

## **Problems in English-Chinese and Chinese-English legal translation: with a case study of mistranslations**

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**Abstract:** In this article, characteristic features of the Chinese legal language are approached from the perspective of legal translation from and into Chinese. The main focus is put upon the emergence of meaning in legal texts, which is reflected in the process of legal translation. Problems of meaning emergence in the Chinese law are regularly connected to legal transfers and legal implants borrowed from foreign languages such as English as well as other text forming devices. Translation is regularly inherent in such processes. As a result, legal

translation influences processes in which legislation and the legislative language are shaped. Meanwhile, general problems of translation remain out of the scope of this study. Therefore, specific features of translation of legal texts from and into Chinese dominate the discussed issues. These specific issues include some little-explored ones such as translating traditional Chinese law and social attitudes to legal translation. Moreover, Chinese is the language of legislation and of court and administrative procedures in several jurisdictions as well as in numerous international organizations. Its legal status differs from jurisdiction to jurisdiction and displays its pluricentric character. Legal acts that are issued in these jurisdictions demonstrate therefore different levels of terminological formation and other legal-linguistically relevant varieties. It is the task of legal lexicography to register lexical varieties of legal Chinese in the relevant jurisdictions. Examples based on translations of legal texts in Mainland China, Hong Kong and Macau complement the main corpus of the article. The analysed texts show that legal translation and shaping legal language are closely interrelated creative activities.

**Key words:** Chinese law, legal translation, legal texts, legal linguistics, legal terminology, translations and mistranslations.

## **1. Introduction**

In this study, problems of the Chinese legal language are approached from the perspective of legal translation from and into Chinese. The main focus is put upon the emergence of meaning in legal texts, which is reflected in the process of legal translation. Problems of meaning emergence in the Chinese law are regularly connected to legal transfers and legal implants borrowed from foreign languages such as English as well as other text forming devices such as text types. Translation is regularly inherent in such processes. As a result, legal translation influences processes in which legislation and the legislative language are shaped. Meanwhile, general problems of translation remain out of the scope of this study. Therefore, specific features of translation of legal texts from and into Chinese dominate the discussed issues. These specific issues include some little-explored ones such as translating traditional Chinese law and social attitudes to legal translation. Moreover, Chinese is the language of legislation and of court and administrative procedures in several jurisdictions such as Mainland China, Hong Kong, Macau and Taiwan as well as in numerous

international organizations. Its legal status differs from jurisdiction to jurisdiction and displays its pluricentric character. Legal acts and other legally relevant documents that are issued in these jurisdictions demonstrate therefore different levels of terminological formation and other legal-linguistically relevant varieties. It is the task of legal lexicography to register lexical varieties of legal Chinese in the relevant jurisdictions. Examples based on translations of legal texts in Mainland China, Hong Kong and Macau complement the main corpus of the article. The texts analysed in this study show that legal translation and shaping legal language are closely interrelated creative activities.

As all legal systems, traditional and contemporary Chinese law is also a product of intercultural exchanges and influences (cf. Galdia 2021: 140). It is generally maintained that contemporary Chinese law is largely translated law (cf. Grzybek 2013: 18; Grzybek, Xin 2017: 8). In the ongoing globalization process, most non-Chinese jurists become acquainted with Chinese law through translations.<sup>1</sup> Even if, in general, the knowledge of the Chinese language is exponentially growing all over the world, foreign jurists rarely master the Chinese language on a professional level that would enable their dealing with the Chinese law without linguistic intermediaries. In addition, legal translation still plays a role in commercial exchanges with China. Therefore, the importance of translations of the Chinese law will definitely not decrease in the near future, notwithstanding the general tendency in international trade to use exclusively the English language in commercial negotiations and contract drafting.

Next to the named particularities, the translation of legal texts from and into Chinese is subject to all semiotic transformations of meaning within grammatical systems of languages that cause problems in the work of translators. These problems are of general nature, i.e., they are typical of all translation, legal and literary, into and from Chinese or into and from Czech. Therefore, when discussing translation problems in legal linguistics it is necessary to distinguish the specifically legal-translational problems and the general problems of translating texts (cf. Galdia 2017: 282). The later will be only marginally touched upon in this article. The perspective upon legal translation that will dominate this article is related to the task of identifying specific features of legal translation from and into Chinese.

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<sup>1</sup> Yanping Liu (2015: 125) writes: „Legal translation (...) has become a principal means to unfold Chinese law to the world in the global era”.

Next to it, the importance of legal translations for the development of the Chinese law is another specific focus in the perspective of this article.<sup>2</sup> Likewise, mistranslations play a role in identifying legal-linguistic problems. Therefore, some topics related to mistranslations will be mentioned here as well.

Today, legal translation in Mainland China, Taiwan, Hong Kong and Singapore is focused on the English-Chinese linguistic exchange (cf. Hu, Cheng 2016). Meanwhile, the focus on Chinese-English translation may also complicate the understanding of relevant topics in translating from and into Chinese as the English language by the very nature of things tends to mirror the common law conceptual structure (cf. Grzybek 2013: 8). However, the law of Mainland China might become more accessible within legal concepts that reflect the civil law tradition (cf. Kozanecka, Matulewska, Trzaskawka 2017: 38). Moreover, historically, the situation was different as for purposes of the transplantation of laws in China since the Qing dynasty translations from French and German dominated the process. Chinese legislation was also translated into these languages for practical purposes. However, scholarly interest in such translations was rare. An additional aspect is the translation of Latin terms into Chinese such as *ex debito justitiae*, *inter vivos* and *lis alibi pendens* that appear mainly in court decisions. They were only recently researched in a systematic manner (cf. Tsou, Chin 2021).

