治权利	fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights	sanction

While in legal English, Bhatia (1994) points out that the structure of legislative provisions is composed of three parts: case description, legal subject and legal action. A typical example will be 18 U. S. Code § 81 - Arson within special maritime and territorial jurisdiction:

*Whoever (legal subject), // within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to...or attempts or conspires to do such an act (case description), // shall be imprisoned for..., fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both (legal action).*

Even though linguistics in different countries name the structure of legislative provisions in different ways, the inner logic structures are the same. Actually, as early as 1969, Crystal and Davy (1969) had already put forward that the majority of legal sentences have one of the following structures: If X, then Y shall do Z. Or if X, then Y shall be Z.

Where “If X” stands for the description of case(s) to which the rule of law applies, “Y” is meant to be the legal subject and “Z” indicates the legal action (Crystal & Davy, 1969). Narrowing them down to the specific Criminal Law context, “If X” refers to the case descriptions to which the criminal punishment will be imposed; the legal subject refers to the person who has committed the criminal act or acts and the legal action refers to the action of imposing criminal punishment.

In legal Chinese, “ If X ”, or we say condition, takes the form of “ verb-object word group + 的 (de1)”, we call it “De Structure”, for example: 拐卖妇女, 儿童的 (anyone who abducts and traffics in a woman or child). The character “的” in Chinese can act as an auxiliary word, a pronoun, or an adverb. And the “的” of the “De Structure” in the criminal law context is a pronoun that is attached to the phrase or phrases to represent the person who commits the crime or crimes described by the “De Structure”. That is to say, the “De Structure” acts as the legal subject as well as the case description, which is a distinctive feature of the Chinese legal language (Lin & Ji, 2002, p. 21). While “If X” in legal English prefers the form of adverbial clause beginning with “Where”, “Whenever”, and “Whoever” etc., which can be called “Wh- Structure”, for example:

*Whenever a vessel, entitled to be documented and not so documented, is employed in a trade for... and if...the vessel...is liable to seizure and forfeiture....shall be prima facie evidence of the foreign origin of such merchandise. (19 U. S. Code § 1706a - Civil penalties for trading without required certificate of documentation)*

In logic, the inner structure of Chinese and English provisions is identical to each other. Both consist of condition, legal subject and legal action. Therefore, “Wh- Structure” in English can be regarded as the equivalent to “De Structure” in Chinese. While differences between Chinese and English provisions lie in that Chinese prefers to use coordinate or parallel structures and complex appositional

structures, English shows much more preference in using nominalized expressions, complex prepositional phrases, and qualificational insertions. But, they both share the same bare bones. As mentioned above is just only one simple example that shows us how logic can help us find equivalents during translation. More studies can be made to find classic expression patterns with the help of propositional logic and deontic logic.

### Conclusion

Logic honors consistency, unambiguity, validity, completeness and soundness (Bergmann, et al, 2009). It is of great help for translators in simplifying lengthy sentences, excluding ambiguity, and finding equivalents. Through a logic analysis of the sentence structure of legislative provisions, it makes it easier and much more precise for translators during comprehension and expression process. Logic's role in helping build up inner structure of law is fundamental, and thus accurate translations can never be achieved without logic. This paper holds that, along with precision, consistency, clarity, professionalism and standardization, logic should become a guiding principle for legal translators, because logic is the principal foundation of law, as well as a guarantee which ensures the realization of others.

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All provisions of U. S. Code within the article were retrieved from Cornell University Law School, [http://www.law.cornell.edu/uscode/text/18/81\\_](http://www.law.cornell.edu/uscode/text/18/81_)

# China's Legal English Teaching – A Case Study of China University of Political Science and Law

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*[Abstract] China's joining the WTO has produced a demand for talent with the ability of legal knowledge and skills, and the English language. Thus, legal English teaching is becoming more important. This paper introduces the current situation of China's legal English teaching with the data collected from China University of Political Science and Law through questionnaires and interviews, and suggestions are given based on the relationship between legal language, legal culture, and legal English.*

*[Keywords] legal English teaching; case study; legal culture; legal language*

## **Introduction**

In order to meet the need for Law-English compound style talent, nearly all law colleges and their foreign languages schools have set up legal English courses and even legal English majors. As for the present conditions and existing problems of legal English teaching, some scholars have done some investigation and analysis. They have pointed out several problems concerning the current state of teaching, such as the absence of a unitary syllabus for legal English course, a lack of scientific legal English teaching curriculum, a lack of unitary high-quality textbook, and a lack of variety of teaching methods and means. There is also a lack of qualified teachers, and weak teaching effects. In this paper, the authors will take CUPL as an example to investigate the status quo of China's legal English teaching under the guidance of ESP theories and try to give suggestions regarding the findings.

## **Design of the Study**

### ***Previous Study***

Legal English is within the range of ESP. ESP stands for English for Specific Purposes. Dudley-Evans and St. John (1998, pp. 10-20) defined ESP as a special kind of language to meet specific needs of different learners and make use of the underlying methodology and activities of such disciplines it serves such as Business, Law and so on. There have been studies on legal English involving the methods of ESP, both at home and abroad, and there are some very valuable findings. In regard to legal English teaching in China, a program was conducted by Professor Cheng Le to survey the current literature on how students use knowledge of legal English after graduation in workplace settings. Results were discussed in his 'Professional Legal English Training in China' in *TESOL Law Journal* in 2008. The participants of that program were practicing lawyers and the results basically revealed the use of legal English knowledge and difficulties in practice at that time. However, what the program didn't show is the current situation of legal English training, and that means, "Does the current legal English teaching fit the needs that were revealed in that survey?" Therefore, in this paper, another survey was conducted to investigate the status quo of legal English teaching in China.

Despite the fact that there were plenty of researches on China's legal English teaching, most of them mainly placed emphasis on the discipline status, pedagogy and language features of legal English. They rarely got involved in the outcome of this course and in what was still missing in the teaching content.

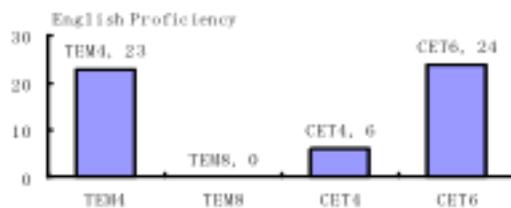
### ***Design of the Study***

China University of Political Science and Law (CUPL) has the top law school in China and was among the first to adopt legal English courses in 1994 and thus, has the lead experience in legal English teaching. The data collected from CUPL should be taken as typical to study China's legal English teaching. Therefore, the study in this paper is based on the results that stemmed from a questionnaire and interviews with students in CUPL. The participants included 60 students majoring in Law and English who had once attended at least one legal English related course. Interviews mainly focused on investigating the teaching content of the legal English course. The items of the questionnaire can be divided into the following categories:

1. Basic information of students
2. The motivation and expectation for taking legal English courses
3. Evaluation opinions on textbook
4. Opinions on pedagogy
5. Opinions on teaching contents
6. Self-evaluation

What is different from the past questionnaires is that there is a gap filling part of the Chinese to English translation of common legal expressions and the questions that are asked regarding Chinese legal systems.

**The basic information of students.** The basic information includes two items: the English and legal proficiency of the students. Questions in this part were designed separately for Law and English students. English proficiency refers to the Band of College English Test (CET) or the Test for English Major (TEM) that they have passed. Legal proficiency refers to the National Judicial Examination. Among the 30 law students, 27 have passed the exam and none of the English majors.



**Figure 1. English Proficiency**

**Table 1. The Motivation and Expectation for Taking Legal English Courses**

<b>Do you agree with the following statements?</b>	<b>No</b>	<b>Not sure</b>	<b>Yes</b>
I take legal English courses for the sake of future work.	7%	23%	70%
I think reading and translating should be focused on the most.	31%	14%	55%
I hope to be able to read legal texts in English through learning this course	10%	0	90%

**Table 2. Evaluation of Opinions on Textbook and Pedagogy**

Do you agree with the following statements?	No	Not Sure	Yes
Textbooks are very important.	13%	37%	50%
I think the current textbook we use is fine.	33%	53%	14%
<b>Which kind of textbook do you prefer?</b>	<b>English textbook of original edition 59%</b>	<b>English textbook written by Chinese 0%</b>	<b>Chinese-English Bilingual 41%</b>
My teacher always analyzes and translates the texts rather than teaches us other skills.	24%	43%	33%
I hope to exchange more with the teacher and classmates and do case analysis other than only listening to the teacher.	3%	17%	80%
I hope the teachers could be law majors who are proficient in English.	10%	14%	76%

**Do you think your legal English ability is improved? Are you satisfied with the current legal English teaching?**

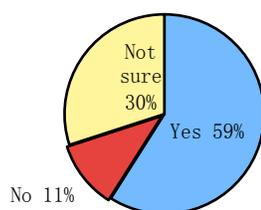


Figure 2

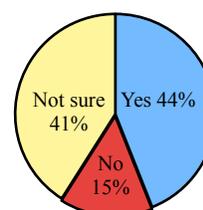


Figure 3

**Figures 2 & 3. Self-Evaluation**

**Gap filling of common legal and political expressions.** In this part, the students were asked to translate six expressions into English without any aid. The first three regarding the Chinese legal system are 全国人民代表大会 (National People’s Congress), 直辖市 (Municipality), and 人民检察院 (People’s Procuratorate); the other three were 国会 (Congress), 华盛顿特区 (Washington DC), and 上诉法院 (appellate court). The following are the suggestions students were asked to make regarding to these questions.

**Table 3. Student Suggestions Regarding the Chinese Legal System**

Is there any introduction to Chinese legal system in your legal English course?	A lot 0%	A little 76%	Barely no 24%
Do you think it necessary to increase the proportion of Chinese legal system in legal English teaching?	No 3%	Not sure 28%	Yes 69%
If necessary, which part should be the focus?	Legal terms with Chinese characteristics 29%	Translation of Chinese articles and provisions 43%	List your advice

## Results and Discussions

From Table 1 above, we can see most students have a clear attitude and purpose toward learning and hope to improve their ability to apply their legal English knowledge. 55% of the students feel they should focus the most on their ability of reading and translating. Regarding their current textbook in Table 2, only 14% are satisfied with it and more than half would like to import the original edition textbook and believe the textbook does matter. 80% of the students hope there could be more interactions in class. This survey also included items about teaching contents. More than half of the students feel the course hours should be extended and 89% think the courses should cover more legal aspects, for example more laws, which means the current curriculum does not contain enough specific laws for the students. 85% of the students think there should be more practical training. The outcome of some certain questions went to one specific option, for example, when being asked, “I hope to exchange more with the teacher and classmates and do case analysis other than only listening to the teacher”: 80% chose “yes”, which reflected, to a large extent, the contradiction and gap between the teaching and the students’ needs. From Figures 2 and 3, we can see there are still 41% of the students who have a positive position toward their legal English ability, and only 44% are satisfied with the teaching. In the gap filling part, interestingly, we found that no student could write them all. Among those who could fill in some of the blanks, the case was that they usually left more blanks in the column of Chinese legal system than that of the US. It seems that they are more familiar with British-American legal system. And the questions that followed can explain some in a certain amount.

In Table 3, we can see that in the students’ opinions, there are not enough contents about the Chinese legal system and 69% of them feel it is necessary to increase the proportion of Chinese legal system. Asked to give some advice, some students suggested that it was necessary to balance the proportion of civil law system and British-American legal system and that it would be better to help the students distinguish the expressions between the Chinese and English legal systems. Based on the data above, analysis and suggestions are made as follows:

### ***On Teaching Objectives and Curriculum Design***

In addition to the traditional training on students’ legal knowledge, it is necessary to provide them opportunities to confront real cases in which they could get acquainted with an actual case procedure and practice their ability to handle those cases, either in the form of on-site or moot court. It is not hard to tell from the results of the survey that the outcome of current legal English teaching is not as good as expected. From the students’ answers to the questionnaire, it is safe to say that they have high expectations for this course and they are motivated, to a large extent, by their desire to improve their career potential. However, this study shows a relatively wide gap between the actual outcome and their anticipation. Reconsideration should be adopted with respect to the teaching objectives and curriculum design. The main feature of legal English teaching is the “double high” teaching objectives. This refers to a high standard for students’ basic legal knowledge, as well as their English communicating ability (Du, 2006). Waters & Vilches (2001) also distinguished two kinds of needs, namely “foundation building” and “potential realizing”. According to these two kinds of needs, legal English teaching can be categorized as basic objective and higher objective. The former mainly stresses the reading and translating ability of the students to equip them with the capability of providing basic legal services and continuing their study independently after graduation. The latter is to foster legal intellectuals who can deal with legal issues

concerning foreign affairs. This means students should be provided with opportunities to apply their skills in practice as much as possible.

### ***On Teaching Content:***

**What kind of language should be taught in this course?** Courses such as court discourse analysis or court interpretation should be accessible and supplementary to students, and linguistics knowledge that is relevant to these courses should also be approachable. According to the result of the questionnaire and the interview, these courses have covered the introduction to legal systems, reading and writing of legal texts and legal translation, and so on, but seldom do they expose the students to the legal language itself. As the students who take these courses expect, or are expected, to be engaged in legal professions, it is necessary for them to have a knowledge of the features of legal language and how to use them, at least at a preliminary level.

The law in literate societies is a social institution that has become highly specialized, and predominantly written, and since it involves the imposition of societal norms, it is also associated with the deployment of power. These three characteristics are marked in the language of the law (Gibbons, 1999). The finding that language varies with its function led to the descriptions of “varieties” of language use referred to as *registers* (Reid, 1956; Halliday, McIntosh, & Stevens, 1964). The legal register may comprise the language of the law in legal documents (legislative texts, contracts, deeds, and wills), the language of the courtroom (e.g. the judge declaring the law, judge/counsel interchanges, and counsel/witness interchanges), the language of legal textbooks, and various types of lawyers' communication with other lawyers and laymen. The above language cannot be acquired unless a systematic and specific curriculum is carried out with a content of not only basic legal knowledge, but also a particular training on discourse or speech act analysis of specific cases.

**Legal culture should not be neglected.** According to cultural linguistics, legal language plays a significant role in legal culture. It is a product of legal culture; meanwhile, it also records and carries on the legal culture. Legal language helps to preserve, spread, and exchange the essence of the legal culture worldwide. Typical cultural characteristics of different nations are embodied in their languages and, at the same time, they restrict the language act. The importance of culture to communication reflects first in the nature of culture. E. B. Taylor, a famous British anthropologist, defined culture as “the complex whole which includes knowledge, belief, art, morals, laws, customs and many other capabilities and habits acquired by members of society.” We could not discuss language without the cultural context and what legal English will teach should be placed in that context.

The teaching and learning of legal English should be, of course, in the context of legal culture and that means studying the legal system of English-speaking countries as a cultural phenomenon. Generally, legal culture refers to the history, traditions, custom, systems, doctrines and other cultural subjects related to law. The major teaching content of legal English focuses on English-speaking countries and the huge difference between western and eastern cultures often makes it difficult to reach a substantial consistency, and hence, disagreements even on the same subject or phenomenon. Therefore, a relatively profound and comprehensive understanding of the legal culture in those countries is necessary for a better grasp of legal English. For the sake of Chinese students, it is also of great significance to make a contrastive study of legal cultures between China and the western world so as to learn the underlying reasons for the difference of legal phenomena in the two systems, which can also help them to better understand how the law works in society.

## Conclusion

There are fifteen thousand students studying in CUPL and they are taking legal English as either compulsory or optional courses. With such a large target population, legal English teaching should be of great importance. Therefore, this paper, which has investigated the status quo of the legal English teaching in CUPL and made suggestions from the perspective of the relationship between legal culture and legal language, is supposed to have a referential meaning for the reform and improvement of these courses. Hopefully, it can reflect a present situation of the mainstream legal English teaching in China as well since CUPL is one of the top law schools and has a leading experience in the curriculum construction of legal English. Nevertheless, the study and result in this paper are still to be supplemented in further researches.

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# On the Translation of Culture-Specific Metaphors in Legal Language

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*[Abstract] The metaphoric choices available to a user are filtered by the value and belief systems prevailing in different cultural contexts. This applies to legal discourse in regard to the legal metaphoric expressions. This article compares the different conceptualized mapping situations in English and Chinese legal language metaphors, such as the similarities and differences for the same conceptually mapped vehicles, and the cultural default in legal language metaphors. On the basis of the contrastive analysis, translation strategies are explored. Four different mapping conditions are generalized from cognitive perspectives, namely, equivalent mapping, domesticated mapping, transplanted mapping and mapping deletion. As legal metaphors demonstrate the semantic characteristics and cultural connotations of the text, the study of the interlingual conversion of legal metaphors can contribute toward achieving the precision and accuracy in translation.*

*[Keywords] legal metaphor; translation strategies; cultural connotations; conceptual mapping; vehicles*

Metaphor has been studied in philosophical, psychological and linguistic dimensions (Lakoff & Johnson, 1980; Davidson, 1984) and is generally regarded as a testing ground for theories of language comprehension. The conception system of metaphors is greatly based on social and cultural experiences of the language users. Following Lakoff and Johnson (1980, p. 12), “a culture may be thought of as providing, among other things, a pool of available metaphors for making sense of reality”. For Dagut (1976, p. 22), a metaphor is an “individual flash of imaginative insight”, a creative product of violating the linguistic system, and thus, highly cultural specific. This is related to the fact that people of a given culture use language to reflect their attitudes towards the world in general and the life of the community they live in particular. It poses extraordinary challenges in translation. As the meaning of the metaphoric lexical constituents has to be decoded from their referential meaning, the translator has to do double work intralingually by working out the meaning in the original text, as well as interlingually by finding out the equivalent meanings and similar functions of these expressions in the target language. This applies to legal discourse in regards to the cultural connotations in the metaphoric expressions. It, in turn, gives rise to the reason for our exploration of cultural specific metaphors in legal language translation, especially between culturally distinct languages, i.e. English and Chinese.

## **The Different Conceptualization of Vehicles in Legal Language Metaphors**

Lakoff and Johnson (1980, p. 5) defined metaphor as a means to understand one domain of experience (the target domain) in terms of another, a familiar one (source domain). To understand the meaning of a metaphor, the source domain is usually reflected onto the target domain in order that the latter can be comprehended from a new angle. More than linguistic entities or rhetorical phenomena, metaphor has a cognitive function in which human beings draw upon their human experience, non-human surroundings or even other concepts and images. Thus, metaphors are not just decorative elements, but rather, basic resources for thought processes in human society and the term “metaphor” is used to refer to this conceptual mapping. For this reason, we are going to look at the different mapping conditions of

metaphors in legal language contexts in terms of their cultural connotations before the study of the translation strategies.

### **Cultural Overlaps with the Same Conceptually Mapped Vehicles**

Based on the similar perception and cognition system of human beings, different nations may have similar conception systems that determine how we structure our languages. “Wall” is a word related to prison in both English and Chinese. “Iron” in English has its corresponding Chinese word as “*tie* 铁”. Since ancient times, sturdy “iron” has always been made into instruments of torture used in prisons and other similar places. This is the custom imprinted in Chinese legal culture. The cultural connotation born by the metaphor from the attributes of the word “iron” is reflected in the law-related vocabulary such as “*tie liao* 铁镣” (iron chain), “*tie chuang* 铁窗” (iron window, behind the bars), “*tie an* 铁案” (a case with irreversible final decision), and “*tie zheng* 铁证” (irrefutable evidence). Likewise, “the iron house” in English, means “behind bars”, a metaphorical term for prison. And “leg irons” means “fetters”. “An iron bound person” refers to a person “wearing fetter and handcuffs”. “An iron maiden”, instead of meaning “a strong woman” as it sounds, instead means “an iron woman scaffold”, an ancient brutal instrument of torture with the image of a woman, but equipped with internal spikes.

### **Different Cultural Specifications with the Similar Conceptually Mapped Vehicles**

Languages are known as the carrier or the mirror of human cultures and “it is through the vocabulary of human languages that we can discover and identify the culture-specific conceptual configurations characteristic of different peoples of the world” Wierzbicka (1992, p. 22). Different cultures conceptualize experiences in varying ways. Cultural contexts, being embodied by history, religion, customs, and aesthetic values, play a very significant role the different conceptual mapping conditions of vehicles. Some metaphors in both English and Chinese legal language derive from the legal profession. Abstract legal images are mapped into specific objects, such as a name of a place or specific figure in legal profession. Examples are “Justice Bao (Bao *Zheng* 包拯)” in Chinese and “Philadelphia lawyer” in English.

### **Cultural Default in Legal Language Metaphors**

As “default” generally refers to the failure to perform a task or fulfill an obligation, the author uses “cultural default” here to refer to the omission of cultural background information in the communication with the prospective audience. Linguistically, cultural default makes language concise, and therefore, communication efficiency is improved. Cultural default stimulates readers’ imaginations and makes them take part in active reading. However, with the absence of relevant knowledge shared by the author and the intended readers, cultural default brings great challenge for translators because of the fact that source and target readers do not share the same cultural background. As legal language metaphors are greatly culturally loaded, many of them are totally incomprehensible in another language.

“Yellow-dog contract” is a legal term sourced from labor law. It is a now-illegal labor contract whereby the employee agrees not to join a trade union or participate in any union activity as a condition of employment. The intention of such contract is to restrict employees’ freedom of association and to enervate the power of labor unions to defend against and negotiate with cooperates. Yellow-dog contract offends the basic rights of laborers regulated in the constitution and labor law, for which it is generally forbidden to sign a yellow-dog contract around the world (Garner, 2009). There seems to be little relation or similarity between “yellow dog” and “contract”. However, in English “a yellow dog” means “a

cowardly, despicable person”, which, when used as an attributive of “contract”, can vividly describe the deeds that employers pressure employees by undermining the unification of the latter. This metaphor compares the employers who attempt to overwhelm their workers’ freedom of association to a yellow dog. Such semantic relation maps the indicative meaning by supplementing into the context of employment contract.

### **Translation Strategies**

Metaphor has been categorized as a special form of rhetoric. Metaphor translation theory has been considered as an issue of interlingual transition on the rhetorical level for a long time. With the density of the linguistic, cultural and cognitive elements simultaneously in play, the translatability of metaphors has been the object of heated debate in translation studies over the last few decades. This paper will present the techniques and strategies of metaphor translation from the cognitive approach by analyzing the four mapping conditions of conceptual domains in accordance with the different conceptual mapping conditions of legal language metaphors as discussed above.

#### ***Equivalent Mapping***

With the same physical structure and psychological foundation, various nations have approximately the same cognition ability and may share similar conceptual domains. In line with the universality for the culturally overlapped metaphors, one of the most common possible methods contributed by scholars in translation is maximizing the level of equivalence in the target language. With this equivalent mapping of conceptual domains, the conceptual metaphors that arise directly from image-schemas should be translated as literally as necessary to ensure the preservation. It is also referred to as ‘metaphrase’ with its reservation of the original tenor, vehicle and ground. The word “loophole” originally means the arrow slits with narrow vertical windows from which castle defenders launched arrows from a sheltered position. In a legal context, a loophole means “an ambiguity, omission, or exception (as in a law or other legal document) that provides a way to avoid a rule without violating its literal requirements, especially a tax-code provision that allows a taxpayer to legally avoid or reduce income taxes” (Garner, 2009). It contravenes the intent of the law without technically breaking it, in the same way as the small slit window in a castle wall provides the only ready means of gaining entry without breaching or destroying the wall or a gate. Loopholes are searched for and used strategically in a variety of circumstances. A sentence in example can be, “The tax-free gift to the spouse is a perfectly legal loophole”. In Chinese translation, “loophole” is put into “*loudong* 漏洞” which is a complete transference of this image-schema as it totally matches the Chinese conceptual mapping. A commonly used phrase in Chinese referring to the conduct of “taking advantage of legal loopholes” is “*zuan falu loudong* 钻法律漏洞”.

#### ***Domesticated Mapping***

The notions of domestication and foreignization in translation theory were named by Lawrence Venuti (1995) in the twentieth century. These approaches to translation were based on the idea that in translating a text, the culture of the original text has to be accounted for in the translation, either by “adapting” it to the culture of the target language, and thus bringing the text to the reader (domestication), or by making the target language adapt to the culture of the source text, and thus taking the reader to the text (foreignization). “Barrier” in English is defined by in dictionaries as a physical structure “blocking”, “impeding” or “hindering” something. It is extended to some analogies as “patent barrier”, “trade barrier”, or “barriers to entry”, indicating the obstacles set to make it difficult to enter a given area. The

linguistic equivalence for “barrier” in Chinese is “*zhangai* 障碍” which means “obstacle”, without the similar extended analogical meanings. But the equivalent analogical meaning is found in another Chinese termed “*bi lei* 壁垒” which originally means “the walls of the ancient barracks, generally referring to fortifications and now mostly used figuratively to indicate the opposites or a dividing line” (Davidson, 1984). In this sense, the vehicle “barrier” is domesticated into “fortifications” in English-Chinese translation and is widely accepted as part of Chinese vocabulary.

### ***Transplanted Mapping***

As opposed to domestication, foreignization is a strategy of retaining information from the source text by highlighting the identity of the source language and protecting it from ethnocentric reduction of its cultural values. According to Lawrence Venuti, every translator should look at the translation process through the prism of culture, which refracts the source language cultural norms, and there is violence residing in the very purpose and activity of domestication. He strongly advocated the foreignization strategy, considering it to be “an ethnovegant pressure on [target-language cultural] values to register the linguistic and cultural difference of the foreign text, sending the reader abroad” (Venuti, 1995, p. 20). Foreignization is an estranging translation style designed to make visible the linguistic and cultural difference of the foreign text at the cost of fluency. It normally involves deliberately breaking the conventions of the target language to preserve the foreignness of the source text. A foreignizing translation aims primarily to reproduce, as much as possible, the “foreign elements” in the original, including the foreign cultural features, the foreign formal features, and the author’s particular rhetorical writing skills. Transplantation is a major method in the practice of foreignizing translation. In terms of translation of metaphors from a cognitive perspective, it is categorized as “transplanting mapping” in which two approaches will be illustrated.

**Complete transplantation.** Complete transplantation refers to the approach by which the translator totally retains in the target text both the figurative image and basic structure of the original. It is universally well known that the image of “scale” has been used as a symbol of law. The personification of justice balancing the scales of truth and fairness dates back to the Goddess Maat, and later Isis, of ancient Egypt. The Hellenic deities Themis and Dike were later goddesses of justice. Themis was the embodiment of divine order, law, and custom, in her aspect as the personification of the divine rightness of law. A more direct connection between “law” and the image “scale” is to Themis’ daughter Dike, who was portrayed carrying scales. “The scale of justice” is an expression coined in the literature of all categories with the evident presentation for the “justice of law”. Despite of the fact that the metaphor of law in Chinese originally is the “compass rule” rather than “scale”, the translation of the legal terms relating to “scale” has been done with transplanting mapping without exception. The vehicle “scale” is put into “*tianping* 天枰” in all linguistic contexts, which brings about a series of loaned terms associated with this metaphor.

**Transplantation with notes.** There are a lot of cases where some legal metaphors are based on legal, historical or literary allusions that are beyond the comprehension of target language readers. A complete transplantation method may bring about the loss of its legal meaning. Under such a circumstance, an alternative approach should be the employment of transplantation with notes. The elaboration of the legal contents in the notes can be a guarantee for the preservation of the original legal texts and by retaining the image; the source language culture is disseminated.

The “Blue law” has been part of U.S. legal history since the colonial period and prohibits certain types of commercial activity on Sundays, such as the sale of alcohol. The “Blue law” got its name because it was supposedly written on blue paper when first enacted by Puritan colonies in the 17th century (Garner, 2009). The Chinese translation is “*langse fagui* 蓝色法规 (plus notes)”.

With the globalization process at different levels, more and more legal metaphors in English have been introduced into Chinese language and more assimilation has occurred. Some figurative terms are first translated with notes but, as time goes by, the original metaphorical usage are more understood, accepted and finally adopted by virtue of their authenticity and visualized language feature. The exploration of the interlingual conversion of legal metaphors could share some insights in maximizing the communicative value of legal text, enriching the legal vocabulary of the two languages and eventually promoting legal cultural exchange.

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# A Joint and Balanced Effort in Legal Translators Training

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***[Abstract]** In the past, translators entered the profession of legal translation without formal training. They were educated with sound linguistic capability. They had a combination of linguistic skills and knowledge that produced good performance in general translation. However, legal translation has its specific features. Legal language, an ever-changing and living dialect, is perceived as carrying both a social and linguistic burden. Therefore, legal translation is a challenging profession for translators without formal training. Training legal translators is one area that needs cooperation between discipline specialists and teachers of English for legal purposes (ELP). This paper will examine both law teachers and language teachers' perceptions on legal translator training. Though they have different conceptualizations of legal translation, they jointly contribute a specific training need. Legal setting language training is particularly valuable for the potential legal translators.*

***[Keywords]** training; language capacity; legal subject matter; joint effort by teachers*

## Introduction

Translation is often perceived as a skill with nothing to do with intellectual challenge and creativity. It is an activity that anyone who has conversational or reading ability in two or more languages can perform automatically. However, the job of a translator is not as easy as translating software. A translator is required to be able to transpose the ideas, not the words, of the source text into the appropriate style and terminology of the target language. “The translator is a key factor in the process of importing and exporting ideas, concepts, rationales... He is also a vital go-between in operations and actions involving international cooperation... He is in fact an extremely powerful and critical agent facilitating and even at times enabling...exchanges throughout the world” (Gouadec, 2007, p. 6).

In addition, there is a growing translation market in specialized fields. Enormous numbers of texts and terminologies are fairly remote from anything like common everyday language. This general phenomenon is well understood as “specialization” (Pym, 1993). And with it, there is now a great demand for more competent and professional legal translators with the development of a global society and international business involved with laws affairs. It was reported that in China there were about 100,000 people engaging in translation, but only twenty were superior and professional legal translators (Gu, 2011). This sharp contrast evidences the importance of training professional legal translators and it is difficult to separate the career aspect from a consideration of the necessary training (Tinsley, 1976).

## Legal Translation and its Requirements for Legal Translators

“Translation, must meet a number of requirements, both in the message conveyed and the way it is conveyed” (Gouadec, 2007, p.5). With this logic, legal translation should subject itself to the attributes of legal language.

Legal language has its distinct attributes. In terms of the language itself, the top feature is the pursuit for accuracy, which is the essence of legal language. Accuracy means the best diction choice for a given context in legal settings. Sometimes, one minor error makes great loss. In addition, simplicity is also an

important pursuit. In nature, it means being simple and clear (Yang, 2005). To embody the complicated context in simple, but clarified target language, is an undertaking job. The use of legal language has its rules and principles, and terminology in particular (Gong, 2002). In the choice of sentence structure, it requires more parallel sentences and well-coherent narrative sentences, but with a strict restraint on questions, imperatives or exclamations (Zhang, 2009). In terms of discourse, it dislikes descriptions or lyrics. Instead, it calls for reasons and evidences. Therefore, the common approaches for expression are narration, exposition and argumentation. In terms of its style, ambiguity and confusion have no stand in the use of legal language. A desirable one is a serious, concise, no-biased, and simple style without individual subjective expression. Each communicator must follow these rules and codes in order to accomplish effective legal communication. Moreover, competent translation of legal texts demands broad basis knowledge of the subject matter and much more research and background reading. If a translator does not understand the subject matter, his translation would make no sense.

Most of the legal translators in the past were not full-time professionals. They were either lawyers with international experiences and good foreign language skill or graduates from foreign language majors. The authentic and systemic training programs, either at the university level or in a professional development level, were practically rare (Gu, 2011). Often, the legal translators in the past honed their skills by a long gradual experience of trial and error. A top legal translator had a talent for the use of language and experiences in legal settings. However, this traditional way of training and the few exceptional translator talents are unable to meet the growing demand for larger number of legal translators. In response to this new trend, legal translators training programs are urgently needed at universities, which can foster well-educated graduates in large numbers, as compared with other professional training organizations.

### **Perspectives from Law Teachers and ELP Teachers**

Training legal translators is one area that needs cooperation between law teachers and teachers of English for legal purposes (ELP). Though they have different conceptualizations of legal translation, they can jointly contribute to a specific training need. Legal setting language training is particularly valuable for potential legal translators as well as beneficial for these teachers' long-term professional development.

Law teachers, especially those who have international communication experiences and learning experiences abroad, are ideal trainers in legal translator training. But the dilemma lies in their ignorant attitudes towards legal translation, in the name of not having enough time and energy in legal translation teaching. Part of the reason is the low pay in legal translation. They assume that this burden of training job should be laid on foreign language teachers. However, one fact cannot be misread is that most of the classic legal translations have been accomplished by legal professionals who have good foreign language capacity. Moreover, we must clarify a point that linguistics and law are the most closely interconnected disciplines. Law is a profession about language (Stuart, 2006). Many scholars devote their interests into the relationship between language and the law, which range from problems of interpretation and beyond to the difficulties of legal translation, and further to the interrelation between language and the law in a variety of contexts, including criminal law, contract law, family law, human rights law, and EU law (Freeman & Smith, 2013). Legal translation, as an interdisciplinary area, can best combine the knowledge both in the linguistics and in the law. This is surely a field for developing the potential of a law teacher to its full. By teaching legal translation, a law teacher can also conduct more research in this given field and further practice and promote their research findings. They must be happy working on it. Thus, one way to

improve the current teaching staff is to encourage more law teachers with good language skills into the legal translator training program or to have more young law teachers who have an interest in this field into foreign language learning program in order to transfer their roles into interdisciplinary teachers.

People take it for granted that any translation can be categorized into the field of foreign language studies. There are often three well-established standards for a good translator: translational language competence, translational knowledge structure and translational strategic competence (Cao, 2008). These criteria can also be applied to the judgment for a good legal translator. Nevertheless, people who can meet these requirements and who are willing to engage in legal translation are rare in numbers. Cortazzi and Jin (1996) took a questionnaire study of Chinese students' expectations of a good teacher. They found that the top feature of a good teacher was their knowledge of the subject matter. Similarly, a good ELP teacher is expected to know the target language knowledge, as well as the subject matters. Genuinely, language difficulties have an adverse effect on effective teaching. But more seriously speaking, teacher-student interaction can be broken down because of insufficiency in subject matters. If the teacher as communicator does not have clear ideas and concepts due to a lack of necessary knowledge, then the very first step in the communication process is blocked, resulting in ineffective teaching (Brosh, 1996). Therefore, a good ELP teacher can constantly improve and refine their knowledge of the subject matter. One way to improve this status quo is to train foreign language teachers who have interest in law or who have had experience in legal translation professionally. Systematically, these teachers are lectured for legal knowledge by superior law teachers. They should also be included in the international law program for teacher development each year, such as academic communication or visits in foreign universities, institutions or law firms.

## **Discussion**

In the process of legal translation, language capacities are essential, but not sufficient. What is also needed is a perfect knowledge of relevant legal backgrounds and a full understanding of the subject matters involved in legal texts. "Translators are made not born and the role of learning processes must be understood and structured" (Dobson, 2012, p. 272). Therefore, there are many challenges for a joint-effort both by ELP teachers and Law teachers in multiple ways.

### ***Curriculum Design for Potential Legal Translators***

One challenge is to design curriculum scientifically, with the objective of fostering interdisciplinary talents as its core principle. Curriculum design in legal translator training has two orientations in terms of its consideration on students' majors (major in foreign languages or in law). As for students specialized in foreign languages, having a basis on solid language skills training, developing legal courses with purpose and in system is an important next step. Courses, such as Theory of Law, Principle of Law, Common Law, Civil Law, Procedure Law, Case Law, Economics, Legal Writing, and the like, are included in the training program. With intense readings of legal knowledge, students could grasp a clear, systemic and effective control of legal system both in China and in other countries. As for students specialized in Law, increasing more credit courses on Legal English (or other foreign languages), Classic Readings in Laws, Translation Theory and Practice, help students go into deeper research in the original language text which could promote their legal learning in the perspective of foreign language learning. In addition, the employment of a number of foreign teachers who are practitioners in legal affairs would be a better option

in a legal translator training program. These expert teachers in legal translation can design curriculum appropriate for practical training.

### ***Degree Program Developing in Legal Translation***

Besides fostering potential legal translators either in foreign language majors or in law majors, it is necessary to establish a degree program in legal translation at the graduate level. In China, some universities have initiated legal translation training programs. Certificate programs have been developed in particular in recent years. In 2003, CATTI (China Aptitude Test for Translators and Interpreters) was first written by many people who were committed to the potential career of translators or interpreters. A few years later, LEC (Legal English Certificate) became one of the essentials for legal translating jobs. In 2007, the proposal for MTI (Master of Translation and Interpreting) was approved and 15 universities initiated MTI degree programs, including Peking University, Beijing Foreign Language University, Fudan University and other top universities. In recent years, more than 150 universities in China have authorized MTI programs (Huang & Gao, 2010). If legal translators training programs culminate in a degree in translation, this would attract many students in this promising field. Law teachers and ELP teachers can co-work in the degree program with ELP teachers focusing more on language training and law teachers focusing more on subject matters.

### ***Legal Translator Training in Class and in Practice***

The legal translator training class is not that similar to other classes at universities which are often embodied in lectures where teachers inform unknown knowledge to students in various presentations and students are the passive receivers. It is also not similar to the currently popular students-oriented teaching that focuses on students' exploration and interest, but lacks effective class control, and thus, results in inefficient learning outcomes. It is a class with learning as its core, in which students are helped to be trained as professional practitioners by their teachers' guidance through a set of exercises and practices, such as case analysis, legal debate, mock court, interrogative discussion. As proven effective by years of teaching experiences, the case method and Socratic methods are strongly suggested in legal translators training class (Gu, 2011).

Training programs also aim to shorten the gap between training in class and practice in legal settings. Students are required to grasp translation theory and relevant skills, as well as practices in real settings or in simulated settings. To strengthen their professional performance, students are assigned to intern in international law offices and encouraged to take part in international conferences on laws as volunteers. A training base also helps their practice. It includes a legal translation workshop, a platform of bilingual corpus for legal translation, and a computer-assisted instrument. A workshop provides highly intensive practices for students, helping them "learn to translate" and "translate to learn" (Guo, 2011, p. 242). Experts also suggested the application of parallel corpora to translator training, based on the Chinese-English Parallel Corpora. A parallel corpus is an available instrument for reference or a platform for training, and its function can be seen in many ways (Wang, 2004). The corpora use in translator training is a specific area for further exploit and development. In addition, a computer-assisted instrument can facilitate training and learning effectively. A joint-effort by law teachers and ELP teachers is essential to accomplishing this training base.

### Implication

Research in this field now continues the debate on more academic legal translation training or more practical legal translation training. To clarify the objectives of translator training, there are often two divergent perspectives. One argues that translator training must take market demand and graduate employment as orientation (Mossop, 2000). The short-term goal is to help trainees upgrade their performance in translation to the practical and professional standards. Once the training comes to an end, they could devote themselves into the area of professional translation effectively. By contrast, the other states the training can't be diverted from the academic genre. It emphasizes the cultivation of translator talents in terms of the long-term development of translation as a discipline (Gouadec, 2007). Which option could better fit the current need for a good legal translator, more research, especially quantitative research might give an answer in the near future. Be it a more academic one, or a more practical one, the joint-effort by law teachers and ELP teachers is indispensable to legal translator training.

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# **A Computer-Aided Case Study on Equivalence in the Translation of Legal Texts**

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*[Abstract] In this article, the author makes a comparative study of the original texts of both the Contract Law and the Company Law of the People's Republic of China and their two English versions with the help of text analysis software. Through quantitative analysis of the data, together with qualitative analysis of some concrete examples taken from the translated versions, the author finds some linguistic features of both Chinese and English in the legal texts, and checks how well equivalence is achieved in the English versions of Contract Law of the PRC and Company Law of the PRC. Through the study, the author also hopes to shed some light on some practical skills for translating legal texts.*

*[Keywords] equivalence; translation of legal texts; Contract Law of the PRC; Company law of the PRC*

## **Introduction**

With its accession to the WTO and the strengthening of international cooperation, China has witnessed a proliferation of economic activities, which leads to the growing need for the translation of laws and other legal texts. Many scholars and people in the legal profession have done numerous researches on how the Chinese laws and legal texts can be effectively translated into English, but not many have been computer-aided and corpus-based. This is a case study of how well equivalence is achieved in the English versions of *Contract Law of the PRC* and *Company Law of the PRC* and how it can be applied to guide legal translation.

First, the two above-mentioned Chinese laws were made into text files before being made treatable with the help of the software ICTCLAS 3.0 (Institute of Computing Technology, Chinese Lexical Analysis System). Then they were examined in several aspects together with their two English versions by another software AntConc 3.3.5. During this process, some specific data (for example, high frequency words, word types, and average sentence length, etc.) were produced and were then compared carefully. The first English version of *Contract Law of the PRC* is from the database of Chinalawinfo (referred to as Version 1 hereinafter). So is the first English version of *Company Law of the PRC*. The second English version of *Contract Law of the PRC* was translated and compiled by John Jiang and Henry Liu (referred to as Version 2 hereinafter). The second English version of *Company Law of the PRC* was taken from the website of Chinadaily (referred to as Version 2 hereinafter).

## **Equivalence**

Equivalence, as a criterion, is always a keyword in translation studies. As equivalence doesn't involve the attitude of the translator, it seems more objective than the notion "faithfulness" which can both refer to the translator's attitude and the quality of the translation. This keyword has been used by many scholars in their discussion of translation theories and strategies, among which the most well-known must be dynamic equivalence (later adjusted to Functional Equivalence) put forward by Eugene A. Nida, a pioneer in the fields of translation theory and linguistics. The idea was that the translator should translate so that the effect of the translation on the target reader is roughly the same as the effect of the source text once

was on the source reader. Dynamic equivalence includes equivalence in vocabulary, syntax, discourse and style, among which Nida believed “the meaning is more important than the form” (Guo Jianzhong 2000, p. 67). In his monograph *Language, Culture and Translating*, Nida mentioned two examples to illustrate his idea. “This means that for the English idiom *to hit the ceiling*, Spanish may employ *tomar el cielo en las manos*, literally, ‘to take the sky in the hands.’ Similarly, for the English expression *to grow like mushrooms*, it is appropriate in Chinese to talk about ‘*growing like bamboo shoots*” (Nida, 1993, p. 121). Nida’s theory is applied in a series of translation studies, including legal translation, however, more emphasis is put on cultural communication and on discarding the form to maintain the meaning and culture of the original text.

In her monograph *New Approaches to Legal Translation*, Susan Sarcevic (1997, pp. 238-239) divided equivalence in legal translation into three categories, namely near equivalence, partial equivalence and non-equivalence. This classification is reasonable and sheds some light on legal translation.

In his article ‘On static equivalence in translating legal texts’, Professor Li Kexing (2010, p. 59), has reviewed several translation theories including dynamic equivalence, functionalism, foreignization and domestication, semantic and communicative translations, and has found that static equivalence is more applicable in legal translation than the above-mentioned translation theories or strategies. This is argued mainly from the perspectives of unique linguistic features and special functions of legal texts, namely, the static nature of legal language, informative nature of the translated versions, stereotyped writing style, rigidity of translation criteria and the restricted readership of legal documents.

In this article, the author intends to do a computer-aided case study by taking as objects the Chinese and English versions of both the *Contract Law* and the *Company Law of the People’s Republic of China*. With the help of some software for text analysis, the author hopes to find out how well equivalence is achieved.

### Findings and Analyses

After all the six text files were processed by AntConc 3.3.5, six groups of data were produced, each of which included word types, word tokens and a word list that sorted all the types of words in each legal text by their frequency. The data are presented in the following three tables.

**Table 1. Word Types and Word Tokens in *Contract Law of the PRC* and *Company Law of the PRC* and their English Versions**

Texts	Word Types	Word Tokens	Word Types/Word Tokens
<i>Contract Law</i> (Chinese)	1,674	16,651	1:9.95
<i>Contract Law</i> (English Version 1)	1,739	23,554	1:13.54
<i>Contract Law</i> (English Version 2)	1,745	25,115	1:14.39
<i>Company Law</i> (Chinese)	1,285	12,266	1:9.55
<i>Company Law</i> (English Version 1)	1,390	18,053	1:12.99
<i>Company Law</i> (English Version 2)	1,380	18,528	1:13.43

From the above table, it is clear that despite the minor differences in word tokens, the numbers of word types in the two English versions of both *Contract Law* (1739 and 1745) and *Company Law* (1390 and 1380) are almost the same. Also, these figures are very close to the word types in the original Chinese legal texts. This indicates that because of the precision of the legal language, translators are not entitled to a high degree of subjectivity.

In the original Chinese version of *Contract Law of the PRC*, there were 16,651 word tokens (in terms of Chinese phrases rather than each single Chinese character, the number of which amounted to 32,897), and the word types were 1674. The ratio of word types and word tokens for the Chinese *Contract Law* is 1:9.95. Similarly, the ratio of word types and word tokens for the Chinese *Company Law* is 1:9.55. As for the two English versions of each law, the ratios are 1:13.54 and 1:14.39 for *Contract Law*, which are very close to those for *Company Law* (1:12.99 and 1:13.43). These figures demonstrate a high level of similarity between both the two Chinese laws and their two English versions. This may prove the static nature of legal language.

If the previous table only gives us a general view of some features of legal texts, then Table 2 presents a more detailed view of the two Chinese laws. The left part of the table presents data concerning *Contract Law of the PRC* while the right part of the table presents data concerning *Company Law of PRC*.

**Table 2. Top 10 High Frequency Words in the Chinese Versions of *Contract Law of the PRC* & *Company Law of the PRC***

Ranking	Frequency	Words	Ranking	Frequency	Words
1	1354	的 (similar to 'of')	1	792	的 (similar to 'of')
2	570	人 (person/people)	2	689	公司 (company)
3	478	条 (article)	3	244	条 (article)
4	396	合同 (contract)	4	239	股东 (shareholders)
5	342	或者 (or)	5	206	或者 (or)
6	322	应当 (shall)	6	177	应当 (shall)
7	286	约定 (agree/prescribe)	7	171	规定 (prescribe/require)
8	233	物 (matter)	8	130	股份 (shares)
9	194	可以 (may)	9	123	由 (be subject to)
10	180	当事人 (party)	10	110	责任 (responsibility)

From Table 2, we can see that the words, which appear very frequently in the two original Chinese texts, are surprisingly similar. In both laws, the word that appears most is “的” (*de*), which is very similar to the English word “of” that indicates possessive. Also, the word “条” (*tiao*, which means article) is usually a high frequency word and its frequency in each law is usually close to the number of articles included in the law. Words like “合同” (*hetong*, which means contract) and “公司” (*gongsi*, which means company) clearly indicate the themes of the laws under discussion. The word “应当” (close in meaning to the English auxiliary verb “shall”) is usually used in laws, regulations and other legal texts to indicate obligations and prescriptions and naturally, it becomes a high frequency word in almost every authoritative legal text. Similarly, the fact that the verbs “约定” (*yueding*, which means to agree/prescribe) and “规定” (*guiding*, which means to prescribe/require) rank the seventh in the above table is also not surprising. Translators can easily find equivalents for nearly all the high frequency words listed in table 2, which can be classified as near equivalence proposed by Susan Sarcevic (1997:238-239).

The noun that ranks highest in the *Contract Law of the PRC* is the word “人” (*Ren*, which means “person/people”). This suggests that the law is related to a variety of people since the character “人” is often put together with other words that mean actions in Chinese laws and regulations to refer to different kinds of people. The word that ranks tenth in frequency in the *Contract Law* “当事人” (*dangshiren*), which is regarded as one phrase by the Chinese Lexical Analysis System, also refers to a person or a type of people and is often translated into “party” or “parties”. The word “股东” (*gudong*) that ranks the fourth infrequency in the *Company Law*, although without the Chinese character “人”, still refers to a type of people.

The above data has more or less reflected that legal texts, compared with other forms of texts, are more static than dynamic. Translators of literary works sometimes give full play to their subjectivity and their translations often show different styles. Whereas translators for legal texts (esp. authoritative ones) seem to enjoy little freedom as legal texts are much more serious and allows no mistakes.

How did the translators do their jobs while translating *Contract Law* and *Company Law of the PRC*? An examination of the following table will provide a general picture. Still, the left part of the table presents data concerning the English versions of *Contract Law of the PRC* while the right part of the table presents data concerning the English versions of *Company Law of the PRC*.

**Table 3: Top 10 High Frequency Words in the English versions of *Contract Law of the PRC* and *Company Law of the PRC***

Ranking	Words (Version 1)	Freq.	Words (Version 2)	Freq.	Ranking	Words (Version 1)	Freq.	Words (Version 2)	Freq.
1	the	3210	the	2875	1	the	2146	the	2232
2	of	988	of	1177	2	of	1174	of	1356
3	to	647	to	694	3	<b>company</b>	599	<b>company</b>	586
4	<b>shall</b>	502	in	537	4	<b>shall</b>	477	<b>shall</b>	508
5	or	491	or	515	5	to	449	a	425
6	<b>article</b>	475	a	508	6	a	447	to	410
7	a	458	<b>contract</b>	507	7	and	404	and	405
8	<b>contract</b>	444	<b>article</b>	471	8	or	334	or	334
9	in	434	and	406	9	be	265	be	283
10	and	411	<b>shall</b>	370	10	by	248	by	250

It is obvious that in all the above four English versions, functional words (definite and indefinite articles, prepositions “of”, “to”, and “in”, as well as conjunctions “or” and “and”) are very often used. This may not only suggest that English is a hypotactic language, but also indicates that the texts are rather formal. Besides those functional words, the words that appear most frequently in the two English versions of *Contract Law of the PRC* are “contract”, “article”, and “shall”, which correspond to the Chinese high frequency words “合同” (*hetong*), “条” (*tiao*), and “应当” (*yingdang*), listed in Table 2. The word “contract” reveals the theme of the law. Words like “article” and “shall” also clearly indicate the common features of legal texts. According to Susan Sarcevic (1997, p. 21), because of the special social functions and practical value of legal texts, legal translation should first achieve precision and accuracy in order to maintain the authority of the legal texts. This may explain the many correspondences of the high frequency words in both Chinese and English versions of the legal texts concerned.

One may notice that the English equivalent to “人” (*ren*) is missing in the above table. In order to find out the reason for the seemingly “inequivalence”, the author retrieved the articles with the Chinese character “人” (*ren*) from *Contract Law of the PRC* and did a close study on their English versions. Here are two examples:

Example 1:

第四百一十三条 因受托人死亡、丧失民事行为能力或者破产，致使委托合同终止的，受托人的继承人、法定代理人或者清算组织应当及时通知委托人。……  
(Contract Law)

Version 1: Article 413 – If the commission contract is discharged as a result of the death, incapacitation or bankruptcy of the agent, the heir, legal agent or liquidation team thereof shall timely notify the principal. ...

Version 2: Article 413 – Heir’s Obligations in Case of Agent's Incapacitation

If the agency appointment contract is discharged as a result of the death, incapacitation or bankruptcy of the agent, the heir, legal agent or liquidation team thereof shall timely notify the principal. ...

Example 2:

第二十八条 受要约人超过承诺期限发出承诺的，除要约人及时通知受要约人该承诺有效的以外，为新要约。(Contract Law)

Version 1: Article 28 – Where an **offeree** makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the **offeror** promptly informs the **offeree** of the effectiveness of the said acceptance.

Version 2: Article 28 – Late Acceptance An acceptance dispatched by the **offeree** after expiration of the period for acceptance constitutes a new offer, unless the **offeror** timely advises the **offeree** that the acceptance is valid.

As is seen from the above two English versions of Article 413, the Chinese phrases (××人), which refer to certain types of people, usually have equivalents in English. These equivalents are so established and static that no matter how different the translators are, they will make the same choices in their translations.

The second example shows a usual way to translate the Chinese phrases with the character “人”(××人) – adding suffix “-or”, “-er”, or “-ee” etc. Other examples include obligor (义务人 *yiwuren*), obligee (权利人 *quanliren*), warehouseman (保管人 *baoguanren*), hiree (承揽人 *chenglanren*), hirer (定作人 *dingzuoren*), buyer (买受人 *maishouren*) and seller (出卖人 *chumairen*). Also, the keyword “shareholders”, which ranks fourth in frequency in the Chinese version of *Company Law of the PRC*, belongs to this group.

It may also be noticed that Version 1 of *Contract Law* tends to use “shall” more often than Version 2, so the author did a research by retrieving the articles with the word “shall” from *Contract Law of the PRC* and tried to find out the reason for the difference. A typical example is chosen and is listed below.

Example 3:

第四十三条 当事人在订立合同过程中知悉的商业秘密，无论合同是否成立，不得泄露或者不正当地使用。泄露或者不正当地使用该商业秘密给对方造成损失的，应当承担损害赔偿责任。(Contract Law)

Version 1: Article 43 – A trade secret the parties learn in concluding a contract **shall not** be disclosed or improperly used, no matter the contract is established or not. If the party discloses or improperly uses such trade secret and thus causing loss to the other party, it **shall** be liable for damages.

Version 2: Article 43 – Trade Secrets; Liability for Disclosure or Improper Use

A party **may not** disclose or improperly use any trade secret which it became aware of in the course of negotiating a contract, regardless of whether a contract is formed. If the party disclosed or improperly used such trade secret, thereby causing loss to the other party, it **shall** be liable for damages.

From the above example, it is clear that instead of applying “shall” all the time, translators sometimes use “may”, which is not as forceful as “shall”. This may explain the different frequencies of the word “shall” in the two English versions of *Contract Law of the PRC*. The above example indicates

that although the Chinese word “应当” (*yingdang*) is usually translated into “shall” (and similarly “必须” *bixu* is translated into “must”), translators do not seem to have a unified opinion for the translation of “不得” (*bude*) and they sometimes make their choices after judging from the context. According to Professor Li Kexing (2007, p. 59), “shall” is often overused in legal documents. If the original text indicates permission or a choice instead of a mandatory requirement, it is not appropriate to use “shall”. The Chinese word “不得” (*bude*) has a rather forceful tone, so it seems more proper to translate it into “shall not” and “may not” is just a partial equivalent.

If we examine the figures shown in the right section of Table 3, we may find that the two English versions of *Company Law of the PRC* seem extremely similar to each other in terms of high frequency words. Also, both versions correspond to the original text to a large extent, which is reflected from both the theme word “company” and the auxiliary verb “shall”. This may well justify the static equivalence principle.

It is widely known that words with prefixes “here-” and “there-” are often found in legal texts. These words help to avoid repetition or ambiguity and maintain the authoritativeness in legal texts. In his article ‘Translation of Legal and Contract Documents’, Professor Fu Weiliang listed several words of this type (2002, p. 42). The author studied the use of these words in the above-mentioned English versions with the help of the computer and the result is presented in the following table:

**Table 4. Use of Words with Prefixes “here-” and “there-” in the English Versions of *Contract Law of the PRC* and *Company Law of the PRC***

<b>words</b>	<b>hereafter</b>	<b>hereby</b>	<b>herein</b>	<b>hereof</b>	<b>hereto</b>	<b>hereunder</b>	<b>herewith</b>
<b>English Versions</b>							
<i>Contract Law 1</i>	1	45	3	23	12	4	2
<i>Contract Law 2</i>	2	54	2	68	12	7	2
<i>Company Law 1</i>	0	4	1	13	3	0	0
<i>Company Law 2</i>	0	2	1	15	3	0	0
<b>words</b>	<b>thereafter</b>	<b>thereby</b>	<b>therefrom</b>	<b>therein</b>	<b>thereon</b>	<b>thereof</b>	<b>therewith</b>
<b>English Versions</b>							
<i>Contract Law 1</i>	0	0	7	0	4	0	0
<i>Contract Law 2</i>	2	37	3	2	5	29	1
<i>Company Law 1</i>	0	0	0	0	0	0	0
<i>Company Law 2</i>	0	0	2	0	0	0	0

From the above table, it seems that the translators of *Contract Law* tend to choose some words (“hereby” and “hereof”) over others. The translators of the second version (John Jiang and Henry Liu) seemed to have made great efforts to make their translation more formal and accurate with more uses of “thereby” and “thereof”. The two English versions of *Company Law* also showed certain uses of words with the prefix “here-”.

After a close examination of the six legal texts from word level, the author hopes to study them from sentence level. By using the “seek” and “replace” functions of Microsoft Word, the author found out the number of full stops in each of the six legal texts under discussion, which was also the number of sentences in each text. Then the average sentence length in each text could easily be calculated by using division. The results are shown in Table 5.

**Table 5. Average Sentence Length in the Chinese and English Versions of *Contract Law of the PRC Company Law of the PRC***

Texts	Word Tokens	Number of sentences	Average sentence length (word)
<i>Contract Law</i> (Chinese)	16,651	708	23.52
<i>Contract Law</i> (English Version 1)	23,554	740	31.83
<i>Contract Law</i> (English Version 2)	25,115	736	34.12
<i>Company Law</i> (Chinese)	12,266	478	25.66
<i>Company Law</i> (English Version 1)	18,053	531	34.00
<i>Company Law</i> (English Version 2)	18,528	536	34.57

From the above table, we can see that the sentences in the translated English versions are always longer than those in the original texts. In other words, Chinese is more succinct than English and more English words are needed to express the same meaning expressed by Chinese. The average sentence lengths of both versions of the two Chinese laws seem to be stable, which also indicates the static nature of legal texts. Here are two examples from *Contract Law*:

Example 4:

第一百七十四条 法律对其他有偿合同有规定的，依照其规定；没有规定的，参照买卖合同的有关规定。(20 Chinese words)

Version 1: Article 174 – If there are provisions in the law for other non-gratuitous contracts, such provisions shall apply; in the absence of such provisions, reference shall be made to the relevant provision on sales contract. (32 English words)

Version 2: Article 174 – General Applicability to Contracts for Value

For any other contract for value, if the law provides for such contract, such provisions apply; absent any such provision, reference shall be made to the relevant provisions governing sales contracts. (37 English words)

Example 5:

第二百二十二条 承租人应当妥善保管租赁物，因保管不善造成租赁物毁损、灭失的，应当承担损害赔偿责任。(21 Chinese words)

Version 1: Article 222 – The lessee shall keep the lease item with due care and shall be liable for damages if the lease item is damaged or lost due to improper care. (30 English words)

Version 2: Article 222 – Lessee's Obligation of Due Care

The lessee shall keep the lease item with due care and shall be liable for damages if the lease item was damaged or lost due to improper care. (33 English words)

In the above examples, both Chinese articles have around 20 words, whereas the English sentences usually have more than 30 words. The second version is longer than the first version probably because almost one caption, which summarizes the main idea with a noun phrase, is added to each article. This makes the version more reader-friendly and can be regarded as a kind of dynamic equivalence.

