

LINGUISTIC HARMONIZATION AND LEGAL PLURALISM IN ENGLISH-CHINESE CONTRACTS DOCUMENTED IN A TERMINOLOGICAL COMPENDIUM

Review of Chan Ho Yan, 《两岸三地合约法主要词汇》 Liang An San Di. Heyuefa Zhongyao Cihui. Key Terms in Contract Law of Hong Kong, Mainland China and Taiwan, City University of Hong Kong Press, 2014, pp. 282.

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Dr. Ho Yan Chan's Key Terms in Contract Law of Hong Kong, Mainland China and Taiwan appeared in 2014 in the series Falü Fanyi Xilie (法律翻译系列) edited by the City University of Hong Kong Press, which focuses on problems in legal translation. The book aims, as a first step in a more ambitious project that comprises the Chinese and the English legal languages in comparative perspective, to identify and to clarify the fundamental legal terms that are relevant to translation of contracts from English into Chinese.

The volume under scrutiny concerns basic terminology of contracts in a broader textual setting. It contrasts English common law terminology and its equivalents in the legal language of Hong Kong that is dominated by the common law tradition, and the varieties of legal Chinese of Mainland China and Taiwan that lean more towards legal languages of Continental Europe, yet also include elements of traditional Chinese law, as is the case in Taiwan. This is also the reason why every main English language entry in the first part of the handbook is contrasted with distinctively marked three terminological equivalents taken from Hong Kong, Mainland China and Taiwan legal terminology.

In its methodical approach, the work addresses one of the most important issues in legal Chinese studies: the normalization of legal terminology. Existing legal dictionaries of the Chinese language abound in multiple material samples and terms without reference to their actual use by professionals. Users of such works may in fact be writing Chinese, yet not necessarily legal Chinese that may be their point of concern. Dr. Chan's work provides the user with professionally tested and modern legal Chinese

that reflects the development of legal English. This task is enormously complex, as Chinese legal terminology is multiple and develops today at least in a two-fold perspective between civil law and common law. As Chinese law embraces today three formally independent legal systems of Mainland China, Hong Kong and Taiwan, its language is as manifold as are these systems, yet also related legal systems like the one of Singapore (cf. Galdia 2014, 354). Work on the terminology of Chinese law is therefore a challenge, especially when it is undertaken in a contrastive perspective based on English legal terms (cf. Grzybek 2013, 17).

The work establishes the reference between the systems in that it approaches legal terms in two different parts. In the first part, a basic term in legal English is introduced and it is related to three Chinese equivalents in Hong Kong, Mainland China and Taiwan legal languages. For instance, *contract* is rendered in Hong Kong terminology as *heyue* (合约), then for Mainland China as *hetong* (合同) and for Taiwan as *qiyue* (契约). In addition, broad textual quotations and references to common law, case law, and legal literature provide information about the meaning of the English legal term in the Chinese language. This is an innovation particularly valuable to Chinese translators, as terminological databases frequently provide the relevant legal information in the source language and not in the target language. This method helps the translators understand the common law, yet it underestimates their needs for contextually well founded linguistic knowledge in the target language (cf. Mattila 2013, 23). The approach adopted in the handbook fits perfectly such needs of professionals who have to acquire knowledge about law and about its linguistic representation in the target language.

In the second part of the handbook, English legal terms, and occasionally also some Latin expressions used in the common law of contracts, are contrasted with the help of a list that comprises the entry English terms and their equivalents in the three Chinese legal languages of Hong Kong, Mainland China and Taiwan. While the first part introduces sixteen key terms of contract law with explanations coming from the respective legal systems, the second part is largely an English-Chinese glossary to aid actual translation work. The particularity of this second part of the handbook are the references to and the quotes from legal acts in which the Chinese terms are used. For instance, our initial example, the *contract* of the common law, is rendered in the part two with the Chinese terms whose textual origin is documented through references to the legislative acts and quotes from them. Thus, the *contract* as a term of the common law that has been explained in part one in the Chinese language is linguistically characterized in part two with the help of its linguistic mirror image in the Chinese legal texts. At this point, the legal term is exhaustively described both as an English and as a Chinese term. Meanwhile, one might ask whether the two parts could not be integrated. On the one hand, the English entries that structure the whole book differ only sporadically from each other in both parts. On the other side, the choice of Chinese equivalents in part one is in most cases fully understandable only when the corresponding entries in part two have been studied. Therefore, the impression may come up that a lexicological field that belongs together has been split in the book in two parts. Doubtless, it is also evident that the integration of both parts of the handbook