Although English dominates the translation of official statutory texts and international contracts, the Chinese language is also increasingly used in administrative settings outside China. Chinese management of enterprises established outside China tends to use Chinese in internal contexts. Legal problems regularly emerge as to the validity of such documents in jurisdictions where Chinese is not an official language. Meanwhile, courts also increasingly adapt their decisions to the importance of Chinese in international trade.<sup>3</sup>

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<sup>2</sup> Deborah Cao (2021: 42) writes about the importance of translations of foreign legal texts into Chinese: “The transplant or borrowing of Western laws in China was assisted and facilitated through the medium of translation. It is proposed that translation plays an important role as a catalyst in translating and introducing Western law into Chinese and creating a modern Chinese legal language and legal vocabulary.”

<sup>3</sup> A German Court, Oberlandesgericht Bremen, in its decision from 14 February 2019 (2 W 66/18) waived the obligation of the Chinese party to provide an official translation of a proxy in a matter concerning changes to be introduced into the German commercial register. It found the proxy in the Chinese original to be valid as during the procedure

Undeniably, the reality of contemporary translation of legal texts is the domination by the English language and the common law. Relevant research tries to counteract this tendency (cf. Grzybek 2013; Grzybek, Xin 2017), yet the importance of the English language remains overall unchallenged. Meanwhile, it seems to be possible to distill from the experience with legal translation from and into Chinese some general findings. Such findings may be instrumental in shaping more systematic translation directives that would facilitate the tasks of translators and also support the process in which the law rendered in the Chinese language becomes better known beyond the Chinese-language landscape.

## **2. Legal translation in the Chinese-language landscape**

The Chinese-language landscape displays a regionally determined focus upon the main non-Chinese language involved in the translation process. In the contemporary practice, legal translation is basically English-Chinese in Hong Kong, where also co-drafting is used as a method for developing bilingual legislation. In Singapore, English-Chinese translation dominates as well, though it seems that translation activity is limited there as English is a dominant language and the English language proficiency of Singaporeans is high. Chinese-English translation in Mainland China and Taiwan is of different nature than the translation in Hong Kong where English is still an official language. The translation of Chinese laws and documents into English in Mainland China and in Taiwan occurs for reference only, i.e., with no legal effects. Therefore, legal translations there are frequently substandard. In Macau, after 450 years of Portuguese rule with the Portuguese legal system and Portuguese as the sole official language, the situation changed profoundly. Macau returned to China in 1999, under the ‘One Country, Two Systems’ principle laid out in the Basic

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before the German public notary the sworn translator translated the proxy into German and this fact was also mentioned in the protocol of the proceedings. Therefore, no additional translation of the document was deemed necessary for further proceedings in the commercial register (cf. *NJW Spezial*, 2020, vol. 7: 208–208).

Law of the Macau Special Administration Region<sup>4</sup>. Similar to the situation in Hong Kong before the change of sovereignty, a governmental project was launched in Macau to translate all the Portuguese laws into Chinese, in order to maintain the current legislation and way of life of Macau. While Chinese already became another official language of Macau in 1991, Article 9 of the Basic Law further confirmed the bilingual legal system after the handover, stating: “In addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macau SAR”. In 1999, this provision was interpreted by the Standing Committee of the National People’s Congress as follows: “In case of any discrepancy between the Portuguese text and the Chinese text, the Chinese text shall prevail” (cf. Casabona 2011: 231; Cheng 2020: 183–189). In Macau, where the majority of the around 65,000 inhabitants are Cantonese-speaking Chinese, there is a multilingual environment, where three written languages (Chinese, Portuguese and English) and four spoken languages (Cantonese, Putonghua, Portuguese and English) are used. This situation can be described as ‘tri-literacy and quarte-lingualism’ (三文四語 *Sanwen Siyu*). However, according to Macau law professor Tong Io Cheng (2020: 187), Portuguese was only an official language adopted by the government but not the society at large as most Chinese people in Macau do not communicate in the Portuguese language. The medium of instruction in primary and secondary schools is Chinese or English, and even students in Portuguese language schools may not be proficient in Portuguese. The Portuguese speaking population remains less than five per cent. As a result, there is a shortage of bilingual personnel who can translate between Portuguese and Chinese. Under these circumstances, the Chinese translation of the Portuguese laws have constantly attracted criticism from researchers, especially those from Mainland China who generally think the translated Chinese is not Standardized Chinese. Overall speaking, the Chinese translation of the Portuguese laws is rendered in a classical style which is heavily influenced by Europeanized grammar, for instance displaying long

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<sup>4</sup> The Basic Law of the Macau Special Administrative Region of the People’s Republic of China was adopted at the First Session of the Eighth National People’s Congress on 31 March 1993 and became effective as of 20 December 1999, the day Macau was transferred to the sovereignty of China. The Basic Law consists of a preamble, nine chapters (with 145 articles), and three annexes.

sentences with embedded structures and little punctuation. Despite these criticisms, Tong (2020: 192) today believes that the legal translation at the legislative level is of “high quality”:

“Since the handover, Macau’s legislative assembly has spent much time and effort implementing a bilingual policy and forming a competitive team with expertise in law coupled with strong language skills. The presence of such native Portuguese and Chinese speakers has gone a long way towards ensuring that the Portuguese and Chinese texts are as close in meaning as possible.”

Nevertheless, if the problems of the Chinese translation described above still exist, the legal translation from Portuguese into Chinese can hardly be regarded as a success as the general public still finds it difficult to understand the law.

As a comparison, since 1997 handover, the approach to bilingualism and even translation in Hong Kong is more systematic. Hong Kong students receive formal training under the language policy of ‘bi-literacy and tri-lingualism’ (*liangwen sanyu* 兩文三語), where the former refers to the two written languages (English and Chinese) and the latter to the three spoken languages (English, Cantonese and Putonghua). Before 1997, students were mainly trained to be proficient in written and spoken English and Modern Written Chinese, with Cantonese as a native tongue and Putonghua used in daily life occasionally and among new immigrants from Mainland China, especially those from outside the Guangdong Province.

