

**The Fourth International Conference  
On Law, Language and Discourse (LLD)**

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## Preface

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

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

The MALL consists of the following important members: President King Kui Sin, Hang Seng Management College, Hong Kong; Secretary General Dr. Le Cheng, Zhejiang University, China; Vice Presidents Dr. Le Cheng, Zhejiang University, China; Professor Craig Hoffman, Georgetown University Law Center, USA; Professor Lijin Sha, China University of Political Science and Law, China; Professor Joseph-G. Turi, International Academy of Linguistic Law, Canada, and Professor Anne Wagner, Université du Littoral Côte d’Opale, France.

On October 18, 2014, the Fourth International Conference on Law, Language and Discourse and the Eighth Conference of China Association of Forensic Linguistics (CAFL), organized by CAFL and the Multicultural Association of Law and Language (Hong Kong) and hosted by Northwest University of Politics and Law (NWUPL), were successfully held in Xi’an, China. More than 150 participants from over 50 Chinese universities and over 10 countries and regions attended this important forensic linguistics event. A total of 154 abstracts, 58 in English and 96 in Chinese, and 108 full papers on various topics were received from the conference attendees. Twenty-eight peer-reviewed papers have been selected for the publication in this proceeding.

The main theme of this conference was “Diversity and Integrity”, which was divided into the following 10 topics: Theory and Application of Forensic Linguistics; Language in the Courtroom; Linguistic Evidence; Legal Translation and Interpreting; Analysis of Legal Documents; Authorship Attribution; Functional Linguistics; Legal Discourse and Corpus; Law and Philosophy; and History of Legal Culture.

The opening ceremony was presided over by Professor Ma Qinglin, Vice President of CAFL and Dean of the NWUPL School of Foreign Languages. Professor Jia Yu, President of Northwest University of Political Science & Law, Professor Du Jinbang, President of CAFL, and Professor Cheng Le, Vice

President of Multicultural Association of Law & Language, delivered their opening speeches at the ceremony.

“Both the law and language share the same root and grow up together, although they belong to different fields. The only way for judges and lawyers to acquire and use their professional knowledge is via legal language, and the mission of forensic linguistics is to study the relationship between language and law, their features, rules and application, and the various aspects of legislation, judicature and enforcement,” Professor Jia Yu pointed out. “As a brand new discipline, forensic linguistics is playing an increasingly important role in the politics, economy, culture and life of the international community,” Professor Du Jinbang stated in his opening speech. This is the very first time for the two Associations to jointly convene an international conference in China, and the collaboration itself is a good example of the prosperous development in forensic linguistics in China, as well as the milestone of strengthening the exchange and cooperation at home and abroad,” declared Professor Cheng Le. Professor Edward Finegan, President of the International Association of Forensic Linguists, sent his congratulations on the successful opening of this conference on behalf of IAFL.

Four keynote speeches were delivered at this conference. Professor Wang Shirong, Vice President of NWUPL, delivered the first keynote speech, in which he analyzed the linguistic features of the traditional legal culture in the judgments of the Qing Dynasty kept in the Archive Office of Ziyang County, Shanxi Province. The second key note speech was given by Professor Emerita Susan Sarcevic of the University of Rijeka, Croatia, a famous scholar in the field of legal translation. She put forward her view on the feasibility of building a common legal language on the basis of the paradox of EU Multilingualism. The next speech was presented by Professor Cheng Le from Zhejiang University. He illustrated the epistemic modality in civil judgments in light of his Hong Kong SAR and Scotland corpus. Professor Du Jinbang of Guangdong University of Foreign Studies analyzed the experimental design procedures, factors as well as the feasibility of authorship attribution from the DIA-based approach in his keynote speech.

In plenary speeches, Dr. Sol Azuelos-Atias from the University of Haifa, Israel presented her speech “Identifying the Meanings Hidden in Legal Texts: The Three Conditions of Relevance Theory and their Sufficiency”; Professor Wang Zhenhua from Shanghai Jiaotong University delivered his presentation “Analysis of Engagement Resources and Alignment in Statements of Defense in Chinese Criminal Trials”; Professor Wang Jie from China University of Political Science and Law gave her speech “On the Rural Culture of the Rule of Law in China – the Mediation System and Language in the Countryside”; Professor Zhang Qing from China University of Political Science and Law presented her findings on the Modality in American and Chinese Criminal Judgments from the perspective of comparative study; Professor Pan Qingyun from East China University of Political Science and Law shared his view on the Current Research of Forensic Linguistics in Australia and its Enlightenment; Professor Liu Suzhen of NWUPL discussed her reflections on the Three Elements in the Research of the History of Forensic Linguistics; and Professor Zhang Jingyu from Shanxi Normal University analyzed the Power and Sex in Rape Acknowledgment and Identification in China.

The closing ceremony was held on October 19, 2014 and was chaired by Professor Liu Weiming, Vice President of CAFL and Vice Dean of the NWUPL School of Foreign Languages. Professor Yuan Chuanyou, Vice President of CAFL, and Professor Cheng Le, Deputy President of the Multicultural Association of Law & Language, made their respective summary remarks on the success and efficient organization of the conference. They commented, “the conference was quite successful in the communication between the participants at home and abroad, and played a role of inheriting the past and

forging ahead into the future.” In his concluding remarks, Professor Ma Qinglin, Dean of the NWUPL School of Foreign Languages, remarked: “This conference has provided a platform of grand gathering for the participants, both home and abroad, in the fields of forensic linguistic and law and demonstrated a promising future, but there is still a long way to go.” In his view, multilevel research and multidisciplinary cooperation are in urgent need.

To sum up, this conference has played a significant role in promoting communication and academic exchange in the field of forensic linguistics, understanding the mainstream research of the discipline, and strengthening international cooperation and collaboration.

*If you are interested in hosting the two conferences or guest-editing a special issue with the journal, please kindly contact Le Cheng (chengle163@hotmail.com).*

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## Conference Organization

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China Association of Forensic Linguistics, China

### Hosted

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## *Keynote Address I*

### **Functional Approach to Training Translators for Legal Academic Writings**

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*[Abstract] The paper explores problems in translated legal academic writings and discusses solutions for a better quality of translation in legal academic writings by taking translated legal academic papers published on China Legal Science (English Edition) as subjects. There are two fundamental reasons which may account for most problems identified in this study: 1) there are some different linguistic features of English and Chinese that make literal translation unsatisfactory; and 2) there are some personal language habits that result in substandard wordings in terms of academic writing and legal language. This article, while offering suggestions for unified standards of Chinese-to-English translation in legal academic writings, aims to provide a training framework for translators from the perspective of functional approach on the basis of the identified problems. The paper also argues that functional approaches can merit legal translation and has pedagogical implications for translation training.*

*[Keywords] C-E legal translation; translation training; translation competence, functional approaches*

#### **Introduction**

Translation has played a critical role in communication between different civilizations and cultures, however, the translation quality of legal texts varies. In particular, the Chinese-to-English translation of legal academic writings requires unified standards for legal translation, because the translation between the Chinese and English languages not only transmit legal studies in China to the world, but also serve as a bridge of interaction in the field of law. Translation is widely regarded as a “cross-cultural event” (Snell-Hornby, 1988, p.c46), and the translator as the cultural operator (Hewson & Martin, 1991, p. 133). In the meantime, legal translation is bound by the particular culture and legal system encoded in that particular language, and it is also “a translation from one legal system into another” (Sarcevic, 1997, p. 13).

Legal terms have their own unique meanings and concepts within a given jurisdiction, and one legal concept may have various alternative expressions among jurisdictions, which makes the transfer from one legal system to another difficult (Cheng, Sin & Cheng, 2014). The great amount of firsthand data, especially the imprecise use of legal terms and the misinterpretation of concept, is a special advantage that enables this study to cover most of the typical problems in the Chinese-to-English translation of legal academic papers by Chinese translators. Based on the problems identified in the targeted texts, the functional approach was adopted to provide suggestions for translator training and translation competence building in Chinese-to-English legal translation. The 1970s and 80s witnessed a shift from static linguistic strategies of translation and the emergence in German of a functionalist and communicative approach in to the analysis of translation (Munday, 2001, p. 73). The primary consideration of functional approach in

translation studies is that both the source and target text should be taken into account (Kusssmaul, 1995, p. 149). Reiss first saw the equivalence in text rather in sentences, and provided discussions on categories and functions of text analysis, including informative, expressive, operative, and audiomedial texts (Reiss, 1989). The term Skopos was introduced into translation theory in 1970 by Hans J. Vermeer. Vermeer disdained the linguistic approaches “because translating is not merely and not even primarily a linguistic process” (1987, p. 29), and considered translation a process of transfer where communicative verbal and non-verbal signs were transferred from one language into another (Nord, 2007[1997], p. 11). Skoposthorie, simplified as “the end justifies the means” (Nord, 2007[1997], p. 124), in a sense liberates the translation from the confinement of the source text, with an aim to explain the translation from target language. The text is produced intendedly and should serve a given purpose. So, the functional approach, which emphasizes the mapping between source text and target text, is a pertinent tool for legal translation a transfer “from the source legal system into the target legal system” (Sarcevic, 1997, p. 13). Based on the analysis of the identified translation problems and the causes behind, this study aims to propose training strategies based on problems of legal translation from Chinese to English from translated (from Chinese to English) legal academic papers published on *China Legal Science*.<sup>1</sup> After analyzing the problems in translated legal academic writings, this paper provides a framework for legal translation training.

### **Legal Translation Studies in China**

In the early history of legal translation in China, the western missionary and businessmen in China played an important role in exchanging legal concepts between the West and China. The earliest work in introducing the Chinese legal system to the West was *The Travels of Macro Polo the Venetian* written by Macro Polo in the 14<sup>th</sup> century.<sup>2</sup> In this book, Macro Polo introduces Chinese criminal law and procedure in the Yuan Dynasty. In 1554, an article “Costumese leis do reini da China” written by Belchior, a Portuguese missionary, is now considered as the first essay specialized in introducing Chinese legal system of translation of foreign law in China (Wang, 2001, p. 15).

In recent years, more and more Chinese scholars have conducted researches on legal translation and contributed to this subject. One of the forerunners of Chinese legal translation study, Chen (1992; 1998) conducted a great amount of legal texts translation practice and produced research works both in legal language and legal translation. He adopts a critical view to survey the existing translations of Chinese laws and regulations in which many misinterpretations were pointed out. His research works contributes substantially to the international exchanges in jurisprudence field between China and the world. Zhang (2006) pointed out that the main aim of text type classification was to have a better recognition of various types of texts and their communicative purposes. Other scholars also made abundant research. Qiu (2000) discussed a set of principles in comprehending and translating legal documents: precision, formalness, conciseness, and term consistency. Xin (2003) made comparisons between two versions of translated documents and put forward his view on translating legal terms and phrases. Liang (1991, 1993) took the cultural angle and explained legal culture from both the broad and the limited sense. Qu (2010) combined

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<sup>1</sup> China Legal Science (hereinafter CLS) is an academic journal sponsored by China Law Society. It was first issued in 1984 and its English/overseas edition did not come into being until 2001. The English edition of CLS is published annually. It contains selected and translated articles on legal science published on the Chinese-edition. Since 2013, China Legal Science (English Edition) has become a journal parallel with China Legal Science in Chinese. In this study, we only used the data in China Legal Science before August 2013.

<sup>2</sup> <http://afe.easia.columbia.edu/mongols/main/transcript.pdf>, accessed on August 4 2014

the legal translation in China from three aspects: translator's subjectivity, target language's impact on Chinese and terminology translation. Legal translation studies in China also experienced a shift from rigorous, formal translation to target texts-oriented approaches. Legal discourse and legal translation have been touched upon from various perspectives. However, few systemic translation studies were conducted regarding legal scholarship from the perspective of translator's competence.

### **Materials and Methodology**

China Legal Science (CLS) is an academic journal sponsored by the China Law Society. It was first issued in 1984 and its English edition did not come into being until 2001. The English edition of CLS was published annually containing selected and translated articles on legal science published in the Chinese edition. This study chose some 100 articles from the three volumes of the English editions as analyzing objects. For reader's convenience, there will be no detailed citation of related errors found in these articles.

In terms of evaluating criteria, the standard of legal translation has long been in discussion but without fruitful agreement. Legal literature translation aims at communication, and should convey the author's original intention. Since this study mainly focuses on identify translation errors, not including embellishment or polishing, authentic and widely recognized criterion is a must. Given China's reality, this study considers the English edition of laws and regulations published by the National People's Congress<sup>3</sup> as standards, and the English edition of China Law Information as references. With regard to some words with Chinese characteristics, *A Dictionary of New Chinese Phrases in English*, edited by *China Daily* will be the benchmark. In several cases, when involving the political concept of Chinese situations, speeches, and announcements, etc., published by the Ministry of Foreign Affairs, they will also be taken into account. Law dictionaries such as *Black's Law Dictionary* will assist analysis now and then.

### **Results and Analysis**

#### ***Cultural Contrasts***

The interpretation of law as culture emphasizes that law is more than just a set of rules, but also a social practice within a legal community that is determining the actual meaning of the rules and concepts, their implementation and their roles in society (Van Hoecke & Warrington, 1998, p. 498). In other sense, legal culture reflects the main conventionalized value of a legal community and the society. "Comparative legal cultures are examined by a field of scholarship, which is situated at the line bordering comparative law and historical jurisprudence" (Varga, 1992, p. xix). Chinese legal thought could trace its history back to the Spring and Autumn Period which had a great influence not only on the laws in later Chinese dynasties, but also influenced modern Chinese laws. Harmony is the highest value of Chinese culture (Yang, 2013). Through the thousands of years of Chinese history, Chinese society has held harmony as the highest ideal in dispute resolution (Feng, 2009, p. 3). Western legal culture is unified in the systematic reliance on legal constructs, and has an idea of the significance of law, which has its origin in both Roman law and the Bible. Therefore, such concepts as the legal ideology, legal consciousness, and legalities and many other terminologies consist of different connotations. Translators with culture competence are required when dealing with legal translations.

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<sup>3</sup> [http://www.npc.gov.cn/englishnpc/Law/Integrated\\_index.html](http://www.npc.gov.cn/englishnpc/Law/Integrated_index.html), accessed on Oct 4 2014

For instance, the expression “司法 (*si1fa3*)” contains various meanings in Chinese context. The most commonly used one is related to judgment, for instance, “司法机关 (*si1fa3 jilguan1*)” (judicial organ). In China, judicial organs include not only the People’s Courts, but the People’s Procuratorates as well, and their basic functions include approving of arrest and supervising the criminal procedure. In addition, “司法 (*si1fa3*)” also contains the meaning of promulgating law and enforcing law from a broader perspective of view, and the correspondent example is “司法改革 (*si1fa3 gai3ge2*)”. The word “司法 (*si1fa3*)” bears different meanings in different contexts and thus needs different translations respectively. “Judicial” used as an adjective is related to judgment. According to *Black’s Law Dictionary*, judicial means “Of, relating to, or by the court or a judge”, so judicial action refers to the judgment, for example. This word also contains a narrow meaning of “司法 (*si1fa3*)” (Li & Guo, 2013, p. 89). Judicial power refers to the power authorized to the court and the judge to hear cases and make binding judgments (Xue, 2003, p. 750).

### ***Immeasurability between Styles***

There are also gaps between styles of Chinese legal scholarship and those of the English. Titles of Chinese legal scholarship are either descriptive ones, which describe the topic of the text, or those that contain allusions, which have figurative relationship to the topic. In non-literary texts like law review articles and treaties, a descriptive title that succinctly names the subject and states its purpose is appropriate. Normally, translators are entitled to change the title, if the original one is elusive, particularly idiomatic or culturally bound (Newmark, 2001, p. 57). However, all of these academic articles on legal science have a descriptive title, which saves energy to replace them during translating. What draws attention is appropriateness. Generally, the title of scientific articles should be no more than 20 Chinese characters or 10 English words, while the international standard is within 8 words (Wen, 2004, p. 154). As the titles of Chinese academic articles are habitually long, translating them into English requires necessary reduction.

#### **Sample 1**

改革开放三十年马克思主义法学中国化的重大成果

(*Gai3ge2kai1fang4 san3shi2nian2 ma3ke4si1 zhu3y4i fa3xue2 zhong1guo2hua4de0 zhong4da4cheng2guo3*)

*Great Accomplishment on Localization of Marxism Jurisprudence in China during Three Decades of Reform and Opening up [China Legal Science, 2009, (1), 1].*

#### **Sample 2**

我国环境污染责任保单承保渐进性污染的法律思考

(*Wo3guo2 huan2jing4 wu1ran3 ze2ren4 bao3dan1cheng2bao3 jian4jin4xing4 wu1ran3de0 fa3lv4 si1kao3*)

*Legal Reflection in Incorporation of Gradual Pollution into Environmental Pollution Liability Politics in China (China Legal Science, 2011, (3), 176).*

Both Chinese titles are up to the standard, while their translation is too long by English standards. This study suggests omission of less important information and reservation of key words. In the first sample, “great accomplishment” and “during three decades of reform and opening up” can be cut out, only reserving the main subject of the article.

Normally, there is certain formula for writing a title of academic articles in Chinese, such as “试论 (*shi4lun4*)”, “初探 (*chu1tan4*)”, “浅析 (*qian3xi1*)”, and “管窥 (*guan3kui1*)”, etc. In English this would be similar to “A Study of”, or “The Exploration of”, etc., and have been used as their title writing formula in scientific articles since the middle of last century. But these phrases have been at the edge of extinction in international academic circles since the 1970s, due to the requirement for succinctness (Wen, 2004, p. 156). Given the fact that Chinese-version titles are longer than English ones, translators are advised to omit the unnecessary formula translation, where the limitation of length of a title is confronted.

The subtitle of an article is an important component of the whole title part, as it functions as the highlight to transfer information. In some cases, a subtitle serves as a further elaboration of the title. It applies to both Chinese and English articles. Nevertheless, there exists nuances of habitual format between the two. Chinese authors tend to use a new line and a dash to separate a title from a subtitle, while their English counterparts favor a colon and a space. “Use a colon and a space to separate a title from a subtitle, unless the title ends in a question mark, and exclamation point, or a dash. Include other punctuation only if it is part of the title (Gibaldi, 1995, p. 66).”

### Sample 3

医疗纠纷中精神损害赔偿的实证研究

——采用BP神经网络分析法

(*Yi1liao2 jiu1fen1 zhong1 jing1shen2sun3hai3 pei2chang2de0 shi2zheng4yan2jiu1*)

——Cai2yong3 BP shen2jing1wang3luo4fen1xi1fa3)

*An Empirical Study on Compensation for Mental Injury in Medical Disputes: Adopting the Method of BP Neural Networks (China Legal Science, 2011, (1), 105).*

The long title with a long subtitle is definitely not reader-friendly. In this particular case, the subtitle functions as a further elaboration, and involves an unnecessary verb. Taking the principles mentioned above into account, Sample 3 can be revised as “BP Neural Network Approach to Mental Injury Compensation in Medical Dispute”. Where a subtitle reveals the main subject of an article or contains key words, the title can be omitted in translation, and it is sufficient to keep only the subtitle.

### Translators' Language Competence

Terminologies are particular forms of communication in specific domains (Zanón, 2011, p. 7) and legal language and legal concepts belong to a cultural-specific domain (Rosen, 2006). Therefore, culture preparation is a prerequisite for training legal translators. Translators, when trying to overcome the barriers between the two languages or the cultures, also have an insufficient command of the target language. As the previous illustration in the case study of *silfa3*, the cultural connotations of the term requires further examinations of legal translators.

On the other hand, if lexis is the flesh of a text, then grammar is its skeleton, as noted in Newmark (2001, p. 125), and translators are interested in grammar only as a transmitter of meaning. As a matter of fact, Chinese authors pay less attention to grammar than English authors. Therefore, grammar allows for great flexibility in Chinese-to-English translation. Nevertheless, with regard to legal translation, the standard becomes much higher. Inevitably, legal science articles contain official legal provisions of various countries in Chinese, of which the grammar is complex and specialized. What should be noted is logic among units of thoughts and the special usage of forensic linguistics. Chinese legal scholars count on concept-words to exhibit logic, while their English counterparts emphasize grammar as well. Ignoring such differences will lead to inaccurate translation as follows.

#### Sample 4

实际上，只有在对于阐明必须撤销原判的各个理由、原审法院的论据或最高法院本身的观点十分必要时，才引述事实。

(Shi2ji4shang4, zhi3you3 zai4 dui4yu2 chan2ming2 bi4xul che4xiao1 yuan2pan4de0 ge4ge4 li3you4, yuan2shen3 fa3yuan4de0 lun4ju4 huo4 zui4gao1 fa3yuan3 ben3shen1 de0 guan1dian3 shi2fen1 bi4yao4shi2, cai2 yin3shu4 shi4shi2.)

*Actually, facts are quoted only when it is necessary to clarify the reasons for the reversal of the original judgment and the grounds of the original court or the holdings of the Super Court<sup>4</sup> (China Legal Science, 2009, (3), 220).*

In the source text, “理由 (li3you2)”, “论据 (li3you2)” and “观点 (guan1dian3)” are three equal units, connected by punctuation mark “、” and “或 (huo4)”. The original author intended to express that among the reasons for the reversal of the original judgment, and the grounds of the original court and the holdings of the Supreme Court, as long as one of them requires necessary clarification, facts are quoted. However, the translator confuses readers with the coordinating conjunctions “and”/“or”, which makes the sentence logically disordered. With a little exploration, one can notice that it is the Chinese punctuation mark “、” which does not exist in English language that causes the disaster. The Chinese punctuation mark “、” functions as a comma when a comma is used to separate words and phrases.<sup>5</sup>

#### Sample 5

持各种观点者都必须深入研究案情，// 司法判决广泛利用并展示不同意见，...  
(Chi2ge4zhong3guan1dian3zhe3 dou1 bi4xul shen1ru4 yan2jiu1 an4qing2, si1fa3 pan4jue2 guang3fan4 li4yong4 bing4 zhan3shi4 bu4tong2 yi4jian4...)

*People who hold different opinions must study the case thoroughly, adopt judicial decisions in a wide range and present different opinions in a case... (China Legal Science, 2009, (3), 221).*

The source text contains two independent simple sentences in coordinated relation. The subject is marked by “   ”, the predicate by “   ”, and the object by “   ”. Apparently, the original intention of the source text is to advocate that, on the one hand, people who hold different opinions must study the case thoroughly, and that judicial decisions should widely adopt and exhibit different opinions. However, the translator structurally misunderstood it as a long sentence with one subject, two predicates and an attributive clause. The translation has distorted the intended meaning in the source text.

On the other hand, given the fact that the legal system of China is sophisticated with borrowed and re-created concepts and theories from both the common law system and the civil law system, terminology translating strategies could be divided into three categories: neologisms (Ebest, 1999, p. 499) with Chinese characteristics, that is, coining new expressions, naturalization of common-law-origin terminology-metalinguistic adjustment (Cheng & Sin, 2008) and borrowing of civil-law-origin terminology. Chinese scholars also discuss common law concepts in their articles, therefore, naturalization can serve as a good method of translation. But without solid professional legal knowledge, it is difficult for translators to find the accurate term, For example, translating “三段论 (san1duan4lun4)”

<sup>4</sup> The correct translation is “the Supreme Court”.

<sup>5</sup> For further introduction to the Chinese punctuation mark “、”, see <http://psc.shyywz.com:8080/gf/842.htm>

as “syllogism”. Actually, the source text only refers to a writing structure with three parts, which has nothing to do with this legal term “syllogism”. Other examples include using “cross-examination” in an article to describe China’s criminal investigation and using “dissenting opinion” to describe ordinary different views. As aforementioned, due the different of legal tradition, that is civil law and common law, nuances of expressions may cause gaps in both linguistic transfer and legal transfer.

## **Discussion**

### ***Legal Translation as a Purposeful Activity***

Skopos theory had a considerable impact on translator training, first in Germany and, later also in other parts of the world (Nord, 2013, p. 3). According to Skopos theory, the prime principle determining any translation process is the purpose (skopos) of the overall translational action (Nord, 2007[1997], p. 27). Instead of the term Skopos, Vermeer deployed four related words: aim (final result the agent aims to achieve), purpose (provisional stage in achieving the aim), intention (viewpoint of the text sender) and function (viewpoint of the text receiver); the last two were further defined by Nord (2007[1997], p. 27). Therefore, texts are produced intentionally and used in a purposeful way. However, because of the separation of sender and receiver in translation, intention and function is better to be analyzed respectively (Nord (2007[1997], p. 29). According to Šarčević (1997), legal translation is no longer regarded as a process of linguistic transcoding, but an act of communication, and there is also a dichotomous nature in legal communication: the text producer and the text receiver (1997, pp. 55-61). In other words, be it legal translation or interpretation of legal texts, the translator/agent invests his intent in the text and expects an according function that can be detached or used by the receiver in legal communication. On the other hand, in a discussion on the applicability of Skopostheorie to practice, Chesterman and Wagner (2002, p. 44) asserted the framework for use as a legal document; that is-the resulting translation must fulfill all the necessary requirements to become a document of legal validity. In legal translation, due to the double transfer (i.e. linguistic transfer and legal transfer) of the legal text (Cheng & Sin, 2008), a legal text and its translating results may have different aims, which means some translated texts do not have legal effects as its source texts. And legal academic writings are seldom expected to have an immediate binding force, which allows for more adjustments in balancing the intention and the function.

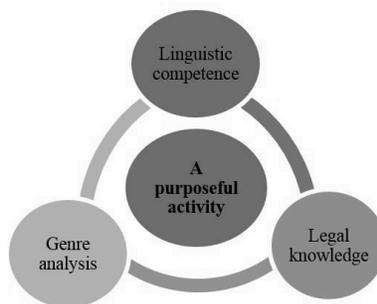
Nord (2007[1997]) proposed four subfunctions in a translation-oriented model based on Bühler’s Model (1934), providing a functional typology structure of translation, which is: (1) the referential/informing function in translation (that involves reference to the objects and phenomena of the world), (2) the expressive function in translation (that refers to the sender’s attitude toward the object and the word, e.g. evaluative subfunction), (3) the appellative/conative function in translation (that induces receivers to respond in a particular way, e.g. appealing to recognition and sensitivity), and (4) the phatic function in translation (that establishes, maintains or ends contact between sender and receiver) (2007[1997], pp. 40-44). The translation function typology helps the translator identify translation approaches and strategies. Since legal translation is also a purposeful activity, legal translation also shares the attributions of general translation texts, which is illustrated in Table 1.

**Table 1. The Functional Typology Framework in Legal Translation**

	<b>Descriptions</b>
<i>The referential/ informing function</i>	referring to norms and concepts, providing descriptive information and presenting facts, etc. e.g. introduction to particular legal knowledge in legal academic writings, facts statements in judgments
<i>The expressive function</i>	providing the sender’s attitudes and intends to phenomena, facts, objects, conveying illocutionary acts of the sender, etc. e.g. court decisions
<i>The appellative/ conative function</i>	guiding the receivers to recognize, abide or obey in a particular way in the mechanisms of law, triggering sympathy or reverence etc. e.g. wanted posters, prohibitions
<i>The phatic function</i>	establishing ideological understandings, etc. e.g. government reports

**Functional Framework to Legal Translation Training**

The development of functionalism in translation attaches importance on translator training (Nord, 2007[1997]). The compatibility between the purposes of translation and the characteristics of produced texts naturally derives from a typology, which, complemented by a familiarity of the receivers and their expectations (Chesterman &Wagner, 2002), indicates the familiarity of legal language and law knowledge. Nord (1988) emphasized the following points: separation of translation skill training, actual professional translation tasks, allowing for the incomplete nature of students’ foreign language competence, and translation difficulties dealt with in the instructional setting (Kiraly, 1995, p. 25). As shown in Figure 1, a purpose-oriented dimension (including purposeful skills training and practices) in the center influences the three other dimensions.



**Figure 1. A Model of Legal Translation Training**

In terms of linguistic competence and legal knowledge, legal translators are expected to train to grasp and use the legal languages in both the source and target texts. According to Neubert (1984, p. 62), it is an important stage in the translation process to discover this prototypical target text through familiarization with parallel texts and to develop text awareness in one mother tongue. Garzone (2011, p. 3) describes the legalese style as “typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction...” It is prerequisite to have the linguistic competence of legal language before the translators’ intention can be effectively produced in the target language. As Garzone (2011) claims, this unchangeability permeates to translation and leaves translators with little alternative but to employ the equivalent rigid legal style of the target language. This begins the question whether the translation of legal texts as a whole allows for any forms of adjustments and adaptation. The skopos rule, “let your translation decision be guided by the function you want to achieve by means of your translation” (Nord, 2007[1997], p. 39) illustrates the aim of a translated text. The translating results are expected to be communicatively

functional to its target language receivers. Translators are aware of the fact that the concepts and norms of the target language will not necessarily be in line with those of the source language. That is why a kind of accommodation (adjustment) in the target text is needed so as to arrive at a solution for the problem (Baker, 1992, p. 243). The function of a legal text usually remains in a mixed texture and contains different genres that carry different intents. The genres are identified on the basis of conventionalized features, and they are constantly developing (Bhatia, 2002).

### Conclusion

The study of this thesis has proposed a relatively new approach in legal translation study under the framework of the Skopos approach. The study aims to start a more practical approach to legal translation by investigating the origin and development process and the further sub-rules underlining Skopostheorie. To achieve the specific purpose of each legal translation action, the purposeful transfer should be realized by adjusting the communicative orientation and fidelity rule. Each rule exerts effects not separated from the other two rules; on the contrary, they take function as a whole, with a primary rule to normalize the specific translation strategy they choose, and at the same time, the other two rules of Skopos approach are also taken into consideration by translators. By applying a functional approach in legal translation, translators of legal documents were certified to put their own feasible strategies into the translation procedure. The practical and operational rules of the Skopos approach are proven to be successful in the whole process of legal translation training.

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## *Keynote Address II*

### **Functions of Witness Language: From the Perspective of Systemic-functional Linguistics**

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*[Abstract] Legal language receives increasingly wide attention due to its essential functions as its status improves. Witness language, as a part of legal language, plays an essential role in judicial practice. Four aspects of the functions of witness language are mainly analyzed from the perspective of systemic-functional linguistics, namely, adaptability, informativity, nature, and expressiveness in this paper. It is hoped that the research on the witness' status in court, features and functions of witness language, and importance of witness language for a fair judgment will be beneficial not only to researchers of legal language, but also professionals of legal science.*

*[Keywords] functions; legal language; systemic-functional linguistics; witness language*

#### **Introduction**

Legal language, as a part of a language, has all the functions of language and serves as a tool expressing legal significance and a carrier of the legal mind. Since accurate use of legal language can make legal interpretation more rigorous and the law itself more harmonious, it is also argued that the use of legal language can promote the progress of the rule of law and the improvement of the interpretative system of the law; moreover, it can also promote legal culture exchanges and cooperation, and the orderly economic conducts as well (Xiao, 2005). Therefore, legal language has become more and more popular at home and abroad with great achievements involving discourse analysis in court, text analysis of legal documents, and power distribution in legal system and other innumerable branches. As part of trial language as well as legal language, witness language has been providing abundant data for further analyses in written forms. However, the specialized research on functions of witness language is a missing part in the field.

Witnesses hold an irreplaceable status in court and witness language has vital functions during a trial. Moreover, their safety problem is being improved in China. "The testimony of witnesses is one of the most widely used types of evidence in criminal procedure and its important value has the irreplaceability of litigation, therefore, the witness to appear in court to testify is an important link of criminal proceedings" (Jia, 2013). However, Jia says that the rate the witness appears in court is generally low in judicial practice, which is not only bad for the embodiment of the value of litigation, but also hinders the process of judicial construction. Witnesses are afraid of, or are not willing, of testimony, especially in combating organized crimes, which is why witnesses seldom appear in court. It is also a very stubborn problem for legal machineries that our state lacks an effective protecting net for witness (Li, & Xing, 2006). Therefore, China is on its way to perfect the legal environment and the systems concerned with witnesses, such as a witness protection mechanism, and witness economic compensation system, etc. (Jia, 2013). From all of the above, it can be seen that the research on witnesses has a guidance function in judicial practice.

Apart from that, opposing attorneys attempt to find out a breakthrough in the witness' words during the cross-examination and the witness matters more than any other time. In the cross-examination, the public prosecutor usually asks the witness questions with presuppositions to make a favorable inference. The presuppositions are in general questions, tag questions, information questions, and statement questions, and whether the presupposition stands depends on the witness' answer (Jiang, 2013). When they agree on the aim, witnesses tend to cooperate; when there is a conflict, witnesses tend to deny the presupposition; when the aim is unknown, it is not certain whether witnesses will cooperate or not; when witnesses evaluate the aim as neutral, the possibility of cooperation is variable (Jiang, 2013). Because of the status of witness language, China now advocates stipulating explicit rules of witness testimony.

It is shown that the study of witnesses is significant and the analysis of witness language is necessary. With the help of cases shown in this paper, the goals of comprehending systemic-functional linguistics and understanding the functions of witness language can be both reached. Completing the missing link of researches on witness language integrates the whole field and provides appropriate information to concerned studies. This paper studies functions of witness language through the theory of systemic-functional linguistics. It attempts to find out features and exclusive functions of witness language, aiming at putting forward some constructive suggestions for China's reform of witness system.

### **Features of Witness Language**

To analyze witness language, it is necessary to discuss the features of witness language, since these features have relevant contributions in understanding those functions. This paper endeavors to analyze the features of witness language concerning with witnesses' status, performances in court, attitudes and their identities. First, witnesses endeavor to use terminology or words in specific fields to express their profession or authority. However, they fail in doing so due to their limitation of status and lack of the ability to narrate things clearly or in a logical way. Example (1) shows that the witness cannot find a proper word to express himself in a detailed and clear way:

#### **Example 1.**

W: Because at that time, Fei told me that waving and stopping the car could ease car's, eh, this, the law's that...

P: You mean what can be eased by waving and stopping the car?

W: Can ease the...eh...

P: Can reduce your accident responsibility, right?

W: Reduce my accident responsibility.

(Public prosecutor=P; Witness=W)

Second, because of being placed in a more powerless status, witnesses keep their language in reflections on their identities and persuasions towards the opposition side with their own characteristics based on their specific functions in the following analysis. There holds a sense of reverence, or even fear, in their voices when they have interactions in the court. Logically, those who master the evidence hold the power. The witness is so called because he has the evidence. As a result, the witness should have the power. But many studies have shown that the actual situation is just the opposite (Liao, 2002 p. 13). In Example (2), the judge's enforceable words have interrupted the witness a lot.

**Example 2.**

DW: And then I...

J: Wait, wait, and let me say first...

DW: And he says...

J: Sit down please. Do you understand? Now you can speak, what did you say?

(Defense Witness=DW; Judge=J)

Third, witnesses are willing to make their testimonies based on the truth value of the propositions (sometimes they are not in reality), avoiding words expressing possibility rather than confirmation. However, as mentioned in the second feature – witness language reflects witnesses’ identities, and the current situation may disappoint the judicial system that the witness’ testimony is just a useless format and concealing to their so-called judicial justice. Some witnesses’ legal consciousness is weak and they say whatever they like without knowing that ensuring their honesty is a civil obligation (Xie, 1995). At the same time, their testimony has nothing with the force of the law, holding the least authoritative level in the whole trial.

**Example 3.**

P: Would you please describe the situation at that time?

W: When I was passing by the “Meet by heart” bar and saw two people in dispute. And the tall one thrust his knife to the short one, but the short one jumped aside. I quickly walked away because of fear.

D: What time was it?

W: It was 2 or 3 in the morning.

D: How was the light then?

W: Although there were street lamps, it was still dark.

D: Under that kind of light, are you sure that the defendant was stabbing the plaintiff?

W: I saw that the tall one thrust into the short one, but I am not sure whether he was stabbed.

(Public prosecutor=P; Witness=W; Defender=D)

Finally, interference by the judge or the opposing attorney in witness language could be discovered quite easily in witnesses’ language, in order to disturb witnesses’ logic thoughts, except that witnesses are experts or having strong language skills. As in Examples (2) and (3), shown above, the witness never has chance to follow his own willing.

**Functions of Witness Language**

Systemic-functional linguistics regards language as a regular resource, thus its basic principles consider that the language describes the system more than the structure. As a kind of symbol, when language is expressing the speaker’s opinions, it must choose from all semantic functions of language and this choice depends on all aspects of the context (Hu, Zhu, Zhang, & Li, 2005, p. 3). Halliday holds the opinion that the nature of language determines people’s requirements to language, i.e. functions must be completed by language. These protean functions can still be concluded into several functions, also called q“metafunction”. This is the inherent usage of a variety of language, i.e. the general characteristic of

language (Halliday, 1967, p. 243). According to systemic-functional linguistics, the functions of witness language are analyzed from the following aspects: adaptability, informativity, nature and expressiveness.

### ***Adaptability***

A witness expression must be consistent with the court scene and case details. The basic unit in actual use is not a grammatical unit like a word or a sentence, but is the text expressing a relatively complete thought. This is called textual function (Halliday, 1964; Spencer, & Gregory, 1964). The text makes the speaker only generate discourse consistent with the context after connecting language and the context. And the text is an aggregation of three variables in social semiotics: field, tenor and mode. Field refers to social activities containing discourses with the subject as its most specific performance. Tenor refers to the aggregation of relations of conversation participants with the degree of formality as its most prominent example. Mode refers to selected channel or wavelength in communication with spoken or written languages as its variables (Hu, Zhu, Zhang, & Li, 2005, p. 46).

#### **Example 4.**

P: Describe the situation at that time.

W: The two people were both injured on the ground.

P: Were they sober or insensible?

W: The tall one rolled and shouted on the ground, and the short one moaned on the ground.

(Public prosecutor=P; Witness=W)

From Example (4), it is known that not one sole sentence can be understood out of the case. Each sentence from the witness cannot make sense without knowing that the field is the court, tenors are the witness and the judge, and the mode is quite official.

### ***Informativity***

Every word, every stress, or even every affix of witnesses is related and conveys information necessary for the trial. Systemic-functional linguistics holds the opinion that language is a multi-level system concluding at least the semantic level, lexical-grammatical level and phonological level (Hu, Zhu, Zhang & Li, 2005, p. 16). All of these levels have the relation of realization and have the reveal of the close relation of content, expression and substance.

#### **Example 5.**

A: Every block in this city is one-eighth mile, right?

W: Maybe, I think.

A: So every block is about 600 feet, right?

W: It sounds like that.

(Attorney=A; Witness=W)

Take an inconspicuous word like “maybe” in the above conversation as an example. The opposing attorney may catch the word and make a detailed inquiry, and then turn the case around. Witnesses must pay attention to what they say because a detail can change the judgment, while the judge must make judgment after thinking over all mentioned levels.

Witness language still holds the function to deliver information, confirm or refute something, though the rate that witnesses appear in the court is low and witness language is usually cited in written

testimonies. This is called a process of saying: a communicational process through the speech. Verbs such as “say”, “tell”, “talk”, “praise”, “boast” and “describe” are usually used in written testimonies (Hu, Zhu, Zhang, & Li, 2005, p. 83).