The data in Table 5 may suggest that while translating, translators need to be aware that, although long sentences have to be employed for the sake of accuracy, the translated legal texts should also be made concise so as to be effective. So the number of words used in a certain sentence should be brought under control.

## Implications and Conclusion

Through the examination of both the Chinese and English versions of *Contract Law of the PRC* and *Company Law of the PRC* from the word level and sentence level, the author provides a lot of data that suggest that certain legal texts share some commonalities. The quantitative evidence not only justifies the static nature of legal texts, but also indicates that if translators keep the principle of equivalence in mind and follow certain rules, they tend to do the translation of legal texts well.

At present, many scholars are endeavoring to unify certain translated legal terms, even the most frequently used sentence structures (like "...shall...", if..."). For example, in the book *Legal Texts and Legal Translation*, Li Kexing and Zhang Xinhong (2006) advised that "must" should be translated into "必须" (*bixu*), while "shall" should be translated as "应当" (*yingdang*). In his article "The writing and translation of conditional sentences in Legal English", Professor Li (2008) also listed six groups of words that can be used to lead conditional sentences in English Legal texts. Recent years have witnessed the development of translation software. If more of the above-mentioned static translated legal terms and structures are written into software, the efficiency and quality of legal translation will be greatly improved.

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# Strategies on Legal Translation Based on Legal Language's Accuracy and Ambiguity

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*[Abstract] All legal rules are expressed in languages; therefore, there is no law out of languages. Legal language has the characteristics of not only accuracy, but also ambiguity, of which the former indicates that legal languages should be of ideography, precision, consistency and authority and the latter demonstrates that ambiguity is an unavoidable, and even "indispensable," part of legal languages. Thus, translators of legal languages should well understand the two features and follow the following strategies when translating: consistent terminology, normative syntax, ideographic equivalence and matching ambiguity.*

*[Keywords] accuracy; ambiguity; translation strategy; legal language*

## Introduction

Language is the carrier of the law, and language is inseparable from the law in either legislative activities, judicial activities, or legal education activities. All legal rules are expressed by languages in the form of legal terms or legal jargon, therefore, there is no law out of languages. Legal language has distinctive features; accuracy is the main one, and ambiguity is an unavoidable one as well. These characteristics shall be given full attention in the translation of legal texts otherwise the translation effect can, by no means, be achieved.

## Accuracy and Ambiguity of Legal Languages

The features of legal languages vary from different points of view. From the view of language style, legal languages are, by nature, solemn, exact and plain; from the view of lexis, they are unique, specific and socialized; from the view of function, they are, by nature, communicative, transformative and dialogic; from the view of semantics, they are certain and uncertain; and from the view of pragmatics, they are accurate and have ambiguity (Yang, 2005; Xiao, 2012; Ma, 2003). This article, focusing on the pragmatics of legal languages, will respectively analyze the two features: accuracy and ambiguity of legal languages.

### *Accuracy of Legal Languages*

Law is the social norm of adjusting human behaviors, and the normative act of law lies in its role of guidance, evaluation, predication, education and correction. The above roles of law determine that legal languages shall be featured by accuracy (Su, 2009), which is further interpreted as ideography, precision, consistency and authority.

First, legal languages shall be ideographic. Legal languages are the tools for the legislators and judiciaries to express their intentions. Legal languages differ from daily life languages in that the latter, without the context, embodies various meanings. For example, people have different understanding of the sentence "I didn't say she took my bag": (1) I didn't say it, but somebody else said that. (2) I didn't say indeed. (3) It was not she, but somebody else who took my bag. (4) Though she didn't take it, she surely touched it. (5) She took another's bag. (6) She took other things instead of my bag. On the contrary,

multiple understandings shall not exist in legal languages, because law is the social norm. When legislators express their intentions by means of legal languages, they hope every single person holds the same understanding on each specific legal rule. Also judiciaries are expected to hold one understanding only to legal rules when they are applying the law (Su, 2009).

Second, legal languages shall be precise. Law as the clear-cut social norm, shall be precisely written by legal languages. To the social public, only accurate legal languages can guarantee accurate understanding of law, and thus, the public tends to behave themselves properly according to the law they understand (Li, 2007).

Third, legal languages shall be consistent. Consistency is the request on the logic of legal languages. Only when the public holds a consistent understanding on law, can law become the norm to guide people's behaviors. The consistency of understanding relies on the consistency of expression, therefore every legal definition, every legal principle, and every legal rule shall be expressed consistently within one legal system (Li, 2007). The consistency in legal languages demonstrates itself in logical rule, grammatical rule, way of expression, and semantic connotation as well.

Last, legal languages shall be authoritative. What legal languages express is the national will. National will shall be delivered in the way of an absolute command, which must be complied without any doubt. In this way, legal languages shall be authoritative and imperative, other than persuasive and didactic (Su, 2009).

### ***Ambiguity of Legal Languages***

Although accuracy is the main feature of legal languages, ambiguity, to some extent, still exists in legal languages as well. The ambiguity of legal languages originates from the following factors. First, there is a "gap" between the legal mind and legal languages, because the mind cannot be wholly expressed by language, thus resulting in the inaccuracy of legal expressions (Su, 2009). Second, language itself embodies double characteristics of accuracy and ambiguity, which is the reason why ambiguity is unavoidable in legal languages. Ambiguity of legal languages is deeply rooted in the ambiguity of language itself. Third, the limited cognitive ability of human beings causes the ambiguity of legal languages. On one hand, constrained by time and cognitive ability, human beings cannot define all the legal phenomena, and there is inevitable a gap left in the legal documents made by them, thus causing the limit of law. On the other hand, in order to maintain the integrity of law and to punish all crimes, law is used to adjust all kinds of social activities. Due to the limited cognitive ability of human beings and un-predictive legal phenomena, a blank is bound to exist, which is, by no means, depicted by accurate languages. From this aspect, the ambiguity of legal languages is functioned to overcome the limit of law (Wang, 2013).

### **Strategies on Legal Translation**

The translation of legal documents is different from the translation of literary works. In the translation of legal documents, accuracy is given full priority and also ambiguity is given appropriate consideration as well. Legal translation shall obey the following strategies:

#### ***Consistent Terminology***

Legal terminology is the language of special purpose, which is widely accepted by linguists. When translating legal terms, translators should follow the strategy of making the terminology consistent in source language and target language. If, within one body of law, one legal term in the source language is

translated into different versions in the target language, or if between two bodies of law there is great discrepancy in the translation of legal terms, the accuracy and authority of legal languages will be greatly doubted.

The need to deal with this specialized terminology shows that only a translator acquainted with both legal systems can undertake the task. Non-specialized translators, even with the highest degree of linguistic knowledge, are simply unable to translate some legal texts. This type of translation requires not only knowledge of the law in general, but also solid acquaintance with the specialized field, its doctrines, and particular theoretical models (Rotman, 1995).

Currently in Mainland China, the legal terminology translation lacks consistency, which results from not only the unprofessional level of legal terminology translation in the whole country, but also the inadequate attention given to the standardization of legal terminology translation (Qu, 2012). Take “consideration” for example. The English legal term “consideration” is translated into Chinese as (1) “对价” (*in Pin-yin: dui jia*) (*Oxford Law Dictionary*, Chinese Translation); (2) “约因” (*in Pin-yin: yue yin*) (*Encyclopedia Britannic*, Chinese Translation); (3) “报酬” (*in Pin-yin: bao chou*) (*Concise Chinese English Dictionary of British Law*, Hongkong Edition). Among the three versions, “报酬” is seldom used, while “对价” and “约因” have been co-existing for a long time. The version of “对价” focuses on the notion of “paid exchange”, and the version of “约因” reflects the key element of contracts in Common Law (Yu, 2009).

Academic contention leads to inconsistency of legal terminology translation (such as “consideration” discussed above), but not all the inconsistency of legal terminology translation is caused by academic contention, more comes from the negative attitude towards legal translation. For example, the Chinese word “监管” (*in Pin-yin: jian guan*) is translated into “govern” (version one), “regulate” (version two), and even “supervise” (version three). “Labor relations” is wrongly translated into “劳工关系” (*in Pin-yin: lao gong guan xi*). The correct translation is “劳资关系” (*in Pin-yin: lao zi guan xi*). “Afforestation law” is wrongly translated into “森林法” (*in Pin-yin: sen lin fa*); the correct translation is “造林法” (*in Pin-yin: zao lin fa*). The above examples violate the consistency strategy of legal terminology translation, which deviates from the accuracy feature of legal languages. Therefore, the strategy of being consistent should be adopted in legal terminology translation, legal terms in the source language should be translated into standardized legal terms in the target language.

### ***Normative Syntax***

According to Du (2004), the feature of syntax in legislative languages is in that declarative sentences are often used, including the statement of facts and the declaration, while both interrogative and imperative sentences are barely used. Besides, the grammatical components in declarative sentences are relatively complete, and noun phrases are largely used. Also, to contain large information in legislative language, the method of parallel is mainly adopted to express the detailed content. Therefore, when translating fixed expressions, modal auxiliaries, and long sentences of legal languages, translators should keep the strategy of making the syntax normative in mind. (The following three examples are from *Understanding English Contracts* by Wang Hui, 2007.)

#### **Example 1: The translation of the fixed expressions**

KNOW ALL MEN by these presents that we \_\_\_\_\_ (bank’s name) having our registered office at \_\_\_\_\_ (hereinafter called “the bank”) will be bound unto \_\_\_\_\_ (the owner’s name) (hereinafter called “the owner”) in the sum of \_\_\_\_\_ for payment well and truly to

be made to the said Owner, the Bank will bind itself, its successors and better assignee by these presents.

In this example, “Know all men by these presents” is the fixed expression in the legal English; it means “according to this document, it is declared that...”, so when translating the sentence, normative syntax should be given to the Chinese version, and it should be translated as the follows:

根据本文件, 兹宣布, 我行, (银行名称), 其注册地点在 (以下简称本银行) 向(业主名称) (以下简称本业主) 立约担保支付 (金额数) 的保证金。本保证书对本银行及其继受人和受让人均具有约束力。

#### **Example two: the translation of modal auxiliaries**

One party to a contract that is not able to perform the contract because of force majeure shall give a notice to the other party in time so as to reduce the probable losses to the other party and provide evidence within a reasonable time limit.

In this example, “shall” is a modal auxiliary. The word “shall” carries an obligation or a duty in legal texts, as opposed its common function in the general English, which expresses futurity. “Shall” in legal English is often translated as “应”.

当事人一方因不可抗力不能履行合同的, 应当及时通知对方, 以减轻可能给对方造成的损失, 并应当在合理期限内提供证明

#### **Example three: the translation of long and complex sentences**

In circumstance provided above in Clause 14.1 C or New Company shall, at its sole option and discretion, be entitled to transfer to B all or part of C or New Company’s proprietary rights and ownership of the infrastructure project, under construction or after Completion Date, as liquidated damages, in lieu of computing and compensating the actual damages provided that such transfer shall be conducted of C’s own free will or rendered in the arbitration award as stipulated in Clause 23.

In this example, there is one sentence only, containing 80 words. In fact, one-sentence paragraphs frequently occur in the legal document and it is common that one sentence consists of 50-100 words, or even more. Understanding the sentence correctly and organizing the target language logically is the key factor for translation. When translating the above sentence, we should first read through it and then split it to clarify each part. The subject of the above sentence is “C or New Company”, the predicate is “shall be entitled to transfer”, and the object is “all or part of C or New Company’s proprietary rights and ownership of the infrastructure project”. By splitting this sentence into such parts, we are likely to have a clear idea of the whole sentence.

在上述第 14 条第 1 款规定的情形下, 丙方或新公司自行选择决断有权向乙方转让丙方或新公司的所有权及在建或竣工后基础设施的所有权的全部或部分作为约定的固定数额的违约金来替代计算赔偿实际损害, 但该转让应为丙方自己自愿实施的行为或根据第 23 条的规定基于仲裁裁决的处分。

### ***Ideographic Equivalence***

The main challenge to the legal translator is the incongruity of legal system (Šarcevic, 1997). China is in the Civil Law system, while most English speaking countries, such as Britain and America, are in the Common Law system, thus causing the problem that in some cases there may be no Chinese equivalence for an English legal term, and vice versa. Like Šarcevic said, “Each national law has its own terminological apparatus and underlying conceptual structure, its own rule of classification, sources of

law, methodological approaches and socio-economic principles, which make it extremely difficult, in some cases impossible, to achieve uniform interpretation and application in practice” (2000). For example, in the Chinese Legal system there are “劳动改造” (*in Pin-yin: lao dong gai zao*) (indoctrination through labor) and “人民调解” (*in Pin-yin: ren min tiao jie*) (people’s mediation), which do not exist in the Common Law system; also in the Common Law system there are “plea bargain” (辩诉交易, *in Pin-yin: bian su jiao yi*) and “marital rape” (婚内强奸罪, *in Pin-yin: hun nei qiang jian zui*), which do not exist in Chinese Legal system as well.

The translation strategy of ideographic equivalence advocates that though there isn’t an exact equivalence in the target language for the legal terms in the source language, translators can still make the translated terms understandable by putting the terms into the legal culture of the target language. “Translators must be familiar with the legal culture of the target language in order to reformulate an equivalent meaning through what they judge to be the most appropriate linguistic and legal expressions” (Rotman, 1995).

Take “magistrate” for example. “Magistrate” in the Common Law system means “a civil officer administering the law, esp. an official conducting a court for minor cases and preliminary hearings, a justice of the peace”. According to its English interpretation, the word “magistrate” is usually translated into Chinese as “地方行政官” (*in Pin-yin: di fang xing zheng guan*) or “治安法官” (*in Pin-yin: zhi an fa guan*). Both of the translated versions “地方行政官” or “治安法官” are blurred, because there is no legal concept of “地方行政官” or “治安法官” in China. The public security cases of China is under the jurisdiction of the public security organs; it is the police of the public security organizations that deal with the public security cases, rather than through the court proceedings. In Britain, there is “magistrates’ court” (治安法院, *in Pin-yin: zhi an fa yuan*), and those who hear cases in the magistrate court are called “magistrate”, thus according to ideographic equivalence of legal translation, “magistrate” is better translated into “审理治安案件的法官” (*in Pin-yin: shen li zhi an an jian de fa guan*) (Bao, 2011), which is understandable within the legal culture of China.

### **Matching Ambiguity**

As illustrated above, besides ideography, precision, consistency and authority, legal languages are also featured by ambiguity, which has unique pragmatic function. First, the ambiguity of legal languages tends to compensate for the deficiency of the accuracy, take *General Principles of the Civil Law of the People’s Republic of China* for example, “Property ownership shall not be obtained in violation of the law. Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself” (Article 72). In this article, both “other arrangements” and “other lawful means” are ambiguous expressions, which refer to “all the other arrangements OR all the other lawful means that are not mentioned in the contract”. Here, accuracy cannot achieve the function of the legal rules because it is impossible to contain every arrangements and every lawful means. The ambiguous expression here doesn’t hinder the effect of the legal rule; instead, it makes the legal rule more effective and complete. Therefore, when translating Article 72, translators should not neglect the function of ambiguity, and Article 72 should be translated as “财产所有权的取得, 不得违反法律规定。按照合同或者其他合法方式取得财产的, 财产所有权从财产交付时起转移, 法律另有规定或者当事人另有约定的除外”.

Second, the ambiguity of legal languages, to some extent, reflects the humanistic care of the law. For example, “Defendant Wang repeatedly slandered Lee by means of insulting languages.” “Insulting

languages” here is the ambiguous expression, which aims to protect the victim from being hurt once again. Thus, the above should be translated as “被告王某多次通过使用侮辱性语言对李某进行诽谤”. In general, when translating the ambiguous expressions of legal languages, translators should fully comprehend the meaning of the source language, so as to make the ambiguity matching in the source and target languages (Xiao, 2001).

A typical case of applying the matching ambiguity strategy in the translation is to handle the adjective words of the legal English. Though adjective words are seldom used in the legal languages, they, occasionally, highlight the rich connotations of the legal languages. Take the opening of the U.S. Constitution for example, *We the people of the United States, in order to maintain perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.* In the above example, three adjectives are used; “perfect”, “common”, and “general” are all the ambiguous expressions. When translating it, translators should preserve the conception of the source language, thus the three adjectives are best translated as “完善的” (*in Pin-yin*: wan shan de), “共同的” (*in Pin-yin*: gong tong de), and “一般的” (*in Pin-yin*: yi ban de). As Li (2007) said, the best policy for translating the words containing ambiguous meanings is loyalty, if there is ambiguity in the source language, ambiguity should be remained in the target language. It is not the translator, but the judge that shall make a clear and authoritative interpretation on the ambiguous expressions. What the translators should do is to be faithful to the original texts.

### Conclusion

This article, by adopting the view of pragmatics, analyzed the two features of legal English: accuracy and ambiguity. Accuracy is the prior demand on legal translation, which contains ideography, precision, consistency and authority. Though accuracy is the most important feature in legal language, ambiguity still exists as an unavoidable factor; it even plays the positive role in the translation of legal languages. Then this article illustrated the strategies on legal translation based on legal language’s accuracy and ambiguity. The accuracy of legal languages determines three translation strategies on legal languages: consistent terminology, normative syntax, and ideographic equivalence, while the ambiguity of legal languages determines another translation strategy on legal translation: matching ambiguity. Only by comprehending and applying the above four strategies can translators achieve the effect of legal translation.

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# **Gourmet and Its Implications from Selling Arrangements to Market Access Test**

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*[Abstract] Gourmet concerns the Swedish national restriction on advertising of alcoholic beverages. It is a critical case, which has made great contributions to Treaty provisions in relation to free movement. The purpose of this article is to discuss Gourmet and reveal its implications. Selling arrangements and the market access test will be analyzed in various contexts. The relationship of the European Court of Justice and national competence will be well demonstrated. Proportionality principle will be revisited. Market access test can be regarded as a clarification of a second Keck condition. The European Court of Justice has injected diverse factors that might influence the integration of the internal market into the assessment of regulatory preferences. The European Court of Justice and national court have been playing different roles with respect to the proportionality test. The European Court of Justice may cut the proportionality knot itself. The National court usually has to assist the European Court of Justice by providing necessary factual information and national legal framework of restriction in issues.*

*[Keywords] gourmet; selling arrangements; market access test; proportionality*

## **Introduction**

In accordance with Treaty provisions, free movement of goods, persons, services and capital are ensured within the internal market. Free movement of goods is a fundamental principle, which is the corner stone of the European Community. Article 28 (ex 30) EC prescribes that the restrictions on imports within Member States should be prohibited, whereas those on exports between Member States are prohibited in Article 29 (ex 34) EC. The European Community attempts to eliminate all obstacles to intra-Community trade so as to integrate the diverse national markets to one single European market within which the economic efficiency, and the Community's competitiveness can be achieved to a large extent. Nevertheless, in the process of the integration of the internal market, the national interests should be respected (Tsai, Wu, & Chang, 2012). Article 30 (ex 36) provides the derogation from Articles 28 and 29 (ex 30-34), which prescribes certain grounds of justification. At the transitional period of the European Community, various interests may conflict in the different contexts. Thus, the proper balance of such relationship becomes extremely necessary (Theodoridis & Panigyrakis, 2011).

In recent years, there are a number of developments on the alteration of the scope of Article 28-30 EC in judicial practice. Gourmet is a critical case, which has made great contributions to the Treaty provisions in relation to the free movement. In Gourmet, an advertising restriction prohibiting the free movement of goods and the freedom to provide services have been concerned. It is indeed an interesting case, which brings an excellent opportunity for the European Court of Justice to re-consider the application of the Keck formula. The market access test is regarded as the most dominant significance of the present case. It is interesting to work out how the Advocate General attempts to reconcile the Dassonville formula with Keck by concerning the market access principle. Furthermore, how the

European Court of Justice settles the relationship between Keck condition and market access test eventually is worth considering.

### **Critical Analysis of Case Gourmet**

Gourmet International Products (hereinafter “GIP”) publishes the periodical *Gourmet* for the purposes of advertising wine and whisky in Sweden. The Swedish Consumer Ombudsman believes that this is contrary to the Article 2 of the Alcohol Advertising Law in Sweden. He has applied to the Stockholm District Court, in accordance with the Swedish Law on Alcohol, for an injunction restraining GIP from advertising wine and whisky in its magazine and a penalty has to be imposed in the case of non-compliance. However, GIP considers that the prohibition has constituted a restriction to the free movement on the basis of Community law and no injunction should be made. “Thus the national court referred two sets of questions to the European Court on the interpretation of Articles 30 and 36 of the E.C. Treaty (now, after amendment, Articles 28 E.C. and 30 E.C.) and of Articles 56 and 59 of the E.C. Treaty (now, after amendment, Articles 46 E.C. and 49 E.C.)” (Case C-405/98, 2011, p. 1).

Was the prohibition on alcoholic advertisement lawful in accordance with Articles 30 and 36 of the E.C. Treaty? The European Court of Justice held that, according to Article 30 of the E.C. Treaty, national laws prohibiting certain selling arrangements were lawful provided that they did not constitute obstacles to the products from other Member States. Alternatively, the national restrictions did not impede access for products from other Member States any more than those from the national Member State. Under Article 36 of the E.C. Treaty, national laws prohibiting the alcohol advertisement on the grounds of public-health could be regarded as justifiable only if they were proportionate and did not prevent the free movement of goods within Member States. How do selling arrangements and the market access test work on the determination of the interpretation of Articles 30 and 36 of the E.C. Treaty?

Gourmet has challenged the application of the Keck formula in a particular way. It introduces the “market access” test as the new yardstick to examine the facts and the law in issue. On the one hand, it can be regarded that the introduction of the “market access” test in the Gourmet case has replaced the application of the Keck formula to some extent. After Keck, advertising prohibitions could be considered as selling arrangements so therefore, they could not be caught by Article 30 of the E.C. Treaty, provided that the Keck condition has been satisfied. After the Gourmet case, the situations have changed. Gourmet has presented a completely new angle as the determinative for the assessment of restrictions to free movement.

On the other hand, it can be regarded that the “market access” test introduced in the Gourmet case is the inevitable result of the judicial practice in the free movement of goods. Furthermore, it will lead to the development of the previous cases in various ways. The Court has critically adopted the Dassonville formula and the Keck rule in deciding whether such Swedish advertising restrictions fall within the scope of Article 30 of the E.C. Treaty. In the Keck rule, selling arrangements are based on the non-discriminatory nature, both in law and in fact. In Gourmet, it employs the “market access” test to examine the rules and facts in issue in order to reveal the very nature of the advertising restrictions. Therefore, it is not difficult to see that the spirit of the Keck and the Gourmet case is actually the same. The only difference is that Gourmet has clearly presented the very essence of the whole assessment, whereas Keck still remains outside of the phenomenon and has a limited scope to apply.

Different roles played by the national court and the European Court of Justice in the process of judicial trail attracts more and more attentions and considerations. In Gourmet, the Swedish national court

brought two issues to the European Court of Justice. The “market access” test has been employed in assessing the proportionality of the restriction. The Court believes that the Swedish national court has a better position to deal with the detailed circumstances of Swedish advertising of alcoholic beverages. Furthermore, the European Court of Justice may interpret the application of Articles 30 and 36 of the E.C. Treaty in the present case on the basis of the submissions by the Swedish national court. Developmental methodology seems extremely crucial in the analysis of the present case.

## **Reflections of the Gourmet Case on the Common Market**

### ***General Review on the Notion of Common Market***

Article 28 has a very limited scope of application and vague definition. Whether the national restrictions can fall within the Article 28 is always the central issue surrounded the European Court of Justice. In the light of the imperfect Treaty provisions prescribed in the Community law, many disputes have arisen between one Member State and an importer from other Member State in judicial practices. Consequently, the interpretation of the Article 28 has to be brought to the European Court of Justice usually by the Member State who has imposed certain restrictions for certain purposes. Similarly, Article 30 is not well equipped to deal with the derogations from Article 28 for all circumstances. The process of the resolution of the legal disputes within Member States in relation to the free movement of goods has inevitably promoted the Community legislative progress. Indeed, there are a number of developments in the alteration of the scope of the Treaty provisions on quantitative restrictions and measures having equivalent effect within Member States in current years.

### ***Discussions on the “Selling Arrangements” and “Market Access Test”***

Whether a national prohibition falls within the Article 28 E.C. has attracted more and more attention with regard to recent case law. The definition of measures having equivalent effect to quantitative restrictions was first adopted in *Dassonville* and has been frequently applied by the European Court of Justice. Under the *Dassonville* test, another direction has been concerned as the *Keck* formula introduces “selling arrangements”. Undoubtedly, significant progress has been achieved in the alteration of the scope of the application of the Article 28 from the *Dassonville* test to the *Keck* formula. Nevertheless, it cannot get rid of its natural limitation. The *Keck* formula needs certain requirements. It cannot cover all the circumstances in which a national restriction is a quantitative restriction or whether a measure having equivalent effect may be determined under selling arrangements. Then, a new dispute will arise and cannot be resolved under the previous legal rules. Consequently, further developments will occur inevitably by the resolution of the new cases. The “Market access test” introduced in the *Gourmet* case is sufficiently flexible. It has revealed the very essence of the application of the Treaty provisions with regard to the free movement of goods. However, whether such test is perfect enough, as determinative for the assessment of restrictions to free movement, remains a critical issue.

**“Selling arrangements”.** In *Keck* and *Mithouard*, K & M attempted to resell the product, which was in an unaltered state at lower price than its original price. It was held that it was against the art.1 loi 2 July 1963, which was in the interest of fair trade. Under the *Dassonville* formula, such prohibition has impeded the volume of sales and the volume of sales of products from other Member States. Nevertheless, the Court of Justice held that such French law constituted “selling arrangements” which fall outside the scope of Article 28.

“Measures relating to the inherent characteristics of goods ‘such as requirements as to designation, form, size, weight, composition, presentation, labeling, and packaging’ are so-called ‘selling arrangements’” (Oliver, 1999). A national restriction can avoid being caught by Article 28 provided that it constitutes selling arrangements. However, the condition of selling arrangements must be satisfied, as there is no discrimination in the law and the fact.

Selling arrangements introduced in Keck have attracted so many comments. It has provided a formal reading, which is frequently adopted in assessing the national bans restricting the free movement of goods. Selling arrangements can be regarded as a great step of the judicial developments in the alteration of the application of Article 28. Nevertheless, such rule creates uncertainty. Non-discrimination is the prerequisite for the application of selling arrangements. “To what extent discrimination would have to be shown before measures of this sort are to be regarded as falling within Article 28 is unclear” (Oliver, 1999). Then, what is the very essence of selling arrangements? “Sometimes a selling arrangement actually causes a real hindrance on the trade between Member States and a test of ‘substantial hindrance’ should be applied” (Wallace, Session 3).

**“Market access test”.** The Swedish Konsumentombudsman made an injunction preventing Gourmet International Products from imposing advertisements for alcoholic beverages in its magazine. Gourmet insisted that such a ban constituted a restriction to the free movement of goods and freedom to provide services. It turns out that whether such national prohibition satisfies the Keck condition, as there is no discrimination in the law, is, in fact, pivotal. This is the determinative issue for the European Court of Justice to apply to the Treaty provisions. “The Court went straight to the market access test, even before considering whether the national rule was capable of hindering intra-Community trade and also in fact affected the marketing of domestic products differently from those from other Member States” (Straetmans, 2002). “National laws restricting certain selling arrangements were lawful under Article 30 of the E.C. Treaty (now, after amendment, Article 28 E.C.) if they did not prevent access for products from other Member States or did not impede access any more than for domestic products” (Case C-405/98, 2001, p. 1).

The market access test introduced in the Gourmet case is regarded as determinative for the assessment of restrictions to free movement. It can go through flexible phenomenon and grasp the key elements of the national restrictions to determine whether they have constituted the obstacles to the free movement in law and in fact. Nevertheless, there are some risks in applying the market access test. The relationship of the national court and the European Court of Justice has attracted so many concerns in employing the market access test. The European Court of Justice sometimes finds it extremely difficult to capture Europe’s diversity in cases where various and different local political, economic, cultural, or social conditions have to be concerned altogether to employ market access test. Furthermore, the legal uncertainty of a market access test does create problems. It cannot provide a formal rule to follow as in the Keck formula. Does a market access test exactly mean anything for the European Court of Justice to assess the restrictions to free movement?

**From “selling arrangements” to “market access test”.** Prior to Keck, the European Court of Justice has to test a national restriction as a measure having an equivalent effect to quantitative restriction with respect to Treaty provisions in relation to the free movement under the Dassonville formula. After Keck, a formal reading is provided to follow for the European Court of Justice in assessing the restrictions to the free movement. A national restriction may benefit automatically from the Keck exception so as to avoid being caught by Article 28 if it satisfies the Keck conditions. Gourmet brings

significant new insights in the development on the alteration of the application of the scope of Treaty Provisions in relation to the free movement. From “selling arrangements” to “market access test”, a great step has been made through the judicial practices in recent years. Before considering the Keck formula, the European Court of Justice employs a “market access test” as a determinative for the assessment of restrictions to free movement. Furthermore, the “market access test” may end up in the same position as how the “selling arrangements” may be challenged in the future. Thus, it is evident that the judicial development will never end.

In recent years, the judicial developments approach, which is employed to assess the restrictions to the free movement achieved by the European Court of Justice, has been altered from “selling arrangements” to “market access test”. After *Gourmet*, the European Court of Justice rejects a formal reading of the Keck rule and considers a “market access test” as a new yardstick in assessing the restrictions to the free movement. Nevertheless, a “market access test” will not last forever and another new approach may be applied in the future in relation to the free movement.

### ***National Competence and Harmonization with Respect to Free Movement to Regulate the Internal Market***

The tension between Community integration and national regulatory autonomy has attracted so many concerns. The relationship between the desire for the harmonization and the requirement for the governmental regulation has been realized to a great extent by the Member States. Many national provisions may include certain protectionist bias, on the case that such measures are based on the intentions of their national interests only. Even though, without such risks, they may contain a substantial restrictive burden on the ground of the diverse factors including economical, political or cultural concerns. As a matter of fact, the Community intends to take a good control on the influence of national governments on production in the process of the integration within the Community. However, the national regulatory preference should not be ignored. National interests should be protected on the grounds that such national measure would not overstep the boundary. In light of Article 30, the legitimacy of the national provision may be assessed. Furthermore, other legal rules and principles have been developed as the tools in policing the borderline between legitimate and illegitimate national measures.

### ***Proportionality Revisited***

‘Access to the market’ is pivotal in the *Gourmet* case. In accordance with Article 36 of the E.C. Treaty (now, after amendment, Article 30 E.C.), the Swedish national advertising restrictions could be justified on the grounds of public health provided that such measures were proportionate. “The proportionate test would be whether a non-discriminatory measure exerts a substantial restriction on that access” (Straetmans, 2002). The assessment of the proportionality of the restrictions has been carried out by Swedish national court. Thus, with respect to all the necessary factual information and an appreciation of the national legal framework of the dispute, the European Court Justice may make the final decision.

## **Conclusion**

Articles 28 and 29 (ex 30-34) EC attempt to eliminate the barriers of the free flow of goods from State to State. ‘Quantitative restrictions, and all measures having equivalent effect’ has been described as the main tool to guarantee the free movement of goods within the internal market. Article 30 concerns a number of specified grounds on which, the prohibitions prescribed in Articles 28 and 29 will be justified. These Articles are addressed together to balance the relationship of the free trade and the national regulatory

competence. Nevertheless, certain disputes have arisen in various contexts in relation to the free movement in recent years in the application of such Treaty provisions. In judicial practice, the interpretation of the laws in relation to the free movement has always been raised before the European Court of Justice. The Gourmet case has demonstrated such circumstance well. It concerns the Swedish national restriction on advertising of alcoholic beverages. The interpretation of Articles 28 and 30 EC and Articles 46 and 49 EC has been referred to the European Court of Justice.

In the Gourmet case, “the Court went straight to the market access test, even before considering whether the national rule was capable of hindering intra-Community trade and also in fact affected the marketing of domestic products differently from those from other Member States: ‘If national provisions restricting or prohibiting certain selling arrangements are to avoid being caught by Article 28 of the Treaty, they must not be of such a kind as to prevent access to the market by products from another Member State or to impede access any more than they impede the access of domestic products’” (Straetmans, 2002). The market access test introduced in Gourmet has required the European Court of Justice to re-examine the Keck formula and concern the yardstick for the assessment of restrictions to free movement. Thus, the discussions on the selling arrangements and market access test are indeed worth being developed as a major implication of the present case. A critical issue, which needs to be emphasized here, is the core nature of the principle of market access test. With respect to this point, the article has demonstrated that the market access test can be regarded as a clarification of a second Keck condition. “Those who read in Keck a formal rule on the basis of which selling arrangements would almost automatically benefit from the Keck exception were proved wrong. ‘Market access’ is according to Keck’s paragraph 17 the relevant test in the light of which the Keck conditions must be applied. Consequently Keck itself stands in the way of a formal reading. If a national restriction is to avoid being caught by Article 28 EC, it must not be such as to prevent access to the market by products from another Member State or to impede access any more than they impede the access of domestic products” (Straetmans, 2002). In the light of the relation of the Community law and national regulatory autonomy, the law of free movement creates the inseparable links between other sectors of the European Community and national regulatory activity. In recent years, with the development of the judicial practice, the European Court of Justice has injected diverse factors which might influence the integration of the internal market into the assessment of the regulatory preferences such as: environmental policy, consumer policy and so forth (Harrop, 2004). Moreover, the complex relation of the European Court of Justice and national court in the application of the proportionality test is another significant implication of the present case, which the author intends to re-confirm here. It has been illustrated that the European Court of Justice and national court perform different functions in different circumstances. Thus, in judicial practice, whether another dispute may arise in such area or not remains a critical issue.

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# Common Sense, Consensus and Conscience: Translating Legal Texts for the Public

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**[Abstract]** *This paper discusses the translation of The Supreme Court: A Very Short Introduction. By examining the intent, meaning, and effect of the source text and the strategies the translator, He Fan, takes in his translation practices, this paper explores and celebrates the choice of a translator who embodies the conscience of legal professionals in China devoted to translating legal texts for the Chinese general public. With the purpose of reconstructing the common sense and consensus of law in the target culture, a translator is able to reconcile what some translation theorists claim to be incompatible: fidelity and creativity.*

**[Keywords]** *legal text; legal translator; choice; fidelity; creativity*

## Introduction

In March 2012, a New York Times journalist, Linda Greenhouse, published a book called *The U.S. Supreme Court: A Very Short Introduction*, a concise, cogent illustration of how the U.S. Supreme Court really works. The Pulitzer-Prize-winning Supreme Court correspondent had spent 30 years covering the Court and its people, and its impact on the shaping of American law. She was considered to have a better knowledge of the institution and its practices than anyone in the country, outside the Court. Her book was soon hailed as an ideal introduction to the Court for students and citizens of all ages. But very few Chinese readers knew and read the book. How could they? Their native language is Chinese.

In July 2013, a Chinese translator, He Fan, published the Chinese version of the book, which immediately became a hit among the general public. He Fan is also a judge of China's Supreme People's Court. Before *The U.S. Supreme Court*, he had translated more than half a dozen bestselling legal books for Chinese readers, including *Charles Dickens as a Legal Historian* by Sir William Searle Holdsworth, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey* by Linda Greenhouse, *The Nine: Inside the Secret World of the Supreme Court* by Jeffrey Toobin, *Make No Law: The Sullivan Case and the First Amendment* by Anthony Lewis, *Making Our Democracy Work: A Judge's View* by Stephen Breyer, and *The Supreme Court: A C-SPAN Book, Featuring the Justices in Their Own Words* by C-SPAN. Chinese readers love He Fan not only because he as a judge writes influential judicial opinions, but also because he, as a translator, has translated an eye-opening world of the common law tradition, especially a telling knowledge of the U.S. Supreme Court, into the Chinese experience.

Is *The U.S. Supreme Court* a legal text? Should He Fan's translation be studied as legal translation? What is the role of a translator who chooses to translate legal readers for the public? What strategies does He Fan take in translating the book that wins a large number of Chinese readers? The rest of this paper will try to answer these questions.

## Translating Legal Texts for the Public

### *The Text Type*

Translation theorists have hardly had an eye on the translating of bestselling legal books for the public. Whether they include such a practice into the genre of legal translation remains a question. According to Susan Sarcevic (1997), Jean-Claude Gemar, a linguist, translator and jurist who studies the translation of legal texts and general translation in Quebec, divides legal texts into three groups. The first group contains laws, regulations, judgments, and international treaties; the second consists of contracts, administrative and commercial forms, and wills; the third includes scholarly works which Gemar thinks are the most difficult to translate.

But Gemar's approach invites criticism. Zhang Xin-hong (2001), a Chinese legal scholar, points out that Gemar's way of classifying legal texts is unscientific because he categorizes the first two groups in terms of subject matter rather than function and "he has no criterion at all for determining the third group." Zhang (2001) also quotes and challenges what Sarcevic (1997) calls "a bipartite system," in which legal language has two fundamental functions: prescriptive and descriptive. Legal texts can thereby be functionally divided into three groups, as Sarcevic puts it: primarily prescriptive, primarily descriptive but also prescriptive, and purely descriptive. Primarily prescriptive are regulatory texts containing rules of conduct or norms such as laws and regulations, codes, contracts, treaties and conventions. Hybrid texts that are primarily descriptive but also prescriptive include judicial decisions and instruments used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, and petitions, etc. The texts in the third group, which are purely descriptive, refer to those written by legal scholars such as legal opinions, law textbooks, and articles, etc. Such texts constitute what is known as legal scholarship or doctrine. They are not legal instruments, although they may have an indirect impact on the law.

Zhang (2001) chooses to narrow down his range of study to the first type of texts, which are purely regulatory. In one of his notes, he argues that legal texts shall not include the third group because purely descriptive texts do not aim to regulate social conducts and build social norms.

Compared with Sarcevic's way of classification, which opens a door for legal translation scholars to explore a more complex and dynamic world of both legal translators and their practices, Zhang's exclusion of Sarcevic's third group from the genre of legal texts fails to see the diversity of legal translation and oversimplifies the reality of the profession by only defining legal texts in a narrow sense.

### *The Supreme Court as a Legal Text*

Legal text deserves a definition in a broader sense. Take *The Supreme Court*. Is this book a legal text? Can we take the translation of the book under the wing of legal translation? The answers are both positive. If we use Sarcevic's criteria, the book is a purely descriptive text, although it is a hybrid of background information and stories, legal doctrine, judicial decisions, The Supreme Court's Rules, and U.S. Constitution. Greenhouse writes in her book the parts of what Sarcevic refers to as prescriptive with a distinctively informative or descriptive purpose. In "Acknowledgments," the author thanks her editor, Nancy Toff, for recruiting her for the writing project and helping her "to envision a world full of curious English-speaking readers who want to know more about the U.S. Supreme Court." Greenhouse is well aware that she writes the book to inform her fellow citizen of a better knowledge of the U.S. Supreme Court and its running. (What goes beyond her awareness is that her book will eventually travel across the oceans and become a popular reader in China – because of translation.) No part in this book is expected to

have practically any prescriptive or regulatory effect on the readers. But that does not mean that when the translator deals with the different types of texts in the process of transcoding the book, he is expected to treat them in the same manner. Look at the following three excerpts:

- The majority in the Environmental Protection Agency case found that at least one of the multiple plaintiffs, Massachusetts, met all three requirements. The state faced losing coastal land to rising seas (“injury-in-fact”) in a process due at least incrementally to the contribution that emissions from motor vehicles were making to global warming (“causation”). And regulation by the agency to reduce the emissions would at least to some degree mitigate the problem (“redressability”). The dissenters argued that the state met none of the requirements: that its assertion of injury was conjectural, not sufficiently traceable to the agency’s inaction, and insufficiently likely to be redressed by regulation. The lawsuit, the dissenters concluded, did not meet the case-or-controversy requirement of Article III.
- Article III, the judicial article of the Constitution, does not even bother to mention a chief justice. Clearly, the Framers intended there to be one, but we can derive that intention only by reference from the text of the Constitution itself--from the explicit requirement in Article I for the chief justice to preside over the Senate trial in any impeachment of a president.
- Section 1. The judicial power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office (Greenhouse 2013).

These three excerpts are written or included in the book for one single reason: to inform the readers. But they are different types of texts. The first paragraph is a summary of two opposite judicial opinions. Books like *The Supreme Court* quote, originally or in a summary, judicial opinions on a frequent basis. The second excerpt is highly descriptive and of the type that Zhang (2001) argues shall not be labeled as legal text. The third quote is originally Constitution itself, though the purpose of the quote is not regulatory.

The translator needs to handle such texts differently – according to their respective functions. That is probably why Gumar claims that legal texts such as scholarly works are the most difficult to translate. The translator is required to know almost EVERYTHING.

## **The Role of the Translator**

### ***Translator as a Legal Linguist***

He Fan knows well the challenges he is faced with as an interdisciplinary translator. In “The Translator’s Postscript” to the Chinese version of *Charles Dickens: As a Legal Historian*, He Fan recalls his very first attempt to translate a legal text as “difficult.” On one hand, the language has evolved. The book was originally published some 80 years ago and the English used back then “sounds awkward today” (Holdsworth, 2009). On the other hand, the subject matter of the book involves law and literature. The translating experience entails both the learning of a British common law tradition and the close reading of Charles Dickens’s novels.

Legal translators face such challenges all the time. They must be competent in both translation and law. They are required to have a good command of at least two languages, the source language and the target language in any case of translation. They need to have a sufficient amount of expertise in at least two legal bodies, understandably the one in the source language and favorably the one in the target language. And their legal competence “presupposes not only in-depth knowledge of legal terminology, but also a thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how a text will be interpreted and applied by the courts” (Sarcevic, 1997)

Legal translators are not born to become what they are. They learn. In “The Translator’s Preface” to *The Supreme Court*, He Fan describes the experience of his modifying the attitude towards the Supreme Court judges’ “political stances” (Greenhouse, 2013). At the beginning of his translation career, he tended to label the judges as Democratic liberals or Republican conservatives, for Chinese readers in general welcome this black-or-white division which makes things easier and clearer to understand. But as he matured into an insightful legal translator, he realized that his earlier way of thinking simplified the complexity of each decision making process and misled the readers to an absolute approach to understanding the decision makers. Either to idealize or to politicize the forming of a judicial opinion is too young, too naive.

### ***Translator as a Lighthouse Builder***

The translator has a choice. The choice doesn’t only lie in what translation strategies or techniques to adopt, which most translation theorists prefer to study and discuss, but in what texts to translate. Take He Fan. Instead of dwelling on legal texts that belong to Sarcevic’s first two groups, He Fan’s choice to translate “purely descriptive” legal texts for the public in the hope of advocating common sense and reaching a consensus among the Chinese readers that can foster a more healthy and more sustainable legal culture in China, is not only foreseeable but also requisite.

The what-to-translate choice derives from the translator’s motive of becoming who he wants to be. Not being satisfied with ending up as a legal language transcoder, the translator can choose to be a cross-cultural ambassador. Different cultural perspectives in translating a single legal term may result in different versions of translation that have different effects on the target readers. In *The U.S. Supreme Court*, He Fan translates the word “opinion” into 意见 (*yijian*, opinion). But Zhang Fa-lian (2009), a legal linguist, states in his research paper that it is better to translate “judicial opinion” into 判决 (*panjue*, judgment) than literally into 意见, because, he argues, “the document is an authoritative judgment and has a seriously prescriptive and regulatory effect. The translator shall not take the meaning of the term literally.”

Zhang takes into consideration the Chinese legal culture in which the judge has the final say and the “judicial opinion” has an ultimate effect on all parties concerned. He, therefore, reads authority into an opinion. But given the American legal context, the *yijian* translation turns out to be a better equivalence of the origin. If the chief justice of the U.S. Supreme Court has voted in the majority on a case, he can assign either himself or one of the other justices in the majority to write the opinion. When the chief justice is in dissent, the senior justice in the majority makes the assignment (Greenhouse, 2013). In such a culture, the opinion *is* an opinion.

To bridge the cultural gap between two different legal mindsets is one important goal of legal translation. To enlighten the target readers, to give new life to the target legal culture, is a more intriguing mission for conscientious legal translators like He Fan. “Many young people today, some of them my

friends, tend to have two attitudes towards life: one is impatient, unwilling to settle down and eager for immediate success and instant benefits; the other is disappointed, cynical, believing whatever they do, they can never change the corrupted society for the better. I wish I could help the confused generation by introducing to them as many insightful and inspiring books as I can. I wish I could build some lighthouses for them” (He, 2011).

### **Translating *The U.S. Supreme Court: A Case Study***

#### ***Translation Strategies***

**Fidelity.** With the purpose of building another lighthouse for his readers though, He Fan honors the principle of fidelity to the original text. He agrees that the translator’s freedom is not unlimited and the freedom only lies in wording and phrasing, well aware that even the linguistic decisions can affect the substance. “The translator is not in a position to change the original intent, the author’s opinions (even though you may not agree with them), the logic, and the layout of the text,” he says in an interview (He 2011).

The translator keeps his promise. He strictly follows the design of the original publication and tries to produce a text with both the same meaning as the message of the source text and the possibly same effects in practice on the target readers.

When coming across some terms that he thinks may sound unfamiliar to the readers, the translator chooses to keep the English original in parenthesis, as he does when he translates, “In recent terms, the Court has received about eight thousand petitions for reviews. These are called petitions for a writ of certiorari...” into “近几个开庭期, 最高法院收到了大约 8000 件复审申请, 这些申请被称为调卷复审令状申请 (petitions for a writ of certiorari)...” (Greenhouse 2013).

**Being creative with language.** He Fan’s translation practices conform with Koutsivitis’s guidelines for the translation of non-standardized parts of legal texts: transfer the sense of the original and respect the genius of the target language (Sarcevic, 1997). The translator selects words, expressions, and grammatical constructions of the Chinese language which best express the sense of the original. Here is one example:

If the senator’s questions during a Supreme Court confirmation hearing provide a reliable window onto the country’s law-related concerns, then it is reasonable to conclude that abortion had not yet become a national political issue nearly three years after the Court’s decision (Greenhouse, 2013).

He Fan’s translation:

如果把参议员们在最高法院人选确认听证会上的提问, 视为观测国家重要法律议题的风向标, 我们可以合理推断, 堕胎在“罗伊案”法院判决近三年后, 仍未成为全国性的政治议题 (Greenhouse, 2013).

The translator uses the image of 风向标 (*fengxiangbiao*, wind vane) to replace “a reliable window” and changes the original sentence structure into 把... 视为... (if we see the questions as a wind vane...). He also chooses to add “罗伊案” to 法院判决 (the Court’s decision on *Roe vs. Wade*) to clarify the reference for the Chinese readers.

The book sells well at *dangdang*, one of China’s biggest on-line bookstores, and receives good reviews. *dangdang*’s official book review says, “Judge He Fan’s prose is concise and smooth. He translates the book in a way a good Chinese writer writes a bestselling book.”



国会 有权宣布对叛国罪的刑罚，但是，因叛国而被褫夺公权者，其血亲不受连累，**非其**在世期间，财产不得充公。

Another example comes from He Fan’s translation of a sentence from a joint Supreme Court opinion that reveals the Court’s view of its connection to the public:

...to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court’s legitimacy beyond any serious question (Greenhouse, 2013).

Here is how He Fan understands the sentence:

如果缺乏最令人信服的理由，就在攻击之下重新检视并推翻一个具有分水岭意义的判决，将引发最严重的问题，损害最高法院的合法性。(Greenhouse 2013)

He Fan’s translation is friendly to Chinese readers, but his way of reorganizing the sentence in Chinese distorts the original message and misleads the readers who have no access to the original text. If we translate He Fan’s Chinese sentence back into English, we have: “In the absence of the most compelling reason, to reexamine and overrule a watershed decision under fire would lead to the most serious consequence and subvert the Court’s legitimacy.” Obviously, this is not what the original sentence meant.

So a better translation can be:

如果连重新检视都缺乏最令人信服的理由，就在攻击之下推翻一个具有分水岭意义的判决，毫无疑问将会损害最高法院的合法性。(To overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court’s legitimacy beyond any serious question.)

At all times, a translator’s trouble begins with the digestion of the source text.

### **A Brief Conclusion**

This paper is neither written to immortalize He Fan, nor to criminalize him. This paper is written to celebrate a translator’s choice – A choice to translate legal texts of a type that is almost neglected by legal translation theorists; a choice to translate for the public; a choice to build lighthouses for the present and future generation by means of translation; a choice to contribute to legal translation by following the traditions and making new attempts and taking age-old risks in translation practices.

He Fan is working on a project that he calls “The Lighthouse Builders Series.” This paper is my choice to wish each lighthouse builder good luck.

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# Legal News C-E Translation for International Communication Purpose: Requirements for Text and Translation Strategy

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*[Abstract] When the three concepts “legal news”, “news translation”, and “translation for international communication” are combined, the process is not simply the translation of legal news from Chinese language into English, but a subtle balance of different translation purposes contained in the complicated text proceeding process. This article first discusses the significance of this topic, and then examines the distinctive features of the above concepts. Finally, it presents some principles to tackle the concrete problems and difficulties in translation practice.*

*[Keywords] legal news, news translation, international communication*

## Introduction

“Legal news”, like political news, economic news, sports news, and entertainment news, etc., is a popular subject in Chinese news reports. Roughly speaking, “legal news” equals the entirety of “court news”, “crime news”, “police news”, and “news on the enactment of a bill”, etc. in western news reports from the perspective of news content.

The significance of legal news translation from Chinese to English is twofold. On the one hand, with an increasing global interest in China, the audiences of Chinese legal news are no longer restricted to Chinese people; a large number of foreigners join in. They are curious about the construction of China’s rule of law, the present condition of Chinese people’s basic rights, such as freedom of speech, and the legal measures taken to crack down officials’ corruption, curb environmental pollution, and guarantee food security. On the other hand, Chinese people, together with the government, also have the urgent need to publicize the above information to the world to demonstrate the achievements they have made so far, to establish a positive national image of rule of law, and to clarify or fight back the international biased or distorted reports about China with regard to its legal issues. Therefore, a legal news transmission and transference from Chinese to English, namely, “C-E news translation for international publicity purpose” is required.

However, such translation is rather challenging. First, it is more than “literal translation”, the faithful word for word translation from Chinese to English, but a complex process where a subtle balance of various translation requirements should be achieved. Second, though scholars in China contribute significantly on the study of legal news from three perspectives: mass communication (Liu & Li, 2005), media law (Wei, 2014; 2007), and linguistics (Yu, 2013). Their focus is not on translation and their academic fruits can hardly directly guide the practice. Third, China’s news media are in a relatively weak position compared with its western rivals; their voice can hardly be heard. As was commented by Harvey Dzodin, a senior adviser to Tsinghua University of China and former director and vice-president of ABC Television in New York, “...all the goodwill generated by terra-cotta warriors, Shaolin monks, Hollywood-Chinese co-productions, Confucius Institutes, etc. can easily be negated by stories of corruption, unfairness, cyber-espionage and so on that are so frequently reported today in China and abroad...” (Dzodin, 2013).

Therefore, this article intends to study the legal news from a new perspective, translations for international communication purpose, and hopes to do some help to increase its translation quality, professionalism, and communication effect.

### Requirements on “Legal News”, “News Translation”, and “Translation for International Communication Purpose”

The three concepts “legal news”, “news translation”, and “translation for international communication purpose” all impose their respective requirements on the text due to different functions. Their translation principles are established accordingly to guide the translation practice.

#### Functions and Requirements of “Legal News”

Though “legal news” in China roughly equals “court news”, “crime news”, and “police news”, etc. in western countries, they serve different purposes. Table 1 attempts to interpret “legal news” from its functions and audience, so as to distinguish the Chinese “legal news” with its western counterpart.

**Table 1. Legal News in China and Western Countries**

	Functions	Audience
Legal news in China’s news media	<ol style="list-style-type: none"> <li>1. <b>Dissemination of information:</b> deliver new information about law to the public; construct a positive national image of rule of law.</li> <li>2. <b>Education:</b> broaden people’s knowledge and understanding of law; enhance their legal awareness; develop their ability of self-protection against all types of crimes; guide a positive public opinion on legal issues.</li> <li>3. <b>Supervision:</b> supervise the court’s decision, the behaviors of officials, the corruption in central and local governments by the public &amp; media.</li> </ol>	Chinese
Legal news in western news media	<ol style="list-style-type: none"> <li>1. <b>Dissemination of information:</b> deliver new information about law to the public.</li> <li>2. <b>Entertainment:</b> entertain people with novel crimes, and satisfy their curiosity.</li> <li>3. <b>Watchdog:</b> supply citizens with information they must have to prevent the power abuse.</li> </ol>	Westerners

As is demonstrated in Table 1, the major differences between China’s and western legal news reporting were in function and their audience. How to retain the education function without sacrificing its entertainment character? How to translate the source text (ST) to make it acceptable by westerners? Given the above similarities and differences, the text should meet the following requirements:

**Objective and professional.** The objective description of the issue, together with the expression of legal opinion, can help the audience to distinguish legal news – whose focus is on law – from social news or political news with some legal elements. For example, if a news report starting with the story that a couple are on their way to the court for divorce is followed by the professional comments of the new interpretation of China’s Marriage Law by Supreme Court in 2011, it should be regarded as a legal news report. However, if the same story is followed by how the husband successfully convinces his wife halfway and saves their marriage, it is a piece of social news.

**Humorous and appealing.** Unlike the Chinese legal news audience, western readers are not accustomed to be taught. Though legal issues are instinctively serious, wisdom (an objective and professional tune) never conflicts with humor. When the ST is too tedious, which is especially true to the reports in China’s state-run media, it must be rewritten to suit the westerners’ reading taste.

**Ideologically conscious.** When translated into English, legal news is added with a new task to fulfill in the international context – to establish and maintain China’s national image of rule-of-law. But if the

political information is too obvious and overloaded, it will be rejected by the western audience. Actually, western media set a good example for China's counterpart on this point by the repetition of terms like “corruption”, “crackdown”, “Tian'anmen Square protest”, “lack of democracy”, and “pollution” in their report on Chinese issues for decades. China should use the same approach to transmit their ideology and values to the western countries.

### ***Definition and Requirements of “News Translation”***

As global communication accelerates, so does the global academic interest in news translation. Chinese and western scholars both have contributed substantially to its advancement, but the majority of the contributions is composed of descriptive accounts from experienced practitioners (Hursti, 2001; Tsai, 2005; Zhang: 2008; Liu: 2009). While these provide very valuable empirical accounts of translation practice in various news organizations, and of the usual tasks and difficulties encountered by the translator of news, and of some solutions, the need remains to define the concept of “news translation” in order to summarize the general principles that govern it.

In addition, one of the tough problems in C-E news translation, more often than not, is that there is no target text (TT) for researchers to scrutinize. When reporting China’s news in English, both Chinese and English journalists would rarely translate a Chinese news text into English. In contrast, they tend to compose a piece of English news directly to achieve an ideal communication effect. Therefore, most of the Chinese researchers are confined to discussion about the translation of news headlines and leads, as well as neologisms due to the lack of TT.

Fortunately, the publication of *Translation in Global News* by Esperanca Bielsa and Susan Bassnett (2009) broke the deadlock. The innovation of this book is its expansion of the definition of news translation:

...(news) translation is one element in a complex set of processes whereby information is transposed from one language into another and then edited, rewritten, shaped and repackaged in a new context, to such a degree that any clear distinction between source and target ceases to be meaningful...Research into news translation poses questions about the very existence of a source and hence challenges established definitions of translation itself (Beilsa & Bassnett, 2009, p. 11).

The significance of this expansion of definition is that when it comes to C-E news translation, one or more pieces of Chinese news of a certain subject can be regarded as the ST, and any English reports of the same subject can be studied as its English translation, namely, the TT, whether it is reported by China’s English news media (TTC), or the Western news media (TTW). And through the comparison of ST, TTC, and TTW, especially the latter two, their differences will be distinct, and it's a good opportunity for Chinese to learn the strengths of their western counterparts. Therefore, the significant feature of C-E news translation is the **remote relationship between ST and TT**. The ST could be regarded as the basic fact that has to be rearranged so that the English TT can be more relevant or comprehensible to the local target audience. It also often happens that one TT is translated based on several STs. Therefore, when producing a TT, the news translator or journalist MUST transfer ST(s) from all levels of a text: words, sentences, paragraphs, and even the whole text. The transference generally requires:

1. Change of title and lead
2. Elimination of unnecessary information
3. Addition of background information

4. Change in the order of paragraphs
5. Summarizing information (Bielsa & Bassnett: 2009, p.64)

### ***Functions and Requirements of “Translation for International Communication Purpose”***

The task of C-E news translation can be done by two parties: western media and China's own English media, whose translation purposes might differ enormously. For western media, they are doing the pure “news translation”, with the maximization of communication effect as their priority. Whether a translated piece of news will attract their audience’s attention, and whether it will cause controversy are their major concerns. However, the large majority of their news is reported from the perspective of the westerners rather than that of Chinese, revealing part of the fact but not the whole picture, reflecting the western values instead of China’s. For this reason, allowing China’s voice to be heard is a must. Here comes the translation for international communication purpose, during which news is a primary channel to achieve the following functions:

1. To construct a positive international image of China
2. To hold the right to speak in domestic and international affairs
3. To clarify the international misunderstanding of China

And the following two requirements should be imposed on this translation to perform them.

**The achievement of communication effect.** All the news translators should take the communication effect as their priority. International communication without an audience is communication in vain. However, the communication effect of China’s English legal news has not been ideal since the Culture Revolution (1966-1976) due to the translators’ lack of legal background knowledge, the ignorance of difference between Chinese and foreign news writing & editing tradition, and the use of improper translation strategies and skills. The consequences are twofold: on the one hand, foreign readers do not buy the news with propaganda characters, which tends to overload Chinese legal news reports, especially according to the Western journalistic standard; on the other, the right to speak – the description and commentary of Chinese issues in English language – is still held by mainstream western media. This requirement is a tough one, but it is a goal worth pursuit for Chinese news translator and journalists.