The diversity of languages of reference and approaches to dealing with education and translation in the Chinese-language landscape constitute a basic tenant in all approaches aiming at understanding the preconditions of legal translation in the concerned territories. Connected to this problem is also the diversity of legal Chinese in the Chinese-language landscape. This problem may be perceived as the second main tenant in understanding legal translation from and into Chinese. It will be discussed in the paragraphs below.

### 3. Pluricentrism in Chinese legal language

The Chinese language is spoken on a vast, geographically partly disconnected and politically diversified territory. On this territory, several centres of cultural and political importance developed largely independently from each other. This aspect favoured the emergence of specific linguistic features that are assembled in linguistics under the concept of pluricentrism (cf. Chan, Galdia 2023). Comparative legal linguistics of the Chinese language pays therefore particular attention to this topic. The most salient issues in contemporary comparative legal linguistics within the approach to the legal-linguistic pluricentrism are conceptualization and terming. In legal texts, they manifest themselves regularly as hybrid linguistic constructs due to linguistic contacts that were established among legal cultures. Hybridity in law primarily concerns conceptualization, i.e., processes in which legal concepts such as *statute of limitations* and its Chinese counterpart *shixiao tiaowen* (時效條文) (or just *shixiao* 時效 for *limitation*) emerge in the legal language (cf. Galdia 2021: 27). In legal translation, *limitation* is translated as *shixiao* (時效) with the help of the amplification or addition method, i.e., adding the meaning of time (時) to *limitation*. It is a very common method to translate from English into Chinese as the two languages have huge lexical differences. However, this makes the English-Chinese translation very difficult and varied. The conceptual translation based upon *limit/limitation* is a convincing translation proposal as Chinese speakers automatically associate it with *shijian de xiaoli* (時間的效力) ('time's effect') or *youxiao de shiqi* (有效的時期) ('effective period'). Each proposed or translated term has its reasons for success and the process of investigating these reasons is by far not terminated at this point. What is more, conceptualization is related to the terming of concepts, i.e., calling a concept *limitation* or *shixiao* like the two sides of the same coin. The particular feature of legal hybridity is that it is omnipresent in law.

Due to the pluricentric character of legal Chinese also the choice of one legal Chinese language imposes itself for purposes of legal translation. The reason for the necessity to make a choice follows from terminological diversity in the area of legal Chinese that covers Mainland China, Macau, Hong Kong and Singapore. For instance, 'contract' is rendered in Hong Kong terminology as *heyue* (合約), then for Mainland China as *hetong* (合同) and for Taiwan as *qiyue* (契約).



*Hetong* and *heyue* are hyponyms, semantically they cover the same field of reference (cf. Cheng, Sin 2008: 43). Furthermore, concerning the Chinese equivalents for ‘acceptance’ in contract law, that is, *chengyue* (承約) (‘accept a contract’), a specialised coinage used in Hong Kong and *chengnuo* (承諾) (‘promise’), an ordinary Chinese word used as a legal term in the Mainland and Taiwan. In Hong Kong, the word *yue* (約) (‘agree’; ‘contract’) helps generate a number of related terms under contract law: *heyue* (合約) (‘contract’), *yaoyue* (要約) (‘offer’), *chengyue* (承約) (‘acceptance’), *weiyue* (違約) (‘breach of contract’), *huiyue* (毀約) (‘repudiation of contract’), and so on, some of which also used in other two major Chinese communities. If legal linguists intend to make some efforts towards more professional use of legal terminology, *chengyue* can be recommended to replace *chengnuo*. Another example can be based on the two Chinese translations of ‘mortgage’, that is, *anjie* (按揭) in Hong Kong and *diyā* (抵押) in Mainland China and Taiwan. *Anjie* (按揭) is a Chinese term created specifically to carry the meaning of ‘mortgage’, which is defined as “a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms”, and “A lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms” (cf. Garner 2009: 1101). In comparison, the term *diyā* (抵押) denotes setting certain properties as guarantee to the creditor’s rights without transferring the ownership (e.g., Chapter 3, Guarantee Law of the Copyright Law of the PRC). In the English/Chinese edition of *Xiandai Hanyu Cidian* (The Contemporary Chinese Dictionary) [BDSLDD] (2002: 417) edited and translated by Bilingual Dictionary Subdivision, Linguistics and Dictionary Division, *diyā* as an ordinary word means ‘mortgage’, ‘pledge’, which do not define whether the security concerned involves a transfer of title. Second, when using ordinary words instead of a new creation, precision is still a paramount rule to follow and literalness is preferred. For instance, for ‘duty of care’, the Hong Kong translation *jinshen zeren* (謹慎責任), with the literal meaning of ‘prudence responsibility’, expresses original meaning of ‘duty of care’ more accurately than the functional equivalents in the Mainland and Taiwan, *zhuyi yiwu* (注意義務), which means literally ‘attention obligation’. In common law’s occupiers’ liability, ‘common duty of care’ means to take reasonable steps to keep the visitors

reasonably safe so ‘care’ is more than just ‘paying some attention’ (Section 3(2), Occupiers Liability Ordinance (Cap. 314)).

Meanwhile, legal terms do not represent the totality of the legal language. Even more, they actually make only a skeleton of the legal language; they are scaffolds upon which the legal language can be set. Therefore, also broader syntagmas and other phraseologisms belonging to company law such as *Contracts made before Company’s Incorporation* (公司成立為法團前訂立的合約) play a role in forming the legal language. Such terms easily develop to phraseologisms, cf. *piercing the corporate veil* (揭開公司面紗) (cf. Chan 2017: 31). Also many doctrinally largely uncomplicated terms such as *buyer* have many equivalents in Chinese, for instance *maishouren* (買受人), *maifang* (買方), *maijia* (買家) (cf. Grzybek, Xin 2017: 18).