Further developed from the above two functions, witness language also has the function of exchanging old information and providing new. Information architecture is the structure of organizing language into information units, which are the elementary compositions in the exchange of information. The so-called exchange of information refers to the interaction between unknowns and knowns in the process of a speech event. “Knowns refer to the composition which has been already introduced or could be concluded according to the context in the speech process, which is called ‘known information’” (Hu, Zhu, Zhang, & Li, 2005, p. 172). In Example (6), the attorney used a close-ended question to affirm the known information and the word “yes” is enough. “Unknowns refer to the composition which has not been introduced or could not be concluded according to the context in the speech process, which is called ‘unknown information’” (Hu, Zhu, Zhang, & Li, 2005, p. 172). By asking an open question, the attorney wanted to elicit some unknown information.

**Example 6.**

A: The defendant pointed his gun to your face?

P: Yes.

A: Then what did you do?

P: I gave him my wallet!

(Attorney=A; Witness=W)

In a Chinese court, the judge has some critical information from the file before the court, and the judge can affirm the old information while receiving the new one by the conversation.

***Nature***

Witness language can have expression and embodiment on social structure and system both at the same time. As stated by Halliday (2008), “Language is the reflection of processes and things in subjective and objective worlds, which is called experimental function.” “Language is social person’s meaningful activity, is a way of doing things and is a function. So that one of its functions is necessary to be reflecting relations between people, such as reflecting social status between the speaker, the hearer and their constraints. This kind of function is called “interpersonal function” (Halliday, 2008). The legal system is a well-conceived “hierarchy” in which the witnesses are the most powerless, and their language can mirror their own identities, reflecting the legal procedure and national conditions as well. Even the attorney holds a superior position in court. “The form and essence of the cross-examination are not conducive to the witness, which make the witness vulnerable in confrontation with the attorney” (Li, & Zhao, 2009, p. 364). A typical situation showing the nature of witness language is that the witness must respond to every word of the judge and must obey the rule of answering the “ask while knowing the answer” question from the judge:

**Example 7.**

J: What’s your age?

W: 21

J: Nationality?

W: Han

J: Where do you work? And your position?

W: The security guard of “Meet by heart” bar.

(Judge=J; Witness=W)

### ***Expressiveness***

To be the supplementary of the first function, the interpersonal function, which is the “meaning potential,” where the speaker acts as the intruder, also includes the speaker’s attitude, motivation and his deduction, judgment and evaluation to things apart from expressing his identity and status (Hu, Zhu, Zhang, & Li, 2005, p. 115). By this function, the speaker makes himself involved in a certain context to express his attitude and deduction in order to influence others’ attitudes and actions. This function also shows the relationship between roles concerned with the context, like questioner and answerer, as well as announcer and skeptic. Whichever side the witness stands, he is sure to convince others, including the judge, the jury and audiences, to believe his words and make fair judgments.

The witness language evaluates the case, the judge’s words, even the words of the prosecutor and the defense. “The evaluation theory divides evaluative resources into three aspects in accordance with the semantics: attitude, engagement and graduation” (Hu, Zhu, Zhang, & Li, 2005, p. 319). Engagement is used to measure relations between the speaker’s voice and various propositions or views in the text. Speakers may admit or ignore words involving many different perspectives and challenges, and they fight for a personal space for their opinions among others. Though the judge or jurors have their presuppositions, the witness, as a more objective part, is able to play a guiding role. The judge can be led to a fair judgment by witnesses’ responses showing their agreement or disagreement.

### **Conclusion**

Witness language is a crucial part of legal language and its status is testified by its functions. It has an inextricable relation with its context and it is the reflection of legal system. It also has two information providing functions: exchanging old information and providing new, and confirming or refuting information even in written forms. Moreover, witness language can lead to a fair judgment by evaluating the case. The study of the functions of witness language attempts to promote the reform of the witness’ role and improvement of the court system. Hopefully, this paper will shed some light on future studies of the similar kind.

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## ***Keynote Address III***

### **Translating Deontic Modality into English as a Discursive Reflection**

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*[Abstract] Few addressing pragmatic and social factors involved in the interpretation of modality in legal settings from a semiotic perspective have been formulated. This paper seeks to shed some light on some conspicuous issues within a semiotic approach to the understanding, and then translation, of deontic modality in legal settings based on corpora – four corpora of approximately 250,000 words each. The four corpora consist of randomly selected Chinese legislation in the four jurisdictions of China: Hong Kong, Macau, Taiwan and Mainland China. In this corpus-based study, I try to argue, just like those advocating pragmatics, that whenever the words ying and xu (or its disyllabic forms yinggai/yingdang and bixu) are used, the linguistic context must be resorted to in order to determine what concept this occurrence of ying and xu express. I would also like to argue that the common association of ying and xu with duty in legal settings is prototypical, and that is closely related to the meaning distribution of ying and xu in legislation.*

*[Keywords] translation; deontic modality; English counterparts; discursive reflection*

#### **Introduction**

Modality has been the subject of tremendous volumes of studies in logic, philosophy, and linguistics. Within linguistics, the study of modality has witnessed a gradual shift from a static conception to a more dynamic understanding of modality taking into account the relevance of linguistic and extralinguistic contextual factors in the production and interpretation of modal utterances in discourse (Cheng & Sin, 2011; Connor & Upton, 2004). In the study of the language of the law as a specialized language (Bhatia, Hernández, & Pérez-Paredes, 2011), modality finds its place in contract, legislation (Cheng & Sin, 2011; Gotti & Dossena, 2001), and court judgments (Cheng, 2012; Cheng & Cheng, 2014); however, few addressing pragmatic and social factors involved in the interpretation of modality (c.f. Cheng & Cheng, 2014; Cheng & Sin, 2011) in legal settings from a semiotic perspective (Cheng & Sin, 2011; Cheng, Sin & Cheng, 2014) have been formulated. This paper seeks to shed some light on some conspicuous issues within a semiotic approach to modality in legal settings based on corpora.

Many discussions on deontic modality strictly relate deontic modality to the concept of right (usually termed as permission) and obligation. It seems not unusual for many scholars to assume or claim that it is obvious that whenever one *ying* (“ought to”)/*xu* (“shall/must”) (not) do something, especially in legal settings, one has a duty (not) to do it. In this corpus-based study, I try to argue, just like those advocating pragmatics, that whenever the words *ying* and *xu* (or its disyllabic forms *yinggai/yingdang* and *bixu*) are used, the linguistic context must be resorted to in order to determine what concept this occurrence of *ying* and *xu* express. I would also like to argue that the common association of *ying* and *xu* with duty in legal settings is prototypical, and that is closely related to the meaning distribution of *ying* and *xu* in legislation; and even for the apparently same linguistic context, different discourse communities (Hong Kong, Macau, Taiwan and the Mainland are herein taken as different discourse communities because they may use the same sign differently (Cheng & Sin, 2011; Connor & Upton, 2004; Ni, Cheng & Sin), though the same

language Chinese is shared among them) may have different understandings on the same signs *ying* and *xu*.

The findings of the paper should not be understood just as a descriptive analysis. The underlying rationale for this study is to argue now that diversity exists in different regions (herein specifically), what we are expected to do is to appreciate the diversity and to take tolerance as a virtue. Only in this way can a language be more prosperous and language as a right be respected.

### **Definition and Exponents**

It seems a widely accepted consensus among linguists that semantic areas such as “possibility”, “necessity” and “prediction” (epistemic modality), on the one hand, and “permission”, “obligation” and “volition” (deontic and dynamic modality or root modality), on the other hand, constitute the domains of modality. Modality in systemic grammar was originally restricted to what is called “epistemic” modality, and what is often referred to as “root” or “deontic” modality is regarded as forming a different (though obviously connected) category of its own, namely, “modulation”, the reason being that the latter “...are not speaker’s comments on the process referred to...” (Halliday 1970, p. 338). This restrictive formulation of modality has received criticisms for the facts that a clear-cut distinction between both types of modality can be challenged at an ideational level, since cases of indeterminacy may occur and that both epistemic and deontic modality may be geared towards the interpersonal component of the language. Halliday & Matthiessen (2004) modified the definition of modality as “these intermediate degrees, between the positive and negative poles”, and divides modality into two subtypes “modalization” and “modulation”. It is held that in philosophical semantics, probability is referred to as “epistemic” modality and obligation as “deontic” modality (Halliday & Matthiessen, 2004). Linguists (Halliday & Matthiessen, 2004, p. 621, among others) have posited “dynamic modality”, which is not subjective and is subject-oriented: the subject’s ability or readiness is at issue, not the speaker’s attitudes or opinions. This three-fold distinction will be retained in this paper.

From the above definitions, it can be claimed that modality is concerned with the expression of the subject/speaker’s involvement towards the propositional content of an utterance, whether in the form of agency or subjectivity and that modality are not necessarily exclusively restricted to modal verbs; similarly, the same modality exponent (including modal verbs) is not necessarily tied to a certain type of modality as demonstrated below (Cheng & Sin, 2011).

### **Corpora and Methodology**

This is a corpus-linguistic study based on the concordances yielded by four corpora of approximately 250,000 words each. The four corpora include randomly selected Chinese legislation from the websites of the respective legislature in Hong Kong, Macau, Taiwan and Mainland China. The concordances containing the lexical items under investigation were produced by means of the concordancer CONCAPP MFC Application, which can handle English and Chinese (simplified and traditional), in view that even in the Chinese version of Hong Kong legislation, English expressions are sometimes included (Cheng, 2012).

In order to obtain the lexical items to be searched, each concordance line containing an exponent of *yinggai*, *yingdang*, or *ying and xu* or *bixu* was examined in context in order to ascertain whether the lexical item was related to deontic modality or whether it had other interpretations. In case of a number of deontic exponents, the context searched extended beyond the concordance line and the wider co-text was

examined. To ensure that there were as few errors as possible, some colleagues were consulted in the analysis of certain ambiguous instances in the corpora.

Although this study is a descriptive one, I am, however, primarily interested not in the empirical analysis of the meanings of *ying* and *xu*, but in the nature of the concepts such as right and duty that those signs can be used to express – especially when those concepts are central to both law and linguistics. Still, it is often easiest to approach the task of giving an account of the nature of certain concepts by studying the meanings of the signs that can express those concepts. This is why I shall try here to outline an account of the meaning of *ying* and *xu*.

When it comes to the validity of this study, I shall not be entitled, just like any other corpus-linguistic study, to claim that my account has dealt adequately with all the linguistic data that need to be accounted for, nor that my account has captured all the concepts that *ying* and *xu* can express. I shall also highlight that I am herein concerned only with *ying* and *xu*, not with all deontic concepts as such.

### Results and Discussion

In this part, the main purpose is to clarify some misconceptions in the understanding of *ying* and *xu*, as well as deontic modality, based on the linguistic data and results obtained from the corpora. It is true that when “one *ying/xu* do something” appears in Chinese legislation, it often denotes that one has the duty to do it. However, we will come to a different conclusion if considering the following expressions:

#### 1. Agent as beneficiary instead of duty bearer

1(a) 特別經理人須獲付法院釐定的酬金。

1(b) The special manager *shall* receive such remuneration as may be fixed by the court.

1(c) \*The special manager *have the duty to* receive such remuneration as may be fixed by the court.

1(d) *it is necessary* that the special manager receive such remuneration as may be fixed by the court.

#### 2. The sentential subject is nonperson

2(a) 法院規則須訂定有關以下事宜的條文-

2(b) Rules of court *shall* provide-

2(c) ? Rules of court *have the duty to* provide-

2(d) *It is necessary* that rules of court shall provide-

#### 3. Passive voice

3(a) 被傳召出任陪審員的人，在有人提出上述反對或在其本人提出申請後，須獲解除出任陪審員的責任

3(b) the person so summoned *shall* be discharged on such challenge or on his own application, if the court is satisfied of the fact and so directs

3(c) \*the person so summoned *has the duty to* be discharged on such challenge or on his own application, if the court is satisfied of the fact and so directs

3(d) *it is necessary* that the person so summoned be discharged on such challenge or on his own application, if the court is satisfied of the fact and so directs

We can notice that whether *ying/xu* can be interpreted as *have a duty to* or *be obliged to* is also related to the process (predicate), that is, whether the process can denote duty or not (1(a)-1(d)). If the

subject is not a person, whether natural or virtual, it cannot be taken as an agent to bear a duty (2(a)-2(b)). If the process is in passive voice, the concept of duty is difficult to be embraced (3(a)-3(b)). In legislation, as well as in daily language, the case is not so simple as is dreamt by some linguists or jurists. In legislative expression, legal subject and legal action are necessary elements, but the optional elements legal case and legal condition will necessarily complicate the analysis of deontic modality.

#### 4. Normative conditional

Unlawful oaths to commit capital offences

任何人—

(a) 為任何誓言或屬誓言性質的協定而監誓或在場並同意有關監誓，而該等誓言或屬誓言性質的協定其意是約束作出該等誓言或協定的人必須犯謀殺、叛逆或有暴力的海盜行為的罪行的；或（由 1993 年第 24 號第 3 條修訂）

(b) 並非被強迫而作出上述誓言或協定，

即屬犯罪，一經循公訴程序定罪，可處終身監禁。

Any person who-

(a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit an offence of murder, treason or piracy with violence; or (Amended 24 of 1993 s. 3)

(b) takes any such oath or engagement, not being compelled to do so,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

The person herein obviously *has no duty* “to commit an offence of murder, treason or piracy with violence”, but “to commit an offence of murder, treason or piracy with violence” is the constitutive/necessary elements for charging such a person. But all these problems can be well dealt with if the concept of normative acceptability or necessity is introduced.

**Table 1. Distribution of Prima Facie Deontic Modality Exponents (not including right) in Legislation**

	HK	Portion	MC	Portion	Taiwan	Portion	Mainland	Portion
yinggai	1	5E-04	0	0	0	0	0	0
yingdang	1	5E-04	0	0	0	0	1810	0.673
ying	59	0.03	767	0.27	1794	0.752	91	0.034
buying	6	0.003	26	0.009	12	0.005	10	0.004
xu	1281	0.662	1659	0.584	43	0.018	15	0.006
bixu	328	0.17	81	0.029	9	0.004	208	0.077
buke	6	0.003	116	0.041	0	0	0	0
bude	253	0.131	190	0.067	527	0.221	554	0.206
<b>Total</b>	<b>1935</b>	<b>1</b>	<b>2839</b>	<b>1</b>	<b>2385</b>	<b>1</b>	<b>2688</b>	<b>1</b>

From Table 1, we can notice the signs with highest frequency for obligation (contrasted with prohibition which may be expressed by *buke* or *bude*) for Hong Kong, Macau, Taiwan and the Mainland are respectively *xu*, *xu*, *ying* and *yingdang*. It is, therefore, not odd when it is taken for granted that

obligation in the context of Hong Kong must be expressed by *xu* (or *bixu*) instead of any other deontic modality such as *ying*, because people are more often exposed to *xu* (or *bixu*) in case of obligation.

### Conclusion

While in the Mainland, *ying/yingdang* is more frequently used, as *shall* instead of *must* is in English, than *xu/bixu* as the marker of legal obligation which must be performed; in Hong Kong *xu/bixu* is often used as an indication of legal obligation and *yinggai* often indicates moral obligation as *yingdang* (“ought to”) does. But we cannot assume *ying* in Hong Kong is a denotation of moral obligation without good evidence. *Ying*, in fact, is used as indicator of legal obligation in Hong Kong. It is also clear that *ying*, instead of *xu/bixu*, is on top of the list in Taiwan when denoting obligation.

Different discourse communities or speech communities may have divergent understandings of the same sign, but without adequate linguistic evidence, such understanding may be just a kind of prototypical assumption. It is also important to understand the value of modality in context; in other words, some modal expressions are sensitive to context.

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# Interaction between Media Expression and Trial of Criminal Cases Under the View of Modern Media

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**[Abstract]** *As the modern media play a growing role in and exert increasing influence on social life, media expression, in some cases, even directly interferes with or influences the handling of affairs by government organs and the trials of cases by judicial organs, exhibiting a strong power of control on society. In recent years, some typical criminal cases have caught the attention of the media and numerous netizens. While expression of the media often arouse “hot” discussion, Internet users, the media and the public may also use edgy language in expressing opinions and may even bypass judicial proceedings to announce their “judgment”. Consequently, recent trials of cases have seen the imposition of a trial by public opinion, a trial by the media and a trial by experts. Against such a backdrop, social attention should be directed to the conduction of judicial work under the view of modern media, to the interaction between trials of typical criminal cases and expression of the media, and to the insurance that judicial work be open, fair and just.*

**[Keywords]** *media expression; criminal case; power of control on society; public opinion*

## Introduction

As the modern media plays a growing role in and exerts increasing influence on our social life, media expression in some cases even directly interferes with or influences the handling of affairs by government organs and the trials of cases by judicial organs, exhibiting a strong power of control on society. In recent years, some typical criminal cases have caught the attention of the media and numerous netizens. While a craze for “law” is surging in media expression, judicial organs have shown considerable concern and respect for such “media expression” in the course of trials.

## “Topic” Criminal Cases and Judicial Attention in the Presence of Media Expression

Because of the presence of media expression, issues of common public concern tend to arouse social attention as “topics” for discussion. A survey was made of the typical criminal cases in the period between 2009 and 2013 by summarizing the cases listed under the title “Marks of the Year: Top Ten Typical Criminal Cases of the Year XXXX” in the *Procuratorial Daily (Jiancha Ribao)*, which fall into the following six main categories: 1) such politics-related crimes as embezzlement, taking bribes, and dereliction of duty (12 cases); 2) economic crimes such as fraud, illegal operation and pyramid selling (6 cases); 3), crimes concerning illegal organizations, like violence and terrorism, underworld-related crimes, and religious cults (7 cases); 4) crimes against humanity and morality, such as homicide, rape, theft and traffic accident crimes (18 cases); 5) crimes arising from personal conduct, i.e. drunk driving (2 cases); and 6), crimes jeopardizing public safety, such as crimes against food security and public security (5 cases) (*Procuratorial Daily*, Dec., 2009 – Dec., 2013). According to such statistics from the *Procuratorial Daily*, in the new era, humanity and morality remain the major subjects for mankind, which means “education” has an arduous but meaningful role to play. In the meantime, media expression highlights the fact that the public is allergic to criminal cases related to “humanity and morality”, which is apt to give rise to “hot” discussion. The resulting opinions of the people, the media and relevant experts

eventually converge into a “trial” by the public. Among such cases, particularly glaring are those homicides committed by college students, who are supposed by the public to be good-natured but “accidentally” violate the bottom line of life, such as the atrocious murder by Ma Jiajue on February 23, 2004, the intentional killing by Yao Jiaxin on October 20, 2010, and the poisoning killing by a postgraduate at Fudan University on April 1, 2013. These cases became “topic” cases of the time.

Following the occurrence of each of the following three typical criminal cases, the media covered each case at length, through which people learned all the details of the cases. Specifically, the atrocious murder by Ma Jiajue: On February 23, 2004, at the dormitory of the Class of Biological Technology of Grade 2000 under the College of Life Science of Yunnan University, because of some daily trivialities, Ma Jiajue killed four of his classmates – Shao Ruijie, Gong Bo, Tang Xueli and Yang Kaihong. He was sentenced to death at first instance and was executed on June 17, 2004 (Wang, L., et al. 2004).

The intentional killing by Yao Jiaxin occurred on the evening of October 20, 2010, while driving back to downtown Xi’an, he killed a stranger, victim Zhang Miao, due to a traffic accident involving the victim. He was sentenced to death and was executed on June 7, 2011 (*Procuratorial Daily Dec.*, 2010). And the poisoning killing by a postgraduate at Fudan University on April 1, 2013, at the dormitory of postgraduates of Grade 2010 at Fudan University in Shanghai. Lin Senhao killed his classmate Huang Yang because of some daily trivial matters. On February 18, 2014, the court of first instance “convicted Lin Senhao of intentional homicide and sentenced him to death with deprivation of political rights for life” (*Procuratorial Daily Dec.*, 2013).

Media expression has contributed to the wide discussion and close study of these three “topic” criminal cases. Statistics of search results until August 5, 2014 via Baidu and CNKI have shown the degrees of attention to these topics. Searched via Baidu, the key word “Ma Jiajue” produced 2,610,000 results, “Yao Jiaxin” had 5,280,000 results, and “Fudan poisoning” 3,150,000 results. With article search on CNKI, the key word “Ma Jiajue” had 1,248 results (365 in 2004, 166 in 2005...76 in 2013, and 13 by the end of July 2014); “Yao Jiaxin” had 1,425 results (541 in 2011, 525 in 2012, and 294 in 2013); “Fudan poisoning” had 221 results (151 in 2013 and 70 in 2014). Such figures are proof of the tremendous social concern over the aforesaid cases during a period of ten years. In the meantime, the issue of the mental health of college students not only poses challenges to education of the humanistic quality in Chinese colleges and universities, but is also embedded into judicial evaluation.

While taking a heavy toll on the perpetrators, the three cases have caused misfortune and unhealable trauma to the relevant individuals and families, as well as adverse influence on and irretrievable consequences to the schools and college education, family education and social education. What is more, they have generated a revolutionary interaction between “expression of public opinions” and “legal adjudication” under the view of modern media, which impacts the domination of court proceedings in traditional justice. Driven by news media, public opinions, the media and experts all quickly assume the role of a judge. Judicial secrecy, independence and professionalism are challenged; judicial proceedings and adjudications are under watch by the public; trials of typical major criminal cases by judicial organs are confronted by new problems and difficulties in the new era. Therefore, such cases naturally receive extra judicial concern.

## **Problems Revealed by “Topic” Criminal Cases and Judicial Solution in the Presence of Media Expression**

“The emergence of the Internet does not only mean development of information communication technology and readjustment of the structure of communication media, but also profoundly affects people’s political behavior and the operation mode of state politics” (Xie, J., 2011). Like any other medium, the Internet is a double-edged sword. On the one hand, by making trials of typical judicial cases open and transparent under widespread social attention, it constrains arbitrariness in court proceedings to some extent. On the other hand, the in-depth follow-up coverage by the media exposes to the public eye every detail of personal behavior and privacy of the major criminal suspects and other persons involved in the cases, which, to some degree, turns the regulatory effect of public opinion into an influence on judicial evaluation. Thus, under the view of modern media, it is more than necessary and urgent to reconstruct the interactive and symbiotic relations between media expression and trials of criminal cases, which can be exemplified by the above-mentioned three cases.

### ***Media Coverage and Judicial Regulation***

The cases of Ma Jiajue, Yao Jiabin and the Fudan poisoning did not arouse widespread social concern by chance. Instead, these cases, in essence, point to a universal social problem, i.e. education of the young, which is a significant philosophical proposition concerning mankind, humanity and talent. The three cases have been brought to an end by their adjudication, but they still have durable effects on society, families, individuals as well as judicial proceedings.

A summary of the media reports and special academic writings on the aforementioned cases prior to their judgments demonstrates that what has been expressed and discussed can be boiled down to such key words: doubts about suspects, judgment prior to trial, language violence, labeling and entertainment. For example:

1. Will Ma Jiajue be sentenced to death? According to You Wei, director of the Center of Judicial Research of East China University of Political Science and Law, the fact that Ma Jiajue killed four classmates at several times and had planned detailed routes of escape for himself shows that he was well aware of his own acts (*Yanzhao Evening*, March 18, 2004).
2. Someone says, “If Internet comments could bring back fairness, I would rather become an ‘executioner’ who would ‘add fuel to the flames’ and ‘kill Yao Jiabin with language’” (Nan An, April 22, 2011).
3. Huang Yang is gone. However, the society owes him the truth and the justice of law. The one who poisoned Huang Yang has harmed two families. But the perpetrator must be punished by law. Only truth and justice may console Huang Yang and his parents as well as appease the public (Wei Yingjie, April 16, 2013).
4. In the Yao Jiabin case, Yao Jiabin is labeled as “heartless second generation of military family”; the victim Li Miao is tagged with “country girl” (Wang Zhiyin, 2014).
5. Some people haste to prepare for making a TV drama of the Ma Jiajue case (*New Express [Xinkuaibao]* March 19); ...go to great lengths to recommend Ma Jiayue’s fellow-townsmen to act the role of Ma Jiajue, as the person’s excellent acting will be “impressive” (*Chengdu Business [Chengdu Shangbao]* March 19); for example, Ma Jiajue was born against the family-planning policy and his birth was imposed with a 500-yuan excess birth-fine (*Tianfu Morning Post [Tianfu Zaobao]* March 20) (Tan Xiaoyan, 2004).

In this way, media involvement complicated these three simple cases in terms of judgment. To be on the safe side, the court proceedings of the three cases were supplemented by such open procedures as comments by educational psychologists, on-the-spot questionnaire survey, and publicizing letters of petition from fellow students, which demonstrated the sincere respect of the judicial organs for public opinion. Eventually, the cases were tried based on comprehensive consideration of their legal, political and social effects before the final judgment was made, by which the principals were all sentenced to death.

Although Ma Jiajue and Yao Jiaxin have been executed, the adjudications of the cases have left people with a lot of content for thought and have been the subject of articles. Among the opinions, strong voices of support for the judgments are heard. For example:

6. Following execution of Yao Jiaxin, some netizens commented, “The execution of the death penalty has cleared suspicions of all sorts, demonstrated judicial fairness and therefore comforted the public in some way” (Chen, S., 2014).

Voices of doubt are also extremely loud. For example:

7. In the Yao Jiaxin case, the public intellectuals and the social masses were two polarized groups, and the media failed to bridge the gap of understanding between them, thus subjecting adjudication to social pressures. When the Yao Jiaxin case was tossed on the top of public opinions and the social masses were irritated by the media and public intellectuals, justice finally chose to take the side of the social masses and sustained the life of law on condition of the death of Yao Jiaxin. While the death sentence to Yao Jiaxin is legally justified, such adjudication is not deemed to be a good one (Chen, S., 2014).

In the meantime, except for support or doubts, there is rational thinking, which can be helpful reference for judicial organs. For example:

8. As law originates from society, while we doubt about the influence of the so-called “popular indignation” on justice, will it be acceptable to introduce “sentiment” into the measurement of penalty in favor of the criminal or defendant (Shen, L., 2014)?

A view of the status quo of China’s judicial proceedings is revealed by the series of special writings reflecting on and interpreting the final judgments of the intentional killings by the college students. On the one hand, judicial fairness is seen to succumb to public opinions in that a death sentence is meted out in the face of strong popular indignation while a death sentence with reprieve is imposed in case of less popular indignation. Out of precaution, all the judicial organs of the above-mentioned cases employed in the proceedings such means as opinion poll or questionnaire survey or expert debate. Under the social bias of protecting the weak, “public opinions” were protected by the law. On the other hand, due to the weak judicial credibility in China, people are highly cautious about the fairness of cases. Hence, legal interpretation by judges should be an appropriate means to guide the public to the correct understanding of law, which should be part of the judicial reform efforts in China (Tan, X., 2004). Although the fueling effect of the media means a predicament for judicial proceedings, such a situation also contains an opportunity for the judicial system to present and reshape itself.

In the course of transformation from rule by law to rule of law, China’s justice is not without problems and shortcomings. A lot of work has to be done for the country’s judicial credibility to stand the test of time, undergo public supervision and win popular recognition. Representation of national character and popular will in judicial practice should be the only way to China’s judicial reform and ultimately to the rule of law.

### ***Criminal Litigation and Civil Compensation***

Generally speaking, effects of criminal litigation are very complicated. The overt effects of the homicide cases of Ma Jiajue and Yao Jiaxin and the Fudan poisoning case are that the public opinion is “catered to”, popular indignation has cooled down, social stability is maintained, and the appeals of the victims’ parties are partially satisfied. However, behind these overt effects, the covert effects have failed, such as economic compensation for the victims and their relatives, the authority of law, and judicial credibility, which is a great pity. The fact that the civil appeals for compensation for the victims and their relatives are barely met exposes the defects in China’s justice. Although there are presently no legal remedies for such defects, it must be understood that criminal adjudication and economic compensation are inseparable parts of equal importance to the victim and his relatives. Following the final judgments of three cases, the continuing concern over them mainly focuses on a series of “legal” discussion arising from the inadequate economic compensation for the victims and their relatives, which once again brings up such judicial issues as “judicial fairness”, “sparing the life of the criminal for the life of his relatives”, “abolition or retention of death penalty”, “virtue of leniency”, “social care”, and “social responsibility”, etc. Such discussion attempts to ease or really resolve the acute contradiction resulting from the separation of criminal action from civil action (i.e. economic compensation) for the same case in judicial practice. For example:

1. As reported by Sina.com on April 9, 2004, the relatives of Shao Ruijie, Yang Kaihong and Tang Xueli, the victims of the February 23 intentional homicide at Yunnan University, respectively submitted to the Kunming Intermediate People’s Court a *Bill of Incidental Civil Action*, claiming compensation from Ma Jiajue, which brought the total damages claimed against Ma Jiajue in the case to approximately 820,000 yuan (Peng, H., et al., 2004)
2. On the afternoon of April 28, the Kunming Intermediate People’s Court of Yunnan province served Ma Jiajue a written judgment of first instance and passed judgment upon the incidental civil compensation claim, which rules that Ma Jiajue should pay 20,000 yuan to each of the plaintiffs, i.e. the family of each of the victims – Tang Xueli, Shao Ruijie and Yang Kaihong. (Peng F., et al., 2006).
3. In the Yao Jiaxin case the family has lost a wife and a mother. However, influenced by the Internet public opinions of “life but not money”, “life for life” and “no blood-stained dirty money”, the family waived their legitimate right to claim compensation, adding to the difficulty and insecurity of their life (Peng, F., et al., 2006).

Justice in China is confronted with two conflicting but concurrent purposes: realization of the fairness and justice that “the murderer pays the forfeit of his life” vs. satisfaction of the reasonable and lawful appeal of the victim’s relatives for compensation for their material and spiritual losses. The judgments of the three cases expose the severe contradiction between criminal litigation and civil compensation, as no due compensations have been made to neither the victims, nor their relatives for their old-age life, as well as financial and spiritual damages following their loss of family members. Such an issue, left by the judgments, deserves attention and calls for a solution. According to the principle of civil compensation collateral to criminal proceedings, as expressed by the wording in Article 36 of the *Criminal Law* that “...be sentenced to make compensation for the (financial) loss upon circumstances”, it may be inferred that: First, since the criminal defendant has taken corresponding criminal responsibility for his act, the penalty will be too heavy for him if he still has to take full civil responsibility for compensation for damages arising from his act. Second, if the criminal defendant is sentenced to

deprivation of freedom or life according to law, except for his extant compensative ability, he will not be able to create any more material wealth to execute compensation. Thirdly, the defendant's practical compensative ability may be limited, so it is unnecessary to blindly sentence him to make complete compensation for loss, which will eventually fail to be enforced, otherwise the authority of law will be impaired (Luo, Y., 2013). Judging by all these factors, the criminal and civil adjudications of the three cases in question are based on law, on public opinion and on the will of the plaintiffs. However, the effects of such judgments are not satisfactory. With the cases settled, people are more concerned about the victims and their relatives' appeal for civil compensation and put forth such constructive suggestions as "sparing the life of the criminal for the life of his relatives", "supplementing compensation with public funds", and "restorative justice". Also, people pay attention to such social issues as leniency, understanding and responsibility from a humanistic perspective, thus transcending the settlement of specific cases and arriving at the high level of carrying on traditional culture and enhancing national quality.

With the resumption of judicial fairness, the restoration of public rationality and the return to reality on the part of the persons concerned, the justice system should lose no time in finding ways to regulate the above-mentioned conflict. It is high time for China's *Criminal Law* to keep abreast with the times and adjust itself in a more pragmatic, operable and controllable manner in the presence of the media. Justice in the country should quickly advance toward the rule of law on the basis of comprehensive protection of human rights.

### ***Personality Education and Prevention of Crime***

As the bottom line that human life was violated in the three much talked-about murders committed by "highly intellectual talents", the functions of the higher education received by the three "criminals" are left to doubt and denial, and China's education is blamed as the primary cause of their crimes and has become the scapegoat. For example:

1. Some psychologists indicated that the more covert root causes underlying the mind of Yao Jiaxin were the loopholes in his growth environment including family, schools and college, and society, and that there were serious gaps in the education he received (Liu, Y., 2011).

It should be understood that although "education is not a panacea", it plays a crucial role in cultivating talent and preventing crime. Following criticism of the gaps in education, it seems that we should pay more attention to the continuity, orientation and fairness of education, maintain the balanced development of education, cultivate talent through practice, and prevent crime by means of education. For example:

2. The "Ma Jiajue" issue spurred the public to seriously question and reflect on the value and drawbacks of education, especially that of higher education, and people of insight in the education community were awakened to the need for education not only to emphasize the dominant curriculum (students' scores, theses, and experiment projects, etc.), but also to attach more importance to the hidden curriculum (development of a sound personality, elevated character, unyielding willpower, perseverance in the face of setbacks, aspiration to serve the country and the people, and correct outlook on employment, etc.) (Zhong, X., 2004).

In reality, criminal judicial organs tend to ignore the numerous criminal risks underlying the society and are used to striking heavily at de facto crimes and punishing criminals with severity, i.e. stopping

existing problems. Contrary to this, education prevents problems from happening, i.e. nipping them in the bud.

### **Judicial Construction in the Presence of Media Expression**

Judicial construction is an urgent task in the presence of media expression. The trials and judgments of the “hotspot” or “topic” criminal cases in the last decade have been filled with the interaction and gaming between public voices, pressures from “popular will”, expert comments, lagging jurisprudence, authority of law, power of judges, and so on and so forth, which means the arduous way China’s rule of law has to go with its heavy responsibilities in the near future. In the new time, media expression takes an irreplaceable position in the modern society, playing a significant part in expressing public appeals, rationalizing social control, assisting in public decision making, and enhancing democratic awareness. It is bound to facilitate judicial construction and regulate the direction of such construction, which deserves substantial attention.

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# Analysis of the Legal Language Defects in the Law of Road Traffic Safety of the People's Republic of China

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*[Abstract] Legal language is a special kind of language, not only with the request of being precise, but also with presence of accuracy. Yet, there are some defining vagueness of the term "road" and ambiguous expressions, including "overseas", "temporary parking", and "city road", in the Law of the People's Republic of China on Road Traffic Safety. Similar problems exist with the contradictions in language, misuse of words and wrong syntax in the definition of "motor vehicle", "non-motor vehicle" and "traffic accident". This paper analyzes the problems and puts forward some suggestions for improvement.*

*[Keywords] Law of the People's Republic of China on Road Traffic Safety; legal language; defects*

## Introduction

With the implementation of *Law on Road Traffic Safety of the People's Republic of China* (hereinafter shortened to *The Road Traffic Safety Law*) on May 1, 2004, two modifications have been conducted successively on December 29, 2007 and April 22, 2011. The promulgation and implementation of *The Road Traffic Safety Law* has been playing an important role in regulating the behavior of traffic participants and traffic management in China. However, looking closer at the language structure of the law there are still a few defects. Chinese scholar Jianyun Jiang once said: When words are selected and used in legal field, some principles of standardization must be upheld – they must be up to the language standard, legal norms and legal language specification (Guo, 2013). Suzhen Liu pointed out that the ambiguity in the judicial practice is caused by the vagueness and abstract in legal language, which results from a lack of a “corresponding word” of some legal terms (Zong, & Liu, 2006). Therefore, it is necessary to strengthen the research of legal language, and improve the quality of legislation. Taking *The Road Traffic Safety Law* as background, this paper inquires into the language of the law, points out a few flaws and puts forward some suggestions for improvement, in hope that the legal language in this law becomes more exact and normative.

## Vagueness in Language

### ***Defining Vagueness of “Road”***

According to the first item of Article 119 of *The Road Traffic Safety Law*:

A “road” means a highway, an urban road or an area which, although within the of scope of management by an entity, allows public motor vehicles to pass, including the places used for passage of the general public such as the squares and public parking lots, etc.

Article 77 of *the Road Traffic Safety Law* stipulates:

“For an accident occurring at the time of passage of a vehicle outside the road, the traffic administrative department of the public security organ shall, after receiving report of the accident, handle the matter with reference to the relevant provisions of the present Law.”

The defining vagueness of “road” shows in “allows public motor vehicles to pass” and “the places used for passage of the general public”, because it is difficult to define what “public motor vehicles” is and what “the general public” is. According to the definition of “road”, rural road should not be included. However, rural roads were brought into the field of management and construction of transportation department in *The Administrative Rules on the Rural Road Construction* implemented by China's Ministry of Transportation in 2006, while it is not included in the management of the public security traffic administration department. Meanwhile, whether a road within the residential areas is a legal road or not continues to be almost impossible to justify. Therefore, it is difficult for the public security traffic administration department to understand what the right concept of a “road” and “non-road” is in the course of actual operation. Since Article 77 stipulates that “for an accident occurring at the time of passage of a vehicle outside the road, the traffic administrative department of the public security organ shall, after receiving report of the accident, handle the matter with reference to the relevant provisions of the present Law”, there seems little practical point then in distinguishing between a “road” and “non-road”.

In fact, many scientific definitions of “road” have been given to the Road Traffic Safety Laws from outside the Chinese mainland or abroad. For example, the *Law of Macao on Road Traffic* defines the definition of “road” as “urban building areas, in which the range is marked by signals provided by regulations, and overland routes for public traffic, regardless of public or private property.” Despite its seeming complex definition of a road, it “is marked by signals provided by regulations”. The definition of road is clearly made from the cognition perspective of traffic participants. In other words, it can be regarded as a road if there is a special road sign, and these definitions are certainly better than that of *The Law of the P. R. C. on Road Traffic Safety*.

*The Law of Japan on Road Traffic* defined a “road” as “special motorway, ordinary driveway and other places for general traffic. Among them, other places for general traffic include agricultural and forestry roads, as well as places for most of unspecified people or vehicles.” It is self-evident that rural roads, agricultural and forestry roads, and private roads, etc. are totally included into road traffic management.

To the problem of defining vagueness of “road”, the lawmakers should, from the facts of China, clarify their thoughts, take the domestic and foreign legislative experiences for reference, and give an accurate definition of road that is suitable for China practice.

### ***Expressing Vagueness of “Overseas”***

According to the third item of Article 19 of *the Road Traffic Safety Law*:

Whoever holds an overseas motor vehicle driving license may, if meeting the conditions for driving permission as prescribed by the public security institution under the State Council, and assessed by the traffic administrative department of the public security organ to be qualified, be issued a Chinese motor vehicle driving license.

The problem here is the fuzziness in the meaning of “overseas”; if it refers to foreign countries, the word “abroad” should be used rather than “overseas”; if it refers to the areas outside China mainland, it should be expressed as “other countries and areas like Hong Kong, Macao and Taiwan” but not identify “overseas” with “China”, because Hong Kong, Macao and Taiwan belong to the territory of the People's Republic of China on International Law. From the perspective of the purpose of legislation and the actual

situation in China, *overseas* should be clearly expressed, as *other countries and Hong Kong, Macao and Taiwan*, and *Chinese* should be changed to *mainland China*.

### ***Poor Concept of “Temporary Parking”***

Article 56 of the Road Traffic Safety Law states:

Motor vehicles shall be parked at the prescribed places. It is prohibited to park any motor vehicle on the pavement; except for the parking areas designated in accordance with Article 33 of the present Law. Whoever temporarily parks a vehicle on road shall not impede the passage of other vehicles or pedestrians.