**The demonstration of soft power.** The concept of "international communication" contains a political implication, and the demonstration of soft power is a necessity of translation work. Joseph Nye further developed the concept in 2004:

A country may obtain the outcomes it wants in world politics because other countries – admiring its values, emulating its example, aspiring to its level of prosperity and openness – want to follow it. In this sense, it is also important to set the agenda and attract others in world politics, and not only to force them to change by threatening military force or economic sanctions. This soft power – getting others to want the outcomes that you want – co-opts people rather than coerces them (Nye, 2004, p. 5).

Without the requirement of soft power demonstration, the news produced by China’s English media will be of no difference with those of western media. And China will remain the follower of international public opinion. Still, as befits its importance, the requirement is as challenging as the former one.

### **Translation Strategy and Principles**

The requirements for texts related to the above three concepts can be summarized as three fundamental ones:

1. The construction of China's national image of rule-of-law (for legal news writing & editing)
2. The maximization of communication effect (for news translation);
3. The conveying of political message in an indirect, soft, and subconscious way (for international communication).

Therefore the translation strategy and principles can be subsequently concluded. As for the strategy, the author agrees with the assertion made by Bielsa & Bassnett, "In news translation, the dominant strategy is absolute domestication, as material is shaped in order to be consumed by the target audience, so has to be tailored to suit their needs and expectations" (2009, p. 10).

And the following concrete principles aim to achieve a subtle balance between the fundamental requirements.

***Principle 1: Reporting People's Life Story Rather than Political Propaganda***

A good piece of news should be started with or illustrated by stories or examples, so that audience could be attracted and subsequently influenced by and even may embrace the perception it conveys. In contrast, Chinese news reports, especially those produced by the state-run national media, still tend to give a stereotyped report inherited even from the Mao Zedong era. It is especially true to newspapers such as *Liberation Daily*, *People's Daily*, *Kuangming Daily*, and *China Youth*, whose editorials remain in the same style and wordings just like decades ago. For example, the latest headlines of *People's Daily* are "To promote reform with legislation, to accumulate strength with democracy – Warm Congratulation on the closing of the second session of the 12th National People's Congress", "Demonstrating the force of labor in the reform – A celebration on May 1st, the international Labor's Day", and "To inspire the youth to realize the Chinese Dream – In memory of the 95th Anniversary of May 4th, China's Youth Day". Obviously, these traditional internal reports, with their official content and political intention, are not suitable for external reports. In the choice of reporting subject, it seems that the western readers prefer Chinese traditional culture and progress in economy and daily life. Therefore, the author suggests that China's report for international communication use the story-telling mode, with Chinese people's daily life as the report content, so as to exercise an invisible, but formative influence on the foreign audience's impression of China.

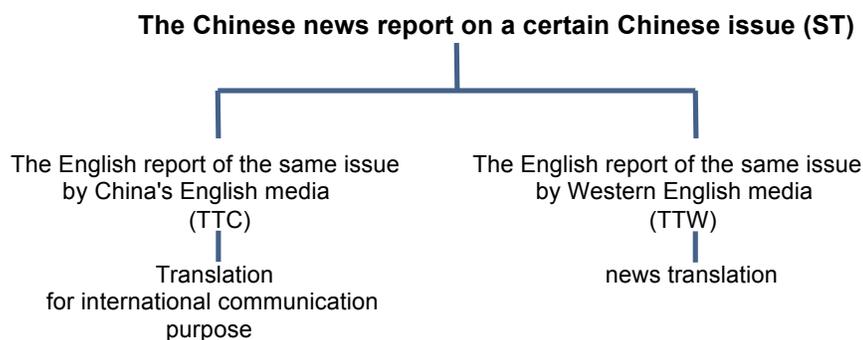
Besides, the tone of government is distant, official and formal, but that of the people is intimate, private and informal. Obviously, the latter is more proper and authentic in international communication than the former.

***Principle 2: Exposing Problems Rather than Hiding Them***

There is a tradition in China's internal media – to report only what is good while concealing what is unpleasant. However, the tradition of the western media is quite the opposite. Though the purpose of China's international communication is to construct a positive image for modern China, it doesn't mean that the bad news of China should be hidden or deliberately ignored. The exposure of problems demonstrates a frank attitude of China, Chinese people and Chinese government, and a too-good-to-be-true story will not be bought by the western audience. That is the reason why China's purposely concealing of the death toll of SARS in 2003 were strongly criticized by the World Health Organization and the world's public opinion; and why China's transparent reports on the death, the injury and the loss of the 2008 Sichuan earthquake were praised worldwide. Therefore, it is preferable to report negative incidents in China to the outside world as long as the report is followed by reflections on and solutions to the problems concerned.

### ***Principle 3: Balancing the Political Effect with Communication Effect***

The above two principles all focus on the achievement of the communication effect. But it is not everything. Foreign media's reports on Chinese issues can achieve 100% communication effect on foreign audience effortlessly, the majority of which, however, will not help to construct a positive national image of China. For example, unlike the term "mainland Europe" purely containing a geographical meaning, the terms "mainland China" used by the foreign media implies the existence of "Taiwan China", in contrast with China's "one China" policy. Given this consideration, China's English media prefer the expression "China's mainland" or "the Chinese mainland". Similarly, the use of "Senkaku Islands" by the Japanese and "Scarborough Shoal" by the Filipinos are not proper in China's English report, and should be replaced by "Diaoyu Islands" and "the Huangyan Island" respectively to claim China's sovereignty and to maintain its territorial integrity. Actually, the difference between "news translation" and "translation for international community purpose in China" can be illustrated by Figure 1.



**Figure 1. Relationship between ST, TTC and TTW**

### **Conclusion**

Aiming at improving the communication effect of China's legal news reports in the world, and contending for the right to speak in international affairs, this article discusses the C-E legal news translation from the perspective of international communication. With a close analysis of each individual concept of "legal news", "news translation", and "translation for international communication purpose", three requirements are summarized and their consequently translation principles are established to follow in translation practice.

Of course, these principles are still tentative, and should be testified by the legal news translation practice. Adjustments and refinements should be made according to the result. Moreover, many essential tasks remain to be fulfilled. For example, the practical problems on neology translation, cultural translation and text reorganization need further exploration; the detailed comparison between ST, TTC and TTW should be drawn, and if possible, a corpus of legal news in both English and Chinese categorized by its reporting subjects should be established. This article just starts the topic and expects that more constructive academic opinions could be put forward to improve its translation practice, and hence the establishment of a positive and objective national image of rule-of-law for China.

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# Mirror and Effects of the *Prohibition Act* – A Legal Reading of *The Great Gatsby*

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**[Abstract]** Considered as a classic in the history of American literature, *The Great Gatsby* is heralded as a telling mirror in exposing the widespread social abuses of the Prohibition Act whose effect hasn't submerged in the passage of time. Although this novel has occupied a hot spot in the field of criticism with numerous readers and scholars' making various interpretations and studies, this paper will make a detailed analysis of this novel from a new angle – a legal reading: the mirror of the wrestling result between characters in the novel and the Prohibition Act, and its effects on the world today.

**[Keywords]** *The Great Gatsby*; the Prohibition Act; legal reading; mirror; effects

## Introduction

In January 1919, aiming at bringing about a dramatic reduction in the nation's poverty, crime, and other social problems, the Eighteenth Amendment banning alcohol was ratified by 36 states in US. Unfortunately, this noble experience of prohibition is anything other than a great simulacrum during the 1920s, despite its ardently hopes and fervently beliefs. Among the direct reversed effects were a sharp increase in the number of alcohol consumers, the flux of organized crime, the boom of bootleggers, and the widespread corruption of public officials' violation of law. As a result, the *Prohibition Act* turned out to be a miscarriage in 1933.

Published in 1925, *The Great Gatsby* is viewed as Francis Scott Fitzgerald's finest novel among all his five novels and 178 short stories. Set in the prosperous Long Island of 1922, *The Great Gatsby* provides a critical social history of the U.S. during the Roaring Twenties and its plausible depiction conveys Fitzgerald's utilization of the societal developments in the 1920s to build Gatsby's story in mirroring the *Prohibition Act* from simple details like cocktail parties and drugstores, to broader themes like Fitzgerald's discreet allusions to the organized crime culture as bootlegging, which was the source of Gatsby's fortune in the wave of the garish and turmoil society.

Studies on Fitzgerald's *The Great Gatsby* abroad are innumerable: Prominent themes as money, alcohol, and the American dream; symbols like colors and allusive names, and sources of literary influences on Fitzgerald. Studies of feminism, social cultural consumerism, deconstructive analysis, spiritual ecological analysis, new historical analyses and psychological interpretations have been presented. Nevertheless, there are few, if any, of the previous studies that have touched the angle that combines *The Great Gatsby* with the *Prohibition Act*, despite of some papers' minor mention of alcohol and bootlegging in the novel. Therefore, this paper intends to fill the vacancy in making an integrated attempt to research in detail how the characters and events in *The Great Gatsby* mirror the *Prohibition Act*, and what effects of the wrestling outcome between this prohibition experiment and people in the roaring era exert on the world today.

### **Influence of the *Prohibition Act* on Major Characters in *The Great Gatsby***

America in the 1920s was in unprecedented prosperity and people seemed to make money easily in stock-market speculation, while the spiritual world of the people was a mess, directly or indirectly influenced by the new ammunition of the *Prohibition Act* (1919). There is no denying that Gatsby's sudden wealth has countless ties with this Act – Tom and Daisy's scheming tragedy is more or less the fruits of the *Prohibition Act*.

#### ***Accumulation of Gay Gatsby's Wealth***

Born into a poor farmer's family, Gatsby never settled for his social status and always brooded over his great plans for self-improvement. He began to fabricate his dreamy world after his inherited money from a fabulously wealthy man was swindled by a newspaper woman named Ella Kaye, and his failure to marry Daisy because of his poverty. In this circumstance, the *Prohibition Act* provided him with an opportunity to join the bootlegging business, where he accumulated heavy money and bought a mansion on Long Island. As to how much wealth he seized from the bootlegging business, we should look no further to the description of his mansion – “a colossal affair by any standard, a factual imitation of some Hotel de Bille in Normandy” (Fitzgerald, 2013, p. 3), his extravagant parties – “Every Friday five crates of oranges and lemons arrived..., a pyramid of pulpless halves, extract the juice of two hundred oranges in half an hour” (p. 24), his gorgeous car – “a rich cream colour, bright with nickel, monstrous length, a labyrinth of wind-shields that mirrored a dozen suns” (p. 39), and piles of expensive clothes – “massed suits and dressing-gowns and ties, and his shirts, piled like bricks in stacks a dozen high” (p. 57).

Some may argue that the grand mansion, lavish parties, fabulous cars and sumptuous clothes are not fully grounded in indicting the *Prohibition Act's* influence on Gatsby. Indeed, we should also pay attention to comments about him and bearings of himself, as well as his drugstores and telephones. His party attendees accused him that “he's a bootlegger” (Fitzgerald, 2013, p. 37), “Contemporary legends such as the ‘underground pipeline to Canada’ attached themselves to him” (p. 60), and his conversation with Nick “pick up a nice bit of money without taking up much time, a rather confidential sort of thing” (p. 51) gives us clues for his profiteering mien. In fact, Gatsby's drugstores are an insinuation of his dark business – the bootlegging activities. Tom Buchanan suspected Gatsby as some big bootlegger the first time he met him, and after the unsuccessful party that Gatsby gave for Jordan, the Buchanans and Nick, Tom supported his suspicion with his denouncement of Gatsby as a criminal – his fortune came from his illegal and wicked activities: “I found out what the ‘drugstores’ were. He bought up a lot of side-street drugstores here and in Chicago and sold grain alcohol over the counter” (p. 83). A series of telephones Gatsby stealthily received from some mysterious persons (pp. 33-58) also indicated his veiled business. In such a roaring society of 1920s, bootlegging was popular and every citizen knew it well in heart. The *Prohibition Act* made it possible that bootlegging of alcohol not only satisfied the public, but also provided chances for the bootleggers to reap staggering profits. Gatsby was just one of the many speculators greatly influenced by the *Prohibition Act*.

#### ***Behaviors of Tom and Daisy***

The brutal social realities such as selfishness, carelessness, hypocrisy and barbarity rooted in materialism have something to do with after-effect of the *Prohibition Act* in the chaotic 1920s. Of impeccable pedigree, Tom was an arrogant man, and he had an extramarital affair with the vulgar Mrs. Wilson – Myrtle, who was in her middle thirties, and faintly stout, but carried her flesh sensuously. In order to

satisfy his desires, Tom rented an apartment where they had private parties to drink in New York with Mrs. Wilson, and he even showed off his lover in the presence of Nick who was Daisy's cousin. Perhaps Tom had the notion that nothing would happen even though Daisy had knowledge of what he'd done.

Delicate and pale as the daisy, for which she is named, Daisy, condemned the abjectness of some beautiful materialism-oriented women: she is cultured but vacuous, as her inane utterances reveal. Privileged as she lived, she was pretty cynical about everything. The *Prohibition Act* did have some restraint on her, but she broke it and drank for the first time to vent her emotions when she had to marry Tom. The tragedy approached during her driving drunk on their way back home in nearing the ashes valley when she accidentally and unfortunately killed Myrtle. After the accident, Gatsby volunteered to shoulder the responsibility while Tom and Daisy plotted to murder Gatsby at the hands of Mr. Wilson from Tom's lies that Gatsby was the one who killed Mrs. Wilson. This clearly shows us the sordidness and shallowness of all the wealthy, but corrupted, Easters in the backdrop of the *Prohibition Act* which directly or indirectly propelled the disorder of the society.

From the novel, we can see that the execution of the *Prohibition Act* hadn't pushed people away from alcohol, but brought some into a motionless, lifeless and dead state of life. Even the honest man – Mr. Wilson expressed his inert and insentient characteristic when Fitzgerald described him as so dumb a man that he didn't know he was alive. Also, none of the party attendees showed up when Nick arranged the funeral for Gatsby, either did Gatsby's once close friend, Mr. Wolfsheim, and even Daisy fled elsewhere and didn't even a bunch of flowers for the man who died for her and loved her so much.

Nevertheless, no matter how wealthy, profiteering or tragic Gatsby was, no matter how arrogant, vain or vile Tom was, and no matter how frivolous, flatulent or materialism-oriented Daisy was, they were all victims of the post-prohibition period. The *Prohibition Act's* direct or indirect influence exerted on them is irrevocable in leading to the final tragedy of the whole story: there's no sincerity among people, no pure friendship or love among people, but what overflows the society is deceit and disloyalty in marriage, and the loss of responsibility, morality, justice, sympathy, as well as confraternity.

### **Backfires of the Prohibition Act Mirrored in *The Great Gatsby***

In *The Great Gatsby*, the backfires are fierce, ranging from the ordinary people, including some famous, and officials from the government, to the organized crime groups. They expressed themselves in various ways like participating in Gatsby's big parties, getting together to hold private parties drinking at some rented apartment, smuggling the alcohol with camouflaged ways and even bribing the policemen or political officials in changing certain Big Events.

#### ***Backfires from the Ordinary People***

As opposed to the *Prohibition Act*, a new symbol appeared: the image of the shorthaired, short-skirted, independent-minded, and sexually liberated "flapper" women who lived life in the fast lane and they were also seen lying in the parlor, flirting with male guests, with cropped hair and a cigarette in mouth, cynical about everything. An example in point is Jordan Baker, peacockish, aloof, and intoxicated with money and hedonism, a self-centered notorious golf-champion. When Nick met her the first time at Tom's house, "She was extended full length at her end of the divan, completely motionless" (Fitzgerald, 2013, p. 5), which was not unusual in these frivolous times. When Nick had an appointment with her, Nick described her as "incurably dishonest. She wasn't able to endure being at a disadvantage and, given this unwillingness..." (pp. 36-37).

In fact, drinks exerted a ruinous effect on both young men and women. The prohibition of wine, instead of restoring moral restraint, ironically made people drink harder, as possessing alcohol was proof of responsibility and of social position. "...happy, vacuous bursts of laughter rose towards the summer sky and champagne was served in glasses bigger than finger-bowls" ((Fitzgerald, 2013, pp. 24-29). Among Gatsby's party attendees, there were not only the unknown named ones, who came to the party even without purposes to drink something; but there were also the ones who were famous at that time, and who had superior social status, "From West Egg came Gulick the senator and Newton Orchid, who controlled Films Par Excellence..." (p. 38). Still there was a stout, middle-aged man in Gatsby's library – "I've been drunk for about a week now" (p. 28). Besides Gatsby's big parties that provided wines, the Buchanan couple always had small private parties to drink with friends at home, and Tom Buchanan often met his lover in the rented apartment in New York, along with his lover's sister and friends who would drink their fill.

The backfires of ordinary people are deceptively subtle: the anti-prohibition atmosphere that had rooted in everyday life since the United States is a kingdom in which their English ancestors had enjoyed beer and ale hundreds of years; even the Puritans loaded provisions onto the *Mayflower* before casting off for the New World – they brought on board more beer than water (Hanson, 1997). No matter which class they may belong to, all the people in the party presented a state of loneliness. Evasion, numbness or benightedness, whatever it may be, obviously their state of mind was a silent protest to the *Prohibition Act*. The mood caused by anti-prohibition even infiltrated into the policemen. Details like Gatsby's over-speeding riding was not punished by the policeman since Gatsby was a liquor smuggler, permitted by some governmental organizations, and thus, seizing power or privilege appears in the novel is a backfire to this Act.

### ***Backfires from the Illegal Organizations***

Prohibition destroyed the manufacturing and distributive agencies through which the demand for alcohol had been legally supplied, but the demand remained and perhaps, never stopped. The backfires of the criminal organizations were seemingly hidden, but they were lethal in permeating the entire nation with alcohol. There is no denying that the big winners from *Prohibition Act* were the nation's gangsters and bootleggers. "Prohibition clearly benefited some people. Notorious bootlegger Al Capone made \$60,000,000... per year (untaxed!) while the average industrial worker earned less than \$1,000 per year" (Schlaadt, 1992, p. 16). From the very beginning of this prohibition, criminals realized that it represented a marvelous business opportunity. In major cities, indeed, gangs quietly stockpiled booze supplies for weeks. Legend has it that the first gangster to grasp the real commercial potential of the Prohibition, though, was racketeer Arnold Rothstein, whose agents were responsible for rigging the baseball World Series in 1919 (Sandbrook, 2012). In *The Great Gatsby*, through Mr. Wolfsheim's conversation with Nick we can sniff that Rosy Rosenthal is just the model for Rothstein. "Filled with faces dead and gone... Four of them were electrocuted" (Fitzgerald, 2013. p. 43). Indeed, from the details Gatsby revealed, "He's quite a character around New York... Meyer Wolfsheim? No, he's a gambler. ...He's the man who fixed the World's Series back in 1919" (p. 45), we can conclude that Mr. Wolfsheim had even set foot to politics through bootlegging and gambling. Light even comes to us that Gatsby himself – the quintessential self-made American hero – was alleged to had made his fortune from organized crime since "he is one of that bunch that hangs around with Meyer Wolfsheim" (p. 83).

Besides bootleggers, other criminal organizations also materialized. The institution of the speakeasy replaced the institution of the saloon and the law was circumvented by various means. Although there may have been legitimate, medicinal purposes for whiskey, the practice of obtaining a medical prescription for the illegal substance was often abused. It was estimated that doctors earned \$40 million in 1928 by writing prescriptions for whiskey (McGrew, 1973). In addition, backfires to the *Prohibition Act* came from some organizations that had close connections with the neighboring countries that remained defiantly wet: neither Mexico, nor Canada, had any intention of clamping down on breweries and distilleries near the American border. In *The Great Gatsby*, the announcement of the reporter investigating Mr. Gatsby stated, “Contemporary legends such as the ‘underground pipeline to Canada’ attached themselves to him...” (Fitzgerald, 2013, p. 60) and showed indirect support from the neighboring countries as backfires to this Act.

Not only was the prohibition ineffective, it also was counterproductive because it encouraged the heavy and rapid consumption of alcohol in secretive, non-socially regulated and controlled ways. People did not take the trouble to go to a speakeasy, present the password, and pay the high prices for very poor quality alcohol simply to have a beer. When people went to the speakeasies, they went to get drunk (Hanson, 1997). Indeed, backfires from the entire society were so strong that the consequence of the *Prohibition Act*, to some extent, presented a roaring decade, denoting an age of ragtime, jazz, cocktail and lavish parties, an age of contraband, violence and chaos, and an age of huge conflicts between the past Victorian ethic and the modern values.

### **Effects of the Prohibition Results**

Over the past ninety-five years, the *Prohibition Act*, concerning the thorny potato of liquor, has been finding its voice in a large number of states in the United States, as well as other regions of the world where heightened concern was expressed over problems related to the misuse of alcohol, such as increased auto accidents and fatalities among young drivers. In the novel, *Gatsby* is quintessentially a victim of the prohibition experience. The moment he stepped into the field of bootlegging, he was destined to be victimized, along with the being betrayed by his loyal and steadfast love and spurned by the ones who were supposed to have gratitude for him. In the backdrop of the *Prohibition Act*, which aimed at reducing the nation’s poverty, crime and other social problems, didn’t obtain its goal, but instead, the changed attitudes of women toward alcohol has been one of the most influential factors in the encouragement of lawless drinking. Since then, large amount of women, with a taste for alcohol, began to drink for the first time in the speakeasies and were determined to get hold of a drink, one way or another. Everyone seemed so vacuous that “A sudden emptiness seemed to flow now from the windows and the great doors, endowing with complete isolation the figure of the host, who stood on the porch, his hand up in a formal gesture of farewell” (Fitzgerald, 2013, p. 35). Without exaggeration, the actual consequences of the prohibition experiment ranged from unfortunate to disastrous and deadly.

However, the confusion and warped attitudes sprang from this long and bitter struggle over prohibition have not ceased in the long process of history. “Therefore, despite the repeal of prohibition at the national level, 38% of the nation’s population lived in areas with state or local prohibition” (Mendelson & Mello, 1985, p. 94). Even today, more than 500 municipalities across the United States are dry, often in strongly evangelical states. The truth is that in many corners of the United States, opposition to alcohol dies hard and prohibition has been attempted several times after its repeal. After the United

States was attacked at Pearl Harbor in 1941, temperance leaders even tried to have all alcohol prohibited on all military bases.

In today's world, the problems related to alcohol are still amounting, but the mirror tells us that prohibition is a failure in and out of itself. Though alcohol consumption has detrimental effects on both the physical body of people and the order of society, it is part of people's daily life and cannot be deprived of in the foreseeing future. Back to December 1968, the Department of Health, Education, and Welfare (HEW) recommended that prohibition has been tried in many other countries except for America, but attempted legislative controls have not proven adequate except in some Muslim areas. In spite of many sincere and determined efforts, no country in Europe or the Americas has yet succeeded in eliminating the use of alcohol by society by legislative fiat.

Central to the drinking culture of colonial life was the tavern, which was considered an integral part of community life, second only in importance to the meetinghouse, which served as the church, town hall, and courtroom. The United States and other western countries could hardly realize the non-consumption of alcohol life. The mirror effect also has telling proof for many other countries that are still puzzled with the problem of the aftermath caused by alcohol.

### Conclusion

*The Great Gatsby* captures a work of conscious artistry in all the yearning desire and anguished disappointment of its hopelessly romantic hero, and is a mirror that reflects how the *Prohibition Act* affected American life in the 1920s with its interweaving story of unusual ideas, fascinating characters, surprising events, and unexpected outcomes. The story is not only Gatsby's, but also the story of all the 1920s in the United States and a tragedy that can be traced back to the *Prohibition Act*, whose tone still tolls even today not only to the American people, but also to the world at large. Thus, this novel stands as a haunting elegy to the passing of the grand Prohibition era with many scholars who have studied both in depth hundreds of times, and I seven as old as the United States itself. Though the analysis of the influence on characters of *The Great Gatsby* and backfires to the *Prohibition Act*, we can capture an overall view of the mirror and its effects on policies of today's world concerning the problems of alcohol.

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# The Application of Domestication and Foreignization to the Translation of News Headlines in Different Legal Cultures

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*[Abstract] This study explores the application of domestication and foreignization to the translation of news headlines influenced by different legal cultures, with a hope to provide an important glimpse into how translation can be affected by legal culture. In Chinese-English translation of news headlines, foreignization should be used for western readers to register foreign cultures, whereas due to the history and roles of news media in a different legal culture, domestication should be used in English-Chinese translation of news headlines to achieve reader-culture compatibility. However, frequent Sino-foreign communication offers a rich and significant setting for the improvement of China's news media. As a result, domestication and foreignization are no longer contradictory in English-Chinese translation of news headlines, but complementary.*

*[Keywords] domestication; foreignization; news headlines; legal culture*

## Introduction

The process of translation from language to language, from one system of law to another is a significant and multi-faceted subject. A myriad of factors has been exerting influence on legal translation, one of which is legal culture. As a constraint, it has a great impact on whether one language is effectively translated, whether non-language messages or contexts are conveyed and whether the translated target language is comprehensible within the target culture. This is also true to the translation concerning law-regulated fields, such as mass media in which language has the power to influence community and public opinions. As a result, the translation in this field seems equally significant.

In translation including that of news headlines under legal constraints, which is going to be explored throughout this study, domestication and foreignization are two principal strategies, which were termed by American translation theorist L. Venuti. According to Venuti, the former refers to “an ethnocentric reduction of the foreign text to target-language cultural values, bring the author back home,” while the latter is “an ethnodeliant pressure on those (cultural) values to register the linguistic and cultural difference of the foreign text, sending the reader abroad” (Venuti, 1995, p. 20).

Disputes over domestication and foreignization have never stopped. Domestication activists prioritize whether target language readers can understand the translated texts if something unfamiliar or foreign has not been replaced by target language. But Venuti once pointed out that domestication is cultural hegemony (Wang, 2008). Foreignization supporters hold that the foreign culture conveyed in the original is able to influence the values of the target culture and society. Thus, there is a real possibility that the retained foreignness in the target texts will guarantee effective cultural communication. However, according to Schuttleworth and Cowie (2004), “foreignization deliberately breaks target conventions by retaining something of the foreignness of the original” (p. 59). Seen from this, these two strategies, both with the aim for cultural communication, are in fact opposite in their major concerns and how to achieve

mutual understanding between different cultures. The center of these disputes is cultural, social, historical and political rather than linguistic.

### **The History and Roles of News Media in Different Legal Cultures**

News media play a central role in cultural communication. Language is its weapon to bring cultures closer. It is language in this sense that dominates the assumption that language is a material power in the societies in which mass media exert their influence. But the seemingly easy translation of news headlines is, in fact, harder in the constraints – legal culture, the roles of news media and the history of their development have to be taken into account. And how to mix the translation of language and the transference of legal culture into shorter phrases that can be understood by the audience or the readers of the target language adds more complexity.

The application of different strategies to the translation of news headlines between English and Chinese is largely the result of the different roles of news media in different legal cultures. The history of news media growth in China and that in the western world have experienced different stages due to different legal cultures and certainly are different in their operation and function.

Chinese history is a history greatly influenced by a legal culture, which espouses deep-rooted blood heritage ethical concept. As a result, it gives priority to supreme national interests over individuality. News media were once a political sword monopolized by the feudal ruling class for their absolute powers. After the Revolution of 1911, also known as the Chinese bourgeois democratic revolution led by Dr. Sun Yat-sen which overthrew the Qing Dynasty, news media began to speak for the interests of those revolutionists by publicizing their political stance. In modern society, affected by USSR, news media in China have been the Party's propagandists. From the very first moment when news media become one part of its legal culture, it became the "mouthpiece theory" that dominates, from the initial "voice of imperial powers" in feudal society to the "eyes and ears of voice" of intellectuals in bourgeois-democratic revolution; from the "voice of revolutionists" in New Culture Movement to the "Party, government and people's voice" in modern society (Zhang & Qi, 2010). Therefore, it is not surprising to find that the news media in China have been used as a vehicle of propaganda in that, with a sense of historical mission and a sense of social responsibility, the Chinese news media prioritize politics and social interests, which results from the belief that newspapers are supposed to serve Socialism, the Party and its people (He, 2008).

The development of western news media is in marked contrast due to a different legal culture in which it is law, but not ethics, that keeps the society going. Under such a circumstance, the social position of the news media has been maintained, making it enjoy more freedom. News media in the west have been the tool to balance powers ever since the Roman Empire. The 16<sup>th</sup> century and the subsequent 100 years have witnessed vigorous debates on the freedom of publication, which paved the way for an unrestrained news tradition (Zheng, 2010). News media were once regarded as the fourth power along with the executive, legislative and judicial powers to ensure the bourgeois democratic politics. Press freedom was "the most significant freedom of all freedoms" as noted by John Milton in his *Areopagitica*. It is regarded as one of the most eloquent defenses of press freedom ever written because many of its expressed principles form the basis for modern justifications of that right. For both the sophists of ancient Greece and modern humanists, competition and self-awareness are what matters. However, despite the prevalence of freedom and equality, there are cases that the western news media, driven by financial profits, have damaged public interests (Ke, 2006).

## **Differences Between Western and Chinese News Headlines**

News headlines in both cultures are the soul of the news. The writing and editing of news headlines should be accurate, highly generalized and conspicuous to keep to the facts, to express the richest content and to attract readers' attention for further reading. Due to the different development paths that news media have gone through, there are differences in the composing of news headlines in different cultures.

Linguistically, news headlines in the west are characterized by the use of terse sentence structure and free style so as to directly point out the focus of news facts, and therefore, noun phrases, midget words, vogue words and acronyms are favored by news editors for fear of spoiling readers' pleasure for further reading (Wang, 2007). News headlines such as "Preventing Genocide" (*Economist*, 11/12/2008), "Morocco Military Plane Crash Kills 78" (*BBC*, 26/7/2011), "Chinese Netizens React to Norway Attack" (*CHINA DAILY*, 23/7/2011) and "Exploding UFOs and Alien Landings in Secret FBI Files" (*CHINA DAILY*, 21/4/2011) are examples of this. By contrast, Chinese news headlines are more complex in wording, frequently adopting elegant compound titles. Therefore, the use of classical poetry, allusions and figures of speech are commonly seen in Chinese news headlines (Li, 2005).

Subjectively, the composing of news headlines in the west involves a lesser degree of the author's involvement. That is to say, news headlines generalize the facts they are to report in a more objective manner so that readers are able to process the reported information based on such factors as readers' need, their social status and their interests, all of which depend on the culture they are in. As a result, news headlines in the west are narrative for the purpose of briefly introducing the basic elements of news facts. While besides the objective report of the facts, Chinese news headlines give readers tips to understand the core issues (Zhi, 1991). For example, a news headline like "The Outbreak of Web War II" (*The 21<sup>st</sup> Century*, 27/2/2005) would be enough for western readers to interpret by further reading of the news. Whereas the Chinese newspaper would probably offer its readers a subtitle so that readers can understand the severe competition in the internet industry and where this new wireless technology would go. It is in this way that the news headlines make a proper evaluation of the significance of the news events to ensure the same headline is interpreted in almost the same way by different readers.

The wording of news headlines, their purpose and the culture, both historical and legal, determine how the news facts are interpreted by the readers. For western readers who live in a media environment that is commercialization-driven and in a legal culture that highlights the freedom of the press, it is easier to comprehend news with a foreign flavor. On the contrary, Chinese readers living in a different legal culture with nationalism undertone are more conservative.

## **The Application of Domestication and Foreignization to the Translation of News Headlines in Different Legal Cultures**

The translation of news headlines has an inseparable relation to the development of historical, social, political, economic and legal environment. Linguistically, the translation of news headlines between languages does not seem complicated as a number of news headlines, especially soft ones, can be literally translated to preserve the meaning and form of the source texts (Zhang, 1996). However, for the serious and time-sensitive hard news, culturally it is not that simple to have a perfect translation that costs the readers the least processing effort to understand both the meaning and the culture embodied in the news since hard news reflects the legal culture of a country by giving serious reports on the national welfare and the people's livelihood (Wang, 2006). A good translation of news headlines is a bridge that brings

readers in different legal cultures closer while an ordinary translation is an alienator who widens the distance between readers and the target cultures.

Here, for successful translation of news headlines, there is the use of different translation strategies at play. Domestication and foreignization are able to harmonize how news headlines are translated with reader acceptability of such news.

Based on Nida's theory (2001), domestication, as a target-language-culture-oriented translation strategy, can produce transparent and fluent target texts that are acceptable and intelligible for target readers to avoid distortion caused by cultural and linguistic obstacles in differing cultures. Andre Lefevere points out that "the strange and different culture has to be naturalized into target language in order to be understood immediately" (Nord, 1997, p. 12).

In China, news media governed by substantive laws regulating communication process and media coverage have been the mouthpiece of the Party and its government due to the history of its development in a different legal culture. Chances are that the target readers are going to be startled if the Chinese news media perform the same function and report the same issues as their western counterpart. Therefore, for the English-Chinese translation of news headlines, domestication, which minimizes the strangeness of the foreign texts and cultures, functions more to relieve Chinese readers' stress to "appalling" news and thus, bridges the gap between Chinese readers and foreign legal cultures.

For instance, in the eventful year of 1998 when Bill Clinton, the former US president, was accused of having an affair with Monica Lewinsky, the news soon caused his ratings to plummet. Years later a piece of news under the title of "Clinton Sexual Scandal Musical to Be Staged" (*CHINA DAILY*, 9/2/2005) once again became the center of public attention. For western readers, it is not a big deal to hear of celebrities being accused by mass media because in a media environment that feeds on sensational news, media coverage of celebrities has become an area of heightened interest for the public. In this sense, information under such a title is sold as news or entertainment, or both. But living in a different legal culture, which thrives on loyalty to the country and the Party, Chinese readers might find it uncomfortable to read headlines written with a hint of sarcasm based on adverse feelings towards country leaders and their families. Consequently, the translation of such a news headline should be as vague as possible by adopting euphemism to avoid foreignness.

Another example is the news under the headline of "Bush Daughters Reach Legal Age to Drink" (*CHINA DAILY*, 11/29/2002). In the Chinese context, underage drinking problems have never been a concern of public attention. If the translation of this headline did not apply domestication, which embeds the original legal culture into the target culture, it would sound too foreign and unacceptable for Chinese readers to identify with. Therefore, the background of the news is key for Chinese readers to understand, which tells them that the twin daughters of President Bush had been charged with misdemeanor underage drinking violations and caught several times by the media for drinking problems before they turned the legal age to drink.

According to Nida, for an effective intercultural communication to be fulfilled through translation, cultural barriers should be cleared up to achieve natural expression. On the contrary, in the monograph by Jeremy Munday (2001, p. 147) who arranged a chapter to introduce Venuti's theory, points out "it is highly desirable to retain the ethnocentric violence of translation by highlighting the foreign identity of the source texts and protecting it from the ideological dominance of the target culture."

The west, inspired by the spirit of free speech, has been tolerant of diverse issues from animal protection to human rights, from reports on street vendors to those on celebrities, from views on daily life

to criticism on national system. Thus, a foreign culture embedded in the news does not seem unacceptable and incomprehensible. As a result, for the Chinese-English translation of news headlines, foreignization, a source-language-culture-oriented translation strategy, is able to keep foreign flavor and is appropriate to reflect real foreign legal culture to western readers.

Take the translation of “Red Tourism in China” (*CHINA DAILY*, 5/18/2011) for example. The color of red, and its embedded meaning, cause little misunderstanding for western readers who are eager to know what happens on the other side of the world. Recently, a new term of Red Tourism was coined to refer to a subset of tourism in China in which Chinese people visit locations with historical significance for Chinese Communism to rekindle their long-lost sense of class struggle and proletarian principles. A word-for-word translation of this news headline familiarizes the western readers with a new connotation of the red color, thus a “sense-for-sense” transference of legal culture is achieved.

On August 19, 2011, during his visit to China, US Vice-President Joe Biden paid a lunchtime visit to one Beijing eatery and ordered a bowl of Beijing noodles with soybean paste, 10 steamed buns, smashed cucumber salad, mountain yam salad, shredded potatoes and a Coca-Cola. Since then, the “Biden Set” has become popular among local Chinese. The translation of the news headline “Popular ‘Biden Set’ Noodles Lure Customers” (*CHINA DAILY*, 8/23/2011) should be “foreignized” to transfer such a unique culture feature to western readers.

As seen above, instead of clearing up cultural barriers, foreignization introduces original foreign culture into the target culture by presenting cultural foreignness in translation so that intercultural communication is effectively achieved.

### **Conclusion**

In order to guarantee target text readers’ comprehension, domestication, a transparent and fluent style of translation, is adopted at the expense of cultural and stylistic features of the source text. While foreignization preserves the foreignness of the source text, even though it seems alien and overloaded to target text readers it is able to bring readers in different cultures closer. However, the translation of news headlines, as a product of the influence of the development and roles of new media in different legal cultures, seems more difficult because the impact of a country’s legal philosophy and legal norms on the degree to which the target readers can accept the news adds more complexity.

For the fulfillment of intercultural communication, domestication should be used in English-Chinese translation of news headlines to achieve reader-culture compatibility. While in Chinese-English translation of news headlines, foreignization should be used as much as possible for western readers to register the foreign culture. But, as noted by Venuti (1998), domestication and foreignization are heuristic concepts rather than binary opposites. Different historical periods require different translation norms.

Recent decades have witnessed frequent communication between different legal cultures and the prevalence of online news, both of which have increased readers tolerance to what happens in other legal cultures. Sino-foreign communication in every field is on the rise along with the rapid development of globalization. In China, free speech has become an increasingly important aspect of human rights. These new directions offer rich and significant setting for the improvement of China’s news media. As a result, domestication and foreignization are no longer contradictory in English-Chinese translation of news headlines, but complementary. Chinese readers are more open to “foreignized” translation, which brings them exotic elements of a foreign culture. Therefore, the appropriate use of both can largely achieve

mutual understanding between readers from different legal cultures and strengthen legal culture communication.

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# Legal Language in Anglo-American Courtroom Dramas

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**[Abstract]** *Through the medium of popular and classic Anglo-American courtroom dramas nowadays, the frequently cited legal language has gradually gained popularity. After offering a glimpse into the development of law-related visual studies, this paper spotlights lines in ‘Good Wife’ and ‘Silk’ as examples, identifies some scenes with typical legal terms, provides a reflection of legal culture, and aims to explore the impact on China’s current legal films and dramas. It concludes with the suggestion when it comes to drawing on terms, culture, and traditions from different legal systems.*

**[Keywords]** *Anglo-American courtroom dramas; legal language; legal culture*

## Introduction

Nowadays, as commodities, film and television products have begun to enter the consumption market and become increasingly popular in today’s “global village”; Anglo-American courtroom dramas have become widely known among Chinese viewers as a great window into the comings and goings of lawyers and the law. On the one hand, the Anglo-American courtroom plays often deliver some very important legal and cultural ideas, such as restrictions of public power, protection of private life, respect for fundamental human rights and so on. On the other hand, different legal systems have their respective legal terminology, often linked with their own legal history. Some typical terms appear in these Anglo-American dramas, impressing the audience with specific meaning of legal language of its legal system. Through the medium of the most popular and classic legal dramas, we can come to terms with what the general public knows about the legal system. Even though many of those perceptions are wrong, it is still of importance for us to understand the Anglo-American legal culture. What’s more, these legal terms and culture have gradually impacted China’s local courtroom movies and dramas, sometimes even misleading and confusing with absurdness. This paper, first, reviews the development of law-related visual studies, second, examines some scenes and lines with legal terms in popular courtroom dramas, focusing on *Silk and Good Wife* as examples, and provides analysis of the legal culture reflected. Then, it aims to explore the impact on China’s current legal films and dramas. Finally, it concludes with a suggestion when it comes to drawing on terms, culture, and traditions from other different legal systems.

## Law-Related Visual Studies

While law and art were once viewed as distinct realms of discourse and practice, visual performance, such as movies, dramas and plays about trials, has compelled examination of their interplay in modern culture, and sparked a boom in legal studies. Scholarship on legal cinema began in the late 1980s with a series of pieces on representations of law in popular culture (Machura & Robson, 2001). In the early 1990s, a number of academic journals began to pay attention to the combination of legal topics and film to explore the relationship between law and movies (Machura & Robson, 2001). Academics in both Britain and the United States have written on law-related films, and some authors have called the situation the “law and cinema movement” (Rosenberg, 1991). Many law schools set courses and organizing seminars on law, lawyers and justice in popular culture, such as novels, movies and dramas (Meyer, 1993; Greenfield &

Osborn, 1996). The title “Law and the Movie” appears increasingly in a variety of lectures, course names in law school, and even pop culture websites. In 1999, the then-president of Law and Society, Austin Sarat, at the annual president’s speech, delivered a law review on the movie ‘The Sweet Hereafter’, to encourage and invite legal scholars to pay greater attention to the law-related visual field (Kamir, 2005).

The visual medium makes use of sound, light, lots of surprise, and a bit of legal knowledge to present compelling conflicts in such a way as to engage the viewer, which has aroused serious concerns from some legal scholars. They have provided rigorous legal analysis for readers to explain the legal process through introduction to movies in their papers. One of the most well known writings is *Reel Justice: The Courtroom Goes to the Movies* (Bergman & Asimow, 1996, 2006). It was translated into Chinese by Zhu Jingjiang, a famous filmmaker and legal scholar, and the book brings together 75 classic movies with different legal themes. The author describes in detail the specific information for each film, including plot synopsis, duration of film, screenplay, original author, director, main actors, awards, and conducts a legal analysis to each movie story.

The book’s cultural influence is indeed far-flung. In Chinese publications, before 2010, two influential writings stood out: the “Justice in Movies,” edited by Professor Xu Xin, and the “Watch Movies and Study Law,” by the Taiwan Yuanzhao publishing house. The former not only introduced foreign classic legal films, but also concerned China’s film, with special emphasis on the “issues of China” (Xu, 2006). The latter chose eight movies as the basis, introduced a series of legal knowledge easily accessible even to the reader who never had any legal study (Judicial Reform Foundation, 2002). In 2012, another book titled, “Watch Movies and Study Law,” was published by China University of Political Science Press. It re-examined more than 20 Chinese and foreign classic movies from a legal point of view, and classified them into different legal subjects: Civil law, Marriage and Inheritance law, Commercial law, Economic law, Criminal law, the Constitution Law, Administrative law, Procedural law and the Judicial system (Wei, 2002). During the same year, another legal-visual themed writing, “U.S. Law in the Movies,” was published by Dr. Zhang Wanhong with an American perspective, concentrating on the American legal system, theory and culture (Zhang & Cheng, 2012).

In addition, there have been more and more legal English textbooks involved in the introduction for courtroom films and dramas. In short, the law-related visual medium has increasingly caught the attention from legal scholars home and abroad, who are applying it to introduce student’s to some basic rules, system and culture through courtroom visual studies. These previous studies have provided interdisciplinary insights into film’s jurisprudence and set the stage for this article. But this paper focuses on courtroom dramas featuring the lawyer figure with a series of short but exciting stories, and demonstrates the presentation of their legal language, instead of furthering the existing law-film research which examines each movie’s juridical function.

### **Frequently Cited Legal Expressions: Taking *Silk* and *Good Wife* as Examples**

The hegemony of the courtroom paradigm must be related to its massive representation in large quantities of medium, including literature, film and TV dramas. All previous and current law-related visual studies has laid a foundation for us to pursue further research on legal language used in popular Anglo-American courtroom dramas, which are normally shown by relatively separate stories in each episode, famous for their narrative patterns, linguistic terms, and strong, media-inspired storyline.

Most of the Anglo-American courtroom dramas deal with the legal system in the UK and US. What they have in common is that essential parts of their stories take place in court. As John T. Noonan stated

in his 1976 book *Persons and Masks of the Law*, “The image of the courtroom as the center of the legal process has remained” (Noonan, 2002). These dramas have a tremendous influence on the public’s concept of justice even though there is still a gap from legal reality. There are certain elements from them repeated over and over again, such as the dramatic cross-examination, and the exciting and impressive opening and closing arguments.

This paper will not review all these elements, nor dip into the reasons behind the popularity of Anglo-American courtroom dramas in China, but instead focus on the legal expression that can reflect its legal culture, taking scenes and lines in *Silk* and *Good Wife* as examples.

*Silk* is a British courtroom series about life at the Bar, the dilemmas and problems that modern day barristers have to face, and what it means to become a ‘silk’. This first episode of Season One shows Martha, an idealistic career woman pursuing the coveted title of QC, accompanying two defendants: one is a single mother accused of being a drug mule; the other is a violent offender suspect with a long list of prior convictions. This latter is accused of tying up and torturing a spry 85-year-old widower (who has a medal for his service in World War II, no less). Even the prosecutor has relatively strong suspicions against the suspect and the burglary case appears to land Martha in yet more hot water as she kept telling her pupil, “*innocent until proven guilty*”, “*and this is four words to live by*”. In fact, this line implies the presumption of innocence, which is also the core message of the show. It helps clarify the maxim, to some extent, by sending the message that this is a fundamental respect for everyone, including a criminal suspect. The maxim, which originates from common law, protects defendants from being coerced to give testimony and to incriminate themselves, which is one of the fundamental values in Anglo-American legal culture.

Now, turning to *Good Wife*, this is another classic courtroom show not only popular in America, but also China. The series focuses on Alicia, whose husband Peter, a former Cook County state’s attorney, has been jailed, following a very public sex and corruption scandal, thus, forcing her to return to her old job as a litigator. In the eleventh episode of Season One, Tim’s baby-daughter disappeared a year ago in a supermarket and Duke Rosco, the host of “Gimme Some Truth” and who has a wide following, provoked the public to believe the baby was murdered by Tim’s wife Cheryl: Cheryl, under huge pressure, finally commits suicide. Tim decides to sue the TV station and Alicia’s firm represents him. The central issue is whether it is the right to free speech or the right to slander and lie. In the end, although the jury thinks Rosco is scum, the Judge decides he has to overrule their verdict to protect the First Amendment, and here he influences public sentiment by explaining *free speech*, “*there is no greater bedrock to our society than the First Amendment. Without it, all our other rights are at risk... I cannot allow a jury under my purview to subvert the First Amendment. So I am, therefore, directing a verdict in favor of the defense.*” These lines are firm and strong, expressed by the role of judge, to highlight again the significance of the First Amendment. I believe that because of this story, most of the viewers will have a better understanding and impression of free speech.

There is no denying that this is the power and charm of language to law. Indeed, law and language has a very close relationship. Legal communication between different nationalities is the exchange of language which record and reflect its national law. The above lines from courtroom dramas are the reflection of legal culture. In other cases, they are an explanation of some legal concepts and terms, an embodiment of spirit of law, and a clarification of the formation and development of the legal system. Legal languages under different legal and cultural backgrounds are often not the same. From this perspective, the Anglo-American courtroom series is not only the media to learn foreign language skills,

but also the platform to understand its legal culture. Many stories in television series are shaped by real social life or judicial practice, covering legal, ethics, political and other fields, which have sparked discussion and reflection among public. For example, they often involve views of whether to abandon the death penalty, or abortion, etc. After all, we are both hopeful and anxious about the law's ability to provide as much justice as the dramas.

Dramas dealing with criminal law and procedure are far more common than that which explores the civil world, even though there is far more civil than criminal litigation in reality (Robson, 1996). It could be that courtroom dramas can satisfy public expectations towards justice, involving the public into a social dialogue, although most people do not participate in the real proceedings. Thus, many lines involving legal culture become the source for the public to share and debate, and they have not only exerted influence within the country of origin, but also have had a significant impact worldwide, including China, of course, which will be analyzed in the next part.

### **Impact of Anglo-American Courtroom Dramas on China**

Legal movies and dramas with twisted and complex plots, involving judges, prosecutors, and defense lawyers seem to have gained popularity quickly and they are one of the popular drama types. However, some visual works have a very strong Anglo-American influence. A group of psychologists from Kiel who published a book for the preparation of children as witnesses found out that, even after seeing pictures of a German courtroom, children still believed that the judge would have gravel or at least wear a wig (Machura & Ulbrich, 2001). It is not a single case, and we can find the typical Anglo-American criminal procedure has been followed in Chinese courtroom movies and TV series. Without fully understanding the Anglo-American legal culture by simply copying some typical terms and procedures, there will be many flaws and absurdness in these visual works. Even for people whose impressions of law had probably been shaped in large part by what they had seen in television and movies, they are able to point out these mistakes easily.

Take the legal movie "Silent Witness" as an example. It begins with a murder crime, and the entire storyline centers around the issue, "Who is the real criminal?" Most of the movie scenes are courtroom trials with the prosecutor and the defense battling it out. Although it performed well at the weekend box office, the legal mistakes cannot be ignored.

First of all, the procedure and court setting in the trial scene were based on the Anglo-American legal system. The current legal system in China is the socialist legal system with Chinese characteristics, which has assimilated some legal contents, institutions and content from the Continental legal system, especially the trial procedure and provisions. That is to say, the adversary system does not have any roots within China, let alone the courtroom setting. Although it is a commercial film, it cannot deviate from reality too far.

Secondly, there is another obvious mistake in the movie, when the prosecutor and the defense examine and cross-examine the defendant and witnesses, they just leave their seats and move around casually. In some scenes, the prosecutors and defense even point their finger to the noses of the defendant and witnesses, asking them to repeat what happened in an offensive attitude. However, according to the Criminal Procedure Law of PRC, the prosecutors and defense counsels must comply with the legal provisions and court order, and before a trial, normally the clerk will forbid parties from moving around without permission. Any question raised by any party has to be allowed by the presiding judge, and not to mention, leaving the seat at will.

Last, but not least, a ridiculous mistake is the role of the presiding judge, who is so weak that he has to ask whether the defense opposes the prosecutor examining the witness. Throughout the whole trial, the presiding judge kept banging the gavel and shouting “quiet, quiet” in a helpless tone, while the situation was completely controlled by the prosecutor and defense. In reality, the function of the judge is not maintaining order, but taking a leading role. Even in Anglo-American courtroom dramas where attorneys traditionally enjoy a strong position, the judge’s role is more than supporting the proceedings of procedure. When it comes to current China, it is the co-operation of the judge, prosecutor, and the defense attorney to ensure a fair trial, in which the judge plays a more active role.

### Conclusion

Many television series feature lawyers and judges, and the legal system, and certain scenes, lines, and legal terms recur in different TV series over and over. Law students certainly cannot watch them all. But some are worth dipping into, because good courtroom dramas not only tell progressive story well, but also contribute to an understanding of the legal culture involved.

Many people have constructed their initial impression of Britain and America through judicial-themed TV series, and the popular dramas have become lively textbooks for law students. These Anglo-American courtroom dramas not only provide a new perspective for us to understand foreign legal culture, but also prompt concerns over incidents in our daily life, and inspire us to analyze social issues in a legal way. Anglo-American movies have influenced the image of legal procedures a great deal, not just in the US or the UK, but also worldwide. However, although these courtroom dramas have opened a window to further our understanding of legal culture, there is no denying that the artistic performance is not equivalent of real life. All the learning, borrowing, or drawing on should be under careful consideration, after the reflection of pros and cons. The way to pursue legal transplants and carry out legal reform is definitely not to be done blindly, nor simply copying concepts without consideration of the culture it is rooted in.

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# Chinese Anti-Litigation and Western Litigiosity: A Historical Perspective

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**[Abstract]** *As a specific content of the legal consciousness, attitudes towards litigations embody and reflect the level of the legal consciousness. Views of conducting litigation vary from country to country and are influenced by political, cultural, legal, religious and ethical factors. This article studies the main differences between the litigation in China and that of western countries from a comparative perspective. It also investigates their causes rooted in traditional Chinese and western litigation cultures. The differentiation of Chinese anti-litigation from western litigiosity can be attributed to the value orientations in legal cultures, the procedures in the operation of laws, as well as the relationships between laws and religious ethics.*

**[Keywords]** *litigation; Chinese anti-litigation; western litigiosity; traditional litigation cultures*

## Introduction

As a specific content of the legal consciousness, attitudes towards litigations embody and reflect the level of the legal consciousness (Gao, 1994, p. 43). The concept of litigation of a certain country is influenced by many factors, such as economic foundation and historical conditions, etc. This results in the differences of conducting litigation between China and western countries. China, in this article, denotes the period from Xia, Shang, and Zhou Dynasties to the late Qing law reform, while western countries in this article refer to those western countries deeply affected by the Christian culture, including traditional civil law countries, and the Anglo-American law system countries to some general extent. Meanwhile, the period discussed in this article of those western countries covers the time from ancient Greece and ancient Rome to the bourgeois revolution victory. Although there are a lot of divergences in respect to litigation cultures between the two law systems, they share more similarities on the whole. The concept of litigation in this article refers to the willingness of people to participate in litigation activities and the social assessment of those who engage in these litigation activities from other social members (Gao, 1994, p. 44). There are two dimensions of this definition: First, it signifies expectations on the functions of litigation. That is to say, what extent people would prefer resolving disputes by resort of litigation. Second, this concept concerns perceptual knowledge about litigation, which embodies the value evaluation of litigation, such as sustainment, self-identity, rejection, or averseness. There is homoousia to some extent that people's willingness to participate in litigation activities means that people sustain and support litigation activities, and vice versa (Tang, 2001, p. 96).

There are various views of conducting litigation based on different standards and cultures. This article mainly focuses on Chinese anti-litigation and western litigiosity. The so-called anti-litigation means that there lacks a sense of identity to resolve disputes by resort of litigations. People, therefore, uphold a repellent state of mind and feel embarrassed and awkward towards litigation. On the other hand, litigiosity signifies that people positively prefer to solve controversies by means of litigation and lawsuits. In addition, the attitudes towards litigation are credible and sustained. The former takes "ancient China" as the typical representative country, and the latter takes western countries as representatives. This article studies the anti-litigation in China and litigiosity in western countries from a comparative perspective and

investigates their causes rooted in both litigation cultures. There are four dimensions in this article that follow.

First, the value orientation of a litigation culture decides the fundamental features of litigation concepts, but also deeply affects and restricts the judicial practice operation mechanism and decision procedure. Second, the understanding of and attitude towards proceedings in legislation and litigation practice constitute the important contents of the traditional litigation culture and the essential cause of formation of litigation concepts. Traditional litigation cultures of China and Western countries, correspondingly, proved wide variations to this point. Third, the traditional litigation culture of China has a strong ethical orientation, while the western traditional litigation culture is deeply marked by a religious color. This is another important difference between the two litigation cultures, which, therefore, has produced different views of litigation in China from that in western countries. Last, but not the least, by and large, the Chinese traditional litigation culture presents a strong property closure and constancy, whereas the western traditional litigation culture shows openness and instability.

### **From the Perspective of Value Orientations in Legal Cultures: “Pursuit of Non-Litigation” and “Realization of Justice”**

The value orientation of a litigation culture determines the basic characteristics of litigation concepts, and deeply affects and restricts the operation mechanism and decision-making procedures of judicial practice. The value orientation of Chinese traditional litigation culture is “pursuit of no-litigation,” which embodies the lawsuit-detesting litigation concept (Fan, 2009, p. 41). The reason is that, in ancient China, law was a secondary and subordinate means of achieving social order, and it was used only as a last resort. The harmony of society was seen as reflecting the general harmony of the world, as evidenced in the nature and cosmos (Kotz, 1998, p. 70). Therefore, law in this system is regarded as a method of establishing order by maintaining authority of a ruler over those governed. Law begins, in accordance with this view, only when a coercive apparatus comes into existence to maintain control through enforcement of social norms (Zhao & Xia, 1999, p. 1). Under such circumstance, law is defined as a set of rules that govern the actions of people in a community. These rules must be followed by citizens, and violation of these rules may give rise to a cause of action in the courts (Zhao & Xia, p. 3). In consequence, it is no solution to a dispute to have a winner and a loser; instead the claimant must take great care to let his opponent ‘save face’ (Kotz, 1998, p. 71). Thus, Chinese traditional law does not lead to a judicial decision in favor of one party, but to a peaceable settlement or amicable composition. A bad settlement is better than a good lawsuit, and a legal adviser may pride himself on never having had to go to court (Kotz, 1998, p. 72).

Despite this, people in the West naturally fight for their rights and seek a clear decision. The value orientations of the western traditional culture of lawsuit proceedings are the realization of justice by means of application of laws (Kotz, 1998, p. 71). This value orientation embodies the litigiousity litigation concept in western litigation cultures. There is a stylistic element in legal thinking that is called the ‘struggle for law’ (Jhering, 2007). The principle is that though the goal of law is peace, one must struggle to achieve it. In other words, it is the duty of a person, owed both to himself and to the idea of law itself, to fight for his rights (Kotz, 1998, p. 70). Western laws of procedure are based on this view. As presented in the “The Sayings of the Fathers”: “a treasury of maxims on justice, integrity, and virtue” (Avot, 2010). Legal action is thought to be an activity that seeks and cultivates natural justice, while the judge is correspondingly regarded as the propagator of justice.

Under such circumstance, whenever the divergences of concepts of litigations between China and western countries were discovered by Chinese jurists, the traditional view points were that “traditional Chinese concepts of litigation are lawsuit-detesting litigation concept. Chinese considered lawsuits as an ashamed affair; on the contrary, western concepts of litigations are litigosity litigation Concept. Westerners, therefore, considered litigation as rightful and proper approaches to protect their own rights and interests. Therefore, lawsuits are the preferable method to be chosen to solve problems (Wang, 1999; Zhu, 2005; Zhen & Li, 2005). This opinion might be acceptable to some extent. However, the various states of concepts did not accomplish this with one stroke. For example, in ancient Chinese times, people did not absolutely detest lawsuits as an approach to resolve disputes. In accordance with the historical records, there was considerable scale of the litigation system. For example, in the Western Zhou Dynasty, there were distinguishes between criminal procedures and civil procedures. (The Western Zhou Dynasty dynasty was established by the King Wu OF Zhou, the son of King Wen of Zhou, after destroying the Shang Dynasty in 1046BC. The Western Zhou Dynasty experienced 11 generations of 12 kings, and lasted around 275 years. During this period, the Chinese nation gradually developed and became the predecessor of the modern Chinese). Criminal procedures were called “prisoning” and civil procedures were called “arguing”. In addition, there were corresponding litigation offices to deal with different lawsuits. Therefore, the lawsuit-detesting state of mind was not overwhelming throughout the entire 5,000 years history of China. (China has a history of 5000 years since the legend of the Three Wise Kings and Five August Emperors. However, it was originated approximately 3400 years ago and had approved characters by the Yin Ruins Oracle.) Formations of lawsuit-detesting state of mind in China were a product of comprehensive factors. All those involving factors shall be discussed in the following contents.