Thus, legal-linguistic pluricentrism determines translations from and into Chinese. For larger translational undertakings, especially in bilingual territories fundamental choices will have to be exercised to avoid the emergence of a methodological vacuum that confuses translators. Frequently, a translation language emerges that does not take into consideration the limitation of translational choices caused by the legal-linguistic pluricentrism.

#### 4. Shaping legal terminology

Another central issue is the problem of shaping legal Chinese terminology. On the one side, the practice of the development of legal Chinese clearly witness to the borrowing process of legal terms. This leads to the assumption that legal Chinese is largely a translated language, especially when its terms are concerned. It is therefore a language that takes form in translation. When shaping the basic terminology of an area of law there will always be plenty of choices, for instance between *company* and *corporation*, as well as between the more general terms such as *enterprise* and *undertaking*. Terminology always emerges in processes where choices are exercised to the benefit of certain terms, which also means that these choices are made to the disadvantage of other terms that are abandoned (cf. Grzybek, Xin 2017: 101–130). Special terminology, such as legal terminology, emerged toward the background of lexical diversity typical of every natural

language. In the area of terminology formation, linguistic choices are better visible than in the daily use of ordinary language. For instance, as Hong Kong law developed in a close relation to the English common law, the English terminological tradition is stressed in it. To illustrate, the term *company* may dominate in certain texts, but *corporation* (a term used predominantly in the US law) appears only in derivative forms such as *corporate finance* (cf. Chan 2017: 214) or *corporate governance* (cf. Chan 2017: 215). In the Chinese equivalents of both terms *gongsi* (公司) is proposed as their notional counterpart. Furthermore, some key terms in torts, for instance *tort / delict* that is called *qinquan* (侵權) are surprisingly unproblematic in all three Chinese legal-linguistic regions. Of course, this terminological equality masks the difference in the structure of concepts behind the terms in common law and in civil law. This difference is essential to legal-lexicographic undertakings (cf. Mattila 2017: 36), yet it does not always manifest itself visibly in dictionaries. The common law *tort* may correspond to *delict* in civil law, yet it is structured differently as it manifests itself always as a specific tort, for instance *nuisance* or *infliction of emotional distress*. The civil law *delict* remains a *delict* in situations that might correspond to the named common law *torts*. This principle is particularly important because it predetermines the structure of semantic fields emerging around the key terms. When the legal terminology of English common law is selected to function as terminological basis for the legal system, as is the case in Hong Kong, terms accompanying the key terms depend strictly on this choice. For instance, *battery* and *assault* (cf. Chan 2015: 161), *false imprisonment* (cf. Chan 2015: 171) or *nuisance* (cf. Chan 2015: 115) are rooted in the common law.

In the face of the pluricentric Chinese terms, there is a view that the Chinese legal terms should be standardized. In his analysis of the similarities and dissimilarities of the legal terminology in Mainland China, Taiwan, Hong Kong and Macau, Qu Wensheng (2013: 267–275) predicts that the standardization of terminology in Hong Kong and Macau will have an impact on Mainland China and Taiwan. Qu (2013: 188) also suggests Mainland China to borrow the Hong Kong translation *anjie* (按揭), which is based on the Cantonese pronunciation of ‘mortgage’. It is because in Mainland China there is no close Chinese equivalent to the term. According to a study in the 1990s, many commercial terms customarily used in Hong Kong such as *gongsi* (公司) (‘company’), *youxian gongsi* (有限公司) (‘limited company’),

*dongshi* (董事) ('director'), *gudong* (股東) ('shareholder') and *jingli* (經理) ('manager') had 'migrated' to Mainland China before the 1997 handover (cf. Tian 1996). The cause for the standardized use across the regions should seem to be the relatively minor legal difference in the commercial terms. Concerning the differences between Hong Kong written Chinese and the Modern Chinese, Hsu (2009: 164) notes that standardisation does not aim to bind language but rather promote its development, and many Hong Kong lexical units have been incorporated into the Modern Chinese Dictionary.

Likewise, the new Civil Code of Mainland China includes problematic formulations. According to Weiwei Pang (2020), the Civil Code tends to be consistent in using some words and terms. For instance, in the first draft of the Civil Code, for 'suing', both *qisu* (起訴) and *tiqi susong* (提起訴訟) are used, while the final draft standardises the use of *tiqi susong*. Now there are eighteen counts of *tiqi susong* and one count of *qisu* which forms the noun *qisuzhuang* (起訴狀) (writ). For 'entering into' a contract, the literal Chinese translation is *dingli* (訂立) ('conclude'), while *qianding* (簽訂) ('sign and conclude') can also be used when the acting of signing is concerned in entering into a contract. In the Civil Code, all 90 counts of *dingli* but one collocates with *hetong* (合同) ('contract'), while all nine counts of *qianding* but one collocates with *xieyi* (協議) ('agreement') such as an 'adoption agreement' and a 'will agreement' which must be in writing. Nevertheless, there are still inconsistencies of legal terminology. For example, while *caiyong* (採用) ('use') and *caiqu* (採取) ('adopt') have very close literal meaning, the code uses them both in describing the manners of entering into a contract, that is, *caiyong* collocates with 'offer', 'acceptance' and other methods (Article 471) and with the form of 'electronic messages' (Clause 2, Article 492), while *caiqu* collocates with 'written form' (Article 490) and with the 'form' of letter or electronic messages (Article 491).

Another particularity is the borrowing of legal concepts expressed with the help of Chinese signs in translations of foreign legal texts into Japanese (cf. Cao 2021: 50, 51, 53). In the European legal culture, we find a corresponding example in the borrowings from French in legal English that returned to France with occasionally modified meaning, cf. *parliament* meaning initially 'court of law' in French and having today the meaning of the English-language term.

