Comparative Legilinguistics
vol. 2025/63
DOI: https://doi.org/10.14746/cl.2025.63.6

Linguistic aspects of concepts of law in Chinese legal discourse

Clara Ho-yan CHAN, PhD, Associate Professor
2001 Longxiang Blvd., Longgang District, Shenzhen
The Chinese University of Hong Kong, Shenzhen. Postal Code: 518172
clarachan@cuhk.edu.cn

ORCID: https://orcid.org/0000-0002-2329-5310

Marcus Galdia, Dr.phil, Dr.iur, Associate Professor of Law
14, rue Henri Clerissi, 98000 Monaco, Principality of Monaco
International University of Monaco
mgaldia@monaco.edu

ORCID: https://orcid.org/0000-0003-0490-5213

Abstract: Chinese concepts of law have been rarely approached from the legal-linguistic perspective. Systematic research into the Chinese law started with the analysis of the traditional concept of law in Chinese state and society. Scholarly interest in this perspective was mainly conditioned by the question whether the Chinese concept of law differs from Occidental conceptions. In terms of legal-linguistic research, the answer to this traditional question depends on the methodology used in scrutinizing legal Chinese, both in the diachronic and in the synchronic perspectives. This methodology is rooted in the analysis of the Chinese legal discourse. It indicates a complexity of

© The Author(s). Published by Adam Mickiewicz University. This article is licensed under the Creative Commons Attribution 4.0 International License (CC BY 4.0): https://creativecommons.org/licenses/by/4.0/

concepts and related argumentative structures that was underestimated by the traditional research. Therefore, in this study the stages in the development of the discourse about Chinese concepts of law are elucidated to show their dependance upon the legal discourse in its different stages of social evolution. Nowadays, the traditional concept of law plays a limited role in the Chinese legal discourse. Today, Occidental conceptions of law dominate the legal landscape of the Chinese-speaking world. Therefore, the understanding of discursive fundamentals necessitates the integration of both research areas. Finally, the focus upon the language of law rather than the traditional concept may enable new insights into the nature of the discourse about the Chinese law. This study investigates the preconditions of such innovative insights.

Keywords: Chinese concepts of law; legal Chinese; legal sinology; languages of Chinese law; Chinese legal discourse.

1. Introduction

Our study applies the legal-linguistic approach to the research of the Chinese concepts of law. This approach is less frequent in the research that regularly focuses upon the Chinese concepts of law from the point of view of legal history, legal philosophy and the general theory of law. Explicit interest in the nature of the Chinese concept of law goes back to the basic tenets of the Chinese thinking about state and society. Therefore, fundamental research into the Chinese law started with the analysis of the concept of law in Chinese state and society. It was based on the study of Chinese classics. Scholarly interest in this perspective was mainly conditioned by the question whether the Chinese concept of law differs from Occidental conceptions. In legal sinology that expands the traditional research into Chinese concepts of law, the answer to the initial question depends on the methodology used in scrutinizing legal Chinese, both in the diachronic and in the synchronic perspectives. Nowadays, the traditional concept of law plays a limited role in the Chinese legal culture that evolved profoundly in the course of centuries. Instead, Occidental conceptions of law that underlie common law and civil law dominate the legal landscape of the Chinese

speaking world. In the Chinese speaking legal landscape, these conceptions have been adopted in different ways.

From the point of view of legal linguistics, it is important to seize the language in which the traditional Chinese concept of law and its followers were expressed in the long run of centuries. It is also equally interesting to identify the elements of cultural interchange that contributed to the shape of the conception of law that determines the Chinese legal discourse today. Therefore, the focus upon the language of law rather than the traditional concept of law may enable new insights into the nature of the discourse about the Chinese law. The approach based upon the analysis of legal discourse rather than the isolated concept of law has many preconditions. In the following paragraphs, some of the central features of the discourse that reaches beyond the isolated concepts of law will be mentioned and discussed. First, contemporary Chinese legal discourse unites all concepts of the Chinese law (Zhang, 2023, p. 366). This finding might be used as a starting point for further investigations. Second, this finding could also be used as a corrective of investigative strategies that are typical of Occidental sinological approaches based on the comparison of Chinese and Occidental concepts of law as well as the discursive structure of the traditional Chinese approach to the concept of law. This comparison starts with the description of schools of legal thought, called in Chinese *jia* (家) that will be used also in this study. Finally, our study makes a step towards adopting a comparative perspective that is instrumental in structuring the discourse about legal fundamentals. By so doing, it focuses on the Chinese language and other languages used to express legal thought in China. It seems that the Chinese legal discourse becomes clearer when our approach is adopted, yet it definitely will not become simpler as its object is multilayered.

1.1 Traditional Chinese concepts of law in the legal discourse

Ancient Chinese law is perceived mostly in the perspective of the Confucian doctrine (Fromont, 2005, p. 9; Zhang, 2023, p. 371),

according to which ethical aspects of maintaining social harmony were perceived as fundamental to the relations between the State and its inhabitants, i.e., the emperor and its subjects as well as between the subjects themselves. The Confucian doctrine, which underlined the necessity to maintain universal harmony, avoided any excessive action and accepted authorities, in the family as well as in higher societal organization forms such as the state. Confucianism has been definitely dominant in the traditional Chinese law and in the legal thinking. However, other explicitly legal doctrines existed in the Chinese cultural landscape as well. For instance, Legalism as an explicitly legal doctrine, when compared with the Confucian thought that is in essence ethical, has been considered second among the classical schools of Chinese thought (Upham, 1990, p. 83; Zhang, 2023, p. 368). It had nevertheless a great influence upon the political life of its time (Upham, 1990, p. 83, Zhang, 2023, p. 368). It can be therefore posited that the tradition of explicit legal thinking has a much longer history in the Chinese culture than sometimes presumed. The mere existence of the legalist reasoning contradicts the occasionally expressed assumption that the traditional Chinese philosophical reasoning did not distinguish between moral and strictly legal rules and that it construed them as one ideal entity. In the legalist writings, they were apparently clearly apprehended as different. However, the reactions that many Chinese thinkers of the past developed towards purely legal arguments and rules were not always positive. Legalist arguments and rules had not been particularly cherished in the past and may even today not be popular among parts of the population. Nevertheless, these different attitudes accompanied the development of the Chinese society and shaped the structure of the Chinese socio-political discourse like other traditional rites and rules.