From the part of speech, "temporary" (Linshi) is an adjective with “for a long time, in the long run” as its antonym. How do we understand “temporary parking on the road”? What is the period of “temporary”? Does 5 minutes mean “temporary” as opposed to 60 minutes? Can 1 hour be understood as "temporary" as opposed to 24 hours? It’s not executable without judicial interpretation. Therefore, we recommend explicitly changing such words to clear language, which is possible to be carried out in *the Road Traffic Safety Law*.

### ***Difficult to Define “City Road”***

According to the second item of Article 55 of *the Regulation on the Implementation of the Road Traffic Safety Law of the People’s Republic of China*:

No carriage of a cargo motor vehicle may carry passengers. On a city road, a cargo motor vehicle may carry 1-5 temporary operators in its carriage on the precondition that it leaves safe room. When the load height exceeds that of the breast board, no person may be carried together with the goods.

How to understand “city road” in the provision? The concept of “city” is very vague in China, especially at present; China is in the rush of rapid urbanization and many towns are continuously expanding. Besides, there are 4 levels of cities in China according to the new city standards, namely, a small city with a population of less than 500,000, a medium-sized city between 500,000 and 1 million people, a large city between 1 million and 5 million people, and a megalopolis with a population of over 5 million (*The Standard of Urban Size Adjustment Plan*, 2014). So of the counties and county-level cities in which population has reached a certain size, which of these should or not be identified as a city? And have the roads in these counties and county-level cities been identified as a “city road”? Thus, it is difficult to perform such provisions in practice. *On a city road* should be reproduced as *within the prescribed area*. And as for the fact that which roads allowed cargo motor vehicles to carry temporary operators in its carriage on the precondition that it leaves a safe room, it can be specific prescribed by next-level law.

### ***Improper Expression of “When necessary”***

Article 116 of *The Road Traffic Safety Law* stipulates:

Where a traffic policeman is imposed upon an administrative sanction in accordance with Article 115 of the present Law, he may be ceased from performing his duties before the decision on the administrative sanction is made; and may, when necessary, be confined.

There is ambiguity on the expression of “when necessary”, and what does “necessary” mean in this context? Does it refer to the time when violating the provisions in Article 115 or when doing harm to the

society? It is difficult to carry out the provision in judicial practice. Hence, we recommend changing *when necessary* to certain specific behaviors.

### **Contradiction in Language**

According to the third item of Article 119 of *The Road Traffic Safety Law*:

A “motor vehicle” means a wheeled vehicle which is driven or drawn by power device, running on road for people to ride or take, or for carrying articles, or for carrying out special engineering operations.

Item 4 of Article 119 of *The Road Traffic Safety Law* stipulates:

A “non-motor vehicle” means a means of transportation which is driven by manpower or domestic animal power to run on road, or a motor wheel chair vehicle of a disabled person, an electric bicycle or any other means of transportation which is driven by power device but the designed maximum speed per hour, with the empty vehicle's quality and the external size conforming to the relevant national standards.

The contradiction between the provisions in language mainly covers two aspects: on one hand, “motor vehicle” means a wheeled vehicle which is driven or drawn by a power device, while a “non-motor vehicle” refers to a means of transportation...which is driven by power device but.... Can you try to analyze the reason why they are two different vehicles since both of them are driven or drawn by a power device? On the other hand, some motor wheelchair vehicles for the disabled are powered by gasoline, others by electricity, and in the meantime, in addition to electric bicycles, there are also the electric tricycles with wide variety of power. In judicial practice, some people only have a contradictory idea about whether these vehicles are “motor vehicles” or “non-motor vehicles”. So, a “*non-motor vehicle*” hereby should be defined as *a means of transportation which is driven by manpower or domestic animal power to run on road*. And all the methods of transportation, which are driven or drawn by power devices are defined as “*motor vehicles*”, and then specific provisions to “motor vehicle” and “non-motor vehicle” on the road passage shall be formulated, which will help improve the recognition and understanding of the traffic participants and benefit the management department.

### **Misuse of Words**

According to the second item of Article 52 of the *Regulation on the Implementation of the Road Traffic Safety Law of the People's Republic of China*:

If there is no traffic sign or line at the intersection, a motor vehicle shall stop and look out before entering into the intersection and let the oncoming vehicles from the right road go first.

In this provision of “let the oncoming vehicles from the right road go first”, the traffic participants have to determine “left” and “right” when entering into the intersection. On the other hand, if several cars arrived at an intersection simultaneously, who goes first? Therefore, *right* should not be used here, it should be changed into *let the vehicle which has entered the intersection go first or let the vehicle pass if it is safe to do so*.

## Syntax Errors

### ***Inaccurate Definition of “Traffic accident”***

The fifth item of Article 119 of *The Road Traffic Safety Law* states:

A “traffic accident” means an incident in which a vehicle causes, when running on road, personal injury or death or properties losses.

First, it is easily misinterpreted as personal injury, death, or properties losses caused by pedestrians due to an error or unexpected incident that is not a traffic accident. Second, the “vehicle” is not at fault, it is the vehicle users and vehicle managers, as well as traffic participants who are in fault. So, the subject should be a person but not a vehicle. Third, “traffic accidents” include both road traffic accident and water traffic accidents. Accordingly, a few errors in the wording and syntax are found in the definition of “traffic accident”, and it could be revised as follows:

A “Road traffic accident” means an incident in which a vehicle driver causes, when driving on the road, personal injury or death or properties losses.

### ***Setting-Measures Collocational Errors***

Articles 50 and 52 of *The Road Traffic Safety Law* specify:

Freight motor vehicles are prohibited to carry passengers. If a freight motor vehicle needs to bring workers, safety measures shall be taken to protect the workers. When a motor vehicle meets with a breakdown on road, and needs to be parked for elimination of the breakdown, the driver shall immediately turn on the danger emergency alarm flash light, and move the motor vehicle to be parked at a place where the traffic will not be impeded; if the motor vehicle is difficult to be moved, the driver shall continuously turn on the danger emergency alarm flash light, and set up a warning mark towards the direction facing the coming vehicles, or take other measures to enlarge the warning distance, and shall, when necessary, promptly call the police.

In the previous provisions, two mistakes were made. According to the second item of Article 50: “If a freight motor vehicle needs to bring workers, safety measures shall be setup to protect the workers.” It is clear that the collocation is setting measures if the main part of the attributive is removed. As we know, “setting”(shezhi) refers to establishment or installation, while “measures” (chuoshi) are taken aiming at certain conditions. Obviously a wrong collocation is found. Accordingly, the word *measures* should have been replaced by the word *facilities*.

Similarly, in Articles 52 of this law “the driver shall continuously turn on the danger emergency alarm flash light, and set up measures such as a warning mark towards the direction facing the coming vehicles, or take other measures to enlarge the warning distance, and shall, when necessary, promptly call the police.” This sentence is also grammatically wrong due to the improper collocation of “set up” with “measures”, and thus “warning mark” became the attributive of “measures”, and obviously “warning mark” can certainly not be called as measures. If the verb-object phrase “set up a warning mark” is the attributive of “measures” then that became meaningless. Therefore, the correct interpretation should be combined with the predicate “take”, namely: “and take measures to set up a warning mark towards the direction facing the coming vehicles to enlarge the warning distance.”

## Conclusion

Although the nonstandard problem of legal language is a flaw in the current laws, it directly injures the solemnity and authority of the law, and is potentially an obstacle to the construction of legal system in China. Therefore, solving the problem that the usages in legal language are not standard needs to become a common concern of the whole society, especially the lawmakers who should place great importance to this. The use of legislative language in China can be standardized by means of establishing special legislature, strengthening the legislative technical research and increasing language examination procedures, etc. As Mr. Pan Qingyun points out, “Legal language is a double-edged sword, which is not only a carrier of judicial justice, but also a ‘cell’ of judicial justice” (Zong, & Liu, 2006). Therefore, to guarantee justice and efficiency in the judicial field, the function of legal justice shall be further enhanced and optimized, and the ‘cell’ effect of legal language shall be broken through. Meanwhile, we should learn from the developed countries that have made legislative achievements, continue to innovate in the new historical period, and bring new reasonable contents for the construction of road traffic regulations, thus playing a better role in the realization of safe and smooth traffic.

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# **The Food Law System of the Jungle-America in the Early 1900s**

## **– Study on *The Jungle* from the Perspective of Law**

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**[Abstract]** *Built on the existing study on The Jungle authored by Upton Sinclair, this paper attempts to approach this genuinely realistic novel mainly from a legal perspective of probing America's food problems, the specific flaws in its food law system at the turn of the 19th century, and ultimately the contributing factors for those legal flaws, with a primary objective to gain a deeper insight into America's food condition then, and more importantly, its food law system at large.*

**[Keywords]** *The Jungle; legal; food condition; food law system*

### **Introduction**

Hailed as a preeminent novelist in the 20<sup>th</sup> century, Upton Sinclair has crafted profusely in the full span of his life, pouring out some sixty substantial books, a score of pamphlets and fifteen hundred-odd articles. Amongst his staggering literary output, *The Jungle* distinguishes itself from others as his representative work, bearing testimony to his extraordinary flair for a remarkable novelist. Pivoting on the tear-jerking life story of the Jurgis' family, the novel relates with minute detail the untold misfortunes they repeatedly encounter and relentlessly unveils the impudence of the money-obsessive capitalists, with an intention to call national attention to the laboring people's plight and win as many converts as possible to socialism. The daring novel was actually born from Sinclair's seven-week investigation of the meatpacking plants in Chicago, exposing him fully to the mercenary nature of capitalism, and the abject misery of the tolling workers. With full verisimilitude, he fleshes out a capitalist inferno with a realistic style that relies heavily on a stomach-churning description, such as the spectacle of the overstrained workers laboring in the place that "ran with steaming hot blood" (Sinclair, 1906, p. 47), and groups of rats scurrying over the meat, etc. Quite unexpectedly, the publication of *The Jungle* greatly failed Sinclair in achieving his original writing purpose of exposing the capitalists' cruelty and gainfulness. As he has ever professed with a pronounced self-mockery tone, "I aimed at the public's heart, and by accident I hit it in the stomach" (Sinclair, 1906). As it turns out, the broad American populace responded more to the severe food problems, nauseatingly rendered in the novel, than to capitalism. The novel also alerted people to the serious flaws of the food laws then, stimulating the ultimate passage of the 1906 Food and Drug Safety act, the first effective federal law ever signed to ameliorate the domestic food condition. As "an exact and faithful picture of conditions" in Chicago's Packingtown "in the smallest detail" (Sinclair, 1906), the novel can serve as compelling proof of a Jungle-America where food problems clustered in the early 1900s, and obtain a better knowledge of food law system then.

## Literature Review

Fabulous as *The Jungle* was, the relevant studies on it at home and abroad are disappointingly unfledged. For example, Chinese scholar Huang (2000) endeavored to probe the novel by exploring its artistic characteristics objectively and comprehensively. Xiao (2003), and Li (2011) went further by exploring the formidable power of the public opinion. In sharp contrast, An, Luo and Zhu's (2011) approach to the novel turns out to diverge a lot from those above by delving deeper into the relationship between political stability and the press freedom demonstrated in the novel. The existing study on the novel abroad is comparatively more abundant and profound. Specifically, Michael Folsom (1979) attempted to investigate Sinclair's true political stand. J. Michael Duvall (2002) sought to explore *The Jungle* by examining the very idea of "the body" in *Processes of Elimination: Progressive-Era Hygienic Ideology, Waste, and Upton Sinclair's The Jungle*. In sharp contrast, Benjamin R. Sachs (2009), proceeding from an in-depth inquiry into the complex social background of the novel, aims to address the perplexing question, "will privacy law be for the information age what consumer protection law was for the industrial age?"

Seen from above, the study on *The Jungle* is far from ample, the main focus of which has been exclusively limited to its artistic features, politics, or consumerism. Few, if any, have tried to explore it from a legal perspective at length and in depth. Given this, this author has written this paper with its focus on the food law system in America then. The paper mainly consists of three parts: the first of which serves to present various food related problems of the day, the second probing several flaws in America's food law system, and the third exploring the specific reasons for those legal flaws. Based upon the existing sources, it is among the first to delve into the novel from a legal perspective, which will contribute to a better understanding of America's food law system in the early 1900s.

### Food Problems in *The Jungle*

At the height of the industrial age, America was inflicted with a myriad of food-related problems. It manifested itself mainly in the form of food contamination and adulteration, which ran wild in America's food industry then, stretching further and further into human life. On this score, the report findings below published by the Agriculture Departments then can speak volumes:

Over 20 studies found that milk was watered down or skimmed without warning. Eight studies discovered butter to be adulterated with oleomargarine. Fifteen studies found that cottonseed oil was extensively used to adulterate lard (Law, 2003).

All of the above attests to the grimness of America's food condition in the early 1900s, of which Sinclair was keenly aware. So observant was he that nothing could escape his prying eyes and all were set down on paper with minute detail and sheer acridness.

To squeeze out the maximized profits, the venal packers in *The Jungle* frequently resorted to food contamination or adulteration. Specifically, they concocted meat products out of knuckle joints, gullets, skins, moldy scrap ends and even poisoned rats. The chickens, for example, turned out to be a mixture of "tripe, and the fat of pork, and beef suet, and hearts of beef, and finally the waste ends of veal" (Sinclair, 1906, p. 112), which would undoubtedly reduce their nutritional value. To cover up their packinghouse "crimes" and "swindles", they hired regular alchemists to have their products chemically spiced, colored and preserved, as exemplified by the "Devyled" ham, a foodstuff commonly seen on American tables. With undiminished vehemence and meticulousness, Sinclair lays bare its whole production process:

... such stuff was made out of the waste ends of smoked beef that were too small to be sliced by the machines; and also tripe, dyed with chemicals so that it would not show white; and trimmings of hams and corned beef; and potatoes, skins and all; and finally the hard cartilaginous gullets of beef, after the tongues had been cut out. All this ingenious mixture was ground up and flavored with spices to make it taste like something (Sinclair, 1906, p. 112).

Beyond that, mercenary packers even went further by pushing their nationwide agencies into a maniac hunt for “old and crippled and diseased cattle” which had been fully “covered with boils” (Sinclair, 1906, p. 111). Those nauseatingly graphic descriptions consequently produced a dramatic influence upon the American multitude, “unsettling their stomachs” (Wood, 1985) and stirring their rage. President Roosevelt was found to be among them as a victim of foul sausage. While reading this part of the novel over a light breakfast at the White House, Roosevelt “suddenly rose from the table, and crying”: “I’m pizened’, and begun throwing sausages out of the window” (Dunne, 1906), which alerted him to the grimness of America’s food problems of the day.

### **Flaws of America’s Food Laws**

America’s food law system in the early 1900s was far from sound, and the specific flaws of which included include, but are not limited to the following:

#### ***Absence of a Major Federal Food Law***

Back to the early 1900s, the United States, of all major nations, was found to be “the only one without a uniform system for guaranteeing the quality of food products and the accuracy of their labels” (Wood, 1985). It was true that by the year 1906 when *The Jungle* was published, there had already been several early federal food legislations, but nonetheless, the broad fact remained that most were primarily concerned with exported foods, rather than domestically produced foods, and the routine food inspection was also exclusively limited to the former. For example, according to the regulations then for the inspection of livestock, “no microscopic examination will be made of hogs slaughtered for interstate trade, but this examination should be confined to export trade” (Sinclair, 1906, p. 110). Conceivable that, unrestrained and reckless, mercenary packers engaged in interstate commerce would always plunge themselves into a frenzied hunt for the low-priced diseased hogs so as to maximize their profits. To address the problem, America’s individual states preceded the federal government in regulating domestically produced foods, which, however, turned out to accomplish little on account of their limited power. Consequently, food contamination and adulteration was always able to run wild. With the ever-increasing amounts of foods traded in interstate commerce, the absence of an effective federal food law, a major legal flaw in America of the day, loomed larger and larger, making it increasingly necessary that an effective Federal food law be signed to guard against food problems.

#### ***Flawed State Food Laws***

In the general absence of federal food legislation, the state laws generally took the lion’s responsibility for the regulation of domestic foods, which, however, used to be greatly flawed. Specifically, those legal flaws can be summarized as follows:

**Relaxed statutory provisions.** Historical evidence indicated that as early as the 1880s “State legislatures began to enact pure food laws” (Law, 2003), and “by 1900 nearly every state had passed some kind of pure food or pure dairy legislation” (Law, 2003). Nevertheless, most state food laws turned

out to do little in deterring food related problems because they were always relaxed in their specific statutory provisions. In this regard, the statutory requirements then for the labeling of foods served as a telling example. The majority of state food laws dictated that manufacturers should make clear on the product labels whether impurities or mixtures were added to their products. It suggested that producers could still get away with adding any kind of impurities, such as glucose or even additives, to their foods as long as they had indicated them on the labels. Consequently, statutory provisions concerning foods were downright reduced to dead letters, pure and simple, failing to act as a deterrent force against food adulteration in most cases. The chance was that many manufacturers would always maximize the advantage of this legal loophole to make their deceptive practices go “right on” “without anyone punished” (Sinclair, 1906, p. 109).

**Absence of law enforcement agencies.** Back to the years between 1880 and 1900, it was common in quite a few states that “the regulations outlawed adulterated products, but no agencies were entrusted with authority to enforce the law against food law offenders” (Law, 2003). Typical among such statutes was Arizona, whose food law explicitly outlawed “the adulteration or dilution, for sale as pure, of food, drink, or drug, or the sale as pure of such adulterated or diluted Articles” (U.S. Senate, 1901), but ironically, it did not entrust any specific agency with the authority to enforce it. Perfectly possible that even if one were smart and sober-minded enough to make the discoveries that “their sugar and flour had been doctored”, and “their canned peas colored with copper salts” (Sinclair, 1906, p. 87), they would still fail to make any difference for the absence of an enforcement agency. Consequently, the majority of the state food laws were nothing short of nonexistent.

**Lax law enforcement.** It was true that in a limited number of states, especially in the American south and west, a certain law enforcement agency had been specified. Nonetheless, to public dismay, it was barely competent for deterring food problems due to the lax enforcement. Back then out of self-interest, “the government would always collude with a powerful major manufacturer” (Xiao, 2003), turning a blind eye to their deceptive practices, and constantly muddling through the so called routine food inspection:

"If you were a sociable person, he (the government inspector) was quite willing to enter into conversation with you, and to explain to you the deadly nature of the ptomaines which are found in tubercular pork; and while he was talking with you, you could hardly be so ungrateful as to notice that a dozen carcasses were passing him untouched, which are found in tubercular pork...(Sinclair, 1906, p. 41)

Undoubtedly, the unscrupulous acts of the above-mentioned government staff were in blatant defiance of the law. Their entire dereliction of duty was bound to wreak havoc on the state law, impairing its authority tremendously, which should have well justified serving punishment on them. However, it would always turn out that those irresponsible officials usually fared well at that time. In sharp contrast, those who were out to fulfill their duty of inspection in all earnest were always shrugged off, and even ended up jobless. As was related by Sinclair,

“[...] a physician, made the discovery that the carcass of steers which had been condemned as tubercular by the government inspectors, [...] which are deadly poisons, were left upon an open platform and sold away to be sold in the city; and so he insisted that these carcasses should be treated with an injection of kerosene-and was ordered to resign the same week!” (Sinclair, 1906, p. 110).

On account of the lax enforcement then, manufacturers of adulterated foods would always remain at large, making the food status of America ever worsening.

**Considerable inconsistency in state food laws.** There remained a considerable inconsistency in state food laws. The food packaging requirements then could be taken as a revealing example, which used to vary tremendously among different states, constantly trapping those food producers involved in the interstate commerce in a fix. As pointed out by Senator Allen Crampton (1900), “a manufacturer whose goods are retailed extensively all over the Union must put them up in a dozen different ways to suit the laws of different States.” Worse still, for this reason, it used to immensely weaken an individual state government's competency for the prohibition of food adulteration, always rendering them “tired hand and foot” (Sinclair, 1906, p. 204) in dealing with food problems in interstate commerce, which provided money-grabbing food manufacturers with more opportunities to continue their deceptive practices. Packers in *The Jungle* were among them, who welcomed cattle “from far state”, some of whom “had die”, “from what cause no one could say”, and then disposed them “in darkness and silence” (Sinclair, 1906, p. 71). The list of such unscrupulous acts went on and on, unleashing even greater harm on the food industry of the time.

### **Contributing Factors for the Flawed Food Law System**

Based upon the existing primary and secondary sources, the contributing factors for the flawed food law system can be summed up as follows:

#### ***Public Unawareness of the Severity of the Food Adulteration***

Dating back to the early 1900s, it was especially true of some sanguine congressmen, who, “not aware of the seriousness of the (food) problem” (Bailey, 1930), failed to realize the high necessity of food legislation as a great national problem, and insisted that dedicated legislative efforts be made on other issues of a more pressing nature. In consequence of their strong opposition to the federal food legislation, many bills primarily designed to prevent food adulteration were rejected. By the statistics, of the 190 measures designed to protect food consumers from the year of 1879 to 1906, only “eight became law, six passed the House but not the Senate, three passed the senate but not the house, nine were reported back adversely, and 141 were never heard of after their introduction” (Bailey, 1930).

#### ***Lack of Sufficient Knowledge and Efficiency of the Legal Staff***

According to Wood (1985), there used to be “a lack of sufficient of knowledge and efficiency” of legislators and law-executors, making them incompetent to perform their duties. As a consequence, a multitude of state food laws were quite flawed, such as the inaccuracy in the specific statutory requirements; the enforcement of the food law turned out to be despairingly weak, which combined to create more opportunities for producers of adulterated foods to go along unpunished.

#### ***Moral Corruption***

The early 1900s was inarguably a gorgeous era for America when society basked in a great economic boom against the backdrop of the second technological revolution. However, the broad fact remained that “the moral development of the nation had failed to keep pace with an enormous material expansion” (Chalmers, 1959). As the century progressed, people became increasingly obsessive with money, so much so that they willingly sacrificed their moral integrity for the maniac pursuit of it. It was especially true of those mercenary food manufacturers during the turn of the century, many of whom resorted to the adulteration of foods as the most ideal roadmap to getting rich quick without regard of the health of the

American populace. To prevent themselves from punishment, they would try every means to maximize the use of legal loopholes while grinding out profits. The packers in Durham in *The Jungle* can stand as a vivid and illustrating example. Bent on profits, they turned Durham into Sodom incarnate where “so many sharp wits had been at work” (Sinclair, 1906, p. 92), mobilizing their agencies to hunt out diseased cattle from far states, bringing up all the old rancid butter left over for sale after oxidizing it and rechurning it with skim milk.

A lack of moral sense can also be found in the law enforcement officials. Lured by generous sums of money offered by rich food manufacturers, these officials would always stand at their side and even act as their accomplice in using the law at their command, turning it into “a hideous, brutal lie” (Sinclair, 1906, p. 184). Bursting with overwhelming fury, Sinclair laid bare all those brazen acts in *The Jungle* with full pungency, as was vividly exemplified by the government inspector who wantonly “put the stamp of official approval upon the things (tubercular pork)” (Sinclair, 1906, p. 41).

The general moral deficiency turned out to erode many people’s consciences and senses of responsibility, making the law enforcement weaker and laxer, and the food conditions worse off.

### ***Business Interests' Increasing Interruption of Legislation***

With the ever-growing economic strength of businessmen, they enjoyed an increasing power in society. By the early 1900s it “had become the ruling force in society” (Chalmers, 1959). It was also true of food manufacturers of the day. They progressively formed into various domineering Trusts, “the incarnation of blind and insensate Greed” (Sinclair, 1906, p. 361), making their presence increasingly felt by American society, and even going further by buying “up the law of the land” (Sinclair, 1906, p. 184) to have it tilted in their favor. Specifically, through bribery and corruption, they “forbade the mayor to enforce the laws” against them, “violated the rebate law” (Sinclair, 1906, p. 362) unpunished, and gradually turning the city council into “one of their branches” (Sinclair, 1906, p. 62). As a consequence of their increasing interruption of legislation, food laws were always skewed to their favor. As was despairingly exclaimed from the mouth of Jurgris in the book “that was their law, that was their justice!” (Sinclair, 1906, p. 184).

### ***Distinct Differences in State Conditions***

The fact that America is a typical federal country, entitling its individual states too many of the legislative rights, which would always vary tremendously from state to state for the distinct differences in their respective economic, cultural and political development. It was especially true of the state food laws of the day. As pointed out by many business representatives, there were considerable “inconsistencies in state laws in terms of both statutory requirements and enforcement practices-governing the purity and labeling of food and drugs” (Wood, 1985), which rendered it more challenging and tougher for the state governments to efficiently enact their food law.

## **Conclusion**

With full vividness and verisimilitude, *The Jungle* unveils all the ugly truth hidden within the filthy Packingtown, painting a meticulously faithful picture of the American food industry at large in the early 1900s. Upon its publication, the vast American populace was awakened to the realization of the already grim food condition engendered by widespread food adulteration, of which the major cause was the much flawed food law system. Building upon an in-depth study, those tentative conclusions can be reached that it is the joint force of a general lack of a federal food law, the relaxed statutory provisions, the lax enforcement, and the considerable inconsistencies in state laws that comprise the bulk of the flaws of

America's food law system, rendering it incompetent to effectively address food adulteration, not to mention reverse the deteriorating food condition. The contributing factors accounting for those legal flaws can include, but are not limited to, a general unawareness of the severity of food problems, a general moral decline, insufficient knowledge and competency of government staff, increasing influence of business interests on legislation and the distinctively different state conditions.

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# A Study of Information Development in Non-Lawyer Agents *ad litem*'s Courtroom Debate in Civil Cases from the Perspective of Rhetoric

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*[Abstract]* In China, the agent *ad litem* doesn't necessarily have to be a lawyer in civil cases, which caters to the present social reality, which may include the dominance of authority doctrine litigant mode in a courtroom trial instead of the adversary procedure and the underdevelopment of the bar and legal aid system. However, this may induce some problems during a trial in court. For instance, the non-lawyer agents *ad litem* may quickly find themselves being trapped in linguistic dead ends by their own language in trial. From the perspective of rhetoric, this paper analyzes the information development of courtroom debate in civil cases in which at least one of the parties does not appoint any lawyer as his/her agent *ad litem*. In the analysis, Aristotle's three persuasive methods (i.e. *logos*, *ethos* and *pathos*) are introduced and grafted onto a tree model of discourse information in order to clearly demonstrate how a linguistic dead end is formed step-by-step, which is also the main innovation of this study. It is hoped that this paper can raise the awareness of non-lawyer agents *ad litem* in terms of using information and rhetoric as language tools, and can enhance their linguistic justice in the civil trials.

*[Keywords]* civil case; agent *ad litem*; discourse information; rhetoric; tree model of discourse information

## Introduction

According to the *Civil Procedure Law of the People's Republic of China*, Article 58, Second Clause: a lawyer, a near relative of a party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent *ad litem*. Consequently, the agent *ad litem* in China doesn't have to be a lawyer, which is different from many other countries in which Mandatory Representation by the lawyer is implemented, i.e., when the parties or their legal representatives are on a lawsuit, they must entrust lawyer to complete the lawsuit (Ji, 2008). The situation exists in China for some reasons: first, China resembles Germany and France in their civil procedure model which is based on the *ex officio* doctrine instead of the adversarial proceedings. Second, the system of lawyer's service and legal aid is still not fairly complete in China. Therefore, the situation of non-mandatory representation by the lawyer would exist for quite a long period (Xiao, 2007). It is generally believed that the parties' taking part in the court by themselves is helpful for revealing the truth, and avoiding the interruption of professional lawyers who sometimes abuse their skills to distort realities for their clients' sake in litigation. However, it is actually even harder for the judges to maintain procedural justice in some civil courts, especially in some basic People's Court cases, if there is no participation of professional lawyers (Ji, 2008). As for procedural justice, Li (2008), an expert in procedural law, asserts that procedural justice should include "the equal dialogue between parties". Liao (2003) also points out that it is hard and problematic to keep equal dialogue between parties in practice. The following courtroom adjudication transcript of a civil case can demonstrate the situation.

The basic information of the case is as follows: on the evening of May 30, 2008, the plaintiff and his friends went to the two defendants' restaurant for meal. During the meal, the plaintiff fell to the ground

and was injured by the pieces of a bottle on the ground. Finally, the plaintiff was identified with six levels of disability for the injury. Therefore, the plaintiff sued the two defendants for joint compensation for a total of ¥313429.24 RMB. In the process of negotiating compensation, the two defendants refused to compensate further after paying ¥4000 for the plaintiff's medical treatment costs.

**Presiding judge:** ...Now, it is time for court debate. The two parties, please argue based on the focus of dispute. The plaintiff argues first.

**Non-lawyer agent *ad litem* of the plaintiff:** The testimony of the witnesses and the statement provided by the defendant is contradictory. Our testimony of witnesses and statement are consistent. Therefore, our statement to the court should be true. Therefore, the defendant should be held accountable.

**Presiding judge:** The defendant, please argue.

**Lawyer agent *ad litem* of the defendants:** Our testimony of witnesses and the statement are consistent because our giving the plaintiff ¥4,000 does not mean we have a fault. Instead, we give him money out of sympathy. Further, in the plaintiffs' evidences, there is no causal relationship evidence between the plaintiff's injury and the defendant. Rather, the evidences are all about the losses after his injury...

This extract comes from one of the author's recorded court trials. It can obviously be seen that the non-lawyer agent *ad litem* of the plaintiff did not develop any of the information provided in his debate before jumping to a series of conclusions, which seemed illogical. Compared with the non-lawyer agent *ad litem* of the plaintiff, the lawyer agent *ad litem* of the defendants developed the information of his debate step-by-step, fully and logically.

### Objectives

According to courtroom observation and adjudication transcript reading, it is found that one of the factors that affects procedural justice is the underdevelopment of the non-lawyer agent *ad litem*'s debate in court in terms of the information and rhetoric, which may easily result in imbalance and asymmetry: unequal dialogue between parties violates the principle of equality, adversary and efficiency (Gu, 2002) just like the above extract has demonstrated. Because of the above-mentioned social limitations, it is still difficult to improve this situation institutionally (Xiao, 2007). Therefore, enhancing the procedural justice through "the equal dialogue between parties" (Li, 2008) verbally should be believed to be prioritized. As a result, this study tries to analyze the characteristics of the court debate in non-lawyer-represented civil cases from the perspectives of information and rhetoric. It is hoped that this paper can raise the awareness of non-lawyer agents *ad litem* in terms of information and rhetoric development in courtroom debates, and enhance the procedural justice linguistically in trials. To achieve these objectives, two specific research questions are elaborated tentatively as follows:

1. How do the lawyer agents *ad litem* develop their information in courtroom debates by using rhetoric in civil cases?
2. What are the characteristics of successful information and rhetoric development in courtroom debates of lawyer agents *ad litem* in civil cases?

## Scope and Background

### ***Previous Related Studies on Courtroom Debates of Lawyers***

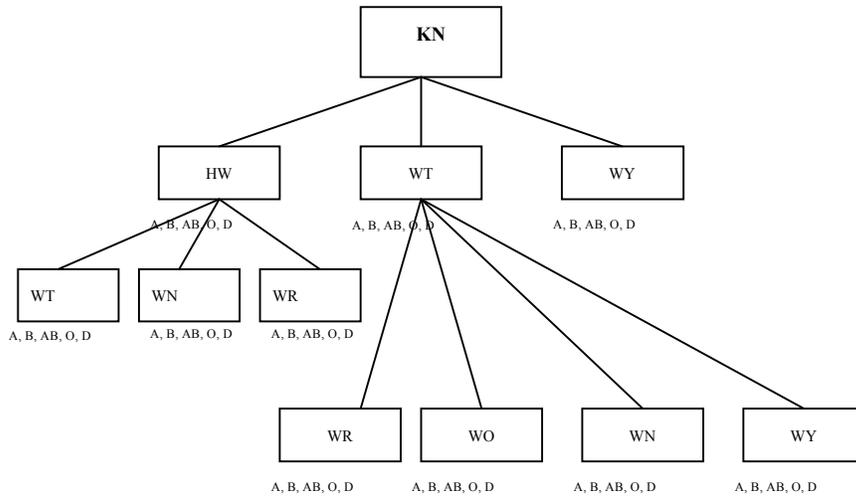
Qin (2001) asserts that lawyers' debates in the court are the integrative embodiment of professional lawyers which can influence the quality of the defense. This view has become the common sense in the field of jurisprudence, which induces the popularity of books and articles on lawyers' debates in court. In addition, there are some books and articles on general legal debate that include not only lawyers' debates in court, but also the debates of public prosecutors, parties and other participants in the court (Gu, 2002). Also, there are some studies that are interested in all sorts of debate, such as political debate, academic debate, and debate contests, in which legal debate in court is only one of them. Lastly, since forensic linguistics have won current popularity, more and more studies have turned to lawyerspeak analysis from the perspectives of conversation analysis and pragmatics.

To sum up, these studies mainly fall into two categories. First, many studies have devoted their attention to concrete strategies of legal debate in the courtroom. These studies are mostly skill-oriented, which lack theoretical support. Second, a number of other studies, focusing on the forensic discourse analysis of lawyer debate, are concerned with a sub-domain of discourse analysis, as one variety of the study of institutional discourse, that is, the study of 'talk at work' or 'institutional discourse in a forensic context'. These studies are mostly theory-oriented; they do not take any problem in the real world into consideration, which stands for another extreme. Third, few of the previous studies directly considered the problem of non-lawyer agents *ad litem* and the difficulties they face in courtroom debate, which has exerted obvious bad influences on the trials in China. In general, these studies have shed great light on the interplay between legal issues and linguistics. However, these analyses merely focus on the explanation of the lawyerspeak with little concern for real world legal problems, and lacks applicable value in legal settings. This study aims at occupying this niche.

### ***Previous Related Studies on Discourse Information Analysis***

Du (2007) proposed that the information structure of a legal discourse is a hierarchical structure, which is comprised of a kernel proposition (KN) and a number of information units developed under the KN. An information unit is a proposition that is independent of communication medium, constituting the smallest unit of meaning. For each legal discourse, besides the kernel proposition (KN), the content of any subordinate information unit can be expressed by 15 interrogative words, including What Thing (WT), What Basis (WB), What Fact (WF), What Inference (WI), What Disposal (WP), Who (WO), When (WN), Where (WR), How (HW), Why (WY), What Effect (WE), What Condition (WC), What Attitude (WA), What Change (WG) and What Judgment (WJ) (Du, 2007).

Therefore, together with the above-mentioned Labovian shared information type (Du, 2007); the information structure of a legal discourse can be displayed as a tree diagram like the one in Figure 1.



**Figure 1. Tree Structure of Information of Legal Discourses (Du, 2007)**

In Figure 1, each information unit becomes an information knot in the tree diagram. KN is the uppermost information knot, which is the information focus of the whole discourse. This information focus is developed by subordinate information knots, such as HW, WT and WY at the first level, which is also developed by their own subordinate knots: WT, WN and WR for HW and WR, WO, WN and WY for WT. The information knots as a whole form a hierarchical structure, with each knot being labeled with a Labovian shared information type. The combination of information knot and shared information type into a hierarchical net is an innovation which is rooted in the processing of legal discourse but is applicable to the processing of other written and oral discourse information as well.

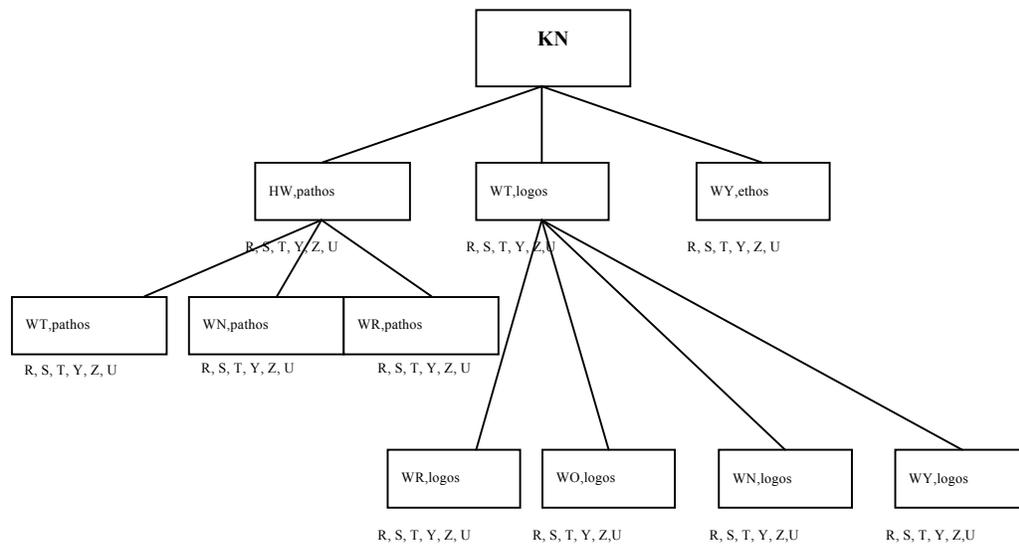
***Aristotle’s Forensic Rhetoric: Three Means of Persuasion***

To be more specific, *logos*, or logical appeal, means persuading by the use of reasoning. Aristotle and Roberts (2004) defined *logos* as “what makes the argument of speech demonstrative and worthy of belief?”. While *ethos*, or ethical appeal, means convincing by the personality of the arguer. Naturally, we tend to believe people whom we respect. Therefore, one of the central problems of argumentation is to project an impression to the audience that you are someone who is likable and worthy of respect. As a result, nowadays in advertising, it is very popular to get a famous movie star or sports star as a brand spokesman. This is actually an indirect use of *ethos* in persuasion. *Pathos*, or emotional appeal means persuading by appealing to the audience’s emotion. Aristotle (2004) described *pathos* as the persuasion through the hearers’ sympathy for the arguer. Some argue that *pathos* has power over *logos* in that emotion will determine how the mind perceives and interprets any logical arguments presented to it. Therefore, it is considered to be the strongest of the appeals over centuries.