### **From the Perspective of Procedures in the Operation of Laws: “Procedural” and “Non-Procedural”**

The legislative procedure and litigation practice constitute important contents of traditional litigation cultures and explain the essential cause of litigation concepts. The western and Chinese litigation cultures have significant divergences at this level. With regard to the ancient social laws of China, substantive law was not clearly distinguished from procedural law. This phenomenon led to an indifferent ideology towards procedure of litigations and the severe violation of procedures in judicial practice (Fan, 2009, p. 44).

First of all, the awareness of litigation has a non-procedural orientation. Given that the Chinese culture is deeply influenced by Confucian non-litigation thought, litigation was regarded as an immoral behavior in essence. Therefore, non-litigation dispute resolution, such as the family internal judgment and folk mediation, etc., prevailed in ancient China (Huang, 1998). Second, the litigation procedure of ancient China has a non-system feature and trend of uniformity. The stipulations concerning procedures are scattered in codes of different dynasties. Under such circumstance, the procedural laws were not separated from substantive law. This phenomenon resulted in difficulty in distinguishing criminal procedures and civil procedures (Fan, 2009, p. 43). Third, Chinese ancient lawsuit practice never formed a relatively independent legal occupation stratum. The so-called ‘justice’ that was merely treated as one of the functions of administration had never appeared in ancient China during her thousands of years’ history. Therefore, neither the legal profession, nor the specialized judicial system, existed in ancient China (Fan, 2009, p. 43). Last, but not the least, legal operation of ancient China has a non-procedural characteristic. Due to the trend of strong ethics of the Chinese ancient legal culture, as well as the lack and roughening

of procedural rules, Justice Officials were concerned only with how to cajole clients by the patriarchal ethics to reduce or eliminate litigations (Hu, 1998, p. 144-145).

Different from ancient China, ancient western countries have had more emphasis on the value and function of procedures in legislation and practices. Their own traditional litigation culture correspondingly developed drastically. First, litigation was regarded as a means to achieve social justice. Thus, from ancient Greece and ancient Rome, people preferred resorting to litigations to resolve contradictions and disputes that appeared in ordinary life. Therefore, an emphasis on procedures and development of procedure legislation was correspondingly established. Until the church legislation in the medieval times, procedures had developed rigidly and prosperously. What is more, the western society has formed and sustained independent legal occupation from the earliest of time. Western countries formed specific legal occupation stratum long ago. In ancient Rome, there were a group of professional jurists who greatly promoted and influenced the development of Roman law by means of guiding litigation, writing explanatory notes, drafting agreements, and answering law questions, etc. Moreover, the ancient western procedural operation has had the characteristics of proceduralization and standardization. As Sir Edward Coke, the greatest jurist of the Elizabethan and Jacobean eras, indicated, "Law is treated as an artificial rational, a man can only obtain recognition to law after a long period of study and practice" (Pound, 2001, p. 145).

### **From the Perspective of Relationships Between Laws and Religious Ethics: "Ethicization" and "Religion"**

The traditional litigation culture of China has a strong ethical orientation, while the western traditional legal culture is deeply marked by religious color. The ethics of Chinese traditional legal culture, also known as "the moral action" (Hu, 1998, p. 112), denotes the principles and norms of Confucian ethics dominating and acting as the guiding ideology of legislation and judicial practice. People's understanding concerning litigation, at the same time, had also been deeply permeated with the spirit of Confucian Ethics. With regard to the understanding to actions laid down in the traditional litigation culture of China, lawsuits were regarded as evil actions, which was related to immorality and shamefulness. Under such circumstance, litigation was not for the purpose of resolving disputes, but to achieve social harmony (Zhang, 1999, pp. 122-125). This moral ideology that was deeply rooted in the heart of judicial officials fundamentally determined the ethical orientation of procedural operation.

At the same time, codes present the characteristic of ethicization. Confucianism and ethicization of codes had been completed since the laws of Tang Dynasty, and the laws of Song, Yuan, Ming and Qing Dynasties promoted the ethical spirit, rooted in the combination of their respective social reality, especially in fields of family, marriage and sex (Zhang, 1987, pp. 181-185). Meanwhile, ethicization appeared in the practice of litigation. Pan-moralization of litigation operation was not uncommon in judicial practice in ancient China.

In contrast to the non-religious tendency of traditional litigation culture of China, caused by strong rejection to the religious ideology (such as Buddhism and Daoism) from the dominant Confucian ethics ideology and the Chinese traditional secular regime, the western litigation culture had a strong religious tendency as a result of the specific historical tradition and social environment. From the end of the fifth century A.D. in the West Rome Empire to the beginning of the sixteenth century's Roman Law Renaissance Movement, Christian (mostly Catholic) authority and status of church laws continuously ascended until they preceded the laws and secular regime (Fan, 1998, p. 50). As Karl Marx appraised,

politics and law, at that time, was in the hands of the monks. Similar to other subjects, law became a branch of theology in the practice of litigation. Church doctrines were treated as political creeds. The Bible also had legal effects on courts (Marx & Engels, 1972, p. 400). At the same time, the independent judicial system that developed took the ecclesiastical courts and archbishop papal courts that appeared in churches as the main body, forming complete litigation procedures. Along with the rise of the Renaissance and religious reform of church since the sixteenth century, churches and ecclesiastical law gradually lost their prominence over law. However, practices with strong religious tendencies, including words such as “rational”, and “conscience,” and an oath system, have continued to be applied in the modern judicial system. At this level, the western legal tradition was raised in a religious revolution (Berman, 1993).

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# Jurisprudential Analysis of the Vagueness of Legal Language

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*[Abstract] Same as accuracy, vagueness, which is a feature and indelible phenomenon of legal language, runs through the whole process of legislation, jurisdiction and enforcement of law. Reinforcing the study of vagueness of legal language has not only important theoretical significance, but also a realistic one. Based on legal principles, this paper first analyzes the causes of the vagueness of legal language, then it discusses the active functions of the vagueness of legal language, and finally, based on the analysis of the abuses of legal language, it brings up proposals on the abuses of the vagueness of legal language in terms of macro and micro rules and regulations.*

*[Keywords] legal language; vagueness; function; rules and regulations*

## **Introduction**

Legal language is a system of ideographic language, which runs through the process for the making, study and application of the law (Liu, 2003). Laws, which are expressed in legal language, represent social fairness, justice and impartiality, endowed with mandatory, authoritative and solemn features. As the carrier of legal activities, legal language is different from literary, scientific and other languages, because it must reflect the characteristics of and the requirements for the law, must follow the spirit of the law and must respect the methods of legal argumentation, including characteristics and logic of legal thinking. That contributes to a unique genre and style of legal language. Of all the characteristics, accuracy is the most important one, for it is the life and soul of the legal language. Although concise and precise legal language is what legislative activities and judicial practices aim for, once the application and in-depth study of law is involved, explicit legal rules have been found vague when facing the complex realities of life. In fact, the use of vague terms can be found everywhere in the legislative and judicial fields (Jia, 2002). Thus, exploring the issues related to vagueness of legal language becomes a matter of great practical significance.

## **Causes for the Vagueness of Legal Language**

There are both objective and subjective factors that cause the vagueness of legal language. Studying these reasons is good for flexibly dealing with the vagueness and they also inspire a deep understanding of the essence of laws.

### ***People's Uncertainty of Cognition***

For the infinitely rich and subtle differences between objects, language is unable to accurately sense the way it is manifested. As Hawks, a linguist, says, "Space and time are in fact a continuum. Without fixed or unchanged boundaries or divisions, each language can differentiate between time and space according to their own particular structure (1997)." The number of things in the world largely overwhelms that of the words that can be used to describe things. Therefore, however deep people's cognition reaches, vagueness is always there. However, the law should have a comprehensive coverage of social life

adjusted by it. All kinds of social relations and its various legal phenomena are evolving and may have some degree of disconnection with social and living conditions. Legislators could not foresee all possible situations or accordingly set the courses of action for people, so the laws enacted by them will inevitably have flaws and gray areas, which result in incomprehensive coverage. Therefore, legislators need to take advantage of vagueness of the language to expand the legal coverage of social dimensions, and need to effectively maintain stability of laws and regulations in order to avoid constant changes.

### ***Essential Attributes of Legal Language***

Language is the carrier and main manifestation of the law and has been used as means of interaction from legislation to jurisdiction and texts of law to law enforcement. “Imprecision of language, i.e. ambiguity, is one of the essential attributes of the language (Wu, 1999).” Ambiguity of language is a major factor causing vagueness in legal language. First, many legal terminologies are devoid of specific “references” and we cannot map every word to a specific thing. Legal terms such as mental confusion, justice, freedom, morality, power, etc. are very abstract, which means that defining these abstract terms must resort to other vague conceptions. However, the vague terms themselves need semantic interpretation and in this way legal language turns out to be abstract terms. Second, there is uncertainty in legal terminology. Quite a few legal terms do not have uniform concepts and definitions, which also leads to the vagueness of legal language. For instance, regarding such legal term as “death”, the law does not provide a uniform standard for the demarcation point, “death of brain” or “death of heart”. Also, like in Article 161 of Criminal Procedure Law of the People's Republic of China: “If any participant in the proceedings of a trial or bystander violates the order of the courtroom, the presiding judge shall warn him to desist. If any person fails to obey, he may forcibly be taken out of the courtroom. If the violation is serious, the person shall be fined not more than 1,000 Yuan or detained not more than 15 days.” The term “serious” is of vagueness.

Vagueness of law is not only a common problem but also a core issue in the field of law (Chen, 2002). Vagueness of legal language is a phenomenon that legal practitioners strive to eliminate, but it is very difficult to do so. Maley (1994) pointed out that in Australia and England, approximately 40% of the courts need to rule on the meaning of specific legislative provisions during trial. From that the vagueness of legal language can be seen.

### ***Requirements of Legislative Principle***

As Xu Guodong believes, with the production of social materials and the development of human thinking ability, law-makers are not content with the legalization of experience when setting the goals pursued by law, but they strive to extend the law-making power to things outside experience, trying to maximize the coverage and broaden the applicability of the law (Xu, 1992). The fundamental rule that the law is of vagueness is the starting point of authority for legal reasoning. Based on this, more and more legislators place emphasis on and even adopt the vague language to further expand the coverage of the law.

Limitation of the legal provisions and the diversity of human social behaviors have forced lawmakers to use general language to include specific actions. Generality helps to enhance inclusiveness, but vagueness, too. Such as Article 20 of Criminal Law of the People's Republic of China: “If a person employs an act of defense to an immediate violent crime of committing physical assault, homicide, robbery, rape, kidnapping or any other crime seriously endangering the safety of another person, thus causing bodily injury or death to the unlawful infringer, the said act shall not be regarded as a defense that

exceeds the limits of necessity, and the said person shall not bear criminal responsibility.” The term “any other crime seriously endangering the safety of another person” reflects the vagueness of legal language. Since there is a variety of forms of violent crime in the real life, and they are emerging in an endless stream, which is beyond law’s description. In order to compensate for the deficiency, the article cites typical phenomenon of violent crimes, coupled with the term “any other crime seriously endangering the safety of another person”, which makes the article more rigorous and thorough in elaboration. In another instance, according to “Marriage Law of the People's Republic of China”, divorce shall be granted if “mutual affection no long exists”. However, “emotional breakdown” is a very complex issue, of which different people have different interpretations, so a general term is a better choice than a precise definition in this case.

Legal phenomena that exist in real life are complex and too numerous to enumerate. Some cannot be reflected simply by numbers, and others cannot be expressed with the exact language. Thus, based on abstraction, generalization, induction, judgment and reasoning, drawing up universally instructive legal provisions must refer to the vague language with strong generality (Yang, 2006).

### ***Differences in Ethnicity, Culture, Politics, and Geography, etc.***

“Every nation has historical heritage and underlying structure of its national psychology and everyone must possess the psychological genes of his own nation, ethnic group and region and such genes determine one’s temperament, ways of thinking and behavior, and so on, which therefore constitutes the diversities and features of people from different countries, ethnic groups and regions (Gu, 1987).” Similarly, in a long-term legal practice each different ethnic group has formed a conceptual system that has fixed in the language. Due to the infiltration of cultural, political and geographical factors, such difference is even more prominent. For example, there is great uncertainty in determining the nationality of legal persons because of cultural differences in national laws. According to the rules of lex cause that require legal basis for the establishment of legal persons, States may confer different interpretations on the nationality of legal persons.

### **Positive Functions of the Vagueness of Legal Language**

Russell pointed out that if one thinks indistinct understanding is false, he must be wrong. Instead, a vague understanding is more likely to be true than an accurate understanding, because there are more possible facts confirming it (He, 2005). Chinese is a broad language, and vague language has a positive function to be reckoned with in Chinese. In legal practice, vague legal language is often used by law practioners to compensate for the deficiency in the elaboration of law by legal language, and even to overcome the limitations of legal language (Peng, 2007). Specifically, the vagueness of the legal language has the following positive features:

#### ***More Meticulous and Thorough in Meaning***

The ancient Greek scholar Aristotle, who was the earliest advocator of the rule of law, pointed out in refute of the theory of the rule of man that law had the feature of “stability and certainty” (Kelly, 2002). Civil law expert Xu Guodong refers to all those “circumstances under that law is hard to clearly guide the act of the parties” as the vagueness of the law, and thinks that vague language existing in the legislation generally undermines the clarity of the law (Xu, 1992). Some even propose to prohibit the use of vague language in legislative language (Zhou, 2003). Although these ideas are not unreasonable, they cannot form the basis for the elimination of vague words existing in legal provisions, and in fact, it would be

impossible to completely eliminate the vague terms in the provisions of the law. Vague language can effectively compensate for the lack of expression in human language by leaving a space open for people.

For example, due to the uncertainty of certain contract terms themselves, vague language is often used in the contract to accurately express the rights and obligations of the contracting parties. Vague language is used with various other adjuncts, modifiers and description language to make the content expressed more rigorous, accurate and logical, so as to prevent loopholes in the law. As shown in the following clause, “If the goods are unclaimed during reasonable time, or wherever the goods will become deteriorated, decayed or worthless, the Carrier may, at his discretion and subject to his lien, and without any responsibility attaching to him, sell, abandon or otherwise dispose of such goods solely at the risk and expense of the Merchant.” In the above clause, the term “during reasonable time” is used as the vague language, which refers to a reasonable period of time in the sense of a reasonable man who works in the same general field and has received secondary education. The specific length of time will be determined by the judge, based on the specific circumstances of the case when dispute arouses. Another vague term “otherwise dispose” covers other disposals outside of selling and abandoning. Since business transactions are complex, using precise words together with certain vague language in the contract could make the contract more meticulous and rigorous.

For another instance, “the Constitution of the People's Republic of China” on the establishment of the Special Administrative Region has the following provisions: “The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of specific conditions.” Such terms as “when necessary”, “specific conditions” are all vague words, because there exists flexibility respectively between “necessary” and “unnecessary” and between “specific” and “unspecific”. China established special administrative regions under the special background of “one country, two systems” policy, which will certainly involve all aspects of matters, that can just be covered by vague terms. It is thus evident that the legislative branch using appropriate vague language in the selection of legal phrases would not weaken the clarity of the law, but instead make the law more rigorous and comprehensive.

### ***Reflecting the Humanistic Solicitude of Law***

In the process of application, law must pay attention to its respect and care for people. Laws in most countries in the world regulate that cases involving personal privacy shall not be made public during trial. Likewise, all the language that contradicts the law to the detriment of national interests and human dignity of other people must be banned in legal language. And the case has to be processed with vague language if in need.

As in criminal or civil cases involving rape, obscene, insults, and libel, etc., the privacy of the parties or other relevant matters of social morals must be inevitably concerned. Fine description of the above-mentioned contents will be definitely contrary to public morals and good social customs and once again hurt the victim’s feelings and seriously violate their rights to privacy, which tends to cause adverse effects. Under such circumstances, the use of vague language can avoid the serious consequences so as to reflect the humanistic solicitude of law (Jia, 2002). As shown in the following case brief, “the defendant Zhang stole letters addressed to quite a few young women from the letter rack in the reception room of a factory, and after secretly opening and reading the letters... Zhang wrote obscene words and painted pornographic pictures on the letter papers, then sealed the letters back in the envelopes, and finally put them back on the letter rack (Editors Group, 2004).” In the above case, using such vague language as

“obscene words” for tactful generalization not only gives a complete description of the case, but also leaves out the contents that are inappropriate to describe, which is the unique function of vague language, conforming to legal language’s seriousness and solemnity and more to its humanity.

### ***The Enforcers Having Certain Discretions***

Almost no law is fully clear and precise due to the limit and vagueness of language, while the vagueness of the legislative language is such that it has a certain degree of openness, which allows the law to maintain its own stability in the face of evolving social realities and meanwhile, with the supplement of vague language, to absorb new contents and values that are needed for adapting to social development. Law, therefore, develops gradually and the proposition whether the law is changeable or unchangeable has reached a certain degree of balance (Xu, 1992). For example, Item 7 of Article 19 of “Regulations of the PRC on Administrative Penalties for Public Security” provides, “whoever refuses or obstructs state personnel who are carrying out their functions according to law, without resorting to violence and threat, if it is not serious enough for criminal punishment, shall be detained for a maximum of fifteen days, fined a maximum of two hundred Yuan or given a warning.” Obviously what applies here is the act of disrupting public service without resorting to violence and threat, however, there is no specific regulation for the above act that is not prescribed as crime by the “Criminal Law”, which results in the “blind spot” of legal adjustment (literally it should be so). In order to remedy the literal loophole, the determination on the nature of such acts is at the judge’s discretion (Fu, 2004).

Judges make decisions on the comprehensive analysis of the background of the case, the consequences of illegal behavior and the perpetrator’s subjective culpability, and finally select the applicable punishments or administrative penalties. The use of vague term allows law enforcers to have the opportunity to play to their intelligence and wisdom, to combine the conscience principle with the "fair and just" principle and to bring about creative development of case law, so as to compensate for the limitations of statute law and constantly improve the legal system.

### ***Improving the Efficiency of Language***

Vague expression is often seen in written language, because it helps to improve the efficiency of language. We all know that language symbols have its limitations and a complete identity between conveyed messages and signified objects can never be reached. While the use of vague language can make up for this deficiency, and especially it is more suitable for expressing such details as the time or space that is difficult to determine and the numbers or frequency which requires no accurate description. As seen in the following example, “The defendant Li has frequently committed burglaries since the spring of this year around Jinshajiang Road, Putuo District. He committed more than 50 crimes over the past few months, stealing valuables worth about 300, 000 Yuan”, among which the use of vague terms such as “since the spring of this year, frequently, around, past few months, more than and about” (Wu, 1999) effectively expresses the criminal’s housebreaking details.

## **Abuse of Vague Legal Language and Its Regulation**

### ***Abuse of Vague Legal Language***

The British jurist, Lord Mansfield once said that most of the disputes in the world are caused by words. Precise words and vague words in the language are two different aspects of the same contradictions. Although vague legal language has some positive functions and the vagueness sometimes cannot be

avoided, if too much vague language is used in legal acts or vague language is used when a precise description is needed, then the negative social functions would also be obvious. The abuses of the vagueness of legal language are mainly as follows:

First, vague terms in legal language sometimes make laws and regulations difficult to operate in practice, and those laws and regulations that cannot be implemented turn out to be nothing but dead letters;

Second, vague terms in legal language leave a backdoor to some judicial officials with loose morals for “rent-seeking with power” (Krueger, 1974). Those judicial officials justify their behaviors through post hoc explanation, which is tantamount to authorizing them the legislative power in disguised form. Also some deliberately exploit an advantage of the loopholes in vague legal language to haggle over regulations, which brings adverse effect on society.

Third, improper use of vague terms is likely to affect the precise defining of the nature and state of things, especially in the area of criminal law. For example, a verdict reads, “the defendant’s conducts caused injury and have constituted crime of willful and malicious injury.” Here the word “caused injury” is used loosely, for defining the connotation of the term ‘injury’ may involve not only identifying crime from noncrime, but also distinguishing between different crimes. Wrong use of the vague terms shakes the foundation of the whole argument.

Fourth, vagueness of legal language is likely to deflect legal standards of the rule of law, and even becomes the tools of tyranny. Montesquieu once mentioned that law should not be too vague and esoteric, but as simple and plain like a father instead, because it was developed for people only with general understanding. He even strongly claimed that vague connotation of legal provisions and unclear regulations on conviction were sufficient to make a government fall to authoritarianism.

Fifth, vague laws will eventually impair the legitimate rights of citizens, which in turn affect the stability of the whole society. Woking, the U.S. contemporary master of jurisprudence, once said that vague regulations would place citizens at an unfair position, that is to say, they have to either take a risk to act or accept the restrictions which are more stringent than those authorized by the legislature.

### ***The Regulation of Vague Legal Language***

Vagueness is the basic characteristic of the law, and the pursuit of legal certainty is a sacred duty and obligation incumbent upon legal workers. Certain degree of vagueness and accuracy in legal language reaches dialectical unity, while excessive degree of vagueness in legal language must be subject to regulation. And the vague legal language can be regulated from both macro and micro level.

First, the law is interpreted on a macro level. Since there are a great variety of factors involved in setting semantic boundaries of legal language, along with the limitations of lawmakers in every respect and the limitations of language itself, the legal semantic boundaries, which are usually believed to be set by the lawmakers and have their own legality, are of great tension. This tension is manifested through the legal interpretation. Thus, interpretation becomes not only the primary means of semantic expansion and identifying new boundaries, but also a powerful tool for overcoming the passive vague language (Jiang, 2004). Interpretation of law includes legislative interpretation, judicial interpretation and theoretical explanations (Xu, 2007). Here, only the legally binding judicial and legislative interpretation will be explored.

Legislative interpretation is the continuation of legislative activity. By clarifying the uncertain or unclear descriptions of the law, legislative interpretation plays the role of filling the legal loopholes. The

methods commonly used in legislative interpretation are literal interpretation and jurisprudential interpretation.

Judicial interpretation can eliminate the vagueness of legal language. According to the doctrine of reasonable excuse, judicial interpretation is regarded as a regular means of eliminating vagueness in legal language. Judicial interpretation is a semantic extension, which is not only an important means to determine the new boundaries of concept, but also a powerful tool to overcome the vagueness of language. The content of judicial interpretation can supply the deficiency caused by vague legal language, because legal practitioners will take advantage of the content of judicial interpretation to make the vague legal provisions more specific and legislative intent more clear. More importantly, as the extension of legislature, judicial interpretation also has legal effect.

Secondly, micro-level regulation of vague legal language is available from the following aspects:

First of all, we should try to avoid using adjectives and adverbs in legal language (including legal provisions and contracts, etc.), because such vocabularies are of emotion and subjectivity and very likely to confuse the public. Also, we should avoid using some terms with vague implication.

Adjectives and adverbs such as “splendid”, “happy”, “rather”, “quite” or other words that likely cause ambiguity are barely seen throughout contracts or legal norms in foreign countries, so as to avoid the parties’ deviation on understandings, and ultimately reduce the chance of the judge’s abuse of discretion.

Next, the ambiguity and vagueness of semantic structure of words should be avoided. In legal language, the appropriate use of vague terms is allowed, and sometimes even necessary, but in the process of application, attention must be paid to the difference between vagueness of terms and ambiguity of terms. Vague terms express the words that have no clear extension in concept, such as hard work and excitement, since there is no standard for reference available to define the scope, so they are vague terms; while the ambiguity of terms is different, which shows that a word has more than one meaning, the respective meanings of the word have clear boundaries. Such ambiguity caused by ambiguous meaning of terms is not rigorous and thorough and must be absolutely avoided.

Then, legal jargon should be used widely. The meaning of legal jargon is vested by law, with the feature of fixity and unity, so any person in any case must follow the uniform interpretation of it. Such terms as “offer”, “legal person”, “attempted crime”, “parole”, “act of rescue”, etc., are all special or frequently-used terms and phrases in legal language, whose semantic range are fairly accurate, with certain legal connotation. In addition, the meaning of legal jargon is fixed and unitary and cannot be substituted with common words that have similar meanings, which makes the legal concept expressed very accurate.

Finally, stylized text should be used. Stylized legislative discourses range from the General Provision to clauses, from important clauses to sub clauses and from descriptive content to prescriptive content. Stylized legislative discourse is the necessary means to keep legal norms solemn as well as keep its contents reasonable and rigorous and normal and accurate, which can fully embody the connotation of legal norms and set specific contexts of interpretation for legal provisions, jargon and general terms involved. Contracts and judicial documents should also make full use of stylized discourses.

## **Conclusion**

In this paper, I have presented some issues related to the vagueness of legal language, including its causes and active functions as well as its abuse in legislative activities and judicial practices. As far as the abuse

of the vagueness of legal language is concerned, I claim that the vague legal language can be regulated from both the macro and micro level. On the macro level, interpretation of law is the right solution to overcoming the problem. On the other hand, micro-level regulation consists of such aspects as widely using legal jargon and stylized text instead of adjectives and adverbs in legal language and avoiding the ambiguity caused by ambiguous meaning of legal terms.

In summary, legal language should follow the spirit of law and keep a proper degree of vagueness and precision in order to reach a dialectical unity by making good use of the positive functions of vague legal language. Legal language should also be regulated to eliminate its drawbacks, so as to better and more effectively serve the public.

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# **Brief Study on Cross Examination and Its Transplantation into the Chinese Courtroom**

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*[Abstract] Cross-examination, based on the judicial power's ability to find the facts to the greatest extent with the lawyer's help, is one of the basic procedures in common law countries' courtrooms. However, the benefits this system may bring to the judicial procedure have not been practiced to a great extent or fully recognized by the Chinese judicial power. In this paper, the basic elements of cross examination will be introduced and the possibility for this system being transplanted into Chinese courts will be discussed. And it will be concluded that it is possible and necessary to transplant this system into Chinese legal procedure.*

*[Keywords] cross-examination; transplantation; Chinese courtroom*

## **Introduction**

It is undeniable that the most individualized and visualized part of legal language is the courtroom language. In courtroom language, the most dramatic and intriguing part is that of cross-examination. Out of the scope of linguistic perspective, it is not only a common lively scene in the notoriously stereotyped legal language, but also a critical process for the court to deduct truth from the witness' testimony. Admittedly, it is often manipulated by the lawyers in order to lead witnesses to deliver testimony in their client's favor, but it is still an indispensable link in the judicial process in the Anglo-American legal system (Tiersma, 1999, p. 164). In China, the criminal courtroom, though allegedly having introduced the cross-examination, has not practiced it adequately. In this paper, the basic information of the cross-examination will first be introduced. This will include its history, background, the process and function in brief. The second part will be a discussion in the discourse of the Chinese legal system. Both the possibility and the hindrance will be discussed. Also, the temporary practice in China will be evaluated.

## **A Brief Introduction to the Cross-Examination**

### ***History and Background***

Technically speaking, cross-examination is a process of interrogation of a witness called to the court by the opposite party (Ehrhardt, & Young, 1996, p. 25). Before the cross-examination first exposed itself to the legal professionals and other lay persons, the courtroom was dominated by eloquent lawyers who could talk like firearms in the 19th century Anglo-American courtrooms (Wellman, 1904, p. 14). Since the sole lecture of a lawyer was highly likely to drag the jury into puzzlement about the facts, it was necessary that the trial procedure be reformed. Thus, the questioning of the witnesses became the core of the entire process to find out the truth. More than one hundred years have passed and the "question and answer" (Q&A) format is still steadily followed by the legal professionals in the Anglo-American legal system today for its precision and convenience in obtaining information (Tiersma, 1999, p. 159). Cross-examination, undoubtedly, is the most noticeable part of the Q&A format. It is the forum where the

lawyers can show their debating and logic skills and for the jury to evaluate the credibility of the witnesses.

### ***The Process***

Often in a typical jury trial in the Anglo-American legal system, the process begins with the opening statements of the lawyers. Together with the followed direct examination, the two steps are designed by the attorney of one party to tell their version of the story. But soon their story will be challenged by the other party's lawyer, and this process is the cross-examination (Tiersma, 1999, p. 158). As a typical example of the Anglo-American adversarial system, the process of cross-examination is often manifested by the struggle between the lawyer and the witness (Yi, 2003, p. 14). One of the most renowned, and yet controversial ingredients of the cross-examination is the leading question. Lawyers try to elicit information from the witness that will damage her credibility, or simply be unfavorable in her part. That effect is often achieved by asking questions beginning with "Do you", "Have you" or statements with tags like "is not it?", or "have not you?" in a quite formal or even intimidating tone (Tiersma, 1999, 165).

### ***The Function and the Value***

Since the cross-examination is playing such an important role in the Anglo-American legal procedure, the value under this process is worthy of mentioning. First, it is the most effective way to reveal falsification of the testimony that can avail the judge or the jury, to observe the facts in a multi-aspect perspective, and thus, the judicial justice may be achieved. Second, the process is a comparatively proper way to reach fairness. It provides the other party an opportunity to challenge the testimony, which in America has been engraved in their Sixth Amendment to the Constitution. Finally, in the criminal court, it is the final defense to protect the defendant's basic human rights (Li, 2006, pp. 106-107). When a perfect judicial system is unachievable and the justice of process conspicuously outweighs the substantive justice, the cross-examination is therefore more favorable than other choices.

## **The Transplantation into Chinese Courtroom**

### ***The Possibility and the Urgency***

With the communication between the legal professions from common law system and the civil law system becoming more and more frequent, the boundary between the two systems is blurred day after day. Both sides are inclined to learn from each other to improve the whole legal system. As for China, a country where the modern legal system has only been established for a couple of decades, the learning is particularly possible since the system is far more shapeable than those countries with centuries of legal traditions.

Since the amendments to the Criminal Procedure Law of the PRC issued in 1996, the gross frame of the cross-examination has been formed in China (Ni, 2013, p. 26). Though a few judicial interpretations and enforcement regulations have been enacted to support this system, it is still in its infancy and quite immature. The urgency of the thorough and adaptive transplantation is imminent under the current circumstances where the reform is about to be enlarged in extent and expanded in scale.

### ***Temporary Practice and Experiment***

For all the possibility and urgency there is to transplant the system into China, the temporary practice of it in China, which has been more than one decade, is not optimistic. In the first place, the scope of

application is largely limited. Different from the “witness-centered” adjudicative procedure in the common law system, the documentary and written evidence is more preferred in Chinese courtroom trials. Seldom is there a criminal trial where the finding of facts is accomplished by the questioning of witnesses (nor are there so many witnesses involved in the civil court). So cross-examination becomes form without substance (Long, 2000, p. 86).

In the second place, even when cross-examination is applied during a trial, the process is seldom firmly complied with. What is frequently seen is that the order of the questioning is disrupted: the judge, the prosecutor and the defense attorney seem to be unaware of the sequence and their roles. What is worse, the questioners are not well informed in the way to deliver questions. Many of the questions are not relevant. Though it is in high proportion owing to the ability of the questioners, it is a manifestation of the weakness of the whole system (Liu, 2005:272).

Thirdly, the judge, who almost keeps completely silent during the cross-examination (except in the case that an attorney’s question has crossed the line or objected to by the other side), is an active participator in the Chinese cross-examination process. Since in the inquisitorial system the judge is the one who mainly delivers the questions and dominates the process of the trial, the judge then has to play a dual role during the cross-examination. On the one hand, the judge has to keep the order and remain majestic. Research shows that judges are inclined to actively interrupt the lawyers so that they can fortify their power. They may also force the lawyers to inform them of the question they are going to ask the witnesses before asking (Liao, 2013, p. 3). On the other hand, she has to perform as a cross examiner herself. The witness is often intimidated by the title of the judge, precipitating to her nervousness and incapable of giving out the truth. In addition, another important role, i.e., the prosecutors, is often seen as being in the same hierarchy with the judge. The power in the cross-examination can indisputably impose influence upon the system (Ni, 2013, p. 58).

### ***The Hindrances***

With the possibility, urgency and the seemingly lame practice of the cross-examination in China, it is eagerly expected that the process will be appropriately transplanted into Chinese system as soon as possible. However, the transplantation cannot be that smoothly conducted. Immanency and hindrance are at stake at the same time.

First of all, the cross-examination is a process highly-dependent on the jury system in the common law system. It is a tradition and rule in the Anglo-American construction of law (Shi, 2006, pp. 95-96). Nevertheless, in China there is no similar institution as the jury. Though there are usually two people’s assessors supervising and participating in the trial, the cross-examination is still lacking the audience. Consequently, the case shall be finally decided by the judge, who is a member of the questioners.

The second hindrance is even more fundamental, which is the shortage of relevant questioning skills among the legal professions. Students in Chinese law schools are mostly taught the rigid provisions and regulations. The absence of the cross-examination in the real legal system has forced them to neglect teaching or learning the skills for this process. The lack of such skills makes them unable and even reluctant to get involved in the process. With only a few cases that go public through the multimedia, one can hardly find an apt lawyer who can deliver an appropriate objection. The judges, unlike the judges in the common law system who are selected from dexterous and experienced lawyers, are often not that skilled in handling complicated cases (Wang, 2006, p. 232). In the notorious Da Xing infant-murdering

case, when the defendant lawyer tried to object the prosecutor's question, the judge simply deterred him by commenting, "There is nothing to object here," in an annoyed tone.<sup>1</sup>

The last, but not least, significant hindrance is the difference of underlying litigious ideas. In the common law system, the cross-examination is established out of the distrust of the public power. While in China, cases are presented to the court out of the reliance and obedience to the authority (Ni, 2013, p. 42). This radical difference is seemingly one of the most challenging obstacles in the transplantation of the cross-examination. A common scene in Chinese courts can exemplify this disparity: The final statements of both parties shall invariably end with the same sentence: It is expected that the court will deliver the judgment complying with the statutes and the law. The dignity of the law is less established upon the idea that everyone is selfish and only due process can justify the judgment than that the authority shall be unbiased all the time. Another ineligible discrepancy is that the defendant is often in an unfavorable position. The assumption of innocence before proven guilty is far from being accepted by Chinese legal professionals. One of the most frequent words uttered by the judge in Chinese criminal courts is "confess". The judge may urge the defendant to "confess" what they did (Liao, 2003, p. 3). That is to say, the compulsory defense is still void in the Chinese criminal procedure. In the common law system, a penniless defendant has the right to be defended by an appointed lawyer, while in China, whether to hire a lawyer is completely left to the defendant's discretion. As a consequence, the defendant is at the initial place deprived the process of cross-examination.

### **Conclusion and Recommendation**

The cross-examination, which is a core element in the common law trial procedure, has now been implemented by some civil law system countries such as Germany and Japan. It is favored by both legal systems because it is perceived to be the most effective way to reach judicial justice. It is a convenient and convincing way for the jury to find the truth and for the witnesses to better express themselves. Most importantly, this process is out of control of the judge, which means that the facts can come to light, leaving more space for individual freedom. However, currently, the same system is not working effectively in China in spite of its early introduction to Criminal Procedure Law. It is undeniable that this favorable system, though far from perfect, should be transplanted into the Chinese legal system. But the present condition and the long-inherited tradition pose huge obstacles to its transplantation. To eliminate those hindrances, it is recommended that the judicial system be altered in the following aspects: first, the jury system should be gradually established in China's trial system, beginning from the expansion of the people's assessor list in the temporary court system; second, the judge should act passively during the trial, which means they should be neutral and absent from the questioners' list; finally, legal education should reform accordingly, which means the law school teachers should teach more about debating and questioning skills. Also, the propagation of the litigious idea should be altered. The public needs to be informed of the changes and to gradually become accustomed to it. The compulsory defense, to draw lessons from the German and Japanese models, should be enforced in China (Wang, 2006, p. 108). It is expected that a fundamental reformation undergo in Criminal Procedure Law.

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<sup>1</sup> <http://v.qq.com/cover/w/whobwg3y7sgmcw0.html>. The latest logon time is May 25, 2014.

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# The Collocational Features of Formulaic Sequences in Legislative Translated Texts

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**[Abstract]** *As prefabricated structures, formulaic sequences (FSs) are always stored and retrieved whole from memory at the time of use. In this sense, they can be seen as any “lexis”, and they can also have concordances and collocations. A considerable number of formulaic sequences, which perform different patterns and functions, exist in legislative translated texts. First, by the method of corpus-driven and different software to generate the list of FSs, we took 2-grams to 5-grams as observable data. Second, we explored the collocational features and concordances of these FSs. It is easy to find that they perform certain pragmatic or discourse functions in texts, and these functions are roughly subdivided into 2 categories: information and speech-act. They may describe various kinds of information: legal condition, and cases etc. Generally, different grammatical types of FSs tend to function in a certain way in discourses. By way of classification, FSs’ correlating forms were matched with functions. At the same time, by contrasting the same FSs in original texts and translated text, the characteristics of legislative translated texts can be found: complex, normalization, and abnormality.*

**[Keywords]** *formulaic sequences; legislative translational texts; collocational feature*

## Introduction

Formulaic sequences (hereinafter as FSs), also known as formulaic patterns, refer to the fixed or semi-fixed multi-word units stored and retrieved in the brain (e.g. Sinclair, 1991; Cowie, 1988). They are used as a whole rather than being generated or analyzed by language grammar. Normally, FSs include, at the one extreme, tightly idiomatic and immutable stings, such as *by and large*, which are both semantically opaque and syntactically irregular, and, at the other, transparent and flexible ones containing slots for open class items, like NP be-TENSE sorry to keep-TENSE you waiting (Wary, 2002). Legislative texts are those laws or stipulations that are enacted and issued by legislature (the National People’s Congress: NPC or standing committee of P. R. China). The feature of legislative texts are premise, specification and rigorous, and the use of FSs in legislative texts has their own semantic connotation and pragmatic functions. Taking comparable corpus as the research method, this thesis tries to explore different collocational features of FSs in translated and original legislative texts.

## Background Knowledge of FSs

### ***Relative Studies on FSs***

The recent boom of research on formality of language owes a lot to the availability of advanced techniques and tools, particularly the advent and unique methodology of corpora. Departing from differing theoretical perspectives and methodological considerations, scholars have posited various terms, such as: chunks, clusters and formula. Wray & Perkins (2000) first mentioned “formulaic frequencies” and indicated that FSs are multi-words being stored and retrieved as a whole in brain. Hereafter, a group of

scholars endeavored to further explain connotations and denotations of FSs (Pérez-Llantada, Carmen 2014).

Although different views were given, the cognitions of FSs are the same. Meanwhile, because of the psychological implicit being extremely hard to define, finding repeated frequencies of FSs is the most appropriate way to identify patterns of FSs in legislative texts. Scholars have pinpointed different features of FSs in different genres of discourses; they are science discourses (Lu, 2012), political discourses (Deng, 2012), literal discourses (Li, 2011) and legal discourses (Fang, 2011), etc. Being language reflections on human society, economy and life living, legal discourse has three characteristics: complicated, wordy, and conservative. In comparison to literal language, legal language (esp. legislative language) has stable forms of patterns in most of registers. In this way, the study of FSs in law is much more significant and practical.

### ***Relative Studies on Collocation***

According to the definition in the Oxford dictionary, collocation is “the habitual juxtaposition of a particular word with another word or words with a frequency greater than chance”. Corpora are useful for revealing “relations between frequency and typicality, instance and norm” (Stubbs, 2001). According to Baker (1992), “the most important task that awaits the application of corpus techniques in translation studies is the elucidation of the nature of translated text as a mediated communicative event”. Some hypotheses such as “translated texts tend to be more explicit, unambiguous, and grammatically conventional than their source texts” have already been investigated by using translation corpora (Baker, 1992).

Furthermore, some scholars point out the usefulness of corpora and corpus linguistic techniques in translation, such as providing a powerful tool to identify features of translational language, and helping translators understand what translation is and how it works (Baker, 1993). According to Sinclair (2001), collocation, as one of five most crucial elements (node word, colligation, collocation, semantic tendency, and semantic prosody) of co-selection theory, got a lot of attention from scholars in the field of corpus study. Nevertheless, all of them reached the consensus that node lexis play the key role in co-selection research, which is the first step to follow in every empirical study. Then, using the observation of high-frequency collocations of node lexis is the best way to find out the trend of language use. It is generally believed that appropriate collocation use has become an important difference between translated and originate languages (e.g. Cowie, 1988; Wei, 2002 from Wu, 2012). It is worth noting that “node lexis” can be “one lexis” or “multi-lexes”, and this thesis takes FSs (being obviously multi-lexes) as research objects to further explore their collocation features.

At present, major corpus-based studies on the collocation studies of translated texts concentrate on three features: normalization, explication, and simplification. The problems of these studies are: (1) Those studies are too general to contour features of translated texts into one specific genre. (2) There is seldom, if any, study of FSs on their collocations. (3) Previous research methods mainly take a one-way pattern (from translated language to originate language), but the reverse pattern (from originate language to translated language) is hardly found in related research.

We can see from the above discussion that the research of collocation of FSs has been well considered, nevertheless, the research on collocations of FSs has not yet been carried out. Based on the self-built corpus of legislative texts, this thesis is devoted to: (1) Explore high-frequency patterns and collocations of FSs in legislative texts. (2) Observe the co-occurrence frequency and collocations of FSs

in reference corpus. (3) Analyze different uses of FSs in legislative language between translated texts and originate texts, and standardize the translation of FSs.

## Research Design

### *Research Questions*

To fill the great gap in corpus studies on translated legal English FSs in general and find out grammar patterns of original legal English and variation features of translated legal English in particular, we have to take a lot into consideration including theoretical framework, corpus building and analytical tools, criteria on identifying FSs, and a comprehensive analytical scheme. At first, what follows is three research questions in this study. Second, a brief introduction of the corpora and tools will be introduced. Then, we will put forward a multiple verification method to identify qualified legal FSs for our study. Finally, a detailed analytical procedure will be elaborated.

Based on the above discussion, we focus on three research questions in this study, (1) What are the patterns of high-frequency FSs in translated legal texts? (2) What are the different collocational features between translated texts and originate texts: translate simplification, normalization, or abnormality? (3) What are the functions of these collocations?

To explore the above questions, the present study is mainly based on a self-built legal English corpus (SLC), comprised of 302 texts, with a total of 203,000,356 English tokens and 51,721 types. The legislative texts collected are all of the currently implemented laws and regulations, and downloaded from authoritative websites, the database of laws, and regulations of National People’s Congress (NPC). In addition, SLC are regarded as carriers of translated legal language, and the texts in BNC (2.2 million) are regarded as carriers of original legal English. In the meantime, two analytical tools are adopted in the present study – AntConc 3.2.1 (Scott 2005), as the lexical analytical tool, is taken to generate clusters, keywords and concordances, and the statistical analytical tool SPSS11.0 is employed to make chi-square tests and cluster analysis.

### *High-Frequency FSs Extracting*

In this section, a detailed explanation of the above questions will be given. As stated above, research Question 1 states, *What are the patterns of high-frequency FSs in translated legal texts?*

Based on SLC, utilizing the n-gram part of AntConc 3.2.1 as the extracting program and deleting nonsense or repeat multi-words, 9 patterns of FSs have been extracted, as shown in Table 1. To simplify the study, all data has been standardized by the unit convention of per million.

**Table 1. Patterns of High-Frequency FSs**

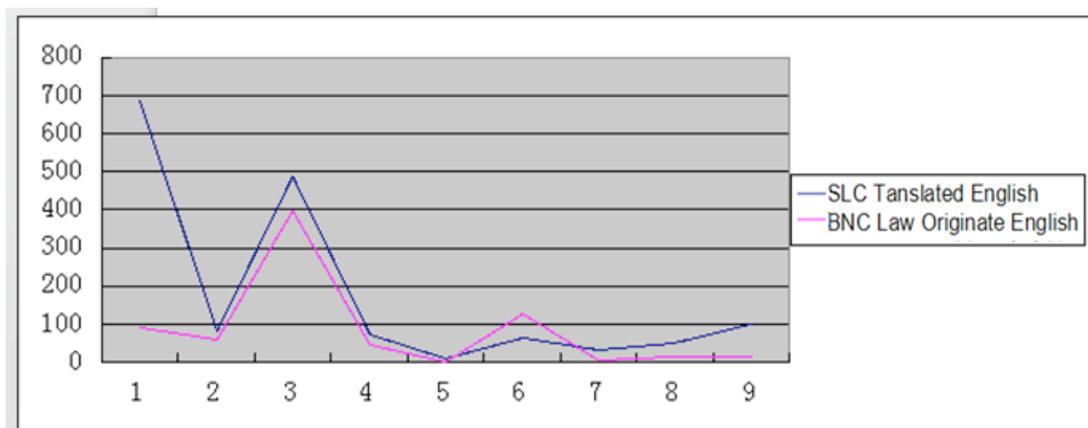
Patterns of FSs	Frequency in SLC (/million)	Frequency in BNC Law (/million)	Frequency Differences
1. shall be	7882	234	7648
2. in accordance with	2286	177	2009
3. where the	1706	811	885
4. according to	1415	136	1279
5. be sentenced to	761	1	760
6. subject to	625	438	187
7. in violation of	413	3	205
8. approval of	304	18	205
9. have the right to	258	19	239

At the same time, we take MI>3 as significant criteria to extract lines. Nevertheless, there is no ready-made program to calculate MI of FSs. For this reason, we used the MI formula manually to get all collocations with MI >3 and analyze them separately.

### Analysis Procedure

Actually, SLC can be seen as the database of translated English and BNC Law is the database of originate English. Indexing the 2 corpora separately, differences of FSs in translated texts and originate texts can be found. The comparison result of the 9 FSs in SLC and BNC Law is shown as follows:

Figure 1. Comparison Line Graph of FSs in SLC and BNC Law



In the above figure, eight of the nine FSs have more collocations in SLC than BNC Law. Then, we explore whether there is any significant difference between collocations of FSs in translated English and originate English by taking chi-square test to make the result valid, as shown in Table 2.

Table 2. Significance Test of Collocations of FSs

	Collocation Amount in SLC	Collocation Amount in BNC Law	Chi-square Value
1. shall be	687	89	225*
2. in accordance with	84	59	271*
3. where the	488	396	60*
4. according to	72	45	139*
5. be sentenced to	8	1	6**
6. subject to	66	125	56*
7. in violation of	30	3	23*
8. approval of	52	16	48*
9. have the right to	102	15	11*

\* P<0.01

\*\* 0.01<P<0.05

From the above figure and table, we try to solve the first issue of Research Question 2: *What are the different collocational features between translated texts and originate texts?*

**Translate simplification.** At first, according to chi-square test, there are significant differences of FSs' collocations between translated and originate language. In other words, FSs have much more collocations in translated text than in originate text, which is just the reverse to the general idea. Taking FS1 "shall be" for example:

**Table 3. Colligation and Collocations of “shall be” in SLC and BNC Law**

Colligation	Collocations in SLC	Collocations in BNC Law
Ved	sentenced; submitted; imposed; ordered; deemed; fined; formulated; determined; punished; investigated; paid; confiscated; handled; revoked; issued.....borne; decided; governed; carried.....etc.	deemed; treated; entitled; construed; taken; regarded; determined; brought; used; given; allowed; borne
adj	liable; responsible; applicable	liable; conclusive; guilty
art.	the	a; the
prep	in	in; at; as

It is obvious that both the number of colligations and the semantic range of FS1 in translated texts are higher than originate texts. It can be seen that some collocations used in translated texts are much richer than their use in originate texts. We conclude that there is no simplification in translated legal language, and to the contrary, the complication of translated legal language exists.

**Normalization.** Normalization is the principle that all translated texts pursue: “translated text strive for more in line with the target language in its pattern and style” (Baker, 1993). But excessive pursuit of normalization may cause exaggerated expression, such as longer sentences and much more functional word use in translated legal texts. As a result of legal text having rigorous characteristics, long sentences can be a fixed feature of legal texts, which we will not discuss more here. Nevertheless, the use of function words can be taken as the criteria of being normalized, such as: both FS2 and FS4 have the meaning “according to”, and their collocations of function words in SLC are 1503/million and 704/million separately, but in BNC Law, collocations of function words are 57/million and 29/million. It is observed that the use of function collocations of FS2 and FS4 in translated texts is much higher than originate texts. This situation applied to all FSs in translated texts and originate texts needs to be further investigated, as shown in Table 4:

**Table 4. Chi-Square Test of Functional Collocations of FSs**

	Chi-Square Value
1. shall be	29.6*
2. in accordance with	79.6*
3. where the	0
4. according to	50.7*
5. be sentenced to	0
6. subject to	0
7. in violation of	0.03
8. approval of	0
9. have the right to	0

\* P<0.01

There are 6 out of 9 FSs (67%) with no significant difference between function collocations in SLC and BNC Law. Therefore, we can conclude that the normalization of FSs exists in legal texts.

**Abnormality.** Abnormality is quite a difficult issue in the research of translation, because of a lack of unified criterion. According to Mauranen (2000), in comparison with originate texts there is always atypical language use in translated texts. In this case, many translated texts lack unification of language use, which makes them unapprehended. Presently, dictionary and manual checking are still two of the best ways to determine the accuracy of translation. In this thesis, we incorporate the advantage of two

methods and take corpus into this research to identify whether the abnormality of FSs exists in the legal texts.

As we can see, there is quite a difference in FSs use between translated and originate language. Both FS2 “in accordance with” and FS4 “according to” have the same meaning, whereas 76% collocations of “in accordance with” means “according to law” in SLC, but only 4% in BNC Law. FS4 “according to” has the collocation “the terms of”, which take 64 % of all its collocations, but the same situation appears only once in BNC Law. In comparison with originate texts, the use of “according to” is more decent and formal, and its collocations focus on the terminologies of “law, Article, regulation” etc. We can conclude that FS2 and FS4 have quite a different usage in SLC and BNC Law.

FS5 “be sentenced to” can be translated as “被判处”, and it only appears once within the sentence “imprisonment for a term of 5 years” in BNC Law. Yet, there are 761 collocations of FS5 in SLC, all of which are formal words, and “fix-term imprisonment of, confiscation, compensation, deprivation” are mainly included. “Fix-term imprisonment of...” takes 45% of all collocations of FS5. The reason of these different uses in SLC and BNC Law may root from different legal logics of our country and western countries. The law of our country is consisted of three elements: assumption, transaction and sanction, which are indispensable, yet not essential in the European and American legal systems. In this sense, there are many differences in the use of FSs in different legal systems. Meanwhile, “fix-term imprisonment of” refers to “有期徒刑”, and the specific punishment duration is always collocated after “of”, which has the same semantic meaning of “fix-term”. Therefore, the using of FS5 is more accurate in BNC Law than in SLC.

FS7 “in violation of” or “侵犯” has three kinds of collocations: 1)~ right, 2)~ the plaintiff’s actual rights, and 3)~ the terms of Article 6 in SLC. They concentrate on the formal vocabulary of “law, provision, Article, regulation” etc. in SLC, whereas there is no any collocation use like “right” which is used much in BNC Law. In this case, we can conclude that translated language use is much more official than the originate legal language.

FS8 “approval of” can be normally translated as “批准, 许可”. The most frequently use of its collocations is “the approval of arrest, the approval of the court and the approval of the legislature”, which is quite similar in the two corpora. Left collocation of FS8 “advance approval of” in SLC has yet to be seen in BNC Law, whereas “prior approval of” appears repeatedly in BNC Law. There is no significant difference between the right collocation using of FS8 in SLC and BNC Law.

FS9 “have the right to” means “有权”, and the most rights collocations of which are “requirement, refusal, application and obtainment”. Actually these words contain the semantic connotation of legal subjects corresponding legal rights. Left collocations with modal auxiliary “shall” of FS9 takes 78% of all collocations in SLC, and this pattern of collocation is quite fixed. Nevertheless, there are many more various left collocations (parties, barristers, judges, police, shall, should, will) of FS9 in BNC Law than in SLC, and only three sentences use “shall”. It is, thus, clear that modal auxiliary “shall” is over-used in translated texts.

In conclusion, in the process of legal translation, translators are endeavoring to take the foreignization and fluency strategy of translation, for legal language strives for accuracy and validity. In this case, translation abnormality appears ineluctably in translation because of being effected by the convention of mother tongue. By virtue of investigating the 9 high frequency FSs in legislative texts, we found that 67% of them are used in many different ways between translated legal texts and originate legal

texts. Therefore, in comparison with originate legislative language, there is abnormality in translated legislative language.

### Conclusion of Study

This thesis took comparable corpora as the research method to comprehensively investigate collocational features of FSs in Chinese-English translated legislative texts. Thereunto, patterns of nine high-frequency FSs have been found and by the way of comparison with originate legislative language, which differ from literary language, translation simplification is unseen FSs in translated legislative texts, whereas complexity, normalization and abnormality coexist. These findings lay a solid foundation for the research of legal translation of standardization.

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# An Overview of Drug Crime Argot

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*[Abstract] Drug crime argot refers to the argot involved in drug making, trafficking and taking, which is employed by criminals in making and trafficking drugs and by drug addicts in drug abuse. Based on the users, the argot falls into two main categories: drug trafficking argot and drug abuse argot, which differ from each other in some ways and also show some respective characteristics. Such argot can serve as a reflector of the drug crime situations in a region, revealing the severity of the drug crimes and drug abuse, as well as relevant information regarding the types of drugs abused, methods of abuse, and length of abuse, etc. The following traits are also found in drug crime argots: a) they consist mostly of new terms created in the last 30 years; b) they evolve in tune with the situation of drug crimes, showing the closest link with the crime situation as compared with other types of argot.*

*[Keywords] drug crime; argot; characteristics*

## Foreword

Despite the fact that argot has not become a popular academic subject, the recent years have, from time to time, seen research papers published by some scholars (such as Hao Zhilun, Cao Wei, Qu Yanbin, and others). Unfortunately, their contents are limited to such ontological issues as the definition, hypernyms and hyponyms, and the constitution of an argot, as well as the cultural properties. In addition, due to the difficulty of corpus collection, the object of study is, more often than not, confined to the obsolete cant used in the underworld, leaving the study of contemporary criminal argot virtually a virgin land. However, in reality, there exists in our society a tremendous community of argot users, which consist of various lawbreakers and criminals who live in symbiosis with all sorts of crimes. In this community, miscellaneous criminal argot is in highly active use. Among these argot users, drug addicts are numerous (reaching a daunting 2.58 million as recorded by the Ministry of Public Security by June 25, 2014). This situation has created a theoretical and pragmatic necessity, and urgency to embark on the study of drug-related criminal argot (Cao, 2005; Hao, 2011).

## Definition and Use of Argot of Drug-Related Crimes

### *Definition of Argot of Drug-Related Crime*

Drug-related criminal argot refers to the enigmatic language used by the criminals during the criminal activities of drug production and trafficking, and used by drug-takers during the process of using, producing and trafficking drugs. Drug-related criminal argot is generally divided into two categories of general and special argot.

The special drug-related criminal argot refers to that only directly related to drug production, drug trafficking and drug use. It includes the raw materials, various drugs and semi-finished products, and the tools used for drug trafficking and using; people directly involved in drug producing and trafficking and drug-taking, including producers, sellers, retailers and takers; the move, behavior and status involved in

drug production and trafficking, and drug use, including the methods of transport, ways of use (including cigarette infusion, aluminium foil burning, vein injection, swallowing, subcutaneous embedding, muscle injection and snorting) of various kinds of drugs (from the most common heroin and ice, to opium, pappy shell, ma gu, ephedrine, cocaine, ketamine, ecstasy, marijuana and other various addictive drugs, covering all the controlled anesthetic and psychoactive drugs) and the process of drug-taking (including drug addiction, the feeling during the process of drug use, the consequence caused by drug use, over dosage of drugs and drug-taking by one or several people); people, things and matter involved during the process of giving up drugs or forced rehabilitation; the expressions of the weight of the drugs and the expressions of the money for drug trading.

The general drug-related criminal argot not only includes all of the aforementioned categories, but also the matter encountered by the drug-producers, drug-traffickers and drug-takers in their social lives including for example, the nicknames of the police and public security organizations, the possibilities of being captured during the process of committing a crime or illegal activity, confession, exposure and being setting free by the public security organization.

This paper elaborates the special drug-related criminal argot.

### ***The Use of Argot of Drug-Related Crime***

Argots of drug-related crimes are the most widely used cant by the most number of people among all the argots that have formed a system. They account for 22.48%<sup>1</sup> or more than one-fifth of all the discovered argot. See below:

**Table 1. Argot of Drug-Related Crimes, (Wang, 2010)**

<b>General cases</b>	<b>Drug</b>	<b>Theft</b>	<b>Cheating</b>	<b>Gambling</b>	<b>Porn</b>	<b>Imprisonment Space</b>
29.85%	22.48%	15.07%	1.16%	7.32%	6.34%	17.78%

### **Category of Criminal Argot of Drug-Related Crime**

The criminal argot is divided into two categories according to its users. Namely, the argot of drug-trafficking and the argot of drug-taking.

#### ***Argot of Drug-Trafficking***

Argots of drug-trafficking are used by drug producers and traffickers. Compared to the number of drug-takers, the number of drug trafficker is insignificantly lower. However, they created many argots that have long been abandoned, but used by other criminals. For example, the argot that formed in the process of heroin processing: “*si hao*” (used in most part of China); the argot for weight in drug-trading: “*yi zhuai, yi dui*” (indicating 1,650 grams and 700 grams of heroin respectively in Kunming); the argot for the trade value: “*yi dian, yi chuan*” (indicating 10,000 yuan RMB and 1 million yuan RMB in Kunming); the argot for those who transport drugs: “*cai ke, lv* (donkey)” (indicating people who help transport body-hidden drugs in Kunming).

The reason for drug-traffickers to use argots is self-evident. They are engaged in the most surprising job that is the most risky, but has the greatest benefits in the world. To avoid crackdowns, they must be

<sup>1</sup>The data come from the *Research on Criminal Argot of Drug-related Crime in Eight Cities Based on the Construction of Corpus*, a public security software science project by the Ministry of Public Security, authored by Wang Hui. According to the latest investigations by the author, the data have had some changes by 2014. This paper uses the original data.

very careful in all aspects and willfully change their language for drug trade to make conversations sound normal, and thus avoid being understood by an outsider.

### ***Argot of Drug-Taking***

Argot of drug-taking is the language used by drug users who are the largest users of the argot in contemporary China. According to the China Drug Prohibition Report in 2011, by November 7, 2011, China had registered 1.78 million young drug-takers. They have laid a solid community foundation for the creation and dissemination of the argot of drug-related criminals.