Contemporary legal-linguistic understanding of classical Chinese law is based on discursive approaches. Meanwhile, it is cumbersome to describe historical-linguistic processes in terms of discourse. Therefore, the legal-linguistic research focused until now mainly on the terminology of the classical Chinese law. The semiotic perspective upon the classical Chinese law is broader. It includes the analyses of intellectual processes in which the Chinese law emerged, the composition of texts and the emergence of the very idea to commit laws to writing (Caldwell, 2018). Within this complex of research

topics, the question whether the conception of law developed by ancient Chinese could be perceived as specific gained momentum in the research. Yet, in the light of the above remarks, is the Chinese traditional law truly specific? Could it be that there is only the impression of specific nature of this law? The Chinese legal exceptionalism hypothesis is present in many publications that come close to it or distance themselves from it to a different degree (Seppänen, 2020; Clark, 2020). Donald Clark (2020) stressed that it may be methodically risky, i.e., ethnocentric to speak about Chinese law while using Western type terms such as courts, judges, law, and rights. Furthermore, in some outlines of the classical Chinese law, no difference is made between this conception and the law in force today. This omission might have led to the misunderstanding that the contemporary Chinese law is based on a different idea of law than Occidental law. The mentioned misconception comes close to quoting Thomas Aquinas' reflections on law in his *Summa Theologica* (1265 – 1274) for the characterization of modern European law. Meanwhile, his views on natural law and his investigation of normative ethic provided a model for Occidental conception of law in the past (Sikora, 1978, p. 133). Doubtless, all legal systems are historically rooted in broad philosophical conceptions of law. Meanwhile, there is continuity as well as discontinuity in the development of conceptual fundamentals of legal systems. The Chinese law is not an exception to this rule.

1.2 Chinese concepts of law and legal linguistics

As mentioned, parts of Chinese and foreign legal-linguistic research are dominated by the analysis of the Chinese concepts of law. In this context, Cao (2004, p. 15) rightly referred to Clarke (1996) who criticized this interest in the analysis of the isolated concept of *fa* (法) without connection to the entirety of the Chinese law, i.e., without discovering potential consequences of such philosophical analyses for the development of the Chinese law. When the point of departure of the comparative study is the contemporary Occidental positivist concept of law, the understanding of the Chinese traditional law becomes truly

challenging for the researcher. Another problem concerns the historicity of the Chinese concepts of law. When speaking about the Chinese concepts of law, researchers have as a rule the traditional concepts in mind (Pan, 2011). They focus especially on its construction, origin, and sources of intellectual inspiration for its linguistic coinage. They refer to the multiplicity of notions such as *li* (禮), *fa* (法), and *lü* (律) that in different textual configurations form the ideas of *law* and of *right*. They also stress that in China, unlike in traditional Occidental thought, law was not rooted in religious thought, and it was not perceived as being of divine origin (Huotari and Seppälä, 1999, p. 103).

When dealing with legal sinology one has to bear in mind that the traditional Chinese concept of law in its multiple facets is today only an issue of academic debate and at best part of some daily practices and attitudes related to law in the contemporary Chinese society. Contemporary Chinese legal discourse is dominated by the Occidental conception of law that has its roots in positivist thinking. Traditional, i.e., classical law of the Ming and of the Qing is in modern China a matter for specialists only. However, researchers also regularly stress that, for instance, the frank confession of crimes has been encouraged by the classical Chinese law (Cao, 2004, p. 17). Likewise, some concepts of the traditional law such as the eternal rent (*yongdianquan* 永佃權), which made part of the old private law may witness to the older layers of the Chinese law in the proper sense of the word (Sun, 2007, p. 647). Other remnants of the traditional legal thinking could be probably found in the legal argumentation which is used in the judicial decisions. Systematic research into this aspect of the Chinese legal culture is however rare.

2. Historical conceptions of traditional Chinese law in legal-linguistic perspective

2.1 Schools of thoughts: Development of law

In the Chinese legal discourse, traditional Chinese law appears in ancient times in broader socio-political conceptions of state and society. It is scrutinized from the perspectives of mainly four schools of thought: Confucianism, Mohism, Legalism, and Daoism. In the comparative perspective, crystalized conceptions of these schools that are known from ancient writings appeared in times of the development of ancient Greek philosophy. Therefore, the Greek philosophers Socrates, Plato and Aristotle can be thought as counterparts of Chinese thinkers such as Confucius, Laozi or Mozi. It is important to compare both positions. This intellectual experiment is not just pastime, it enables the correlation in the research that deals with the upcoming of rational thought in different areas of the world (Galdia and Liaci, 2016).

Among Occidental pioneers of the linguistic approach to language, Jean Escarra (1936) attempted a synthetic overview of the process in which the Chinese law emerged. In his conception, law (*fa*, 法) emerged from ritual customs (*li*, 禮). It was formed towards the background of fundamental legal principles such as harmony under heaven (*tian*, 天) of the ruler and the state. It was dominated by general intellectual principles, and not practical goals. Hence, the traditional Chinese concepts of law had to be seen from a broader perspective, as the Chinese law begins with non-legal reflections, and it definitely does not rely on an isolated concept of law in the Occidental positivist sense of the term. These intellectual foundations were rooted in the Chinese philosophy of Confucianism, Legalism, and Daoism. Escarra also identified the particular element of Chinese law that according to him makes comparisons between Occidental and ancient Chinese law difficult. He pretended that the Chinese concepts of law and society were construed as an ideal model reflecting the structure of the cosmos. He also assumed that private law was incorporated in such a conception of law based on cosmic ideals and that society and state were bound on

this ideal model of cosmic order. Meanwhile, the idea of natural law that was cherished in the Occidental legal philosophy over centuries comes close to the Chinese conception of law rooted in idealized natural principles. Jean Escarra also stressed that Chinese law eagerly assimilated Occidental concepts in areas where the Chinese legislation was perceived as deficient. This conclusion may surprise in a conception that was based on an ideal model that as such – as one could assume – did not need any improvements.