**Theoretical Framework**

Specifically, the theoretical framework of this study is a combination of the discourse information analysis proposed by Du (2007) and Aristotle’s three means of persuasion for forensic rhetoric for the analysis of courtroom debate. What is creative about the study also lies in its combination of tree structure of information for legal discourses and rhetoric in the hope of raising the awareness of non-lawyer agents *ad litem* in terms of information and rhetoric development in courtroom debate, and thus, enhancing the

procedural justice linguistically in trial. According to Du (2007), this study will draw on the symbol R, S, T, Y, Z, U to represent the five Labovian shared information types (Y=BA, means unknown to either A or B) respectively in dialogue to which the courtroom debate belongs in the intention of distinguishing the five types of information A, B, C, E, O, D (E=BA, means unknown to either A or B) in monologue. Therefore, the proposed new tree structure is presented as follows:



**Figure 2. Tree Structure of Information and Rhetoric of Courtroom Debate**

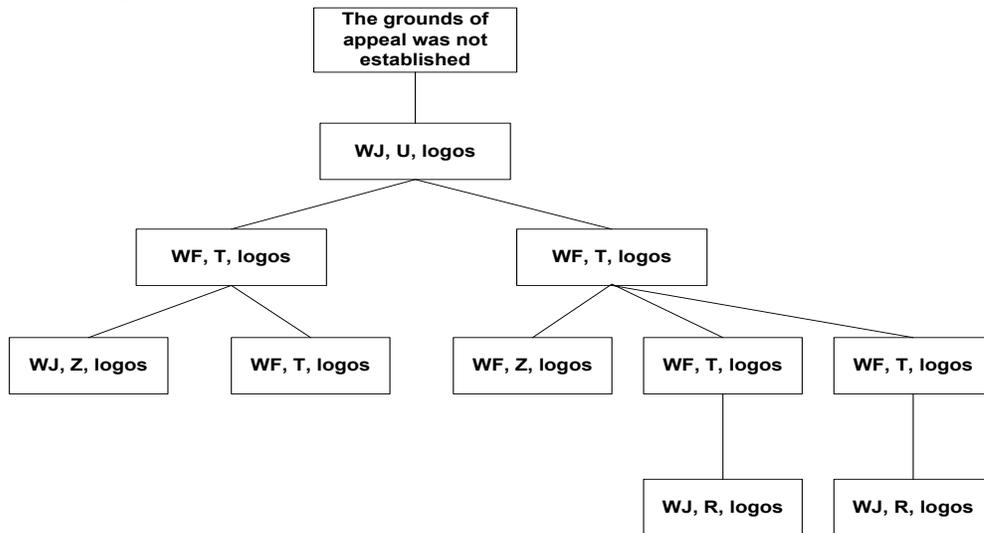
Specifically, the rhetor of courtroom debate will choose one of the means of persuasion according to his/her motivation, i.e. to display the facts and proofs (logos), or to illustrate the authoritativeness of what is going to say (ethos), or to arouse audience’s emotion or sympathy for what is going to be said (pathos). This is the initial step which triggers the development of information: different information units will be used for different motivations or purposes, which will result in different tree structures of information. Then, a whole picture of the tree structure of information and rhetoric of courtroom debate is constructed with the realization of linguistic behavior, that is, courtroom debate. Then, the audience will demonstrate different degrees of acceptance according to their understanding of different information units and shared information types under the influence of rhetoric. Such responses are realized in continued debate about certain information unit or in the ending of the debate. If the debate continues, the party-audience becomes the rhetor and the same procedure will continue which is a recursive process until the end of the court debate.

### Analysis

First of all, it is necessary to delimit the data used in this study. Non-mandatory representation by the lawyer during courtroom trials in civil cases is unique to China, which induces many problems. Therefore, this study focuses only on such civil cases lacking a lawyer agent *ad litem* in one party. The data consist of transcripts of courtroom debate from three civil cases.

The present study is a discourse analysis in nature and qualitative analysis will be conducted.

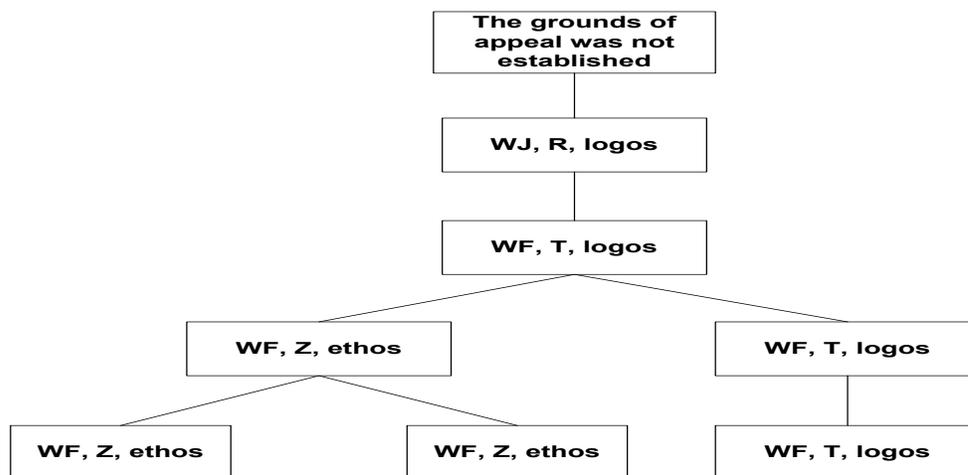
**Logos in the Information Development of Courtroom Debate**



**Figure 3. Application of Logos in Lawyer Agent *ad litem***

First, it can be seen clearly from the figure that the first opinion WJ is supported by two subordinate information (WF, T), which continue to be developed by one WJ and four WFs with a quite high degree of acceptance (Z). Thus, the rhetor can easily involve his audience in a common ground through shared information. Second, the other party’s non-lawyer agent *ad litem* responds to the debate by using very insufficient and unsystematic information development. By the way, the non-lawyer agent *ad litem* also demonstrates a false use of logos, i.e. “registration is equal to working”. The presupposition is false since registration is not equal to actually working. Therefore, the conclusion is naturally false. This kind of conclusion is illogical and unreasonable, which will easily put the non-lawyer agent *ad litem* at a disadvantage during the courtroom debate.

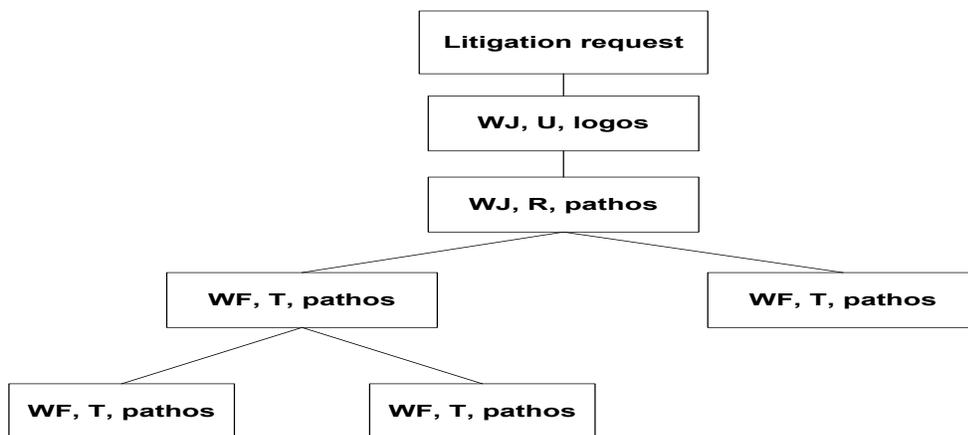
**Ethos in the Information Development of Courtroom Debate**



**Figure 4. Application of Ethos in Lawyer Agent *ad litem***

In this segment of the information and rhetoric development (Figure 4), it is obvious that the rhetor begins with his motivation, i.e. his intention to prove that the grounds of appeal are untenable. Therefore, *logos* is used, which is the most frequently used means to prove some idea. As a result, the rhetor begins with his own opinions upon the appellant's arguments which may not been known to others, i.e., "the appellee have never recruited the appellant" which is WJ, R, *logos*. Then, in the next step, in order to increase the degree of acceptance for the audience, he develops his reasoning by using a shared fact known to both parties (with a higher degree of acceptance for the audience than the beginning information unit) in a subordinate information unit, i.e., an authoritative document which support the possibility of non-recruitment of the appellant which is WF, T, *logos*. Third, under WF, T, *logos*, the rhetor develops two other information units and both possess a very high degree of acceptance (Z and T): one is a fact known to everyone present, i.e., "the letter of recommendation is not the evidence of recruitment". The reason why this fact has the highest degree of acceptance is that this fact is a social rule officially laid-down by a department of the Chinese government, i.e., the rhetor borrows the authority of government to persuade his audience, which is an indirect use of *ethos*. In order to further promote the degree of acceptance of this fact, two subordinate information units are developed by using a authoritative document (with highest degree of acceptance) and a social fact (with highest degree of acceptance), i.e., WF, Z, *ethos*. The other information unit developed under WF, T, *logos* continues to be the fact known to both parties (with a quite higher degree of acceptance for the audience) which is the same as superordinate information unit, i.e. WF, T, *logos* which continues to be developed by a third WF,T, *logos*. These two similar steps, together with other information and rhetoric developing steps, construct very strong supporting arguments for the KN. Therefore, this segment of courtroom debate is successful in terms of information development and persuading the audience through choosing the right means of rhetoric, which tends to put the lawyer-rhetor in a dominant position in the courtroom debate, which in turn, is likely to incur an imbalance between the lawyer agent *ad litem* and the non-lawyer agent *ad litem*.

***Pathos in the Information Development of Courtroom Debate***



**Figure 5. Application of Pathos in Lawyer Agent *ad litem***

Figure 5 demonstrates how the rhetor first uses one information unit (WJ, U, *logos*), i.e., "the real value of the car is only half of the debt" to develop his litigation request, which is to re-evaluate the value of the car. Then, this information unit, which is an opinion in nature, was developed by another information unit (WJ, R, *pathos*), i.e., "the plaintiff agreed to accept the car as the defendant's debt because he had no time

to consider”, which becomes the start of a “pathos information chain”. The “pathos information chain” includes four information units (WF, T, pathos), which are all objective fact in nature, i.e., “the plaintiff was asked to sign an agreement for the debt immediately”, “the name of the owner of the car must be transferred immediately”, “there was too much debt for the defendant” and “the debt had been very old”. When an object fact is used to support an opinion (WJ), the acceptance of the opinion becomes natural and easy for the audience. Specifically, in this “pathos information chain”, through the use of pathos, the rhetor successfully passes his feelings to his audience, which can easily invoke the expected sympathy and sense of approval in his audience. As a result, his opinion will be easily accepted by his audience.

### ***Summary of the Characteristics of the Information and Rhetoric Development in Courtroom Debates of Lawyer Agents ad litem***

The three means of persuasion proposed by Aristotle (2004) is essential for courtroom debate. To be more specific, logos or logical appeal, is the most frequently used among the three. It focuses on the rhetor’s logic reasoning based on all kinds of facts in order to reach a common ground with audience. This measure will be demonstrated in the rhetor’s WJ, WI or WF with sufficient subordinate information development by using an information unit such as WB, WF or WT, which possesses a very high degree of acceptance (Z and T). While ethos, or ethical appeal, will often be demonstrated by authoritativeness of rhetor in courtroom debate by using information such as (WF, Z) or (WT, Z) to support the superordinate WJ, WA or WI. In this way, rhetor will easily make his audience believe what is said because of credibility. Pathos or emotional appeal, aims at the manipulation of the audience’s mental state because different mental states will involve different judgments in the audience. This goal can even be achieved by using WA, WI or WJ, which demonstrates less degree of acceptance, to support the superordinate information.

### **Concluding Remarks**

In the analysis, in order to demonstrate how the lawyer agents *ad litem* develop their information in courtroom debates step-by-step, Aristotle’s three persuasive methods (i.e. logos, ethos and pathos) are introduced and grafted onto tree models of discourse information, which is also the main innovation of this study. It is hoped that this paper can raise the awareness of non-lawyer agents *ad litem* in terms of using information and rhetoric as language tools, and can enhance the linguistic justice during the trial in civil court.

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# A Summary of Argot of the Crime of Theft<sup>i</sup>

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**[Abstract]** Argot of the crime of theft refers to the enigmatic language used by the criminals of theft during their criminal activities. Among all the argot of the crime of theft, the crimes of pick-pocketing and shoplifting have the most colorful argot. The crime argot of theft has the following features: 1. It has the most mature argot system with the longest history that has been discovered; 2. It is complete and rich in content; 3. It is affected by local dialects so that it is regional; 4. It is quite identical across the country and therefore, it is convergent; 5. It has less new terms. The old expressions lack new substitutions.

**[Keywords]** crime of theft; argot; feature

## The Use of Argot of the Crime of Theft

Argot of the crime of theft is the enigmatic language used by the thieves during their criminal activities. In real life, the crime of theft varies – for instance, burglary theft, pick-pocketing and shoplifting, and technical theft. But the users of the argot of theft are mostly the incorrigible thieves. The contents of the argot mostly reflect different aspects during the process of the theft.

Among the seven kinds of criminal argot that have been discovered and become systematic, the number of theft argot ranks behind general argot, argot of drug crimes and argot occurring in incarceration. The author takes the examples of her research in eight cities of Beijing, Shanghai, Guangzhou, Kunming, Changsha, Fuzhou, Shenyang and Xi'an. See data (*Research on Criminal Argot of Drug-related Crime in Eight Cities Based on the Construction of Corpus*, Wang, 2010):<sup>ii</sup>

**Table 1. Research on Criminal Argot in Eight Cities**

General cases	Drug	Theft	Cheating	Gambling	Porn	Imprisonment space
29.85%	22.48%	15.07%	1.16%	7.32%	6.34%	17.78%

Because the perpetrators of theft mostly appear at bus stations, docks, shops, canteens, theaters, and free markets, as well as on trains and buses of the large- and medium-sized cities and prosperous towns, they take the advantage of the crowds to secretly steal the properties of the victims through various means of cover or by technical means. The entire process of the activity is in view of the public. The criminals need to deceive the public. Particularly, during the exchanges between the gang members, they must use their secret language to avoid being discovered by others. Other types of theft are not in view of the public so there is no need for the gangsters to cover up. Therefore, it is reasonable that the criminal argot of theft mostly appears in pick-pocketing.

## Features of the Criminal Argot of Theft

### ***Criminal Argot of Theft is the Most Mature and has the Longest History among those Discovered Criminal Argots that have Formed a System***

Part of the argot can be dated back to the 1950s and 1960s. Some particular argot even comes from the jargon of the lawless world and the cants of gangsters. For example, the “Eight-character” argot of “Jin,

*Ping, Cai, Gua, Heng, Ge, Lan and Rong*” which was very popular before the founding of the New China in 1949 has been passed down. The following argot originated from the Eight-character argot:

**Shenyang:** The characters of *Heng, Lan, Ge, Rong* means to frame up, becloud, kidnap and cheat. *Heng* means robbery, *Lan* means gambling, *Ge* means theft and *Rong* means cheating. (Some users believe *Rong* means theft and *Ge* means cheating.)

*Ge jia men:* People who live on theft.

*Rong:* Selling fake medicines on the streets or cheating money.

*Lao Heng:* People who collect debts.

*Lan:* The general term for money.

*Lan Tou:* 1.) Cash; 2.) Money with small face value

**Xi’an:** *Cai Rong:* Girl thief

*Wa Lan:* Theft mainly targets money but not properties.

There are still many kinds of argot that have been used until now, such as the general term for the pocket of the victim. (Details, see below.)

### ***Criminal Argot of Theft Covers a Wide Range of Aspects that Will Possibly be Involved in Theft Cases and Become a System.***

Each procedure of the theft has its appropriate argot: From finding a target to sounding the money; from working in cooperation with a due division of labor to the use of different tools or by hands; or after a successful theft, the transfer of the money or property or being discovered and forced to throw away the stolen money; from splitting the loot to the uneven splitting or the money was taken away by other; from selling the stolen goods to the assessment for the theft technology.

The crime of pick-pocketing is to steal other person’s money or wealth in a secret way. During the process of committing the crime, there involves people, stolen goods, and the process of theft. A theft can be divided into the following categories:

1. People: Including the thief (direct offender and accomplices), and the victim of the theft
2. Materials: Including the tools for criminal purpose, and the stolen goods (money and other goods)
3. Way of theft: The way of committing a crime can be divided into the following, according to different standards:
  - a. Division according to the place of theft: Theft on means of transportation – train, bus. Theft on ground: Home, restaurant, shopping mall and railway (bus) station
  - b. Division according to the tools used in the theft: bare hand theft, using a blade or other tools.
  - c. Division according to the stolen goods: wallet, luggage, bicycle, wealth in car, and cloth pocket in hotels.
4. Process of theft: site-casing; choose a target; sounding money or properties; stealing, stealing succeeds; covered by accomplice; be discovered; have to throw away money or properties.
5. Result of theft: Lots of money, or less money
6. After the theft: Selling the stolen goods, or splitting the loot.

7. Ways to name the money and goods: general term for money, indication of various foreign currency, or indications of renminbi note of different face value

The above situations and activities related with theft have one or several argot each. Among them, the argot of money and goods vary greatly. Indications to money and various foreign currencies in different areas are as follows:

**Table 2. Indications to Money and Various Foreign Currencies in Different Areas**

	<b>General Term for Money</b>	<b>Foreign Currency</b>
<b>Beijing</b>	<i>Yezi, T, Erzi</i>	<i>Meizi, Xiao mei, Mei dao, Lao ri, Huang niu</i>
<b>Shanghai</b>	<i>Mian, mi, fen</i>	<i>Meigeli, Lu zhitou, Huang zhitou, Lao toubi, Xiao niao, Hong zhi</i>
<b>Guangzhou</b>	<i>Mi, shui, bao, laoyin, Lao xian, xia, yinzi, Muji, lizi, rou</i>	<i>Renzai, xian, gangzhi, xianlong, hongniu, huangniu, laomei, huaqi, qingyi, jiazhi, taiyang, daishu, atiao, zaizai (jiajia) tiao, tuobeilao</i>
<b>Kunming</b>	<i>Delang, delangzi, xiaohuazhi, menzi, shui, dan, tong</i>	<i>Jin, jinbi, dalubi, taiban</i>
<b>Changsha</b>	<i>Meilituo, lantou</i>	
<b>Fuzhou</b>		<i>Baizhi</i>
<b>Shenyang</b>	<i>Xianzi, lan, lantou, hongtou</i>	
<b>Xi'an</b>	<i>Bazi, ba, lian, dai, ba, lan, die, shaozi, wan, dielou, jia</i>	

Among them, there are many names for the renminbi note with a face value of 100 yuan and 50 yuan.

**Table 3. Names for Renminbi Note with a Face Value of 100 Yuan and 50 Yuan**

	<b>RMB with a face value of 100 yuan</b>	<b>RMB with a face value of 50 yuan</b>
<b>Beijing</b>	<i>Silaotou, laorentou, sirentou, hongniu, lanjingling</i>	
<b>Guangzhou</b>	<i>Hongniu, sirentou, hongbang, hongtaiyang</i>	<i>Qingxie, qingwa, huangniu, lanyuelang, tieguanyin</i>
<b>Kunming</b>	<i>Niuxin, xiangyou kanqi, Rentou, Laorentou, sirentou, maozhuxi, Sirentou,</i>	<i>Yinchao, lvliangui, zhongzu, Lvlianzei, qingwapi, Daiqiangde</i>
<b>Changsha</b>	<i>Hongpiaozi, yabai, yidou, sirentou, liubai</i>	<i>Lygeda, hama, Malawang, zhongzu</i>
<b>Fuzhou</b>	<i>Qingya, honglian</i>	<i>Wulingti, lvmao</i>
<b>Xi'an</b>	<i>Bailing, gangling, Hongtiepi, hongban, Hongzhuantou, liupai</i>	<i>Wuling, lanban, lvmajia, lanjingling</i>

During the theft, apart from the common move or situation that has special argot, there are still some rare cases of using argot.

**Beijing:** *xihuo*: The skill of theft is superb and almost never fails.

*Cuhuo*: The skill of theft is not good and often fails.

**Shanghai:** *tengkongchao* : bare-handed without any tools

*Jiahua luzi*: The man thief cooperates with woman thief as man responsible for stealing and woman responsible for covering and transfer

**Guangzhou:** *baojia, gaoge*: 1.) Burglary; 2.) Safebreaker; 3.) Theft by breaking a lock

*Yunguai*: Theft on bus. Once discovered, the driver will drive the bus directly to the police.

**Kunming:** *feimao*: the way of burglary from climbing through windows on the second and third floor.

*Erzhichan*: theft with tweezers

Moye luosi: a burglar entry

**Changsha:** *yunwei*: dropping hints among thieves during the theft

*Mobing*: stealing those who fall in sleep

**Shenyang:** *zalouzi*: Smashing a car to steal

*Huolouzi*: Smashing a car to steal with people in car

*Silouzi*: Smashing a car to steal when the car is empty

**Xi'an:** *bashou*: Almost no failure in theft. Each move is fruitful.

*Liaomadai*: Pouring fake money on the way to attract others and create chaos for escaping

*Wanrenchui*: Being discovered during a theft and hit by the victim and others.

### ***The Argot of the Crime of Theft is Affected by Local Dialect, Showing a Strong Regional Feature***

Different argot is used in different regions and thus is affected by local dialects, showing a strong regional feature. The argot of theft is no exception.

**Table 4. Argot for Breaking Lock in Eight Cities**

Beijing	<i>Bandazha (pull a big floodgate)</i>
Shanghai	<i>Dengtang</i>
Guangzhou	<i>Baojia, baoge</i>
Kunming	<i>Dading, chuanmen</i>
Changsha	<i>Qiaodou, tongdou, fanmao, wayichi</i>
Fuzhou	<i>Xizao, heihu</i>
Shenyang	<i>Yageda, zayaoer</i>
Xi'an	<i>Chahukou, bafang</i>

When more than two thieves cooperate, the move for covering accomplice has argot in eight cities.

**Table 5. Covering an Accomplice Argot in Eight Cities**

Beijing	<i>Qilianer, danglianer</i>
Shanghai	<i>Dangfeng, chuangmao</i>
Guangzhou	<i>Jidang, zhejing</i>
Kunming	<i>Changxi, dajiazi</i>
Changsha	<i>dajiazi</i>
Fuzhou	<i>Zuoshan, dajiazi</i>
Shenyang	<i>shangtuo</i>
Xi'an	<i>Latuo, dajiazi, hutuo, dangba</i>

### ***Convergence of Argot of the Crime of Theft***

Although the argot of the crime of theft is different in different regions, it shows a regional feature. However, compared with other argot that have formed a system, the argot of the crime of theft is relatively identical across the country and has convergence.

For instance, the indication to the theft at the shops, supermarkets, streets and rural product markets on the ground, the indications of the argot in Beijing, Kunming, Changsha, Shenyang, Xi'an and other cities are all related with the ground. Only Shanghai, Guangzhou and Fuzhou show distinctive regional features. As for the indications to the theft on communications tools, the terms are all related with “lun, gun ” and “tie, and qi ” with the exception of Guangzhou (Wang, 2008).

**Table 6. The Argot of Theft on Communications Tools are Related with the Exception of Guangzhou**

Contents of Argot	Theft on the Ground	Theft on Train	Theft on Public Bus and Coach
Beijing	<i>Koudipi, chidipi, kendipi</i>	<i>Dengda luner, da luner</i>	<i>Wan huo, qiluner</i>
Shanghai	<i>Luodi, ludi, zhua tuzi</i>	<i>Tie lunzi</i>	<i>Lunzishang, zalunzi, daquanlun</i>
Guangzhou	<i>Diba, bubing</i>	<i>qibing</i>	<i>Cheba, qibing</i>
Kunming	<i>Chandipi</i>	<i>Batielun, feiche, youjidui, zhuitiegui</i>	<i>Nianche, niangungun, nianchanggun, bajiaolun, feiche, chongche</i>
Changsha	<i>saodipi</i>	<i>Tiegunzi, gan tiegunzi</i>	<i>Gan gunzi, gunzi</i>
Fuzhou	<i>lala</i>	<i>Shang da tie</i>	<i>Chi zhong ba, chi da ba</i>
Shenyang	<i>Dipi, dadian, da caichang</i>	<i>Pao daluner</i>	<i>Deng daluner, deng xiaoluner, tipier, shang xiaoluner</i>
Xi'an	<i>liudipi</i>	<i>Deng luner, huo luner, deng daluner</i>	<i>Deng luner, deng qi luner, deng xiao luner, gan luner</i>

The convergence of the argot of the crime of theft is partially related with the theft vagabond to commit crimes across the country. There is no definite dividing line between different languages. Any contact between the criminals will allow integration and borrowing of the language. Argot is of the same situation (Chen, 2006).

#### ***New Terms for Argot of the Crime of Theft are Few and the Old Terms Lack Updating***

This is rather a puzzling phenomenon. Since China's reform and opening-up, a good many new matters, new phenomenon and new relationships have appeared in society. With the progress of science, people continue to update their recognition to the world. These require new language to describe. Therefore, some common terms updated quickly, and new terms and new definitions have exploded into being. Statistics indicate that in the 1980s, the average newly increased Chinese vocabulary was about 700 words every year. In the 1990s, the number of new vocabulary stood between 300-400 annually. In the past three to five years, with society progression, explosive information and the great development of the internet language each year, more than 1,000 new entries will appear (Zhang, 2008). On the contrary, there are few new vocabularies for the argot of the crime of theft, which forms a distinctive contrast. At present, only the indication of mobile phone is found in different regions. For instance, “*che sier, lingzi*” (meaning mobile phone in Baoji, Shaanxi Province), “*cidai*” (meaning mobile phone in Kunming, Yunnan Province), “*yangjiao chui*” (meaning stealing other's mobile phone in Kunming, Yunnan Province), “*mie tuotuo*” (meaning stealing mobile phone in Changsha, Hunan Province), “*tianxian* (antenna)” (meaning mobile phone in Guangzhou, Guangdong Province), “*da dianhua* (make a call)” (meaning stealing mobile phone in Guangzhou, Guangdong), and “*wowo*” (meaning mobile phone in Guizhou Province). The target of theft is money and those mobile phones with high value, small in size are the most vulnerable prey for theft. However, there is no corresponding argot of such items as laptop, DVD, and bank card, etc. In Guangzhou, we once discovered the argot of bank card. For example, “*gu pai*” means bank card; “*che shou*” means people who swipe credit card; “*lao ying* ” means VISA card;

“*diqu*” means Master card; “*chong che, shi che*” means to try to swipe credit card. Yet, these types of argot are not from the theft gangs, but a new-type of crime, that is the crime of producing and sales of credit cards and bank cards. If bank cards did not bring immediate fortune for the criminals, if they had to discard the card after they stole it, there would be no need for them to cudgel their brains for an argot. Then, isn’t it meaningless that the criminals create an argot of empty wallet? Nevertheless, there are such kinds of argot in different cities: “*shui yazi*” means those nice-looking, delicate wallets that have less money (Kunming); “*kezi, kong kezi, kong liezi*” means wallets that have less or no money (Xi’an).

In the past, due to poor living standards, people had single but unified clothes. Almost all men wore a Zhongshan jacket with four pockets. Argot of the pocket is similar in different regions. Some are the same such as “*tianchuang, pingtai, lihuai, and didao*”. See the following chart:

**Table 7. Argot of the Pocket is Similar in Different Regions**

Region	Upper pocket	Lower pocket	In the front of trousers	In the back of trousers	Inside pocket	Other
Beijing	<i>tianchuang</i>	<i>pingtai</i>	<i>didao</i>	<i>pimen</i>	<i>lihuai</i>	
Shanghai	<i>Shangce, shangbiao, shangbiao</i>	<i>Pingkou, pingce, kace</i>	<i>Kuce</i>	<i>Houmen, pice</i>	<i>Neixince, neixin, lixince, lice</i>	
Guangzhou	<i>Yangtai, sanlou, gaofeng</i>	<i>Erlou, neige</i>	<i>Diku, diban, qiandai</i>	<i>Hougui, houban, didai</i>		
Kunming	<i>Shangpai, shangbao, diaobao, diaodou, laobiao, gaoding</i>	<i>Pingcha, xiaobao</i>	<i>Kuchai, kubao, chabao</i>	<i>Gouchai, pibao, kubao,</i>	<i>Neichai, neizang</i>	<i>Biaoding, xiandiao</i>
Changsha	<i>Shanglaogao, shangchuang</i>	<i>Changxi, zhongchuang</i>	<i>Kuxi, xiachuang</i>	<i>Pixi, pichuang</i>	<i>Neilaogao, neichuang</i>	<i>laoshudong</i>
Fuzhou	<i>shangganling</i>	<i>Bianzhi, biandai</i>	<i>Xiabiandai,</i>	<i>Houdai, hou bianzhi</i>		<i>laoshudai</i>
Xi’an	<i>tianchuang</i>	<i>pingtai</i>	<i>didao</i>	<i>Houdun, houdong,</i>	<i>Neicang, neihuai, fanban</i>	<i>Caidiandou, neifanban</i>
Shenyang	<i>tianchuang</i>	<i>pingtai</i>	<i>Digou, diyu,</i>		<i>Lihuai, fanban</i>	

Along with China’s reform and opening-up, people’s living standard has improved continuously. As a result, clothes also show a diversified trend. The thief now faces changing forms of the pocket, especially in women’s clothes. But surprisingly, there is no corresponding argot. This is really a puzzling phenomenon.

Many kinds argot of the crime of theft are still used today. They lack updating.

### **Prospect for the Argot of the Crime of Theft**

Compared with other newly emerged argot of crime including that in the crime of drugs, cheating, porn and gambling, users of argot of theft are getting fewer and fewer. The whole argot of the crime of theft shows a dying tendency.

During the investigation, we noticed such a phenomenon. The interviewees under the age of 40 can barely provide any argot of theft. Those who can provide argot of theft are all above 40 years old. The late 1960s became a dividing line for users of the argot. Based on this, the 1980s were the booming time for the use of argot. Those people who knew the argot were above 20 years old at the time. After that, the argot was less used. This also explains that few new argot appear later on.

We are living in a time of change. Great changes have been taking place in people's ideas compared with the several dozens of years before the reform. Particularly, in the last dozen of years, with the rapid development of the Chinese economy, the gap between the rich and the poor has expanded. The floating population erupted, making a complete different situation in terms of the situation of crimes and social order. In the past 20 years, fortune-related cases have not reduced, but rebounded. The newly added cases were mostly violent crimes such as robberies that need no argot. Those thieves who were familiar with the argot gradually faded as they got old. Some of them, including Jin Boji of Beijing, Qier Wang in Xi'an, were sentenced and thus separated from society. This ensures a result in the decline of use of argot (Wang, 2008).

In addition, due to the improvement of living standards, the change of the ways of living also brings challenge to theft. For example, with the appearance of the bank card, people carry less cash when going out, making it inconvenient for thieves. Taking the depreciation of currency into consideration, large face-value note have also made a debut. For the same theft, risks grow for a relatively equal profit. Twenty years ago, it was a big harvest if a thief successfully stole 100 yuan. Today, the thief needs to steal about 10,000 yuan to gain the same satisfaction. But the size of 10,000 yuan in cash is much bigger than that of 100 yuan. This greatly increases the risk. These are the historical pictures of the society reflected by the gradual fading of argot of the crime of theft (Cao, 2005).

### **Acknowledgement & Author's Copyright**

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<sup>i</sup> This paper was originally published in *Chinese People's Public Security University Journal* in June 2010 in Chinese and has been changed.

<sup>ii</sup>The data comes from the *Research on Criminal Argot of Drug-related Crime in Eight Cities Based on the Construction of Corpus*, a public security software science project by the Ministry of Public Security, authored by Wang Hui. According to the latest investigations by the author, the data have had some changes by 2014. This paper uses the original data.

# **A Case Study of the Implementation of Task-based Instruction into Legal English Teaching**

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***[Abstract]** This study explores the effectiveness of task-based instruction on legal English teaching with a hope to provide an important glimpse of how current legal English teaching in Chinese universities meets the requirements of the times and the learners. Based on the case study done on college students in China University of Political Science and Law, this student-centered teaching mode is valid because unlike traditional legal English courses which focus on the drills of the linguistic features and translation of legal English, it offers students more exposure to practical extra-linguistic skill building.*

***[Keywords]** legal English teaching; task-based instruction; case study*

## **Introduction**

The rapid development of globalization and China's accession to WTO has offered a rich and significant setting for an ever-increasing demand of versatile professionals proficient in both English and Law. In China, there is a real possibility that these law talents come from universities that offer key courses of legal English, which are supposed to cultivate students' ability to read and use legal documents and deal with cases involving foreign affairs by incorporating expertise in both language and law. Nearly forty institutes of political science and law in China offer legal English courses. But the fact is, close to 64% of the cases have to be put aside as a result of the shortage of law practitioners with sufficient mastery of English (Qiao, 2012). Improvement in the quality of the current legal English teaching in universities is in urgent need.

The effectiveness of legal English courses has been greatly undermined due to the lack of a systematic syllabus, the shortage of high-quality course books and the intricate and obscure use of the English language (Liu, 2009). But more than that, the ineffectiveness of the teaching mode adds more complexity.

## **Disputes over the Objective of Legal English Teaching**

The course design and teaching methods of legal English instruction are dependent on the teaching objective. But ironically, there is no consensus on whether legal English courses help students learn law through English or to handle textual features of legal documents. Activists of the former argue that legal English teaching, at its core, is to familiarize students with the knowledge of the legal system and legal culture, raise their legal awareness, and develop their professional skills through the English language (Guo, 2004). Supporters of the latter hold that the major objective of legal English courses is to apply the theories of applied linguistics to explore the characteristics of legal documents (Man, 2004).

These two seemingly efficient learning objectives are aimed at incorporating the study of law and English language together. But how to guarantee effective study of both turns out to be a hard nut for teachers to crack. Due to in-class time limits, it is a common practice that teachers cram comprehensive knowledge of law into a few English classes so as to broaden the students' horizons on the concepts and

theories of law through authentic English materials. By doing so, legal English courses are similar to traditional teacher-led extensive reading classes with teachers explaining and students memorizing.

Truly, there is nothing wrong with this method of legal English teaching, but it has to be done based on the students' needs. Legal English is one branch of ESP (English for Specific Purpose), an approach to language teaching, which aims to meet the needs of particular learners (Hutchinson, & Waters, 1987). It is self-evident that needs analysis plays a central role in systematic curriculum design. It generally refers to information gathering activities serving as the basis of developing a curriculum to meet particular learning needs of a certain group of learners (Riechter, 1997). Once learners' needs are identified, a teaching objective and teaching method can be determined. The particular learners' needs in the instruction of legal English courses are to produce talents who are going to learn other legal cultures and handle international law affairs with the help of their fluent English, as well as their expertise in law. Unfortunately, the current teaching method practiced in most law schools fails to meet this need. The focus of the instruction of legal English of a large number of teachers is to introduce the basic knowledge of the law of Common Law System countries, familiarize the students with technical terms and improve their translation skills. And this has led to the complaints from students that they have learned nothing practical. Therefore, a valid teaching method of practical significance should be adopted to cater for the particular learners' need.

### **A Case Study of Making Task-based Legal English Courses as an Interactive and Contextualized Process**

Task-based instruction (TBI) focuses on the use of authentic language and the involvement of students doing meaningful tasks by the use of the target language. It originates from communicative language teaching as a subcategory. The core of TBI is, as the name suggests, the task which has to be better understood in order to be implemented in legal English teaching. Breen (1987) defined the task, from a pedagogical perspective, as "a range of work plans which have the overall purposes of facilitating language learning-from the simple and brief exercise type, to more complex and lengthy activities such as group problem-solving or simulations and decision-making" (p. 23). As noted by N. Prabhu (1987), who popularized TBI while working in Bangalore, India, students may learn more effectively when their minds are focused on the tasks, rather than on the language they are using.

According to Du (2006), two highly demanding requirements of legal English course are the command of law knowledge and students' communication abilities in legal English. However, the current practice of legal English courses fails to meet these demands in that it mostly imparts both linguistic and law knowledge down a one-way road, i.e. from teacher to students. Little time is literally spent on interaction. To cope with the current problems in legal English teaching, it is urgent to find out a valid teaching method.

Based on a case study done on college students in China University of Political Science and Law, task-based legal English instruction is proved to be an effective and efficient approach because it makes legal English courses more interactive and contextualized by integrating the six elements identified by Nunan (1989), i.e. goals, input, activities, role of teacher, role of learner, and setting, that systematically exert their influence on each of the steps of task-based legal English instruction.

A particular class on Miranda Warnings is given here as an example to illustrate how each element of task-based legal English instruction is implemented. The following is the outline of the six elements of

this particular class, which are to be explained in great detail. It is worth noting that each of the tasks designed for this class involves more than one of the following six elements.

- (1) Goal: The mastery of content knowledge and the reviving of linguistic knowledge
- (2) Input: Materials students work on as well as teacher's instruction
- (3) Activities: Structured activity and unstructured activity
- (4) Teacher's role: Monitor and facilitator
- (5) Learners' role: Conversational partners
- (6) Setting: Pair or group

The goal of this particular class is two-fold, i.e. the mastery of the knowledge of law and the improvement of English communication of that knowledge. To be specific, the teaching objective of this task-based version is similar to that of the traditional one, i.e. to familiarize students with the origin of Miranda Warnings, its development, key cases and its use in different U.S. jurisdictions. But more than that, there is one added objective that plays a key role in the design of this task-based version, that is, besides the simple impartation of the knowledge of language and law, real-life situation practice of such knowledge is offered to make up for one of the major criticisms of teaching English for specific or Professional Purposes, i.e. professional practice is left out, except for providing context of specific analysis (Bhatia, 2008).

The input includes teachers' instruction and the materials that the learners work on. In this case, the mastery of input knowledge is completed preferably through the reading task assigned to students, which is supplemented by teacher's in-class instruction of key points, both linguistic and legal. By doing so, the input step guarantees the students' possession of the basic knowledge of law, improves their English reading skills and largely saves the in-class time, most of which is allotted to the follow-up activities. In this case, the input is assigned to students to learn as a pre-class task that is comprised of:

- (1) Setting Goal: the mastery of both language and content used in the activities that follow.
- (2) Activity: students collecting basic information needed on Miranda Warnings.
- (3) Material: text and online materials;
- (4) Time: before class.

Specifically, students are asked to read the text materials before class on how and why there is such a thing as Miranda Warnings so that they get familiar with the key case of *Miranda v. Arizona*, which has defined Miranda Warnings. Since what is provided in the textbook is only a brief introduction, students are divided into several groups to conduct a collaborative online search for authentic input which will certainly narrow the gap between the classroom and the social world. That's when they get a sea of relevant information and more importantly, confront problems such as the use and translation of certain legal terms, for example, the difference of "condemn", "convict" and "sentence", as well as problems concerning the legal background and history of that case, for example, the top priority of the police to get evidence vs. coerced confession. This problem-awareness process is meaningful in that it, on the one hand, triggers students' implicit learning, and on the other hand, encourages in-class teacher-students instruction or discussion on "unpredicted" problems.

The activities are the center of task-based legal English classrooms on the basis of the aforementioned goal and input. They refer to pieces of classroom work that involve students in comprehending, manipulating, producing or interacting in the target language (Nunan, 1989). In this case, what actually happens in class is that instead of teacher's one-way instruction and students' repeated drills

on the structure and vocabulary of legal English, students are offered real-life situations to practice what they actually do with the input.

During the task, students are asked to do two kinds of activities: a structured activity and an unstructured activity. The structured activity is composed of: (1) Setting Goal: consolidation of the input; (2) Activity: retelling and recasts; (3) Material: input; (4) Time: one class period. In detail, students have to contribute as much as they gain by retelling the input, i.e. the case of *Miranda v. Arizona*. Differing from retelling in a traditional English class where students retell the whole story one after another simply for homework checking, this activity requires each student in the class to make one-sentence contribution to the retelling of the whole case based on the outline given by the teacher. The activity is “structured” in such a way that it is possible to predict the exact language that is needed in order to perform the activity. Therefore, students can consolidate the mastery of language in class by the teacher’s highlighting selective features of the input. The technique used in this highlighting process is recast, i.e. repetition of a learner’s incorrect utterance, but with changes made in order to make it correct. Recasts are more effective than correct models in bringing about short-term improvement in learner language (Lyster, 1998). Provided with good mastery of the input, this recast process can achieve better results if it is done by peers with the guidance of the teacher. In addition, this explicit learning is triggered by the structured activity. It is more meaningful that after the correction of language forms achieved by recasts, and students are equipped with the basic language to perform the unstructured activity that follows.