Drug-taking is also an illegal act to be cracked down on. It should be carried out secretly. Although it is not a capital crime, it still needs to be covered up. Facing no recognition from society, alienation of their relatives, being disgusted by the normal people and being disgraced by other people, drug-takers need recognition of their identities when they stay together. Speaking the same language will not only protect them from their deeds, but also give them a sense of being in one family. It may help strengthen their unity. This is the most direct reason for the creation of the argot for drug-takers and due to the great number of people who use drugs, the language has soil to grow. This is another reason that drug-related argot has been used for so long.

### ***The Differences Between Argots of Drug-Trafficking and Drug-Taking***

Due to different users of argots, their purposes for using them are slightly different. The argots of drug-trafficking and drug-taking have some differences despite some similarities.

**Difference Between the Use of Existing Argots and the Spur-of-the-Moment Argot.** We discovered that among the argot for drug names, those relatively new terms were mostly related to drug-trafficking. For example, the recent creations of “*hai xian* (seafood), *zhu bao* (jewelry), *xiao gu niang* (little girl), and *xiao jie* (little girl)” (in Kunming) are all new but not common terminologies for heroin. Most people engaged in the drug business will have a legal status. Particularly, they appear as legal business people. When talking about drugs, they propose their suggestions and requirements for the quality of drugs as if they were talking about their normal businesses. They talk about the amount and value of the drugs as if they were talking about the items within their business scope. For example, when a drug trafficker, under the name of a jewelry dealer, talks about drugs with a supplier, he might say, “The quality of the jewelry last time was quite good. I would like to have another 50,000 yuan RMB worth of goods. However, although your diamond is hard enough, it is not purely white. It is yellowish!” The supplier would obviously understand the meaning that the buyer was not satisfied with the color. Generally, the more common and lifelike such random argot is, the safer the business is. It is really easy for public security organization to ignore during monitoring. During this investigation, we found similar words that have been temporarily borrowed from other areas that include “*hai huo* (marine products), *ye zi* (leaf), *yan ye* (tobacco leaf), *cha ye* (tea), *shu* (book), *ba ba* (glutinous rice ball), *mian fen* (flour), and *xi yi fen* (detergent powder), etc. (Chen, 2006).

**Difference between weight and amount of money.** The trade unit and value of drug trafficker are usually quite large. In early time, heroin produced overseas had a unified standard, which was 350 grams in the shape of a brick. Producers can now make the drugs into different shapes and sizes that are easy to carry according to the buyer's requirements. Therefore, some similar terms on the basis of 350 grams and 700 grams appeared as argots for weight and quality of the heroin. For example, “*zhuān* (brick)” (350 grams of heroin) and “*yi tuo*” (700 grams of heroin) in Beijing; “*yi ban*” (350 grams of heroin), “*yi tong*

(one barrel)” (700 grams of heroin) in Fuzhou; “*yi dui* (one pair)” (700 grams of heroin) and “*yi kuai* (one piece)” (350 grams of heroin) in Guangzhou; “*yi dui* (one pair)” (700 grams of heroin) and “*ban jian* (half a piece)” (350 grams of heroin) in Kunming; “*yi dui* (one pair)” (700 grams of heroin), “*yi kuai* (one piece)” (350 grams of heroin) in Shanghai; and “*da ban* (a big board)” (700 grams of heroin), “*xiao ban* (a small board)” (350 grams of heroin) in Shenyang. As for drug-takers, they buy drugs for personal consumption. A single trade volume and value is quite small. The argot they use equals a much smaller item than used by a drug-trafficker. For example, “*yi ge qiu* (a ball)” (3 grams of heroin) in Beijing; “*wu hua cha*” (5 grams of heroin) in Guangzhou; “*yi Ya*” (1/4 gram of heroin) in Kunming and “*yi ge*” (1 gram of heroin) in Shanghai, Shenyang, Changsha and Fuzhou (Chen, 2006).

**Drug-Taking Argot Covers Overall Aspects of Drug Use Behavior While a Drug-Trafficking Argot is only Restricted to the Name of the Drug, Weight and Other Trivial Words.** Drug-taking argot covers almost all the people, matter, status and move directly involved in the drug use activity. During the process of collecting drug-related criminal argots, we seemed to receive a complete lesson on the knowledge of drugs because the argots cover all aspects of drug-taking.

**Drug-Takers Seem to Know More Types of Argots than Drug-Traffickers.** The consequences of long-term drug use is no less than that of the man starting to steal, rob and cheat, or the woman engaging in prostitution. This vicious cycle puts the drug users in touch with more complicated groups of people. Therefore, they have more chances to learn various types of criminal argots. In the investigation in the eight cities this time, the drug rehabilitation centers in each city generally chose appropriate interviewees who were able to provide a good many various criminal argots. On the other hand, the drug-traffickers we encountered were mostly “self-disciplined” as they needed to ensure the smooth operation of their business. They had relatively strong control on their own lives, and did not take drugs. If a drug-trafficker never participated in other illegal activities, he or she would have less knowledge of other types of criminal argots apart from the drug-related argots. Such a circumstance commonly existed in different prisons during this investigation.

### **Drug-Related Argots Reflect Drug Crimes and the Situation of Drug Prohibition**

If language is the mirror of society, drug-related criminal argot is the mirror of the situation of drug-related crimes. Judging from the argots, we learn whether the drug crimes and drug-taking situations in the area are severe, as well as information about the types of drugs, methods of drug-taking and the time of drug-taking.

**Table 2. Total Amount of Drug-Related Argots and the Amount of Various Drug-Related Argots in Different Cities**

	<b>Total Amount of Drug-Related Argots</b>	<b>Total Number of Drug Names</b>	<b>Heroin</b>	<b>Ice</b>
Beijing	88	36	22	8
Shanghai	129	51	19	18
Guangzhou	205	97	32	12
Kunming	217	103	53	11
Changsha	64	25	6	6
Fuzhou	87	28	12	6
Shenyang	89	43	10	17
Xi'an	86	35	24	3

From the table, we can learn:

### ***Kunming, Guangzhou and Shanghai See Severe Situations in Drug-Related Crimes***

From both the total amount of drug-related argots and the absolute number of drug name argots, Kunming (217), Guangzhou (205) and Shanghai (129) rank in the top three places, which, from the aspect of linguistics, corroborates the severe situations of drug-related crimes in these three cities.

Kunming has the richest name for drugs. There are 53 entries for names related with heroin, 11 for ice, nine for opium, 16 for ephedrine, and eight each for ma gu, marijuana, ecstasy, ketamine and other new type drugs. In addition, there are six argots referring to substitute medications used during the process of drug prohibition. The division for the quality of drug is also the most clearly defined. Taking heroin for example, the regular names for it include: “*lao cao, tuo xie, diao shu, hai xian, si hao, zhuo zi jiao, xiao jie, bai de, huo, and mi*”. The new names include: “*mi, ye zi, yan ye, cha ye, hai huo, xin xing, di qiu, xiao gu niang, xiao jie, si xiao jie, zhu bao, qi che lun zi, shu, ba ba, mian fen, and xi yi fen*”. Some names are different according to the brand of heroin: “*guo di yao, ku lou pai, hong mei gui, fen bi tou, shuang shi di qiu, bai xue gong zhu, yi fan feng shun, qi you se, niu nai se, and jia xin bing gan*”. There are also some names for heroin with packages in retailing: “*xiao ling bao, ya qian bao, and gua zi bao*”. Some are names for high quality heroin include: “*chun jin, ya suo, xiang gang huo, yuan ban huo, shang huo, jiu jing pei, shu, and zheng pai*”. Names for some sub-quality heroin include: “*shui huo, zhong guo huo, huang pi, san hao, zhong huo, xia huo, rui, wai huo, and chi mo hu*”. There are also names for heroin during different processing stages: “*huang pi*” (heroin with the poorest quality, yellow in color; it is the primary product after the second stage of production.), “*cao da pi*” (heroin of medium quality, slightly yellow in color; it is the product after the third stage of production.), and “*jiu jing pi*” (best quality heroin, most white in color. It is the product after the fourth stage of production).

For the methods of heroin use, we found 28 entries in Kunming, from the general names of taking heroin, “*chi yao, xi si tan ding*” to specially referred names for snorting heroin (“*chi si hao, dang zui, chi diao shu, chi dui shu, and kan shu*”), and aluminium foil burning of heroine (“*kao ya dan, zhi suo, suo, zhui long, ta ban, da ban, chong yan, yi tiao long, piao, and tu*”), to muscle and vein injection (“*xia zhen, T-zhen, T-yao, xia, and da lei*”), the arterial injection (“*kai cang, xue cang, da dong mai, kai dong mai and da kua gen*”), and the subcutaneous embedding of “*mai yao*”. Among them, “*xi si tan ding, and kan shu*” are new terms emerging in Kunming in recent years. Yet, “*kao ya dan*” is the only argot for heroin burning discovered in Kunming. This method of drug-taking saves drugs. Such method is done by hitting a small hole in a boiled duck egg. Dig out the egg and pour in heroin. Burn the duck egg from outside while placing the nose over the small hole.

In addition, drug-takers in Kunming have a special favor for ephedrine. There are 16 argots related with ephedrine. Apart from its general names of “*huang de, yao zi, huang gu niang, ma er, xiao ma, xiao ma ge, ma du, xiao ma and dou zi*”, there are still names of “*fen long, da long, hong long, gui hua, mei gui, han xue bao ma and lan jing ling*” that differentiate the name of ephedrine according to the color, quality and the aroma. Some argots for ephedrine such as “*qi ma, shao ma, da ma, and ke ma*” are not found in other cities in China.

It is not difficult to find that Kunming's drug market is extremely active due to its proximity to the Golden Triangle. The city is almost inevitable for the imports of drugs from the Golden Triangle. As a result, severe drug-related crimes lead to an active drug-taking market.

### ***Different Cities Favor Different Drugs***

From the number of argots, Kunming and Xi'an are the two cities that have more people using heroin. Shanghai sees an active market for “ice” and other new drugs, while Guangzhou sees traces of various new drugs.

Xi'an has less argots for new drugs (three for ice and one each for marijuana and ketamine). Almost all drugs in Xi'an are related with heroin. Among the names for heroin, there are also “*huang zha yao*, *huang sha*, *hong sha*, *hong sha huo*, *yi kou zha*, *pi zi*, *huang pi*, *qing huo*, and *qing shui pi zi*” in addition to the general terms. These nine names come from the heroin produced by the indigenous method in Xi'an, Gansu and Henan.

Shanghai is a relatively severe city hit by a new type of drug-takers. Shanghai has 18 names for “ice”, ranking first among eight cities. It includes the general terms of “*leng de*, *bing*, and *leng dong xi*” to the recycled use of ice “*shu bing* (boiled ice)” (During the process of using ice, due to repeated use of the same straw, there will form some crystals of the ice inside the straw. It is black in color and belongs to the poorest quality ice. Such re-collected ice is called *shu bing* (boiled ice), “*er shou bing* (the second-hand ice), to “*ke le bing* (a black-colored ice with the poorest quality)” that is named according to different texture, color and shape, “*you bing* (relatively poor quality, its texture is like a layer of oil which cannot be solidified or takes long time to solidify), “*bai bing*, *huang bing*, *xue pian*, *xue hua bing*, *hong bing*, *gua zi bing*, *ya qian bing*, *bing tang bing*, *tai guo mi*, and *tai guo da mi* (categorized according to the shape of the ice; rice-shaped and of medium and high quality)”, and “*chou bing* (ice of the poorest quality. The taste of ephedrine remains in the ice, leaving a strong taste of plastics).

The name for taking ice is categorized by general method of using: “*liu bing*, *ke bing*, *peng peng tou*, and *kai kai hui*” to the special way of taking it “*gan liu*, *shi liu*, *hua liu*, *kou HI*, *zui HI*, *shou HI*, *jiu HI* and *san bing*”. “*Gan liu*” refers to: ① friends of the same sex taking ice together; ② while taking ice, sucking the ice directly into the mouth with a straw without water filtration. This method is harmful to oral mucosa. “*Shi liu*” refers to: ① friends of the opposite sex taking ice together and having sex afterwards. The sex is one-to-one; ② while taking ice, sucking the ice with a straw after the ice is filtered with water. This way of taking ice is less harmful to oral mucosa. “*Hua liu*” refers to friends of the opposite sex taking ice together and having sex afterwards. The sex is messy with several men and women together. “*kou HI*” refers to the result of taking ice (after taking ice and driven by the influence of the ice, one keeps talking until gets exhausted); “*zui HI* and *shou HI*” refers to the result of taking ice (after taking ice and driven by the influence of the ice, one keeps moving with hands ceaselessly doing something.); and “*san bing*” refers to: ① for a certain period of taking ice, one needs to eliminate toxins from the body. It may be by means of having sex, taking a sauna or ceaselessly doing something until getting exhausted. ② One man and one women having sex after liu bing. Sweating is only part of the movement.

In other cities, the number of names of heroin, or the detailed categories, is not a match for Kunming. Undoubtedly, it rings the alarming bell for the severe situation of taking the traditional drug of heroin in Kunming from the aspect of linguistics.

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# Daoism and Vague Languages in U.S. and China's Contract Laws

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**[Abstract]** Good analysis of the Dao and vague languages in the contract laws will provide better understanding of legal issues. The Dao can mean Nothing, no universal way for one problem, or the Dao can mean Something, which can be an anchor for one problem. There are some key terms in the U.S. and PRC contract laws bearing vagueness where a precise interpretation or analysis is almost impossible; the Daoist notions inviting more values. The use of such expressions aims to clarify the communication in legal cultures.

**[Keywords]** Daoism; Dao and De; contract laws; vague languages

## Introduction

The vagueness and fuzziness in Daoism and contract laws bear their own features and functions. *Dao De Jing* is in itself obscure, open to multi-dimensional interpretations, while contract laws, which require accuracy and precision, also cannot go without broad terms and conditions. The Stoic philosophical notion of vagueness and ambiguity can interpret Daoist theory and the essence of contract law. The overall display of such uncertainty will aid us in understanding Daoism and contract law while going into detailed analysis of the relevant and related issues.

## The Essence of Daoism

It is universally accepted that the Chinese language will kill a passionate learner, in which *the Dao* can be a key killer in their growth and development. Sure, the Way (Tao) that can be expressed in words is not the Eternal Way; a name that can be uttered is not the Eternal's name (Blofeld, 1982, p. 13). Or we can say *the Dao* that can be daoed is not the constant dao. The Name that can be named is not the constant name. Different persons at different times on different occasions with different objectives will render Daoism as distinct values, all of which can be valuable and beneficial. Such a context-bound insight is subject to dynamic study. Professor Wang Keping pointed out his perspectives of the Doctrine of *the Dao* in terms of eight aspects, *the Dao*: of the Universe, of Dialectics, of Human Life, of Heaven and Man, of Personal Cultivation, of Governance, of War, and of Peace (Wang, 1998, pp. 6-19). This paper aims to probe into Daoism in light of contract law. The essence of Daoism can be interpreted from the perspectives of the agreements or deeds.

Liberty, by *Lao Zi*, the core and heart of Daoism, undergoes with implications of *the Dao*, such as spontaneity, taking no action. Generally speaking, liberty comes from the recognition and transformation of the should-be. Only those carrying the underlying principle of the Daoism will embrace real freedom, while those persisting in their own traits, cause or selfness will fail to produce spontaneity. Being spontaneous means naturalness, as what it is, not what it should be. Equality is based on being true and good to others, the administer in particular. What matters profoundly is that contracts prefer Autonomy of the Will, free will substantially displaying the liberty. Plus, freedom entails fairness, no imposing on the other party, which bears a similar connotation of taking no action in Daoism.

## Some Terms of Daoism

Better recognition of Daoism invites better appreciation of its certain key and critical terms, such as *Dao*, *De*, *Wu* and *You*.

### *Dao*

The term *Dao* has the priority in the Dao School, all the other values smiling at it. *The Dao* in Chinese is the way, the road, the route, and then referring to principles, the methods. All of us, young or old, are guided, regulated or even controlled by *the Dao*. *The Dao* is the universal law, all equal in front of it.

The general features of *the Dao* appear to be multi-dimensional. They can be generalized as imagelessness, soundlessness, formlessness, shapelessness, vagueness, elusiveness and namelessness. They are also described as invisibility, intangibility, indescribability and infinity (Wang, 1998, p. 46). *The Dao* should always be understood in its specific context. It contains such categories of meanings as follows:

1. The proto-material or substance which constitutes the universe;
2. The potential driving force that creates all things;
3. The underlying law related to the motion and development of all things; and
4. The standard or code with which to measure human conduct (Wang, 1998, p. 32).

*The Dao* itself is not proper; anyway we fail to embrace a better term. *The Dao* can mean Nothing, no universal way for one problem; *the Dao* can mean Something, which can be an anchor for one issue. Strictly speaking, *the Dao* can be no more like Nothing than it is like Something. There are Dao's implications such as the Being, the essence, the energy, *qi*, the root, the law, the principle, the truth, or the wisdom. Such renderings are vaguely and broadly interpreted. **Personally, *the Dao* in Chinese can be addressed as one of the most significant equivalents for vagueness or fuzziness in the West.**

*The Dao of Heaven*, in its function as the law of nature, lets all things be what they can be and become what they can become without imposing, dominating or taking any action. *The Dao of Heaven* is the heart of the universe that keeps all things in balance.

Based on his observation of the reality of that chaotic competitive and harsh age in which he lived, rent by repeated clashes and wars between the kingdoms, *Lao Zi* delineates the Dao of man as a general social law or code of human conduct similar to the "law of the jungle" (Wang, 1998, pp. 68-69).

*The Dao* can be a political strategy in terms of social administration, or an indirect regulation rather than a compulsory or autocratic mechanism. Superficially the weakness, the tenderness, taking no action undergoes the nature and nurture of the living things, following their ways other than the other way, an integration of taking no action and the other way round rather than doing nothing at all.

### *De*

*Dao* can be transformed as *De* in the integration with all the beings whose *Daos* bear countless features. *De* is the reversion of *the Dao*, such antithesis can be termed as a fuzzy set, with variables in it.

Both the *Dao* and *De* have a variety of interpretations, which are presented in pairs. They include, for example, the Way and its Power, the Way and its Potency, the Way and the Walk on the Way, the all-embracing first principle for all things and the principle underlying each individual thing, the omni-determinant of all beings and its manifestation, etc. (Wang, 1998, p. 72). *The Dao* begets all things, and *De* fosters them, rears them and develops them, matures them and makes them bear fruit (Wang, 1998, p. 73). *The Dao* makes contracts come into being, while *De* makes it perform effectively and

efficiently. The “*Profound De*” as the manifestation of *the Dao* can well be termed the “*Great Virtue*” which transcends mundane values entangled with desires, conflicts, competitions, gains and losses, etc. (Wang, 1998, p. 74). The word *De* generally means “virtue” in both an ethical and social sense. It also denotes the realization and acquisition of *the Dao*. The cultivation of *De* varies in degree from person to person. “The man of superior *De*” follows the way of spontaneity and never displays his *De* in any pretentious form. That is why he is “not conscious of his “*De*” but “really possesses *De*” (Wang, 1998, pp. 75-76). *De* functions in various domains due to its diversity of qualities. Similarly, it is cultivated and manifested in different ways, which all accord with the criteria of *the Dao*. The figurative contributes to one’s understanding of the effects of *De* (Wang, 1998, p. 78). *De* features a wide variety of advantages in myriad realms. Judged respectively from ethical and social perspectives, for instance, *De* plays a significant part in the virtuous cultivation of the personality, proper regulation of the family, effective organization of the community, stable government of the country, and peaceful environment of the world (Wang, 1998, p. 80). *De* works in conformity with *the Dao* simply because the former is the manifestation of the latter. Since they are interrelated, one must bear in mind the fact that *the Dao* is something like an omni-principle underlying all things, whereas *De* exhibits the power of *the Dao* through observable functions.

### ***Wu and You***

“Non-being” (*Wu*) in *Lao Zi*’s terminology does not mean nothing or emptiness. It is actually in existence but without form, and therefore “vague and elusive” from a sensory perception. Similarly, “Being” in *Lao Zi*’s terminology is of course different in meaning from the “Being” of Parmenides. In Daoism the term *You* as the actuality of the *Dao* which is antithetical to *Wu* as the potentiality of *the Dao* embodies antithesis of form and name. In other words, it is a material kind of being with changes, whereas in the views of Parmenides and Plato, it is an immaterial kind of being without changes. *Lao Zi* in his book repeatedly emphasizes the distinction between the particular and the universal among all things, and equally the distinction between essence and appearance. Appearance is particular, while essence is universal. The particular emerges and vanishes, whereas the essential remains as it is forever. *Being-without-form* and *Being-within-form* operate as the dual character of *the Dao*, interrelated so closely as the two sides of a coin. Yet, these two aspects exemplify the dynamic course of *the Dao* moving from the invisible and universal, to the visible and particular (Wang, 1998, pp. 27-29). *Wu* and *You* are substantially vague terms. We assume that the concept *Wu* is used by *Lao Zi* to describe the state of *the Dao* before it achieves its actuality or manifestation – *You*.

### **Comparative Studies of the Vagueness of the Fundamentals of the Contract Laws**

The Stoic motivation for studying ambiguity might be called pragmatic, but not in the sense that it contributed to some narrowly practical goal, whether writing good Greek or understanding the classics, arguing in court or doing grammar – or even doing logic, if that is conceived as just another intellectual discipline, or as a tool of philosophy or of the sciences (Atherton, 2008, p. 3). The point was that seeing or missing an ambiguity could make a difference to one’s general success as a human being. To grasp the reasoning behind and the impact of that approach to contract law, a good deal of “ancient testimony” by and about Daoism will have to be considered and assimilated, aiming to probe into the potential heuristic or creative value of the vague views and expressions. What matters greatly is that it will involve the

multicultural analysis of the contract laws of the U.S and China. Cross-cultural pragmatic analysis can turn out to be one of the substantial and material approaches.

Contractual relationships are also of relevance to sociologists, anthropologists and economists interested in what fuels cooperation between individuals in society, and the norms that emerge from the voluntarily imposed agreements that become contracts and how contracting parties can be given incentives to maximize their own gains and that of the broader economy. Viewed in this way, a contract is not an end in itself but is a tool of social order. ...Contractual doctrines reflect particular ideologies about how and whether contractual relationships should be governed and are often hotly contested by those from the left and right of the political spectrum (Mulcahy, 2008, p. 4). The social order can be organized by contracts, agreements, and deeds, which reflect varieties of social relations. Daoism is also a tool of social order, where *Dao* and *De*, like two wings anchored by the social mechanism, stimulate the growth and development of all beings in the economy. Following *the Dao*, the parties create contracts, while with *De*, they perform the obligations. A well-negotiated agreement with vague attributes is recognized by the market, with the underlying *Dao* and *De* guaranteeing the implementation of the deeds. Distinct cultures foster different *Dao* and *De*, offering myriads of contracts, where the uncertain notions and concepts, and demonstrations take certain places.

### **The Essentials of U.S. Contract Law Some Core Concepts and Daoist Vague Interpretation**

Courts and commentators often state that a contract is a legally enforceable promise. Williston's definition has perhaps had the most influence: "A contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as duty" (Klass, 2010, p. 27). The U. S. emphasizes private rights and freedom, and all other values subject to it. Consideration can be considered as an ancient term, with no equivalent in China's law. It has its own history. Interpretation aims to clarify the vagueness of the contract, no matter that they are unclear terms, conditions or obscure themes.

#### ***Good Faith***

U.S. law does not recognize a duty of good faith in negotiations, but only in the performance and enforcement of a contract. Consequently, the duty of good faith is generally understood to be an implied, mandatory term in all contracts. Both the Restatement and the UCC assay general definitions of good faith, though both attempts are so vague as to be of little help in deciding cases. According to the comments to Section 205 of the Second Restatement, "[g]ood faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." This suggests an objective test: conformity with publicly available standards of behavior (Klass, 2010, p. 40-41). Such a fuzzy principle will not arise in the particular contract which is behind it. *The Dao* of it actually is its *De*, and the profound *De* and the performance of the agreement rely on one's great virtue. More contracts mean more Daos, more performances mean more Des, and more good faith will be displayed.

#### ***Offer and Acceptance***

A valid offer must be communicated so that the other party may accept or reject it. It may be communicated in any manner whatsoever, *i.e.* in writing, in words, or by conduct. It may be made to a particular person, to a group of persons, or to the whole world. It must be definite in substance and distinguished from an "invitation to treat" (Suff, 2004, p. 3).

Viewed from the lens of corrective justice, the failure to keep a promise was a tort; the appropriate remedy was to compensate the innocent party for relying on a broken promise, restoring him the position he was in before the promise was made ('reliance damages') (Baird, 2007, p. xii).

In the words of Section 24 of the Second Restatement, an acceptance is "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Section 50 defines "acceptance" as "a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer" (Klass, 2010, pp. 63-64). In our life we will present so many offers; certainly, we will possess a wealth of acceptance. We will bargain with the nature, with other individuals.

### ***Consideration***

The modern doctrine of consideration is generally traced to Oliver Wendell Holmes's magisterial 1881 work, *The Common Law*. Holmes argued that the essence of the consideration requirement was not merely a benefit or detriment, but an exchange relationship. "The root of the whole matter is the relation of reciprocal conventional inducement, each for the other, between consideration and promise." While Samuel Williston pronounced that "consideration is the price requested and received by the promisor for the promise" cemented the bargain theory into the law of contract. ... While U.S. courts still occasionally explain the consideration requirement using the old benefit-detriment framework, the bargain, or exchange, conception of consideration has largely won the day (Klass, 2010, pp. 72-73).

Because of the many difficulties associated with the doctrine of consideration, in particular the adequacy and sufficiency of consideration and promissory estoppels, it has been suggested that there would be an advantage in abandoning consideration and substituting an intention to be bound. In domestic and family agreements, an intention to be bound might be indicated by a formality, e.g. writing or something done or given in return (Suff, 2004, p. 29). There is no consideration, however, where the promises are vague, e.g. "to stop being a nuisance to his father" or illusory, e.g. to do something impossible; or merely "good", e.g. to show love or affection or gratitude (Suff, 2004, p. 20).

With the similar function of promissory estoppels, such consideration values the deal in the market economy, enforcing the promise and stabilizing the commercial relations. Different countries, different provisions in consideration, different states in the U.S., different courts, different cases, make different decisions in qualifying it. Indeterminacy and uncertainty assure us the situation of such a term, displaying distinct *Dao* and *De*.

The reverse argument is a good approach to testify the function of a better analysis of the vague expression in the contract, to clarify the uncertainty: to kill the vagueness, letting the things be clear. The consideration is arguable in U.S. judicial history, which has a court-made tradition. Justifying the contract is case by case, while it stresses the social order by employing the diminishing the vagueness.

### **The Principles of PRC Contract Law and the Vagueness in the Perspective of the Daosim**

Equality, autonomy, fairness, bona fide and public interests can be interpreted as key and critical principles in China's contract law, demonstrated in the process of making and performing the contract. Any party shall not impose their will on the other party. The contract can be null and void, or rescinded out of fraud or coerce, beyond any unit and other party's interference. Anyway, there are a couple of restrictions on the autonomy of the contract, varying with the cultures and customs. All such terms or principles are obscure and of indeterminacy, bearing their own *Dao*.

Article 3 articulates the equality of the parties in the contract, which is demonstrated in the entire process of bargaining, signing, performing and the following issues. This is fundamental for negotiators, requiring mutual respect and help. The next section provides the autonomy of handling the agreement. The *Dao* of such situation undergoes with human's nature of mutual understanding and appreciating. Article 5 provides that the parties shall adhere to the principle of fairness in deciding their respective rights and obligations. A contract is to define the rights and obligations, involving the whole process from the formation to termination of the contract, including the substantial circumstances arising. Article 6 requires that the parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations. This principle can be termed as the closest one of the Daoism, entailing the *Dao* and *De* in particular. It appears to handle the contract morally, with more *De*, and any deceits or dishonesty rendering want of virtues. Fraud renders all invalidity, no bona fide, no contract; nothing can be fulfilled but disappointment and chaos. What matters materially is that this can be the underlying principle of the vague subtlety entailed in contract law. Stipulations in China Contract Law carry distinct values with what are going on in the U.S. counterpart. Article 7 holds that in concluding and performing a contract, the parties shall comply with the laws and administrative regulations, respect social ethics, and shall not disrupt the social and economic order or impair the public interests. Here, a contract is subject to the laws and regulations, which is a constriction to the freedom of the contract. The public interest is similar to the public policy in the West. *The Dao* in China's economy contains more restrictions, a kind of *Man's Dao*, while *the Dao of Heaven* lets the market go as it likes, presenting more liberty. The conflict of *Man's Dao and Heaven's Dao* will, to a great extent, reflect the civilizing and enlightening of a society. Article 9 holds that in entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts. *Appropriateness* is one of the typical words to implement the undefined implications.

More general expressions can be found in China's contract laws. The general provisions of PRC Contract Law present the guiding principles, which can witness a great deal of vague and undefined concepts and terms, while the specific provisions are also involved in varieties of such renderings. This framework undertakes its own features in regulating the social order. Almost all the articles in the general provisions can be interpreted as very broad, open to more supporting laws and regulations.

The term of *general provisions* is itself very general and vague. What kinds of provisions can be termed as general, what is the range of such requirements? The vagueness and unsharpness of the terms *general and specific* is hard to define, which is subject to the legislators. *Hefaquanyi*, the lawful rights and interests, is also vague, where law can refer to the statute, act, regulations, rules, or ordinance, or in the narrow sense, just the statute.

The specific provisions clarify 15 types of agreements, while some contracts cannot be named and shall be governed by the general provisions. The contracts that can be named shall be legally binding, and those unnamed also shall be enforceable.

It is the same with the next illustration in Article 23: (1) If the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties, unless introduces another proviso.

Article 30 displays that the contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the

substantial modification of an offer. This provision sets forth the substantial modification, which adopts a list of conditions with a general and vague summary remark.

There are some other terms in Articles 38, 39, and 41 such as *mandatory plan, relevant legal persons and the other organizations, the relevant laws and administrative regulations, in a reasonable way, unfavorable to the party, fulfilling* their own functions, bad faith, deliberately concealing important facts false information (Article 42). Article 52 lists the situations that can null and void a contract, like fraud, coercion, malicious collusion, an illegitimate purpose under the guise of legitimate acts, damaging the public interests, violating the compulsory provisions of laws and administrative regulations, or where the subject matter is not fit for escrow, or the cost of escrow is excessively high (Article 101).

It is unimaginable that such a value can be reflected in the provision without the employment of obscure concepts. Moreover, such plans make the law concise and flexible to the changing market.

### **Vagueness in the Contract Laws in Terms of Daoism**

*The Dao* is a law of vagueness and obscurity. *Dao De Jing* is a contract law between and among all the humans and Nature, a universal law of contracts. It is a law of *Dao* and *De*, the way and the moral. *The Dao* is a process of creating contracts, handling negotiations with others and ourselves, while *De* is the implementing of the agreements. *Jing* is a code, a code of *Dao* and *De*, of contracts forming and performing. Since we were born, we sign an implied contract with Nature, with mutual respect and assisting. The “statute” of limitation is the entire life, from birth to death. This is a compulsory agreement. Signature of the deed gives way to specific performance, which represents the binding force between the two parties. Love it or not, the two parties, human beings and Nature, are equal in status. Each party has their own obligations and rights, and the breach of the promise bears the relevant and related liability. Such a contract is an obscure and undecided act.

The contract is *the Dao* of debts, and the *De* of performance, in which unjust enrichment, negligence and tort violate *the Dao* and are of bad *De*, causing disturbance. The payment of the debt and the performing of the contract are playing a leading role in such an environment.

*Lao Zi* introduces three so-called precious things, “kindness, frugality, and to dare not be ahead of the world” and maintains that only the ability to fall back is bravery, the ability to shrink is to stretch, and that avoiding prominence and precedence makes one come first. Breach of these three principles will bring complete failure. It can be said that *Lao Zi* offers his three treasures in respect of the social problems of his time – rampant pleasure – snobbery, insatiable acquisitiveness and harsh competition among the people in general, and the rich and powerful in particular (Wang, 1998, p. 97). These three virtues can be called the big three in the market economy, more imposing in China. China is galloping in the capital market, and growing populations, crying and smiling to profit, resort to every means, good or evil. An economy is tens times more serious than that of *Lao Zi*’s times, thousands of years ago. Almost all things in China will be killed by money. Such a market hungers for *Lao Zi* value of taking-no-action. The number of confessing to *the Dao of Heaven*, spontaneity, would create a better social order with the stability of the entity.

Hence, he proposes his philosophy of compromising for the sake of gaining more, and of retreating for the sake of advancing further... The inchworm draws itself together when it wants to stretch out. Dragons and snakes hibernate in order to preserve life (Wang, 1998, p. 99). Don’t be short-sightedly arrogant or self-important. Things are always on the move, developing into their opposites and replacing one another naturally, as in the interactions between “the strong and the soft,” “the firm and the yielding,”

“advance and retreat” and “contract and expand”. In such a crazy world, a profit-oriented market drives the businesses mad, crying for going beyond, ignoring the cultivating of the internal culture and how to retreat in the contract to obtain more space tomorrow.

How and when we will realize that this insight can promote us going merrily with more harmony and welfare?

### **Conclusion**

In the entire life we live in a vague world, with more contracts, agreements and deeds involved. Our birth means involving the nature, following *the Daos of Heaven and Man*. Our moral sense and commitment lead us to the entertaining of our obligations, enjoying the rights offered by the nature. The superior De nurtures us to be harmonious with our neighbors. The global community is intertwined with myriads of offers and acceptances. The invisible contract is like a shadow around us, drawing us, killing our needs and wants, strengthening and weakening our desires and dreams.

The courts will strive to find a contract valid where it has been executed. Nature gives you a wealth of offers. Your birth is your first promise to nature's calling. What you are undertaking are promises to such offers, which shall comply with your obligations. Otherwise, your breach will get punished. Nature's reliance on your duties takes countless forms, ranging from subtle changes in conduct to massive investments in capital and equipment, but one way or another it is the central focus of contracting. Understanding the principles at work here has preoccupied us for thousands of millions of years. There are a host of contracts, which shall not be viewed in isolation. They should be taken into consideration as a whole. The local market, the national market and the world market can be looked at integratedly. Not all promises are legally enforceable. Nature will comfort you if you keep your promise to go along well with the earth, keeping balance with no greed.

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# **Study on Bilingual Teaching of International Commercial Law from the Perspective of CBI Theory**

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**[Abstract]** *The course of International Commercial Law is usually designed as bilingual teaching in many colleges, but mutual promotion and synchronous development of language and discipline content has become the teaching focus. Under the guidance of the theory of content-based instruction (CBI), this thesis discusses cultivating the language proficiency, strengthening the subject knowledge, and converting the teaching method from the perspective of classroom teaching, aiming at the problems that appear in the bilingual teaching. Finally, it puts forward bilingual teaching strategies for International Commercial Law.*

**[Keywords]** *CBI theory; bilingual teaching; teaching strategies; teaching language*

## **Introduction**

By introducing customary practice and trade customs in international trade, International Commercial Law imparts the basic knowledge of international trade law, which lays a solid foundation for foreign trade and settlement of dispute in foreign contracts. Being foreign-related, this course requires students' with a high level of foreign language, so many universities design it as a bilingual teaching course. In practice, the introduction of CBI theory to classroom teaching is of great significance for realization of bilingual teaching in this course and cultivation of students' discourse competence concerning foreign affairs and legal practice ability.

## **CBI Theory and Bilingual Teaching of International Commercial Law**

### ***CBI Theory***

CBI means language teaching is based on a certain particular discipline or subject, which improves the development of language proficiency while promoting subject knowledge and cognitive ability. Instead of emphasizing the language knowledge itself, language teaching lays emphasis on the integration of language system and content by teaching in the target language. The teaching idea of CBI was put forward by Widdowson in the 1960s; he argued that the acquisition process of English can use other disciplines as a medium with teaching by combining language and subject (Widdowson, 1978). It not only can maintain the relationship between the students' learning levels and teaching practice, but also provide more approaches so as to use language as a communicative tool for boosting the new knowledge learning based on the subject. By absorbing foreign study achievements, the CBI model has been proven as a feasible method in China with promotion both in language proficiency and professional knowledge after being introduced in China in the late 1970s.

Stryker & Leaver hold that CBI theory not only involves certain philosophical thoughts – language and content are interdependent and inseparable, but it is also a method system, namely integration of

language and content can bring enhancement in teaching effects and efficiency (Stryker & Leaver, 1997). However, this integration can embody many different levels, which shows diverse curriculum objectives, curriculum design, teaching approaches, textbooks, and structure of teachers and students (Davison & Williams, 2001). In the teaching process, CBI can be divided into weak form and strong form due to the fact that different levels lie in the integration of language and discipline contents (Du, 2011). The language teaching, which is based on specialized courses, is a weak form of CBI because of its focus on language teaching, whereas bilingual teaching, based on foreign language, is a strong form of CBI because of its professional courses teaching (Du & Deng, 2012). This thesis discusses the bilingual teaching of International Commercial Law which carries out that law teaching is based on English, namely the strong form of CBI. Its teaching emphasis is imparting knowledge of international commercial law by English with the discipline contents as its teaching core so it can promote English proficiency in learning professional knowledge.

### ***Bilingual Teaching in International Commercial Law***

*Longman Dictionary of Applied Linguistics* defines bilingual teaching as: The use of a second or foreign language in school for the teaching of content subject. In China, bilingual teaching means: with two languages as the medium of instruction, the subject language is learned through studying specialized knowledge. In bilingual teaching, language is the method to learn subject knowledge and the teaching objective has duality: (1) to acquire the subject knowledge; (2) to improve the English application ability. The teaching emphasis should be laid on the relation between the objectives of content teaching and language teaching, the construction of teaching objective and the realization of code-switching strategies in the bilingual classroom. The foreign-related nature of International Commercial Law and the students' grasp of subject content provide the basic conditions for bilingual teaching, which makes it easy to reach the expected teaching effects.

Legal text is solemn, which has the highest degree of formality among diversified types of English. Compared with general English, legal English shows its uniqueness in remarkable characteristics of vocabulary and syntactic structure (Johns & Dudley-Evans, 1991). Because of the complicated variable nature of legal practice, legal English is characterized by its formality and accuracy: redundant and complex sentence structure, often used passive voice, and nominal structure and fixed sentence pattern. Its obscure language makes it difficult to understand for readers who know little about legal English when they read legal documents, so the course of International Commercial Law should be carried out in bilingual teaching. This is necessary to cultivate the students to become the compound talents that the society needs.

### **Bilingual Teaching Situation of International Commercial Law**

Although a lot of experience and achievement have been gained in recent years, many problems have influenced the development of bilingual teaching. Besides teaching ideas, policy promotion and teaching staff, the situation in classroom teaching is not optimistic. The main problems are as follows:

#### ***Low Capacity of Listening and Speaking***

In bilingual teaching, as English and Chinese become the communicative languages, at the same time, teachers and students are required to have certain English listening and speaking abilities. Generally, professional teachers are chosen for bilingual teachers. Because of a lack of relevant English training and learning, the acquisition effect of professional English becomes harder to achieve in this teaching

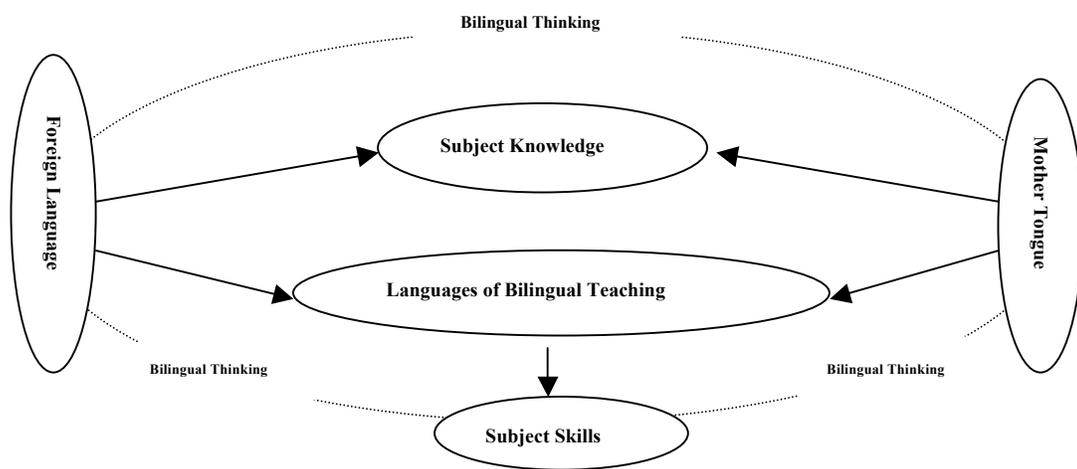
language. For students, the low capacity of listening and speaking, and the differences in cognitive capabilities take a lot of time and energy, which hinders the understanding of the subject content and classroom interaction.

***The Negative Influence of Ambiguity in Definition on Learning of Subject Knowledge***

The core task for bilingual teaching is to regard foreign language as the medium of instruction, while using Chinese as the auxiliary language. Its learning approach is totally different from foreign language teaching. However, in practice, some teachers use foreign language throughout the class; others still adopt a grammar-translation method, ignoring the student’s English level. For keeping up with teaching progress, students are tired of remembering words and perceiving the sentence structure according to Chinese thought patterns, neglecting the understanding and the digesting of subject knowledge, let alone exploring the cultural background, theoretical origin, rhetoric and genre. It affects the study quality in subject knowledge and the development of application capability.

***Lack of a Perfect Teaching Method***

Although bilingual teaching develops by exploring, teaching methods are still short of change: the contradiction between using English original textbooks and the traditional teaching system; the contradiction between time-consuming English lectures and the Chinese explanation of bilingual teaching, and the lack of class time; the contradiction between solving student’s language problem and not finishing the teaching task. The impression students get from the traditional teaching method is that being able to read the English version of the International Commercial Law textbook is finishing the learning task. Professional learning can’t be strengthened by using English, thus the language can’t assist the further sublimation of professional knowledge. Therefore, the result from the above is that the input of the subject knowledge from teachers is not proportional to the output of application ability from the students.



**Figure 1. Schematic Diagram of Bilingual Teaching Based on CBI Theory**

## Bilingual Teaching Strategies from the Perspective of CBI Theory

### *Focusing on English Training and Promoting Language Application Ability*

The effects of bilingual teaching depend heavily on the students' English foundation and communicative abilities in listening and speaking. Preparation and use of the classroom language is of great significance if teachers and students want to correctly use English as the medium of instruction and use Chinese as the auxiliary language in the bilingual classroom.

**Preparation for classroom language.** Stratified teaching could be carried out according to students' subject and English foundations: bilingual teaching can be scheduled in Grade Two or Grade Three. The nature of leading and adaptability should be considered when choosing the teaching materials; complementary teaching materials with the classroom teaching context could be compiled according to different stratifications. In order to help students with their language, the content of preview, the topics will be discussed in class and a review emphasis after class should be determined in advance for dealing with the new words, grammar, training in listening and speaking, and autonomous learning after class. Or the professional teachers can work with the language teachers to give guidance in the subject knowledge and language. It guarantees the students' advancement in oral English and writing by extensive reading and writing with language explanation in the language class (Burger & Chretien, 2001).

**Use of classroom language.** In order to help students to grasp and get used to the language used in bilingual teaching, two approaches could be adopted: (1) the Maintenance Bilingual Model, namely the teaching language is English, and professional vocabulary, concepts and theories are taught in English, while other explanations and communications are in Chinese; (2) the Transitional Bilingual Model, where Chinese is used to impart important definitions and theories, while English is used in other teaching content. These approaches can help to smoothly develop the bilingual teaching at the primary stage. However, disadvantages appear in alternate use of the mother tongue and the second language at the same time (Mixing Approach) (McLaughlin, 1978). Students are inclined to ignore the language they don't understand. The students are not willing to listen to information conveyed in English (or the second language) if two kinds of languages give the same messages at the same time (Swain, 1983). So the language teachers could arrange to give guidance before or after class or require the students to preview the text for teaching effect. Then teachers can use the second language in a certain concentrated period in class, and arrange relevant homework for the teaching effect, as well. In this way, the mother tongue and second language can be separated, which can better boost the development of bilingual skills, so the objective of learning bilingual language by monolingual study can be reached. This so-called Separation Approach (Swain, 1983) in bilingual teaching can let the students and teachers try hard; students make great efforts to understand the information the teacher gives them, while the teachers try to make what they convey understood by the students (Swain, 1983).

**Language task in classroom.** Teachers can design task-based classroom teaching, aimed at students' low capability in language proficiency. For example, teachers could read an easy English legal concept or theory two times, and require the students to dictate it. The students are also required to adjust their records according to language or professional knowledge, and then their tasks will be corrected by teachers in language and content, which can enhance their English proficiency in legal context.

### ***Strengthening the Professional Knowledge; Cultivating the Interest of Professional Study***

**Focus on the teaching of academic discourse of International Commercial Law.** For students, basic theories and international treaties of International Commercial Law are complicated and boring, which causes them to lose study interest. But study interest and motive are the necessary conditions for carrying out bilingual teaching effectively. Discourse analysis can be applied to this course in explaining the professional knowledge and analyzing the rules of language use, so interest of learning professional knowledge can be cultivated by understanding the context, generic structure and language features of legal text. The discourse analysis in this course emphasizes textual functions and meanings in legal academic discourse, which is not only beneficial to students' better understanding of specialized knowledge and accepting and adapting to bilingual teaching, but also to its close combination of language and subject knowledge. The CBI theory discussed in this thesis mainly applies Systematic Functional Linguistics, namely SFL, to studying language competence, which is language theory that focuses on language functions and implications instead of form and syntax, or rather, its emphasis is language use rather than grammaticality (Yu, Yeoman, & Han, 2009). Getting rid of having to focus on the traditional grammar structure model, SFL in bilingual teaching converts into imparting professional knowledge in bilingual teaching from the perspective of language use, which is helpful for students to effectively generate new knowledge.

**Emphasis on explanations of knowledge points in International Commercial Law.** Unintelligible or obscure knowledge points are inevitable when learning, especially for the ones with the great length and difficulty. Teachers can compile some English phrases and short sentences with key points, or English flowcharts and tables (e.g. flowchart for Incoterms, 2000); or use ready-made audio or video materials to help students grasp the professional knowledge. Besides the general method of elaboration, nonverbal behavior can be used to give suggestions intuitively and vividly (e.g. hand gestures). In this way, the difficulty of learning professional knowledge in the second language can be reduced and the students' confidence for it can be strengthened.

### ***Converting the Teaching Method, Cultivating Language Habit of Bilingual Teaching***

**Converting the teaching method.** Bilingual teaching should get rid of simply teaching in foreign language, and serve professional study based on language activities to cultivate students to absorb knowledge in a foreign language through diverse approaches, and to think and solve problems in an English thought pattern. Teachers can take advantage of the background materials that connect closely to the old knowledge, as well as list and compare the different legal provisions of the same legal concept in civil law system and common law system. They can show English flow charts of professional knowledge to the students (e.g. Letter of Credit Financing), and then ask them, in turn, to explain the process in the chart in groups of two, doing the first one in oral form, and the second in written form, so each other's missing knowledge points can be made up. Teachers can launch reading and analysis activities so as to know different legal backgrounds, cultural shock, and characteristics of legal documents; they can carry out special research on particular topics in International Commercial Law and give guidance to consulting data in comparing the differences between Chinese and western law. The students are encouraged and led to try to speak English in these activities, and they are also asked to give summaries in oral form or written form after finishing the activities. This method is filling in the Information Gap in Two-Way. Information gap means a lack of some information; two-way filling-in means the alternative process of filling in the old information gap, and establishing a new information gap (Yu, Yeoman, & Han, 2009),

which is beneficial to helping them with professional knowledge and English application ability, as well. The adoption of two-way filling-in can boost the foreign language proficiency and professional skills simultaneously.

**Cultivating language habit of bilingual teaching.** With foreign language as the medium of instruction and Chinese as the auxiliary language, the input and output of the teaching language influences the bilingual teaching quality. As long as the students' expressions could be understood in practical teaching, most teachers will correct the mistakes in the content instead of the language, which leads to Fossilization of Linguistic Errors (Swain, 1988). Swain (1999) emphasizes that what students need is not the opportunities to produce more language, but opportunities to produce more lasting, accurate and coherent language output with levels in language arrangement. To make sure of the accuracy of the language output, teachers can choose closely linked learning materials between the old and new knowledge and design familiar, popular, and feasible teaching tasks. In order to avoid that the language output is too simple or stylized, teachers should try hard to avoid interrupting the students' questions or statements in English, give them enough time to prepare their oral or written homework, and encourage them to compile random thinking for certain problem in class into a formal essay. Teachers should also guide the students in studying by English-Chinese bilingual thinking, forming the concept of bilingualism according to the characteristics of professional knowledge and skills, solving professional problems by bilingual rules, and cultivating the abilities of listening, speaking, reading and writing professional English through bilingual teaching.

### Conclusion

International Commercial Law is a course combined with theory and practice, which is needed by students of this major. In practice, we should realize that using English textbooks and teaching in English doesn't mean bilingual teaching. It's clear that bilingual teaching is still in a primary stage. Bilingual teaching, which is based on CBI theory, can help students to think both in English and their mother tongue. It not only can improve their language proficiency and subject knowledge to develop simultaneously, but they also gradually realize the goal of bilingual teaching: being able to switch freely between the two languages according to objects and environments.

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# Legal English Teaching for English Majors in China: An Innovative Approach to Cultivating Interdisciplinary Talents

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*[Abstract] In the context of China's exploring how to cultivate legal talents and interdisciplinary foreign language majors, it was inevitable for the occurrence of the course of legal English for English majors. The course necessity is determined by the legal culturality, legal professionalism, and the relationship between law and language. The course feasibility is guaranteed by the students' knowledge reserves, the teachers' occupational development, and the case law tradition in the Anglo-US legal system. Thus, transcultural competence can be cultivated in the course of legal activities, together with legal professional knowledge and English language skills. Furthermore, another option is offered for learners' future career.*

*[Keywords] legal English; English majors; interdisciplinary foreign language talents*

## **Introduction**

Since the founding of new China, especially since the reform and opening up policy, remarkable achievements have been made in the reform and development of Chinese foreign language college education. But it is undeniable that some problems still exist in the aspects of the training modes for foreign language, and the construction of curriculum and knowledge systems, which results in the dissatisfaction of students, parents, and even teachers themselves. The College Graduates Employment Report in the Blue Book on Employment 2010 points out that college graduates of 8 specialties including English, computers, and law have ranked the lowest on the employment rate for 3 consecutive years. Under such circumstances, talent cultivation strategies need reform, and the quality of personnel training needs improvement. The national outline for educational planning once explicitly put forward "innovating talents training mode, and exploring various training methods", and therefore, it has always been an important practical issue in foreign language education in our country for how to reform and innovate the mode of training for interdisciplinary foreign language talents. "The impact is the biggest, the duration the longest" (Hu, 2009), but the effect does not seem to be satisfactory.

In December 2011, the Ministry of Education and the Central Committee of Politics and Law officially launched the "Excellent Legal Talents Training Program", which took foreign-related legal talents as the breakthrough for practical training with interdisciplinary legal professionals. In this context, the Excellent Legal Talents Training Program provides a new perspective for the exploration of foreign language education and cultivation of interdisciplinary foreign language talents. Locating the meeting point between the two targets is becoming an important and useful subject of research.

## **Rise and Classification of Legal English Courses**

In December 1998, Instructions on Reforming 21st Century Undergraduate Education of English Majors, drafted by the Teaching Guidance Committee of College Foreign Language Specialties and approved by the Higher Education Department of the Ministry of Education, were forwarded to nationwide colleges and universities with foreign language institutions. The Instructions pointed out that the training mode of

foreign language majors must be transferred “from the single academic to a broad caliber, practical, and interdisciplinary one.” In order to carry out and implement the Instructions approved and issued by the Ministry of Education, a Syllabus of English Courses for College English Majors, compiled by the College English Teaching Guidance Committee English group and approved by the Ministry of Education, was forwarded to nationwide colleges and universities with foreign language institutions. The Syllabus reaffirmed the training objectives that higher education of the English major is inter-disciplined English talents. From then on, colleges and universities across the country started to develop their own mode of training talents based on the existing faculty, specialty development status, and the demand of the job market.

The history of legal English teaching in China is very short, and even research papers on legal English teaching are rarely seen in important academic journals. Since 1986, the Commercial Press has published *English VI: Law Teaching Reference Book*, compiled by the Foreign Language Department English Textbook Writing Group of Anhui University, and dozens of legal English textbooks have been published in China, but all are designated for students majoring in Law. Legal English is considered a course for seniors of the Law major, as well as law postgraduates. Its purpose is to enable students to deal with foreign-related legal services through the study of this course (Zhang, 2002). It is based on the understanding that the College English Teaching Reform Pilot, being conducted in Shanghai, regards Legal English as an academic English course (English for specific purposes can be divided into Professional English and Academic English; the latter of which can be subdivided into General Academic English and Specific Academic English). The research on teaching method, testing and evaluation of the course is also centered on its orientation as an optional course for the Law major.

So far, the teaching objects and scope of the legal English course has changed greatly. The traditional higher education institutions of political science and law such as the China University of Political Science and Law, Southwest University of Political Science and Law, East China University of Political Science and Law, and Shanghai Institute of Political Science and Law, have used their academic strengths to set up Legal English majors. At the same time, some foreign language and foreign trade colleges and universities, such as the Shanghai International Studies University, Guangdong University of Foreign Studies, Beijing Foreign Studies University, Foreign Trade University and the Shanghai Institute of Foreign Trade, etc., have also set up law faculties featuring “Law + English” (Zhang, & Sha, 2008). Thanks to these attempts and exploration, Legal English teaching is moving toward being systematic, specialized and differentiated, and has become a new research field. However, the legal English course for the non Legal English or Law majors, also very important, has not attracted enough attention in education circles.

### **Necessities of a Legal English Course for English Majors**

In modern society, law has been increasingly integrated into daily life. From jurists’ analysis of the social scene, we can see that pure everyday thinking is declining, and lawyers can link everyday life to law (Chen, & Fan, 2006). With the trend of law socialization, the role of basic legal knowledge and legal awareness in the world’s culture, economic cooperation and information dissemination is being fully appreciated by all walks of life in the Chinese society. Therefore, in order to develop interdisciplinary English talents, English education cannot ignore the importance of basic legal knowledge and legal thinking in international communication. Thus, the English majors-oriented course of Legal English is of the utmost priority.

To begin with, the culture of the law, and the importance of law in cross-cultural communication activities determines the necessity of the creation of legal English courses. The biggest feature of the Syllabus is the proposed idea of combining personnel training and relevant professions, which provides guidance for innovative professional education in foreign language colleges and universities. Among them, developing cross-cultural communicative competence is the most important factor for foreign language majors. As English is an international medium of communication, it is similar to “global vision” in the objectives of Excellent Legal Talents Training Program. As a historical concept, the legal system is an important component of the cultural system. Different legal systems are rooted in their cultural traditions, and understanding the differences between legal systems can help understand more deeply and grasp the characteristics of different cultures and will help in the future to avoid potential conflicts, due to cultural and legal rules, in authentic communication and interaction. Thus, Legal English meets the requirements of cross-cultural communicative ability, and helps achieve the objectives of cultivating English talents.

Next, the creation of legal English courses for English majors facilitates the coordination of undergraduate education and lifelong learning. It is one of the ways to implement and materialize the requirements of the “Instructions” and “Syllabus”, but set up a pool of potential outstanding legal talents as well. “Foreign language education for undergraduates is only one stage of lifelong learning, whose goal is to lay a solid foundation for students to become the future professionals as well as experts, scholars in all walks of life” (Syllabus, 2000, p. 43). Instrumentality is its formal characteristic, and its humanistic is its essence. In this case, lifelong learning English education is just a phase. Under the new situation, the traditional curriculum is increasingly cramping the English major, and employment space for English talents is gradually shrinking. Language skills alone have been unable to meet the students' career expectations, and such kind of education does not conform to the social demand trends of diversity of talents. Therefore, the English curriculum needs to serve the needs of learners, and lay the foundation for their future self-learning and career planning. In addition, in the case of legal education, pedagogy focusing on source of law, case analysis and legal reasoning helps students develop thinking ability by asking questions, answering questions, exposing their contradictions and guiding them to summarize general conclusions. The competence of the acquisition of knowledge, the ability to apply knowledge, the ability to analyze problems, the ability to independently raise insights and the ability to innovate can be developed by introducing legal English classroom, fulfilling objectives and requirements of interdisciplinary talents. At the same time, legal English courses can stimulate English majors to study, arouse their interests in legal disciplines, and also lay the necessary foundation for future learning and interest in engaging in legal services.

Last, but not least, the relationship between language and the law determines the necessity for the creation of Legal English courses. Language is the carrier of the law, the customary marks of law, the manifestation of legal rights, and the expression of legal regulations (Zhang, 2010). Meanwhile, the law also has a dynamic role for language, enriching the content and form of the language. Legal English is one of the most unique uses of English for Specific Purposes, and even some people say that legal English itself is a “foreign language.” Whether it is for non-English speaking people, or for English-speaking people, legal English is an incomprehensible language. It is incomprehensible and difficult to learn because of the openness of the language and the intertwining of legal logic and thinking. Language is the carrier of content and serves a particular academic, vocational, social and other purpose, which necessarily involves the use of listening, speaking, reading, writing and other language skills (Richards, &

Rodgers, 2001, pp. 207-208). Since legal English possesses the integration of the knowledge of both common law and English language as a whole, then the creation of legal English courses, not only allows English majors to receive legal education, but also implement training and improve their language skills. The cultivation targets of foreign language talents are English majors centered on language. Generally, their language knowledge, professional skills and subject knowledge on a particular area of expertise is equally strange. Therefore, both the language and the professional expertise should weigh the same in learning, in order to truly meet the needs of learners. In order to attain the goal of cultivating interdisciplinary foreign language talents, the systematic integration of relevant expertise into teaching language skills organically can help students not only acquire language skills, but also understand and master the relevant legal expertise.