The described situation proves the necessity to shape a better harmonized legal Chinese language. It seems that legal linguists are

well qualified to assist the community of users of legal Chinese in the task of shaping a coherent Chinese legal terminology.

## **5. Chinese legal language in translation: From general to specific**

Some special topics in the discussion of translation problems from an into legal Chinese cover the dominant tendencies in the development of the Chinese legal translation. Among them are the Chinese translational tradition, problems in translating traditional Chinese law, translating literary texts with legal reference, and the specific features of translating legal texts from and into Chinese. They will be treated in this paragraph.

### **5.1. Chinese translational tradition**

In the history of Chinese culture, translation, and most prominently legal translation, has long roots. What is more, translators of legal texts were often non-Chinese, for instance Tuyuhuns, Sogdians, and others (cf. Lung 2011). Meanwhile, China has its own tradition of translation. The Chinese scholar Yan Fu (1854–1921) conceptualized the Chinese translation tradition in the formula *xin da ya* (信達雅, faithfulness, expressiveness, and elegance'), the three main problems of translator's work (cf. Schwartz 1964; Zhu 2018: 5; Cao 2021: 47). Following his own method, Yan Fu translated numerous Western scholarly works into Chinese, among them T.H. Huxley, A. Smith, H. Spencer, J.S. Mill, and Charles de Montesquieu. Furthermore, Xu Guangqi translated the first six books of Euclidean geometry into Chinese, Li Shanlan (1810–1882) translated Euclid's last nine books (cf. Zhang 2002: 64). The level of professionalism in these translations reflects the general translational standards of this epoch. Meanwhile, in contemporary research, Cao (2007: 40) distinguished for purposes of translational proficiency three sets of interacting variables within translational contexts. They are: translational language competence, translational knowledge structure, and translational strategic competence. Professionalism in translating is reached when these sets of interacting variables are integrated. Their

integration in legal translation is cumbersome, as additional knowledge of legal aspects of the translated source texts has to be taken into consideration. With this problem in mind, Du Jinbang (2005) stressed the general notion of appropriateness in legal exchanges, where the linguistic element plays a decisive role. For legal translation, Xiong Demi (2011) differentiated general translational problems and particular problems of legal translation. He stressed professionalism, rigorousness, accuracy and equivalency as main structural features of legal translation.

For purposes of translating legal texts such as contracts and other texts related to commercial exchanges that take place within private law, one could ask whether traditional concepts based on the *xin da ya* (信達雅) approach may apply at all. Such texts, and mainly contracts have their own characteristic features that are situated beyond aesthetic considerations.

## 5.2. Translation of traditional Chinese law

While Chinese law follows today largely patterns developed in the Occidental legal tradition, the contemporary translator does not deal with terms that lack any conceptual correspondence. Historical concepts may be more problematic in this sense. An example is the concept of *qinqin xiangyin* (親親相隱), discussed already in Confucian writings (cf. Li 2015). Eighteen equivalents of *qinqin xiangyin* were identified in the literature reaching from *avoidance of relative being witness system* to the *kinship concealment institution*. In fact, the term is translatable, as its many English equivalents show, yet its translations cannot fully render its anchorage in the Confucian ethic. Neither can they transfer the importance it had in the history of the Chinese law in the disputes of Confucianists who supported it as a cultural achievement of the Chinese people and the Legalists who combatted it as illegal. General aspects of law that are visible here in the attempt to privilege certain relatives in cases of concealment of crimes and the specifics of the Chinese legal culture are intertwined in this example. Another example concerns the concept of *yi* (義), recently discussed by Deborah Cao (2019b). The concept may correspond to ‘justice’ in the English language, yet definitely not in all contexts. Meanwhile, in all legal

traditions ancient conceptual coinages cause problems in their semantic affiliations and require some adjustment to become fully understandable both in spacial/cultural and temporal perspectives. ‘Justice’ in English is far from being equivocal, and ‘social justice’ and ‘formal justice’ are different things. Beyond the scope of our approach remain numerous examples of the use of ‘justice’ in the English ordinary language, which include metaphorical and ideological formulations. In other languages used in the European legal tradition, for instance in Finnish, ‘justice’ known as *oikeudenmukaisuus* may be construed in material terms as ‘justice’ or more formally as ‘rightness’. Conceptual diversity is therefore a characteristic feature of advanced forms of linguistic communication rather than their deficient manifestation in legal translations. It is definitely not a specific feature of legal Chinese.

The end of the imperial tradition and the establishing of the republican government in China mark the moment in which a new law, influenced by the Occidental tradition began to emerge.<sup>5</sup> Meanwhile, traditional law did not fully disappear; it was present in the Chinese legal culture in multiple forms that influenced the creation and the application of the newly forged law. Understanding modern Chinese law presupposes therefore the understanding of traditional sources of the past law even if they do not constitute formally the Chinese law in force anymore. Abroad, these traditional sources became known through translations that prefigured the conception of Chinese law that emerged in scholarly circles there. *The Qing Code (Da Qing lili 《大清律例》)* was translated for the first time into English by George Thomas Staunton (1781–1859) and published as *Fundamental Laws of China* (1810). The French translation of the Qing Code by Raynouard de Ste. Croix appeared in print in 1812. Nowadays, the translation by William C. Jones that appeared under the title *The Great Qing Code: A New Translation* is consulted as an authoritative source (cf. Jones 1994). Creating a fully coherent legal translation language, as is Chinese in our area of interest, includes therefore the diachronic perspective that

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<sup>5</sup> Deborah Cao (2021: 42) defines the term ‘traditional Chinese law’ as referring to “the laws, legal rules, and legal cultures of imperial China when the last imperial dynasty ended.”. Including the reference to legal culture in the definition enables the integration of formerly valid law into the discussion about the role of the translation of ancient Chinese legal texts into other languages. The integrative approach proposed in this article makes use of the broadened definition of the term ‘traditional Chinese law’.

covers past linguistic formations with all their discrepancies as well as real or alleged contradictions.