would make every entry less transparent, yet the undersigned as a user of the book would be ready to accept this inconvenience for the sake of preservation of intertextual reference. However, the structure proposed by the author is coherent and a system of references binds entries of part two to entries in part one. It greatly facilitates the comparative terminological work that might be undertaken for research purposes and is definitely also helpful for practical work of translators.

The work is called in Chinese *cihui* (词汇), a terminological handbook. Actually, it is much more. Seen in its entirety, it presents common law and Chinese contract law from a language perspective. This approach has been initiated in the Chinese legal linguistics by Deborah Cao (2004, 2006). The author also refers to this approach when discussing, although briefly, the methodological fundamentals of her work. Methodologically, the work is clearly a progress in Chinese terminological research as it goes beyond listing of legal terms out of context as is the case with most legal dictionaries. It introduces the English and the threefold Chinese legal terminology in their textual embeddedness in legal texts. These texts are identified for the common law basically as precedents and rendered in Chinese summary translations that include the most salient terms in English. This feature of the handbook is particularly helpful because it does not only refer the user to the legal and linguistic source of the English legal term. It also provides the Chinese text that the user – translator or student – badly needs in order to render the English text that is made understandable through textual explanation. Regularly, better understanding of legal texts can be achieved by reference to sources and it is done frequently in modern lexicographical on-line and off-line works. Meanwhile, the translation problem is not fully solved when comprehension is achieved because the translator needs next to his or her understanding of a concept also a term that represents language in law. Briefly put, the question is not only to understand what a legal notion such as *promissory estoppel* is about in the common law but also to express it with a Chinese term. The approach adopted in the book is very efficient in this respect. Additional references and quotes from the legal acts of the three Chinese-language jurisdictions facilitate the understanding and the contextualization of terms. The work establishes also an order in terminology that regularly tends to disappear in multilingual and multilegal complex textual contexts such as *contracts*. The work goes far in its attempt to set up the right context for the perception of legal English abroad and does not hesitate to go to the Latin legal-linguistic roots of many fundamental common law legal terms. As a work on the legal language it is both phraseological as it presents terms in their immediate context and textological because it provides the broader textual settings of terms in law, both in English and in Chinese languages. The methodology of the work is innovative and also practically helpful. When used in future similar works, it offers a prospect of uncovering the lexical fundamentals of the legal language that is central to English-Chinese translation.

The book, which is written in traditional Chinese characters, contributes essentially to the harmonization of the terminological use in the Chinese legal language, especially in the context of translations from and into English. It shows that harmonization of language use in multiple legal systems and legal traditions is possible and achievable when effort and inventiveness are not avoided. The book is also welcome as a contribution to comparative law as it shows the modern Chinese law bare

of unnecessary historical dress that should appeal to readers by apparent exoticism or legal particularism which disappeared from laws of East Asia more than a century ago. Clearly, explicitness and modernity are among the most characteristic features of the book. One may therefore hope that it would pave the way towards modernization in lexicographic undertakings, not only in the area of the Chinese and the English legal languages.

Users rarely read lexicographic works in their entirety as such books are construed for casual reference only. Meanwhile, Dr. Chan's terminological compendium is a book that should be read and studied from its first to its last page. The thorough study of the book bridges the space between two textual shores where also the three Chinese legal language areas have to be positioned as indicated in the Chinese title of the book. The book manifests that terminological work in the area of law does not need to be sterile and intellectually uninspiring. The book can therefore be unconditionally recommended to translators and scholars interested in the methodologically innovative portrayal of the Chinese and English legal languages and their critical linguistic analysis.

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