An unstructured activity is the synonym of authentic communication. In this sense, the unstructured activity revives more content than language. It consists of: (1) Setting Goal: activating the input in a real-life situation; (2) Activity: role play; (3) Material: input and recasts; and (4) Time: one class period. The activity in this stage centers on a case study. Authentic interest is one part of the principle of authenticity which is vital to task-based instruction (Nunan, 1989). According to Zhang (2004), 80% of the students think legal English courses are more attractive by adopting case studies, which unfortunately are seldom used because of the limit of class hours and the large number of students. But as a matter of fact, this will not be a problem if the reading and writing are done before and after class respectively and students are divided into groups responsible for a particular part of the activity.

The details of this case is that one group of the students role play each party in the case of *Berghuis v. Thompkins* which has refined *Miranda*, particularly reviving the interrogation on Thompkins while others play either the judges of the state and federal court or judges with dissenting opinions. All of this is done based on an in-depth investigation of relevant information that students have collected and analyzed prior to class. This information processing procedure offers students a theoretical setting for a contextualized process of their role play in class and also helps develop their critical thinking. What is crucial in students’ involvement in the real situation activities is that it gives students an opportunity to internalize the content knowledge they have learned about law to communicate in real life law-related activities. It is by this way that the input content knowledge and training of English skills are brought together so that students are provided with both linguistic and extra-linguistic skill building. But for such successful activities to take effect, the whole process is largely dependent on the change of the role of teachers and that of students.

Traditional legal English classrooms are more teacher-centered, which hinders students from more interpersonal communication. Students are passive recipients rather than active participants spending most of the class time busy with note-taking, while teachers are engaging in explaining and translating. How can such a teaching mode help to improve students’ ability to deal with foreign cases and

communicate smoothly with foreign counterparts based on their law knowledge and English competence? Since task-based legal English teaching gives priority to communication between students as conversational partners rather than the command of language forms, teachers are more like monitors who facilitate the smooth progress of activities and supporters who help students to mobilize the input in a task.

In this task-based case, the teacher “controls” the activity by creating a setting that he thinks is suitable for both the structured and unstructured activity to be carried out. But he has less control in the latter than in the former over the actual language that the students will need. This is why the teacher has to monitor for a smooth unstructured activity to be done according to what he wants the students to learn from each activity and his pre-class design of its procedure.

The setting is crucial for the tasks. Due to the large number of students in a legal English classroom, it is not easy to go on with any task. Therefore, the perfect setting that fits this particular task-based class is group work so that every student is involved in one part of each task.

Seen from this particular case, task-based legal English teaching is the integration of the above elements. Activities are designed by teachers to engage students in a practical and functional use of the input of both language and content in particular settings for the purpose of using what they have learned in real-life law-related situations. In this sense, the task-based instruction provides a purpose for classroom activities that go beyond the practice of language (Crystal, 1991).

### **Implications and Conclusion**

Seen from the case above, it is clear that the task-based legal English instruction has a dual focused aim, i.e. the mastery of both content and language. However, for this teaching mode to be effective, a number of problems inherent in the exam-oriented education system should be dealt with. Superficial learning is often a problem in language education (Larsson, 2001), for example when students, instead of acquiring a sense of when and how to use which linguistic or legal knowledge, memorize all that they need for the exam next week and then promptly forget it. Therefore, apart from a change in the students’ concept about what learning is, an extra step is needed to give students an opportunity to reflect on what they have got from their involvement in the task-based instruction. According to Nunan (1991), a task usually requires the teaching to specify what will be regarded as successful completion of the task. In the case of this task-based mode, one final step of the successful completion of the task, i.e. post-task is that students are better inspired by writing an after-class report of the analysis of the activities having been dealt with in class. It, on the one hand, transfers both the content and language that the students have learned into English writing which is also a part of legal English learning. On the other hand, it raises the students’ awareness of what they need to improve.

Huang (2004) describes that legal English is the customary language used by drafters, legislators, lawyers, judges, litigants, law enforces, and other law uses in the common law jurisdiction where English is legally sanctioned official or national-used. This definition indicates that the teaching of legal English, in essence, should be functional. Compared with traditional mechanical teaching and learning of the distinctive features of legal English at the level of lexicon, syntax, rhetoric, discourse structure and so on, task-based instruction of legal English helps to encourage students to gain a deeper sense of understanding of what legal English learning is all about because it is more situational interactive. During the process of dealing with specially designed law-related activities, chances are that students are able to develop their language use, improve their communicative competence and consolidate their content

mastery. In this sense, task-based legal English instruction leads these highly trained students to their future profession.

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# **Study on Micro-learning in the Bilingual Teaching of International Commercial Law**

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***[Abstract]** Bilingual teaching is an important way to realize the education internationalization and cultivation of international innovative talents, so Chinese colleges have always been exploring an effective model for bilingual teaching. Based on constructivism theory, this thesis discusses the hypotheses of Micro-learning based on bilingual teaching in international commercial law, aimed at the problems existing in the bilingual teaching of international commercial law within the context of unification of teaching model and teaching method.*

***[Keywords]** bilingual teaching; Micro-learning; correlation and integration*

## **Introduction**

For its foreign-related characteristics, the application of bilingual teaching to international commercial law becomes a highlight in practical teaching, which is the combination of a subject and a second language. Most of the practice and theoretical research of teaching design for this lecture is carried out on the basis of traditional teaching model by teachers and scholars. This thesis focuses on a new study method for bilingual learning of international commercial law – Micro-learning. It is a new learning method that exists in the ecosystem of new media based on Microcontent and Micro media (Lindner, 2007). Through Micro-learning, students can find out the connection between the subject content and foreign language and solve the problem of oral and written language input and output, while learning professional knowledge, and then reaching the goal of improving their second language and mastering the subject knowledge at the same time, and finally really become the learning subject of bilingual teaching.

## ***Connotation of Micro-learning in Bilingual Teaching of International Commercial Law***

Considering the new media of digital network as study environment, Micro-learning pays close attention to the new type of knowledge structure. This type of organization structure divides knowledge into minute, loose, but interconnected learning units, whose learning activities are convenient for learners to carry out in their daily interactions and work (Bruck, 2006). Micro-learning has two important elements: Micro content and micro media (Lindner, 2007). Because of the smaller quantity and better quality of content, ease of operation of study media (cellphone, tablet computer and electronic dictionary, etc.) at any time, Micro-learning has flexible learning time and is easy for students to accept in form compared with learning style of limited time and content in the traditional big classes. From the microcosmic perspective of teaching and movable learning situation, the Micro-learning based on bilingual teaching of international commercial law combines international commercial law teaching relying on second language with Micro-learning, “micronizes” the subject knowledge and foreign language and then

integrates them into the students' habitual activities by the methods they are used to, and finally makes the learning life-oriented.

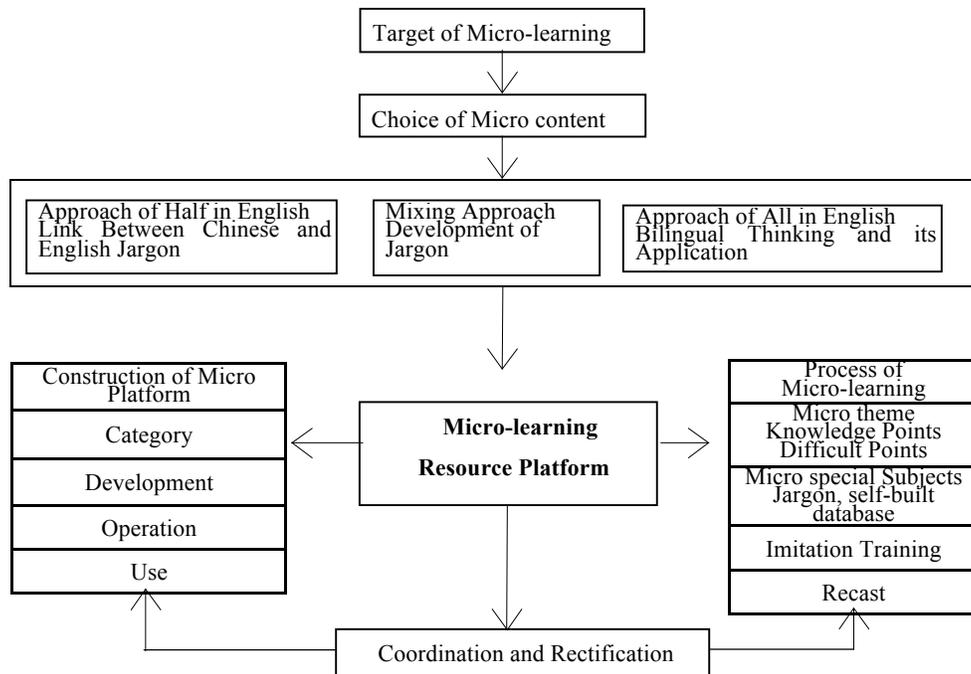
For a large number of English international treaties and the customs and usages of international trade being involved in this lecture, usually a great amount of teaching time involves the intensive reading of legal English in practice because of students' difference of English levels need explanations of second language. Or for students' better understanding, the teaching language is always of simplified grammar and vocabulary. The students are short of language output (particularly in persistent writing and oral English) and systematic and adequate correction (Swain, 1989). They have weaker ability in generating new knowledge compared with absorbing knowledge (Cummins, 2000). The emergence of Micro-learning theory provides a new idea for teaching. At the present, Micro-learning is mostly applied to adult education and higher education with emphasis on foreign and subject education (Zhang, 2013). For lots of the complicated and obscure clauses and the cases in this lecture, memorizing the clauses in two languages will take students' a lot of time before they begin to analyze the cases by the traditional method. According to Micro-learning, students can learn by using their cellphones or tablet computers in their spare time. Micro-learning, based on bilingual teaching of international commercial law, combines subject knowledge, second language and advanced communication media together, and therefore facilitates language problem solving and promotes the teaching effects.

#### ***Theoretical Basis of Study on Micro-learning Based on Bilingual Teaching in International Commercial Law***

Connectivism holds that learning is the integration of many individual learning webs instead of learning by oneself, and these webs further form a much larger learning web (Zhang, 2013). In the web, every learner is contributing or sharing his or others' learning resources to or from the web at his IP address, so the web is continuously extending in this way. Moreover, Canadian scholar, George Siemens, argues that learning is the process of connecting the particular node and information source (Siemens, 2005). Under the guidance of this theory, learners need to bring subjective initiative into searching for and then filling the resources in the special subject databases. It's helpful for learners to master the study methods and improve their study abilities by analyzing the special subject databases and finding out the relations among them before establishing the links of databases. This process of knowledge reconstruction and connection facilitates the learners' better understanding of knowledge and interaction with other learners, and enhances the spreading of research finding and influence of special subject knowledge. This theory is suitable for the characteristics of the times and young students' learning habits, which makes a further step towards the new research model of self-dependent innovation and joint development.

#### ***Design of Micro-learning Based on Bilingual Teaching of International Commercial Law***

Under the new situation, the nature of Micro-learning, based on bilingual teaching of international commercial law, is still professional teaching, but its language environment is bilingual language. With this distinctive feature and the influence of information technology, this type of Micro-learning consists of subject knowledge, foreign language and information technology. It is helpful for teachers and students to have access to rich bilingual language resources and practice their ability of application of information technology as well.



**Figure 1. Schematic Diagram of Design of Micro-learning Based on Bilingual Teaching**

**Choice of micro content.** The activity design should highlight bilingual teaching by considering the professional knowledge of international commercial law and second language as the core. First, we should make students grasp the whole structure of subject knowledge by devising the knowledge points, key points and difficult points of each chapter as a Micro theme. Second, in order to integrate point and sphere and then form a coherent curriculum knowledge system, we can set several Micro special subjects in the framework of the Micro theme according to the needs of difficult points, each of which contains several Micro issues that are closely linked to another.

**Construction of resource platform of micro-learning.**

*The categories of resource platform of micro-learning.* The resources of Micro-learning for bilingual teaching of international commercial law can be divided into three categories according to subject knowledge and cultivation of second language competence:

1. Audio resources. They are mainly applied to the language competence training and subject study of Micro-learning. The resources with less operability, more language explanations and short time period should be given priority because they can be used flexibly in spare time. Vocabulary, sentence structure, news of legal English, international trade news, and legal elite' anecdotes can arouse students' interests without image, so they are preferred to be used as content.
2. Image-diagram resources. They are largely used to learn conceptual, complicated professional knowledge with memory, such as the "flow chart for Collection and Letter of Credit", "differences of Incoterms", and "the similarities and differences of stipulations of contract between CISG and some major countries". More attention about refining and generalizing knowledge, simplifying the English titles, highlighting the key points, and

emphasizing both texts and graphics should be paid to making courseware, since it should be suitable for reading at spare time.

3. Video resources. They are fit for knowledge with operability and skills, e.g. case study, court debate, international trade process or exclusive interview of hot legal issues. While making courseware of this kind, teachers are supposed to edit the original video sources to make them short, fragmented and serialized with English lead-ins and key points at the beginning and English summaries at the end. There could be subtitles in both English and Chinese if the content is difficult.

*Development of recourses of micro-learning.* Different from common learning resources, development of a Micro-learning resource platform mostly come from the courseware made by teachers and students, social learning courseware, the latest related resources students collect in autonomous study and learning activities carried out by teachers and students. These principles ought to be conformed during development: construction of bilingual teaching environment; modularization and coherence of Micro content; the building of fragmented, minute and interesting resources and self-help development. Meanwhile, related contests such as “Legal Vocabulary Contest”, “Legal English Listening Contest” and “Professional Micro content Reading Contest” are supposed to be carried out, which focus on the listening, vocabulary memorizing, and reading of bilingual teaching. In this way, resource platform of Micro-learning can really become the platform of easily learning and practicing.

*The operation of resource platform of micro-learning.* The smooth operation of resource of Micro-learning is primarily embodied in design and rational and effective Micro-learning activities. Krashen holds that reading is the key method for learning vocabulary in a second language (Dupuy & Krashen, 1993). For solving the problems of simplification and inadequacy of language input in bilingual teaching in international commercial law, after finishing the Micro-learning on the platform teachers can select brief news, simple essays in professional journals, laws and regulations, cases in courts, legal elite’s information or business news from LexisNexis Academy, which are inclined to attract students’ attention. The chosen articles ought to be relevant to the Micro theme with moderate difficulty in language, content and length. The students are required to pay more attention to the discourse functions and use of legal documents rather than its grammar, which is in line with the Systematic Functional Linguistics which centers on the functions and meanings of language instead of form and syntax (Yu, Yeoman & Han, 2009). The steps are as follows:

1. Teacher posts some Micro theme-related articles downloaded from LexisNexis Academy on the internet without classifying, but with explanatory notes for the complicated sentences or knowledge points.
2. Ask students to classify the above articles according to certain Micro theme.
3. After reading the classified articles, students are required to summarize the professional vocabulary and sentence patterns under certain Micro theme, such as vocabulary of international cargo insurance, bill of lading, signing a contract, etc.
4. Then students should make these vocabulary and sentence patterns summarized into PPT and show it in class with oral English explanations, which not only improves the breadth, depth and quality of language and professional knowledge input, but also guarantees the opportunities of oral English language output.

5. According to the above-summarized material, encourage students to create database of professional vocabulary and sentence patterns, which is related to certain Micro theme (Fang, 2013).
6. For better dealing with problem of language and knowledge output, especially persistent reading and writing, students are supposed to write summaries about above articles that they've read and analysed. Rivard argues that many aspects of language competence, especially discourse competence, can be promoted through Summary Writing (Rivard, 2002). The articles that attract students' attention and are better analyzed and summarized are preferred for better reading and writing effects. The students are told to write the main idea in coherent and concise language after reading.
7. The teacher recast the incorrect sentences in the summary online. Recast means teachers help students use more correct and professional language by explanations (Yu, Yeoman & Han, 2009). Instead of commenting or correcting the grammar or choice of words thoroughly, the recast is to rewrite the lengthy, illogical, repeated parts but still remain the space for students to modify after teacher's recast. Then ask students to examine each other's grammar and words in groups in class. Therefore, students' common errors can be relatively comprehensively corrected.
8. To enhance output effects, teacher could apply simulated court and choose the cases from above articles that can be easily operated and require students write their speeches by some references. During the debate, the students with weak oral speaking can be arranged as the court clerks and record the speeches of "plaintiff", "defendant", "lawyers of both parties" in English, which is good both for listening and writing.
9. After the court debate, students are encouraged to adapt their speeches to essays on certain theme for better output effect. The whole Micro-learning process is carried out through resource platform of Micro-learning.

*The use of resource platform of micro-learning.* With the purpose of learners' quick search and willing involvement in "learning game" in their fragmented time, the convenient method of using a resource platform of Micro-learning should be devised.

1. Chapter Navigation. Catalogue index of curriculum content can be designed for exact query and locating the present study activity.
2. Problem Search. The content needed can be found quickly through module, theme titles, image-text, video and audio cues and media types.
3. Personal Identification. It can help learners enter into the study task quickly.
4. Coordination and rectification. The coordination and rectification of management of resource platform should be throughout the whole process of design and activity.

**Correlation and integration of micro-learning and micro problems.** Students with weak language foundation tend to go overboard on professional knowledge and ignore the language cultivation. Since Micro-learning in bilingual teaching of international commercial law has the double demands of subject knowledge and second language, "online answer-to-question system" could be set up. Teachers also create the database of learning difficulties and collect the key points through accumulated experience in teaching practice, questions students have raised or the ones that are abstracted and summarized from the

typical and common errors. In addition, by using the Micro media – mobile phone, teacher can live record the better PPT presentations with oral English explanations or simulated court activities and then post them on the resource platform of Micro-learning, which facilitates imitation and further study. In this way, students' psychology of willingly embodying self-worth could be fully taken advantage of and problems of pronunciation and expressions can be found and corrected by repeatedly observing the video clip, and in turn, it can provide motivation for other students to make better PPT presentations and performances in English. For reflective learning, the teacher also can post the video clips containing students' descriptions of their personal understanding toward the related homework online by interviewing the students involved in the PPT presentations and simulated courts; or post the summary writing homework with the typical errors and detailed teacher comments on the internet for reference. Finally, for the key point that can not be added into the Micro courseware in a short time but is urgently needed by students, teachers may write its deduction process on a piece of paper and simultaneously record it by cellphone, and then post it online. Through the steps above, the correlation between the cultivation of professional skills and language competence and the integration of subject knowledge and English language can be realized, which embodies the Micro interactive function of Micro-learning in the context of bilingual teaching.

### **Conclusion**

The teaching goal of bilingual teaching of international commercial law aided by Micro-learning is to change the simple bilingual teaching mode and explore the Micro interactive effect, which is a result from the Micro-learning based on subject knowledge and second language against the background of bilingual teaching so as to promote the teaching effect.

### **Acknowledgement**

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# **An Analysis of Legal Language Used by a Strong Judge in Court: A Case Study**

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*[Abstract] Judges are dominant in court proceedings, the exercisers of power, and the active side of language. They control the process of the proceedings due to their unique social status and identity. The quality of their language therefore is of great significance in ensuring the justice and fairness of the proceedings and adjudications. This paper conducts a case study on Beijing's very first case where disabled persons were used for organized begging activities. This study focuses on the language use of the judges in the real-life proceedings, and the value and emotion it reflects. The legality, impartiality, preciseness, and appropriateness of the language use are the main areas of focus of this study. In addition, this paper examines the issues of the judges' language use, be it intentional or not, and proposes suggestions that may be of certain feasibility.*

*[Keywords] exerciser of power; dominant status; judges' language; proceedings*

## **Introduction**

A legal proceeding is an interactive form of language exchange (Liao, 2003), consisting of discourse of both speakers and listeners. In such an exchange, however, the power of control over the discourse is not evenly distributed between the two parties, due to differences in social classes and status (Lv, 2011). In legal proceedings, the judge is prominent and the exerciser of power, thus able to control the discourse of both litigants, especially the defendant, via multiple language usages. Judges' personal preferences, which are reflected in their language, poses a significant influence on the final adjudications, and on the overall fairness of the proceedings (Yu, 2010). This paper studies the judges' language in a case (China network television, 2011) where the disabled were used for organized begging, the very first such case in Beijing (hereafter "the Beijing Case"). This aims to find out the issues involved in the languages and their solutions, in the hope of helping judges to improve their language use and their overall standard of jurisdiction.

## **Theoretical Basis of Studies on Judges' Language Use in Legal Proceedings**

Socio-linguists first introduced social factors into the study on court language in the 1970s (Du, 2004), analyzing the differences of social status involved to explain linguistic phenomenon in court (Chen, 1995). Atkinson and Drew (1979) analyzed the sequence of questions and answers and the exchanges of turns between witnesses and lawyers, arguing that the layout of the court and the allocation of power in the court contributed to the maintenance of order, whereas, such order also brought pressure on the defendant and witness. Hudson (2000) argued that linguistic analysis could be used to understand the allocation of power as language could reflect different levels of power among different individuals. In recent years, academia has paid more attention to the analysis on discourse power in court language (Ma & Xie, 2007; Lv, 2006).

Discourse power enables the dominant side of a dialogue to pose a strong influence on the choice of discourse, being able to control and manage the topic, from start to end. The dominant side is also capable

of expressing their emotions in such discourse. On the other hand, the response of the less powerful side would be restricted and limited. They cannot sway from the topic, nor can they choose the topic. To meet the requirement of the dominant side, their discourse would also be subject to the psychological implications posed by the emotion of the dominant side (Lv, 2006).

In proceedings, different parties differ in their levels of power due to their social status. Such differences would lead to the stronger side controlling the development of topics in the proceeding and the weaker side being controlled. The weaker side has no control on the topic, and their discourse has to change in accordance to the stronger side's requirement.

### **The Dominance of Judges in Proceedings**

The parties in the proceedings are not equal; judges are stronger than others due to their representation of the state and their ability to exercise the power of adjudication, and as a result of which, they are capable of influencing the final result (Yu, 2010). Furthermore, judges are mostly professionals by training, equipped with specialized knowledge, whereas litigants are mostly not. In criminal trials especially, litigants are not appropriately educated, and are not able to answer, or even understand the judge's questions as a result of knowledge gap, contributing to their disadvantage (Lv, 2011).

In addition, the judge's physical position in the court is extremely prominent, higher than any other party in the court, which is also a source of pressure to others. Prosecutors and lawyers are just below the judge; litigants and witnesses are the lowest. Such arrangement reflects the rank of power within the court: judges are the most powerful (Lv, 2011).

Brown (Ma & Xie, 2007) argued that in the case where inequality in social relations exists, the more powerful side could be determined by the fact that he/she can control the other side's action. As such, the more powerful side would be stronger in control of the discourse as well.

Judges therefore have the most powerful discourse because of their dominant role in the court. Judges control every aspect of the proceeding, from the identification of the defendant to the final statement. The judges' permission is necessary for other parties if they would like to speak. This represents the judges' power of controlling the progress of the proceeding via their discourse. For example, judges would ask litigants to clarify or elaborate if the statement was not clear enough or detailed enough; judges can even interrupt litigants' statements if they deem it irrelevant. Also, judges have the power to summarize litigants' statements and opinions. Thus, judges are able to control the topic, and determine which topic is more important, and they can even skip a certain topic if they think it is unimportant.

Such power is also represented in that judges have more options than litigants, e.g. explanation, order, and proclamation. Proclamation is exclusive to judges. Orders are used throughout the proceeding, including question, interruption, and imperative sentences. Judges use them to control the proceeding (Lv, 2006).

### **Judges' Methods of Controlling Discourse in Proceedings**

The Beijing Case is a typical case where the judge occupies the dominant position (China network television, 2011). The four defendants in the case, Liu Shehui, Zhang Xinli, Liu Huimin and Wang Li, who organized the disabled to beg, were poor-educated farmers, and they could not afford counsel for the trial. They were in such a weak position that they could not even speak clearly. This situation enhanced the judge's dominance. The judge used appropriate language to ensure procedural justice, showing a high

standard of professionalism, yet, certain emotions that should not have been demonstrated in a trial still burst out, attributing to his powerful status in the court. The judge used questioning, interruption, and imperative sentences to control the discourse in this proceeding. This paper examines these in detail. It is noteworthy that this trial also showed the judge's personal value and emotion.

### ***Questioning***

Some researchers (in Liao, 2005, pp. 83-89) summarized two kinds of questions that judges raise in trials: procedural questions to ensure procedural justice, and substantial questions to acquire facts. This reflects the judges' dual roles in proceedings. The judge is not only safeguarding the order in the court, but also investigating the facts. Questions are the beginning of the judges' control on discourse. First, answering the judges' questions is mandatory, and defendants have no right of silence. Second, the content and format of the questions restrict what the answer would be. As such, litigants can only provide answers that are of interest to the judge, and nothing irrelevant. Judges can interrupt or ask for correction if the answer is unsatisfactory. In procedural questioning, on the other hand, identity checks prior to the proceeding would be the best example of discourse control. For instance:

#### **Example 1. Identity check on the defendant, Liu Shehui, prior to the proceeding.**

*Judge (J): Do you have any other names?*

*Defendant 1 (D1): No.*

*J: Any alias?*

*D1: No.*

*J: Speak louder. Date of birth?*

*D1: November 25th, 1971.*

*J: Louder.*

*D1: '71.*

*J: Which date of November?*

*D1: 25th.*

We think this is the strongest control on the litigants, because the inequality of power between the judge and the defendant is extremely serious. In such a close-ended dialogue, the defendants were totally passive and could only reply very briefly to a very limited extent. Such procedural questions served the purpose of demonstrating the judge's authority, not for any factual purposes (Liao, 2003). From the video clip of the trial, it was clear that the judge actually had all the information at hand. Even so, the judge decided not to use explanatory language followed by orders, but instead to use segmented chunks of orders instead. Furthermore, the judge used imperative sentences as complement to the orders, with even some rare occasions of interruption. All of this sent the message that the judge was in control of the court and everything should go as he/she wished. If the defendants had realized so, they would have been nervous and fretful, which might have caused them to forget advantageous evidence or even give up defending themselves at all.

The second type of question is the substantial question. This type would further reveal the judge's emotion (Xia, 2012), as he/she may put him/herself in the case during this stage of investigation (Liao, 2003). If the judge has an opinion toward whether the defendant is guilty or not, this opinion would make the judge accuse the defendant, or exonerate them. The judge also uses these questions to control the

progress of the investigation (Wang, 1997).

**Example 2. In the investigation stage, the judge asked the four defendants about the charges they faced from the Procuratorate and facts provided by the Procuratorate.**

*J: Zhang Xinli, do you have anything to say?*

*D2: I haven't either. Never beaten a disabled person.*

*J: And you, Liu Huimin? Neither have you?*

*D3 (Liu Huimin): No. And...*

*J (Interrupting): Wang Li? Do you want to say anything, Wang Li?*

*D4 (Wang Li) ...(Silent)*

*J: No, correct? So, the three defendants all claim that they haven't beaten any disabled persons, yes?*

*D: Yes...*

*J (Interrupting): Fine. The procurator may represent relevant evidence to the court.*

In the example, the judge said, “You haven’t either” even before the third defendant gave any response. Although the judge then asked the third defendant immediately, this opinion was not supported by the third defendant, and was highly subjective. When asking the fourth defendant, the judge decided that the defendant “had nothing to say”, but the defendant did not give any such indication. When the defendant did want to say something, the judge interrupted immediately, and switched to another topic. These actions were used to control the defendants’ discourse. In this stage of the proceeding, the defendants were supposed to be the active speakers, not the judge. But it ended up with the judge being prominent, without sufficient expression of the defendants’ opinions.

### ***Interruption***

Interruption is used to acquire control of the discourse, or in other words, to make the interrupted side lose control. It also implies that the interrupting side thinks that the discourse being interrupted is pointless (Yu, 2010). Judges would interrupt litigants during proceedings for its progress and efficiency. However, such action would deprive the litigant, who is already in a weak position, of even more power of speech. In certain cases this would lead to litigants becoming embarrassed and discouraged, making them less capable of arguing for their own right and interest.

**Example 3. Identity check on the defendant, Liu Shehui, prior to proceedings**

*J: When were you arrested?*

*D1: Can't remember.*

*J: Was it June the 2nd? 2010, June the 2nd.*

*D1: Yeah...it was on that day...*

*J (Interrupting D1): The second defendant, what's your name? Raise your head!*

In Example 3, however, the judge interrupted after he had gained the wanted information. This is because the judge thought what the defendant would then have said would be irrelevant to the case, so the judge interrupted and switched to another topic. It was the judge’s method of controlling the court: preventing the defendants from further statement of irrelevant information in order to enhance the efficiency of the proceeding (Lv, 2011).

### ***Imperative Sentences***

Imperative sentences are powerful, giving orders with strong emotions. Such an order is uni-directional, usually from the more powerful to the less. In proceedings, defendants must obey such orders from judges. It is impossible for defendants to give orders, as they are of a lower level of power. Hence, the judge, as the dominant side in the court, has the power of speech.

In the stage of the identity check in this case, the judge used 12 imperative sentences, while the defendants used none. These imperative sentences also carried the judge's personal emotions, with strong tones. Admittedly, imperative sentences were used to maintain the order, but it also made the defendants even weaker on their balance of power, and worsened their psychological disadvantage.

#### **Example 4. The judge checks the identity of defendant Wang Li, prior to the proceeding**

*J: The Third Affiliated Hospital to the Medical School of Peking University, right? When was it?*

*D4: June the 2<sup>nd</sup>.*

*J: June the 2<sup>nd</sup>, correct? All four defendants of you, raise your heads! Have you all received the indictment from the Procuratorate of Haidian District?*

#### **Example 5.**

*J: No comments? In the confession Zhang Xinli mentioned that all four of you had beaten and cursed those disabled persons, and you have no comments on that?*

*D3: I didn't beat them.*

*J: So that's a comment! Listen carefully to my question and answer accordingly, ah?! Wang Li, comments?*

In Example 4, the judge used very strong tone when giving the order "All four defendants of you, raise your heads!" posed great pressure on the others, scaring the four defendants who were already very anxious. Also, the order contained the judge's impatience and reproach. This made the defendants feel that they were not respected or treated appropriately hence, they dared not express their opinions fully. If the defendants had spoken to the judge in this manner, it would be ridiculous, because it is generally recognized that the judge *is* more dominant, and that the judge controls the volume and tone of the defendants' speech. In Example 5, the judge required the same but adding "ah" ("a" in Chinese, a mood word to express concession, etc.) at the end of imperative sentences. It softened the tone, and lessened the pressure.

### **Conclusion and Suggestions**

The judge controls the court discourse mainly by questioning, interruption, and imperative sentences. A professional judge should be impartial on the court, should be familiar with the context calmly (Liu, 2003), listen to both sides of the litigation without any personal emotion, and not involve him or herself actively into the investigation of the facts. Neither should they express their emotions in their language. The judge should grant litigants with enough power of speech and respect. They should use questioning, interruption, and imperative sentences in a reasonable manner.

### ***Judges Should Use Less Closed Questions, and More Open Ones (Liao, 2005)***

Only in an open dialogue are litigants able to express their opinions and will more freely, with sufficient power of speech. Judges should use more procedural questions, and less substantial ones; as mentioned earlier, substantial questions bring judges' values into the case. A judges' impartiality can only be possible without any personal emotion from the judge, and the same applies to the fairness and justice of adjudications.

### ***Judges Should Avoid Frequent Interruptions***

In proceedings, judges should make sure that lawyers and litigants are able to explain their cases thoroughly. The judge should avoid blunt interruptions, and avoid showcasing the judge's authority by interruptions. Avoiding interruption could also contribute to easing the litigants' anxiety and negative emotions (Liao, 2005).

### ***Judges Have to Control their Emotions and Use Imperative Sentences with Caution***

Judges are impartial, and should not bring their own negative emotions into imperative sentences otherwise, the solemnness of the court and the capability of litigants explaining their cases sufficiently would be hurt, and the justice of the adjudication undermined. In cases where imperative sentences are inevitable, judges are advised to use some mood words that could soften the tone, e.g. "ah", "ma", both in Chinese could tone down the sentence. Such words can ease the tension in imperative sentences, and counteract the strong emotions in the language. In addition, certain concessional words like "qing (please)" can also be used to soften the tone.

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# Judicial Reasoning as A Complex Process: A Balanced View between Formalism and Realism

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*[Abstract]* This paper presents a balanced understanding with an attempt to reconcile formalist and realist views on legal reasoning; to wit, law is viewed by formalists as the starting point of a deductive mode of legal reasoning, while realists view it as the destination of a reflexive mode of legal reasoning. In either case, legal reasoning provides guidance and a guarantee for judicial decisions to function within the boundaries of law rather than being arbitrary, and hence, no fundamental contradiction between the two.

*[Keywords]* judicial reasoning; formalism; realism; deductive reasoning; reflexive reasoning

## Introduction

The tradition of law and legal education have established in the minds of generations of legal professionals, including lawyers, judges, scholars of legal studies, the belief that there are modes of reasoning distinctive of law, which govern not only the law-making process, but also judicial decision-making (Schauer, 2009, p. 18). Though there is not a uniform definition, legal reasoning conventionally refers to the reasoning process based on legal categories such as rules, precedents, legal doctrines, and so on. For centuries or even longer years of human being's civilized history, legal education, which may have been conducted in various forms and approaches, has had legal reasoning as its essence, though the concept and contents of legal reasoning have varied with the passage of time (Torre, 2002). Piles of literature have already been devoted to the discussion of legal reasoning, and still more is coming out each year.

However, since around the 1920s, such a conventional belief has been facing challenges launched by legal realists, who purport that judicial decisions are determined by non-legal rather than legal standards (Schauer, 2009, pp. 124-142). Such a view has reformed studies of legal reasoning and legal process by turning to an empirical perspective.

As can be inferred from many cases and even from some judges' own accounts, when deciding a case, some judges follow their personal preferences and political ideologies, and are also subject to many external influences (Kozinski, 1993). The doubt on legal reasoning is so widespread that various studies on non-legal influences over judicial decisions grow steadily. For example, the media influence seems to be very heatedly discussed in the recent decade (Hakimi, 2006) and some scholars of law even boldly suggest such conceptions as the "media-mediated court" and "rule by media" in China (Liebman, 2011; Mo, 2013). Accordingly, more and more legal professionals and even the academia argue that there is in theory other than in reality the so-called special method or mode of reasoning that is unique to or at least distinctive of the law.

## Formalist Theoretical Claims on Legal Reasoning

Discussions on legal reasoning can be traced back to Cicero and Aristotle (Bobbio, 1988), and methods of legal reasoning have been evolving from ancient syllogism to the application of modern artificial intelligence (Susskind, 1986) and from a pure logic process to interdisciplinary approaches. Debates are

still going on among jurists holding contrasting views on legal reasoning, and whose divergence is roughly described as “formalism vs. realism” by the contemporary academia (Leiter, 2010).

Formalist theories claim that ‘the law is “rationally” determinate’ and ‘adjudication is thus “autonomous” from other kinds of reasoning, that is, the judge can reach the required decision without recourse to non-legal normative considerations of morality or political philosophy’ (Leiter, 2010). Among many formalist approaches, rule-based decision-making and precedential decision-making are perhaps the most typical and distinctive of law.

A traditional widespread conception of rule-based reasoning is that judges enter decisions by applying the right rules immediately and mechanically. However, such a conception is over simple and far from the reality, and is not likely accepted today. Now it is widely acknowledged that the rule-based decision-making is far more sophisticated and by no means mechanical, instead, ‘it demands the identification of valid sources of law, the interpretation of those sources, the distinguishing of sources that are relevant and irrelevant, and so on’ (Leiter, 2010). However complicated it is, the key theme of this theory is that judicial decisions are the outcomes of the process of application of normative legal rules to case facts, which explains why legal rules are essential part of legal education in many schools of law.

Precedential decision-making, or case-based reasoning, which is especially characteristic of common law, is a three-step process “in which a proposition descriptive of the first case is made into a rule of law and then applied to a next similar situation” (Levi, 1949, p. 11). In the common law system, courts are expected to follow both the precedents of higher courts and those of the past. Judges are obliged to make similar decisions to similar cases and therefore their decision-making is bound by former cases (Schauer, 2009, ch. 3). In a way, precedents may be viewed as kind of judge-made rules, not as literal and rigid as statutory rules, but as the binding constraints as they are. Precedential reasoning can be either deductive or analogical.

Based on such high ranking legal doctrines as mentioned above, many specific reasoning theories are developed, providing guidance as to how to locate applicable laws, how to interpret statutes and rules, and how to find appropriate precedents, etc. For example, MacCormick’s theory of legal reason starting from detailed textual analysis is regarded successful in providing concrete guidance for judicial decision-making (Spaak, 2007). However different such theories concern, they share the same efforts to find answers within the scope of law. Accordingly, the answer to whether there is a special method of reasoning distinctive of the law is self-evident: there is and actually there are many. The doubt on legal reasoning in essence is not a doubt on the existence of legal reasoning, but one on its application, to wit, whether judges follow legal reasoning to reach a judicial decision.

### **Inherent Defects in the Formalist Reasoning**

As per the discussions above, the existence of distinctive legal reasoning is not a question; instead, the question is whether judges actually follow it to decide cases. Such a doubt on judges’ application of legal categories stems from inherent defects of the rule-based deductive reasoning, which is based on the premises of existing and non-ambiguous legal rule. Yet such premises may not be always available and hence problems.

First, rules may be ambiguous. Levi even radically asserted, “In an important sense legal rules are never clear, and, if a rule had to be clear before it could be imposed, society would be impossible” (1949, p. 11). Levi is exaggerating. Yet it is true that the semantics of rules can be very vague due to the indeterminacy of language and intention. Under- and over-inclusive rules are not rare. Rules with the

defect of ambiguity easily cause what MacCormick termed as “the problem of interpretation” (Feteris, 2010, p. 78).

Second, there may be “gaps” between rules or precedents, or as MacCormick himself put forward: “we can run out of rules without running out of the need for legal decisions” (1994, p. 100). Owing to open-textuality, it is not possible to expect rules or precedents to exert a full coverage of every dispute brought to court, hence a problem described as “the problem of relevance” (Feteris, 2010, p. 79).

Third, rules may be corrupted in meaning. Rules by nature are an entrenched representation of the rule-maker’s intention. When the context of the rule-maker’s intention changes or vanishes, it is not impossible for the entrenched literal rules to turn to be an obstacle to realize the original intention of rule making. For instance, the Chinese Adoption Law sets very strict standards for individuals to adopt abandoned children in order to render careful protection to children and to encourage government-run social welfare institutions to bear the responsibility. Nevertheless, in the context of underdeveloped regions where the local governments fail to fulfil their duty to run such welfare institutions due to financial reasons, the discouragement of individual adoption by the inflexible provisions of the Adoption Law only leads to even bigger tragedy of those poor kids, which is definitely not the original intention of the lawmakers. In such a context, it is difficult to judge whether unqualified private adoption is an action of benevolence because it conforms to the lawmaker’s intention to render protection to abandoned children, or an action of law-breaking because it is inconsistent with the literal provisions of the law. Such a defect of rules contributes to “the problem of classification” (Feteris, 2010, p. 81).

