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UNIFORM OR PLURICENTRIC LEGAL CHINESE?

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A review of 《兩岸三地侵權法主要詞彙》(Liangan Sandi Qinquanfa Zhuyao Cihui). Key Terms in Tort Law of Hong Kong, Mainland China and Taiwan (City University of Hong Kong Press, 2015) 310 pages

and

《兩岸三地公司法主要詞彙》(Liangan Sandi Gongsifa Zhuyao Cihui). Key Terms in Company Law of Hong Kong, Mainland China and Taiwan (City University of Hong Kong Press, 2017) 357 pages, both by Ho-yan Chan.

In *Comparative Legilinguistics* vol. 25 / 2015, pp. 59 – 63, I reviewed the first volume in the project of legal-linguistic terminological compendia 《兩岸三地》(*Liang An San Di*) on Key Terms in Contract Law of Hong Kong, Mainland China and Taiwan by Dr. Ho-yan Chan from the Chinese University of Hong Kong in Shenzhen. In

this note I will deal with two follower volumes that appeared recently in the series《法律翻譯系列》(*Falü Fanyi Xilie*), both edited by City University of Hong Kong Press. As also the reference to the first volume appears to me meaningful I will refer in the following to contract terminology as vol. I, to tort terminology as vol. II and to company law terminology as vol. III.

The two follower volumes in the series are structured like the first book on contract terms around high frequency terminology called *key terms*. For torts, as for contracts, the task of key terms selection clarifies in the use of terms in the century-old legal doctrine. Meanwhile, for company law key terms are more difficult to identify as borders of this area of law are less clearly determined. Company law may include aspects of corporate governance and corporate finance depending on the scope of the underlying legal doctrine. The author adopts a broad and an integrative approach to the subject and delimits it by practical needs of translators rather than by doctrinal determinations and she includes also areas such as insolvency and corporate social responsibility. Therefore, the volume of corporate law covers as key terms *company* yet also *listed issuer's obligations to disclose* (上市發行人披露責任).

As in vol. I, a key term in legal English is introduced and related to three Chinese language equivalent groups of Hong Kong, Mainland China and Taiwan also in the here reviewed vol. II and III. For instance, *tort* in vol. II is rendered as a key English language term as *qinquan* (侵權) for all three groups, *negligence* as key term is rendered for Hong Kong as *shuhu* (疏忽) and for the two other groups as *guoshi* (過失). Main reference is made to Hong Kong terms as they directly match the English common law terms being their absolute equivalents (cf. Chan 2015: 336). After every key term the English terminology relating to it is analysed, described, and provided with Chinese functional equivalents, again in three groups of Hong Kong, Mainland China, and Taiwan terms. For instance, *negligence* as key term constitutes a semantic field comprising *duty of care*, *causation*, *reasonable care*, *foreseeability*, *the thing speaks for itself*, *presumption or inference of negligence* or *due to a cause not involving negligence on his part* etc. At this point, the choice of terminology in broader context is steered by translation problems into Chinese and the method is very efficient in this respect. In the second part of every volume, English language legal terms are contrasted with corresponding Chinese language terms, again divided into three

groups, for instance the English key term *third party* is rendered for Hong Kong as *disanfang* (第三方) and *disanzhe* (第三者), for Mainland China as *disanren* (第三人), and for Taiwan as *disanren* (第三人). After every entry a quote from the respective legislation is provided as a lexicological basis for the existence of the term and a justification of its choice.

As already mentioned in the previous review, legal Chinese embraces a polycentric / pluricentric terminology. Due to historically determined discontinued development in the Chinese language area uniformity in legal terminology cannot be expected. Main centres of the development of the Chinese legal terminology are: Mainland China that is comitted to the civil law tradition, Hong Kong that follows the common law, and Taiwan that regularly reflects Chinese legislation and its legal language as well as the language and legal acts of the first Chinese republic. Terminological pluricentrism may be treated in different ways. It can be taken for granted and be marked in specialized dictionaries accordingly. This is the case with legal German in German speaking countries and with legal English in the English speaking world (cf. Kubacki 2015). It may also be portrayed in isolation from other varieties as is the case for Hong Kong legal terminology in the dictionary prepared by the Hong Kong judge Patrick Chan (2005). Meanwhile, pluricentric legal language may also give rise to attempts at uniformization. The first approach is linguistic, the other is the domain of legal linguists and legal comparatists who not only research but also shape the legal language. All three lexicographic undertakings that are reflected upon in this review belong to the legal-linguistic approach to pluricentric legal terminology. They also pave the way to the uniformization of legal Chinese terminology.

For the purposes of legal linguistics it is decisive to acknowledge that linguistic pluricentrism can encompass the standard language as well as the specialized language (Galdia 1999, Kubacki 2014: 172). Chinese legal terminology definitely developed in at least three largely independent centers, if the developemnt in Singapore is set apart.When the legal language as a language for special purposes is concerned, its pluricentric nature is made plain by all three works by Dr. Chan. Linguistic pluricentrism can be researched also in relation to lexicographic works (Kubacki 2015: 33). The focus of the linguist is centered on the tasks of identifying terminological varieties and marking them appropriately in dictionaries. Yet, the legal-linguistic