### 5.3. Translating legal fiction and other texts with legal implications

Research interest in contemporary legal linguistics is dominated by explicit legal texts, i.e., texts that belong exclusively to the text type legal texts such as statutes and court opinions. However, the legal discourse embraces many other text types, for instance medical expert opinions, witness testimonies, and media reporting related to law that in terms of language might also display the legal language less explicitly. Among many texts with legal implications are also literary texts that include law as part of its plot. Li Li (2013) analysed the Chinese translations of Charles Dickens's *Bleak House* and Franz Kafka's *Der Process* and identified controversial treatment of explicitly legal terms in them, notwithstanding the overall high quality of these translations. Li Li supported the view that *Der Process* should not be rendered in translations as *The Trial*, due to different connotations of the terms. As so often in Chinese texts, the term *quan* (權) ('right') causes also problems in the initial scene where K., the protagonist of Kafka's *Der Process* is arrested.<sup>6</sup> *Quan*, a late coinage in legal Chinese, is not only ambivalent; it is occasionally meaningless for Chinese speakers. Legal fiction requires from its translators not only terminological competence. It also claims a profound understanding of law in the philosophical perspective. Conversely, it also makes additional legal-translational problems better understandable in contexts that are often not perceived as strictly legal. Their integration into the debate about the role and the influence of legal translation upon the emergence of the legal language is nevertheless necessary because the legal discourse consists of many text types. Some of them, such as literary translations with legal implications definitely make part of it and are even particularly

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<sup>6</sup> In Franz Kafka's novel *Der Process* (*The Trial*) K. is informed that the servicemen who arrest him have no right to provide him the reasons of his arrest. In Chinese, they say: *women wu quan gaosu ni* (我們無權告訴你), which might mean not having the *right* or not having the *authority* to reveal K. the information about the reasons of his arrest (cf. Li Li 2013: 856).



influential. As example, one may consider the term *presumption of innocence* and its use in ordinary English language that goes beyond pure anchorage of a term in the legal system.

#### 5.4. Specific features of legal translation into and from Chinese

In contemporary research, the problem of alleged indeterminacy of Chinese legal terms has been regularly discussed as a particularity of legal translation from and into Chinese (cf. Mannoni 2021; Cao 2004). Some specific features of Chinese may appear as supporting the indeterminacy thesis. In particular, articles are non-existent in the Chinese language, and subjects and grammatical markers such as conjunctions and modal verbs are optional. An example is *yiwai sunshi* (意外損失) ('accident damage'), where it is not clear whether it is 'accident and/or damage' or 'accidental damage'. The ambiguity extends to verbal tenses. Cao cites another example to illustrate how context compensates lack of tense in the Chinese language: *Xiaxingqi, jiayi shuangfang qianding hetong* (下星期, 甲乙雙方簽訂合) (Next week Party A and Party B will sign [a] contract), where the tense marker *jiang* (將) (will) is omissible without affecting the meaning (cf. Chan 2020: 112). Chinese has no overt markers for parts-of-speech and a given form can enjoy categorical fluidity, for example, *fuwu* (服務) can be 'to serve' or 'service' (cf. Chan 2020: 111). Meanwhile, words in texts, also in legal texts, appear in contexts, where their meaning emerges. They may appear in isolation profoundly undetermined yet can as a rule be easily disambiguated in contexts.

Additionally, in the tradition of the skopos theory, certain translational strategies such as cutting, omission, shifting, conversion, addition and combination are regularly used in order to increase the readability and understandability of translated texts (cf. Liu 2015: 127). Chinese text structure may impose cutting the source text into several meaningful phrases, as English translated sentences are usually significantly longer than the original Chinese sentences. Redundant words may be omitted. Syntactic rules cause shifting of sentence clusters and conversion in the grammatical status of words, nouns may become verbs, etc. (cf. Liu 2015: 129). When translating from Chinese

into English, additions to pronouns such as *thereby* may become necessary due to parataxis being typical of complex Chinese phrases, while hypotaxis dominates English phrases. Inner logic of the target text may be improved by adverbs such as *where* and *thus*. What is more, cultural transfer still plays a role in legal translation, although legal systems all over the world come closer in the process of globalization. Often, for instance in the case of the common law translations from English into Chinese in Hong Kong it causes problems in the conceptualization of basic terms such as *reasonable person* or *due process* (cf. Wang, Sin 2013: 890). Wang and Sin also aptly stated that conceptual equivalence is not found but created in legal translations (cf. Wang, Sin 2013: 886). The cultural transfer that often takes place in the use of legal transplants is a challenge for every legal system. The risk in its implementation is double. First, jurists may misunderstand the new term and non-jurists may not connect any concrete meaning with it. This is often the case with new coinages such as *keshangshou pingzhi* (可商售品質) are introduced to render the term *merchantable quality* in Hong Kong Chinese (cf. Sin 2013: 940). The Chinese neologism is lexically a simple composition, yet it is understandable only towards the background of the common law. Beyond it, as a word in Hong Kong Chinese, it has no independent meaning. The reason for this intricacy is that *shangshou* (商售) is a new coinage, while for instance *yingzi* (影子) and *dongshi* (董事) that form the term *shadow director* (影子董事) are both existing ordinary words that everyone understands.