Lastly, rules may conflict. “Inconsistent rules may be applicable to the same activity” (Posner, 1993, p. 47). As discussed by Dworkin, two conflicting rules cannot be valid concurrently and one of them must be abandoned (1977, p. 22). The judge has to decide to abandon one of them in order to fulfil his duty to eliminate the inconsistency. But the deductive rule-based reasoning does not tell him which one to abandon. This is also true of precedents. With the long history of common law, precedents have gradually accumulated to an enormous scale and are still growing rapidly in huge numbers in all the common law jurisdictions across the world. It is unavoidable that judges may have divergent views towards similar issues, which are not uncommon to be found in dissenting opinions in countless judicial decisions.

### **Realist Empirical Findings on Judicial Reasoning**

Realizing the defects in the traditional concept of legal reasoning, some jurists began to cast serious doubts on formalist approaches to judicial reasoning. Since the early 20<sup>th</sup> century, the descriptive realists have frequently challenged prescriptive formalist approaches that, due to the indeterminacy of law, judges tend to have a biased outcome preceding consultation of the formal law or legal doctrines, which are employed merely for the purpose of rationalizing such an outcome selected on non-legal grounds such as economic consideration, political ideology, and even some trivial personal preferences (Schauer, 2009, ch. 7). Holms, one of the most prominent forbearers of legal realism, expressly belittled rule-based deductive reasoning and advocated “realist” parameters applied in judicial decisions:

*The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed (1923, p. 1).*

Many empirical studies have been conducted to render support to realist propositions. For example, by utilizing sophisticated techniques of multiple regression, researchers examined a range of influential elements and concluded that ideology is the leading determinant for the US Supreme Court decisions (Schauer, 2009, p. 139). Sisk and Heise found political factors in Establishment Clause decisions undeniable and substantial by studying Establishment Clause rulings by the federal court of appeals and district court judges from 1996 through 2005 (2012). In the commercial-law context, ‘judges treat normal economic practice as the normative benchmark for decision’ (Leiter, 2010). With the advancement in empirical sociological approaches to law, the list may go on to run for pages. Such findings are used by realists to suggest that law is rather a tool of rationalization than that of decision-making and non-legal reasoning matters more than and even replaces legal reasoning in judicial practice.

### **Arguments against Radical Legal Reasoning**

Legal realism is playing an active role in the science of law in that it adds an empirical and descriptive perspective to the former purely prescriptive legal reasoning study. There is no denying that legal realism generally holds some truth, but not all. It is no more than a biased cynical speculation to radically assert legal reasoning as an entirely arbitrary activity and allege that judges follow no pre-existing standards but their personal preferences to enter judicial decisions.

#### ***Predetermination vs. Pre-Disposition***

Realists claim that judges tend to have a predetermined decision before consulting any legal standards, which is evidenced by some judges’ confessions (Schauer, 2009, p. 124). But the claim is susceptible because it does not distinguish predetermination from pre-disposition. As Judge Roger Berner points out, the latter is apt to describe a judge’s preliminary, but not fixed, view that he may have adopted before or during a hearing; yet so long as he is open to argument and the possibility that the preliminary view may be wrong, that is not a predetermination but a pre-disposition.<sup>1</sup> It is almost unavoidable that human beings tend to form an idea, or pre-disposition, at the sight of something new or unknown, however, such a preliminary pre-disposition is totally different from the final determination; the former being an outcome of intuition while the later a product of reasoning. There are times, quite many indeed, when a pre-disposition turns out to be consistent with the final determination. It is hard and there is usually not the need to distinguish the two, which is the reason that pre-disposition is often confused with predetermination. Without clear distinction between the two concepts, those judges’ confessions can never be used as evidence of their predetermination of cases, because it is possible that they mistake predetermination for their intuitive pre-disposition, which, due to their legal thinking internalized by years of legal education and practice, is far from being arbitrary but often consistent with legal reasoning. It is very much like in an intense tennis game, when a well-trained and experienced tennis player always deal with an unexpected service from his rival much better than an ordinary person, though neither of them has any time for a reasoning process to work out the best strategy.

#### ***Deductive Reasoning vs. Reflexive Reasoning***

Many realists argue that judges do not, or at least initially, apply legal standards to decide a case, but use them to rationalize their decisions based on non-legal standards (Hutcheson, 1929; Frank, 1930). Indeed, due to such inherent problems with rules as previously analysed, it is not surprising that many legal rules

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<sup>1</sup> *Tricor PLC v The Commissioners for Her Majesty's Revenue & Customs* [2012] UKFTT 336 (TC) paras 9, 11

are subject to vagueness and ambiguity and even inconsistency (Schauer, 1991, pp. 31-37). As a result, rigid formalist rule-based deductive reasoning is often difficult, which offers reason and room for judges' discretion. Nevertheless, such discretion is in no case unlimited or arbitrary; instead, it is limited by a higher level of legal categories, which is evidenced by the reality that judicial decisions of common law courts resort for rationality with nearly no exception to legal standards such as legislations, precedents, legal doctrines, and etc. In this case, rationalization 'is not a useless embellishment, nor an act of deceit (or self-defeat)' (Sartor, 2005, p. 125). It can be (and hopefully it is usually) a serious attempt to make sense of one's decision, an attempt whose failure may lead to withdrawing or revising that very decision, or to departing from it in subsequent cases (Sartor, 2005, p. 125).

It is impossible to force judges to start their decision-making from law, and the empirical studies cited previously prove that they may start elsewhere. Nonetheless, even so doing, it does not necessarily mean that legal reasoning is not involved in their decision-making. They have to end their decision-making in law even if they may not start from it; that is, they must evaluate and rationalize their decisions in terms of law. In such a case, rationalization by law is a reflexive legal reasoning process that guarantees the legitimacy and law-relevance of judicial decisions coming out of non-legal reasoning.

### ***Local Truths vs. Universal Truth***

Furthermore, those empirical studies that suggest that judges apply non-legal standards, like political ideology, etc., all concerning a particular type of either cases or courts, especially appellate courts. None of them provides evidence to suffice a general claim. In addition, some other empirical studies interestingly propose otherwise. For example, Perino, in his databased research on federal district courts decisions, found that judges are more likely to resort to intermediate interpretation of law rather than simply judging cases according to their ideological preferences (Perino, 2006). The conflicting evidence points to the very reality: judicial reasoning is by no means simple and easy. It is most untenable to jump to a rash conclusion that judicial reasoning is strictly logical or entirely arbitrary.

### **A Balanced Perception of Legal Reasoning**

Pertaining to the above analysis, no one-sided extremist claim, either of vulgar formalism that judicial decision-making is mechanical or of radical realism that it is purely arbitrary, is tenable. Extremists, either of formalism or of realism, are erroneous in that they neglect the reality of the complexity of legal reasoning. An objective perception of legal reasoning should be a balanced view between formalism and realism that legal reasoning, indispensable to judicial practice, may be conducted in an either deductive or reflexive manner, or even in other manners.

Legal reasoning by nature is the process of reaching justification for legal practices. Methodologies of legal reasoning, such as deductive reasoning and reasoning by analogy, are not distinctive of law, because such methodologies are also very common for other kinds of reasoning, for example, ethical and political reasoning. What make legal reasoning unique are its special parameters, or "ingredients", applied in the legal reasoning process, which provide special constraints to guarantee such reasoning processed within the legal framework and therefore distinguish it from other types of philosophical thinking.

But what are those special "ingredients" that necessarily contribute to the distinctive legal reasoning? Formalists and realists come up with different answers. It seems that it is comparatively easier for legal theorists to agree on the connotation of "rules" as the formalized linguistic representation of laws, yet it is much more difficult for them to reach a similar uniform understanding of other "ingredients" of legal reasoning. Realists do not deny that rule-based and case-based reasoning are legal reasoning; they only

doubt whether rules and precedents actually work as constraints in the judicial reasoning process. Since Frank (1930) adopted the psychological approach to judicial reasoning, generations of realists have devoted to empirical researches with an attempt to precisely describe the subjective reasoning process to reach a judicial decision, but have not succeeded. In fact, it is pointless to prove their doubt on the law-relevance of judicial reasoning at the start of the process when they all admit that the outcome of such a process must be legally persuasive.

The inherent defects in rule-based deductive reasoning are not an excuse to abandon legal ingredients in the judicial reasoning at all, but a reason to improve legal reasoning. And many theorists have already made constructive contributions in this aspect. By proposing the revolutionary concept of “law as integrity”, Dworkin, widely regarded as a prominent natural law theorist, revealed his understanding of legal reasoning as constructive interpretation of law. As per the theory of integrity, the judges’ job is to interpret the law in the best light and to conform his justification to a coherent conception of justice and fairness (Wacks, 2009, p. 146). Besides, MacCormick, a well-known soft formalist, proposed the “second-order justification” to the ruling in hard cases through other modes of reasoning, such as hermeneutics, to provide acceptable interpretation, and analogy, to guarantee the ruling being coherent with various legal principles and consistent with certain legal rules (MacCormick, 1994, pp. 101-128). The point is that the connotation of legal reasoning has been expanded beyond rules and precedents to include less formalized ingredients such as legal values, principles, doctrines, and so on, which, though more vague in terms of formal representation, are consistent with the philosophy of law. From this perspective, the difference between formalism and realism lies only in conceptualization; they do not fundamentally contradict each other in that both of them aim at reaching legally persuasive and coherent justifications.

### **Conclusion**

By elaborating both theoretical claims and empirical findings on legal reasoning, this paper succinctly reviews legal formalism and legal realism. By analyzing inherent defects of rules and repudiating radical claims of realism, this paper presents a balanced understanding by reconciling the two, instead of rivalling them. Law is viewed by formalists as the starting point of a deductive mode of legal reasoning while by realists as the destination of a reflexive mode of legal reasoning. There is no fundamental contradiction between the two. In either case, legal reasoning plays a significant role to provide guidance and guarantee for judicial decisions to function within the boundaries of law other than being arbitrary. Legal reasoning plays an indispensable role in judicial decision-making. Judges’ discretion is derived from law (to be exact, either because of excessiveness or scarce of law), and is supposed to be subject to law, instead of to any law-irrelevant factors. Propositions pertinent to external influences (media influence, emotional appeal, etc.) on judicial decisions are questionable. Such exaggerated claims of “media-mediated court” or “rule by media”, as previously mentioned in the Introduction of this paper, are impossible. Being “real” realists are to be aware of the reality of the complexity of legal reasoning, instead of being subject to extreme bias.

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# On the Legislative Perfection of China's Trust Law from the Perspective of the Relation between Trust Law and Trust Industry Law

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**[Abstract]** *As one of the four significant financial industries in China, the trust industry is short of the system rules of basic law. This situation leads to respective regulation in the financial market of wealth investment products, which does not provide a full-scale and well-working regulation. In the future legal system of trust, the power border, organization structure, regulation procedure, decision-making rule and liability of the regulation department should be clearly provided. The amendment of the current Trust Law should reduce ambiguous statements to reinforce the operability and enhance the effect of law.*

**[Keyword]** *trust; trust industry; accuracy*

## Issues

In China, the trust industry, banking industry, securities industry and insurance industry are called the four most significant financial industries (Wei 2002). As an independent financial industry, each should have a specialized basic law to regulate it. In the banking industry, China has the specially made *Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry*, which provides specific stipulations on the regulatory authority, regulatory and supervisory responsibilities, supervisory measures and legal liability. In the securities and insurance industries, although there is no specialized regulatory law, basic regulation rules have made up the imperfection. In *Securities Law* there is a special chapter to stipulate the regulation of and supervision over the securities industry. And in *Insurance Law* there is also a special chapter on the regulation of the insurance industry. At the same time, when talking about the regulation of and supervision over the trust industry, there is neither specially made regulatory law as in the banking industry, nor specialized stipulations in *Trust Law*. So there is a shortage of basic regulatory law in the legal system of the trust industry.

The lack of basic regulatory law has led to the problems in financial practice that the financial management products with the same trust structure cannot receive the same and unified legal judgment, and as a result, different investors get different treatment and unequal protection due to the complicated system of trust laws. The financial management products provided by trust companies enjoy the protection of *Trust Law*, while the non-insured floating returns products provided by commercial banks, asset management business conducted by securities companies, and investment-linked insurance business of insurance companies which all have the legal features of trust, cannot be operated in the name of trust and cannot be protected by *Trust Law*. This is the real problem in daily life. The problem occurs in the financial practice, but is rooted in the system of trust laws. To be specific, the defect of trust law legislation leads to such problem.

Then, to dig up the problem, where is the trust legislative defect that results in financial management products in the financial market with the same legal structure cannot enjoy the same treatment of law? The legal system of trust has long been established in China; does the problem have some relation with the legal system of trust? Why is it necessary to establish basic legal system for the trust industry? Which

is the means to establish the system? And what kind of content should the future basic legal system for the trust industry include? These questions make up the issues this paper is going to discuss.

### **The Relation between the Trust Industry Law and Trust Law**

The world of law starts from language. Legal language is the most effective tool for law (Wang, 2012). From the perspective of linguistics, trust industry law and trust law only have the difference of one word. So can they substitute for each other? What is the relation between them? These are questions that must be made clear.

Trust law is the set of rules to regulate trust activities. It is the basic law of the institution of trust. Trust industry law is the basic law for the regulation of and supervision over the trust industry. The connection of them lies in the functional complement of each other. Trust law provides rights and responsibilities of the interested parties in trust activities, while trust industry law mainly focuses on trustees, providing restrictions on the capital, employees, structure and trade of the trustees, in order to make sure that the trustees serve the interest of beneficiaries well. Therefore, trust industry law is the special law, which is specialized for regulation of and supervision over the trust industry (Zhou, 1996). It is the set of rules to reinforce the regulation of trust investment organizations and to insure the healthy development of the trust business (Chen, 2004).

Apart from the functional complement, trust industry law and trust law have big differences in legal nature, legal value and the subject of legal relation:

1. Their legal natures are distinct. Trust law belongs to civil law or commercial law, and has the nature of private law. Trust industry law belongs to administrative law and has the nature of public law.
2. Their legal values are different. Trust law pursues liberty and efficiency preaching financial liberty and wealth increment. The core values of trust industry law are justice and efficiency, pursuing equal competition, and healthy development of the whole trust market, and it is based on achieving efficiency.
3. The subjects of the two legal relations differ from each other. In trust law, the participants of the legal relation are entities in the market with equal status: settler, trustee and beneficiary. In trust industry law, the participants of the legal relation have an unequal status: one party is the regulatory authority and the other party is the one being supervised. The contents of this legal relation are the regulatory rights and responsibilities between the authority and its supervising objects.

### **The Necessity Analysis of Establishing Basic Legal System for Trust Industry**

As China does not have a basic legal system for the trust industry, the protection of trust investors lacks a legal basis. Recently, with the rising and flourishing development of China's financial industry, the actual business of trust is enlarging daily. From the perspective of the justice requirement of the financial management market, the equal protection of investors and the perfection of the legal system of trust, there are demands to establish a basic legal system for the trust industry, confirming fundamental regulation rules in the trust industry on the level of basic law.

### ***Fair Competition in the Financial Management Market Requires Unified Regulation Rules in the Trust Industry***

The current financial management market is full of respective regulation. This means different regulation departments handle different businesses in the trust industry, which does not provide a full-scale and well-working regulation. According to the current laws and regulations, the trust business only conducted by trust company can be called trust and other businesses with the feature of trust conducted by other financial organizations does not belong to the trust industry, and as a matter of course cannot be supervised under the scope of the regulation of the trust industry. This is the fundamental reason that leads to respective regulations. So the justice requirement of the financial management market requires unified regulation rules in the trust industry.

Financial management businesses with the same nature of trust should receive unified regulation. To establish unified regulation rules in the trust industry will not only achieve consistency and authority of supervision, but also ensure justice. Financial organizations under different supervision departments all have their own interest requirements, on the premise that there is no unified trust industry regulation rule; it is hard to judge who is right, who is wrong, and whose prescript is better. In the huge asset management market, competition among financial organizations exists. The competition is normal, but there is need for the same basic game rules to be considered and followed, or the market will be in disorder. By establishing unified regulation rules in the trust industry, a fair competition of asset management business among different financial organizations will be achieved.

### ***Equal Protection of Investors Requires Unified Regulation Rules in the Trust Industry***

In the current financial market, there are lots of financial management products. Do they all have the nature of trust? Is it a trust product when its introduction uses the word “trust”? Or are those products with the legal structure of trust, but without the description, trust products? There are three standards for judging a trust product. The first one is whether the asset is independent. The second one is whether the financial management organization uses its own name to manage the asset. And the third is whether the risk is taken by the investor. The following section will take the financial management businesses conducted by commercial banks, securities companies and insurance companies as examples.

**Financial management business conducted by commercial banks.** According to Article 2 of the *Interim Measures for the Administration of Commercial Banks’ Personal Financial Management Services*, personal financial management service refers to those commercial banks that provide personal clients with financial analysis, financial planning, investment consultant, asset management and other professional services. So the business has a large range. The non-insured floating returns product is a kind of service where the commercial banks pay the returns to their clients according to the condition of their investment returns and agreed terms, but does not guarantee the safety of corpus. In this kind of product, commercial banks manage and use the money of their client in the name of the bank, collect management fees and take no responsibility on the gain or loss of the money. The clients’ asset of this kind of financial management product is independent. Therefore, the legal nature of the non-insured floating returns product belongs to the trust relation.

**Financial management business conducted by securities companies.** The financial management service provided by securities companies contains “the targeted asset management” and “the collective asset management”. According to the relative rules in the *Detailed Rules for the Targeted Asset Management Business of Securities Companies* and the *Detailed Rules for the Implementation of the*

*Collective Asset Management Business of Securities Companies*, in the financial management business, securities companies and investors sign financial management agreements and the investors hand over money to the securities companies through commercial banks. The money handed over by investors turns into the collective asset. It is independent from the asset of settlers, trustees and the manager. Securities companies manage the assets under their own name. And also the securities companies do not take any responsibility for the gains or losses of the invested assets. The investors need to bear the risk. Accordingly, the financial management business conducted by security companies also conforms to the features of a trust.

**Investment-linked insurance business conducted by insurance companies.** There are three kinds of financial management business provided by insurance companies. They are dividend-participated insurance, universal insurance and investment-linked insurance. Among them, the investment-linked insurance does not have the promise that it can guarantee the corpus, and investors need to take the risk. *The Interim Measures for Investment-linked Insurance* provides, “The investment risk is totally taken by the investors”, “the investment account of insurance companies and the asset managed by them or other investment account does not have debt relation. The insurance companies do not take the joint responsibility for the investment.” Therefore the investment-linked insurance is the production when insurance combines with investment trust. The investment-linked insurance product shares the feature of a trust.

To sum up, the non-insured floating returns product, asset management business of securities companies and investment-linked insurance are all have the legal features of a trust, but they cannot run in the name of a trust. Their legal relations are trust relations, but are applied to different regulation rules. Different rules not only mean the difference in the entrance of the market and management, but also mean that investors’ protections are distinct. For instance, although the financial management businesses all have the nature of a trust, the entrances for the investors are different due to the request of different financial organizations. Although they are financial management businesses, the product developed and issued by commercial banks may ask the investor to take the risk, while the products issued by trust companies enjoys absolute cashing, though they do not fit in the principle of a trust. So due to the equal protection of investors in this Trust Time, a unified rule should be made to regulate the investor entrance, risk taken, rights protection and other issues.

### ***Perfection of the Legal System of Trust Requires Unified Regulation Rules in Trust Industry***

China has already had *Trust Law*. *Trust Law* belongs to civil or commercial law, which is private law, and stipulates the civil or commercial legal relation among equal parties, namely the rights, responsibilities and liabilities among settlers, trustee, and beneficiary. The regulation of one industry needs laws. There is a specialized chapter in *Securities Law* to provide rules on securities regulation. Chapter Six of *Insurance Law* is about the regulation for the insurance industry. And in banking, *Law on Regulation of and Supervision over the Banking Industry* provides specific stipulations on the regulatory authority, regulatory and supervisory responsibilities, supervisory measures and legal liability. The regulation for the trust industry is neither in *Trust Law*, nor in the special regulatory law as the banking industry. So from the basic law level, it is lacking relative law in the trust industry. The perfection of the legal system of trust requires unified regulation rules in trust industry.

Article 4 of *Trust Law* states that “with regard to trustees that engage in trust activities in the form of trust institutions, the State Council shall formulate specific measures for the organization and

administration of such institutions”. So not all trust activities conducted by trustees need the state council to formulate specific measures. Only those in the form of a trust institution have that request. As a consequence, problem rises. Starting from the interests of the regulated, regulation departments provide basis for the regulated to engage in trust activities. Those bases lead to the power given by orders exceeds the right entitled by law (Sheng, 2003).

Therefore, although from the perspective of linguistics, the difference between trust law and trust industry law is quite small, but considering the justice requirement of the financial management market, the equal protection of investors and the perfection of the legal system of trust, the now available legal system of trust cannot fulfill the request of the market. There is a need to establish a legal system for the trust industry on the level of basic law.

### **Path Choice for the Establishment of a Basic Legal System for the Trust Industry**

As discussed in the above section, it is necessary to establish a legal system for the trust industry. However, for the issue of which path China will choose to establish that basic legal system, there are different opinions in the academic circles. Zhang Hui (2001) believes that China should formulate unified *Trust Industry Law*, and establish the regulatory authority for the trust industry in China according to that law. Liu Dinghua and Zheng Yuanmin (2002) believe that the legislation of regulation for the trust industry should adopt the pattern of “lateral comprehensive legislation”, bringing all commercial trust business conducted by all kinds of financial organizations in the market into regulation. Xia Bin (2007) believes that the regulation of China’s trust industry is in the state of segment, with contradictory orders coming from different departments, so China should make unified laws to regulate the market of trust. Shi Tiantao (2008) thinks that to make *Trust Industry Law* is of great urgency. Xi Yuemin (2011) thinks that the unified regulation for the trust market requires nailing down the legislative right of CBRC and to pass a widely applied *Trust Industry Law*. He believes it is the only way to solve the problem, or the current orders will still disturb the supervision. Luo Zhihua (2012) believes that the lack of stipulations on the trust industry in *Trust Law* leads to the “orders from all kinds of regulation departments” for asset management business, “disorder” in the market, and hardly good protection for the interests of investors.

In the view of the author, the reorganization of trust financial management market needs unified trust industry regulatory rules. The unified rules are the fundamental way to protect investors and ensure the efficiency of the market. The opinions of some scholars coming from the level of laws can make sense, but it takes a long time, high cost, and with great difficulty to solely legislate a *Trust Industry Law*. To make up the shorted rules in the trust industry by amending the current *Trust Law* may be more realistic.

### **The Main Contents of Basic Legal Systems for Trust Industry**

If amending the *Trust Law* is accepted to establish the basic legal systems for trust industry, then what kind of contents shall the amendment add? And what needs to be paid attention to from the perspective of legal language? The nature of a law decides its border of content. First, we should analyze the nature of legal systems for the trust industry. The legal systems for the trust industry belong to administrative law. It is the law to entitle and restrict the regulatory authority for the trust industry. So for the system, it should contain the power border, structure, regulatory procedure, deciding rules, liability and so on. The ambiguity is the major factor of the indefinite meaning (Sha, et al., 2009). Furthermore, the power of regulatory authority shall come from law. So the regulatory power must be definite, and it is better to not have too many entitling terms. The entitling terms may lead to an enlargement of regulatory power by the

regulation department and disturb the normal operation of trust business, which will let the innovation lacking trust business under restriction and give a bad influence on the development of the trust industry.

The structure of trust regulation is a relatively big problem. In the respect that for the perspective of the state, trust is under the supervision of the non-banking department, the trust section of CBRC, and the regulation force is relatively weak. Now, with the fast development of the trust business, business diversification brings up high requirements for the regulation. Different trust companies have different kinds of business – some focus on asset securitization, some rely on real estate investment trusts, and some cooperate with banks or local governments. For those trust companies with different characteristics, the regulation shall not be the same. It is better to supervise them by different staffs with various backgrounds. The structure of the regulation department should relate to the cooperation and division of regulatory work. The regulatory power should be subdivided inside the regulatory authority. It should be authorized to individuals, as well as the responsibility, so as to achieve the definitude and match of power and responsibility. The current law only provides simple stipulations on the regulation department, and is without the provisions on its structure, which will result in that part of the trust business is not regulated at all, leaving the regulation blank, and part of the business is regulated by all, causing overlap and low-efficiency. The structure of regulation needs to be added and adjusted in the legal systems for the trust industry.

A reasonable deciding procedure is the procedural guarantee of regulation according to the law. Now what is the procedure inside the regulatory authority for the trust regulation? It lacks the stipulations of law. This may result in someone's decision to replace the procedure of a law that should be adopted. Someone may loosen or overdo the regulation. So the necessity and objectivity of regulatory power exercise are influenced. And the deciding procedure also relates to the use of regulatory responsibility. It is necessary to be provided by law. The procedure should be definite and operable. Meanwhile, the procedure should be in the law, rather than in the orders made by regulation department to restrict its behaviors and measures. If the power is enjoyed, the responsibility shall be taken. The regulatory authority for trust and its staff must act in accordance with the law and bear the liability if their regulation behaviors violate the law. It is not only the monitoring of their work, but also the requirement for enhancing the efficiency and promoting the development of trust industry. The responsibility should be specific; that means the subject who takes the responsibility and the way to take it should be specific.

Apart from the requirements on the contents of law, the selection of legal words and the expression of the law for the future legal system of the trust industry needs to a lot of attention. The legal words are the carriers and reflection of legal culture. They are the most fundamental elements of legal culture (Liu, 2013). In China's legal words, the ambiguity of meaning is not rare. It may be affected by the legal culture, but not conform to the standardized and accurate requirements of legal language. The legislative language is the language used during the process of making a law. The quality of legislation decides the quality of rule of law (Dong, 2013). The development of a legal system for China's trust industry cannot separate from the expressions of legal language. So at first the standardized legislative language should be used. And it must let the legislator and those that follow the law have the same understanding on the same words (Ding, 2001). Otherwise, the discrepancy of understanding can lead to the deviation of behaviors, and then affect the execution of the law. The feature of legal language includes accuracy and preciseness (Ma, 2003). So in the future legal systems for the trust industry, what is the trust industry shall be clearly defined. In the time of preciseness, ambiguous expressions should be reduced. We should improve the operability of laws in the trust industry with the accuracy of legal language.

## Conclusion

Over the years, as the privately collected nature, a trust is not familiar and famous to the public. And the trust industry has long been in a marginal and insignificant place in the financial business. However, in recent years, the trust industry has experienced vigorous and fast development. Even so, the participants are varied and different companies run in their own way in the disordered financial management market, which objectively leads to a request about the unified regulation of and supervision over the commercial trust business. From the perspective of legislation, it is short of laws for China's trust industry, and does not have relative judicial interpretation to guide the trust businesses. In addition, the innovative business occurs all the time, but the laws always lag behind. So China faces the contradiction between the fast development of the trust industry and the lack of relative regulatory law.

The ultimate guarantee for the financial safety is the perfection of the financial legal system (Zhu, 2006). Part of the phenomenon is that the asset size of China's trust industry has increased tremendously, and hides grievous risk, threatening the safety of the whole industry. The fundamental way to minimize the risk and achieve the goal of safety is to perfect the rule of law in the trust industry, including the making and execution of legal systems for the trust industry. The most urgent purpose of the *Trust Law* that came into effect in 2001 was to provide all-sided and systematic legal bases for the reorganization of trust business (Wang, 2008). However, the transplanted *Trust Law* seems to change the original intention, and the shortage of legal systems for the trust industry is quite a pity. China's reform relies on legislation (Li, 2007). The rule of law in China's trust industry first requires the establishment of basic legal systems for the industry, making the legal systems as the bases of the reform, and at the same time, letting the regulation also find its legal support.

The language of laws is the important carrier of achieving rule of law, justice and rightness (Pan, 2011). It should provide a definite expectation for enterprises and citizens. Otherwise, the uncertainty of legal consequence will increase and it will influence the instability in the heart of citizens and the whole expectation of the society. China has entered into a pan-asset management time. The legal relations of pan-asset management are basically trust relations. However, the orders from different regulation departments in the market of asset management and the different regulations result in unfair competition of trustees and unequal protection of settlers. Under this condition, the addition of the trust industry in the amendment of *Trust Law* is quite necessary. When establishing the legal system for the trust industry, the legal language should be as accurate as possible, since "accuracy is the soul of legal language (Du, 2001)". But the ambiguity of legal language is unavoidable. So the legislators need to find the balance between accuracy and ambiguity, to establish the basic legal systems for the trust industry with both justice and efficiency.

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# The Analysis of Trademark Dispute Cases in China – A Cognitive Perspective

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**[Abstract]** *From the perspective of cognitive science, this paper identifies and analyzes the semiotic and linguistic features in a trademark dispute case. With the discussion of similar cases in trademark law in China and the US, the authors conclude that some Chinese companies may “manipulate consumers’ awareness”, build wrong perceptions between their brands and some famous people, and therefore, cause consumers’ confusion and mistakes. This phenomenon calls for the renovation of Chinese trademark law on trademark infringement and the authors recommend putting cognitive analysis into consideration to trademark disputes.*

**[Keywords]** *trademark; law; cognitive;*

## Introduction

Forensic linguistics explores the relation between language and law and it tends to solve all the possible linguistic issues, including oral and written linguistic materials in law, with all possible linguistic theories. Although some scholars (Gibbons, 2003; Shuy, 2002) do not support to use the term “forensic linguistics” in all situations, it is still widely used in different discussions to refer to the subject. Whatever the name is, many achievements have been made in this area and linguistic theories are extensively employed to analyze and settle the disputes of languages in law. Specific to the trademark field, Rebecca Tushnet (2008) combines cognitive science and trademark law together and analyzes the trademark dilution phenomenon and differentiates similar marks with cognitive theories. Roger Shuy (2002) successfully employed linguistic theories, namely phonetic and semantics in the case, *ConAgra, Inc. v. Geo. A. Hormell & Company* to differentiate the sounding-alike-and-meaning-alike trademark disputes. He also discussed the use of foreign languages in trademarks. He pointed out that the issues of descriptiveness and suggestiveness are also interesting linguistic issues when foreign language words are part of a trademark. In the case, *Alixandre Furs, Inc. v. Alexandros Furs, Ltd. and Alex Furs, Inc.* Shuy (2002) argued the similarity of sound, look, and meaning between the original names and transliterated names, and he concluded that there was a strong likelihood of confusion by consumers based on their similarity of business and the confusing trademark should be removed.

On the other side, according to Zhihong Gao’s investigation (2011), that although China and the United States differ in their legal traditions, their approaches to trademark protection are similar on several fronts. China does not differentiate between infringement and dilution, though the Chinese law includes provisions on protecting well-known marks from dilution injuries. He also points out that counterfeiting is not confined to China, but a worldwide phenomenon that requires globally orchestrated efforts to combat.

The authors of this article argue that cognitive science and multimodal analysis in systemic functional linguistics can actively assist to settle the disputes of similar trademarks and make a clearance of “who is using whose name”.

## Introduction of the Case

Michael Jordan is considered by the association as “the greatest basketball player of all time” and was inducted into the Naismith Memorial Basketball Hall of Fame in 2009. He was selected by ESPN Top 1 of 100 American athletes of the century. According to Forbes, Mr. Jordan now is also a billionaire entrepreneur and has business cooperations with some world-famous companies, such as Nike, Hanes, and so on. The Brand Jordan is a \$1 billion (sales) business for Nike. Air Jordan is a brand of shoes and athletic clothing designed, owned, and produced for Michael Jordan by Nike’s Jordan Brand subsidiary.

The Qiaodan Sports Co., Ltd. in China was established in 2000 and claims itself as one of “China’s leading name-branded sports enterprise”, mainly engaged in the design, research and development, production and marketing of the Qiaodan Sports shoes, sports clothes and sports accessories. According to the introduction on the official website, the company has achieved an annual 4 billion RMB yuan and a net profit of over RMB 0.6 billion yuan, establishing more than six thousand exclusive stores with 80 thousand employees all over the country.

In 2012, Michael Jordan filed a lawsuit against Qiaodan Sports, claiming the unauthorized use of his Chinese transliterated name (乔丹 qiáodān, /tʃiaudæn /). In the case, Jordan accused Qiaodan using a brand of sportswear (mainly in sports shoes) without his permission. In 2013, Qiaodan countersued Michael Jordan for \$8 million in damages, claiming that Jordan ruined its reputation and caused the delay of its plan for an initial public offering in China.

## The Analysis of the Trademarks from the Perspectives of Cognitive Science

The “prototype theory” was put forward by American psychologist, Eleanor Rosch (1975) and suggested that people are inclined to build a mental image based on average characteristics of that object which contains the most representative features inside the category. Objects that do not share all the characteristics of the prototype are still members of the category but not prototypical ones. Prototype theory focuses on where some members of a category are more central than others. For instance, when people are asked to give a name of certain kind of commodity, the famous brands are more frequently cited, like *Xerox* in xerographic copying machines, *Hoover* in vacuum cleaners, *Escalator* in moving staircases and the contemporary buzz word, *Google* in Internet search and so on. People just pick the most popular and representative trademark in the industry to refer to the whole category of the products.

Lakoff (1987) presented the theory of cognitive models (CMs) and the theory shows how our knowledge of the world is organized in our minds based on human experience. CM is the characterization of all the relevant knowledge of certain domain stored in human being’s brain, which is based on a series of relevant situations and contexts. Therefore, a CM usually includes many concepts, situations, and contexts. Besides the basic features, a CM is highly selective, closely interrelated, and omnipresent. “Highly selective” means the most representative features are chosen from the open-ended descriptions. “Closely interrelated” means inside the CM, the components have the interrelation with one another, which can make a cognitive network. “Omnipresent” means CMs widely exists in the world and people have to understand the world and reason out the world via CMs. In summary, cognitive science helps us get to know how we know the world. This, in trademark disputes, it can help us to analyze people’s cognitions and attitudes toward different, but similar, trademarks because in the disputes, one of the most key factors to decide similar trademarks is whether it confuses the consumers, which will be discussed in the following part.

In the case of Michael Jordan vs. Qiaodan, one key point is whether Qiaodan Sports' brand, “乔丹” was stealing Michael Jordan's reputation and influence. Generally speaking, 乔丹 (qiáodān, / tʃiɑudæn /) in Chinese characters has several meanings according to BaiduBaikē (alleged “the largest online Chinese encyclopedia”) and Wikipedia in Chinese (“the most well-known online encyclopedia in the world”):

1. Michael Jordan, former NBA basketball player;
2. Air Jordan, a brand of shoes and athletic clothing designed, owned, and produced for Michael Jordan by Nike's Jordan Brand subsidiary. The shoes were first produced for Michael Jordan in 1984;
3. DeAndre Jordan, a basketball player in NBA Los Angeles Clippers, who was born on July 21, 1988;
4. Katie Price, previously known by the pseudonym “Jordan”, an English singer, television personality, novelist, businesswoman, and former glamour model;
5. Qiaodan, The Qiaodan Sports Co. Ltd. in China, which was established in 2000 in Fijian province, China;
6. Jordan Pierre Ayew, a Portuguese footballer;
7. Michael Jordan, an England footballer;
8. Jordan Grand Prix, an Irish-registered Formula One constructor that competed from 1991 to 2005. The team is named after Irish businessman and founder Eddie Jordan;
9. Jordan Carver, a German glamour model and actress based in the United States.

Among nine entries, there is no doubt that Michael Jordan is the most well-known and popular sport star in the world thanks to his effort, achievements and the influence of mass media, NBA and basketball games. His reputation (as stated in the “Introduction of the Case” part) extends broader than any other person (or team) of related entries in the encyclopedias. In other words, Michael Jordan can be considered as the most representative person in the name of “Jordan”. When people discuss “Jordan”, whether in Chinese or English, what comes to their minds first, for most people, in most circumstances, may be the basketball player, Michael Jordan. That is not only just human nature, but also prototype in cognitive science. Just like *Xerox*, *Hoover* or *Google*, Michael Jordan is the most representative in the “Jordan/乔丹” entries. Therefore, it is easy to understand that the footballer Michael Jordan (before he becomes much more famous than the basketball player) may not be remembered by most people so far because people always remember and understand people and things from the most impressive features.

Prototype theory makes “乔丹” connect with “Michael Jordan” or at least connect with Michael Jordan and other people named “Jordan”. Then, the cognitive model can assist people to recognize the further evidences of Michael Jordan vs. Qiaodan case. Just as stated above, a CM is highly selective, closely interrelated, and omnipresent. People are likely to choose to remember the most unforgettable features and interrelate them together to form a network in their mind to reinforce the remembrance. For example, how do people differentiate a traffic light from other common lights? Probably, the three colors, red, yellow and green, may be the most impressive feature to remember. A traffic light also changes in turns at intervals. Then, a traffic light must be at the corner of a crossroad to control the traffic. All the above can form a network together to make people remember and differentiate a traffic light from other lights. The same principle can be employed on this case.

Qiaodan Sports Co. Ltd. in China has registered a series of trademarks respectively. According to its own initial public offering application manual from China Securities Regulatory Commission, Qiaodan Sports Co. Ltd. owns a series of logos. If the above trademarks can be described and categorized, it is likely to have the following conclusions:

1. “乔丹” or “Qiaodan (QIAODAN)” is Qiaodan Co.'s trademark.

2. The logos of the trademark are silhouettes of a man is holding, dribbling, or playing with a ball.
3. A trademark is the logo of a man who is playing baseball.
4. The man or the trademark has connection with the number “23”.
5. The trademark “乔丹” has connections with the other two trademarks “杰弗里乔丹” and “马库斯乔丹”, which happen to be the Chinese characters and pinyin forms for English names “Jeffrey” and “Marcus”.
6. Almost all the trademarks are registered for “Class 25”, which means “Headgear, Clothing and Footwear” in the international classes in trademark domain (only one trademark is Class 32 which means “Beers and Beverages”). Moreover, according to Qiaodan Co.’s initial public offering application manual, basketball shoes and basketball clothes are their top selling products in footwear and clothing respectively.

Just as the authors have stated above in the cognitive model part, people interrelate features to in the cognition process to remember things or form a concept. There are some facts about Michael Jordan which can be used to compare with the trademarks registered by Qiaodan Co.