Additionally, Legalism (*Fajia*, 法家) was characterized as the counterpart or competitor of legal Confucianism (Vandermeersch, 1965; Watson, 1963a). It developed a strictly positivist approach to law (*fa*) that it construed as a set of mandatory rules imposed by the sovereign. No reference to moral or ethical rules, traditions such as *li* and other commitments to values besides the raison d'état in the understanding of the sovereign was necessary to set law. Thus, it clearly set itself off from Confucian conceptions of state and society that were based on ethical rules and traditions. Meanwhile, also the influence of Daoism upon Legalism is admitted by the researchers, be it only in rudiments (Escarra, 1936). Legalism and Confucianism must be thought as political tendencies in the Chinese society where the conservative tendency and the progressive tendency that stimulated the strengthening of a centralized state and its ruler competed for hegemony. In the development of the Chinese state, Legalism finally merged with Confucianism in a holy alliance to strengthen the Chinese state by laws and other mechanisms of exercising power. Legalism provided also a structured form of state administration and of monitoring it. It can be duly described as a philosophy and a technique for state administration.

Legal historians regularly stressed the orientation towards penal law in the Chinese codes that cover only a part of issues usually regulated in the legislation that more or less closely followed the Roman legal tradition. Private law in the Occidental sense existed in China but it was customary law, decided in clans and merchant guilds. The preferred way of solving conflicts in this area was the settlement of disputes out of court (Huotari and Seppälä, 1999, p. 104, Zhang, 2023, p. 369). Pre-imperial and imperial Chinese laws were therefore often characterized as deficient in theory. Interest in them was oriented

towards studying, i.e., interpreting the existing codes. The scholarly discipline dealing with this task was called *lüxue* (律學) (Cao, 2004, p. 4). Later, the legalists added thoughts about the efficiency of provisions, mainly in penal law, which stabilize social order. For instance, Zhang Pei differentiated between intentional and negligent acts and different degrees of conspiracy (Wallacker, 1986). Some legal concepts, e.g., *qinqin xiangyin* (親親相隱, approximately *hiding crime of relatives* or *the kinship concealment institution*), which is mentioned already in Confucius's *Analects* (《論語》), are original Chinese creations that cause difficulties in translation (Li, 2015, p. 181). Li Li listed eighteen different equivalents of *qinqin xiangyin* in English translations; *concealment of crime* is dominating in the attempts to render this term in English. We may therefore assume that cultural connotations are, as so often, not transferred properly in the analysis of purely conceptual creations. What is more, it seems that in China, unlike in Europe, there had not been any 'Roman law' of its own to which future generations could look for guidance and epistemological clarification. This circumstance explains, at least partly, the readiness to incorporate Western law into the Chinese legal-cultural landscape. In legal-linguistic studies, the lack of textual reference in processes of shaping law is central to the understanding of formative steps that may be identified in the texts of ancient Chinese law as far as they can be accessed today. Strict intertextuality present in legal texts of European countries marks this fundamental difference. In contemporary approaches, Marxist and Maoist ideology contributed to the understanding of law as a regulative mechanism in society. The traditional conceptions are still relevant to the understanding of the contemporary Chinese law that may be rooted in the century old Confucian thinking, although it displays its socialist roots more directly. Meanwhile, Confucianism, like the Roman law, is deeply rooted in legal reasoning. Also in the West, only a minority of jurists study Roman law explicitly and thoroughly, yet Roman law is subliminally omnipresent in their thinking. This circumstance has been neglected in analyses of the Chinese legal discourse.

Likewise, the classical Chinese law is best understood in the legal-discursive perspective. While many descriptions of classical Chinese law limit themselves to contrast Confucianism and Legalism,

some add Daoism to it. Meanwhile, the traditional Chinese intellectual landscape is broader and encompasses many directions of thought that contributed to the emergence of the Chinese law, especially under the Zhou when the plurality of intellectual currents manifested particularly strongly (Titarenko, 1994; Huotari and Seppälä, 1999, p. 172; Perry, 2008). The classic of Chinese thought, Sima Qian (deceased 110 BCE) spoke in his collection of notes *Shiji* (《史記》) about one hundred schools of thought, named *bai jia* (百家). Beyond the named Confucianism (*Rujia* 儒家), Legalism (*Fajia*, 法家), Daoism (*Daojia* 道家), other schools such as Mohism (*mojia* 墨家), Nominalism (*Mingjia* 名家), Yin-yang school (*Yinyangjia* 陰陽家), contributed thoughts that in one way or another, and definitely in unequal proportion, shaped processes and the intellectual climate in which the discourse about law could emerge in China (Feifel, 1959, pp. 49 – 59; Watson, 1963b). For instance, Nominalists, called also the School of Names, shaped the principles of dialectic and logic and paved the way towards the development of legal argumentation. They were often compared with the Greek sophists (Huotari and Seppälä, 1999, p. 172). Legalists, who in many respects were close to the thinking of Nominalists, established themselves as a much more influential current than Nominalists in the Chinese society. The Yin-yang school was rooted in occultism, yet it contributed for instance the official calendar to the Chinese society. Mohists, interested originally in strategy, explored also legal-philosophical concepts such as equality and universal solidarity, as well as logical constructs, yet they lost importance in later social processes, in which Chinese state developed. Sometimes, authors such as the skeptic philosopher Wang Chong (ca. 27–100) who wrote on general aspects of rationality, for instance in his work *Lunheng* (《論衡》), might have contributed more to the development of the Chinese legal discourse than authors who focused specifically on legal issues.

Often the schools are described solely as intellectual enterprises. In fact, they are like the schools of Plato and Aristotle in ancient Greece profoundly political, and they provide ideology to competing forces in the Chinese state or to the multitude of feudal states and societies. This is particularly visible in the case of legalists, whose thought was also called the philosophy of state of the Qin dynasty

(Huotari and Seppälä, 1999, p. 172). It has been remarked that 'Legalism' or 'Legism' as the Occidental translations of *Fajia* (法家) are debatable approximations (Huotari and Seppälä, 1999, p. 208). It has been also stressed that for the legalists, the law was not as central as it was for Occidental legal positivists. Legalists were interested, like Niccoló Machiavelli in Renaissance Italy, in acquisition and maintenance of power. Politics is in Machiavelli's thought rooted in ethics yet his concern with power dominates the argument in his most known work, *The Prince*. Significantly, the famous treatise on strategy by Sun known as *Sunzi* (孫子) was compiled by a legalist. They are therefore perceived by some researchers as state philosophers rather than jurists or theoreticians of law. On the other hand, one cannot contest that they dealt with the systematic of penal sanctions and the deterrent impact that draconian punishment may have on society. These are definitely legal issues, although the legalists might have been primarily interested in political aspects of legislation rather than in the technicality of law. In it, they correspond perfectly with the European development of legal thought where naturalism and other connected schools of thought dominated until the emergence of legal positivism (Schmid, 1946, p. 15).