## 6. Practical aspects in legal translation from and into Chinese

Translational practice reflects the preconditions of translating legal texts from and into Chinese that were named in the above paragraphs. They manifest themselves in the attitudes to legal translation and practical educational programmes for translators of legal texts. It can be assumed that they provide a mirror-image of translation problems identified in the theoretical research into legal translation. This assumption will be strengthened by a case study that makes part of this paragraph.

## **6.1. Attitudes to legal translation**

In every society, attitudes to legal translations oscillate on the scale between profound underestimation of the work of translators to the exaggeration of their efforts. In the public service, translators are sometimes treated as secretaries, sometimes as high-level experts. Lee Tong King (2020) identified some additional attitudes towards legal translation that he limited to the experience in Hong Kong. His findings might have further going consequences. Lee addresses two problems in the institutionalized legal translation. First, he mentions legal bilingualism, such as Hong Kong's, where legislation is bilingual, English and Chinese. The legal status of Chinese and English texts in Hong Kong legislation is equal, although according to Tong, the Chinese versions are often translations of the English *de facto* originals. Lee also identified the tendency to avoid addressing the issue of translation as such, apparently due to ideological limitations based on the conviction that a translation values less than the original. The problem described by Lee might be addressed technically in parallel drafting, yet, again, not much is known about the reality of this procedure.

Meanwhile, the awareness about the necessity of quality management also in legal translations is growing in the Chinese-language landscape (cf. Chan 2020). This process of rising awareness resulted in educational programmes that aim at setting up systematic and coherent translational strategies. Academically advanced research in this area such as Grzybek and Xin (2017) paves the way towards theoretically well-funded systematic understanding of translation of legal texts.<sup>7</sup>

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<sup>7</sup> Concerning the problem of identifying terminological equivalents Joanna Grzybek and Fu Xin (2017: 10) mention: "The comparison of potential equivalents in the target language in respect of the relevant parameters can help pinpoint that equivalent which shares the largest number of properties with the term being analysed. Whichever term in the target language shares the largest number of properties with the source-language term can be regarded as the most equivalent." Parametrization, i.e., attributing properties from dimensions relevant to the translation of a term is the decisive factor in this approach.

## **6.2. Education of legal translators and translation errors**

As mentioned above, a competent legal translator must possess the competence of language and the knowledge of translational strategies, without which, one would easily make mistakes in legal translation. The demand for legal translations and interpretations in China is socially relevant since several decades already (cf. Xu 2018: 49). Therefore, multiple educational programmes were developed to meet social needs for services of professional legal translators and interpreters. Educational programmes that combine the most significant requirements for the exercise of these professions such as comparative law, legal languages, and legal (forensic) linguistics were developed at numerous universities (cf. Xu 2018: 54, 59). Smart learning models were proposed to improve professional competences of translators as well (cf. Xu 2018: 57).

Meanwhile, errors in translating texts are not a specific feature of the theory of legal translation. Translation expressed in theoretical terms requires a particularly advanced level of linguistic competence of at least two languages. However, this competence is rarely achieved fully by a translator. In the area of legal translation, additional skills, especially some knowledge of two legal systems are required by the very nature of this activity. As unavoidable as they seem to be, translation errors can at least be reduced, and the quality of translations systematically improved. Error analysis in legal translation studies has the task to identify problematic areas in translation and develop strategies that help avoiding situations in which errors multiply (cf. Hu, Cheng 2016). Next to it, procedures for quality assurance are developed to make the assessment of legal translations a more reliable practice (cf. Prieto Ramos 2015). Additionally, translating legal texts from Chinese into English presupposes a choice of translated language, for instance Mainland Chinese or other varieties of Chinese, as well as the choice between British and American English. Script also plays a role in the translational work, as simplified or traditional signs may cause problems to readers. Their use is determined by regional traditions that make part of legal pluricentrism discussed earlier in this study. Rarely a translation is effectuated in both varieties of the Chinese script. In a way, the choice between the varieties of the Chinese script corresponds, although very largely with the choice translators make between British or American spelling for their English-language texts.

### 6.3. A case study of risks of mistranslations

In the legal translation field, it is established that a legal translator must acquire some basic legal knowledge, so as to avoid producing mistranslation, especially that of the legal terms. Deborah Cao (2002: 337) notes: “some basic knowledge of the relevant law and legal concepts and understanding of legal usage will go a long way”. Besides the lack of legal knowledge, Chan (2017: 9) also shows that mistranslation of legal terms is caused by the gap between international and domestic laws, “intentional errors” based on legal traditions, and translators’ language competency. Owing to the legal differences in different legal systems, there are many ‘false friends’ that can trap the translator in their work. Therefore, even well-trained lawyers must undertake linguistic and legal research to find equivalents in another language.

While there are existing studies concerning mistranslation of legal terms, this case study aims to discuss mistranslation of several ordinary words, terms and signs that appear frequently in legal texts. Those words, terms and signs are mistranslated mainly due to the contrastive linguistic differences between English and Chinese, incompetency in English and a lack of general knowledge of Chinese translators. As this discussion on new examples is based on mistranslation found in student assignments for about five years, it is expected that the findings can shed new light on the development of translation techniques and pedagogy.

The following two examples are taken from a Chinese tenancy agreement from Beijing, which also provides a substandard English translation where numerous typos and grammatical errors occur. In a home assignment taken from this Beijing agreement, students are required to render a number of clauses into English, in which some words are often mistranslated. Before this assignment given in around Week 6 of the translation course, students have, for more than a month, studied a Hong Kong bilingual tenancy agreement, which is an English-Chinese translation with many legal terms concerning tenancy and civil law in general. The first example is an ordinary Chinese word *zeren* (責任), which can be translated as ‘responsibility’, ‘obligation’, ‘duty’ and ‘liability’ in English. The subtitles of Clauses 8 and 9 are *jiafang de zeren* (甲方的責任) and *yifang de zeren* (乙方的責任), which can be rendered as ‘Responsibilities of Party A/the Landlord’ and

‘Responsibilities of Party B/the Tenant’ respectively. ‘Obligations of Party A/the Landlord’ and ‘Obligations of Party B’ are also appropriate. Consider Clause 8, with an English translation from the authors:

Example 1

8. 甲方的責任:

A. 租賃期內甲方不得無故收回房屋, 甲方如有違約, 應退還全部押金及補償壹倍押金給乙方。

8. Responsibilities of the Landlord:

A. Party A shall not re-enter the Premises without reasonable grounds during the tenancy period. If Party A commits a breach of this Agreement, s/he shall return an amount of two times of the Deposit to Party B.