concern in this area may go further and this step is illustrated by the works of Dr. Chan. Unlike the strictly linguistic approach, the legal-linguistic approach may comprise beyond codifying and quantifying terminology also aspects of linguistic policy. They encompass, yet are not limited to, creative measures and attempts at shaping a more uniform terminology. Streamlining terminology is one of such possible methods of uniformization. Special terminology always emerged towards the background of lexical diversity. When shaping the basic terminology of an area of law there will always be plenty of choices for instance between *company*, *corporation*, as well as the more general terms such as *enterprise* and *undertaking*. Terminology 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/Fu 2017: 101 – 130). As Hong Kong law is developed in close application of the English common law the English terminological tradition is stressed in it. For instance, the term *company* is listed as key term, but *corporation* (a term used predominantly in the US law) appears only in derivative forms such as *corporate finance* (vol. III, p. 214) or *corporate governance* (vol. III, p. 215). In the Chinese equivalents of both last terms (公司 *gongsi*) is proposed as a notional counterpart of both legal terms. The dilemma at the bottom of the problem is that linguists are reluctant to shape language as their professional ethics obliges them to record and to analyse rather then to create language. This self imposed limitation might be also the reason of a relatively weak social impact of linguistics as a subject upon society at large. A more courageous approach that is documented in the three volumes in respect of the Chinese legal language can only be supported.

As mentioned, normalization and uniformization of legal terminology make part of legal-linguistic activities as this variety of language rarely develops spontaneously and it needs some institutional support to function efficiently in processes of professional legal communication. Sometimes such processes may be strictly institutional and supervised in terminological commissions, sometimes they may become effective as individual initiatives, as is the case with the three volumes reviewed here. This activity can be exercised by recommendations, for instance concerning the Chinese equivalents for *tort*. The legal linguist could recommend *guoshi* (過失) to become a general term as *shuhu* (疏忽) has a somehow colloquial connotation of daily carelessness as in *Zhe ren tai shuhu le*

(這人太疏忽了) *This man is too careless* or to make other, even contrary recommendations as *guoshi* (過失) may also be used in some colloquial contexts. This proceeding also marks distinctively the descriptive activity of a linguist and the normative activity of a legal linguist.

Some key terms in torts, for instance *tort* / *delict* that is called *qinquan* (侵權) are surprisingly unproblematic in all three groups. Of course, this terminological equality masks the difference in the structure of concepts behind the term in common law and in civil law. This difference is essential to legal-lexicographic undertakings (Mattila 2017: 36), yet it does not always manifest itself visibly in dictionaries. This principle is particularly important for the structure of the three analysed volumes because it predetermines the structure of semantic fields emerging around the key terms. As the legal terminology of English common law was chosen as terminological basis for the whole project, terms accompanying the key term depend strictly on this choice. For instance, *battery* and *assault* (vol. II, p.161), *false imprisonment* (vol. II, p. 171) or *nuisance* (vol. II, p. 115) owe their presence in the semantic field due to the mentioned choice. This structural challenge is somehow balanced by occasionally presented terms having their origin in the civil law such as the German *unerlaubte Handlung* (vol. II, p.11), *Gefährdungshaftung* (vol. II, p. 45), or the Russian *moralnyi vred* (vol. II, p.12). The common law term *Act of God* (vol. II, p. 41) rendered as *tien zai* (天災) must by ideological necessity be split in two terms in Chinese and is then (vol. II, p. 187-188) referred to as *buke likang* (不可抗力) for Mainland China and *tien zai* (天災) for Hong Kong and Taiwan.

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, the volumes include, especially in the book on Company law also broader syntagmas and other phraseologisms such as *Contracts made before Company's Incorporation* (公司成立為法團前訂立的合約) as key terms. Such terms easily develop to phraseologisms, cf. *piercing corporate veil* (揭開公司面紗, vol. III, p. 31).

The process of globalization of law engenders universal legal language. In all three terminological areas covered by the discussed volumes the emergence of globalized language of law is visible, for instance in vol. III p. 17 (*yi ren gong si* 一人公司) *one-man company*.

Unlike in some other countries no attempt is made in Chinese speaking countries to develop originally coined terminology based on conceptual borrowings only. It is also interesting to note that in the legal Chinese there is no tendency towards developing phonetic borrowings from other languages as is the case in the terminology of natural sciences.

In streamlining the Chinese terminology the author is committed to the plain language drafting style. This approach reflects the risk of emergence of Anglicized Chinese as *shadow director* (影子董事, vol. III, p. 54) or *zero transaction costs* (零交易成本, vol. III, p. 14), and the risk of linguistic arbitrariness, i.e. everyone writes his own legal Chinese as well as the risk of terminological diversity, including double or triple legal Chinese terms.

As all three volumes are printed in traditional Chinese characters, also Mainland China's terminology is rendered in them in the traditional script. For the daily needs of translators and linguists from outside the Chinese speaking region it might however be helpful to supply the simplified characters to the traditional ones at least once when they appear for the first time in the entry bar of the headline of each main chapter of the volume. Some Chinese – foreign legal language dictionaries are very formalistic in this respect (cf. Köbler 2002) and indicate all entry words in both simplified and traditional characters even in those multiple cases when there is no difference in writing. This rigid method overburdens the dictionary and is not helpful for the users. It seems however that reducing the demand to providing the other writing variety at least once in the text would be of practical importance. Understandably, also, the reviewed volumes do not include *pinyin* transcriptions of the key terms as they are construed for users with native or native-like competence in Chinese. Meanwhile, as they also might be used outside the Chinese speaking region occasional application of *pinyin* for key terms could facilitate the use of all three works for non-native speakers of Chinese.

A volume on Property Key Terms would be in my view a meaningful follow up in the series as some researchers in translation studies signal particular terminological problems in this area (cf. Kozanecka 2016: 23). I can warmly recommend all three volumes for practitioners and theoreticians of law and its language wherever there is interest and readiness to deal with the intricacies of the Chinese legal language.

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