2.2 A legal-linguistic approach to the sources of the Chinese law

Chinese legal discourse refers to sources of traditional law for the structure of its arguments. Classical legal sources have been described by Hong Pimo in *Zhongguo Gudai Falü Mingzhu Tiyao* (Synopsis of Classical Works on Law in Ancient China) (1999), by Zhang Boyuan in *Falü Wenxianxue* (Documentary Study of Legal Writings) and in Guo Chengwei's *Synopsis of Major Works on Legal Studies in China and Overseas* (2000). The first fully preserved law code *Lüshu* (《律疏》) is also known as *Gu Tanglü Shuyi* (《故唐律疏議》). This legal text is valuable as it illustrates the process of rationalization in drafting legal texts. *Gu Tanglü Shuyi* has been modified several times. It is divided into two parts, the first part covering general provisions and the

second dealing with special provisions. Next to it, the code of the Sui dynasty of 583 comprises one third of the code of Northern Zhou (564) and the Liang dynasty of 503 (Johnson, 1979). All these codes are built up on the model of the code of Cao Wei or the code of Jin (268), prefaced by Zhang Pei who provided valuable comments and definitions that facilitate our understanding of ancient codes.

One of the fundamental sources for the understanding of the process in which legal Chinese emerged is the study of classical legal writings. The legalist Guan Zhong (deceased 645 BCE) is probably the author of *Guanzi* (《管子》) where *fǎ* (法) is construed as a central point of the structure of the state. Meanwhile, also the eclecticism of the text that includes elements of Confucianism (*lǐ*) and Daoistic thought has been stressed in the research (Rickett, 1965). However, Han Fei (ca. 280–233) is perceived as the most prominent representative and synthesizer of legalistic thought. In his writings, he focused on the already mentioned *fa* as central to the structure of the state. Confucian thought is construed as outdated in these writings, mostly due to the evolution of Chinese state and society, while *fa* is favored. Shang Yang (ca. 390–338 BCE) in *Shangjun shu* (《商君書》) expressed analogous thoughts. Shen Buhai (dec. 337 BCE) as a legalist also stressed formalism of law. Likewise, Li Kui (ca. 400 BCE) authored *Fajing*《法經》(*Law Canon*) that certain scholars perceived as a prototype of Chinese law codes (Pokora, 1959). There, provisions concerning the protection of private property are particularly interesting as they were neglected in many codes that used to focus on penal law. Wang Anshi (1021–1086) as a public official and reformer was responsible for introducing the examination in law for all candidates for public office in 1073. Song Ci (1181–1249) authored the oldest known handbook on forensic medicine *Xiyuan Jilun* (《洗冤集錄》), a compilation of defenses against accusations in penal proceedings (Giles 1924). A special role played the jurist Bao Zheng (999–1062) whose person became known through numerous medieval dramas based on criminal cases (Hayden, 1978). He is also the protagonist of the *Chalk circle* that has been used as a motive by some authors, among them Bertold Brecht, in his *Kreidekreis*. Gongsun Yang wrote *Shangjun Shu* (《商君書》) that is perceived as the oldest legalist treatise in China. Han Fei's treatise on legalist thought known under the title *Hanfeizi*

《韓非子》is however perceived as quintessential for the legalist school. In an epoch closer to our time, Shen Jiaben (1840–1913) excelled especially in his *Lidai Xingfa Kao* 《歷代刑法考》(History of Chinese Penal law) in numerous legislative initiatives both in the area of private law and in penal law that are perceived by scholars as textual precedents of the Civil Law Code of 1929. Deborah Cao (2006, p. 1) also mentioned the translator's Yan Fu work on the conceptualization of Chinese and Western law. Yan Fu distinguished: *lǐ* (禮) – order in nature, things as they are and *fa* (法) for the human made and Western law. Thus, Occidental law can concern *li* (理, order of things), *lǐ* (禮,rites), *fa* (法, human-made law) or *zhi* (制, order) in relevant contexts. Yan Fu's distinction is an illustrative example of attempts to come to terms with the number of concepts related to law. Meanwhile, any analysis of isolated concepts finally proves unproductive as it produces more problems than it can solve.

Traditional Chinese law has been perceived as embedded in the traditional textual heritage of the Chinese culture. Therefore, the examinations for future governmental officials and judges were based on the totality of classical texts, and especially on the interpretation of the classical literary canon rather than on analyses of texts perceived as explicitly legal. However, this view upon legal culture is today as unproductive in China as it is in the rest of the world. Yet, this finding is fundamental to the understanding of ancient Chinese texts that are perceived as legal. What is more, in legal sinology, particularly important in terms of method is the difference between regulatory importance of a legal text and its legal-linguistic status. Often, new legal acts introduce substantial change into the functioning of state and society, yet they reach this goal by using the existing and well-researched legal language. Sometimes, marginal legal acts may introduce legal innovation, and some already outdated legal documents may appear as revealing in legal-linguistic terms. This is, for instance the case, with Chinese-Russian treaties concerning border issues such as the Treaty of Aigun (1858), Treaty of Urga (1860, 1861), Treaty of St. Petersburg (1881) and some others (Veit, 1986, p. 176) that were explored in legal-linguistic research by Yujiro Murata (2016) with considerable results. This example marks the difference between purely legal approaches to law and legal-linguistic approaches that focus upon

the legal discourse which covers the totality of our speaking about law and society. Another example is illustrative of our approach. Recently, on January 1, 2021 the new Chinese Civil Code (*Minfa Dian*《民法典》) came into effect. Also linguistically, it displays fundamental features characteristic of generally accepted concepts of law all over the world. We may assume that it will soon become a linguistic benchmark for the development of modern legal Chinese. In the view of Lihong Zhang (2023, p. 382) the new Chinese Civil Code (CCC) is deeply influenced by Confucianism and Legalism, notwithstanding its terminology borrowed from the Occidental legal science. Zhang sees elements of Confucianism in the integration of ethical principles into the text of the code (Zhang, 2023, p. 370). Furthermore, principles of Legalism are identifiable in the CCC in its attempt to strengthen the authority of rulers (Zhang, 2023, p. 382). The code seems only marginally to reflect some ideals of traditional Occidental civil codes, such as private autonomy and civil rights (Zhang, 2023, p. 377). Underlying principles that are not directly visible in the text of the CCC but need to be identified through interpretation are called by Zhang cryptotypes, which have an impact upon processes in which law is created and applied (Zhang, 2023, p. 366). Zhang's approach is fully in line with our understanding of processes in which the Chinese conception of law emerged in multilayered discursive practices.