1. Michael Jordan’s name is transliterated in Chinese “迈克尔乔丹”, which was first used in 1984 in a Chinese magazine named “《瞭望周刊》 (Outlook Weekly)”. Since then, Michael Jordan is called by Chinese “乔丹”. Although there may be other foreign names or Chinese names have the same translation or Chinese characters. It is undeniable that Michael Jordan’s transliterated “Chinese name” is included and accepted in the “乔丹” category.
2. Michael Jordan is a basketball player. The silhouettes of a man in the trademarks may be a basketball player or have the potential to be understood by people that he is playing a ball game.
3. Michael Jordan “happened” to be a baseball player for a short time (1994). According to Michael Jordan’s biography from NBA official website, “He (Michael Jordan) spent the 1994 baseball season playing for the Birmingham Barons, an affiliate of the Chicago White Sox in the Class AA Southern League”. And Qiaodan Co.’s trademark No. 8 in Figure 1 “happens” to have a logo of a man is playing baseball.
4. Michael Jordan’s jersey number is 23 in Chicago Bulls in NBA. Although other numbers like 45, 12 were rarely used for a very short time, number 23 is still the most popular number for Michael Jordan. Qiaodan Co.’s trademark No. 9 and No. 10 have the number 23.
5. Michael Jordan’s two sons’ names are “Jeffrey Jordan” and “Marcus Jordan” respectively. They play basketball in NCAA. The names are commonly transliterated in Chinese - “杰弗里乔丹” and “马库斯乔丹”.
6. Michael Jordan has cooperation with Nike, Inc., one of the world’s largest suppliers and manufacturer of sports shoes, clothing, and equipment. Air Jordan is the Jordan brand of one of Nike’s subsidiaries and the main product of Air Jordan is basketball shoes.

If we build all the above information around Qiaodan’s trademarks, the probability of limiting the name “乔丹” or the silhouettes of a man to Michael Jordan is extremely high because all the information has a strong implication pointing to the basketball player and they totally match the life and biography of Michel Jordan. Based on the above information provided, though Qiaodan Co. never advocated that the company has connection with Michael Jordan (Even Qiaodan Co. allegedly claimed that they always stated in public that the company has no connections with Michael Jordan), all the facts still mislead Chinese consumers and causes confusion about the trademark. It is just like a word puzzle, if all the information can be threaded in peoples’ mind like: “乔丹” – “ball game player”– “number 23” – “basketball”– “baseball”– “Jeffrey” – “Marcus” – “basketball shoes”. Thus, the probability of considering “乔丹” as Michael Jordan is much higher than any other person named “乔丹” or “Jordan”. That is not

about what is said, but what is shown. The trademarks cannot talk, but together they remind people of the most popular basketball player and make people think the basketball shoes have certain connections with Michael Jordan.

As a matter of fact, according to a study from *International Business Times*, “90 percent of youths in China’s second-tier cities believe Qiaodan Sports and its products are endorsed or have ties with Jordan himself, because the Chinese sports products, in addition to the brand name, bear a logo of a man playing basketball very similar to Nike’s Air Jordan ‘Jumpman’ logo.”

### **Discussion**

In accordance with the *2011 Annual Judicial Report* of the Supreme People’s Court of the People’s Republic of China, a case named *Shandong Qi Lu Zhong He Co. v. Shandong Qi Lu Securities civil No. 222, 2011* was introduced. In the case, the Supreme Court holds the opinion that the premise of a trademark infringement case is whether the trademark has caused confusion and mistake of the “relevant public”. When the judgment on the confusion or mistake is to be made, the salience and popularity of the trademark should be considered.

When the Lanham Act, the US trademark law (2013) is referenced, a more detailed federal statute can also be found:

§ 43 (15 U.S.C. § 1125). False designations of origin; false description or representation

(a) (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which -

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

It can be clearly understood that in the United States, trademark law has a far more strict standard on the possible confusion, mistake or deception caused by the trademark imitation activities. In the case of *Michael Jordan v. Qiaodan Co.*, although the trademark alone cannot be decided that Qiaodan is equal to Michael Jordan in the “decontextualized” situation, a basic fact is undeniable that the trademark is always appears together with the products – basketball footwear and clothes. Let alone the other trademarks, which have been registered by Chinese Qiaodan Co., explicitly or implicitly create a false implication of the relationship between Qiaodan products and Michael Jordan. In the defense statement of Qiaodan Co., the lawyer claims their explanation that the trademark – Qiaodan means, allegedly, “a kind of big tree growing in the south of China”. The authors considered it as unacceptable because trees never have possible connection with sport games and it is just an explanation from the dictionary. Whatever the meaning is in the Chinese dictionary, the truth is that the meaning is always decided by the context and peoples’ cognition pattern.

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# Lawyer's Communication in the Courtroom: A Multimodal Perspective

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*[Abstract] Few professions are engaged so constantly in communications as lawyers. Traditional sensory communications will never be out of date with contemporary technological communications raising the efficiency and veracity. Communication skills from the multimodal perspective help the lawyer to promote trial comprehensive review and realize legal interests.*

*[Keywords] communication; technology; multimodal perspective; lawyer*

## **Introduction**

Lawyers are professional communicators (1964). For all legal practice there are two critical communication functions: gathering and conveying information. In the courtroom, lawyers receive information about the law and human problems, internally organize it, and assimilate and communicate that information to others. Even in the traditional courtroom, lawyers invariably communicate in multiple modalities: the eyes, gestures, and tones of voice merge with the perceived affordances of the surroundings into an integrated and partially shared experience. Especially in high-developed contemporary modern courtrooms, the multimodality of a lawyer's communication is inevitable and plays its vital role, including different communicative modes of internet, lie detection and information technology.

Multimodality is a term widely discussed by linguists and semioticians in recent years in the social semiotic circles in western countries. Multimodality is the study of interrelationships and interdependence between different communicative modes, no matter whether they are written or oral, visual or auditory. It is also a way to transcribe the meaning of discourses composed of different semiotic modes. Despite the central importance of communication to the lawyering activity, no multi models of communications have ever been studied for this legal profession. From the multimodal perspective to study a lawyer's communication in the courtroom will enrich legal languages and promote trial comprehensive review.

## **Lawyer's Traditional Sensory Communications**

All human experiences are sensory-based and a lawyer's courtroom communication is no exception. The physical world has a vast number of quantities that can be detected by human beings by their sensory system (Gibson, 1968). Human beings experience the world through the channels of their five senses: sight, sound, touch, taste and smell (Miles, 1962). In the legal process of traditional courtroom, lawyers should be able to use the multi models of communications.

### ***Lawyer's Auditory Communication***

Listening to another person's speech can provide the lawyer with very detailed information about the speakers' ideas. Usually communication is partially conscious, and partially unconscious. The content is usually conscious, but the process is largely unconscious. While listening, the lawyer can detect speakers' experience or their thinking processes that are represented consciously. This is very helpful for lawyers to get effective information and come to correct judgment, as follows:

Lawyer: I hear what you are saying and it rings true to me.

Lawyer: From what you said, I can come to a conclusion that his words are unbelievable.

However, lawyers usually listen to other people for content, typically neglecting the process, which will provide lots of additional information. In full sentences, nouns reveal the speaker's content and predicates reveal the speaker's process. Understanding speakers' thinking processes can be extremely useful for gathering additional information from speakers or for effectively conveying information to the speaker. Special listening skills will enable the lawyer to classify the speaker's thought process. Lawyers have never been accused of listening too much; quite the contrary, they have been accused of not listening enough. Yet, central to the model presented is the premise that lawyers improve their listening skills in order to improve their communication.

### ***Lawyer's Visual Communication***

All human experiences are sensory-based. No matter how abstract and intangible a word may appear to be, its meaning always relates back to information acquired through the senses. Lawyer's communication must be based on human being's basic senses, especially vision, which is always considered to be the window of soul.

Lawyer: I can see clearly that he lacks of evidence. When I looked at his face, he is very nervous.

Lawyer: It appears that if we see eye-to-eye with each other, the defendant will have to admit what he did. His red face betrayed him.

From the above, we can see the lawyer used his visual sense to get to know the defendant's inner world. The most important aspect of these communications is to create the lawyer's presuppositions by using vision to persuade the listeners. So visual sense is also part of language communication systems, which allow lawyers to represent the information they have acquired from the external world. In addition, an understanding of eye movement patterns has several uses to a lawyer. For example:

Lawyer: What else do you remember about the accident?

Client: Nothing really (eyes up to the left, indicating visual).

Lawyer: Could you give me a little better picture? What image do you remember?

These eye movements show the client is searching his sensory experiences internally, and then he is likely to miss external sensory input. This suggests that a lawyer may need to pause when the client's eyes are moving rapidly or to repeat what he has just said.

### ***Lawyer's Kinesthetic Communication***

Few professions are engaged so constantly in communication as a lawyer. In oral communication, the effectiveness of these functions is often dependent on the lawyer's ability to establish a rapport with the other person. In fact, the informational and rapport functions of communication are often considered to be inseparable. The better a lawyer is at these skills, the better the reputation the lawyer is likely to achieve. Therefore, lawyers will also express their feelings in communication, as follows:

Lawyer: His attitude is overpowering. I can feel that. Although it is hard to start up, the information strikes me as deserving my solid effort. I feel I can handle it now.

From “overpowering” we can see how strong his will is. From “hard”, “strike” and “solid” we can see how surprising it is to the lawyer. All the kinesthetic words will help the lawyer to achieve his goal of communication.

A large part of a lawyer’s daily activity consists of conversations with clients, witnesses, judges and other lawyers. Lawyers must gather and convey much information orally and the traditional sensory communications are helpful for them.

### **Lawyer’s Contemporary Technological Communications**

Everything has been changed with the quick development of high technology, especially for lawyers who depend on abundant data, immediate negotiation, quick reaction and reliable evidence. So in the modern society lawyer’s contemporary technological communications are sure to be indispensable.

#### ***Internet in Lawyer’s Communication***

An Internet lawyer is an attorney who provides legal advice and assistance to individuals who need help with legal matters. The Internet has become the most important medium for lawyers to communicate. This may include a wide range of legal issues related to the Internet, ranging from matters involving intellectual property on the Internet, to criminal issues like cyber stalking. A good Internet attorney not only understands the law as it applies to cyber-law and the web community as a whole, but they also understand technology and the backend systems used to drive it. Most Internet lawyers bring strong technological work experience to the table.

Online legal question sites have different methods of operation, but typically allow users to post questions that lawyers can answer. In some cases, the answers are provided for free by lawyers who can include their name and contact information in their public answer. This type of online lawyer service provides lawyers with an opportunity to market themselves and to supply individuals that need advice with legal guidance. Other online legal services require users to pay for answers that are then provided by lawyers with whom the service has a contract. The lawyers can make money from answering these questions, and in return the users may get more comprehensive legal advice than they would get from a free site.

For another reason, many people do not have a family or personal attorney to whom they can turn to with legal questions. Some companies now offer online legal services through which lay people can ask questions and receive answers from credentialed lawyers. In many cases, these websites are operated by companies that contract with attorneys to answer the questions. So online lawyer communication involves a hybrid of online document preparation and actual, live legal representation and direct answers to questions. Some lawyers offer an online services, whereby a client can complete the necessary legal forms for an uncomplicated case, such as an uncontested divorce. The forms may then be forwarded to a sponsoring lawyer who reviews them and then meets the client at the courthouse so that the client does not have to represent himself in front of a judge. This system can save the client money by reducing the amount of time the lawyer has to spend on counseling the client and preparing his case.

#### ***Lie Detection in Lawyer’s Communication***

The U.S. judicial system places great weight in the belief that juries are effective and reliable in determining the credibility of the witness. Yet, behavioral and social research has shown that humans are good at lying and quite poor at lie detection (Vrij, 2008). Progress in the use of functional magnetic resonance imaging (fMRI) of the brain to differentiate lying from truth-telling has created an expectation

of a breakthrough in the search for objective methods of lie detection. Now lies can be detected scientifically and lie detection is also one important part of lawyer's communication.

In the courtroom everything is based on facts while the past is irreversible. When the parties cannot agree to each other, the lawyer will ask a lot of questions to test if they are lying. For example:

**Sample 1.**

Lawyer: "So even when the store had been closed for three hours last night, you were still stealing the goods in the shop, right?"

Defendant: "Well, I... I can't remember, at that time it was late."

Lawyer: "What you said indicates that the theft of the night did exist. "

Defendant: "But... , but... . "

**Sample 2.**

Lawyer: "How much can you get each month?"

Defendant: " I have no fixed job, 300-500 \$ for each month. "

Lawyer: "How much can you save in the bank?"

Defendant: "It's very hard for me to make a living. No extra money for bank. "

Lawyer: "So you have no passbook. Why did you say you withdrew cash from your passbook for Mr. Johnson? "

Defendant: "Uh..... . "

These two lawyers above used many questions in communication and made the nervous defendant inconsistent in his answers. We believe that, at the present stage of development, both technical lie detection and lawyer's questions are important communications in courtroom for evidences.

***Information Technology in Lawyer's Communication***

Information technology (IT) is the application of computers and telecommunications equipment to store, retrieve, transmit, communicate and manipulate data. Along with fast economic development and the continuous development of science and technology, the electronic computer is infiltrating slowly to all aspects of the social production and the life including courtroom.

Lawyers not only use computers to store data, but they also rely on the Internet communication technology, which is an information transmission method based on the computer and Internet technology. The computer network communication is a kind of new communication method, formed by the combination of computer technology and communication technology, which is endowed with such functions as combining the data communication with the address to transmit data or multimedia materials. This kind of new communication system can connect different geographical computers with terminal equipment through the Internet network, and can realize network real-time communication through the corresponding network communication software. With the help of this method, lawyers can not only realize the local area network data transmission, resources sharing and information exchange, but also can realize distance information processing, even as far as the world range, the ability to provide voice and video calling functions, all of which can provide great convenience lawyers' communication.

## Conclusion

Communication techniques may be utilized to improve a lawyer's ability to gather and convey and to build rapport. Effective use of communication skills requires a lawyer's attention to the process as well as the content of communication. To study the interrelationships and interdependence between different communicative modes, multimodality has been applied for both the traditional sensory and contemporary technological communications in the courtroom need lawyers' outstanding communication skills. Since the constant expansion of technology-based communication and the Internet into people's lives will not stop at the door of the bricks-and-mortar courthouse, there will be a lot more for us to explore in the field of lawyers' communication in courtroom.

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# **Career Discourse: The Medium of Connection between EGP and ESP**

## **– Taking Legal Discourse as An Example**

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*[Abstract] In the research on the teaching shift of college English to ESP (English for Specific Purpose), career discourse has been introduced in college English as teaching content and becomes the teaching medium of connection between ESP and EGP (English for General Purpose). Under the guide of functional linguistics theory and sociolinguistics theory, this paper discusses the characteristics of integration teaching of career discourse with EGP and the effect of career discourse as a medium from the perspectives of teaching aims, teaching content, and teaching methods based on need analysis.*

*[Keywords] career discourse; integration teaching; discourse analysis; medium of connection*

### **Introduction**

Career discourse is a sort of discourse that occurs in the communication of working fields. It is characterized by definite objectives that are connected to a particular career. The participant's discourse centers on this objective, whose form is limited by the tradition of this professional communication and it possesses a reasoning frame and procedure that links to this particular professional context. They exert an influence of limitation on the understanding of career discourse (Drew & Heritage, 1992). In the context of career discourse, the communication methods aren't restricted by space – by means of face to face talking, telephone or other modern communication equipment. Educationalists regard career discourse as an important teaching content with the expectation of students' understanding of language features and a familiarity of society. As a type of discourse, career discourse has all the characteristics of ESP.

Legal discourse is a world of meaning consisting of various elements, and it's also a way of expression of integrality, whose features derive more from its basic ideas than the vocabulary and concepts it uses (Li, 2008). In practical English teaching, it is considered as ESP and belongs to career discourse.

Under the circumstance of economic globalization, career discourse, which belongs to ESP, has become the focus since it meets the students' demands and links to disciplines. In order to change the traditional teaching pattern of "considering theory more important than application ability", experts begin to explore the integration teaching between career discourse and basic English. It focuses on placing the cultivation of language skills and language application in the context of working fields at the basic stage of college English. Its aim is to expand the horizon of knowledge and promote knowledge and career cultural accomplishments, and finally achieve dual growth in these two fields. This teaching form realizes the combination between language and content and adapts to the learning theory of foreign language and cognitive law, which meets the needs of society and students.

## **Background and Bases**

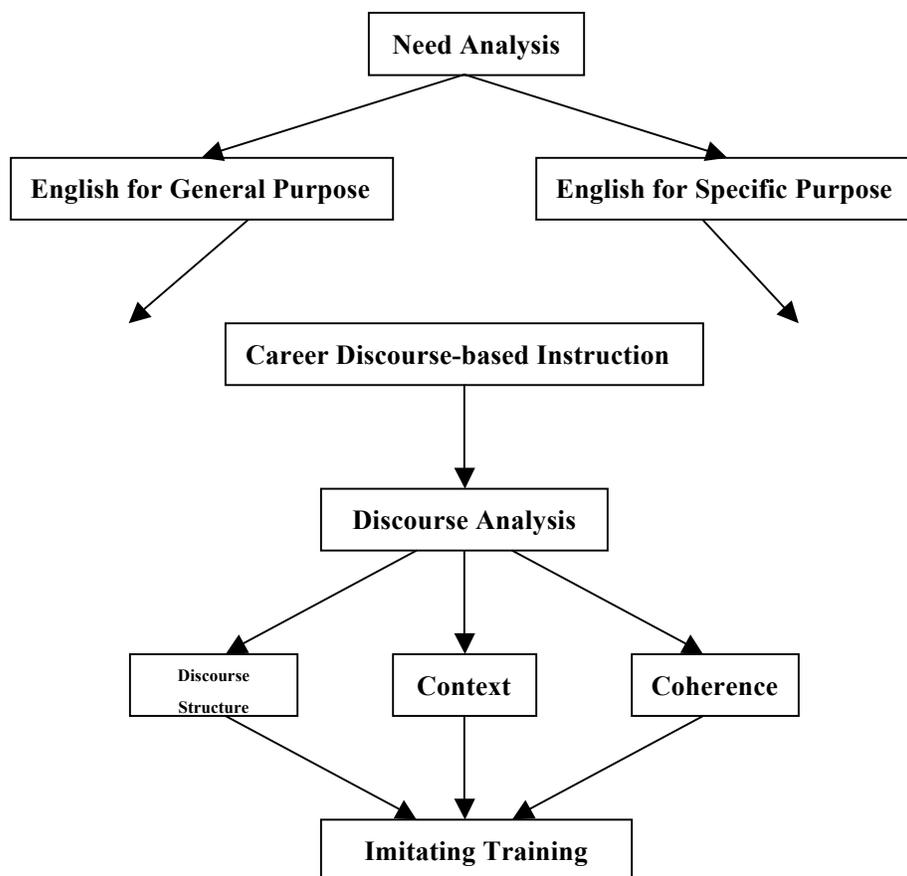
Under the new situation, the transformation of college English from a skill-oriented language to being professional knowledge-oriented must be accomplished (Zhang, 2011). This transformation of orientation is people's desire for knowledge and need of social development. Since the 1980s, adjustments and reforms of college English teaching have begun in many western countries, gradually transferring from isolated, simple language teaching to integration of language and content instruction. Integration teaching of language and content, which is considered an effective teaching method by combining foreign language and content is carried out by a particular discipline or certain subject (Dupuy, 2000). What it emphasizes is the implication of information that foreign language conveys, which means materializing language teaching and making it task-oriented. The teaching content involved need not be relevant to the disciplines; it could include the topics or subjects from any field or important, interesting non-language content for learners (Genesee, 1994). This language teaching regards the target language as a communicative tool, which is used to learn content of subjects rather than become the direct learning purpose (Brinton, 1989).

Integrated teaching of language and content is based on the theories of functional linguistics and sociolinguistics. From the perspective of social members, functional linguistics studies how to learn language and communicate by using the language. Sociolinguistics argue that the most essential function of language is the social communicative function, so the cultivation of communicative competence should be the aim of foreign language teaching. The difference between pure language teaching and content-based instruction depends on the determination of purpose and implementation of teaching method (Widdowson, 1983). When the teaching goal becomes the mastering of the language itself, students will lack study motivation. However, the significance of learning will change when language becomes the tool for learning other discipline or practical and interesting content, which can be effective motivation for learning. The combination of language learning and content learning lays the emphasis on professional development and knowledge construction by changing the tradition of separation of language teaching and specialized courses, and thus it overcomes the obstacles between language and disciplines.

## **The Realization Methods for Integration of Career Discourse and Basic English**

### ***Need Analysis***

Need analysis is the basis of working out the teaching objective and the implementation of teaching. By email and telephone from the employing units and by questionnaires among campus students, the author conducted a survey on graduate's English competence concerning target situation need and learning situation need. The results show that employing units contend that most of the graduates need re-studying if they want to finish the tasks of foreign affairs. For many of them, it's necessary to make up the missed lessons of career discourse. Among the 178 questionnaires for the campus students, 74% of them hope to choose integration learning of related knowledge of ESP at the junior stage of college English.



**Figure 1. The Flow Chart of Link-up Teaching for EGP and ESP with the Career Discourse as Medium**

### ***Curriculum Design***

Based on the need analysis, the teaching target of cultivating students' language competence and career discourse competence should be determined. The syllabus for integration teaching of career discourse and basic English, and the teaching design for combination of teaching in class and learning after class are also needed. General basic knowledge concerning career and specialized subjects could be selected as the integration content, e.g. legal English, e-mail English, general English knowledge of business contact and practical English writing. The teaching could be designed as three modules: listening and speaking, reading, and practical writing. There are three parts in each module: commonly used sentences, scene simulation and vocabulary accumulation. The teachers could give the suggestions, conclusions and enlightenment of language application skills in order to let the students make clear the aim and the specific task and then lead them into the particular context to learn. It should be arranged at the fourth semester when the students have learnt the basic knowledge of English, which is good for them to grasp.

### ***Discourse Analysis***

As discourse analysis studies the language in use, Linguist Widdowson argued it involves the coherence of meaning in the language segment, aimed at searching for the similar context and determining the distribution rules. The most fundamental viewpoint of discourse analysis is to consider discourse as continuation from the language to social reality, and analyze the social events behind the discourse by

studying language and language environment (Sun, 2012), which becomes one of the basic teaching methods. Three aspects will be analyzed in the following paragraphs combined with the aim of integration teaching.

**Discourse structure.** Aimed at usage, the integration teaching mainly begins with two aspects while analyzing the discourse structure. Take legal discourse as an example; the two aspects refer to generic structure and rhetorical structure. For the former, legislative texts have comparatively fixed discourse structure, such as preface or general rules, chapters, sections, articles, supplementary provisions with legislative time, legislators, and date of issue at the beginning. Usually, the content of legal norms should be itemized specifically in clauses. There are four parts in legal provisions which consist of legal discourse: case, condition, legal subject and legal act; and there are three elements in its logical structure: assumption, disposal and sanction (Yang, 2009). By analyzing this aspect, students can understand the general generic structure and structural pattern that is commonly used in legal texts and then boost their confidence in comprehending and applying the discourse. For the latter, it means the sentence structure of legal discourse, including long or short sentences, descriptive components, complete sentences, no-subject sentences, simple sentences and complex sentences, and no usage of interrogative and exclamatory sentences, etc. Different from other career discourses, legal discourse is characterized by accuracy of discourse and a high degree of certainty in vocabulary and syntax. The analysis of discourse structure is helpful for students to master the characteristics and rules of legal discourse structure and then connect the English knowledge closely with career discourses that are frequently used in the future working fields, which promotes their comprehensive practical ability in English.

**Context.** Language environment and the conditions that language is used are called context by linguists. There are two important schools of context in academic circles: cognitive context in pragmatics and context of systemic functional grammar. The theory of cognitive context includes communicative context and linguistic context (Chen, 2009). Context is the important factor in communication, which determines effect and success of intercourse. In the aspect of teaching, teachers could set the context by using word description, pictures and video. With the examples of the implication of words, sentences or discourse in the context of scene simulation, students could be enlightened on the creative train of thought and then construct discourses of their own. The principle of setting the context is that we should pay attention to typicality and scene simulation of context. Context and language form should accord with language communicative function and language rules. In the aspect of linguistic context, the context of legal discourse means the fundamental premise and background for applying the legal terms or concepts and adopting the legal thinking in the legal activities, and the perspectives, standpoints and artistic appreciation legal persons have when they make observation as well. Reasoning, accuracy and independent discourse system (including career thinking and career method) are the characteristics of legal language. Thus a context, that can fully present “reason,” needs to be created at the same time (Ge, 2007). Instead of being the sole and invariable, this context is the one that can differentiate “traditional experience” context and realistic context. Because history is in the process of gradual development and legal activities are in the different historic stages and different developing conditions, there must be differences that lie in legal language and its legal context. Thus, on the premise of not confusing contexts, we should observe and think properly so as to understand correctly, expound impartially and conclude appropriately. It will enlighten students to focus on the shift of context in learning and cultivate their application ability that we think the language learning in present context and intra-lingual context.

**Coherence.** Coherence means the semantic association in discourse, which lies in the bottom of discourse. Semantic interlink could be reached through logical reasoning. It is the invisible internet of conversational communication. Coherence is different from interlink; the former is subjective and relative, but the latter is objective.

e.g. A: The delivery van is coming.

B: I'm in a meeting.

A: O.K.

Superficially, there is no semantic interlink or coherence between the question and answer. But if the conversation takes place in court, then the conversation can start, so the sentence coherence has been established (Liu, 2004). Discourse coherence can be divided into intratextual coherence and extratextual coherence. The former has certain language form and is embodied by interlink of grammar and vocabulary. The latter implies that every concept and relation of the background of discourse itself must be related. Therefore, it can lay a solid foundation for the comprehension of discourse, if the students are taught to identify the method of using coherence during the teaching process (Shen, 2007). After analyzing discourse, students can attempt to understand the implication of discourse and then communicate effectively.

### **The Effect of Career Discourse as Medium**

The integration of career discourse has changed the teaching mode of college English. Language and content are considered as mutual construction rather than mutual independence. Career discourse plays the role as medium in effective linking between EGP and ESP. It's mainly presented as:

#### ***Complementation in Content***

The integration of career discourse provides college English whose major content is knowledge of humanities and social sciences with knowledge of relative disciplines. Above language basis and skills, every program such as listening, speaking, reading and writing should be combined into teaching by centering on content and information of career discourse. The thought pattern and language usage in the professional study and working fields should be applied to teaching, so students can understand communicative language features of their majors or future jobs. They also can gain language knowledge from this main source, and then the unification of humanity and instrumentality can be reached.

#### ***Sharing of Context***

No matter what form it presents, discourse is a type of speech activity with common characteristics – sharing the same context. So context is a necessary condition to learn a language and master skills. The input of career discourse, including not only words, phrases, expressions and grammar, but also the related real audio-visual materials and reading materials in the context, are all applied to the context of created objective, which greatly enriches the contextual resources of language learning and teaching and is beneficial for students to comprehend the language, focus on its meaning and then better use it in the effective context.

#### ***Synchronous Development of Dual Abilities***

The highest level of efficiency for language learning should be learning of significance, so promoting language competence and communicative competence is also the implication of integration teaching. This

integration teaching gives consideration to comprehensible input and communicative training, contributing to a good foundation for new language understanding and learning. Its obvious characteristics are: a. meeting the students' demands in study; b. emphasizing the significance of language; c. achieving the diversity of comprehensible input in language; d. learning in using and reaching synchronous development of students' English language competence and career discourse.

### Conclusion

The integration of general career discourse into College English teaching not only enriches the teaching content and expands the thinking but also transforms the professional theories in specialized courses and working fields into the application area of English teaching, namely realizes the transfer from the pure conversation to topics relevant to jobs. The study shows that career discourse plays a role as medium of connecting between the EGP and ESP in the integration teaching. The selection of teaching content for integration is the key point, which should adapt to the level of universities and specialty characteristics. And more attention also should be paid to the appropriateness of integration content and method of integration teaching.

### Acknowledgement

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# **English for Academic Publication in Science of Law: Problems and Perceptions in Chinese Context**

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***[Abstract]** With a “publish or perish” policy prevailing among research institutions and universities in China, more and more scholars in the science of law are striving to publish their research in international journals. The quality and volume of published researches have now become a yardstick against which the reputation of an institution is measured and is an issue concerning an individual scholar’s rank, promotion, and tenure. This paper will first discuss the factors that give rise to this phenomenon. Based on relevant literature in this field and this research, I will then propose a number of strategies for Chinese researchers in the science of law to publish their research in international journals. Finally, I will identify some areas for further research in English for research and publication purposes in the Chinese context.*

***[Keywords]** knowledge dissemination; science of law; problems and perceptions*

## **Introduction**

Understood as the lingua franca, English plays a pivotal role in the established academic communities with clear orientation of globalization and marketization. Undoubtedly, scholars across disciplines benefit from the omnipresence of English as it facilitates academic exchange; however, the quality and volume of published research has now become a yardstick against which the reputation of an institution is measured and has become an issue concerning an individual scholar’s rank, promotion, and tenure since the “publish or perish” policy has been prevalent in many universities, including higher institutions in China. Responding to this increasing demand for knowledge publication and dissemination, many studies have focused on some important issues, such as generic structure and rhetorical moves in specific disciplines (Tessuto, 2015), equal access to international academy (Gea-Valor, Rey-Rocha & Moreno, 2014), negative attitudes towards EAL (English as an Additional Language) writers (Li & Flowerdew, 2007; Flowerdew, 2001), as well as fears and difficulties triggered by scholars with other mother tongues (Flowerdew, 2000). There is no exception for the science of law, however, this discipline doesn’t share the privilege in understanding its specific social, cultural and disciplinary contexts. This paper, thus, aims at identifying the current status and potential solutions in helping Chinese researchers promote their academic achievements worldwide.

## **Challenges for International Academic Dissemination in the Science of Law**

Chinese researchers in the science of law, like those in other disciplines, have been making prolonged inquiries in order to get their research published in English journals. In seeking out reasons, the following factors for this issue need to be explored.

### ***Academic Reward System in China***

The Chinese academic reward system circumscribes the scope of researchers’ academic publications and knowledge dissemination. As an indexing system developed by the Institute of Scientific Information (ISI) in the United States, it favors international publication in indexed journals like SCI, SSCI and

A&HCI journals. Academic and professional promotions are closely linked with these high-profile publications, and scholars are often awarded cash prizes and other material benefits on the basis of their publications. In addition, as a result of the internationalization of research spurred by global communication networks, universities are competing globally with each other to produce more and more research in international academia. This competition is propelled further by the annual publication of international league tables comparing universities, with research output being a most important metric. What's more, as English is now widely accepted as the international language of research, international publication often entails publishing in English. The greater the number of scholars using English, the more research will be published in English, and the more research disseminated in English, the more the scholars are encouraged to publish in English. This process is thus self-perpetuating (Flowerdew, 2013).

### ***Academic English Courses in the Science of Law***

It is generally known that university education and research in China are increasingly internationalized with more and more university faculty members and research students wishing to publish their research in international journals. In many universities, publication and being published in international publications in particular, have become a graduation requirement for doctoral students and even master's level graduate students. All of these factors, in return, affect the learning material, teaching pedagogy, and curriculum design in Chinese universities.

As for textbooks of legal English, "language-focused materials for teaching professional legal writing to second language writers of English in U.S. law schools" are in full implementation (Hartig & Lu, 2014, p. 87). That's the same tendency in China. Legal writing courses for L2 English students vary across LL.M. programs in U.S. law schools: some stress legal writing for law seminar papers, while others center on the writing of interoffice legal memoranda (Hartig & Lu, 2014, pp. 87-88). However, the majority of textbooks on legal English currently available in China, to some degree, lack clear orientation for different groups, such as undergraduate, or postgraduate, with the result that learners have difficulties in comprehending terms, sentence structures in the science of law, let alone in writing legal documents (Zhang, 2012). As for teaching methods, the dominance of the spoon-feeding method of teaching makes learners overestimate the striking characteristics in terms of diction, syntax, translation, and writing, but they pay insufficient attention to the practice of lawyering skills through discourse analysis. As for curriculum design, Zhang (2012) critiques that courses of legal English in some universities pander to easy, unchallenged notions for legal systems in western countries without addressing the expertise in law services.

### ***Increasing International Academic Communication in China***

International academic communication has blossomed since the implementation of the reform and opening up policy in China. Chinese researchers' efforts to access professional conferences and international journals resembles the attempts of other professions to become accepted members of the target community. Additionally, international conventions and research publication codes in this academic community have become the "must" for Chinese researchers. All of these factors impel them continuously to explore this specific genre, including "plain English" with particularly avoidance of passive voice and nominalizations. Hartig and Lu (2014, p. 87) demonstrate that experts use both the passive voice and nominalizations significantly less frequently than learners while a closer look at the expert corpus also suggests that the use of these features is highly variable across individual samples. As

a professional legal genre, indeed, it reflects its specialty, sacredness, faithfulness, rigorousness, accuracy and distinguished culture of the nation. Chinese researchers in the science of law, therefore, endeavor to interact with wider academic communities by combining our tradition and the innovation of future. To be challenged on the way to international platform, Chinese researcher's opportunities also uncover the problems in the process of international academic involvement.

## **Problems of English Academic Publication in the Science of Law**

### ***Attitudes toward English as a Shared Language in Academia***

Scholarly debates have been conducted on the equity of English as a shared language (Crystal, 2003) in academia. And similar reports on attitudes towards the role of English indicate that this English imperialism provides privilege to English native-speaking academics while violating academic justice and fairness (Gea-Valor, Rey-Rocha & Moreno, 2014). Also, Flowerdew (2008) reports that some EAL writers are discriminated on the part of reviewers and editors based on their English, even though it is difficult to find concrete evidence. With regard to the science of law, the particularity of our traditional culture in law should be taken into consideration, which is an additional factor impacting the possibility of acceptance in international journals.

Another phenomenon we have encountered is the increasing submission from non-native English speaking countries worldwide. *Applied Linguistics*, as a case in point, has also met an overt shift: "the largest proportion of submissions (currently 40%) continues to come from predominantly native English-speaking countries (Australia, Canada, England, New Zealand, & the United States), there has been a substantial increase of papers from nonnative English-speaking countries, particularly, and in order of increase, China, Taiwan, Korea, Iran, and Spain... Unfortunately, that increase in submissions from underrepresented countries has not also led to an increase in their publication" (Zuengler, 2010, pp. 637-638). *The Canadian Modern Language Review (CMLR)/La revue canadienne des langues vivantes (RCLV)*, is a bilingual French-English quarterly, and attempts to publish papers both in English and French, which poses a good number of challenges, and demands that the entire editorial team can work in this bilingual situation. Still, papers published in French that were translated into English in order to reach a broader English readership was unfortunately terminated for overburdened cost (Collins & Dagenais, 2010, pp. 238-239).

All of these issues demonstrate that although we critique the dominance of English in the academic field, the convenience it brought about cannot be denied. That's to say, a shared language is necessary for international knowledge dissemination as too many academic languages are doomed to failure in academic chaos. Thus, proactive attitudes and actions rank high in the time-devouring process for international publishing in English.

### ***Linguistic Competence for International Publication***

Academic language incompetence is the most obvious barrier to the international platform. Many Chinese researchers have experienced difficulties in writing English academic papers as well as in getting them published internationally, even though some believe their research achievements are worthy of dissemination in international journals. Some editors of prestigious academic international journals always request EAL writers to find native-speakers for language support. The following criticisms have been collected from reviews of scientific papers submitted by Chinese researchers and illustrate the linguistic problems in detail (Li & Flowerdew, 2007, p. 106; Flowerdew, 2008):

- The clarity of presentation is poor due to grammatical errors.
- The poorly written manuscript requires considerable editing.
- The quality of the language is far below the acceptable minimum level.

This realistic predicament that EAL writers suffer, from the disadvantage of having to read, conducting research and writing in another language, exacerbates the process of producing acceptable manuscripts in English (van Dijk, 1994, p. 276; Flowerdew, 2008). Together, these primary issues, combined with Chinese specialty, cause the same dilemma to Chinese researchers in the science of law, especially while trying to trace back the development of the legal system in ancient China.

### **Current Strategies for Knowledge Dissemination in Legal Profession**

Chinese researchers are confronted with considerable challenges; in the meantime, EAP programs in universities can certainly address some of their needs in a general way. Actually, the reality of these EAL academics is often broader and more complex. As Hartig and Lu (2014, p. 94) argue, “language that is legally significant may not always be what is most clearly marked as legal discourse”. The limitation of surface-level stylistic features is not enough while focusing on more effective interoffice communications with other legal practitioners. What’s more, the cultivation of outstanding researchers goes beyond fostering the awareness of linguistic choice for indented meaning. The following reasons for rejection may give insight to potential researchers: a narrowed local focus without international vision, outdated literature reviews, underdeveloped methodology, and/or inappropriate research design (Collins & Dagenais, 2010, p. 638). In accordance to the above points, the following suggestions may be helpful in these attempts.

- Instead of trying to publish theoretical papers, try to conduct data-based empirical studies that are theoretically grounded with focused research questions and appropriate methodology and data. Papers of this kind are preferred by most journals.
- Conduct research in a local community, but address current issues in the international community of scholarship. When the papers are grounded in a local context but also reach out to a wider international audience, they may become publishable.
- Apply existing theories, concepts, and methodologies to your local situation with an attempt to test these theories. Because our society, our cultural institutions, and our educational philosophies are so under-represented in prevailing theories, you may be more ambitious and try to challenge prevailing theories rather than try to fit the established mold by producing regional clones. That is when innovation comes up.
- Closely study the journal to which you intend to submit your paper, noticing in particular such things like the target readership of the journal and the adopted academic conventions. Write your paper in accordance with the rules set down in the “Notes to Contributors” or “Information for Contributors” of the journal. Pay particular attention to such matters as paper organization, information contained in a particular section, and the ways particular phrases, sentences and examples are used.
- Try to obtain help from an expert English writer or a “broker” who “knows the ropes” in the field who can advise in which journal your paper should be submitted and why.

- Design action-oriented courses of legal English in dovetailing language and context, in which students, including novice lawyers may make strategic use of the corpus tools as an affordance for studying the practice of law. All these professional trainings may help students distill persuasive, pertinent and economical argumentation in academic papers (Bruce, 2002, p. 321; Hafner & Candlin, 2007, p. 303).
- Persistence is the only shortcut for international publications. This is the only way to make Chinese researchers recognize their strengths and weaknesses through their efforts to revise their papers under the guidance from the reviewers' comments. Actually, most manuscripts submitted for publication in refereed journals get rejected at one time or another before achieving publication.

### **Conclusion**

This exploration of published perceptions and academic reality encourages further investigation in the science of law. Despite the limitation on a wider scope of fieldwork, the results are consistent with some other reports. As for measures going forward to solve these problems, I cannot agree more with the following viewpoint:

...without concerted institutional and political backing, the ideas and proposal put forward in this essay stand on weak ground...the complete elimination of inequalities in the world of scholarship is unlikely, but progress could be achieved if there were a universal will (at institutional, governmental and intergovernmental levels) to redress the current world North/South imbalance, not only in the academic/scientific domain but also in all aspects of human life (Salager-Meyer, 2008, p. 129).

Given the fact that there is a need for Chinese researchers to publish their research in international journals, one overarching question that needs investigation can probably be phrased as follows: why is a research article in one specific area of specialization such as computer studies or physics written and read the way it is? Following this question, I may focus on such topics as conventions of relevant discourse communities in the science of law, the reasons for textual organization and linguistic realizations in particular contexts, and the impact of disciplinary culture on the composing process of a research article by Chinese researchers.

On the whole, ERPP in the current Chinese academic climate will offer a fertile area for research, which will contribute considerably to knowledge creation in the field of the science of law.