However, a significant number of students render the subtitles into ‘Liability/Liabilities of the Landlord’ and ‘Liability/Liabilities of the Tenant’, while some render them into ‘Duty/Duties of the Landlord’ and ‘Duty/Duties of the Tenant’. The first mistranslation of ‘liability’ is probably caused by the introductory session of civil proceeding terms at the start of the course that has taught the English word ‘liability’ and its Chinese translation *zeren*. While students remember the Chinese translation without a full understanding of the meaning of ‘liability’, when seeing *zeren* in another text, they do not translate the meaning in the source text, that is, ‘contractual responsibilities or obligations’, but rather use the literal translation they have memorized. The second mistranslation of ‘duty’ is probably due to the translators’ limited use of the dictionary, that may simply provide a few literal translations. As there is no ‘numeric form’ in the Chinese language grammar, some students also use ‘responsibility’ rather than ‘responsibilities’. To solve the problem, one solution is to explain the term ‘liability’ more fully, and with a differentiation with ‘responsibility’, ‘obligation’ and ‘duty’, especially for Chinese students who grow up in a monolingual society where English translation only serves as a reference. And, it is necessary throughout the translating process, to remind constantly prospective translators of using good dictionaries, and considering the singular or plural form of nouns when translating from Chinese into English.

Another similar example is the Chinese term *feiyong* (費用), which can be translated as English words ‘payment’, ‘charges’, ‘fee’, and even ‘expenses’ in some cases. *Feiyong* is strictly speaking not an exclusive legal term, but it is used frequently in legal texts. Consider

the following clauses where the English translation is taken from the version attached to the original Chinese text:

Example 1

7. 費用

Charges:

租賃期內的管理費用由\_\_方負責支付。

The management fee shall be paid by\_\_\_\_\_.

For the two instances of *feiyong* here, the first one in the subtitle should be translated as ‘charges’ or ‘payment’, meaning the tenant is responsible for paying different ‘charges’ during the tenancy period. The second *feiyong* refers to a particular type of charge, that is, management fee, and in English ‘fee’ is used. Nevertheless, while mixing up all these words, about half of the prospective translators use ‘fee’ in the singular form in the first instance (the subtitle), and some use ‘charge’ in the second instance, that is, after ‘management charge’. To eliminate the mistranslation of this type of ordinary words, one solution is to encourage learners to check up dictionaries and give a longer deadline so that such grammatical errors could be revised and corrected.

Besides the lexical items, there are semiotic issues relating to currency signs and related concepts in judgments. As far as English law cases are concerned, the pound sign £ (*bang* 鎊/*yingbang* 英鎊) appears quite frequently. When such cases are used as examination materials, some students do not recognize them and mistranslate them into ‘euro’, for example, ‘and they awarded the plaintiff £500 damages’ is rendered as ‘陪審團判予原告 500 歐元’. Moreover, when rendering Hong Kong cases that involve the word ‘dollar’ in the award of damages, some students mistranslate it as *meiyuan* (美元) (‘US dollar’) with no regard to the context. Such mistranslation is related to a translator’s world knowledge and the only solution is to encourage them to gain more exposure.

The discussed examples of mistranslations are caused by the lack of a systematic and coherent translation strategy that takes into considerations the prerequisites of legal translation that were identified in our study. The choice of the appropriate variety of legal Chinese, terminological adaptations in texts reflecting common law and civil law terms, as well as the appreciation of characteristic features of the

Chinese grammar are fundamental to any attempt to translate legal texts from and into Chinese, as the above analysis of mistranslations shows.

## **7. Conclusions**

Translating legal texts from and into Chinese is bound on some preconditions that can be identified in the existing research. Main preconditions stressed in this study concern the situation in the Chinese linguistic landscape that is connected to linguistic pluricentricism in the legal Chinese. Next to it, also the task of shaping legal language as a creative activity of legal translators in the area of use of legal Chinese is particular as legal Chinese is largely a translated language. This is the reason why problems of meaning emergence in law are regularly connected to legal transfers, legal implants and other text forming devices that influence the legal texts in processes of legal translation. Therefore, legal translation influences processes in which legislation and the legislative language are shaped. Consequently, the legislative language or the language of the law in general cannot be reduced to texts in the target language that exist in isolation from other legal texts and legal-linguistic operations such as legal interpretation or legal argumentation. In the Chinese linguistic landscape these texts appear in interdependence with languages that are traditionally used in translating legal texts from and into Chinese. What is more, legal Chinese terminology developed in interaction of translative works focusing upon rendering Chinese legal documents in languages other than Chinese, translation of non-legal, for instance literary texts with legal implications, and translation of contemporary ordinary Chinese texts in legal contexts. Indeed, legal language has a diachronic perspective and legal terminology becomes truly understandable solely when it is positioned within a coherent set of conceptual reference. An integrative approach that is supported in this study stresses the necessity to coin legal terminology in the process of legal transfer with the idea in mind that the newly coined legal language shall form a coherent set of terms and accompanying linguistic devices that enrich the target language systematically and coherently. Such linguistic devices would form a translational strategy of legal texts that would function as a reliable basis for translating legal texts from and into Chinese.



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