3. Languages in the Chinese law

3.1 Explicit role of language in legal argumentation

Already the classical Chinese philosophy recognized the power of legal language (Cao, 2004, p. vii). The legalists stressed that clear and precise laws protect the subjects against the abuse of power by the dominant class (Pinto, 1998, p. 13). Confucian classics dealt with the philosophy of law and ethics, mainly in the form of codes of conduct, rather than with law in the stricter sense of the word cherished by legal Occidental positivism. Especially Confucius's *Analects* (《論語》) include

thoughts, which were fundamental to the shaping of the ideology of the imperial Chinese state. Meanwhile also minor works written in the Confucian tradition such as *Xiaojing* (《孝經》, *Treatise on Filial Piety*) contribute profoundly to the elucidation of basic concepts of the classical Chinese law. The very term of filial piety (孝) is less interesting in its application to family structures than to more complex social structures. Filial piety is an inspiring sentiment that regulates all societal action, especially obedience to authorities (Maspero, 1950). Some questions that are fundamental to law such as why someone should obey someone else or why can someone be perceived as sovereign in a country are analyzed in *Xiaojing* with unique exactness of arguments. Likewise, the element of stability is linguistically instrumentalized in many classical texts. The element of stability is central to the Chinese state (Keller, 1994; Liebman 2014) and avoiding anarchic chaos (*luan*, 亂) is an argument that permeates the Chinese legal discourse even today (Galdia and Liaci, 2016).

3.2 Languages in legal texts in China

For early periods of legal development, the importance of the language of the Han cannot be questioned. Particular importance of the Chinese language was also identified under the Qin (Caldwell, 2018). In ancient times, Chinese was also used as lingua franca in East Asia. In diplomatic relations, it was used exclusively in this region and Chinese translation services were established, for instance in Japan (Mizuno, 2018, pp. 28–30). The Qing Dynasty (1644–1912), which is commonly considered as having established a multiethnic and multilingual empire in the Chinese history, used Manchu (Gorelova, 2002), Han Chinese and other languages in its administration. Based on the study by Murata Yujiro (2016), we may assume that Manchu was maintained as the supreme "national language" until the Qianlong (1711–1799) era, then demised when the Han Chinese assimilated the government, army and people and took over the leading role. During the early years, after Nurhaci (1559–1626) established the Qing dynasty, documents such as edicts, memorials and ceremonial writings were written in Manchu or

in Mongol. During the reign of Emperor Shunzhi (1638–1661) many documents were translated into both Han and Manchu and kept as parallel texts. Translation positions were created in the Grand Secretariat as well as in central and local governments. During the Qianlong reign, due to the gradual disuse of Manchu, the translation positions vacated, and the Grand Secretariat was replaced by the Grand Council, which "would not always make all documents bilingual, but rather many Manchu texts were processed by Manchu councilors and Han texts were processed by Han councilors" (Murata, 2016, p. 111). Even though most soldiers could not speak Manchu by the Xianfeng period (1831–1861), Murata contends that the official status of Manchu was unchallenged in the late Qing. It is because the last Emperor Puyi still received Manchu-Han bilingual education, and the state language was mostly used in the signing of treaties with foreign powers, including the Treaty of Tianjin (1858) and the Treaty of Beijing (1860). Considering its secret communicative role, Crossley and Rawski (1993, p. 71) believe that Manchu "functioned as a security language in military affairs" for most of the dynasty. For instance, some Manchu intelligence reports in a war led by Kangxi (1654–1722) against the Mongols was marked "Don't translate" in Chinese.

In existing sources, it is easy to identify borrowings with legal connotations from Chinese in Manchu such as *wang* for *king* (e.g. in *ama wang* - old king) and *juwan wai* for *ministerial counselor* (Tulisow, 2000, p. 82, 160). Borrowings from Manchu in legal Chinese, unlike borrowings from Manchu in ordinary Chinese, are more difficult to identify. Manchu has its own legal terminology and lexemes related to law that were not influenced by Chinese.[1]

For contemporary developments, the attitude of speakers was decisive to methodological choices in the description of legal Chinese. Researchers focused particularly on the cases or linguistic samples that were identified by Chinese speakers as including legal language. Within this perspective, studies focusing upon the characteristics of legal

[1] Terms such as *kooli* (law), which, for example, comes in the Manchu version of the Great Qing Code (*Da Qing Lüli*) (*Daiqing guruni fafuni bithe kooli)*, *duribun* (robbery), *giyariči* (police officer), *kadalači* (administrator), *amban* (minister, general), *uruše* (excuse), *gasxûtai* (under oath). Meanwhile, mixed syntagmas appear as well, e.g., *ama wang* (old king, i.e. king father). (All examples in Tulisow, 2000).

Chinese emerged along the generally known legal-linguistic patters, used in the tradition of comparative legal linguistics (Mattila, 2017; Kozanecka 2018). Among the patterns interesting for the development of the structure of the legal discourse is phonetically based legal terminology. Meanwhile, attempts to coin legal terminology phonetically were short-lived in Chinese. Neologisms such as *buerqiaoya* (布爾喬亞) for bourgeoisie, today *zichanjieji* (資產階級), *puluolietaliya* (普羅列塔利亞), proletariat, now *wuchanjieji* (無產階級), *kudieda* (苦迭打) coup d'état, now *zhengbian* (政變) are not used any more. Apparently, the lack of reference of their component morphemes to the semantic content of the new coinages made them unpopular, as was the case with *delufeng* that only for a short time functioned as telephone, now *dianhua* (Hagège, 1987, p. 64). Hagège refers to Zheng Jian who already in 1955 in a paper presented during a conference on problems of standardization of terms in modern Chinese wrote: "When there are two or more terms borrowed from foreign languages, it is necessary to choose one and abandon the others… Preference in choosing terms should be made to those terms that indicate meaning to the detriment of those which indicate sound" (our translation). Therefore, in the translation of many terms of natural sciences the phonetical method, that is, transliterations, are used because they do not have clear semantic meaning as many of their social science counterparts do. Some natural science terms also use semantic translation. Recently, *probiotics* 益生菌 and *prebiotics* 益生元 appeared in print as convincing Chinese translations. For the modern use of language in the Chinese legal discourse it is interesting to refer to this specific feature. Another, rarely researched topic related to the linguistic diversity of China is the role of legal Latin in Chinese legal texts (Wang, 2006; Zhang, 1989; Tsou and Chin, 2021).