### **Feasibilities of Legal English Course for English Majors**

The English major-oriented course of Legal English differs from English-related courses or academic English courses for law students. First, there are differences in the background knowledge of students. English majors lack extensive legal knowledge, and law students have solid knowledge reserves of the law. Second, the nature of the two courses is different. For English majors, the legal English course is just one course, and the task can be described as heavy and tight; legal English courses for the legal profession are a series of academic English courses in a refined curriculum, and there are plenty of guaranteed study hours. Third, the training objectives of both types are different. The former goal is the teaching of basic legal knowledge and development of basic legal awareness, and intercultural communication competence is part of the target, while the aim of the latter is to achieve a “double higher” target (the so-called double-height, refers to the high demand for basic skills in law and English communicative competence, and neither is dispensable) (Du, 2006). If undergraduate education is only one stage of lifelong learning, it is undoubtedly nonsense to expect four years of undergraduate training to achieve the goal of outstanding legal talent program. In this sense, the English major-oriented course of Legal English is worth trying.

First, the basic course of “Legal Basis” provides students with basic legal knowledge, which ensures that the possibility of achieving the target of legal English teaching. “Legal Basis” is a compulsory fundamental course in China’s colleges and universities. By studying this course, English majors already have a basic knowledge of Law. The contemporary legal system began to be constructed in the late Qing Dynasty modeling after western practice, and this means that “Legal Basis” has already taught students the basic concepts and principles of Western law, which is helpful for them to understand legal texts in English in the Anglo-American legal system so as to master basic legal knowledge, knowledge of basic international rules, culture, and international awareness of basic legal rules.

Second, the case law tradition in common law enables learning of the language, and improved communicative competence in the course of experiencing legal activity. The common law legal system generally emphasizes practical utility and experience of the law, extracting the principles applicable to new cases from the previously existing jurisprudence (He, 2006, p. 9). In the teaching practice, through the analysis of a case, focusing on students' analytical skills, the ability to develop independent thinking and critical spirit, students understand and appreciate the basic principles and rules of the Anglo-American legal system. However, the reality of the legal English course “for those who want to learn the language, the language is few; for those who want to learn the law, the law is little” (Lee, 1999, p. i). Between legal knowledge and the English language, the English major-oriented course of Legal English should teach terms of arts, and then help learners experience legal practice so as to learn the

language, master the basic knowledge of the law, and ultimately acquire the basic legal awareness thinking.

Finally, the common culture of the humanities of law and language ensures the possibility of training qualified teachers. Interlinked disciplines of humanities facilitate interdisciplinary study and research. Language of humanities determines the foreign language teachers with motivation to engage in the law are more likely able for cross-disciplinary learning and research. To break the current language training model of pure literature that has been followed for a long time, the majority of foreign language educators need to transform their educational ideas and concepts. From the perspective of career development, the university teachers should undertake self-growth throughout the whole field of education and need improvement in terms of professional competence, professionalism and professional ethics (Li, 2013). English departments should encourage young teachers' in-service training to learn legal knowledge or to study for law degrees. In such a case, teachers will not only be able to teach language knowledge, but also cultivate learners' qualities of humanities not only to impart knowledge of the law, but also to develop learners' legal thinking.

### Conclusion

At present, the exploration of cultivating interdisciplinary talents brings opportunities and challenges for China's undergraduate education of English major. In the context of China's exploration of how to cultivate legal talents and interdisciplinary foreign language majors, it is historically inevitable for the emergence of a course of legal English for English majors. It is a new perspective, and also a useful attempt, to combine the study of Law and English. The course necessity is determined by legal culturality, legal professionalism, and the relationship between law and language. And the course feasibility is guaranteed by the students' knowledge reserves, the teachers' occupational development and the case law tradition in the Anglo-US legal system. Thus, transcultural competence can be cultivated in the course of legal activities together with legal professional knowledge and English language skills. Legal expertise and English language skills simultaneously go hand-in-hand, and channels of developing intercultural communicative competence are broadened. Meanwhile, potential foreign-related legal talents are born in the course of cultivating interdisciplinary foreign language talents.

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# Plot Strategies in Courtroom Trial Narration

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*[Abstract]* A lawsuit begins typically after a series of events has caused a person injury or infringement, for which the injured person seeks a remedy from or punishment on the offender. And the courtroom trial begins with the narrative of the events by the injured person or the prosecutor. The accused will construct a different or even opposite narrative version of the same events. The narration of the events will include the narration of the “plots” of the events as perceived by the narrator, which might be different from the real happenings of the events. In the courtroom trial narrative, both the plaintiff and the defendant will adopt certain narrative strategies in the construction or reconstruction of the “plots” of the events.

*[Keywords]* plot; completeness; conformaity

## Introduction

In a courtroom trial, both the plaintiff and the defendant (or the prosecutor and the advocate) will narrate the “facts” on the basis of their proof, so therefore, the “facts” are reconstructed through language to some degree. After hearing both sides’ narration and defense, the judge identifies the proofs and the legal facts, the attitudes of the defendant, and the accused, etc., and then proceeds to make a judgment according to the relevant rules. The court opinion is also basically prepared in the form of narratives. Therefore, it is essential for both the plaintiff and the defendant to make their narration of the facts or events persuasive. The present essay aims to explore the persuasiveness strategies of the narration of the facts in the courtroom trial.

## The Plot in the Traditional Narrative

In the discussion of plots, Aristotle, in his *Poetics*, regarded plots as the most important element in the art of tragedy and defined plot as “the arrangement of the events”. This arrangement is the construction of the story structure, rather than the rearrangement of the story events at the discourse level. He also pointed out that a story needs to be complete in that it must have a beginning, a body and an ending, which is essential in arranging events and structuring the plots.

Following Aristotle, the traditional approach to plot regards the plot as one part of the story, emphasizing the completeness of the plot structure. For example, Trollope, the English novelist, accentuated the importance of characters from the perspective of the plot and treated the plot as the most important part of the story. His opinion represents, to a great extent, the traditional tendency to treat plot as part of the content.

In classic narratology, scholars such as Russian formalists do not take plot as the content of the narrative works, but instead as creative arrangement of the events in the story. Almost all the structuralist narratologists locate the plot at the story level.

However, according to Liu & Zhou (2007), Aristotle’s opinion that the tragedy plot consists of a beginning, a body and an ending is challenged by the practice of the modern novel. In a modern novel, such as a novel about the stream of consciousness, the beginning, body, and ending do not correspond to the beginning, the body, and the ending of an event. So the plot in a narrative text become the narrative

elements or a group of the narrative sequences composed of narrative elements. The sequences must be arranged in order to form a unity. Nevertheless, the two authors eventually admit that the narrative elements and the assembly of the narrative sequences should have an inherent arrangement as Aristotle stated.

Other scholars, such as Peng (2000), hold a monism that does not regard the story, discourse, and plot as three independent entities. Instead, the discourse is regarded as a compound, concept-encompassing story. Language, as represented by texts, is a three-dimensional complex of the phonetic system (the substantial dimension), the syntax system (the formal dimension) and the semantic system (the content dimension). Accordingly, the story belongs to the content of the discourse, while the form is the method of constructing the story. The traditional view of the plot holds that it is the concrete events that form the story, or more simply, the plot is the story. Propp thinks that plot is composed of the actantial functions in a story, thus forming part of the story content as a semantic structure. Shklovsky counterposes the plot against the story: the plot means the artistic and formal management of the story events and, to a greater extent, the narrative skills in discourse structure, especially the chronicle rearrangement of the events. Thus, the concept of plot belongs to the pragmatic level.

Others think that the plot, composed of more than one concrete event and conflicts displayed as the relation among people, and between people and the environment, is a process of event evolution centering with characters in literary narratives. Generally speaking, the plot includes a beginning, its development, the climax, and an ending, sometimes also with a prelude and a postlude. The plot, arranged according to the cause-effect logic, should reflect the conflicts among characters through their actions. As one of the elements of literary narrative content, the plot is a developing process of events revealing the relations among characters. It consists of a series of specific events presenting characters' temperaments and manifesting the interrelationship among characters, and between characters and the environment. As Gorky puts it, the plot is the contradictory, sympathetic, antipathic or common relationship among characters - a typical growing and formative history of characters or types.

To sum up, we think that since story and discourse are two levels of narration, the plot, as a part of narration, can be present at both the story level and the discourse level, for the story is materialized by the discourse. However, the plot is different from the narrative skills in that the plot is the result of the narrator's rearrangement of the events by using narrative skills. This results in the story at the discourse level. The formation of the plot depends on events, characters and settings.

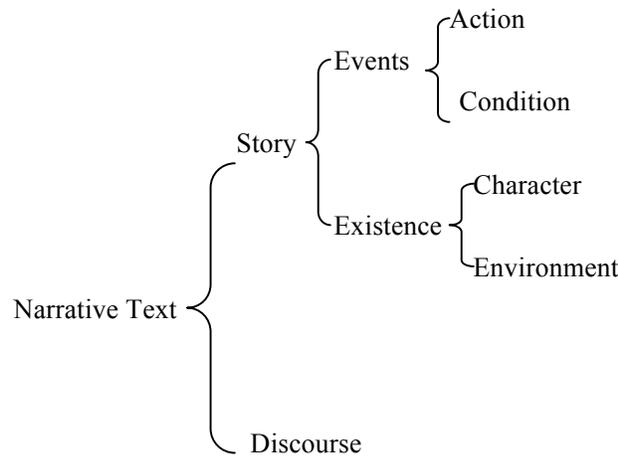
Through the plot, the narrator can demonstrate how time and feeling interweave into a coherent story. It weaves scenarios, characters, tools, and behaviors, and aims at a consistent picture centering with one event. It puts an issue in a series of casually related events and its environment to reveal more of it. For the different aspects of one event, there are many narrative styles for different plot arrangements.

## **The Plot Construction Strategies in Courtroom Trial Narration**

### ***The Completeness of the Story Plot***

Essentially speaking, narration is a communication process in which one sends a message to another. In the case of the plot, this message is concerned with events, whether major or minor, lasting long or short. One major event may encompass a series of minor ones and a group of minor events can also be categorized into a major one.

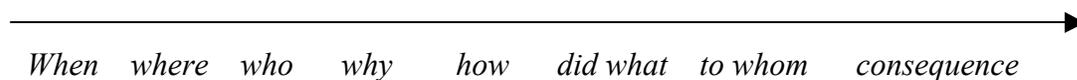
In structuralist terms, one narrative text has two parts: the story (the content or the events chain, together with existents, including characters and environment) and the discourse (the expression by which the content is conveyed). S. Chatman (1978) used the following diagram to indicate the inner relationship of the narrative text.



**Figure 1. S. Chatman’s Narrative Text and its Components**

From the diagram above, in each narrative text, a story level corresponds to a discourse level. The story as the narrated part consists of events as its core and related elements. The content of the narration can be varied, but no matter what it is, it cannot exist without events. Furthermore, events refer to the change of one state of affairs. If this change is caused by the doer, an event can be an action, such as in “My brother broke a cup”; and if it is not caused by the doer, then it is an event, like “There comes thunder”. No matter which one, the change from one state of affairs to another is stressed in an event. At the same time, in a narrative text, there must be a particular doer to trigger the happening of the behavior and the change of the state of affairs. The doer can be either a human being, an animal, or even the almighty god. Without a doer, it will be difficult to constitute the closely connected events chain and will be impossible to for the event to develop over the course of the text. Thus, as we understand it in narratology, the story is extracted from the narrative text or the specific sequence of discourse and it is a series of described events caused or experienced by participants and rearranged chronically and logically (Tan, 2008).

The main function of a courtroom trial is to identify the facts and find out the truth. There are five elements in identifying the facts: what has been done, when and where, who, how, and why. On this basis, we confirm time, location, people (actor and effector), cause, and process (actions and manners), and the result is six main elements of trial narration. Specifically, if we take the actor or effector and his action manners into consideration, we can classify the construction of a story into following eight elements:



**Figure 2. The Construction of Story**

The narrator interweaves scenarios, characters, instruments, behaviors and purposes into a consistent schema around an event. There can be many narrative patterns for the plot arrangement of the different aspects of one same event. In the trial, the prosecutor always narrates a complete story with the eight elements mentioned above, because the more complete the story is, the easier it can be accepted as an interpretation of the evidence. However, in his narration the accused always includes his alibi, the absence of criminal motivation (cause), the doubt over the method, and the reference to others as the real criminal in order to undermine the completeness of the story constructed by the prosecutor and win the lawsuit.

### ***The Conformality with the Law***

In a trial, the People's Court examines the facts in the case and makes judgments or mediations in accordance with the laws in the presence of the litigants and all other participants. The aim of the trial is for the judge, who represents the court, to examine the facts in the case, apply the law, and deliver a final judgment. In doing this, the judge relies on procedural and evidence rules, and decides which relevant article of a law should be applied in each individual case. The conformity with the law in trial narration mainly refers to the following points:

**The application of law.** After an infringement, the prosecutor or the Procuratorate will initiate the process of finding applicable laws and articles for the case. When the indictment is filed, the judge will also face the same problem of applying proper laws and articles. Take, for example, the notorious drag racing case in Hangzhou (on May 7th, 2009, evening, Tan Zhuo, a recent college graduate, was crossing the zebra line, and was unfortunately knocked away by a Mitsubishi at a high speed and died later in hospital). In the local bbs forum of Hangzhou, a post, titled "A Rich Second Generation Took the Road as the F1 Circuit and Knocked an Innocent Pedestrian to Five Meters High," incited outrage on the motorcycle racing clan. On July 20th, 2009, Hu Bin, the accused driver, was charged with vehicular manslaughter and met with a three-year prison sentence. But part of the public opinion held that Hu's misbehavior had constituted the crime of negligently endangering public security or public security with a dangerous method. In the case of "My Father is Li Gang", there was also a divergence of opinions between endangering the public security and vehicular manslaughter. Yet once the nature of the crime is confirmed, the narration of the participants of all sides should center with this theme.

**The constitutes of the crime.** As to vehicular manslaughter, Article 133 of the Criminal Law stipulates that whoever violates regulations governing traffic and transportation and thereby causes a serious accident, resulting in serious injuries or deaths or heavy losses of public or private property, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; that whoever runs away from the spot after he has caused a traffic accident or is involved in other flagrant circumstances shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if his escape results in the death of another person, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Its Constitutes include:

1. The subject of the crime is the general subject. In judicial practice the crime subject is mainly the person engaged in transportation business.
2. The subjective aspect of this crime must be negligence, which means the occurrence of the consequence is caused by carelessness of foresight or over confidence with the belief that it can be avoided.

3. The objective aspect of the crime of vehicular manslaughter is the violation of the laws and regulations governing traffic and transportation, causing a serious accident that results in serious injuries or deaths or heavy losses of public or private property.
4. The object of this crime is the public security of the traffic and transportation.

Therefore, to be effective with the trial narration, one should pay attention to the rule-orientation in their strategy rather than a fact-oriented plot arrangement.

### **Conclusion**

The plot, as a narrative element, is present at both the story and the discourse levels of a narrative, and is constructed in terms of events, characters, and settings. In a courtroom trial, the judge identifies the legal facts and the degrees of repentance of the accused during the trial on the basis of narrations of both parties and applies the proper laws to form his judgment based on his interpretations of the evidences. Both the plaintiff and the accused, for the purposes of a more persuasive narrative and, more generally, a successful defense of the case, will employ certain plot construction strategies such as the completeness of the plot, and conformity with the law.

### **Acknowledgments**

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# To Accommodate, Not to Abandon: Use of Legislative Modal Verb *Shall* in China's Legal Translation

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**[Abstract]** Studies on legal translation in China indicate that the legislative modal verb 'shall' has been overused in the translated English versions of Chinese laws and regulations. Based on a small parallel corpus, this paper examines how 'shall' is used in English legislative texts, describes how it is overused in China and finds reasons underlying such overuse. This paper concludes that instead of calling for the abandonment of 'shall', it is necessary to accommodate its use in China's legal translation with efforts made to avoid its inappropriate use.

**[Keywords]** legal translation; shall; Plain English Movement; translator's creativity

## Introduction

Legal translation is regarded as an act of legal communication (Sarcevic, 1997, p. 55). Through decades of unflinching efforts of legal translation, most of China's laws and regulations have been translated to English and have gradually become known by more foreigners. However, the translation quality is still far from satisfactory. The Work Report of the State Council of China on the Exit, Entry, Residence and Employment of Foreigners in 2012 (Yang, 2012) points out that, except for intentional defiance of laws, a great number of illegal-residence cases of foreigners in China can be attributed to their ignorance of relevant Chinese laws and regulations. This report implicitly reveals the problem of the accessibility of laws and the readability and comprehensibility of the translated version of the laws. This paper, taking the translated English version of the Exit and Entry Administration Law of the People's Republic of China (EEAL), as an example, focuses on the use of *shall* in EEAL and explores reasons that account for its overuse.

## Use of *Shall* in Legislative Texts

Modal verbs play a significant role in legal drafting, as most of the provisions concerning authorization, prohibition and imposition of obligations are linguistically realized through their use (Torbert, 2004, p. 142). Altogether, there are 12 modal verbs in English, among which *shall* has probably stirred the most heated debate among legal language researchers and legislators. In the communicative process of legal translation, translators of legislative texts are expected to convey the intent of legislators and adapt language to the conventions of the target language and target receivers (Du, 2004, p. 158). In this section, studies on the use of *shall* in English legislative drafting will be first reviewed in order to learn how this word is used in the target language of translated Chinese laws and regulations. Then, previous discussions on the use of *shall* in China's legal translation will be introduced.

### *Use of Shall in English Legislative Drafting*

*Shall* used to be "the hallmark of traditional legal writing" (Butt & Castles, 2001, p. 99) and "the most important word in the world of legal drafting" (Kimble, 1992, p. 61). However, under the direct or implicit influence of the Plain English Movement, there emerged a "modal revolution" (Williams, 2009),

but no consensus has been reached yet concerning the use of *shall* worldwide. Pioneer countries such as Australia, South Africa and New Zealand have moved enthusiastically towards a *shall*-less style drafting (Williams, 2006, pp. 238-239). For example, Eagleson and Asprey (1989) assert that we *must* abandon *shall* and substitute *must* for *shall*. Garner (2001, pp. 105-106) is also an active proponent who calls for deleting every *shall* in legal drafting.

Unlike the active pioneers' radical approach that endeavors to completely abandon *shall*, followers of the Plain English Movement, as in the UK and the EU, have adopted a mild way to diminish the use of *shall*. Garzone's (2013) chronological study on the use of *shall* in UK legislation shows that the abandonment is gradual and to date it is approximating zero. Thus, it can be inferred that *shall* still has its scarce, but visible, presence in UK legislation. A similar situation can also be found in the EU; Cooper (2011) has noticed that despite great efforts to abolish *shall*, it "remains as a feature of EU regulatory texts, perhaps even with increased frequency".

In addition, tolerant users like the USA have allowed *shall* to play a role in legislation but intend to restrict its use to one single sense "has a duty to". However, this one-single-sense rule, also termed as "the American rule" (Garner, 1995, p. 940), has not been strictly followed by many states in the USA. For example, among the 14 states that specifically addressed the use of *shall* in their drafting manuals, "the position [of *shall*] in the United States, at both a State and Federal level, is inconsistent and unclear" (Cooper, 2011).

Apparently, there is variation in the use of the modal verb *shall* (Garzone, 2013) in English legislative texts. It is thus not surprising to notice that Chinese legal translators who look for a definite guideline concerning the use of *shall* often feel bewildered. Together with a lack of consensus on the use of *shall* in English, conflicting views among researchers on the use of *shall* also complicate legal translation in China.

### ***Use of Shall in Chinese Legal Translation***

While the use of *shall* is to be abolished or diminished in English legislative texts, it flourishes in China's legal translation. In China, *shall*, *must* and *may* are the three most frequently used modal verbs in legal translation (Li, 2007). Jiang and Jin (2012) find that *shall* ranks at the top, accounting for almost 1/3 of all the modal words used in translated Chinese laws and regulations, far higher than that in the statutes of the UK. They worry that overuse of *shall* may over-emphasize the compulsory nature of laws and regulations, making legal language fuzzy and making laws difficult to enforce.

Actually, the overuse of *shall* in China's legal translation has long been noted by Chen (1992). He regards *shall* as a virus and calls for a joint effort to expel this virus from legal translation. However, Li (2007) acknowledged the value of *shall* in legislation and translation, insisting that *shall* is an appropriate equivalent of "yingdang," while *must* is an ideal counterpart of "bixu". In view of the diminishing, but not vanishing, use of *shall* in English legislation, he asserts that it is improper to abandon *shall* in China's legal translation. Cao (2009) also sees the value of *shall* as the ideal counterpart of "yingdang"/"ying" which is regarded as the "dominant performative modal verb for Chinese statutes for the sense of ordering and imposing obligations".

### **The Data**

The data used in this paper consists of two parts. The first part is the translated EEAL taken from the Bureau of Exit and Entry Administration of the Ministry of Public Security. The second part consists of

relevant exit and entry acts in five main English-speaking countries, including Australia, Canada, New Zealand, the UK and the USA. They are downloaded from official websites (See Table 1) and serve as parallel data for the present study.

**Table 1. Relevant Laws in China and Five Main English-speaking Countries**

Name	Source
The Exit and Entry Administration Law of the People’s Republic of China 2013, China	Ministry of Public Security
Migration Act 1958 (revised in 2005), Australia	Australian Government Comlaw
Immigration and Refugee Protection Act 2001, Canada	Department of Justice
Immigration Act 2009, New Zealand	New Zealand Legislation
Borders, Citizenship and Immigration Act 2009, UK	legislation.gov.uk
Immigration and Nationality Act (amended in 2010), USA	US Citizenship and Immigration Services

After the data was collected, the paper used the wordsmith 5.0 tool to check the concordance and frequencies of *shall* and the two most favored substitutes for *shall* by Plain English Movement, namely, the modal verb *must* and the semi modal phrase *is to* (including the form of *are to*). Table 2 shows that there is variation in the use of *shall*. China has the highest percentage, 22.4% *shall* in every one thousand words, almost twice that of the USA. The UK has the lowest percentage, only 0.34%. It is consistent with Garzone’s (2013) study that the UK is diminishing the use of *shall*. Even pioneer countries such as Australia and New Zealand still use *shall* occasionally, accounting for 0.72% and 0.76%, respectively. Thus, it is evident that although many scholars (such as Garner, 2004) call for a *shall*-less or *shall*-free style of legislation, *shall* still plays a role in English legislation.

**Table 2. Use of ‘Shall’, ‘Must’ and ‘is to’ in China and Five Main English-speaking Countries**

Laws and Acts in:	Tokens	<i>shall</i>		<i>shall not</i>		<i>must</i>		<i>must not</i>		<i>is to</i>	
		Hits	%	Hits	%	Hits	%	Hits	%	Hits	%
<b>China</b>	8527	191	22.4	19	2.23	0	0	0	0	1	0.12
<b>Australia</b>	225329	162	0.72	36	0.16	865	3.84	201	0.89	3262	14.48
<b>Canada</b>	96119	134	1.39	10	0.1	140	1.46	0	0	23	0.24
<b>New Zealand</b>	112942	86	0.76	7	0.06	475	4.21	37	0.33	56	0.50
<b>UK</b>	20486	7	0.34	2	0.09	31	1.51	4	0.19	43	2.10
<b>USA</b>	159231	1867	11.73	202	1.27	49	0.31	1	0	16	0.10

In addition, the frequency in the use of *shall not* also varied a lot. While China still takes the lead, followed by the USA, other countries seldom use it. On the contrary, when it comes to the use of *must*, Australia and New Zealand outrank China and others. *Must not* is also chosen by them to refer to prohibition whose percentage is almost five times that of their usage of *shall not*. As for the use of the semi-modal phrase *is to*, Australia takes the lead, accounting for 14.48%, while China and other countries show little interest in the use of this phrase.

Statistics in Table 2 echo the findings of Li (2007), and Jiang and Jin (2012), that the frequency of *shall* outranks other modal verbs in China’s legal translation. It also echoes the findings of Garzone (2013) that the UK has limited the use of *shall*. It also indicates Australia and New Zealand’s determination to look for substitutes for *shall*. However, data in Table 2 also demonstrates that there are still some instances of the use of *shall* in both countries. It is slightly different from Williams’ (2006, pp. 238-239) claim that Australia, South Africa and New Zealand have switched totally to *shall*-free legislation. This can be mainly explained by Garzone’s (2013) discussion on the effects of

*shall*-substitutes in legislative texts. She found that the four main substitutes for *shall*, including *must*, simple present tense, semi modal *is to* and the imperative substitutes, may well convey the same meaning as *shall*. However, they fail to reach the same effect, because *shall* also contribute crucially to the realization of the speech acts that constitute a legal text's pragmatic force and legal validity.

### Use of *Shall* in EEAL

In EEAL, 191 counts of the use of *shall* were found, among which 76 are as the equivalent translation of “yingdang” and 19 are in the negative form (*shall not*) as the counterpart of “bude”, “buzhun” and “buyu”. Except for 2 counts of “*shall be subject to*” and 2 of “*shall be conducted*”, the remaining 72 “yingdang” appear in active voice in the form of “A *shall do B*”. It is thus apparent that except for these 95 instances of the proper use of *shall*, the remaining 96 uses of *shall*, over half of the total uses of *shall* in EEAL, are subjectively added by the translator. The patterns concerning the use of *shall* in EEAL from wordsmith shows that *shall be* is the most popular pattern, occurring 91 times, followed by “shall not” with 19 occurrences. Thus, it can be inferred that 87 instances of *shall be* in EEAL are open to question.

#### *The Equivalent Use of Shall*

Quite similar to English legislation which uses such modal verbs as *shall* and *must* to impose a duty, Chinese laws and regulations also resort to function words such as “yingdang” to prescribe what has to be done and “bude” for prohibition. It has generally been acknowledged that when translating Chinese laws and regulations into English, *shall* is an equivalent of “yingdang” and *shall not* of “bude” or its synonyms in Chinese. In the original Chinese version of EEAL, “yingdang” was used 76 times and “bude” and its synonyms 19 times.

(1) 第三条 ... 在中国境内的外国人应当遵守中国法律, 不得危害中国国家安全...

Article 3... Foreigners in China **shall** abide by the Chinese laws, and **shall** not endanger China's national security...

Here, *shall* is used to impose on foreigners who enter into China a duty to abide by the Chinese laws. It is a typical use of *shall*, that is, following an animate subject and imposing a duty on that subject. Obviously, it falls within the category of appropriate use of *shall*, because there is “应当” (*yingdang*) in the source text. Similar examples of the appropriate use of *shall* can also be found in EEAL when it explicitly provides in Chinese that foreigners “yingdang” (*shall*) apply for something, file with a department, report to a department, register with a department, or submit documents to a department. Similarly, with the presence of “不得” (*bude*) in the source text, the use of *shall not* is also justified and imposes a prohibition on foreigners.

#### *The Use of Added Shall*

Altogether, 96 counts of the use of *shall* were subjectively added by the translator, of which 87 counts of *shall be* were added. Based on statistics gained from wordsmith, three types of an added use of *shall be* were summarized: adding *shall* before punishments, adding *shall* after competent departments, and adding *shall* in statements.

**Adding *shall* before punishments.** *Shall* is frequently added before penalties of imposing fines, making detention or confiscation in Chapter VII that sets forth legal liability. The sentence pattern for imposing a punishment is “...的, 处...” (...*de, chu*...). It begins with a typical Chinese “de” structure, which introduces legal conditions and has a similar function with conditional clauses. The “de” structure

is generally translated into *if* or *where* when the headword of the “de” structure is present, or into *anyone who* or *persons who* in the absence of a headword (Lin & Ji, 2002). In Chinese, “chu” (the third tone, i.e. a falling-rising tone) means to punish or sentence (A Chinese-English Dictionary, 1997, p. 184). In Example (2) below, the sentence pattern “...de, chu...” has been used to impose penalties.

(2) 第七十二条 协助他人非法入境的，处两千元以上一万元以下罚款； ...

Article 72... Persons who assist others in illegally exiting or entering China **shall** be fined not less than RMB 2,000 yuan but not more than RMB 10,000 yuan; ...

In Chapter VII, 48 instances of *shall* have been added and put in the following forms: *shall* be fined (21 counts), *shall* be detained (7 counts), *shall* be given (a warning or disciplinary sanctions) (7 counts), *shall* be punished (5 counts), *shall* be confiscated (5 counts) and *shall* be ordered (3 counts). Example (2) above illustrates the addition of *shall* before penalties of fines in the absence of “yingdnag” in the original article. However, the verb “chu” clearly shows the intention of the legislator to impose a duty on the offender, be it a fine, detention or confiscation of money or property. Thus, the addition of the first three instances of *shall* in provisions with the word “chu” turns out to be appropriate.

**Adding *shall* after competent departments.** The second type of adding *shall* in EEAL occurred when the actor or the agent (not necessarily the subject of the sentence) of the verb is about the competent departments that are responsible for issues arising out of the exit and entry of foreigners in China. In EEAL, the competent department refers to the Ministry of Public Security or its subordinate bureaus, the Ministry of Foreign Affairs, or the State Council individually, or two or three of them collectively. Unlike proper addition of *shall* before punishment-related provisions, the addition of *shall* in forms of “shall be responsible” (5 counts) and “shall be stipulated” (5 counts) is somewhat problematic.

(3) 第四条 公安部、外交部按照各自职责负责有骨干出境入境事务的管理。

The Ministry of Public Security and the Ministry of Foreign Affairs **shall**, within the scope of their respective responsibilities, be responsible for administering exit/entry affairs. (Article 4)

In Example (3), *shall* was added when it came to the responsibilities that the Ministry of Public Security and the Ministry of Foreign Affairs set forth. At first glance, the addition seems to be quite natural because the article itself is talking about the responsibilities of competent departments. However, after a closer look at the article, we may find that this article merely states that the two ministries mentioned are the competent departments of the administration (“管理”, *guanli*) of exit and entry affairs. In Chinese, the word “guanli” means management or managerial work in the context of business, and means administration or administrative work when official departments or offices are involved.

According to Collins Learner's English-Chinese Dictionary (2008, p. 22), “the administration of something is the process of organizing and supervising it”. This definition implies that administrative work involves both a duty of organization and the power of supervision. Apparently, instead of imposing a duty on the two ministries, Example (3) makes a mere statement and assigns the administrative work to these two ministries. The addition of *shall* turns out to be inappropriate.

**Adding *shall* in statements.** The third type of *shall* addition includes the addition of *shall* in statements that dealt with time limits, details of visa, permission of visa extension and effects of competent departments' decisions. They were added in a variety of forms: shall be ...days (2 counts), shall be calculated (2 counts), shall be issued (2 counts), shall be granted (2 counts) and shall be final (3 counts).

(4) 第三十条...外国人工作类居留证件的有效期最短为九十日，最长为五年； ...

Article 30 The validity period of a foreigner's work-type residence permit **shall** be 90 days at the minimum and five years at the maximum; ...

In Example (4) above, *shall* was added before the time limit for a work-type residence permit. The original Chinese article prescribes the time limit by using such expressions as “最短为...最长为...” (zuiduan wei... zuichang wei). Here, the Chinese word “wei” (the second tone, i.e. a rising tone) means *is*. It has the same function with English linking verbs that introduces a description, without any sense of imposing a duty.

Likewise, in Article 36, *shall* was added when it came to the effect of the decision made by the exit and entry administration department of the public security bureau. The original expression “...wei zuizhong jue ding” (is the final decision) also used the link verb “wei” (meaning *is*) to regard the decision as the final decision. Actually, as Martin and White's (2005, p. 99) study on appraisal theory reveals, bare assertions such as mere statements that make no reference to other voices or viewpoints are more forceful than sentences with appraisal resources, modality included. Thus, when there is no duty imposed, a pure statement can perfectly convey the meaning of certainty and the addition of *shall* is not necessary at all.

### Reasons for Overuse of *Shall*

Analysis in the previous shows that as scholars (Jiang & Jin, 2012; Li, 2007) have noticed, *shall* has been overused in Chinese legal translation. One of the obvious reasons is that *shall* and *shall* not are used frequently because there are a great number of “yingdang” and “bude” in Chinese laws and regulations. For legal translators, the use of these instances of *shall*, no matter how high the percentage, is well justified because they are equivalent translation. Despite this reason, four other reasons may account for the overuse of *shall*.

First, the word *shall* itself has potential for several meanings. The potential of taking on a number of meanings becomes “the fundamental problem of shall” (Goga-Vigaru, 2012). For example, in legal drafting, *shall* has three possible meanings: to refer to something to take place in the future; to impose a duty; or simply to function rhetorically by adding legal flavor to the texts (Torbert, 2004, p. 127). Due to the richness of the meanings of *shall*, it is not surprising to find that it is used now and then in China's legal translation.

Moreover, there is a lack of consensus on the use of *shall* in English-speaking countries. The literature on the use of *shall* in English legislative texts shows that while some countries like Australia and New Zealand move enthusiastically toward a *shall*-less legislation, America continues to use *shall* frequently. Such a conflicting convention on the use of *shall* in the target language of China's legal translation increase difficulty for legal translators.

In addition, translators may want to add an additional legal flavor to laws. Due to the differences between Chinese and English languages and to the mission of legal translators (to convey the intent of the legislators), legal translators may be too “creative” in legal translation and over-read the hidden intent of the laws and regulations to impose a duty or obligation. Torbert (2004, p. 143) mentions that some drafters favor the use of *shall* so much simply because they think *shall* can help increase the legal flavor. However, this kind of subjective addition of legal flavor is dangerous, as it will leave nothing but “vague flavor” (Torbert, 2004, p. 143) of law and make ensuing law enforcement difficult (Jiang & Jin, 2012).

Finally, there is no official guidance on the use of *shall* in China's legal translation. According to Qv (2012), the most recent official guidance for legal translation is the *Handbook of Frequently Used*

*Sentence Patterns for Editors of Legal Translation* compiled by the Legislative Affairs Office of the State Council in 2005. Sadly, this handbook is for internal use only. Experiences from the USA shows that even if there is a publically accessible guiding manual, if the guidance is quite general, it still leaves too much discretion to legal translators, which helps little to tackle the problem of overusing *shall*. Without any official guidance, legal translators may rely on their intuition to be creative, which may lead translators to read too much from the source texts and add *shall* more than needed.

### Conclusion

Based on a small parallel corpus, this paper analyzes the proper equivalent use of *shall* and three types of questionable use of the added *shall* in EEAL, and explores four underlying reasons for the overuse of *shall* in Chinese legal translation. Statistics show that though there is a strong call for *shall*-less style legislation, *shall* still play a role but with a variable frequency in English legislative drafting. In view of the in-replaceable attributes of *shall* in English, this author argues that it is unrealistic to abandon *shall* in Chinese legal translation. Instead, it is practical to accommodate the use of *shall*. By “accommodate” this author means that it is necessary for legal translators to provide a shelter for *shall* when it exactly conveys the meaning of the Chinese words “yingdang” or “bude”, and to make room for the added *shall* when the intention of legislators to impose a duty is evident.

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# The Role of the Court Interpreter in the Judicial Proceeding

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*[Abstract]* Role definition of court interpreters remains a controversial issue due to the different levels of development of the court interpreting profession across the world. Even within one country, legal professionals and court interpreters could not reach a consensus on the perception of the court interpreters' role in judicial proceedings. This paper looks at the different ways the participants of the interpreted interaction perceive the role of the court interpreter and how this can conflict with their professional ethics. An attempt is made to illustrate the moral dilemmas that confront court interpreters, and an argument is put forward for a more realistic understanding of court interpreters' role and more empirical research based on authentic courtroom data.

*[Keywords]* role definition; court interpreter; professional ethics; conduit; facilitator

## Introduction

Whether viewed as a rare event or as something routine, interpreted legal proceedings, and concomitantly, those who interpret them, are a part of every modern country's judicial system, and of the increasing number of international courts and tribunals. The term 'court interpreting' refers to interpreting provided by professional interpreters at the various stages of court proceedings, and 'court interpreters' refers to professional interpreters engaged in court proceedings involving witnesses and defendants from Culturally and Linguistically Diverse (CALD) backgrounds (Lee, 2009, p. 35). Court interpretation may be performed in different modes: consecutive, simultaneous, and sight translation, all of which may be used in a single hearing or trial.

Over the decades, members of the legal profession in a variety of jurisdictions have commented on and expressed their wishes relating to the role performed by interpreters. Various images have been used by legal actors to describe the human beings who transfer a message delivered in one language into another in a legal setting, including a transmission belt, a transmission wire or telephone, a court reporter, a bilingual transmitter, a translating machine, a (mere) conduit or channel, a cipher, an organ conveying (presumably reliably) sentiments or information, a mouthpiece, and a means of communication (Morris, 1993, pp. 221-223).

Existing studies have dealt with the role of the court interpreter, such as role perceptions and expectations, using social science methods of surveys, interviews and focus groups (Kelly, 2000; Hale, 1997; Angelelli, 2003), but this topic is far from having been exhausted, and still deserves scholarly investigation because it is closely linked to the provision of quality interpreting services and effective communication in bilingual courtrooms.

## Language Rights of Linguistic Minorities

Interpreters have long played a pivotal role as linguistic and cultural intermediaries. Interpretation, the transfer of meaning from a source language to a receptor or target language, allows oral communication between two or more persons who do not speak the same language. In a court of law, interpreters make it possible for defendants and witnesses from CALD backgrounds to "hear" the proceedings in which they

are involved, and for judges, attorneys, court reporters, and other key courtroom personnel to understand the testimony of defendants and witnesses from CALD backgrounds. Those with limited proficiency are at an obvious disadvantage in crucial situations, perhaps most notably within the judicial system, where qualified interpreters are critically necessary to protect the constitutional rights of these individuals (de Jongh, 1991, p. 286).

Linguistic minorities have a constitutional right to due process. As do all others accused of crimes, such persons have the right to a fair trial, including the right to understand and confront adverse witnesses and the right to effective communication with their attorney. Court interpreting involves a linguistic and cultural performance whose objective is to overcome the language barriers and cultural misunderstandings that could cause linguistic minorities to be linguistically absent from their own legal proceedings.

### **Court Interpreters' Code of Ethics**

*The American Heritage Dictionary of the English Language* defines ethics as “the study of the general nature of morals and of the specific moral choices to be made by a person; moral philosophy” and “the rules or standards governing the conduct of a person or the members of a profession.” In the context of court interpreting, a code of ethics “protects the interpreter and lessens the arbitrariness of his or her decisions by providing guidelines and standards to follow”(Solow, 2000, p. 50).

The Model Code of Professional Responsibility for Interpreters in the Judiciary developed by the National Center for State Courts in the United States frames the role of the court interpreter in typical fashion:

*Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help ensure that such persons may enjoy equal access to justice, and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice (Hewitt, 1995, p. 199).*

Another major feature of ethical codes for court interpreters, particularly in adversarial justice systems, is the idea of impartiality or neutrality. For example, Article 4 of the Code of Conduct for Court Interpreters published by the International Federation of Translators (FIT) provides:

*The court interpreter shall at all times be neutral and impartial and shall not allow his/her personal attitudes or opinions to impinge upon the performance of his/her duties.*

A court interpreter should be aware of the professional and ethical standards that are expected of her and know the appropriate conduct for a courtroom. Lack of professionalism contributes to interpreter error and errors of this type can be just as egregious as those stemming from linguistic issues. A professional code should be used as a training tool for interpreters. Likewise, a professional code should be used to educate attorneys and judges about what court interpreters are expected to do. The code can be used as a hiring tool for interpreters. This alone will set standards for court interpreters, as well as

Interpreters who are expected to know the code will be better trained and will provide more accurate interpretation.

## **Conflicting Views on the Role of the Court Interpreter**

### ***The Court Interpreters' Own Perception of Their Role***

A crucial role of an interpreter is to uphold basic human rights equally before the law (Mikkelson, 2000, p. 48). Such a task is extremely difficult and the expectation on an interpreter grave. In addition, the ideal goal for an interpreter is to render the information from the source language (SL) into the target language (TL) as accurately as possible. This idea explains why Australian interpreters are bound by a professional Code of Ethics (AUSIT, 1996), which puts an emphasis on the needs for accuracy and impartiality. Also, Gonzalez (1989) stressed that the goal of court interpreting is to produce a legal equivalent, an interpretation that is both linguistically true and legally appropriate. Even though the regulations and expectations have been spelled out clearly for interpreters, these two points highlighted above are complex issues and have remained controversial in the practice of this profession (Mikkelson, 2000).

To complicate matters further, other studies (Anderson, 1976; Brown, 1993; Fenton, 1997; Gentile, et al., 1996; Duenñas Gonzalez, et al., 1991; Mikkelson, 1998; Moeketsi, 1998; Roy, 1990) have revealed different views that court interpreters hold regarding their roles in court. Take the use of English as the communicative language in Australian courts for example. At one end of the spectrum, some interpreters believe their job is to help disadvantaged nonnative English speakers to succeed in their cases. The interpreters with this mindset may either deviate from the source language utterance to provide more detailed explanations to non-native English speakers for a better and clearer understanding (Conomos, 1993) or embellish the received answers to help nonnative English speakers gain more favorable results (Barsky, 1996). At the other end, some interpreters argue that their role in court is similar to a conduit, with the function of repeating verbatim whatever they hear in one language and translating the message into another language. The latter belief is usually held by those legal professionals who have little knowledge about the complexities and differences among languages (Karen, 2013, p. 147). Then in the middle ground are those interpreters who believe that language is their client. For those holding this view, the role of an interpreter is to interpret what is said and mimic the way in which the information is expressed so that the interpreted version can not only be understood by its receivers in the same way as the original, but also achieve the same potential response (Duenñas Gonzales, et al., 1991; Edwards, 1995; Hale, 1996a, 1996b, 2002; Laster & Taylor, 1994; Moeketsi, 1999; Mikkelson, 2000). With these different views, how a court interpreter handles the information he/she receives in court is clearly determined by the beliefs he/she holds, making his/her performance a more complicated matter.

### ***Perceptions of Legal Professionals***

Most players in the courtroom are unaware of the proper role of the interpreter. On the one extreme, the court tends to see court interpreters as robotic language switchers, performing a task that can easily be performed by a machine. On the other extreme, the minority language speakers tend to see them as their advocates and saviors. In the middle of these two extremes are the professional requirements of their code of ethics and their own self, exerting different types of pressures (Mikkelson, 1998; Angelelli, 2003; Hale, 2004). These conflicting views from the different parties put great pressure on court interpreters.

In a paper on controversies over the role of the court interpreter, Hale discusses five current roles prescribed or adopted by interpreters: advocate for the minority language speaker, including cultural

brokerage or mediation; advocate for the institution or the service provider; gatekeeper; facilitator of communication; and faithful renderer of others' utterances (Hale, 2008, pp. 102-119).

### **The Court Interpreter-as-Conduit Model**

The conduit model is usually associated with literal interpreting at the word level, or word-for-word interpreting. In this model, the interpreter is compared to a conduit, who is engaged in linguistic transfer, namely linguistic encoding and decoding. Understandably, the court is wary of any alterations that may be made by the interpreter to the original evidence of CALD witnesses, so the conduit model may seem a fitting way of preventing the interpreter from assuming a potentially intrusive role. This severely restricted role of court interpreters is based on the notion that the interpreter, who is compared to a conduit, is engaged in linguistic transfer, namely linguistic encoding and decoding. This mechanical and non-participatory role does not necessitate the interpreter's intervention in ensuring effective communication. Thus, the conduit interpreter is not expected to request or provide clarification (Morris, 1993, p. 291).

The interpreter-as-conduit model has been challenged by courts and tribunals, as well as by scholars and practitioners of interpreting. Researchers into court interpreting have been critical of risks arising from formal adherence to the conduit model, which may result in distortion and miscommunication (Laster & Taylor, 1994; Fenton, 1997; Mikkelson, 2000, Hale, 2004).

In contrast to the ostensible and presumed transparency of the interpreter in legal settings traditionally favored by legal players, a growing body of research has shown over the last three decades that the interpreter does not in fact function as a conduit, a much-favored simile among judicial personnel. Susan Berk-Seligson's seminal 1980s studies of the bilingual courtroom in the United States revealed that, contrary to the legal system's fundamental assumption, interpreters are indeed an intrusive element in legal proceedings, the content of which is inevitably affected by their involvement (Berk-Seligson, 1990). Backing up this finding, Sandra Hale's subsequent studies in Australia identified pragmatic changes that occurred during Australian court interpreting practice (Hale, 2004). More recently, a number of researchers (Hale, 2008; Mikkelson, 2008) have explored the evolving views and controversies over the role of interpreters working in a variety of law enforcement and legal settings.

### **The Court Interpreter-as-facilitator Model**

The interpreter's role at all times, from the simplest to the most complex exchange, is to convey the exact meaning and intent of the speaker. The interpreter's role is keeping the person who does not understand the language of the court abreast of the proceedings. This involves far more than acting as a "conduit."

In her investigation of the role of court interpreters, Berk-Seligson (2002) found that, in many legal proceedings, judges and attorneys perceived the role of the interpreter as that of a facilitator, an intercultural mediator, and even an advocate.

Cultural differences and culturally bound terms or expressions often pose challenges in interpreting, requiring the interpreter's discretion and judgment about the best possible renditions. In most interpreting settings, this may warrant addition or explanation. However, in court interpreting, the provision of opinion or extra information is generally regarded as overstepping the bounds of court interpreters' role. While some scholars support cultural intervention for the sake of effective communication, others take a more conservative position, mainly to protect the professional identity of court interpreters and to avoid ethical problems. They argue that court interpreters should not assume the role of an expert, nor attempt

to explain cultural concepts or beliefs that may have a bearing on the case. Nevertheless, when it comes to cultural information that is neither significant nor controversial, many maintain that an interpreter who is aware of cultural differences should point out any information pertinent to the case at the proper time in the proper manner. Thus, a lack of cultural sensitivity on the part of court interpreters may produce untoward consequences (Lee, 2009).

The court interpreter's role is to put the linguistic minorities in the same situation as that of the English speaker in a legal setting. In performing his or her job, the court interpreter "does not give any advantage or disadvantage to the witness or defendant who couldn't speak the language of the court." The interpreter allows the court to communicate with a defendant or witness by acting as the linguistic liaison, but the interpreter does not possess specialized legal training that would qualify him or her to offer legal services to the linguistic minorities. Still, in the past, interpreters have been expected to explain the legal process and terminology to non-English speakers. Such requests have the interpreter act as advocate, which is not the interpreter's role.

### ***Implications for Court Interpreting Practitioners and Trainers***

A court interpreter plays a critical role in the administration of justice as he/she transfers a message from one language to another thus ensuring access, due process and participation of all parties involved. The goal of a court interpreter is two-fold: to enable the judge, jury, counsel and parties involved to react in the same manner to someone who does not speak the language of the court as they would to a native speaker and to enable the linguistically disadvantaged defendant to 'hear' everything and therefore participate as a native speaker would.

Court interpreting is a highly specialized profession, not simply a function that any bilingual person might perform. The role of court interpreters is removing language barriers and placing the linguistic minorities in a position that would be as close as possible to that of a native speaker.

While language is the prime factor in linguistic interchange across cultures, accurate communication is based on other important components as well. In fact, bilingualism, or fluency in two languages, is only the starting point in interpreter training.

Beyond technical skills, interpreters must be aware of their professional role and what is and is not acceptable within their role as a court interpreter and within the courtroom itself.

Many people often misunderstand the role of the court interpreter and may ask the interpreter to do something that either violates their duties or causes the interpreter to engage in activity other than interpreting. It is the interpreter's duty to inform any persons making such a request of his or her professional obligations. A common example of this is a request not to interpret. It is the duty of the interpreter to interpret all proceedings for the court. Any request contrary to this duty should be directed to the court, so that the request and explanation by the interpreter are on the record."

### **Future Research**

Surveys with legal practitioners may indicate progress in the legal sector's perception of the interpreting process and the interpreter's role. However, as Morris (1995, 1999) has pointed out, it is lawyers and judges who have defined the functions of interpreters in the legal sphere. Many problems in practice can be attributed to general lack of statewide standards for interpreter qualification, lack of training for interpreters, and ignorance of the proper role of interpreters on the part of the judiciary.

The importance of achieving pragmatic equivalence and equivalence in social meanings in interpreting has not been well recognized by the judiciary. More linguistic analysis is needed order to reveal issues in these areas that are not apparent to non-linguists.

One of the most difficult issues in researching court interpreting in countries like China and Japan is the access to authentic bilingual courtroom discourse data. The lack of access to courtroom recordings prevents scholars from producing rigorous and large-scale studies to present to the legal community.

It is hoped that studies like this will raise public awareness of problems in court interpreting and lead to better access to authentic courtroom data, which would allow scholars to present convincing cases to bridge the gap in the understanding of court interpreters' role and initiate productive dialogue with legal professionals.

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# Hedges and Translation Strategies: A Case Study of the Text of the Criminal Law of China

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*[Abstract] Accuracy and preciseness are the primary traits of the language of law, but linguistic hedges do arise and play a role in legal instruments. This paper studies the hedges in the Criminal Law of the PRC, researching into the distribution, frequency and their functions. In addition, it discusses the strategies used in the translation of hedges, and in light of the relevance translation theory, probes into the tasks of translation and finds out the intents of the legislators and the effect of the usage of the hedges. What's more, the types of frequently appearing hedges are expounded, their functions are illustrated and finally, other factors are enumerated so as to achieve the maximum relevance among the translator, the legislators and the recipients.*

*[Keywords] hedges; translation; relevance theory; the criminal law of the PRC; strategies*

## **Introduction**

Criminal law is the toughest law and the ultimate law of the legislative system in all countries across the world. The aim of the Criminal Law of the People's Republic of China is to use criminal punishment to fight against all crimes in order to safeguard the security of the State, to defend the State power and the socialist system, to protect people's property to protect citizens' rights, to maintain order, and to ensure the progress of socialist construction. In order to attain these, there is a need for a law of accuracy and preciseness. However, emphasizing the accuracy doesn't mean the absolute negation of hedges. Since criminal law is a crucial method of adjusting the social relationship that is always changing and developing, especially in a current transitional period, China has amended the criminal law several times and the adoptions of hedges cannot be avoided because they provide the access to retain the accuracy and the preciseness of the legal language.

With the rapid development of the global economy and international cultural exchange, the translation of Chinese legal texts has become an important part in Chinese legal exchanges with other countries. In order to make people all around the world learn Chinese rules and regulations, it is necessary and urgent for China to produce standardized translations of its legal texts, and among which the hedges in the law and their translation are vitally important. This paper attaches a great importance based on case study of the criminal law of China. In addition, the strategies with the reference of the relevance theory are also studied.

## **“Hedges” from the Perspectives of Linguistics and Law**

For the word “hedge”, there hasn't been an absolute definition, although there has been a lot of work in the philosophy of logic and language attempting to define it in the west. Lackoff was the first to propose the concept of hedge for the purpose of linguistics (1972, p. 195). His definition has at least two important implications. First, fuzziness is common in language, existing in all levels and aspects. Not only are there words that are vague, but larger language units such as phrases, sentences and discourses and texts can also be vague. Therefore, vagueness should be semantic rather than only lexical. Second, hedges can not

only make things fuzzier but also make them less fuzzy. Therefore, hedges can alter the fuzziness of other words or phrases, which are not necessarily vague. Zadeh uses hedges to refer to the modifiers of vague words and the modifiers themselves are not necessarily fuzzy.

In his book *Vagueness in Law*, Endicott (2000/2005) thinks in ordinary life, a remark is often considered vague if the information it provides is insufficiently specific to advance the accepted conversational purpose (especially when the speaker is expected to possess that information). There are two kinds of investigations of vagueness – in philosophical logic and the philosophy of law, and this paper will focus on the “vagueness in law” by means of studying the hedges used in the criminal law text of the PRC.

“In the simplest case, vagueness in the content of the law arises when lawmakers employ a vague term in an authoritative legal text. In general, they may be understood when using the term either with its default content (provided by the rules governing its use in the common language) or with a partially precise content. For the former case, the application of the law to items for which the term is undefined is left indeterminate and subject to future precision by other authorities. In the latter case, lawmakers narrow the range of future interpretation by stipulating in advance how the law is to be applied to certain borderline cases” (Endicott, 2000/2005).

The rationality of “vagueness” can be illustrated in the following two aspects. First, and most obvious, a law may be vague because the authoritative text drafted by the legislation contains vague terms. Due to this, the assertive or stipulative contents of the lawmakers’ authoritative speech acts will typically be vague. “The need for such interpretation of this content often arises in legal proceedings in which reaching a verdict requires making an unequivocal decision about the application or non-application of a vague predicate *P*, used to express the relevant law or laws, to a borderline case of *P*” (Soames, 2011). Secondly, vagueness of legal content arises through the resolution of contradictions generated by different laws, or provisions of the same law, taken in conjunction with the facts of a particular case. In these cases, contradictory legal conclusions are derivable from the facts of the case plus different but equally authoritative preexisting legal contents. This glut of legal results is unacceptable, and so produces what is in effect a gap in the law that must be filled by modifying the content of the relevant laws.

### **Hedges in the Criminal Law of China**

Criminal law is a nation’s shield law and safeguards other laws’ operation. Criminal has its own specific characteristics different from other laws, such as the specificity of regulations, the severity of sanctions, and the pervasiveness of legal interests. Thus, the accuracy and preciseness of the language of the criminal law are highly required. However, emphasizing the accuracy doesn’t mean the absolute negation of hedges. John Gibbons, in his book *Forensic Linguistics*, cites Bhatia’s point of view (1994, p. 45): Though precision is the driving force for the formation of legal instruments’ specific characteristics, precision doesn’t mean extreme precision. The legal instruments often adopt appropriate hedges or flexibility. As a result, the hedges in the criminal law text are unavoidable and rational.

For the case study of the text of the Criminal Law of China, it is not difficult for us to find that hedges are frequently used in the law text, including verbs, nouns, adjectives and adverbs, and the following is a table to show the distribution of hedges:

**Table 1. Sample Table of Hedges in the Criminal Law of China**

<b>Adaptors (hedge of degree)</b>	Hedge of degree	Modifying the degree of the circumstances to make it more objective	High frequency
<b>Rounder (hedge of quantity) 以上, 以下, 以内 (yishang, yixia, yinei)</b>	Hedge of quantity	Modifying numbers by the upper limit or the lower limit	High frequency
<b>Model auxiliaries 应 (ying), 可 (k可以 (keyi), 须 (xu)</b>		应 (ying): indicating the obligation that laws imposed or rights that the law endows	High frequency
		可以 (keyi): expressing permissions or approval	High frequency
		须 (xu) implying a kind of coercive power	Low frequency

### **Translation of Hedges in the Criminal Law of China**

With the development of China's comprehensive power and the globalization, more and more people long to know more about China's history, culture and society. As a cultural product, it is necessary to translate the criminal law of the PRC into different versions of foreign languages on the purpose of cultural exchanges and policy guidance. While translating the criminal law, hedges in the criminal law of the PRC are unavoidable challenges. The following is examples of translation versions of verb and adjective hedges in the criminal law. (All Chinese provisions and translations within the article were retrieved from [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384075.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm), the database of National People's Congress, PRC.)

#### **Verb Hedges**

##### **Example 1**

中华人民共和国刑法第一百三十条 非法“携带”枪支、弹药、管制刀具或者爆炸性、易燃性、放射性、毒害性、腐蚀性物品，进入公共场所或者公共交通工具，危及公共安全，情节严重的，处三年以下有期徒刑、拘役或者管制。

*Article 130 Whoever illegally enters a public place or gets on a public transportation vehicle “with” any gun, ammunition, controlled cutting tool or explosive, inflammable, radioactive, poisonous or corrosive materials and thereby endangers public security, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.*

##### **Example 2**

第二十条 对正在进行“行凶”、杀人、抢劫、强奸、绑架以及其他严重危及人身安全的暴力犯罪，采取防卫行为，造成不法侵害人伤亡的，不属于防卫过当，不负刑事责任。

*Article 20 If a person acts in defense against an on-going “assault”, murder, robbery, rape, kidnap or any other crime of violence that seriously endangers his personal safety, thus causing injury or death to the perpetrator of the unlawful act, it is not undue defense, and he shall not bear criminal responsibility.*

Seen from the English versions of Article 130 and Article 20, the verbs “携带”, “行凶” are adopted to translate “with” and a noun “assault” into a proposition, respectively. It is obviously that the translation shift approach is applied in the translations of these two articles. But for the word “携带”, its original meaning is to carry a gun that can be seen conspicuously, while the expression “be with a gun” widens the range. If a man puts a gun in his bag or pocket, which also suggests that the man is “with a gun”. The word “assault” means: a) close fighting during the culmination of a military attack; b) threatened or attempted physical attack by someone who appears to be able to cause bodily harm if not stopped. Compared with the source text, the degree of “行凶” is hard to define, so the word “assault” is relatively a proper word in spite of the hedge of degree. Thus, the hedges in the original Chinese text lead to the hedges in the English versions.

### Example 3

第二百八十九条 聚众“打砸抢”, 致人伤残、死亡的, 依照本法第二百三十四条、第二百三十二条的规定定罪处罚。毁坏或者抢走公私财物的, 除判令退赔外, 对首要分子, 依照本法第二百六十三条的规定定罪处罚。

*Article 289 where people are gathered to commit “beating, smashing or looting”, thus causing injury, disability or death to a person, the offenders shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law. If public or private money or property is destroyed, damaged, or forcibly taken, the offenders shall be ordered to return the money or property or make compensation and, in addition, the ringleaders shall be convicted and punished in accordance with the provisions of Article 263 of this Law.*

In this article translation version, the verb phrase “beating, smashing and looting” are translated based on non-legal language. The fact is that there is no standardized definition of the degree of “beating, smashing and looting”, which constitutes the hedges in the source law text. Besides this, whether it just constitutes the crime when the three actions above happen simultaneously or not is uncertain for the definition of the charge. Thus, the hedges of the source text and target text can not be avoided, bring about the hedges in the translation version.

### Example 4

第二百二十五条 违反国家规定, 有下列“非法经营行为”之一, 扰乱市场秩序, 情节严重的, 处五年以下有期徒刑或者拘役, 并处或者单处违法所得一倍以上五倍以下罚金; 情节特别严重的, 处五年以上有期徒刑, 并处违法所得一倍以上五倍以下罚金或者没收财产。

*Article 225 Whoever, in violation of State regulations, commits any of the following illegal acts in business operation and thus disrupts market order, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the amount of illegal gains; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than one time but not more than five times the amount of illegal gains or be sentenced to confiscation of property.*

From the perspective of the criminal law, “非法经营罪” are classified as pocket charge, which can include many similar behaviors. That is to say it can contain more behaviors than the behaviors listed. Due to its characteristics, translation itself has no chance or duty to remove the vagueness of the source text. So for the translation “非法经营行为”, illegal acts in business operations is the result of the application of literal translation.