3.3 The Chinese legal language: General interpretation issues

For legal Chinese, its level of linguistic complexity was discussed in the legal-linguistic research, and it remains a recurrent issue in the

research. Some researchers stressed that legal Chinese is rather simple, especially when compared with legal English (Cao, 2004). Cao made regularly use of the comparative perspective when investigating the Chinese legal language. She found out that the legal Chinese when compared with legal English appears ordinary and plain (Cao, 2004, p. vii). She stressed, however, that the lack of complexity in linguistic utterances does not necessarily make them easy to apply. This finding is also in accordance with pragmatic approaches to the legal language where legal-linguistic operations such as interpretation are perceived as structural constants of law that cannot be overcome with linguistic plainness (Galdia, 2014, p. 246). Cao discovered in this context the imprecision of the Chinese legal language that causes more interpretive problems than many complex formulations in English legalese. Cao (2008) also discussed ambiguity and vagueness issues in the legal Chinese in a cross-linguistic perspective. Other researchers perceived ambiguities in the legal language as a particular problem. Likewise, the quality of statutory legal texts has been viewed differently in the research. Some scholars perceive them as complicated, others as relatively simple[2]. The simplicity-thesis seems problematic in the sense that it confuses the simplicity of regulated matters with linguistic simplicity. It may be right that matters regulated in the Chinese codes since the Qin until the Qing were relatively simple and that only casuistry was responsible for the impression of their particular complexity. They regulated largely penal matters, for instance also details such as sanctions for unpermitted absence from the garrison by a soldier (Trauzettel, 1986, p. 276). For instance, the Institutes of the Yuan Dynasty (*Yuan tien chang* 元典章) include this type of offences against military discipline meticulously divided in twelve chapters (Franke, 1970). They may give raise to claims about particular

[2] Trauzettel (1986, p. 274) wrote about the simplicity of Mongolian and Chinese legal texts: „Für die mongolische wie die chinesische Rechtsordnung war es kennzeichnend, dass sie relativ einfach ausgestaltet war. Der Grund hierzu liegt in der segmentären Struktur der Gesellschaft und deren geringer funktionaler Differenzierung.“ (trans. Characteristic of the Mongolian and of the Chinese legal orders was that they were relatively simply designed. The reason for it is the segmentary structure of society and its limited functional differentiation.) Likewise, Huotari and Seppälä (1990, p. 103) mentioned that it was typical of China to attach less importance to the development of judicature and written law than was the case in other legal cultures.

complexity in legal texts. Yet, for legal linguists, complexity is textual, not regulatory. Due to the ubiquitous presence of legal-linguistic operations, application problems in the area of law used to emerge independently of lexical or syntactic complexity of legal rules. Therefore, the problem of complexity must be reformulated in legal sinology, and one would have to ask how textual complexity can increase or decrease problems in statutory application. However, in this sense the Chinese legal language does not differ from other legal languages as it displays exactly the same legal-linguistic problems in the application of statutes.

3.4 Signs with legal reference: Overinterpretation and misinterpretation

Additionally, strong interest has been shown in the interpretation of the Chinese script as basis for a better understanding of Chinese legal concepts. This interest is truly unique due to the structure of Chinese script (Feifel, 1959, p. 6, 93). It is facilitated by the existence of dictionaries of signs that is conditioned by the structure of the Chinese writing system. This approach, however, may put the process of reconstruction of ancient Chinese law into jeopardy as it may over-interpret the signs in the sense of essentialist claims. For instance, the sign *lǐ* (理, law, rationality) has the sign *wang* (王, king) as its radical. It would however be premature to interpret *lǐ* as a law set by the king. The sign *wang* (王, king) that is constituted of three horizontal strokes connected with a vertical stroke was for its part interpreted as displaying the idea of mediating between higher natural and divine powers and society placed below them (*tianxia* 天下). Likewise, in Chinese *heli* (合理 composed of *he* – be in line and *ll* – natural, law, meaning 'reasonable') corresponds with *hefa* (合法 composed of *he* – be in line and *fa* – (juridical) law, meaning 'legal' (Timoteo, 2014, p. 98; Timoteo, 2010; Kozanecka, 2016). Furthermore, one of the three signs of *guo* (国, country) might be interpreted as displaying the ruler (王) surrounded by borders of his territory that set limits on his exercise of power. One could even see in this sign the source of inspiration or

reflection upon the concept of sovereignty. Yet, such interpretation may also overstretch the epistemological potential of the sign (Cao, 2004, p. 33, 42, 107). Similarly, the Chinese sign *qiu* (囚) (prison, prisoner) shows a person enclosed. In fact, inner systemic motivation for the construction of a Chinese sign will often be available, yet epistemologically such motivation has its limits as it is based on associative rather than analytic methods (May, 1980). Therefore, Chinese signs that refer to law remain abstract; they are as arbitrary as concepts expressed in the Latin script. Meanwhile, their composition may suggest conceptual connections that are purely arbitrary and motivational. The origin of signs is another challenge, as the best-known oldest form of a sign is not necessarily the original one. Additionally, the relative value of analyzing the structure of signs is their regular change that manifests most recently in the introduction of the system of simplification of signs in the Peoples' Republic of China. In sum, interpreting the structure of signs to understand the concepts behind them is a misleading practice. Signs, especially the signs of law, acquire meaning in discursive formations constructively. There is no essential value in the signs of law. Meanwhile, the motivation of first writers that renders the sign more comprehensible is definitely part of such attempts to come to terms with the language of law. Another example of legal-linguistically relevant material are the Chinese signs for numbers. In the Chinese language, particular signs exist to render numerical magnitudes in official documents such as contracts and cheques, (cf. 壹、貳、參、肆、伍、陸、柒、捌、玖、拾、佰、仟). Signs may also clarify legal meaning that may get blurred in verbal communication. A legal term, for instance 法治 (*fazhi*, rule *of* law) may be easily confused in spoken Mandarin with the rule *by* law, which can be termed as 法制(also pronounced *fazhi*). Therefore, the conceptual interpretation of signs is a traditional part of the Chinese discourse about law. It displays methodical advantages and disadvantages that are clarified in legal-linguistic research.

3.5 Modern and contemporary conceptions of law in China: Diversities and varieties

The Chinese linguistic landscape is not uniform in terms of the concepts of law. In Hong Kong, the concept of law is the one of the English common law. Taiwan is committed to civil law traditions. Mainland China follows the Communist conception of state and law inherited from the classics of Marxism and redefined in recent developments of ideological fundamentals of the Chinese state (Zhang, 2023, p. 371). The Chinese state evolved in that it passed from the conception of law *tianfu* (天賦), i.e., coming from the heaven to the state-given (*guofu*, 國賦) law. (Heuser, 2005, p. 152). In it, it largely follows the general tendencies in the world and reflects the development in Europe where natural law conceptions evolved over time to positive conceptions of a law coming from parliaments. During the first Republic (1911-1949) the law and the judicial institutions have been formally occidentalized. Five codes covering the traditional legal areas of the Western law have been promulgated between 1927 and 1937 (Fromont, 2005, p. 11). This modern law did not affect the rural China where traditional law continued to govern all relations which would be perceived in the West as legal. Taiwan has preserved at least partially the law of the First Chinese Republic (Fromont, 2005, p. 167). The Communist Revolution of 1949 brought doctrinal thought of Soviet origin. This aspect of the law which may be called socialist law is effective in several ways. First, the interpretation of legal notions takes place towards the background of the Marxist ideology of a communist state (Zhang, 2023, p. 381). Second, the Government intervenes in the form of decrees and other administrative decisions which do not have the form of statutes and are therefore less accessible to the persons concerned or interested. The future will show how stable the elements of the socialist law will be in the evolving socio-political reality of Mainland China. Overall, from the perspective of legal linguistics, it would be difficult to speak today of a Chinese concept of law that would display fundamental differences in one way or another from other, mainly Occidental conceptions.

Conclusion: Legal-linguistic and semiotic understanding of traditional Chinese law

Chinese law appears in the contemporary legal-linguistic approach as a discourse about forming and applying legal rules. It combines interests of Occidental researchers and perspectives of Chinese specialists and approaches the concepts of Chinese law from the comparative point of view. Legal linguistics that focuses upon language use in the sources of reference of the legal discourse elucidates layers of discourse that refer to different problems in the use of language about the exercise of power in society. The language that coined the discourse differed both diachronically and synchronically as differed intellectual influences and their literary sources all over different epochs. It is therefore a complex discourse that unites professional and non-professional speaking about law in linguistically diversified landscapes that comprise the geography of Chinese language influence. Chinese law emerged as a complex phenomenon that came about in multilayered discursive processes in which texts, languages and concepts intertwined to form a discourse about the law in the Chinese language landscape. It seems appropriate to point out that the comparative view upon the Chinese law is nowadays best situated in a broader perspective which includes the cultural, linguistic and intellectual-doctrinal contexts. Towards this conceptual background, the Chinese law as a particularly heterogeneous legal system becomes better understandable without the involvement of stiffening systematic schemes of traditional comparison that isolated legal concepts when discussing the Chinese law. In our study, an approach rooted in legal linguistics enabled to shape a view upon the discourse about Chinese concepts of law that reaches beyond traditional analyses present in legal history, legal philosophy and general theory of law.

Conflict of interest

The authors declare that there is no conflict of interest.

AI Use statement

AI was not used in the paper.

Statement of Contributions

The authors contributed equally to the preparation of the manuscript.

Bibliography

Caldwell, E. (2018). *Writing Chinese Laws. The Form and Function of Legal Statutes Found in the Qin Shuihudi Corpus*. Routledge.

Cao, D. (2004). *Chinese Law. A Language Perspective*. Ashgate.

Cao, D. (2006). Key Words in Chinese Law, In: Wagner, A., Pencak, W. (eds.), *Images in Law*, Ashgate, 35–50.

Cao, D. (2020). Desperately Seeking 'Justice' in Classical Chinese. On the Meaning of Yi. *International Journal for the Semiotics of Law*, *32*, 13–28.

Clark, D. (2020). Anti Anti-Orientalism, or Is Chinese Law Different? *American Journal of Comparative Law*, *68*, 55–94.

Clarke, D. C. (1996). Methodologies for Research in Chinese Law, *University of Columbia Law Review*, *30*, 201–209.

Crossley, P. K. & Rawski, E. S. (1993). A Profile of the Manchu Language, in: Ch'ing History. *Harvard Journal of Asiatic Studies*, *53/1*, 63-102.

Escarra, J. (1936). *Le droit chinois*. *Conception générale*, *aperçu historique*. Henri Vetch.

Feifel, E. (1959). *Geschichte der chinesischen Literatur mit Berücksichtigung ihres geistesgeschichtlichen Hintergrundes. Dargestellt nach Nagasawa Kikuya: Shina Gakujutsu Bungeishi*. (2nd ed.), Wissenschaftliche Buchgesellschaft.

Franke, H. (1970). *Zum Militärstrafrecht im chinesischen Mittelalter*, Bayerische Akademie der Wissenschaften.

Fromont, M. (2005). *Grands systèmes de droit étrangers*, (5. ed.), Dalloz.

Galdia, M. (2014). *Legal Discourses*. Lang.

Galdia, M. & Liaci, A. (2016). Fairness as Interpretive Device in Law? An Analysis of Discursive Practices in the Recent Conflict about Voting Rights in Hong Kong and their Anchorage in Argumentative Practices in East Asia. *Comparative Legilinguistics*, *26*, 125–150.

Giles, L. (1910). *Sun Tzu on the Art of War*. *The Oldest Military Treatise in the World*. Luzac & Co.

Giles, H. A. (1924). The Hsi Yüan Lu or "Instructions to Coroners." *Proceedings of the Royal Society of Medicine*. *17*, 59–107.