### ***Adjective or Verb Hedges***

#### **Example 5**

第一百七十三条 变造货币, “数额较大”的, 处三年以下有期徒刑或者拘役, 并处或者单处一万元以上十万元以下罚金; “数额巨大”的, 处三年以上十年以下有期徒刑, 并处二万元以上二十万元以下罚金。

*Article 173 Whoever alters currencies shall, if the amount involved is “relatively large”, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan; if the amount involved is “huge”, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan. .*

#### **Example 6**

第二百二十五条 违反国家规定, 有下列非法经营行为之一, 扰乱市场秩序, 情节严重的, 处五年以下有期徒刑或者拘役, 并处或者单处违法所得一倍以上五倍以下罚金; 情节特别严重的, 处五年以上有期徒刑, 并处违法所得一倍以上五倍以下罚金或者没收财产。

*Article 225 Whoever, in violation of State regulations, commits any of the following illegal acts in business operation and thus disrupts market order, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the amount of illegal gains; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than one time but not more than five times the amount of illegal gains or be sentenced to confiscation of property.*

Due to the specific characteristics of the criminal law of China, belonging to the civil law system, the adverbs of degree exist in the legal instruments inevitably. The hedges in these two articles still give expression to the degree definition. There is no distinction between “huge” and “relatively large”, because the Chinese word “较大” and “巨大” has no absolute distinction. So the translations of these two articles also involve the hedges with the adoption of literal translation.

## **Relevance Theory Adopted in the Translation of Hedges**

### ***Relevance Theory***

Christoph Unger states that relevance theory is an inferential theory of communication, which aims to explain how the audience infers the communicator’s intended meaning. The relevance-theoretic explanation of these inference processes is rooted in an account of cognition. It is because of the link this provides between communication and cognition that this dissertation can be at the same time a study of

the pragmatics of genre and of its cognitive role (2001, pp. 19-29). Dan Sperber and Deirdre Wilson hold that relevance theory is based on a definition of relevance and two principles of relevance: a Cognitive Principle (that human cognition is geared to the maximization of relevance), and a Communicative Principle (that utterances create expectations of optimal relevance) (2002, p. 250).

Working on the assumption that translation falls within the domain of communication, Ernest-August Gutt argued that relevance theory contains the key to providing a unified account of translation (1989, p. 194). Translation, then, as a form of secondary communication, is the interlingual interpretive use of language in which the translator tries to faithfully express the thoughts of the original author in another language. The principle of relevance constrains a translation both in terms of what it should convey and in terms of how this should be expressed. Relevance theory explains ostensive communication in the following way: the production of an ostensive stimulus demands the investment of some processing effort from the addressee. Since the mind tends to allocate its resources to the most relevant information, if the communicator wants to be understood, he or she should produce a stimulus which is at least relevant enough to the addressee to be worth attending to. The addresser can therefore interpret the stimulus on the assumption that it will be at least adequately to him. This justifies acceptance of the first assessable interpretation that satisfies his expectations of optimal relevance.

### **Strategies for the Translation of the Criminal Law**

#### ***Application of the Relevance Theory***

Seen from the case study above, it is not difficult for us to find that the literal translation is the most used adoption due to the precision of law. However, sometimes the literal translation is not a very appropriate approach to produce the translation.

Referring to Nida's "basic Process in Translating", the restrictions in the whole process of translating the criminal law include: law contained in the source text and the law contained in the target text, source language and target language, author of the source text and readers of the target text (Nida, 1993, pp. 146-150). In this way, the translator plays a role of bridge between the readers of translated version and the author of the source text. The translator shall realize his or her core role in the translation process and get involved in the positive participation of the process. The function of translator's positive participation includes interpretation, coordination, and decision-making.

#### ***Translation Strategies for the Criminal Law of the PRC from the Perspective of the Relevance Theory***

**The abundant background knowledge, relevance and translation.** Translation is a process of comprehension and expression. Compared with the comprehension involved in the common reading, the comprehension in translation process aims at presenting the meaning of the source text and the original propositional form faithfully (Nida, 1993, pp. 134-135). Thus, the translator has to have an accurate, thorough and comprehensive understanding of the criminal law of the PRC. The legislative background, including the social, historic and cultural features, should be taken into consideration. For the reader of the source text, maybe they will have totally different background knowledge with the original author, so the translator, as the core role in the translation process, has the duty to figure out the relevance between the author and the reader and then produce a correct reasoning.

**Loyalty to the legislative intention.** Law is a part of the culture, which is made based on people's manners, customs and daily behaviors of a certain region. Thus, the law has obvious regionalism. The legislators take the legislative intention into consideration when making laws so that the legal effect can

be realized. Šarčević once quoted in her own research, “to produce a text that leads to the same results in practice, the translator must be able to understand not only what the words mean and what a sentence means, but also what legal effect it is supposed to have, and how to achieve that legal effect in other language” (Šarčević, 1997, p. 92). Owing a profound understanding of the legislative intention contributes to produce a legal translation with high quality.

**The descriptive or self-explanatory translation.** This solution has the advantage of being transparent and easy to memorize. It is appropriate in a wide variety of contexts where a formal equivalent is considered insufficiently clear. In a text aimed at a specialized reader, it can be helpful to add the source language term to avoid ambiguity. Back translation can provide a convenient acceptability test.

**Obedience of the rules of legal translation.** The translator shall obey the rules of legal English expression. Legal language is the carrier of the law, which should be taken into consideration when the legal text is translated. In order to convey the meaning and make target legal texts produce the same legal effect as the source text and get applied properly by the judges on the courts, some methods have to be used to guarantee the standardized use of the legal expressions

### Conclusion

In a word, the adoption of hedges in the criminal law plays a significant role and its quantity and functions cannot be ignored. The proper adoptions of hedges provide the access to retain the accuracy and the preciseness of the language of the criminal law. The hedges in the criminal law doesn't violate the language rule, instead they meet different requests of judicial practice. So when getting involved in the translation, the translator must find out the intents of the legislators and the effect of usage of the hedges and choose proper translation strategies. The application of the relevance theory can promote the communication between the original author and the readers of the source text. The translator should realize his or her core role in the communication with abundant background knowledge and build the relevance between the original author and the readers of the target language. Only in this way the communication between the legislator and the reader will be realized.

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# **Analysis on Shifts of English-Chinese Translation of Constitutional Provisions on Open Judiciary with van Leuven-Zwart's Comparative Model of Translation Shifts**

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*[Abstract] Constitutions or constitutional documents are the most fundamental law of almost every country in the world. As globalization deepens, the translation of constitutional provisions has become very important. This paper, from the point of translation shifts, analyzes constitutional provisions on an open judiciary with the source texts in English and the target texts in Chinese with van Leuven-Zwart's comparative model of translation shifts. Though originally designed for the study of fictional texts, the comparative model is surprisingly suitable for the study of legal translation because its systematicness, detailedness and objectivity fits in precisely with the requirements of legal translation. This paper purports to add a small building block in any way possible to the mansion of China's legal English-Chinese translation.*

*[Keywords] van Leuven-Zwart; comparative model; translation shifts; constitutional provisions*

## **Introduction: Translation Shifts**

Though translating activities have been a necessity for people of different ethnic groups or nationalities to communicate with and understand each other since ancient times, translatology, the science of translation, has been in existence for no more than a hundred years. Equivalence in translation is a goal that every translator seeks to achieve. The debate on literal translation versus free translation has lasted for more than two millenniums. "The distinction between 'word-for-word' (i.e. 'literal') and 'sense-for-sense' (i.e. 'free') translation goes back to Cicero (first century BCE) and St. Jerome (late fourth century CE) and forms the basis of key writings on translation in centuries nearer to our own" (Mundy, 2001, p. 19). The paradox of literal versus free translation is fundamentally a reflection of the eternal philosophical paradox of prudence versus passion. Bertrand Russell believes that "prudence versus passion is a conflict that runs through history. It is not a conflict in which we ought to side wholly with either party" (Russell, 1967, p. 16). It is also probably a desirable suggestion for translation. On one hand, literal translation, in its strict compliance with cold and inhumane objectivism, can lead to a generic and obscure interpretation of meaning, making the text more difficult and less readable. On the other hand, free translation supporters are more than often passionate rewriters of source texts, who run the risks of being criticized as the "faithful traitor" (Gentzler, 2004, p. 58). The great theologian and translator Eugene Nida, whose dynamic equivalence and "utmost verisimilitude" (Nida, 2003, p. 224) has greatly released translators from somehow rigid adherence to source texts, has been criticized by Edwin Gentzler, "Nida does not trust readers to decode texts for themselves, thus he posits as omnipotent reader, preferably the ideal missionary/translator, who will do the work for the reader. His goal, even with the Bible, is to dispel the mystery, solve the ambiguities, and reduce the complexities for simple consumption" (Gentzler, 2004, p. 57). No wonder the old saying goes, "translation is to dance with heavy fetters". Therefore, to find a balance – or, equivalence – somewhere between the two is perhaps a standard for good translation. Though it is hard to evaluate the equivalence between the ST and TT, it is much easier to examine its

opposite, that is, the translation shifts (“small linguistics changes occurring in translation of ST to TT” (Mundy, 2001, p. 55) from the ST to the TT, hence, the many theories concerning translation shifts, such as those of Vinay and Darbelnet, Levý, and Catford, etc. “The most detailed attempt to produce and apply a model of shift analysis was carried out by Kitty van Leuven-Zwart of Amsterdam” (Mundy, 2001, p. 63).

Van Leuven-Zwart’s comparative-descriptive model of translation shifts consists of the comparative model and the descriptive model. This paper adopts the comparative model to explore the shifts in legal translation of various constitutional provisions on an open judiciary. Though van Leuven-Zwart’s model is “intended for the description of integral translations of fictional texts” (1989, p. 154), it is surprisingly useful for examining shifts in legal translation partly because the systematic and detailed mode ensures as much as possible the objectiveness and accuracy of language, which are precisely the requirements in legal translation.

### **An Overview of van Leuven-Zwart’s Comparative Model of Translation Shifts**

In her “discourse framework above the sentence level” (Mundy, 2001, p. 63), van Leuven-Zwart introduces the “transeme” (comprehensive textual unit) and further defines the “architranseme” (“the invariant core sense of the ST transeme”) as the “tertium comparationis”. Van Leuven-Zwart starts by exploring the relations among the source text transeme (stt), the target text transeme (ttt) and the Architranseme (ATR).

Judging from its result, translation can be generally categorized into four categories. First, when  $stt=ttt=ATR$ , this indicates the ideal in translation. Absolute equivalence is reached and hence no translation shifts. Second, in some translations where either  $stt=ATR>ttt$  or  $ttt=ATR>stt$ , there are translation shifts. “One of the transemes tallies with the Architranseme, but the other differs either semantically or stylistically” (Mundy, 2001, p. 64). This is what van Leuven-Zwart calls “modulation”. Third, in cases where “both transemes show some form of disjunction (semantically, stylistically, syntactically, pragmatically, or some combination of these) compared to the Architranseme” (Mundy, 2001, p. 64), there is a greater degree of translation shifts compared to Category 2. To be specific, both the stt and the ttt are hyponyms of the ATR and have, to some extent, overlap in meaning. This is defined by van Leuven-Zwart as “modification”. Fourth, when it is impossible to establish an ART between the stt and the ttt, the ttt is almost a rewritten stt “either because of addition, deletion or some radical changes in meaning” (Mundy, 2001, p. 64). From Category 1 to Category 4, there is a growing degree of translation shifts between the stt and ttt. Categories 2, 3, and 4 are the objects of the study of translation shifts. Considering all possible cases in translation, we have a brief introduction of Category 1 here for further comparison with Categories 2, 3, and 4.

### **Application of van Leuven-Zwart’s Comparative Model to Analyze Constitutional Provisions on An Open Judiciary**

Constitutions or constitutional documents are of fundamental significance to almost every country in the world. As globalization deepens, the translation of constitutional provisions has become very important. This paper seeks to study the shifts in English to Chinese translation concerning constitutional provisions on an open judiciary. Since some constitutions make no provisions in this regard, such as the Constitution of the U.S, France, Canada, Australia, and Germany among others, this paper is based on such provisions in the latest versions of constitutions or constitutional documents of countries such as the Socialist

Republic of Vietnam, the Russian Federation, and the Republic of Turkey among others. The English versions are from the website of World Intellectual Property Organization (WIPO, <http://www.wipo.int/portal/en/index.html>) and the Chinese translations are from the four-volume *World Constitutions* published by China Procuratorial Press in 2012. This paper selects typical provisions in this regard for study.

### ***No Translation Shifts***

Example (1) stt: Proceedings in the People’s Courts shall be open to the public<sup>1</sup>,/ (unless otherwise stipulated by the law<sup>2</sup>.)

ttt: / 人民法院的审判应当公开进行 <sup>1</sup>, / (法律另行规定的除外 <sup>2</sup>。  
(Sun, Han, et al., 2012a, p. 25)

ATR 1: be open to the public

ATR 2: stipulated by law

This provision from Article 131 of the *Constitution of the Socialist Republic of Vietnam* consists of two transemes, a state of affairs transeme and a satellite transeme. Van Leuven-Zwart rejects the traditional approach of regarding a sentence or a word or phrase as a comparative unit since a sentence is too long and a word or phrase is too short for study. Her transeme is a “comprehensible textual unit”. A state of affairs transeme is comprised of a predicate and an argument, indicated in /.../; and a satellite transeme, which has no predicate, can be viewed as the “confirmation of or supplement to the adverb of a state of affairs transeme” (Li, 2004), indicated in (...). And an Architranseme is the meaning of a notional verb or a copula shared by the stt and the ttt, or the so-called “common denominator”. In practical study, the determination of the Architranseme is usually dependent on a definitive dictionary.

In Example 1, we conclude that ATR 1 = stt 1 = ttt 1 and ATR 2 = stt 2 = ttt 2. This is an ideal situation where almost absolute equivalence is reached. There are no disjunctions of stt 1 or ttt 1 from ATR 1, or of stt 2 or ttt 2 from ATR 2. Therefore, this is not the object of study of van Leuven-Zwart’s shift theory, though it sounds too ideal in reality.

### ***Modulation***

Example 2 stt: Examinations<sup>1</sup> in camera<sup>2</sup> shall be allowed<sup>3</sup>,/ (only in the cases envisaged by federal law.)

ttt: (只有在联邦法律规定的情况下, ) / 才可以对案件进行 <sup>3</sup> 不公开 <sup>2</sup> 审理 <sup>1</sup>。/  
(Sun, Han, et al, 2012b, p. 226)

ATR: closed trials/hearings + are let to happen

Example 2 is from Article 123 of the *Constitution of the Russian Federation*. Since the satellite transeme is translated without shift, it is not discussed here. However, there is much to say about the state of affairs transeme. To discuss it in a thorough way, we mark the state of affair transeme in three segments: 1, 2 and 3. First, “examinations” in the stt is a hyponym of trials or hearings. According to the Oxford Dictionary of Law, “examination” means “the questioning of a witness on oath or affirmation” (Martin, 2007, p. 188). Yet “Shen Li” (审理) in Chinese is a broader concept than “examination”. It literally means the whole process of a trial or hearing, in which “all issues of law and fact arising in the case will be

determined” (Martin, 2007, p. 508). Up to this point, we can conclude that stt 1 is a hyponym of ATR 1 and ttt 1 is a synonym of ATR 1, the typical relation of modulation. In other words, stt 1 is a hyponym of ttt 1. Something that is not in stt 1 is expressed in ttt 1. TT generalizes the meaning in ST, and this is a process of “modulation/generalization”. The opposite is “modulation/specification”. To sum up, this modulation in meaning, either through generalization or specification, is subcategorized by van Leuven-Zwart as “semantic modulation”.

Second, the discussion of “in camera” will familiarize us with the other subcategory of modulation, that is, stylistic modulation. Van Leuven-Zwart, in her study of stylistic modulation, adopts Lyons’ stylistic distinction of “social meaning” and “expressive meaning” (Li, 2004). The social meaning of style studies the register element, the professional element, the time element, the text-specific element and the culture-specific element, while the expressive meaning of style studies the syntagmatic element and the paradigmatic element (such as metaphor, metonymy, etc.). In the study of ATR2, we conclude that ATR 2 based on “in camera” and “Bu Gong Kai” (不公开) is “in private” plus a stylistic attachment. Then, we have the formula: ATR 2 = stt 2 > ttt 2. “Bu Gong Kai” in Chinese literally means “not open to the public” in English, an expression of “in private” from the opposite angle. However, “in camera” has also a stylistic attachment to it. First and foremost, as a Latin phrase, “in camera” indicates a time element of style, which can never be felt by readers in “Bu Gong Kai”. In addition, “in camera” equals “in the chamber” according to Vinay and Darbelnet’s approach of calque. Compared to the plain expression of “Bu Gong Kai”, “in camera” involves a paradigmatic element of style. To be specific, “in camera” is a metaphoric expression of “Bu Gong Kai”. Metaphor, an aspect of the study of paradigmatic element of style, is far more than a mere rhetorical device. It is structural rather than rhetorical. “The essence of metaphor is understanding and experiencing one kind of thing in terms of another” (Lakoff, & Johnson, 1980, p. 5). Cognitive linguists George Lakoff and Mark Johnson classify metaphors into ontological metaphors, orientational metaphors and structural metaphors. “In camera” is an orientational metaphor. For some specific reasons, “for example, when it is necessary for public safety or when a child gives evidence in a case involving indecency” (Martin, 2007, p. 245), the judge(s) will decide that the public will be barred from the court and to try the case in a confined space. The phrase “in camera” invites to readers an image where the judge(s), the plaintiff, the defendant, the trial (if any), the witness(es) and other relevant personnel working together in a specific space to find the facts and to apply laws. A reasonable person will not fail to sense the confidentiality when reading a trial “in camera”. A trial “not open to the public” or “in private”, however, fails to invite such a conceptional image. That leads to our conclusion that from the translation stt 2 to ttt 2 causes the loss of some stylistic elements. This is an example of van Leuven-Zwart’s “stylistic modulation”.

### ***Modification***

Following the above example, we analyze the second type of translation shift in van Leuven-Zwart’s comparative mode of translation shifts, namely, modification. Modification reflects a translation shift, which, in degree, is larger than modulation. Where both the stt and the ttt partly convey the meaning – semantically, stylistically or syntactically – of the ATR, there occurs modification. In Example 2, “shall be allowed” as stt 3 conveys in semantics almost the same meaning as “Dui An Jian Jin Xing (Bu Gong Kai) Shen Li” (对案件进行 (不公开) 审理) as ttt 3. However, stt 3 is in passive voice while ttt 3 is in active voice, though the subject has not been defined. There is a large degree of disjunction of ttt 3 from stt 3 in the syntactic level or, more specifically speaking, in the semantic-pragmatic level. Semantically

equivalent yet syntactically disjunctive, stt 3 and ttt 3 must have an ATR that can cover all the nuanced meanings conveyed by stt 3 and ttt3 and all the forms of conveying the meanings. This leads both stt 3 and ttt3 to be the hyponyms of ATR 3. The whole picture in modification is that van Leuven-Zwart categorizes modification into semantic, stylistic and syntactic modification. And syntactic modification is sub-categorized into syntactic-semantic, syntactic-stylistic and syntactic-pragmatic modification. The example marked 3 is a syntactic-pragmatic modification. “English has a tendency of excessive use of passive voice, especially in formal documents” (Lian, 1993, p. 90) while Chinese features impersonal sentence. The translation shift therefore provides a good angle to do contrastive studies of English and Chinese.

### ***Mutation***

Example 3 stt: /Court hearings shall be open to the public./ (the Constitution of the Republic of Turkey)

ttt: /法庭 每 案 | 律 2 公 开。 / (Sun, Han, et al, 2012, p. 619)

ATR 1: nil

ATR 2: nil

This provision on judicial openness is from Article 141 of the *Constitution of the Republic of Turkey*. There is no equivalent of “shall” (stt 1) in the TT. Some knowledge of English and Chinese will enable us to conclude that the proper equivalent of “shall” in the ST is “Ying” (应) in the TT. Therefore, no ATR 1 can be established between stt 1 and ttt1. This kind of translation shift is defined by van Leuven-Zwart as “mutation”. In contrast, “Yi Lv” (一律) in the TT, which literally means “without exception”, has no equivalent in the ST. ATR 2 cannot be built, either. In the first example, the ATR cannot be established because of addition while in the second example, because of deletion. However, one thing worth mentioning is that inequivalence in form does not necessarily result in equivalence in meaning. The importance of van Leuven-Zwart’s theory lies in that it provides a relatively objective way to compare bilingual differences at a micro-level while the judgment of the value of objectivity and subjectivity is another subject for discussion.

### **Conclusion**

This paper is a preliminary attempt to examine legal English-Chinese translation at a micro-level with van Leuven-Zwart’s comparative model of translation shifts. Though the model is originally designed for studying shifts in fictional translation, its systematicness, detailedness and objectivity fit in precisely with the requirements of legal translation. The analysis above enables us to have some knowledge on the advantages and disadvantages of van Leuven Zwart’s comparative model of translation shifts. To distinguish the degree to which the TT is disjunctive from the ST, the comparative model defines three categories of translation shifts, namely, modulation, modification and mutation. To minimize the subjective influence on translation, the comparison of the ST and the TT is based on a tertium comparationis, the ATR and usually with the help of definitive dictionaries. However, the model explores translation shifts in such a detailed way that it is practically time-consuming in the study of a long legal document. In addition, the objectivity the model seeks to achieve is also susceptible to the criticism of

some extent of subjectivity. For example, the choice of a definitive dictionary to determine word meaning is based on personal decision and preference, too.

In conclusion, van Leuven-Zwart's comparative model provides a new angle for studying translation shifts at a micro-level. Its combination with the legal translation opens a new door for further study.

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# Forensic Linguistic Theory and Investigative Interviewing Teaching

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*[Abstract]* Despite the recognition of the interrelationship between language and law, the teaching program fails to pay much attention to the linguistic features of investigative interviewing in Chinese police academies. This paper introduces a genre-based perspective on interviewing teaching, and provides suggestions and guidance to improve students' awareness of the role of representative in institutional interaction. This paper also intends to evoke interest in the linguistic study of interactional processes in institutional settings.

*[Keywords]* forensic linguistics; investigative interviewing; teaching content

## Introduction

Language is prominent in law. As Mellinkoff (1963) states, “the law is a profession of words”, law and language are inextricably linked. Legislation and legal documents are coded in language. The process of the law, such as police investigation and courtroom procedures take place through language. Language works to shape and enrich our understandings of the law. Therefore, the law is an overwhelmingly linguistic institution (Gibbons, 2003, p. 1). Forensic linguistics, in a wide definition, is nearly synonymous with “language, law and legal process” (e.g. Levi, 1982, 1986; Goodrich, 1987; Kniffka, 1990; Eades, 1994; Tiersma, 1999; Gibbons 1994, 2003; Gibbons et al., 2004; Schane, 2006; Coulthard & Johnson, 2007; Kredens, et al., 2007; Gibbons & Turell, 2008). McMenamin (2002, p. 67) defines it as “the scientific study of language as applied to forensic purposes and contexts.”

As a subfield of Forensic linguistics, the police-suspect investigative interviewing comprises a crucial part in almost every criminal case investigation process, as Milne and Bull (1998) emphasize that police interviews have always been vital to police work and the criminal justice process. “The investigative task is the core aspect of policing today and what emerges from that core task is the key element of the ability to interview” (Evans & Webb, 1993, p. 37). The suspects may make truthful claims, and the information passed on in the interviews may provide valuable clues to the investigation. But in most cases, especially at the starting stage, the suspects may not admit crimes they have committed and make false confessions. The police interview “is often the most important fact-finding method available to the police” (Gudjonsson, 1999, p. 7), which is conducted as a search for truth and a search for proof as well.

Given the importance of investigative interviewing, training on appropriate interviewing practices is mandatory. Inbau, et al. (1986) recommended a number of interviewing tactics in the book *Criminal Interrogation and Confession*, which could be regarded as the first substantial guidance. With the growing prominence of forensic linguistics in the past couple of decades, an increasing number of linguists join the research on police interviews. They provide concrete analysis and practical guide to investigative interviewing based on linguistic, psycholinguistic and sociolinguistic theory and research. (e.g. Milne & Bull, 1998; Shuy, 1998; Gibbons, 2003; Heydon, 2005; Coulthard & Johnson, 2007; Ye, 2010)

## Investigative Interviewing Teaching in China

Investigative interviewing is a key part of any investigation into a criminal offence. The Investigative interviewing course is a fundamental subject for students majoring in criminal investigation in Chinese police academies. According to the Teaching Program issued by Chinese Ministry of Public Security for public security majors of police academies, the teaching aim of the investigative interviewing course is to make students understand its fundamental knowledge and theory, perceive its significance, purpose and task, comprehend its basic content and method, preliminarily grasp basic tactics and be competent to interview and make written notes and relative documents.

According to the survey conducted in police academies in Beijing, Zhejiang, Jiangsu, Shangdong and Yunnan, two main course books are used for Investigative interviewing course, they are *Science of Investigative interviewing* (Hu, 2001) and *Investigative interviewing* (Hou, 2007). The Investigative interviewing course of People's Public Security University of China, a leading police academy in China, has been elected as a National Elite Course. Its teaching content has been regarded as a model by other police academies throughout the nation. The teaching period allocation and content are shown in Table 1.

**Table 1. Teaching period and content of Investigative interviewing course (Bi, 2007)**

Chapter	Content	In-Class Lecturing Period (*1 period = 45 minutes)
Chapter 1	Introduction	4
Chapter 2	Characteristics, task and basic principles	2
Chapter 3	Legal rights of suspects	6
Chapter 4	Guarantee of investigative interviewing	4
Chapter 5	Psychology of suspects	6
Chapter 6	Preparatory work of investigative interviewing	6
Chapter 7	Fundamental procedures of investigative interviewing	2 (Simulated Interviewing 16)
Chapter 8	Basic strategy of investigative interviewing	4
Chapter 9	Method of investigative interviewing	8 (Case discussion 2)
Chapter 10	Language of investigative interviewing	3
Chapter 11	Auxiliary methods of investigative interviewing	1
Chapter 12	Written notes of investigative interviewing	Self-study
Chapter 13	Review and judge of investigative interviewing	Self-study
Chapter 14	Investigative interviewing in different types of cases	Self-study
<b>Total</b>		<b>64</b>

We found that the present teaching model fails to reveal the linguistic nature of investigative interviewing. The disadvantages of its status quo are as follows. (1) The chapter on interviewing language of both course books focuses on Figures of speech and sample analysis, involving few linguistic theories. (2) The allocated lecturing period is inadequate. (3) Most teachers do not possess linguistic knowledge.

### Forensic Linguistics Application in Investigative Interviewing Teaching

Because of the inherent superiority complex of the legal circle, the attention paid to the studies on forensic linguistics by the linguistic world is often regarded as unnecessary. Such a stand has made the judicial circle ignore studies about forensic linguistics, indirectly influenced the efficiency of law enforcement and increased cost of law enforcement in China. (Ye & Li, 2012) To train high-quality law enforcement officers for the society, it is high time that educators attached their importance to the relationship between language and law. To unravel the linguistic features of interviewing, two ways can be adopted in pedagogical practice. One is to construct a theoretical framework in course teaching,

providing students linguistic perspective on investigative interviewing. The other is to offer electives on legal language, giving students more angles to comprehend linguistic symptom in legal process.

**Genre-Based View on Institutional Discourse**

Renkema (2004, p. 253) states institution “is used to describe those activities by which individuals construct and maintain a society. These activities are aimed, for example, at the transmission of knowledge (the institution ‘education’) or combating crime (the institution ‘justice’).”The interactions between police interviewers and suspects could be defined as institutional.

*...institutional discourse can perhaps be best described as a form of interaction in which the relationship between a participant’s current institutional role (that is, interviewer, caller to a phone-in program or school teacher) and their current discursive role (for example, questioner, answerer or opinion giver) emerges as a local phenomenon which shapes the organization and trajectory of the talk (Thornborrow, 2002, p. 5).*

Gibbons (2004, p. 7) describes legal genre as “the highly institutionalised, and sometimes ritualised discourse of the law often follows regular patters; each organised sequence of elements plays a role in achieving the purpose of the discourse. ...these are termed genres.” Maley (1994, p. 16) provides a chart of the main genres used in legal settings, in which includes the type of police interview genre. Police interview is goal-oriented, conventionalized with repeated and distinctive features of institutional discourse that arise from its communicative purpose identified by police officers of the professional community. The macro genre framework of investigative interviewing is clearly described in the following table. It is highly recommended as a cornerstone for introducing forensic linguistic theory in the course of police interview.

**Table 2. Formal Police Interview Genre** (Gibbons, 2003, p. 142)

Primary reality framing	Secondary reality core	Primary reality framing
(Place) (Date) Time of Interview Persons present Interviewee’s Name (Address)(Date of Birth) Cautions Rights to silence Recording (Interpreter present/(not) required)	Orientation Subject of interview (Date and time of incident) Questioning Q-A <sup>1-n</sup> [narrative structure usually underlying] (Introduction of evidence from Secondary Reality) (Invitation to give further evidence)	Recording issues Cautions Uncoerced interview (Invitation to sign) (Further actions) Closure (Time)

The knowledge of genre is critical to both the construction and the comprehension of discourse. (Gibbons, 2003, p. 130) The above generic structure can contribute to a broad understanding of police procedures and interactions in legal discourse. When teachers analyze sample interviews, this genre outline could be a helpful approach to unravel discursive features, communicative patterns and inter-discursivity of police interviewing discourse.

**Professional and Layman**

Coulthard and Johnson (2007) point out, “professional genres are closed to lay interpretation, or at least lay interpreters have to work harder to derive meaning from these texts.” Many people including professionals believe that the legal lexicon, preciseness, lengthy and complex sentences, redundant and

unusual sentence structure are the obstacles for laymen to comprehend legal language, impeding communication between legal professionals and laymen.

It is clear that complex and technical language also carries a social message concerning the power and authority of the person using it (Gibbons, 2004, p. 7). Haworth (2010, p. 172) also states that “given the nature of police-suspect interview interaction, where one participant is prescribed the role of questioner and the other that of respondent, combined with the highly unequal power relations between participants”. Drew and Heritage (1992, p. 49) report that the participants in institutional interactions are asymmetric in terms of such matters as differential distribution of knowledge, rights to knowledge, access to conversational resources, and to participation in the interaction. Power is disseminated through language, and this is especially the case in the legal process. Besides the complexity in lexicon, phrase, syntax and inter-sentence, laymen are short of explanatory resources that are manipulated by professionals. This unequal appropriation of generic resources produces a set of complex communicative actions, which embodies unbalanced power relation between police and suspect.

In the context of investigative interviewing, the clearly asymmetrical distribution of status and power in investigative interviewing indicates that police officers obviously play a dominant role in interview, the interview form an interaction in which the identities of participants, whether they are interviewers or suspects, shift with reference to their pre-determined roles in the immediate institutional context and the wider social and cultural contexts (Heydon, 2004).

It is hard to imagine that a police officer with little professional expertise in the genre of investigative interviewing can appropriately handle interviews with suspects. The students in police academy are required to be equipped with necessary knowledge and trained to be competent professionals after graduation. Since “the manner in which power and authority are exercised through language is a significant issue in the study of language and law” (Gibbons, 2003, p. 75), teachers should help students to make sense of how the institutional power controls and dominates the selection of language resources by the two parties in interviewing and how the police impose power and authority through language. From the perspective of forensic linguistics, students can gain insights and better understand the coercion and asymmetrical power are the features of investigative interviewing owing to the distinctive social and discursive roles of both participants.

### ***Design of Elective Course on Discourse of Investigative Interviewing***

Due to teaching syllabus and limited in-class time, setting up elective courses on linguistic and sociolinguistic features of investigative interviewing is an effective complement. Zhejiang Police College has set up a pilot elective course called *Analysis and Application of Police discourse* among the student who are majoring in the science of public security. The content includes the introduction of forensic linguistic, important theories and concepts, discourse and power, investigative interviewing, language evidence and case study. Based on the teaching experience and feedback, the complementary content to investigative interviewing course consists of five parts.

- (1) Linguistic features
- (2) Conversational implicature theory
- (3) Speech act
- (4) Generic structure
- (5) Legal context
- (6) Asymmetrical power and control
- (7) Case study
- (8) Written notes

It is absolutely not necessary to convey all the theoretical concepts of forensic linguistics in the elective course, which will not give prominence to the point and will definitely be boring, as the students do not major in language. The aim of the course makes brief introduction to linguistic theory and emphasizes practical analysis and application.

### Conclusion

As an interdisciplinary subject, forensic linguistics has its theoretical frameworks rooted in both law and linguistics. However, the linguistic nature of legal language has been ignored in education and training of police officers. The teaching content of investigative interviewing in China has not made much change in the past decades, and obviously, the traditional teaching program on investigative interviewing fails to apply to the interdisciplinary trend in contemporary education. Highlighting the relationship between language and law provides students a more scientific perspective to comprehend their role and function in institutional interaction. With the knowledge of forensic linguistics, they are more aware of the essence of investigative interviewing as a social action and their role as representative of institutional discourse.

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# Effective Use of Address Terms in Court Mediations for Disputes Settlements

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**[Abstract]** *This paper first explored address terms' communicative functions of restructuring interpersonal relationships, activating attitudinal evaluation, rescaling situation formality and performing speech acts and then investigated the effective use of address terms in court mediations for the sake of dispute settlements. Two principles have been reached from the study: 1) polite address terms should be encouraged in court mediations among the parties involved, especially by the mediators; 2) formal or legal address terms are used to keep the order of courts.*

**[Keywords]** *Address terms; court mediations; disputes settlement; communicative functions*

## Introduction

“Address forms are the words speakers use to designate the person they are talking to while they are talking to them” (Fasold, 2000, pp. 2-3). In most languages, forms of address encompass nominal forms of address (i.e. address nouns) and pronominal forms of address (i.e. address pronouns). Address nouns include first names (Peter, Mary), title+last names (Mr. Wang), kinship terms (Mom, Dad), pseudo-kinship terms (Bro, Sister), titles (Professor, Your Grace), general terms (Tongzhi, Shifu, Miss, Mr., Madam), occupational terms (Doctor, Waiter), and so on. Address terms often distinguish between intimate (or familiar) terms and distant (or polite) ones.

People's use of address terms in daily life is extremely dynamic and diverse, and always varies with social factors and speakers' communicative intents. The connection between choice of address forms and social reality can be approached either from what contextual parameters motivate the choice of address forms, or alternatively, how address behavior can affect social reality as a result of interlocutors' agency. In general, people can employ address terms to fulfill three macro-communicative functions: restructuring interpersonal relationship, projecting the speaker's attitudinal appraisal and rescaling situation formality (Liu, 2012). These findings can be applied to researches of language in law, and court mediation in particular. Therefore, the present study aims to investigate how different parties in court mediations use *address terms* effectively for mediation success and the ultimate disputes settlement. Three metaphorical functions of address terms will be explored first and then follows the last section concerning how they are applied in court mediations.

## Restructuring Interpersonal Relationships

Interlocutors do not always follow socially expected address rules. As creative agents, they can use address terms metaphorically to manipulate or re-structure interpersonal relationships. This kind of re-structuring encompasses both the solidification and the alienation of a relationship. The former can be done by minimizing vertical power difference or maximizing horizontal solidarity of a dyad. The latter can be achieved by minimizing horizontal solidarity or maximizing vertical power.

People frequently vary their address terms to increase their intimacy with others. If we use the scale of social distance as the landmark, a rule can be identified as follows. If an instance of address variation

occurs as an attempt to solidify a dyadic relationship, the switch of address generally moves from a polite term to an intimate one, or from an intimate address term to an even more intimate one.

The first way is that the speaker can reduce his/her social distance with the addressee by maximizing the solidarity between them. Solidarity is concerned with a set of symmetric and horizontal relations, and personal characteristics like political membership, religion, profession, sex, interest, regional origin can all determine whether two people are solidarity or not (Brown & Gilman, 2003). Interactants, as communicative agents, can use their address terms very consciously to maximize commonalities and minimize differences. There are some modes. One, the use of intimate address terms actually reinforces and promotes a progressive relationship. Two, an intimate addressing mode can help realize a motive in a symmetric relationship. Power equals often switch their address behavior from distant terms to intimate ones to reduce the horizontal social distance so as to realize individual motives. In such uses, one party of the symmetric dyad intends to ask for a favor, a message, or service from the other who happens to have such things. Three, an intimate addressing mode of a dyad can elbow an audience away. Intimates, such as lovers and couples, generally use polite or distant address terms to cover their close relationships in the presence of an audience.

The second way to reduce interpersonal social distance is to minimize vertical power. As Chaika (1982, p. 33) reports, "My immediate superior, a courtly gentleman who outranks me both in position and age, for ten years greeted me, 'How do you do, Dr. Chaika.' That alternant affirmed his own higher status and announced that he wished to maintain distance. Recently, he announced his impending retirement. The next time I saw him, he greeted me 'Hello, Elaine.' My superior's eventual 'Hello, Elaine' was a signal of shift from power." In this case, the superior purposefully had been using Dr. Chaika for ten years to keep some hierarchical distance from Elaine Chaika, and then when he was going to retire, he switched to an intimate greeting 'hello' and an informal given-name address 'Elaine' to reduce their relationship by minimizing their power differential.

Then, what is power? "One person may be said to have power over another in the degree that he is able to control the behavior of the other. Power is a relationship between at least two persons, and it is nonreciprocal in the sense that both cannot have power in the same area of behavior" (Brown & Gilman, 2003, p. 158). Occupational status, ranks, institutionalized roles, wealth, generation, physical strength, age, and sex are all bases of power. Brown and Ford (1961) identify three fine cases of occupational status differential. It may be a relation of direct and enduring subordination (e.g., master-servant, employer-employee); it may be a relation of direct but temporary subordination, involving someone in a service occupation (e.g., waiter and a customer); it may be an enduring difference of status that does not involve any direct subordination (e.g., United States senators have higher status than firemen). One of the strategies for people of lower status to minimize hierarchical status differential with their superiors is to switch their address behavior.

There is a rule that always applies to interpersonal communication. Formality means politeness, and politeness means distance (Chaika, 1982). That's why a switch from an intimate term to a polite one can reduce interpersonal social distance, or push someone away and keep him/her at a distance. Just contrary to the switching direction of address variations that are aimed at solidifying interpersonal relations, the direction of address variations for alienating interpersonal relationships must be switching from an intimate term to a less intimate one, or from a polite term to an even more polite one. In addition, alienating interpersonal distance can be realized either by minimizing horizontal solidarity, or by maximizing asymmetric power differential, or by both at the same time. There are a couple of motivations

for interlocutors to vary their address terms to minimize their horizontal intimacy, like the motivation of negative emotions, the speaker's motives, and the speaker's attempt to cover an intimate relationship in the presence of an audience.

### **Projecting Attitudinal Appraisal**

Secondly, address terms can help to project the speaker's attitudinal stance towards the addressee. By modeling on the attitudinal system of Appraisal Theory (Martin & White, 2005), the author wishes to explore how address terms activate the speaker's emotional stance, judgmental evaluation and appreciative appraisal of the addressee and his/her behaviors. Attitudinal properties can be roughly grouped into two types, positive ones and negative ones, and such a binary classification is widely practiced. Besnier (1990, pp. 428-429) notes that most characterizations of affective meanings make do with general notions like emotional intensity (e.g. involvement vs detachment) or directionality (e.g. focus of empathy), or with labels like 'positive' and 'negative' affect. Martin and White (2005, p. 42) note that affect is concerned with registering positive and negative feelings: do we feel happy or sad, confident or anxious, interested or bored?

Address forms are attitude-loaded linguistic semitones, and they can express speakers' attitudinal evaluations of both a given dyadic relationship and the people with whom they are communicating. Appraisal Theory encompasses three interacting domains: Attitude, Engagement, and Graduation. "Attitude is concerned with our feelings, including emotional reactions, judgments of behavior and evaluation of things. Engagement deals with sourcing attitudes and the play of voices around opinions in discourse. Graduation attends to grading phenomena whereby feelings are amplified and categories blurred" (Martin & White, 2005, p. 35). The system of Attitude is the focus and is of central position while Engagement and Graduation are its appraisal resources. The concept of Attitude in the system is treated to be more comprehensive than emotion. It deals with feelings, and is delicately divided into three regions: affect, judgment, and appreciation. Affect is the main sub-system, and it deals with the expression of emotions (happiness, fear, etc.). For instance, do we feel interested or bored, happy or sad? Related with this main category are two more specialized sub-systems: Judgment, dealing with moral assessments of behaviors (honesty, kindness, etc.), and Appreciation, dealing with aesthetic assessments of the value of things (subtlety, beauty, etc.).

Let's give some examples to elaborate evaluating functions and appraisal potentials of address terms. Among the three domains of attitude, the address terms *qinai de* 'dear' and *hundun* 'bastard' respectively indicate the speaker's positive and negative emotional stances to the addressee; *danxiaogui* 'coward', *dapianzi* 'big cheat' clearly display the speaker's negative judgmental dispositions concerning the addressees' behaviors; *meinv* 'beauty' and *shuaijie* 'handsome man' show the speaker's appreciative aesthetic taste and evaluation of two individuals' outlook.

A speaker always grounds his attitudinal position in emotions. It is normal for speakers' positive attitudes/feelings to co-occur with address terms with positive values. Therefore, when a speaker uses an address form loaded with positive connotation, he/she is exercising positive attitudinal assessments. Just like the co-occurrence between positive effects and address terms with positive values, negative effects in the first place tend to co-occur with address terms laden with negative connotations. Such negative effects include disdain, dissatisfaction, complaint, anger, and the like. Address choices and deviations are capable of vividly revealing the speakers' attitudinal judgments of the addressees' behaviors. Address behavior

includes such attitudinal judgments as admiring and praising in the positive group and criticizing and condemning in the negative group.

### **Rescaling Situational Formality**

Address terms can be manipulated to upgrade and downgrade situational formality, i.e. making a situation more formal or less formal. In other words, the choice of a formal or polite style on an informal occasion or by an intimate dyad can help to formalize the situation and improve the seriousness of an interaction. Switching to a formal addressing style either by an intimate person or on an informal occasion can formalize the conversational setting and strengthen the communicative force of an address term, and that's why when children are unbearably naughty or refuse to do their homework; their parents always switch to their full names to upgrade the communicative seriousness. Maybe the reason lies in that formal address terms like titles project seriousness and thus define formality, and the switch from the informal style to a formal one can draw more attention from the addressee, and thus attach great emphasis to the message(s) to be conveyed.

On the other hand, the use of an informal/intimate style on a formal occasion or by a distant dyad can informalize a conversing event and downgrade the communicative seriousness. The rationale is still that when an address variation occurs, the communicative style is changed, and the situational formality is hereby altered and re-scaled. That's why address variations can downgrade the degree of formality of a speech situation. Informal or intimate forms count in defining informality. The more informal and personal elements there are in an address term, the more informal it is. Omission of formal address forms (esp. titles) helps to play down formality.

Besides the potential of changing the situational formality, address terms have illocutionary forces, and can fulfill speech acts as performative words. According to Speech Act Theory, a speech act is an act that a speaker performs when making an utterance. In saying something, we perform three kinds of acts simultaneously. One, we perform *a locutionary act*, which is roughly equivalent to uttering a certain sentence with a certain sense and reference; two, we also perform *an illocutionary act*, such as informing, ordering, warning, utterances which have a certain (conventional) force. Three, we may also perform *a perlocutionary act*: what we bring about or achieve by saying something, such as convincing, persuading, deterring, surprising or misleading (Austin, 1962, pp. 109-110).

The forces of illocutionary acts are called illocutionary forces. We find the concept of *illocutionary force* can be very well applied to address behavior, and different address terms can be contextually loaded with a different intensity of illocutionary forces. Address forms can be said to perform three different types of acts in a single utterance. Its locutionary act is simply to designate the addressee, but that's not the real purpose of the marked language use. The real purpose is to perform the illocutionary act, i.e., the speaker's true intention, which might lead to certain perlocutionary effect. Besides, address terms can perform other acts like greeting, thanking. Formal address terms can perform the speech acts of teasing, expressing sarcasm, warning, ordering, action-checking while informal address terms can perform the speech acts of pleading, reminding, rebuking and threatening. All these linguistic findings can be applied to the analysis of the address behavior of the court mediator, the plaintiff and the defendant in courts. Some examples will be provided below.

## Use of Address Terms in Court Mediations

Court mediation is an effective judicial activity for settling civil disputes. The purpose of the mediation is the mediator persuading the parties involved to accept the mediation and thus resolving the disputes and the conflicts. The parties involved in court mediation include the mediator, the plaintiff, the defendant, and their respective lawyers. In many cases, the effective mediation discourse determines the success of the mediation. As discussed above, address terms have the functions of adjusting interpersonal relationships, projecting the speaker's attitudinal evaluation of the addressee and his/her behavior, and changing the situational formality. In courts, polite address behavior is encouraged for all parties involved. Ke (2011, 2013) cited some examples to illustrate the importance of address terms in courts.

### 案例 1 (Case 1)

调解员(Mediator): *Xu××, Chen×× suoshu shifou shushi?* (徐××,陈××所述是否属实? Xu××, is what Chen ×× said true?)

被告(Defendant): *Yiwanyuan bushi gei haizi de fuyangfei, shi gei wo de caichan zhejiafei...* (1 万元不是给孩子的抚养费, 是给我的财产折价费.....Ten thousand yuan is not the alimony for the child, but the property depreciation for me.)

调解员(Mediator): *Chen××, Xu×× ne ye bu tongyi women tichu de banfa, na ni duiyu tichu Xu ×× de zhifu fuyangfei fangshi, ni shifou tongyi?* (陈××, 徐××呢也不同意我们提出的办法, 那你对于提出徐××的支付抚养费方式, 你是否同意? Chen ××, Xu ×× doesn't accept our proposal. Then do you agree on the way Xu ×× proposed to pay the alimony?)

原告(Plaintiff): *Wo bu tongyi.* (我不同意。I don't agree.)

In this example, the mediator used the full names to address the plaintiff and the defendant, and used the pronoun *we* to refer to the court. These terms are emotionally neutral and seem legally just in mediation, but they cannot help in disputes settlement. Maybe the divergence of the plaintiff and the defendant concerning the way to pay the child's alimony caused their disagreement in this case, but the mediator's neutral address choices failed to solidify the interpersonal relationships of the parties and did not contribute to the court mediation at all.

### 案例 2 (Case 2)

调解员(Mediator): *Na, Wu Zhuren, nin shuoshuo kan.* (那, 吴主任, 您说说看。Then, Director Wu, what's your opinion?)

被告(Defendant): *Kanzai Peng Faguan de mianzi shang, wo kan jiu miandian miandian suan le, jiu pei ge zhengshu ba.* (看在彭法官面子上, 我看就免点免点算了, 就赔个整数吧。For Judge Peng's sake, I can make a concession, and exempt the fraction.)

The mediator's use of a polite address form *Wu Zhuren* 'Director Wu' (surname + title) to the defendant projected his positive attitudinal evaluation of the defendant, and it played a significant role in winning the defendant's agreement to make a concession. Titles, as one of the politest address terms, are able to give the addressee face value and exalt him/her to a respectable position. The defendant in this case, when addressed *Director Wu* by the judge, felt respected, and willingly agreed to exempt the fraction. This example shows the important role titles can play in court mediations. However, it should be noted that high-status social titles are encouraged while low-status ones should be avoided since the latter might make the addressee lose face and trigger negative reaction.

### 案例 3 (Case 3)

法官(Judge): *Na beigao* × × *ne?* (那被告 × × 呢? Then how about the defendant × ×?)

被告(Defendant): *Erbaiyuan shi meiyou de. Ruguo laomu yuanyi dao wojia laizhu, na mei wenti.* (200 元是没有的。如果老母愿意到我家来住, 那每问题。We can't provide a monthly stipend of RMB200. But if Mother is willing to move into our house, there's no problem.)

原告(Plaintiff): *Buganqu, xia dou xiasile.* (不敢去, 吓都吓死了。Too scared to live with them.)

被告(Defendant): *Shui xia ni a? ...Na Zhajifei dasuan gei laoda haishi dasuan daijin guanxi?* (谁下你啊? ...那宅基费打算给老大还是打算带进棺材? You are scared of whom? Are you going to leave the homestead payment with your eldest son or die with it?)

法官(Judge): *Beigao, qing zhuyi nide yuqi, zhuyi ni de yanci, kongzhi yixia ni deqingxu.* (被告, 请注意你的语气, 注意你的言词, 控制一下你的情绪。(Defendant, please watch your tone and words! Calm down!)

This case vividly shows how the judge used address terms effectively to perform the speech acts of warning and checking the defendant's rude behavior. The judge first used the formal/legal terms to address the plaintiff and the defendant, thus constructed their respective identities in the court while projecting the formality of the occasion. Although the judge did not use any polite or familiar address terms, his address behavior did help maintain the order of the court. When the plaintiff complained endlessly about how scared she was at the thought of living with her son and daughter-in-law, the mediator used *yuangao* 'plaintiff' to stop her and help clarify her position in a clear but formal way. When the defendant began to question his mother in a very impolite way, the judge switched to *Beigao* 'defendant' to stop his impolite verbal attack to his mother. The judge's address terms in this case effectively performed the speech acts of reminding or warning and checking a rude deed by upgrading the communicative seriousness and formality.

### Conclusion

Some rules can be arrived at concerning the appropriate and effective use of address terms in court mediations. One, polite address terms should be encouraged in court mediations among the parties involved especially by the mediator. Court mediations are different from court trials. In the latter the extreme formality of the occasion require the use of legally rigid address terms. However, court mediations are not so formal or rigid, and they aim to settle people's disputes and conflicts. If polite linguistic strategies can help solve the disputes, they should be employed by all means. Polite address terms can enable interlocutors to express politeness to each other, project positive attitudinal stances and even solidify mutual relationships. Chinese polite address forms like job titles (*zhuren* 'director', *jiaoshou* 'professor', etc) and social titles (*xiansheng* 'Mr.', *xiaojie* 'Miss') should be encouraged. If the mediator is already familiar with the plaintiff and the defendant, their given names might also be used. Two, when needed, formal address terms should be used to keep the order of the court. There are cases when the plaintiff or the defendant gets excited in the negotiation, and their inappropriate verbal or physical deeds might disturb the order of the court. In such cases, legal/formal address terms like *yuangao* 'plaintiff' and *beigao* 'defendant' can be used to issue a warning. Address terms have the potential of changing communicative seriousness and rescaling situational formality, and they can perform many speech acts in court mediations.

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# Westerns' Critical Interest in Yuan Courtroom Drama

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**[Abstract]** This paper mainly focuses on George A. Hayden's "The Courtroom Plays of the Yuan and Early Ming Periods" and some of reviews. The interactions between the writer and readers provide us with a specific insight to courtroom plays, Chinese legal system, even to Chinese culture. Meanwhile, it puts forward some interesting and penetrating questions that might be difficult to answer even today.

**[Keywords]** Yuan Courtroom drama; George Hayden; book reviews; ancient Chinese legal system

## Introduction

As the term itself suggests, "Yuan drama" was at full florescence in Yuan Dynasty and then seems quickly eclipsed by novels in Ming and Qing Dynasty. However, the late Wang Guo-Wei (2010, p. 66), a Chinese scholar who has possibly contributed more to the field than anyone else, contended it to be "superb works of art", yet "people in Yuan were not aware of that, Ming literati started to admire them", then after the interruption of war between Ming and Qing and the subsequent upheaval, "For three hundred years, most scholars and literati have rejected Yuan dramas. But those who read them were all overwhelmed with admiration". Indeed, Yuan dramas do fascinate many researchers including those of the West. Some western scholars considered Yuan dramas to be the grand classical forebear of all Chinese theatre, and they have made great endeavors to which even Chinese scholars felt indebted.

Among all those Yuan dramas introduced and translated to the West, great scholarly interests arose from a sub-genre which was called Kung-an in China. The reason might be that a multitude of them specialised in the portrayal of social conflicts, sharing formal and substantive qualities, reveals the essence of an alien civilization which is a diversion from their own. Moreover, the exotic atmosphere of this genre is most strong here, with its overstated and often complex plot.

With approaches and cultural horizons different from those of Chinese scholars, works on Gong-an produced by westerners deserve special attention. The present paper mainly focuses on George A. Hayden's pioneering work *The Courtroom Plays of the Yuan and Early Ming Periods* and its reviews, to be more specific, these western scholars' interpretation of ancient Chinese legal system in Yuan courtroom drama will be carefully examined.

As these works and reviews constitute the focus of this investigation, reference to other research books and translations is also desirable and indispensable. When necessary, they will be examined as well, for example, the works of Ching-Hsi Perng (1978) and Chung-Wen Shih (1976), the former worked diligently and fruitfully in this subgenre with his book *Double Jeopardy: A Critique of Seven Yuan Courtroom Dramas*, the latter's book *The Golden Age of Chinese Drama: Yuan Tsa-chu* is a comprehensive and general study which systematically explores the most essential information of Yuan dramas but also spared dozens of pages talking about social justice theme. Moreover, some works written by Chinese scholars might be treated here as the background as well to facilitate the comparison needed. Such comparison does not attempt to make any judgments concerning the accomplishments of Western

and Chinese scholars, it's because foreign insights, when compared with native ones, can be used to illuminate one's own culture better.

Hayden (1974) claimed to "provide an empirical basis" for establishing a unique category in both Chinese and Western drama, he manufactures a new term "Courtroom plays" for this kind of drama labelled "Kung-an" in China, and contended that this genre should "have certain essential ingredients: (1) a crime, a specific infraction of the legal statutes of the time in which the plays were written, (2) the crime's solution and punishment in a courtroom situation, and (3) a judge or court clerk who solves the crime and, in the case of a judge, punishes the guilty and rewards the meritorious"(Hayden, 1974). Since this study focuses on western scholars' various interpretation and comments of the legal system in Yuan courtroom plays, we might as well follow Professor Hayden's approach, only with slight alteration to combine the second and third ingredients, to examine how and why justice was menaced and challenged by the criminals in the first part of this paper, and how injustice was redressed, how the villains were punished in the second. In the last part western and Chinese scholars' interpretation of justice in Yuan courtroom plays is to be compared and analyzed.

### **Criminal Offenses**

Professor Hayden listed 26 plays which falls into his category of "courtroom plays", and he found that most of these cases concerns at least one murder, only to "The Yuan playwrights seem to have found that only a depiction of cold-blooded murder could produce the feelings of outrage at the crime's occurrence and relief at its solution that they desired in their audiences" (Hayden, 1974). Here he refuted some Chinese scholars, including the so-called Socialism School's argument that Gong-an dramas were veiled attacks against Mongol oppression with plenty of reasoning, and pointed out that "evildoers in the kung-an plays are not restricted to any one class or even sex (although a male usually commits murder). The only attribute Yuan dramatic villains share is a completely black heart" (Hayden, 1974). And they are presented as "irredeemably evil". In this part, two problems would be our focus: Who are the evildoers? And why did they commit those bloody crimes?

#### ***Personalities and Social Status of the Evildoers***

The culprits of those courtroom plays in Professor Hayden's list are not restricted to any one class or even sex, but roughly they fell into three categories: members of privileged class, middle-class people who were faced with a situation that might strip them of wealth, and scoundrels or villains. One of the plays translated by Professor Hayden in the book was *The Ghost of the Pot*, he terms this play a "black comedy", maybe Aristotle's definition of comedy should be responsible for that. But there never exists such definitions as tragedy or comedy in Chinese literature, moreover, even his reader Richard Strassberg (1979) pointed out that his concern that "readers might not be shocked or dismayed, that they might even find moments of humor in the predicament of the villain" is not justified, as a matter of fact, the readers' reactions are similar to those ones while reading *Water Margin*, "in which 'loyalty and righteousness' seem secondary to the portraiture of the dark, grotesque, and frankly funny sides of human nature". Professor Hayden obviously shows more interest in Yuan Dramas' genre, style and literal value, the readers' taste, though, inclines towards the playwrights' portrayal of human natures.

To Professor Hayden's comment on the evildoers, all those reviews accessible agreed, or at least we can say paid no special attention. For example, another reviewer Walter J. Meserve (1979) employed a phrase "thoroughly evil villains" to refer to the persons who committed the offences. The convention of a

single singing role in Yuan dramas performance might serve as a convincing explanation here: in every act, only one leading role is to sing the aria, and such roles are assigned to the characters who had been wronged before the revelation of the culprits. Western scholars were impressed that the emphasis of Yuan drama is not on depicting the characters' inner psychological conflict, but rather on elaboration of the struggle between good and evil, even the characterization of the leads that had been given enough time and opportunities to win the audience's sympathy seemed a failure according to typical western standard, let alone the culprits who had shocked the audience with their cruelty and shamelessness.

### ***Motives and Social Roots of the Crimes***

As to why those evildoers committed those horrible offences, none of the western scholars bother to inquire in depth, however, some of the criminals do have reasons to justify themselves to some extent. Lord Ma's wife is just a case in point, who was the culprit in *The Chalk Circle*, while conceiving the plan to murder her husband so that she might enjoy the freedom to be the lawful wife of her secret lover, the audience was informed by her narration that it is almost impossible for a woman in ancient China to divorce her husband, even though she managed to do so, that could be at the expense of her being deprived of her dowry, status and fame. As a result, she ventured to murder her husband, and in her search for a scapegoat, Lord Ma's concubine Hai-tang became an easy target. While talking about the child, she confessed that to the audience: "If I let Hai-tang keep the child, the heirs of Lord Ma would strip me of all his wealth and I shouldn't be allowed to keep so much as a farthing" (Hume, 1953, chap. 2). That might account for the impressive number of those treacherous wives who murdered their husbands with their lovers.

Still among the list there is more than one play that is centered on family disputes, and the evildoers in them are mostly women. Take *Shen Nu-er* and *He-tong Wen-shu* as examples, both of the two stories evolved around the disputes between wives of brothers: one gave birth to a boy, the other childless; both the nephews were cheated or even killed by the childless women. Their motives seem sinister – for family properties, but everybody knows that by ancient Chinese law, the couple without their own male heir will definitely be at an unfavorable position when splitting family properties later, it is also the reason Mrs. Ma attempted to deprive Hai-tang of her son.