Gorelova, L. M. (2002). *Manchu Grammar*. Brill.

Hagège, C. (1987). *Le français et les siècles*. Odile Jacob.

Hayden, G. A. (1978). *Crime and Punishment in Medieval Chinese Drama. Three Judge Pao Plays*. Cambridge, Harvard University Press.

Heuser, R. (2005). Gegenwärtige Lage und Entwicklung des chinesischen Rechtssystems. Eine Skizze. *Verfassung und Recht im Übersee*, *38*, 137–153.

Huotari, T.-O. & Seppälä, P. (1999.) *Kiinan kulttuuri* (3 ed.), Otava.

Johnson, W. (1979). *The T'ang Code*, vol. I. *General Prnciples*. Princeton: Princeton University Press.

Keller, P. (1994). Sources of Order in Chinese Law. *The American Journal of Comparative Law*, *42*, 711–759.

Kozanecka, P. (2016). Chińska terminologia prawna z zakresu prawa własności, *Comparative Legilinguistics*, *25*, 7–25.

Kozanecka, Paulina. (2018). Chinese Legal Terminology in European and Asian Contexts Analysed on the Example of Freedom of Contract Limits Related to State, Law and Publicity, *Studies in Logic, Grammar and Rhetoric*, *53* (66), 141–162.

Liebman, B. L. (2014). Legal Reform: China's Law-Stability Paradox, *Daedalus*, *143* (2), 96–109.

Li, L. (2015). Translation of Chinese Legal Concept of "qinqin xiangyin", *International Journal for the Semiotics of Law*, 28(1), 177–188.

Maspero, H. (1950). *Le Taoïsme et les religions chinoises*. Gallimard.

Mattila, H. E.S. (2017). *Vertaileva oikeuslingvistiikka*. *Juridinen kielenkäyttö, lakimieslatina, kansainväliset oikeuskielet*, (2nd ed.) Alma Talent.

May, R. (1980). Zur Problematik des chinesischen Rechtsverständnisses. Schritte zur sprach-kritischen Fundierung einer vergleichenden Rechtstheorie im interkulturellen Forschungsbereich. *Archiv für Rechts-und Staatsphilosophie, LXVI*/2, 193–205.

Mizuno, M. (2018). Interpreting in Criminal Cases in Japan: Past, Present, and Future Prospects. *Comparative Legilinguistics*. *International Journal for Legal Communication, 36*, 25–46.

Murata, Y. (2016). The late Qing "national language" issue and monolingual systems: Focusing on political diplomacy. *Chinese Studies in History*, *49*/3, 108–125.

Pan, J. (2011). Chinese Philosophy and International Law. In: *Asian Journal of International Law*, *2*(2), 233–248.

Perry, E. J. (2008). Chinese Conceptions of Rights: From Mencius to Mao – and Now. *Perspectives of Politics*, *6*, 37–50.

Pinto, R. (1998). Piété filiale et Droits de l'homme. In: *Confucius*, *Le livre de la piété filiale*, Seuil.

Pokora, T. (1959). The Canon of Laws by Li K'uei. A Double Falsification. *Archív Orientální*, *27*, 96–121.

Rickett, W. A. (1965). *Kuan-tzu*: *A Repository of Early Chinese Thought*. vol. I. Hong Kong University Press.

Schmid, von, J. J. (1946). *Wijsbegeerte van het recht*. (3d ed.), N.V. Servire.

Seppänen, S. (2020). After Difference: A Meta-Comparative Study of Chinese Encounters with Foreign Comparative Law. *American Journal of Comparative Law*, *68*/1, 186–221.

Sikora, A. (1978). *Spotkania z filozofią*. (5th ed.), Iskry.

Sun, X. (2007). Die Rezeption der westlichen Zivilrechtswissenschaft und ihre Auswirkung im modernen China, *Rabels Zeitschrift*, *71*, 644–662.

Timoteo, M. (2010). Vague Notions in Chinese Contract Law: The Heli Standard in Court Practice, *European Review of Private Law*, *18*, 939–951.

Timoteo, M. (2014). Il diritto per immagini. Aspetti del linguaggio giuridico cinese contemporaneo, In: Pozzo, B. (ed.): *Lingua e Diritto*: *Oltre l'Europa*. Giuffré Editore, 73–101.

Titarenko, M. L. (ed.) (1994). *Kitajskaja filosofija*. *Enciklopedicheskij slovar*. Mysl.

Trauzettel, R. (1986). Die Yüan-Dynastie, In: Weiers, M. (ed.) *Die Mongolen. Beiträge zu ihrer Geschichte und Kultur*, Wissenschaftliche Buchgesellschaft.

Tsou, B. K. & Chin, A. (2021). *Common Latin Terms in Hong Kong Legal Chinese.* City University of Hong Kong Press.

Tulisow, J. (2000). *Język mandżurski*. Dialog.

Upham, F. K. (1990). *Introduction to East Asian Legal Systems*. Boston College Law School.

Vandermeersch, L. (1965). *La formation du legisme. Recherche sur la constitution d'une philosophie politique de la Chine ancienne*. École Française d'Extrême-Orient.

Veit, V. (1986). Von der Clanföderation zur Volksrepublik. In: Weiers, M. (ed.) *Die Mongolen*. *Beiträge zu ihrer Geschichte und Kultur*. Wissenschaftliche Buchgesellschaft, 155–180.

Wallacker, B. E. (1986). Chang Fei's Preface to the Chin Code of Law. *T'oung Pao*, *72* (2), 229–268.

Wang, Z. (2006). The Roman Law Tradition and Its Future Development in China, *Frontiers of Law in China*, *1*, 72–78.

Watson, B. (1963a). *Hanfei Tzu*. *Basic Writings*. Columbia University Press.

Watson, B. (1963b). *Mo Tzu*. *Basic Writings*. Columbia University Press.

Zhang, L. (2023). A Brief Analysis of Cryptotypes in the Chinese Civil Code: Legalism and Confucianism, In: Michele Graziadei, Lihong Zhang (eds.) *The Making of the Civil Codes. A Twenty-First Century Perspective*, Springer Nature, 365–383.

Zhang, Q. (trans.). (1989). *The Institutes of Justinian*. Beijing: The Commercial Press.