### **Revelation and Punishment of the Crime**

As Professor Hayden and most reviewers perceive, Gong-an drama in China is distinctly different from western "whodunit", as those evil-doers almost inevitably commit crimes in full view of the audience. The essence of Yuan courtroom drama thus lies in "the manner in which the detective-judge unravels the case and the lure of resolution" (Leung, 1979). In other words, the writers of Yuan courtroom plays compose their works with the intention of overwhelming the audience with ethics and emotion, not enlightening their intelligence as "whodunit" does.

### ***Judges As a Minor Role***

Doubtlessly, the magistrate is expected to act as the engine of courtroom plays, but unexpectedly in quite a few plays we found that the judge merely played a minor role in the solution of the case, even in punishment of criminals. In these courtroom plays, sometimes the revelation of the crime was even partly done by ghosts, illuminated by them, judges succeeded in their solution. About them, no fuss was made in the examined researches and reviews. More often, it's the relatives or friends of the victims who traced evil-doers; some of them even took their revenge by killing the culprits themselves. Taking revenge

through private efforts has been a common practice in ancient China for thousands of years, although prohibited in vain by the government more than once in the history, people accomplished such deeds would generally be respected by others, while judging their revenge-oriented offence, the judges tends to show their mercy and respect too.

As late as in the time of *Water Margin*, after Wu Song killed Pan Jin-lian, Wang Po and Xi-men Qing in public, he confessed to the local judge and the latter just sentenced him to exile, as his goal was to avenge his brother. Perhaps due to lack of such knowledge, Professor Hayden expressed his curiosity when Judge Bao saved a young man from execution by cheating the emperor, because the young man braved all the difficulties in fighting against a powerful antagonist to avenge his father's death. Putting into the words of Chung-wen Shih (1976, pp. 110-111), here "the concept of justice was retributive rather than merciful".

It is noteworthy that Chung probed this problem deeper to remind us of the famous play *Injustice to Dou E*, in which the innocent women asked the Heaven to punish the corrupt magistrate with three years' drought, no one doubted that this is not only to punish the officials, more importantly, it's a severe torture for the local people. But the audience cheered merrily when it really happened, regarding it a triumph of justice, the redress of injustice, and it's not hard at all to follow this phenomenon down to its root: Chinese attach so much importance to family that they extend this concept into government, thus the state became an enlargement of the family, while family a miniature of the state. The head of the government was seen as the father in a family, and the whole state is the biggest family. Children should respect and obey their fathers, and they are also supposed to be responsible for the fathers' mistakes.

### ***Magistrate Heroes***

Professor Hayden's research brought an extremely popular character in Chinese literature – Judge Bao into the westerners' spotlight, before that some western readers have had a taste of Chinese Gong-an literature and knew the stories of Judge Di. Despite that, from Professor Hayden's book and its reviewers, it can be seen that the typical Chinese term "Qing Guan" is still too intangible and complicated to be understood in the West.

### ***Errors and Intelligence of the Judges in Yuan Drama***

When commenting on Judge Bao in Yuan dramas, Professor Hayden stated, "his moments of confusion and error may delay the conferring of this respect, but in the end he sees everything clearly" (Hayden, 1974). He cited in his book from *Chalk of Circle* as a proof that Judge Bao misjudged the true mother to support this statement. *Chalk of Circle* is one of the most famous Judge Pao plays which had been introduced to the West. According to the author's knowledge, there should be at least two translations: one in French by Stanislas Julien as early as 1832, and the other one in English by France Humes, besides, two Germany writers adapted this Yuan drama and created their own, Alfred Henshke (whose pseudonym was Klabund)'s adaptation (it was translated into English by James Laver in 1929) is less popular and thus less studied than B. F. Brechet's *The Caucasian Circle*. Professor Hayden therefore could not be excused for his misunderstanding concerning whether Judge Bao failed to figure out the true mother when he set out to deal with this case and that might invite readers to doubt the validity of Professor Hayden's statement supported by this example.

In addition, the statement quoted above sounds a little bit surprising when compared with its following sentences: "Occasionally he is gifted with extraordinary powers of perception so that he can see

ghosts or have revelatory dreams. He frequently possesses the symbols of total power (i.e., a sword of authority and a golden badge or bronze blade) and with these embodies law and order. On the whole, however, the kung-an playwrights tend to avoid an excessive idealization and abstraction of the detective” (Hayden, 1974).

Putting the two statements together, careful readers just cannot help questioning: How could such detective-judges possibly err, if he was endowed super intelligence, and “in its most extreme form, this insight allows the detective to determine from a mere glance at a subject’s physiognomy and bearing his innocence or guilt” (Hayden, 1974). Unlike their collective indifference to the reasons resulting in the evildoers’ offense, some reviewers paid more attention, even after quoting the author’s answer: the concept of all-pervasive justice in a Judge Pao play is ingrained in the Chinese tradition: “such justice embodied not only the unification of “Heaven, Earth and Man”, but also that of “Confucianism, Buddhism and Taoism”. A reviewer still wondered, “If Legalism, too, had left its mark on the courtroom plays” (Leung, 1979)? It is pitiful that Professor Hayden did not answer such a good question, but we can discuss it later in the third part.

### ***Judge Bao in History and Literature***

Professor Hayden aptly distinguished the dramas he labelled “courtroom play” with plays of historical themes, and in the first chapter Courtroom Plays of the Yuan and Ming Periods, he told the readers clearly that “even those with historical figures as judges, appear to be, not dramatic reproductions of known history or even legend, but instead highly imaginary creations, whose judge character, if traceable to history at all, is taken only loosely from a historical personality. In this process of casual borrowing, in general only the judge's idealized character traits survive intact, only to undergo further development in their new dramatic environment” (Hayden, 1974). Setting out here, he made a chronological account of the development of legends with Judge Bao as their hero, his findings in this chapter is that accounts in Song Dynasty of Bao elaborated his integrity, intelligence and loyalty, while Yuan and early Ming portrayed him not only as a magistrate among human beings, but also among ghosts. Yet probing into this development, we found that such change took place not in Yuan Dynasty, but at the end of Song.

### **Conclusion**

The otherness of China has long been a lure to the westerners, their familiarity with Chinese culture, including Chinese literature and legal system, was mostly of a vague sort, maybe less vague today with the strengthening of global communication. Centring on Chinese Gong-an dramas, we saw so much misunderstanding and misinterpretation to be cleared, so many questions to be answered, so many domains untouched half a century ago. Focusing on this research, the author would like to raise a few questions to ourselves: since we impressed westerners with a culture imbued with relatively mild Confucianism, Buddhism and Taoism, how can our legal system impress them as cruel, brutal? What lead to some scholars’ total forgetfulness of the existence of Legalism School while reading the Yuan Courtroom Dramas?

To answer these questions, an old Chinese scholar’s analysis is quite insightful: every culture, under its explicit layer, has another layer that is implicit but no less powerful. In ancient China, the relatively mild, seemingly civilized Confucianism is always active on the surface, but some other trends never stopped exerting their influences on the life and mind of Chinese people (Jin Ke-mu, 2007, pp. 128-130). One of the strongest is the worship of force, which has been embodied in the image of swordsmen in

Chinese history, and these swordsmen either appear as saviour of the populace while fighting against corrupted officials, or as indispensable assistants of wise and honest officials. Swordsmen had been among the first target to eradicate in Han Fei-zi's proposal to the Emperor; ironically, they served as a complimentary social stratum to enforcement of the natural law while the ruling class were too weak or corrupt.

In addition, it was noteworthy that in the process of rising to its dominance, Confucianism never stopped assimilating various elements from Buddhism, Taoism, even Legalism, despite their immense differences. As far as Legalism was concerned, not only in the period before and during Qin Dynasty, but long after it, there were numerous officials who use Legalism as guidelines and achieved great political success, Zhu-ge Liang was just a case in point. The brutal penalties recorded and described vividly in all categories of Chinese historical and literal works are also perfect examples to support the argument of the author.

Jin Ke-mu (2007, p. 105) contended that the courtroom was a galaxy of Chinese social strata, a panorama of Chinese civilization. We can easily classify the well educated and the uneducated, the former includes the judge, the clerks; and the complainants, defendants, and witnesses are normally uneducated. Nevertheless, it is really hard to distinguish the people who act on the law from those who take advantage of or even violate the law. Because the courtroom scenes reflect not necessarily the rule of law, more importantly, they are stages where all kinds of Chinese competing for the spotlight. Even then, Chinese and foreign readers saw different things and got different impressions.

To better present Chinese civilization, we should first learn more of ourselves, and learn more of our image in others' eyes with an open mind.

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# A Critique of Legal Translation in *Legal English Terms*

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**[Abstract]** The year 2008 saw the debut of *Legal English Certificate (LEC)*, the first nationally unified examination “assessing proficiency in test takers’ reading, writing, translating and comprehension of legal terminology and concepts across American law practices” (<http://www.lectest.com/english/>). *Legal English Terms* compiled by Prof. Zhang Falian (2008), and published by China Fangzheng Press, is one of the designated textbooks recommended to test candidates. The author, while studying and teaching legal English, has found the translation in the said book rife with problems and inappropriateness. This paper, based on the author’s empirical experience, coupled with her understanding of linguistics, legal culture and translation strategies, attempts to showcase the major faults in the terminological translation in respect of the conceptual misrepresentation, misinterpretation of culture-bound or culture-specific terms, the blurring between generic words and legal terms, and the generalization of the legal terminology in question. For the sake of brevity, succinct suggestions for each of the problems are put forward to exhibit a linkage between the awareness of required of a legal translator and the practice of the translation job.

**[Keywords]** legal terminology; legal translation; culture-bound; legal system

## Overview

With myriad classifications of language translation, as well as varied translation theories advanced by different experts and scholars, there is a classification of translation, which is commonly accepted, as meaningful. In this typology, translation is divided into general translation (general), literary translation (literary) and professional translation (specialist or technical). Legal translation, in this sense, should fall under professional translation. In other words, legal translation entails rendition in the legal context, or related to the special use of language (Language for Special Purposes, hereafter LSP). According to Sarcevic (1997, p. 9), premised on the function of the legal texts in the source language (SL), legal translation can come in three forms: (1) translation of normative texts, such as laws, regulations, contracts, agreements and conventions, which are all provisions and standard documents; (2) translation of a descriptive (also prescriptive) character, e.g. judicial decisions, and administrative proceedings that govern actions, pleadings, appeals, petitions etc.; (3) translation of a purely descriptive nature, e.g. legal translation of scholarly works, law textbooks, and articles, etc. Legal terminological translation, then, falls under the third category.

One problem that has long existed with the above-mentioned translation theories is that weight is merely attached to the original legal texts, disregarding the function, which the translated legal texts are to serve in the target language (TL). German linguist and translation scholar Katherina Reiss (1971) proposed the new translation strategies, namely, legal translation needs to take into account both the subject in SL and the purpose, which the translation is to serve in TL. In translation practice, many other experts have begun to focus on and accept receiver-oriented translation strategies. German linguist Hans Vermeer (1996) proposed the Skopos Theory, which, among other things, proposes that the purpose of a text determines the translation strategies. He objects to the traditional equivalent-based theories, which gravitates toward the source text, or the effects on the reader of the SL. Sarcevic (2000, p. 329) writes,

“While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus the translator's main task is to produce a text that will lead to the same legal effects in practice.”

“Register” is useful to distinguish the variations of discourse in different situations and scenarios “in the sense that each speaker has a range of varieties and choices at different times” (Halliday, 1975, p. 11). Dennis Kurzon (1998), professor of linguistics at University of Haifa, Israeli defined legal language as “a type of register”. The “register” principle accords with the Skopos Theory in that it is agreed to be vital to consider the function of the translated text is to serve in TL. “Register” has a role to play in legal translation in the sense that the legal language can be deemed to be a variation of register which points to a specific purpose and fits in with a specific occasion. Deborah Cao (2008, p. 10) in *Translating Law* examines the legal translation where there are of three kinds. First, legal translation for “normative purpose”, including the domestic laws, international documents that can in turn be used in bilingual or multilingual jurisdictions; second, legal translation for “informative purposes”, including the ruling of the court, the views of scholars etc; third, legal translation for “general law and legal purposes”, including legal documents as well as ordinary texts which can be used as evidence in legal proceedings.

Therefore, based on the “register” principle and the classification of legal translation proposed by Deborah Cao (2008), although *Legal English Terms* is not thought of as a “parallel text” which is supposedly legally binding, the fact that the book, as a recommended textbook for the national exam, has by far too many mistakes, and bad enough ones. This merits scrutiny and attention from legal translators and scholars. This paper employs such disciplines as linguistics, law and translation strategies, coupled with the authors’ empirical experience, in order to make an analysis of the terminological mistakes.

### **The Four Major Problems Stemming From Translation of Legal Terms**

*Legal English Terms*, as it were, dictates, to some extent, the learner’s choice when he or she decides on the taking of LEC. As there is much in the book to be desired, hopefully errors in terminological translation are to be addressed, with rigorous criteria materializing and recognized in the profession so that the learner is not misled and that the fulfilled learner does not err in practice. Here is an inventory of the major faults in the terminological translation, in respect of the conceptual misrepresentation, misinterpretation of culture-bound or culture-specific terms, the blurring between generic words and legal terms, and the generalization of the legal terminology in question, coupled with the author’s analysis and suggested corrections.

#### ***Conceptual Misrepresentation in Translation***

The legal concept is the abstraction of ideas and rules in a legal system; the concept is the authority of law in the specific field. Thus, the translation of the legal concept should be fashioned in the professional language, the translation of which is therefore bound by the legal system. The translation of the legal concept from SL into another involves two dimensions: the original meaning in (SL) and the intended meaning in (TL) with which the translated concept does, may, or may not comport. Charles S. Peirce (1998) proposed “Semiotics”, by which a concept is possessed of three dimensions, namely linguistic, referential and conceptual. A concept from SL can be translated into a concept in TL, an identical concept, a similar concept or totally different concept being likely to emerge from the rendition, considering the three dimensions of a concept. Therefore it follows that an identical concept in all three dimensions is the most desirable. If there is one of three or two of the three dimension(s) is (are) missing,

a neologism, then, is supposed to be the way out. A mere translation version of a concept, which is not an equivalent, may not pass muster in translation.

“Magistrate”, typically found in Anglo-Saxon law can by no means be simplified as the equivalent “local judge” as *English Legal Terms* does. Even in the common law system exemplified by the United States and the United Kingdom, “magistrate” is not linguistically, referentially and conceptually equivalent in the two legal systems, which have diverged in many aspects over the years. The term has undergone considerable changes in its denotation and connotation. Currently, “magistrate” is somewhat less common in Europe while in U.S. the magistrate is the successor to Justice of the Peace, who handles the trials of civil cases which concern a certain dollar amount at issue, depending on the particular jurisdiction. Translated into Chinese, the magistrate is literally the county leader in the Mainland China, the political head of a country or “*xian*” which ranks in the third level of the administrative hierarch of PRC. Take Hong Kong. There are seven magistrates’ courts, which exercise jurisdiction over some offenses where there is a general limit to the year(s) of imprisonment and the amount of a fine. In Taiwan, magistrates are the heads of government of counties, which bears a great resemblance to the practice in the Mainland China.

*English Legal Terms* translated “indictment” into “prosecution” (*qisu*) and “complaint” (*qisuzhuang*). Anyone who is exposed to case law is well acquainted with the varied functions of “complaint”, “information”, “indictment”, “presentment” etc. A look at the following contexts will be revealing.

- a. The 5<sup>th</sup> Amendment to the U.S. Constitution provides that, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a Grand Jury.”
- b. Judgments in Cases of impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to indictment, trial, Judgment and Punishment, according to Law. (Declaration of Independence)
- c. District Attorney Ira Beiner said that he would seek indictments from a grand jury. Within a week, the grand jury – after watching the videotapes and listening to the testimony from King and others – returned indictments against Officer Koon, Powell, Briseno, and Wind (In connection with the beating of Rodney King by four white policemen).

These contexts are clear enough for one to gather that “indictment” is not merely prosecution or a complaint. Rather, it is a term exclusively used in the common law system, which is a formal accusation by the grand jury that a person has committed a crime, felonies in particular. Conceptual misrepresentation, or the conceptual mismatch, or erroneous rendition is likely to confuse or mislead the learner.

### ***Misinterpretation of Culture-bound or Culture-specific Terms***

Different legal cultures in both the West and China will enter into the equation where legal translation is concerned. Legal culture, broad by nature, dictates legal ideologies, the legal system, and law practice in a culture, all of which exert an impact on legal translation, including the translation of legal terms. Lawrence M. Friedman (1989) proposed as early as 1969 that legal culture is the attitude, the knowledge and the interaction on the part of the public who respond to a legal system. In this regard, legal translation, particularly terminological translation, has been inextricably bound up with a legal culture.

American legal culture is unified in the systematic reliance on legal constructs, such as corporations, contracts, estates, rights and power etc, which, taken together, nurtures the adversarial environment. Conversely, the legal culture of China in an inquisitorial context, has experienced and continues to undergo dramatic changes since PRC's reforms of 1978. Transformation has occurred by way of legal modernization, whereby a rule of law has replaced the rule of man. The latter is characteristic of the traditional rural Chinese society, which features unwritten rules and personal relationships. Institutional, customary and legal reform (a rule of law that embodies universal rules uniformly enforced by a centralized and bureaucratic state) is necessary to govern legal relations. So what is evident with China is that legal culture is susceptible to change in pursuance to socio-economic and political forces.

*English Legal Terms* translated "court of limited jurisdiction" into the equivalent "you xian guan xia quan fa yuan" in Mandarin, together with "invested with lower courts" as a supplementary explanation in the bracket. The author is puzzled over the supplementary note added to the translation, which is consequently misleading.

Section II under Article III of the American Constitution provides, The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Section 2 authorizes the federal courts to hear two types of cases, namely cases where a federal question may be filed and cases that involve parties from "foreign" states. Therefore, the legal translation of terms is to identify the legal system where the term is used. The superficial equivalent will never work.

"Barrister" and "counsel" in *English Legal Terms* are all translated into "the one who practices law". It is known to every legal translator and practitioner that in U.K. a barrister is a lawyer who represents a litigant as an advocate before a court of an appropriate jurisdiction. But the other type of lawyers, namely a solicitor is nowhere to be found in *English Legal Terms*. The legal profession in Hong Kong is also divided into two branches: barrister and solicitors who serve different functions. In the Commonwealth countries like Canada (except Quebec), Singapore and Malaysia, there are usually the two kinds of lawyers. The United States makes no formal division of the legal profession, as the United Kingdom does. Most Americans loosely use the term the counsel, counselor or attorney.

As American linguist Eugene Nida (cited from Yang Ke, 2010) pointed out, "To be lingual, one has to be bicultural." The famous Chinese translator Wang Zuoliang also said, "The translator is handling two expanses of cultures while engaged in the translation of individual words. Therefore legal translators well versed in individual words, are actually going back and forth between the two cultures in question. A superficial equivalent is far from satisfactory, calling for explanatory and illustrative comments for the sake of accuracy.

### ***The Blurring Between Generic Words and Legal Terms***

Apart from the uniquely legal words, many legal terms that are otherwise ordinary generic words give rise to considerable confusion in legal translation. Therefore, before the legal words are translated into Chinese legal terms, it is of vital importance to distinguish in the first place between the vocabulary related

to legal significance and the vocabulary in general English. Many frequently encountered legal words such as “action”, “provision”, “deliberation”, and “offense”, etc. have been frequently used in non-legal settings. For example, a question often emerging from the author’s class is the word ‘equity’ and ‘equitable relief’.

Section II under Article III of the Constitution reads, “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...”

“Equitable relief” applies to the assistance to a complainant seeking a just and fair remedy from the court. See relief. (Black Law Dictionary).

The translation of “equity” and “equitable relief” in *English Legal Terms* does not make much sense to the learner in that the beginner is likely to associate “equality” with “equity,” which is British by origin. Words like these are seemingly ordinary words, but they have specific legal meanings.

*English Legal Terms* translates “burden of persuasion,” “burden of producing evidence,” and “the burden of proof” in such a way that the learner, for sure, will find it hard to sort out the difference. “Burden”, “persuasion”, “producing evidence” etc are all likely to be used in the non-legal settings, but *English Legal Terms* fails to include the words in a meaningful fashion. According to Wikipedia, “the burden of proof” is often associated with the Latin *maxim semper necessitas probandi incumbit ei qui agit*, the best translation of which seems to be: “the necessity of proof always lies with the person who lays charges.” In the legal sense, “burden of proof” consists of both “burden of persuasion” and “burden of production”. *English Legal Terms* errs in being unprofessional by including “burden of producing evidence”, and in being indiscriminate between the legal term and the ordinary generic word by failing to address correctly ‘burden of proof’ and ‘burden of persuasion.’

Another example is the inappropriate translation in *English Legal Terms* of “infringe”, “breach”, “violate”, “contravene”, and “transgression”. Translation of these synonyms isolated from a context or unrelated to any particular category of law can possibly mislead the learner who will take it for granted that they are merely synonyms. To address the issue of false cognates or “false friends”, there are two feasible solutions to the problem. One is to put these individual words under a category of law, like criminal law, contract law, intellectual property law so that the learner will understand when a law is violated, there may be commission of a crime; when intellectual property law is infringed, there may be an invasion of rights to patent, copyright or trademark. In the case of breach of a contract, the focal issue at trial is either monetary damages or a continuance of a performance or an injunction. “Contravene” is, for the most part, of a neutral register. A rule or regulation or even a law or a proposition can be contravened. “Transgression”, according to Wikipedia, is of a Biblical character, meaning a violation of God’s Ten Commandments. That is to say, a transgression is a sin, rather than a crime.

*English-Chinese Dictionary of Anglo-American Law* compiled by the Law Press will not see words like ‘prescribed’, ‘prescribed event’, ‘trustworthy’, ‘try to persuade’, ‘this law’, ‘trying case carefully’, and ‘unadmitted,’ etc. as does *English Legal Terms*, which does not draw a line at the loosely knit phrases and ordinary words. The legal translator can not be too careful where superficial synonyms, cognates and non-distinction between legal terms and ordinary words are concerned.

### ***The Generalization of the Legal Terminology in Question***

English translation in some areas, especially the translation of literature, often exhibits the fact that the same concept, the same connotation and the same thing can be expressed in different terms, so as to avoid

the redundancy or repetition. But the letter of the law, especially the legal term, in order to maintain the denotation and consistency of the same concept in the law, often repeats itself. “Don’t be afraid to repeat the Right Word!” University of New Mexico Professor Henry Wiehofen (1961) in *“Legal Style”* warned the legal drafters. This warning, with the equal appropriateness, applies to legal translators. He also said:

*Exactness often demands repeating the same term to express the same idea. Where that is true, never be afraid of using the same word over and over again. Many more sentences are spoiled by trying to avoid repetition than by repetition.*

Precision in the legal language is said to be the epitome of legal language, which can not be rephrased or reworded, in different words. Legal language has also been described as “variant of English, the meaning of which is precise and the connotation of which is accurate” (Hou Weirui, 1996). But between English and Chinese words there is inevitably the inconsistency arising from translation of legal terms. At the root of the problem is the linguistic uncertainty, which lies in linguistic vagueness, linguistic generality and linguistic ambiguity. However, fuzziness is different from “ambiguity”, the latter referring to people to the consequence resulting from people using language improperly. Maley (1994, p. 53) pointed out that, in Australia and the England, 40% of the court activities calls for a decision on interpreting the legislative significance. In the legal translation, translation is not only vocabulary and grammar between two languages (substitution). In order to better express the content of the original and the legal connotation, the translator needs to take care of the linguistic elements. A typical example is the freedom of speech guaranteed by the 1<sup>st</sup> Amendment to the American constitution. Amendment I provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press...”

In many cases that have come before the Supreme Court, “speech” has evolved from its relatively narrow meaning into a broad concept, which is also known as “freedom of expression”. Although “freedom of speech” in Chinese in *English Legal Terms* is seen as both verbal speech and non-verbal speech, “freedom of expression” encompasses much more than these two types of communication. The linguistic issue before the Court is not a question of translation. It tends to teach a lesson. It demonstrates that the most ordinary and common words like ‘speech’ can become a point of legal contention. (Deborah Cao, 2008, p. 53). Legal translators should learn to appreciate and be sensitive to linguistic uncertainty while lawyers and courts may interpret the vague or ambiguous words. In spite of the fact that they are not authorized to resolve the ambiguity or vagueness, the legal translator is arguably accountable to the users and the learner of legal terms, who is to use the terms in time.

### **Conclusion**

Drawing on years of teaching legal English, the author feels ill at ease when she finds that the mistaken rendition of the legal terminology is likely to mislead learners who have yet to sharpen and make a discriminate use of the terms that have found their way into *Legal English Terms*. This paper is not intended to find faults with the *English Legal Terms*. Rather, the author is hoping to awaken the legal translators to the fact that legal translation is by all accounts, a serious undertaking, and that interdisciplinary knowledge in relation to linguistics, legal culture and translation strategies is of vital implication. The book, which is not a legal document in the nature of things, not is it designed to contribute to any legal action, is essentially elementary textbook, a book named in the recommendation lists for LEC. In this connection, the book as such will for sure conduct to legal English beginners if it is free of misinterpretation and inappropriateness.

“Law is a profession of words” is quoted from the American linguist David Mellinkoff, whose classic book is entitled *The Language of the Law* (1963). This statement, which has since had enormous impact on legal translators and scholars both at home and abroad, has given rise to the consensus that “a legal question is a language problem”.

As T.S Eliot said in *Four Quartets*, Burnt Norton:

*Words strain,  
Crack and sometimes break under the burden,  
Under the tension, slip, slide, perish,  
Decay with impression, will not stay in place,  
Will not stay still.*

Legal terms, with at play both their inherent tensile strength on the one hand, and the practice on the part of users of the legal glossary on the other, eroded by inconsistency in rendition, will phase out. Under no circumstances will they stay put. Notwithstanding the fact that there are some who advocate that legal terms, by nature, are untranslatable, there is ample proof that there is “the middle way” to take, namely the preciseness in a relative sense.

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# On Adequacy And Acceptability in Hong Kong's Bilingual Legal Texts: A Case Study of *Baby Formula Limit*

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**[Abstract]** *This Paper conducts a study on “The Import and Export (General) (Amendment) Regulation 2013 (with effect from 1 March 2013) - Quantity of Powdered Formula for Persons Departing from Hong Kong”, nicknamed as Baby formula limit by the media. By comparing the English and Chinese versions which are declared to be both authentic in terms of law, it is found that the adequacy is partly achieved while the Chinese version lacks in what the English version is fluent and professional about on discourse level, cutting short its acceptability.*

**[Keywords]** *adequacy and acceptability; HK bilingual legal system; Baby Formula Limit*

## Introduction

The notions of adequacy and acceptability as bipolar translational initial norms were raised by Gideon Toury (1995) in the school of Descriptive Translation Studies (DTS), for the concepts of which he borrowed Even-Zohar's idea of “adequate translation”, meaning “a translation that realizes in the target language the textual relationships of a source text with no breach of its own [basic] linguistic system” (Even-Zohar 1975, p. 43; ref. Toury, 1995, p. 56).

According to Toury, “[t]ranslation is a kind of activity which inevitably involves at least two languages and two cultural traditions, i.e., at least two sets of norm-systems on each level” (1995, p. 56). Thus, the “value” behind it may be described as consisting of two major elements: 1) being a text in a certain language, and hence occupying a position, or filling in a slot, in the appropriate culture, or in a certain section thereof; 2) constituting a representation in that language/culture of another, pre-existing text in some other language, belonging to some other culture and occupying a definite position within it (Toury, 1995, p. 56).

These two types of requirement derive from two sources that are somewhat different, even incompatible with each other. According to Toury, the basic choice that can be made between requirements of the two different sources constitutes an initial norm (Toury, 1995, p. 56). When a translator subjects himself to the original text, the translation he produces will tend to represent the norms of the source text and through which the norms of the source language and culture. This tendency is characterized as the pursuit of adequate translation.

On the other hand, if the translator adheres to the norms active in the target culture, in the end product, “norm systems of the target culture are triggered and set into motion”. Thus, whereas adherence to source norms determines a translation's adequacy as compared to the source text, subscription to norms originating in the target culture determines its acceptability (Toury, 1995, p. 56).

Later on, Eva E.S. Ng applied these pair of notions to legal interpreting and translation, for the purpose of which she “examine[ed] how legal translators and interpreters resolve the tension between adequacy and acceptability, and conclude[ed] that the effort to achieve adequacy at the expense of

acceptability may not always pay off' (Ng, 2009). Her work is largely on the adequacy and acceptability of Hong Kong's legal language among local civil servant and laypersons.

Despite the fact that any discrepancy in the bilingual statutes can have grave implications for legal practitioners and litigants, or any other person at stake, discussion on legal drafting and bilingual legal system from the perspective of DTS is still lacking. The translation scenario in Hong Kong's legal practice is especially different since the dividing line between the source and target culture is blurred. This leads to the question of "should the bilingual legal texts of Hong Kong be viewed as translation?" — The answer goes back to the language policy of Hong Kong Special Administrative Region (HKSAR) and producing process of such legal texts.

### **Hong Kong's Bilingual System of Law**

While no law existed prior to 1974 designated official languages in Hong Kong, for over a century, English had been the only language in which law was practiced in Hong Kong. Under public pressure, the Official Languages Ordinance was enacted in 1974 to declare that both English and Chinese may be used in communication between the government and the public. After that, the handover of Hong Kong's sovereignty to China in 1997 made legal bilingualism inevitable. In article 8 of the Basic law, it is stated that: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

In translating existing laws into Chinese, the Law Drafting Division emphasizes the need to establish a semantic mapping between the Chinese statutes and their English counterparts, and to strive for both adequacy and acceptability when selecting a Chinese term or expression to represent a common-law concept.

The Law Drafting Division of Hong Kong also holds that one should not take a Chinese term literally to grasp its full meaning, but should always refer to its meaning in the common law. According to them: Even if a common law concept cannot be represented fully by any readily available Chinese term, it does not necessarily mean that the concept cannot be expressed in Chinese. What should be noted is the fact that when a Chinese term is used to express a common law concept, the full meaning behind the term cannot to grasped by merely taking the literal meaning of the term of deciphering its morphemic elements in the Chinese language. Reference must be made to the meaning as it is found in the common law. The common law must be taken as the semantic reference scheme.

In her comments, Ng (2009) states: "an irresistible inference one is tempted to draw from the above remarks is: it is not the meaning of the Chinese term itself that matters at the end of the day; what matters is the meaning as it is understood in the common law." She even quoted Wong in stating that Chinese translations of common law expression are reduced to be "mere symbols in the most unsophisticated sense of those words", and "have no meaning of their own, however beautifully rendered they might seem and however much their creator thinks they resemble the original" (1999, p.31). Hence the Chinese version in its secondary status is, in most cases, produced later than its English counterpart, becoming translated product under its prima facie authenticity

### **Problem of Acceptability**

The gap between the dominant English and subordinate Chinese was covered up by the law. Yet in practice, issues of inequality may cause problems of acceptability. The case of Tam Yuk-ha vs. HKSAR was an indication. Here is another case.

In 2012, the Hong Kong Special Administrative Region issued a draft of the Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children. On March 1 2013, the Import and Export (General) Regulation 2013 has been amended, prohibiting unlicensed export of powdered formula for infants under 36 months: people leaving Hong Kong could only bring with them two cans, or 1.8kg, of powdered formula instead of as much as they wanted before. Hence forward, the Regulation under the name of Import and Export (General)(Amendment) Regulation 2013 (with effect from 1 March 2013) - Quantity of Powdered Formula for Persons Departing from Hong Kong, was called by the media as Baby formula limit.

On 24<sup>th</sup> December 2013, South China Morning Post, an English newspaper in Hong Kong, reported the first infringement case took place 6 months later after the enactment of the Baby formula limit, where a 37-year-old woman was jailed for five weeks after being found with four boxes of baby milk formula weighing 3.2 kilograms at the border crossing between Hong Kong and Shenzhen. Until January 2014, Hong Kong customs officials say they have arrested 64 people for unlicensed baby milk powder exports, in a move aimed to stifle the smuggling of formula before Chinese New Year.

In most of these cases, the motives behind such infringement could be profit-driven. However, arrests by mistakes occurred due to ambiguity caused by the legal expression, which can be blamed for not being cautious enough in selecting the terms and phrases. For instance, a report released on March 24, 2013 recorded that HK had arrested tourists with any kind of powder because of the ambiguity of “powered formula” in the Baby formula limit. In this report, it is said that several Mainland Chinese tourists have been arrested by Hong Kong customs authorities for attempting to leave the special administrative region with cans of milk powder containing rice starch. The visitors protested that the powder should not be subject to the same restriction as infant formula, which Hong Kong had banned visitors from purchasing and carrying across the border since the start of this month. Later on the detainee was told that the charges against him had been dropped and his bail and his purchased product would be returned.

It is also revealed that a woman surnamed Wang from Shenzhen encountered the same problem when she carried 1.8kg of Wyeth milk powder and five cans of Instant Full Cream Milk Powder of the Dutch Lady brand. The drugstore where she made the purchase told her the products were not subject to the restriction since they are for adult consumption. She repeated this claim when Hong Kong customs officers stopped her from leaving on March 19, indicating the label on the cans which said that babies under 12 months should not drink the milk without instruction from a doctor, suggesting it could be consumed by infants between 12 and 24 months of age. Wang protested that the law was too vague but was likewise forced to pay a bond of HK\$2,000 and told to report to Hong Kong police and attend a hearing in June.

Actually, Hong Kong has only imposed restrictions on infant formula, soy-based milk powder and plain milk powder for infants less than 36 months old. The law does not cover other powder that resembles milk after hot water is added or products made with rice, wheat or other starches. There is also no specific rule on milk powder intended for both adults and children. The China Daily reported on the fourth day since the limit took effect that 45 people had been detained in Hong Kong for violating a new

limit on the amount of infant formula than what could be taken to the mainland. Among them 26 were Hong Kong residents and 19 were from the mainland.

If we compare the English and Chinese version, the ambiguity of certain expression may lead to misjudgment on the custom's officers' side. For example, in English, "powdered formula" is defined as "a substance in power form", which does not fully exclude the substance made from rice or starch. However, in the Chinese version, when the term surfaces for the first time, an additional explanatory note is inserted in bracket, stating "即婴幼儿食用奶粉 (i.e. edible milk power for babies and infants)", clarifying the content of substance is a dairy product ("奶"). The vacancy of corresponding expression in English lowers its comprehensibility and sabotages its acceptability among Hong Kong's civil servants and custom's officers.

On the other hand, if the target readership is laypersons or parallel goods traders who are poorly educated, certain expressions in the Chinese version may also sound awkward or even make no sense. For example, when "accompanied personal baggage of a person" is expressed in Chinese as "私人随身行李", the term "私人" means "private" more often when collocated with "baggage (行李)", which may trigger the sensitive issue of privacy intrusion and make them feel depressed and offended .

In a word, too much emphasis has been put on the equal authenticity of the bilingual texts of the Baby formula limit, which is accorded to what the Section 10C (1), Cap 1, Laws of Hong Kong provided:

*Where an expression of the common law is used in the English language text of an Ordinance and an analogous expression is used in the Chinese language text thereof, the Ordinance shall be construed in accordance with the common law meaning of that expression.*

Yet the official versions, however adequate the legal drafters may believe it reproduces the meanings of its counterpart, sound alien and unfriendly, especially to laypeople and residents from a region other than the HK district.

### **Adequacy in Doubt**

For the purpose of achieving adequacy on terms and sentences' level, a repertoire of Chinese translations of legal terminology was built up over the years by the Justice Department of Hong Kong even before the subsequent implementation of bilingual legislation. To represent a common-law concept in legal translation, the common practice is to employ an existing Chinese term. Another solution is to coin new Chinese legal term by combining existing morphemes if no readily available term can be found in the Chinese language (Law Drafting Division, 1999, p. 39). Even though the meaning of a common law term may change over times, the meticulous efforts on the part of the legal translators to attain semantic mapping between English and Chinese do not always pay off. Cohesion achieved in English text due to its grammatical features may be found hard to relay in its Chinese version.

For example, in the *Baby formula limit*, description of the concept "baby" occurred in difference contexts for 3 times. They are "infants and children under 36 months", "a person aged under 36 months" and "a person aged under 36 months (child)", all started with "a person" with post-attributives, creating links between these elements throughout the whole text. In the third occurrence, the term "child" in its singular form is intentionally used to imply that each adult can bring along no more than one baby, since text processing requires inferences for establishing cohesion between successive sentences. In the Chinese version, however, those phrases were put as "36个月以下婴幼儿 (Baby under 36 months)", "年龄未满36个月的人 (person who is under 36 months' old)" and "年龄未满36个月的人(幼儿) (person who is

under 36 month's old(baby))". Messages that can be conveyed in plural or singular form in original English are lost in Chinese. Besides, these expressions, by using different referent nouns such as 婴幼儿”, “人” and “人(幼儿)” are not coherent enough for the readers to comprehend their interrelations. Actually, in order to interpret the current utterance, it is necessary for the reader of the message to link certain phrases' meaning to prior context to establish local cohesion between subsequent sentences. In this sense, the English *Baby formula limit* is more comprehensible; the Chinese version is inadequate.

Another issue stems from inappropriate use of double negation. A double negative occurs when two negative words or constructions are used within a single clause. Nevertheless, under the heading of “Exemption”, the structure of the whole Chinese paragraph can be summarized like this:

豁免

在下述情况下,

- 《【……】规例》不适用于【……】的配方粉  
(不论成分组合是否相同, 亦不论载于多少个容器内)
- (a) 以下条件均获符合— (i) 在过去 24 小时内,  
及 (ii) 该等配方粉总净重不超逾 1.8 公斤;
- 或(b) 以下条件均获符合— (i) 在过去 24 小时内, 该人曾离开香港(不论次数);  
(ii) 该人正与年龄未满 36 个月的人(幼儿)同行离开香港;
- 及 (iii) 该等配方粉载于非密封容器内,  
且不超逾【……】分量: 供该幼儿【……】食用。

The paragraph cited above applies multiple negations using various “不(no)”s in the Chinese version. Such frequent occurrence of more than one negative in a clause leaves an impression that these negatives cancel one another and produce an affirmative sense rather than to intensify the negation. The rhetorical device may cause bewilderment on the side of target readership, even if the drafter intends to use these multiple negatives to intensify negative concord.

The truth is, in Chinese context, the sub-clause conditions following the heading of “exemption” or “immunity” are often in the positive form. The article 23 of *Regulations of The People's Republic of China Concerning Consular privileges and Immunities* (《中华人民共和国领事特权与豁免条例》) serves as a typical example:

下列人员在中国过境或者逗留期间享有所必需的豁免和不受侵犯:

- (1) 途经中国的外国驻第三国的领事官员和与其共同生活的配偶及未成年子女;
- (2) 持有中国外交签证或者持有与中国互免签证国家外交护照的外国领事官员。

*The following persons shall enjoy necessary immunity and inviolability during their transit through or sojourn in China:*

- (1) *a consular officer stationed in a third State who passes through China together with his spouse and underage children forming part of his household; and*
- (2) *a visiting foreign consular officer who has obtained a diplomatic visa from China or who holds a diplomatic passport of a State with which China has an agreement on the mutual exemption of visas.*

It presents a perfect case of how to list conditions of exemption or immunity in positive sense. For comparison purpose, the corresponding paragraph in its English version is also easy to read. The clarified structure goes like this:

### **Exemption**

The [...] regulation **does not apply to powdered formula** [...] that is [...] in the [...] baggage of a **person** [...]

- (a) if (i) the person [...]
- (ii) the formula [...]
- (b) if (i) the person [...]
- (ii) the person [...]
- (iii) the formula [...]

In English, when a single clause contains one cohesive idea with a subject and an action, only one negative is expected to occur within that clause. Here the phrase “does not apply to” is used as a structural linker that reiterates the heading of “exemption”. In conditional clauses, the definite article “the” points back a textual elements that have been mentioned, i.e. a referent that has already been introduced, serving as the basis for the cognitive process of mapping as a cue for discourse cohesion, thus achieving the effect of “anaphora” (Halliday, 2008, pp. 534-544). It also helps the reader to comprehend the complex structure of legal language. In this sense, the paragraph depicting conditions of “exemption” in Chinese is neither adequate nor acceptable.

In a word, the equally authentic status that the Chinese translation is accorded further renders legal drafts no choices but to prioritize adequacy over acceptability. Since both adequacy and acceptability are poorly achieved on the discourse level, it might be worthwhile for the legal drafters to hold acceptability to the highest esteem, striving to reproduce a Chinese version with “identical” meanings.

### **Conclusion**

The establishment of equal authenticity of the bilingual statutes in Hong Kong suggests that both the Chinese and the English version of the Statue book are semantically equivalent and that one may refer to either the Chinese or the English version for the same piece of legislation. The Law Drafting Division (1999, p. 39) also maintains that legal translators have to consider both the adequacy and acceptability when selecting a Chinese term or expression to represent a common law concept, which means whether the term or expression denotes the full meaning of its English counterpart, and whether it makes sense under the grammatical and coherent rules of the Chinese language.

However, issue of inequality may exist in the message produced toward target audience. A seemingly adequacy version in English may fail to gain acceptability among Chinese readers. As demonstrated in the above-mentioned case, one text may enjoy better fluency, sensibility, and cohesion while the other version hinders comprehension, indicating that the drafting process had been dominated by the English text. The analysis also presents that the Chinese version may have issue of acceptability to laypersons other than the legal professional, especially to the mainlanders. When come to adequacy, it is only partially achieved on term/phrase level and needs improving in terms of cohesion and syntax. Such miscomprehension suffers from the reduced status of the Chinese legal text. At this point, we need to ask: whether it is possible for a Chinese version of the legal act to be considered both adequate in the representation of the English original and acceptable at the same time?

One possible explanation to these issues is that the ordinance is not intended for general readers like police officers, other civil servants and even target readers from the Mainland China, and thus esoteric terms rather than commonly accepted are adopted for the sake of better adequacy, and the problem of acceptability is ignored. Whatever the reason, limited acceptability of the terms and inadequate cohesion in the *Baby Milk Limit* as cited above are evident, which are worth pondering and improving.

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# Effects of Students' Anxiety on a College English Speaking and Interpretation Class

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**[Abstract]** *By using the Foreign Language Classroom Anxiety Scale (FLCAS), this paper attempts to explore the relationship between anxiety and college students' performance in an English speaking and interpretation class. The results of analysis indicate that communication apprehension is the most important factor that leads to students' anxiety, followed by fear of negative evaluation. Implications of the analysis are discussed and suggestions are made to reduce students' anxiety in English speaking and interpretation.*

**[Keywords]** *anxiety; affective factors; FLCAS; college speaking; interpretation*

## Introduction

With the deepening of reform and opening-up policy in China, English speaking and interpretation skills are becoming increasingly important to both students and teachers at the tertiary level. Oral English has become a compulsory course for non-English major students and some universities have even offered the interpretation course to them. However, most Chinese college students in independent colleges (low or no ranking) experience more difficulties in expressing themselves or interpreting some long and complicated texts due to their relatively lower overall scores on the national entrance examination compared with those admitted by tier 1 (first level) or tier 2 (second level) universities in the country. They have problems in pronunciation and intonation and frequently make mistakes in grammar. In an oral English and interpretation class, they are less confident and more anxious when being called on to carry out the tasks assigned by the teachers.

Based on the data collected from students at an independent college, this paper investigates the issue of anxiety in an English speaking and interpretation class. It first reviews the affective filter hypothesis proposed by Krashen (1981) and the Foreign Language Classroom Anxiety Scale (FLCAS) designed by Horwitz (1986). Second, it reports on a study that uses the FLCAS to a Chinese independent college to measure and analyze students' anxiety level. Finally, based on the results of the FLCAS, it puts forward some suggestions for teachers in independent colleges to relieve students' anxiety level in English speaking and interpretation.

## Theoretical Basis

Affective factors seem to be one of the most important factors that make an influence on students' performance in English speaking and interpretation skills. Many researchers have addressed this issue. Dulay and Burt (1977) first proposed the concept of an Affective Filter and it was Krashen who developed the construct of "Affective Filter" into a systematic hypothesis through various revisions.

Krashen (1981) believes that "acquirers in a less than optimal affective state will have a filter, or mental block preventing them from fully utilizing input for language acquisition" (p. 56). This mental block caused by affective factors is called the affective filter. According to Krashen, anxiety is one

important factor that “contributes to an affective filter, which makes the individual unreceptive to language input; thus, the learner fails to ‘take in’ the available target language messages and language acquisition does not progress” (as cited in Horwitz, 1986, p. 127). Low anxiety appears to be conducive to second language acquisition (Krashen, 1982). This hypothesis has far-reaching influences in the field of second language acquisition studies in the subsequent years.

Horwitz (1986) has mentioned the foreign language anxiety as follows: it is “a subjective feeling of tension, apprehension, nervousness and worry associated with an arousal of the autonomic nervous system” (p. 125). Horwitz (1986) believes that foreign language anxiety is composed of three components: “(1) communication apprehension (2) test anxiety (3) fear of negative evaluation” (p. 127). Based on these three dimensions, he puts forward the Foreign Language Classroom Anxiety Scale (FLCAS), which consists of 33 questions to measure the anxiety level of foreign language learners. Nowadays, the FLCAS is the most frequently used scale in relevant studies concerning anxiety studies in foreign language learning and it seems to be a highly reliable measure ever since its appearance.

### **Research Questions**

In order to measure students’ anxiety level in colleges, this study addresses the following two questions:

1. To what extent are students in an independent college affected by anxiety in their English speaking and interpretation class?
2. What measures can be taken to reduce their anxiety level?

### **Research Procedures**

Altogether, 72 freshmen (from 2 majors, with 63 male students and 19 female ones) were invited to complete the questionnaire in class after the mid-term examination in the first semester of the 2012-2013 academic year at Ningbo Institute of Technology, Zhejiang University (NIT). The questionnaire contains 35 questions (thirty three questions are based on the Horwitz’s FLACS, and two extra questions concerning classroom activities and group discussions are added) and a 5-point Likert scale ranging from “Strongly Disagree” to “Strongly agree”. All the items were translated from the original English into Chinese before being implemented. Seventy freshmen responded with a return rate of 97%. The results of the questionnaire were analyzed and reported in percentage.

### **Research Findings**

The following table presents the descriptive statistics of the 35 items in the Foreign Language Classroom Anxiety Scale (FLCAS) listed in the Appendix.

**Table 1. Descriptive Statistics of the Items in FLCAS***(SD=strongly disagree; D=disagree; N=neither agree nor disagree; A=agree; SA=strongly agree)*

Item	SD	D	N	A	SA	Item	SD	D	N	A	SA	Item	SD	D	N	A	SA
	%	%	%	%	%		%	%	%	%	%		%	%	%	%	%
<b>1</b>	3	25	30	18	24	<b>13</b>	0	8	19	51	22	<b>25</b>	16	40	27	13	4
<b>2</b>	19	25	32	15	9	<b>14</b>	23	47	22	8	0	<b>26</b>	17	32	19	23	9
<b>3</b>	2	10	13	68	7	<b>15</b>	8	17	32	40	3	<b>27</b>	6	28	27	30	9
<b>4</b>	10	18	46	19	7	<b>16</b>	13	62	17	5	3	<b>28</b>	18	38	21	18	5
<b>5</b>	19	24	30	21	6	<b>17</b>	12	26	27	25	10	<b>29</b>	5	26	32	35	2
<b>6</b>	25	48	12	13	2	<b>18</b>	20	46	24	10	0	<b>30</b>	12	39	31	18	0
<b>7</b>	3	23	46	25	3	<b>19</b>	20	49	17	10	4	<b>31</b>	9	29	47	13	2
<b>8</b>	12	22	42	20	4	<b>20</b>	2	29	38	23	8	<b>32</b>	11	32	39	15	3
<b>9</b>	5	26	9	49	11	<b>21</b>	21	51	20	8	0	<b>33</b>	6	18	28	41	7
<b>10</b>	0	17	40	31	12	<b>22</b>	17	34	19	21	9	<b>34</b>	1	9	29	48	13
<b>11</b>	11	26	46	11	6	<b>23</b>	10	22	45	17	6	<b>35</b>	0	7	31	57	5
<b>12</b>	19	31	21	23	6	<b>24</b>	15	20	41	20	4						

According to the results of the questionnaire, many respondents experienced significant anxiety in English speaking and interpretation. Forty three percent of the subjects rejected that “It wouldn’t bother me at all to take more English classes” (Item 5), and more than 35% subjects admitted that “I often feel like not going to my English class” (Item 17). Thirty two percent of subjects reported that “I feel more tense and nervous in my English class than in my other classes” (Item 26), and more than 56% respondents presented a negative answer to the question that “When I’m on my way to an English class, I feel very sure and relaxed” (Item 28). In sum, all these figures suggest that anxious students feel uneasy and nervous at the thought of an English speaking and interpretation class.

It is found that the perspective of communication apprehension is the most important factor that leads to their speaking anxiety. More than 42 percent of the respondents agreed that “I never feel quite sure of myself when I am speaking or interpreting in my English class” (Item 1), and practically three fourths of the subjects reported that “I tremble when I know that I’m going to be called on in my English class” (Item 3). Seventy three percent of the subjects agreed that “It embarrasses me to volunteer answers in my English class” (Item 13), more than 30% of the students reported that “I can feel my heart pounding when I’m going to be called on in my English class” (Item 20), and 39% of the students reported that “I get nervous and confused when I am speaking in my English class” (Item 27). Sixty six percent of the respondents rejected the idea that “I feel confident when I speak or interpret in my English class” (Item 18), and 29% of the subjects admitted that “In an English class, I can get so nervous that I forget things I know” (Item 12). These results show that difficulty in speaking in class is the most common complaint of anxious students, and coincide with the view forwarded by Horwitz (1986) that “speaking in the target language seems to be the most threatening aspect of foreign language learning” (p. 132).

To answer the questions raised by the teacher without prior preparation also aggravated students’ anxiety, as reflected in the questions admitted by students that “I start to panic when I have to speak or interpret without preparation in my English class” (Item 9, 60%), and “I get nervous when my English teacher asks questions which I haven’t prepared in advance” (Item 33, 48%). Missing important information given by teachers will also lead to students’ anxiety, as reflected in the items “It frightens me when I don’t understand what the teacher is saying in English” (Item 4, 26%), “I get upset when I don’t

understand what the teacher is correcting” (Item 15, 43%), and “I get nervous when I don’t understand every word my English teacher says” (Item 29, 37%). The above mentioned figures reveal the fact that students’ anxiety in English speaking and interpretation manifests itself when students are asked to answer questions in the presence of their peers and teachers, especially without preparation in advance, when they forget some information acquired previously, or when they do not understand all the language input.

As for the area of test anxiety mentioned by Horwitz, the results of the questionnaire reveal that test does not affect them as seriously as does speaking or interpreting in public. One thirds of the subjects rejected the item “I am usually at ease during tests in my English class” (Item 8), and 43% of the subjects endorsed the item that “I worry about the consequences of failing my English class”, (Item 10). It is found that full preparation will relieve many students of test anxiety, which is reflected in the question “The more I study for an English test, the more confused I get” (Item 21, agreed by 8%).

With regard to Horwitz’s fear of negative evaluation, the results also show students’ anxiety when they feel inferior compared with their peers or are negatively evaluated. The subjects endorsed the items like “I keep thinking that the other students are better at English than I am” (Item 7, 28%), “I always feel that the other students speak or interpret better than I do” (Item 23, 23%), “I feel very self-conscious about speaking or interpreting in front of other students” (Item 24, 22%), “I am afraid that the other students will laugh at me when I speak or interpret English” (Item 31, 15%). The responses also reveal that the subjects feared making mistakes in front of their peers, as shown in items “I don’t worry about making mistakes in English class” rejected by 44% of the subjects (Item 2), but most of the respondents do not feared being corrected by their teacher about their errors, as reflected in “I am afraid that my English teacher is ready to correct every mistake I make” (Item 19, 14%). This answer gives a language teacher the hint that students expect their teachers to identify and correct their mistakes.

As for the two extra questions added by the author, more than 60% of the respondents reported their easiness in talking in groups (Item 34), and 62% of the students prefer to carry out activities related to their daily life (Item 35). These results seem encouraging to classroom activities and group work carried out in class.

### **Implications for Teachers to Help Their Students to Reduce Their Anxiety**

Based on the outcome of the questionnaires, it is clear that most students suffer high level of anxiety in English speaking and interpretation in class. The resultant factors range from questions to be answered in class to tests, from teachers’ remarks to peers’ responses. Therefore, it is necessary for teachers to take measures to lower learners’ anxiety. The following are some suggestions:

#### ***Classroom Task Design***

Students are more interested in tasks related to their daily life on campus and in society at large. Therefore, teachers should design authentic and up-to-date tasks. It will be much easier for students to use the target language in a natural and real atmosphere. Thus, when designing tasks, teachers need to take into consideration the factors such as variety, feasibility, reality, and interest. This will gradually help lower or even eliminate students’ anxiety when they are completing tasks in a relaxed atmosphere.

#### ***Cooperative Learning***

According to the results of the questionnaire, 75% of the respondents are reluctant to express themselves in class if they know they have the risk of being made fool of themselves publicly (Item 13). To lower the

risk of losing face in public, we can resort to cooperative learning, which emphasizes interaction, collaboration and mutual assistance in the process of a learning activity. In this learning atmosphere, the discussion is carried out within a small group, and students take no risks of losing face in the public. They can exchange ideas with each other just like having a chat. Others, especially the group leader, will help them lower their anxiety. As time goes by, students will not be afraid of talking or interpreting inside the group. And they can even shift to other groups to attend the discussion. Acceptance from peers will help cultivate their motivation for English learning. Cooperative learning helps create a supportive and non-threatening atmosphere. Hence students' anxiety can be lowered.

### ***Error Correction***

It is unavoidable for students to make mistakes when they are speaking or interpreting. The questionnaire reveals that most students do not want to make mistakes in an English class, but that does not mean that they do not want to be corrected. Instead, they expect their teacher to point out and correct their mistakes. Teachers' high tolerance of students' errors plays a decisive role. It is important for teachers to deliver the correction in a suitable way to lower their anxiety. Students would feel comfortable and secure in class. They should correct in a proper time and indirectly. In interpretation, more often than not there is no standard answer for a text; teachers' response to students' performance should be neither a simple "right" nor "wrong". Even for a less satisfactory answer, teachers should show more tolerance by first responding positively to their effort rather than just be critical to their interpretation. In addition, correcting errors by computers will also help lower students' anxiety. The college where the author works, for instance, has an online platform for students to practice their oral English after class. Students would not be embarrassed to be corrected by the computer when having a dialogue with the machine as to be corrected by an English teacher in class in front of their peers. Therefore the online tasks related to speaking and interpreting need to be promoted.

### ***Transfer of Mother Tongue in Interpretation***

Chinese and English fall into different language families. "The learner's mother tongue may facilitate the developmental process of learning a second language, by helping him progress more rapidly along the 'universal' route when one's mother tongue is similar to the second language" (Pan, 2012, p. 47). This phenomenon of mother tongue transfer can be described as positive transfer, of which we can make full use in interpretation to relieve students' anxiety. In order to improve their proficiency in interpretation, students need to have a good command of linguistic knowledge. When coming across a structure similar in expression between Chinese and English, teachers should help students explore the reason why fewer errors are made and find where this reason can be applied to larger extent. As for negative interference, teachers need to expose students to abundant authentic materials so as to cultivate their ability to use English automatically to eliminate the negative transfer. Meanwhile, teachers also need to help enhance students' awareness of the cultural differences between languages. Many students are trapped into a situation of word-for-word translation from Chinese to English. A good command of background knowledge of culture may help students effectively get rid of this phenomenon.

## **Conclusion**

Language teachers should be aware that a considerable number of students suffer anxiety in an English speaking and interpretation class. Therefore, it is urgent that effective measures should be taken to reduce or even eliminate students' anxiety. The survey study reported in this paper was only conducted by means

of a questionnaire. More studies seem necessary using different methods of data collection such as interviews and classroom observations. By knowing more about the nature of students' anxiety, we will be able to improve our teaching methodology to improve students' proficiency in speaking and interpretation.

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### **Appendix: The Foreign Language Classroom Anxiety Scale (FLCAS)**

1. I never feel quite sure of myself when I am speaking or interpreting in my English class.
2. I don't worry about making mistakes in English class.
3. I tremble when I know that I'm going to be called on in my English class.
4. It frightens me when I don't understand what the teacher is saying in English.
5. It wouldn't bother me at all to take more English classes.
6. During English class, I find myself thinking about things that have nothing to do with the course.
7. I keep thinking that the other students are better at English than I am.
8. I am usually at ease during tests in my English class.
9. I start to panic when I have to speak or interpret without preparation in my English class.
10. I worry about the consequences of failing my English class.
11. I don't understand why some people get so upset over English classes.
12. In English class, I can get so nervous I forget things I know.
13. It embarrasses me to volunteer answers in my English class.
14. I would not be nervous speaking English with native speakers.
15. I get upset when I don't understand what the teacher is correcting.
16. Even if I am well prepared for English class, I feel anxious about it.
17. I often feel like not going to my English class.
18. I feel confident when I speak or interpret in English class.
19. I am afraid that my English teacher is ready to correct every mistake I make.
20. I can feel my heart pounding when I'm going to be called on in English class.
21. The more I study for an English test, the more confused I get.
22. I don't feel pressure to prepare very well for English class.
23. I always feel that the other students speak or interpret better than I do.
24. I feel very self-conscious about speaking or interpreting in front of other students.
25. English class moves so quickly that I worry about getting left behind.
26. I feel more tense and nervous in my English class than in my other classes.
27. I get nervous and confused when I am speaking or interpreting in my English class.
28. When I'm on my way to an English class, I feel very sure and relaxed.
29. I get nervous when I don't understand every word my English teacher says.
30. I feel overwhelmed by the number of rules I have to learn to speak or interpret.
31. I am afraid that the other students will laugh at me when I speak or interpret English.
32. I would probably feel comfortable around native English speakers.
33. I get nervous when my English teacher asks questions which I haven't prepared in advance.
34. I get less nervous when carrying out tasks with group members in English than on my own.
35. I get less nervous in carrying out tasks related to students' daily life than those to formal and serious topics.