### **Acknowledgements**

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# The Prosodic Features of the Attributive Structure

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**[Abstract]** This paper explores the prosodic features of the attributive structure with the presence and absence of the particle *de*. A tendency of where prosodic breaks tend to occur is seen in the study and this tendency is not affected by the position of the term located in the structure, and is not affected by the absence or presence of *de*. The occurrence of *de* in attributive structures does affect the prosodic expression.

**[Keywords]** attributive phrase; *de*; prosodic function; syntax; dependency grammar

## Introduction

The particle *de* is one of the central nodes of the Chinese syntactic networks (Chen & Liu, 2011). The syllable is a top one in the frequency list in both spoken and written Mandarin Chinese, and is able to connect multiple syntactic elements. The nominal phrase it strings up serves at various syntactic positions in a sentence. The presence and absence of the grammatical word *de* in modern Mandarin Chinese has long been a controversial issue. In the examples given in Table 1, various theories fit properly for the phrases of type A and type C, *i.e.*, when and why the marker should be present or absent, but is not so satisfactory for type B, *i.e.*, when and why would *de* be optional.

**Table 1.** Types of the Presence and Absence of *de* in Mandarin Chinese

Type	Description	Examples [in Pinyin; translation]	
A	(+de) The presence of <i>de</i> is required	Characters Pinyin English	奇怪 的 梦 qi2guai4 de5 meng4 strange dream
B	(±de) The presence of <i>de</i> is optional	Characters Pinyin English	新鲜 (的) 牛奶 xin1xian1 (de5) niu2nai3; fresh milk
C	(-de) The absence of <i>de</i> is required	Characters Pinyin English	长途 电话 chang2tu2 dian4hua4 long-distance call

*Note:* The form of pinyin gives both the syllables and the tones. The figures 1-5 after each syllable are to represent the high tone, rising tone, low tone, falling tone and neutral tone respectively.

After exhaustive syntactic and semantic studies, a considerable number of researches suggested that, to better understand the occurrences of *de*, prosodic factors need to be carefully considered (*i.e.* Lu, 2003; Liu, 2008; Li, 2008).

An additional *de* may not necessarily affect the meaning of this attributive phrase, but it may be the cause of some potential rhythmic alternations. Though the syntactic structure and the prosodic structure are not unanimously coordinated (Wang, 2008), previous studies have shown some links between the two (Shih, 1986; Chu, et.al, 1986; Wang, 2008), some of which mention the prosodic phenomena when *de* is concerned.

Based on a news corpus, Ye (2001) further explored the break possibilities among various sentential elements. He indicated that in an attributive structure with a long head word, the possibilities of a break between the modifier and the head would be higher when the modifier was with *de* than without one (2001, p. 198-208). By applying Zhu's (1983) clarification of the composite structure (attributive structure with *de*) and the binding structure (attributive structure without *de*), Wang (2008) concluded that in a composite structure, the prosodic boundary co-occurred with its syntactic boundary, while that in a binding structure the prosodic foot of the modifier part may be grouped with the foot either from the left or the right side, or to form an independent unit itself. Chu, et. al (2004) analyzed a large-scale read-aloud corpus and indicated that the basic rhythmic units were largely constrained by the local syntactic relationship and the length of a prosodic unit. In the 6-level break chart given in their research that depicted common syntactic relationships, the attributive structure was placed under two different levels according to the nature of the attributive part of the phrase. Their researches largely showed the occurrence of *de* and its relevance toward prosodic boundaries, but still, the prosodic function of this optional *de* is not answered.

This article tries to explore this issue by comparing the attributive structures with the presence and absence of *de* directly in a news broadcast corpus.

## The Prosodic Features of Attributive Structure

### *Methods*

Common flaws in unstrained spoken data, like filled pauses, repetition, unfinished sentences, a cough or laugh when speaking, would only make the study more complex. To smooth things out, the ideal materials should be prosodically meaningful, grammatically correct and semantically clear. Based on this understanding, TV and radio news programs, which read aloud texts written for speech purposes, might be the best choice for the current study.

**Corpus preparation.** Materials used in this article were from China National Radio's news broadcasting program "Xin1Wen2 He2 Bao4Zhi3 Zhai1Yao4" (News and Newspaper Digest). The audio recording and the tape scripts of the programs from February 2012 to April 2013 were downloaded from its official website.

We followed the programs anchored by Zhong Cheng, a male speaker, and selected 100 issues according to the recording quality of all the obtainable programs. Among all the forms of the news in the program, i.e., news, commentary, and interviews, etc., we only traced the form of the news, to avoid any potential stylistic influence. Altogether there were 169 clips.

**Sentence parsing.** ICTCLAS2014 was used to parse all the sentences and then the result was manually checked. This step segmented sentences into words, on which the syntactic annotation would be carried out.

**Syntactic annotation.** In her book, Wang (2008) noted that the best syntactic annotation method to go along with prosodic views was predicate-verb-centered. We followed the theory of dependency grammar, as the predicate-verb under this view, and was the starting point of the syntactic analysis of the sentence. Each element of the sentence would ultimately be traced back to this word by the dependency relationship indicated. In particular, we followed the rules initiated by Liu and Huang (2006) and used in a number of studies later (e.g. Chen & Liu, 2011).

**Prosodic annotation.** The information of prosodic breaks were listened to and labeled. Of the 5-level break system designed, 5 and 4 were used to refer to the most obvious pauses at sentence final

position and at the end of an intonational phrase; 3 and 1 were used to refer to breaks at prosodic phrase and prosodic word respectively; and 0 meant no obvious grouping effect was sensed.

**Data extraction.** The attributive noun phrases of the two types concerned, namely, the structure of *AdeB* and the structure *AB*, were extracted from the annotated corpus, bearing its syntactic information of dependency relationship within the phrase and the information of prosodic breaks, i.e., where and in what way did the phrase pause.

There were subcategories under *AdeB* (using the code “deX”) and *AB* (using the code “atrX”), based on the total number of word numbers in the phrase (See Table 2).

**Table 2. Detailed Description of the Subcategories under *AdeB* and *AB***

atrX	Cases	deX	Cases	Combinations
atr2	1356	de3	93	1de1
atr3	576	de4	137	1de2, 2de1
atr4	256	de5	92	1de3, 2de2, 3de1

For example, the subcategory of “atr3” meant there were three words in the phrase, there were 576 cases found in the corpus, and for each case, two dependency relationships were retrieved. The subcategory of “de4”, on the other hand, meant there were three more words besides the word *de*, and the possible combination of the locations of these words were 1de2 and 2de1, with the figure representing the number of words before and after *de*. There were 137 cases in the corpus.

For a clearer presentation and easier comparison, the location of each word in the phrase was numbered in the way as shown in Table 3.

**Table 3. The Way Each Word was Numbered According to its Location in the Phrase**

Category	Sequence from left to right as uttered
atrX	N...2, 1
deX	10N...103 102 101 100( <i>de</i> ) 20N, ...202, 201

*Note: The numbers were from left to right in the descending order.*

## Result

In this section, the prosodic conditions of atr2-4, and de3-5 are analyzed. We didn’t explore further in structures with more numbers of words, as for example, in the subcategory of atr5 there were already 41 syntactic modification combinations in a total of 152 cases. This meant that there were too few cases in some of the combinations and thus when there was a result, it wouldn’t be statistically meaningful.

Table 4 shows the matrix of the information of prosodic breaks and the combination of syntactic modification that occurred in the corpus. Tables 4-1 to 4-3 and Tables 4-4 to 4-9 show the results of the category of atr2, atr3, atr4 and de3, de4, de5 respectively as indicated by the marks of on the upper left corner.

R stands for dependency relationship and the number after this letter indicates the number of dependency relationship in the phrase concerned. The string of numbers under R shows the governor and dependent from the dependency syntax perspective, where the number is the word number in the phrase, and is in the pattern of “governor\_dependent”, meaning a governor controls a dependent. For example, in atr3, the first combination of syntactic relationships is 1\_2, 1\_3, and it means that there are two relationships, i.e. word 1 controls word 2, and word 1 controls word 3.

B stands for break and the number after this letter indicates the level of the prosodic break in the phrase concerned. The table shows the break condition after each of the word in the phrase except the final word. For easier discussion, each of the syntactic combination in the following tables was noted in the alphabetic order, under the column ‘Code’.

**Table 4. The Matrix of the Information of Prosodic Breaks and the Combination of Dependency Relationship in the Corpus**

**Table 4-1.**

ATR2	Code	Total	After Word 2		
			B0	B1	B3
1_2	a	1356	954	344	58
<b>Total</b>	<b>1356</b>		954	344	58

**Table 4-2**

ATR3		Code	Total	After Word 3			After Word 2		
R1	R2			B0	B1	B3	B0	B1	B3
1_2	1_3	a	242	59	80	103	209	29	4
	2_3	b	233	142	42	49	166	60	7
1_3	3_2	c	101	61	28	12	76	23	2
<b>Total</b>			<b>576</b>	262	150	164	451	112	13

**Table 4-3**

ATR4			Code	Total	After Word 4			After Word 3			After Word 2		
R1	R2	R3			B0	B1	B3	B0	B1	B3	B0	B1	B3
1_2	1_3	1_4	a	11		3	8	2	2	7	9	2	
		3_4	b	85	65	11	9	17	29	39	72	9	4
	1_4	2_3	c	18	3	5	10	12	3	3	12	6	
		4_3	d	28	20	4	4	6	8	14	19	7	2
	2_3	2_4	e	25	4	9	12	14	7	4	16	9	
		3_4	f	38	27	5	6	22	8	8	29	7	2
2_4	4_3	g	11	6	3	2	6	1	4	10	1		
1_3	1_4	3_2	h	5	1	3	1	3		2	5		
	3_2	3_4	i	32	3	14	15	20	8	4	23	6	3
1_4	2_3	4_2	j	3	2		1	1	2		2	1	
<b>Total</b>				<b>256</b>	131	57	68	103	68	85	197	48	11

**Table 4-4**

DE3 1de1		Code	Total	After 101			After 100		
R1	R2			B0	B1	B3	B0	B1	B3
100 101	201 100	a	93	88	3	2	84	7	2
<b>Total</b>			93	88	3	2	84	7	2

Table 4-5

DE4 2de1			Code	Total	After 102			After 101			After 100		
R1	R2	R3			B0	B1	B3	B0	B1	B3	B0	B1	B3
100_101	101_102	201_100	a	42	21	18	3	42			42		
100_102	102_101	201_100	b	26	12	13	1	26			26		
<b>Total</b>				<b>68</b>	33	31	4	68			68		

Table 4-6

DE4 1de2			Code	Total	After 101			After 100			After 202		
R1	R2	R3			B0	B1	B3	B0	B1	B3	B0	B1	B3
100_101	201_100	201_202	a	69	69			49	18	2	45	23	1
<b>Total</b>				<b>69</b>	69			49	18	2	45	23	1

Table 4-7

DE5 3de1				Code	Total	After 103			After 102			After 101			After 100		
R1	R2	R3	R4			B0	B1	B3									
100_101	101_102	101_103	201_100	a	13	4	7	2	7	6		13			13		
		102_103	201_100	b	8	5	2	1	3	4	1	8			8		
	101_103	103_102	201_100	c	2	2				1	1	2			2		
100_102	102_101	102_103	201_100	d	9	3	4	2	4	5		9			9		
100_103	101_102	103_101	201_100	e	7	2	4	1	4	3		7			7		
<b>Total</b>					<b>39</b>	16	17	6	18	19	2	39			39		

Table 4-8

DE5 2de2				Code	Total	After 102			After 101			After 100			After 202		
R1	R2	R3	R4			B0	B1	B3									
100_101	101_102	201_100	201_202	a	21	10	11		21			17		4	14	7	
100_102	102_101	201_100	201_202	b	18	7	9	2	18			15	2	1	12	6	
<b>Total</b>					<b>39</b>	17	20	2	39			32	2	5	26	13	

Table 4-9

DE5 1de3				Code	Total	After 101			After 100			After 203			After 202		
R1	R2	R3	R4			B0	B1	B3									
100_101	201_100	201_202	201_203	a	5	5			4		1	3	1	1	4	1	
			202_203	b	9	9			4	3	2	8		1	7	2	
<b>Total</b>					<b>14</b>	14			8	3	3	11	1	2	11	3	

### *Atr2, Atr3 and Atr4*

It can be seen from Tables 4-1 to 4-3 that the bond between the word at the final and the penultimate position is the closest, as breaks were produced much less at this position. This can be judged by comparing the number of B0 with the number of B1 and B3 added.

The break at other sites depends on how the segments were combined syntactically. The phenomenon suggests that, if an attributive word (A) modifies a word (B) that is also modified by another attributive word (C) from the same side yet closer to the word (B), then the break after word (A) tends to occur more. Atr3-a after word3, atr4-a, -c, -e, -h after word4, and atr4-a, -b, -d after word3 belong to this syntactic description and all fit in this prosodic arrangement.

Also, if an attributive word (A) modifies a word (B), which is not being modified by other attributive words from the same side, the break after word (A) tends to occur less. Atr3-b after word3, atr4-b, -f after word4 and atr4-c, -e, -f, -h, and -i after word3 belong to this syntactic description and all fit in this prosodic arrangement.

Atr4-i seems to violate the rules suggested above, but we shall notice that this type contains a coordinate structure with or without the indicator “he2”. The coordinate structure should be carefully and separately dealt with.

### ***De3, De4 and De5***

It can be seen from Tables 4-4 to 4-9 that the bond between the word goes just prior to *de* tightly links with *de* prosodically. In the post-*de* positions, if the word immediately after *de* is already the head of the phrase, then there is no break either. Otherwise, namely, when the word immediately after *de* is another attributive that modifies the head, then the chance of a prosodic break rises at the first post-*de* position.

### **Discussion**

As can be seen from the result of this study, the regional prosodic expression in attributive structures is quite flexible. Where there should be a break is as usual, but not so easily predictable. However, in both “atr” and “de” series, depending on the complexity of the chunk being modified, a pattern of where a break would exist can still be clearly seen. This pattern does not depend on the position of the term concerned located in the structure.

If the term being modified is a complex one, i.e. the word being modified has more than one attributive, then the chance of a prosodic break after the outer layer of attributives rises sharply. This also applies to the “de” category, since the term with *de* is an attributive itself. However, if the word being modified has only one attributive, with *de* or not, then the chance of a prosodic break in-between is much less than otherwise.

For the pre-*de* positions in the “de” category, no clear pattern could be drawn. However, the current result suggests that the occurrence of “*de*” does not always follow the common prosodic expression of attributives that can be seen clearly from the “atr” category.

A factor that needs close examination is the coordinate structure used in the attributive phrase, either in the attributive part or the head of the phrase. The statistics of the study here shows that coordinate structure in the attributive part does not follow the common rules observed in the corpus. The study did not include the cases that had coordinate structure in the head of the phrase. This prosodic difference has been expected as coordinate structure itself is not like the syntactic modification in any “pure” attributive structures.

A factor that prevents us from analyzing the phenomenon is the number of cases of “de” category obtained from the corpus. Simply to enlarge the size of the corpus does not seem to be an effective way to solve the problem, as the number of the requested form with the presence of *de*, with the right number and right syntactic combination, does not seem to increase proportionally with the growth of the size of the corpus. It might be wise to take lab speech into consideration.

### **Conclusion**

The prosodic features of the attributive structure can be seen from the tendency of the place where the prosodic break tends to occur. This tendency is not affected by the position of the term located in the phrase, and is not affected by the absence and presence of the marker *de*. Also, it can be seen that the

occurrence of *de* in attributive structures does affect the prosodic expression of the phrase. In future studies, the materials that contain carefully designed data of the attributive structure with *de* are better to be used. It would be better, too, to take into consideration the attributive phrase that contains the coordinate structure.

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# On the Building of Talent Pools of Court Interpreters in Mainland China

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*[Abstract] Court interpreting is indispensable in ensuring equality and justice in trials involving foreigners, ethnic minorities or the deaf who do not speak the language of the court. With globalization rapidly developing and international exchange constantly increasing, more and more foreign-related cases occur in mainland China. The paper starts with a brief analysis of the major problems in court interpreting in mainland China. Then it moves on to talk about the latest development of court interpreting in Tianjin and Shanghai. Drawing on the experience of building talent pools of court interpreters in these two cities, this paper offers some suggestions about how to set up a nationwide talent pool and improve the court interpreting practice in mainland China.*

*[Keywords] court interpreter; mainland China; talent pool; Shanghai; Tianjin*

## Introduction

In the 21st century, boundaries between countries are becoming increasingly blurred. The convenience of transportation and the widespread availability of job opportunities have encouraged people to move around and even settle down in different countries. As the second largest economy in the world, China has attracted more and more foreigners to come and stay in China for work or as the result of marriage. Disputes or arguments inevitably happen and evolve into legal matters. In addition, China is a multi-ethnic country where many ethnic minorities still use their own distinctive languages. Courts in these areas tend to use the local languages in hearings. These all contribute to the increasing need for court interpreters in China. Compared with countries like the US and Australia, both court interpreting practice and research started late and is still lagging behind (Du, B., 2010). Many problems still exist in court interpreting. Establishing a talent pool of qualified court interpreters holds the key to the solution of these problems. Tianjin and Shanghai have made pioneering efforts to form such talent pools. Apart from introducing and discussing the latest development of court interpreting in these two cities, this paper puts forward some suggestions and recommendations on creating a nationwide talent pool of qualified court interpreters and the positive impact it will have on improving court interpreting practice in mainland China.

## The Increasing Demand for Court Interpreting in Mainland China

In the past three decades, mainland China has experienced exponential growth and development in both cultural and economic spheres. With more and more foreigners coming to mainland China not just as tourists but also for work and marriage, various legal issues have arisen. Consequently, how to enhance and ease foreigners' communication and participation in legal situations has become an important issue (Mikkelsen, 1998). Apart from this, as a large united multi-ethnic country, China is composed of 56 ethnic groups. Among them Han Chinese account for 91.59% of the overall Chinese population and the other 55 make up the remaining 8.41%, according to the Fifth National Population Census of 2000. Since the combined population of these other minorities is far less than that of the Han, they form the other 55 minorities of China. The language of the Han, Mandarin, is commonly referred to as "Chinese", but in

fact it is just one Chinese language, of many. Mandarin is the most common Chinese language, and is also the official language of mainland China. But there are many other languages spoken in China. There are 53 ethnic groups who use spoken language of their own, and 23 ethnic groups have their own written language. In addition to all of this, China has about 20.75 million deaf and hearing-impaired people. Court interpreting is crucial in ensuring legitimate rights and interests of those who do not speak Mandarin, including those of ethnic minorities, the deaf and people from other countries. With the number of these people rapidly increasing, the need for court interpreting has been growing quickly in recent years in mainland China.

### **Problems in Court Interpreting in Mainland China**

A fair and just legal system incorporates natural justice principles, including the right to be heard, and equality before the law. Court interpreters play an important role in maintaining these principles (Hale, 2004). There is legislation in mainland China to ensure the quality of court interpreting and the equal rights of the concerned parties. For instance, Article 240 of the Civil Procedure Law in China stipulates that if the foreign-related case is heard in Chinese, it is necessary to provide translation to the foreign party. Similar provisions can be found in the Constitution and the Criminal Procedure Law. However, these provisions are quite general and abstract. There is no detailed stipulation about the selection and accreditation of court interpreters. The consequent randomness leads to serious problems in actual practice, including inadequate legislation, a shortage of qualified court interpreters, insufficient supervision, lack of training and certification, an absence of professional organization, and conflicting views on the role of court interpreters, etc. When un-tested or un-certified interpreters are used, their poor interpreting may lead to the misunderstanding of defendants about what is taking place, and the evidence heard by judges may be distorted (Berk-Seligson, 2002). These things not only affect the quality of court interpreting, but also may even affect the justice of the law.

### **The Latest Development of Court Interpreting in Tianjin and Shanghai**

These difficulties and problems in court interpreting have caught much attention in central and regional governments. In response to the increasing demand for qualified court interpreters, in 2014, the Shanghai and Tianjin Municipal Governments made efforts to deal with these problems in court interpreting by setting up specialized talent pools of qualified court interpreters.

#### ***The First Talent Pool of Procuratorial Translators and Interpreters in Tianjin***

In recent years, crimes committed by foreigners, ethnic minorities, and the deaf are increasing. In order to protect the litigation rights of these people suspected of committing crimes, in April 2014, the Procuratorate of Tianjin set up the first talent pool of procuratorial translators and interpreters through cooperation with Tianjin Foreign Studies University, deaf schools, ethnic schools and other relevant units. Thirty-five professional translators and interpreters were on the list of this talent pool, covering English, Japanese, Russian, Korean, German, French, Italian, Arabic and other foreign languages, as well as Mongolian, Uighur, Kazakh and other minority languages, in addition to deaf sign language and other common languages. It became the first talent pool of procuratorial translators and interpreters in mainland China. At the same time, the *Interim Provisions on the Appointment of Translators and Interpreters Involved in Criminal Proceedings* was issued by Tianjin Municipal People's Procuratorate, making detailed provisions for the employment, training and management of translators and interpreters, their

rights and obligations, and the procedures of involving them in criminal proceedings, particularly with regard to the establishment of the talent pool of translators procuratorial and interpreters. The building of the talent pool and the issuing of the interim provisions will undoubtedly have a positive impact on safeguarding the legitimate rights and interests of the parties, regulating procuratorial affairs, and improving judicial justice.

### ***The Criminal Litigation Translation Platform in Shanghai***

According to statistics, in 2013, the procuratorial organs in Shanghai dealt with 58 cases involving 78 foreigners, among which there were 50 cases that involved 72 foreigners that were handled by grass-roots procuratorates. The defendants came from 18 countries, speaking English, French, German, Japanese and many other languages. In some cases, the defendants even spoke Swahili, Guarani and other minority languages. In handling foreign and deaf related cases, the procuratorial organs were faced with problems such as a shortage of qualified translators and interpreters, poor qualification of some translators and interpreters, and difficulty in locating minority language translators and interpreters.

In order to further safeguard the legitimate rights and interests of foreigners and the deaf in criminal lawsuits, in May 2014, the Shanghai Procurators' Association, Shanghai Foreign Affairs Translators' Association, and Shanghai Association of the Deaf recently jointly set up the "Criminal Litigation Translation Platform". In the future, the procuratorial organs in Shanghai will hire translators and interpreters through this platform when they need translation services. The Criminal Litigation Translation Platform hires over 30 translators and interpreters recommended by Shanghai Foreign Affairs Translators' Association, covering more than 10 languages, and 6 sign language interpreters recommended by Shanghai Association of the Deaf. It can meet the basic needs of procuratorial organs in dealing with cases involving foreigners and the deaf.

### **Suggestions on Building a Nationwide Talent Pool of Court Interpreters**

Being the first of its kind in mainland China, the Talent Pool of Procuratorial Translators and Interpreters in Tianjin and the Criminal Litigation Translation Platform in Shanghai can be seen as a useful attempt to deal with problems and difficulties in court interpreting. However, they also have their limitations. For instance, the Talent Pool of Procuratorial Translators and Interpreters in Tianjin does not include sign language interpreters, while the Criminal Litigation Translation Platform in Shanghai does not have interpreters for ethnic minorities on its list. Nevertheless, they have certainly paved the way for a more comprehensive talent pool at a larger scale in future. The following are some suggestions about the building of a nationwide talent pool of court interpreters in mainland China.

#### ***Further Developing Legislation on Court Interpreting***

As stated above, the regulations stipulating the qualifications required for a court interpreter are quite loose. There are no clear policies and procedures regarding the booking of court interpreters. Adequate legislation is the precondition for building a nationwide talent pool. The central government should establish a formal guideline to govern the recruiting, training, and working details for court interpreters. The interpreter's rights and obligations should also be coded explicitly.

#### ***Requirements for Court Interpreters***

Court interpreting is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Being bilingual, even fluently so, is insufficient

qualification for court interpreting. Court interpreters must be able to preserve “legal equivalence”, and moreover, they must be capable of interpreting in three modalities: consecutive interpreting, simultaneous interpreting and sight translating documents. Dr. Roseann Gonzalez (2001), Director of the Federal Court Interpreter Certification Project, and her colleagues write that to maintain legal equivalence, the interpreter must interpret the source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone and intent of the speaker or to render what may be termed the legal equivalence of the source message.

### ***Educational Programs for Court Interpreters***

No accredited court interpreter training exists in mainland China. There should be both short-term basic training for interpreters on judicial procedures and long-term educational programs to systematically improve their interpreting skills. In addition to highly specialized and demanding interpreting skills, court interpreters must adhere to strict codes of ethics. Postgraduate educational programs for court interpreters should be developed to teach trainees the complex syntactic structures, specialized legal terminology and the special background knowledge assumed in legal settings. Apart from in-class training, the program should also include a practicum course that requires students to observe interpreting sessions in court.

### ***Certification Program for Court Interpreters***

Currently, there are two major accreditation examinations for translators and interpreters: China Accreditation Test for Translators and Interpreters (CATTI) and National Accreditation Examinations for Translators and Interpreters (NAETI). Expansion of these testing programs to certify the competence of court interpreters is a feasible solution to the absence of test and certification programs for court interpreters. The accreditation examination for court interpreters could serve as the criteria for recruiting individuals to become court interpreters. Certified court interpreters should be entered into regional or national talent pools using the same criteria.

### ***Training Programs for Legal Professionals***

There should be clear policies to guide judges, lawyers and other legal professionals regarding the qualifications of court interpreters, so that they are able to determine whether a bilingual individual is qualified. There should be training to make legal professionals aware of the skills that are required for court interpreters and the damage that can be done by untrained and inadequately skilled individuals. The training should provide judges and attorneys about standards for recruitment and selection to assure that the most qualified interpreters are used. Judges, prosecutors, and lawyers in the court system should be trained or at least be informed of how to work with interpreters. And they should have the awareness that interpreters are not translation machines.

### ***Resource Sharing and the Building of a Nationwide Talent Pool***

Given the fact that there are so many languages used across the country, many regions do not have a demand that is great enough to justify the expense of launching and completing talent pools of court interpreters locally. Resource sharing to achieve economies of scale can help make it possible to develop needed resources. The quality and reliability of court interpreter services could be improved, and costs can be more effectively controlled by building talent pools of court interpreters that are used by all of the courts within the same province. Drawing on resources in different regions, the central government could work out a plan to form a nationwide talent pool of court-certified interpreters. To decide what languages

should be included in the nationwide talent pool, a study of spoken language needs and interpreter use in trials across the country is needed.

### **Implications and Conclusion**

Providing every person with equal access to the courts and the ability to participate in court proceedings is one of the foremost goals of the judicial system. But in a country where the Census Bureau has reported that there are 54 languages, as well as numerous dialects, spoken, China faces a serious test in fulfilling its goal. The challenge continues to increase with more and more foreigners coming to work and live in China. Acknowledging the significant challenges to the court system in providing interpreter services to a population with such linguistic diversity, the central and regional governments in mainland China have started to make efforts to respond to these challenges. Tianjin and Shanghai have created talent pools of court interpreters. But regional talent pools have limitations and are not able to cover all the languages needed in court interpreting, especially some minority languages. Compared with regional talent pools, a nationwide talent pool has its advantages, because it could include more languages and recruit more interpreters with adequate financial support from the central government. Building on the expertise developed by regional talent pools and database in cities like Tianjin and Shanghai, the central government could set up a nationwide talent pool as a formal system for court interpreters. Through resource sharing and a national registry, courts could have effective and efficient mechanisms for locating qualified interpreters. All appointments of court interpreters must be made from this talent pool. To support the building of a nationwide talent pool of court interpreters, legislation on court interpreting should be further developed to specify stipulation and regulation on the selection, supervision and appointment of court interpreters. Both short-term and long-term educational programs for court interpreters are needed in order to train interpreters and help them to meet the specific requirements for court interpreters. Only interpreters who pass the accreditation exam for court interpreting could be entered into the talent pool. Judges, lawyers and other legal professional who work with court interpreters should be trained so that they can have an accurate understanding of the skills and role of court interpreters. The building of a nationwide talent pool is an effective means to standardize the court interpreting practice and improve judicial justice in mainland China.

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# **The Interpreter's Mediation of Power and Control Through Interruptions in the Chinese Courtroom Discourse**

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*[Abstract] The present study probes into the court interpreter's role in mediating discursive power and control through interruptions in the Chinese criminal courtroom by using a linguistic toolkit, drawing on conversation analysis, critical discourse analysis, and pragmatics. The analysis of transcripts of 11-odd-hour-odd tape recordings of five court trials reveals that the interpreter, as a mediator, contributes to the dynamics of power and control in the courtroom, either adding to or subtracting from the power inherent in the assigned roles of the participants. However, the interpreter's mediation, although ineluctable, is suggested to be confined to moderation.*

*[Keywords] court interpreter; power and control; mediation; courtroom discourse*

## **Introduction**

Legal discourse is a classic institutional discourse (Maley, 1994). Criminal courtroom discourse contains even more conspicuous features of an asymmetry of power and control, with the ascribed questioners, including the judge, the prosecutor, and the defense counsel, being powerful participants, and the designated responders, including the defendant and the witness, powerless participants. (Liao, 2003, 2009; Lv, 2011; Zhou, 2012). However, not only the responders' compliance with, or deviation from, such institutional roles (Foucault, 1977; Fairclough, 1989), but also the introduction of court interpreter, challenge this power configuration (Laster & Taylor, 1994; Morris, 1995; Berk-Seligson, 1999; Gibbons, 1999; Hale, 2004). Among the many facets of the interpreter's mediation, interruption is addressed in this paper to unveil the seemingly invisible but actually participative role of the interpreter.

Some significant studies on the interpreter's impacts on the power of attorneys in the courtroom have been undertaken by such scholars as Laster & Taylor (1994), Morris (1995), Berk-Seligson (1999), Gibbons (1999), and Hale (2004), etc. who believe that the presence of interpreter often leads to the loss of attorneys' control over the interaction. Hale (2004) expounds on how an interpreter interrupts a questioner and thus, challenges his/her power.

Some research on power and control has been done recently in the Chinese courtroom context. Liao (2003, 2009), Lv (2006, 2011), He (2014), and others investigated the institutional and discursive power and control in the Chinese courtroom. Of what there is, much of the work has been devoted to the interplay of the institutional and discursive roles of each participant. The paucity of study on the interpreter's role in mediating this dynamics contrasts with the reality of a sharp increase of criminal cases involving foreigners in China. According to the statistics of a Guangzhou-based translation company, which was the sole translation service provider for Guangzhou Intermediate People's Court in Guangdong Province in South China from 2008 to 2013, court interpreters were assigned to this court for 136, 141, 109, 140, 118, and 133 shifts respectively.

## **Interpreter Interruption and Discourse Power**

### ***Definition of Interpreter Interruption***

According to the CA theory of Sacks, et al. (1974), a transition relevance place (TRP) is the end of a turn construction unit (TCU) where the turn may go to another speaker, or the current speaker may continue with a new TCU; an interruption occurs when one interlocutor starts talking while the other is still speaking, that is, before the arrival of a TRP. Different from this understanding of interruption, the present study defines interpreter interruption as the instance where an interpreter avails himself/herself of or is granted a chance to speak other than his/her assigned turn to interpret. Since such utterances are beyond the expected communication, they are deemed as interruptions. Such interruptions may fall anywhere in a TCU, on or before a TRP.

Hale (2004, p. 198, 203) summarizes six types of interpreter interruption in the courtroom, including: (i) asking for clarification of a question or an answer; (ii) correcting a question when it is an obvious unintentional mistake; (iii) finishing interpreting a previous, interrupted utterance; (iv) volunteering information; (v) offering a personal opinion; and (vi) protesting for being interrupted. The above interruptions are not uncommon in the Chinese criminal courtroom. On top of these, it is also possible for the interpreter, in a response to the judge's implicit request of "more efficient interpreting" amid high caseloads, to directly interrupt a powerless participant's "excessive" answers as if he/she were a powerful participant. This type of interruption is categorized as a direct interruption as a result of extra empowerment in this paper. Moreover, the interpreter's answering a question rather than interpreting it is also considered an interruption here since it deprives the intended or statutory responder's chance to give an answer and thus, alters the information flow.

### ***Asymmetry of Power in the Chinese Criminal Courtroom***

With an inherent asymmetry of power and control, and thanks to an absence of code for court interpreting, as well as law practitioners' weak awareness of the significance of court interpreting to the outcome of a case and to justice in a larger context, the Chinese courtroom exhibits its unique features of interplay of different roles.

Under the *Criminal Procedure Law of the People's Republic of China*, a criminal court session in Mainland China is divided into three parts: court inquiry, court argument, and final statement by the defendant. The court inquiry stage, mainly consisting of questions by the prosecutors, the defense counsel, and the judge, and the answers by the defendant and/or the witness, is more characteristic of gaining, losing and retaining power and control compared with the court argument comprised of the statement of prosecution, the statement of defense, and refutes and rebuttals which are generally presented in lengthy segments without frequent turn shifts or interruptions.

In the question-answer court inquiry, the dynamic process of power and control becomes more volatile since there always exists the possibility of gaining power by coercive and restrictive questions, losing power through disobedience of answers, and more importantly, with the interplay of the interpreter, which often breaks the institutional configuration. The interpreter's presence partly contributes to the non-compliance of the assigned roles and thus alters the expected discourse practice. Berk-Seligson states:

"The court interpreter affects the verbal outcome of attorneys' and judges' questions..."  
as well as "interfere(s) with the attempts of examiners to get out their questions in the

way they want to..." (Berk-Seligson, 1990, p. 25).

### ***Interpreter's Mediation through Interruptions***

Among the many aspects of the interpreter's mediation, interruption is one of the most manifested. Orcutt & Harvey (1985) contended that an interruption is a communicative strategy, exercising and marking power and control. Interpreter interruption, if not actively participated in, mediates the power and control between the powerful and powerless participants.

Goffman (1959) asserted that the court interpreter's assigned role is as a "non-person". However, in practice, this ideal role is often challenged and even violated by the interpreter's active engagement. For this reason, Goffman (1959) claimed that the interpreter's own assigned role is a "mediator", and interruption is a sign of the interpreter's mindset as a "go-between" in the courtroom communication. However, such interruption, outside of the planned or conventional conversation, more or less impinges on the power and control in the courtroom. In the question-answer discourse, such interruption can even be detrimental to the original line of questioning, thus often impairing the questioner's amount of power and control.

Hale (2004, p. 164) sorts out seven factors that contribute to the power loss of counsel control: (i) number of questions required to obtain a desired answer; (ii) topics introduced by witnesses; (iii) narrative answers; (iv) questions posed by witnesses; (v) counsel being left out of the exchange by interpreter and witness holding discussions in other languages than the working language in the courtroom; (vi) counsel resorting to the use of the third person; and (vii) interruptions to counsel's questions by other participants.

The research on the interpreter's mediating role in other legal systems than China makes direct application to, or comparison with, the Chinese courtroom context irrelevant to some extent. The scarcity of the work carried out within the Chinese courtroom context leaves this crucial issue untouched. For these considerations, the present study, by employing the approaches of conversation analysis (CA), critical discourse analysis (CDA), and pragmatics, is intended to look into the interpreter's role as a mediator in the power and control dynamics in the question-answer discourse in the Chinese criminal courtroom to pin down how power is negotiated and constructed among different participants at the presence of the interpreter.

## **Interpreter's Mediation of Power Through Interruptions**

### ***Data***

The data used in this paper are the transcripts of a sample of 11-odd-hour court hearing drawn from five criminal cases where interpreters were introduced. The four cases of drug smuggling, illegal possession of drugs, intentional injury, and theft were tried in one morning session each, and the hearing of the drug trafficking case lasted the entire day; no judgment was pronounced at the end of the session for any of the cases.

### ***Analysis***

**Asking for clarification.** As invisible the interpreter endeavors to be, asking for clarification is common in the data.

### **Example (a). Case of drug smuggling<sup>1</sup>**

P: 被告人, 你当时知道这些钱是干什么的吗? (Defendant, at that moment, did you know what the money was for?)

I: 请问公诉人, 您指的是这些钱用来做什么的吗? (Excuse me, prosecutor, did you mean for what purpose the money was used?)

P: 嗯, (..) 你问他他对钱的性质是怎么理解的。 (Er, (..) ask him how he understands the nature of the money.)

I: *Defendant, what do you think is the nature of the money?*

Mishler states that "...to ask a question in response to a question is an act of counter-control..." (1975, p. 106). The above is an example of the interpreter interruption by asking a question to a question. Although the interpreter is not the institutional responder, the interruption challenges the normal distribution of power and control since it is beyond the prosecutor's planned lining of question. As a result, the prosecutor demonstrates hesitation for over two seconds and then resorts to the third person. When addressing the counsel's use of the third person to address the witness, Hale (2004, p.191) says: "they (counsels) lose control of the flow of information" when they try to save face by excluding the responder from the exchange. Hale further concluded that "by using the third person ... she (the interpreter) is given the freedom to paraphrase and express the contents in whichever way she feels." (Hale, 2004, p. 192). In the example here, the interpreter challenges the prosecutor's power and wins control by herself as a questioner, and the prosecutor acts indirectly as a responder by rephrasing the first question. The interpreter is granted more freedom to paraphrase the prosecutor's question, which is expressed in the third person. Furthermore, the interpreter deprives the English-speaking defendant of the chance to hear the initial question and thus causes the latter's absence from the original exchange.

**Correcting an obvious unintentional mistake.** Mistakes are threatening to the speaker's positive face (Brown & Levinson, 1987). When the interpreter corrects an obvious unintentional mistake, he/she actually saves the speaker's positive face, and thus, helps the latter retain power and control.

### **Example (b). Case of intentional injury**

J: 被告人, 你打了张三的脸, 那么... (Defendant, you hit Zhang San in his face, and then...)

I: 打了头。 (*Hit him on his head.*)

J: 噢, 对。 (.) 被告人, 你打了张三的头后, 张三有什么反应? (Oh, right. (.) Defendant, what was Zhang San's reaction after you hit him on his head?)

I: *Defendant, what was Zhang San's reaction after you hit him on his head?*

In Example (b), the interpreter, by providing a correct version, helps the judge regain his power since such a mistake threatens the judge's positive face and the defendant does not hear the mistake at all. Moreover, the interpreter even omits the judge's response "Oh, right" which the interpreter might have understood as a response to her correction rather than part of the question addressed to the defendant. O'Barr (1982) lists fillers, repetitions and hedges as powerless speech features. "Oh" is an obvious filler

<sup>1</sup> Instructions on transcription: P = prosecutor; I = interpreter; D = defendant; J = judge; L = lawyer; (.) = pause of no more than 1 second; (..) = pause of no less than 2 seconds; # = noticeable tone of anger; \_\_\_\_ = co-occurrence of two or more than two voices; ↑ = rising tone. For the purpose of anonymity, the true names and places are placed by pseudonyms. The renditions provided in the brackets are the ones we provide for sake of analysis in this paper; the renditions typed in italics are the original translation extracted from the tape transcripts.

here, evidencing the judge's realizing his own mistake. When excluding this filler from the rendition, the interpreter assists the judge with control. The word "right" signifies the judge's affirmation of the interpreter's correction. The interpreter's omission of this word also excludes the defendant from the mistake correction and mitigates the challenge to the judge's positive face.

**Protesting on not being allowed to interpret and finishing interpreting a discontinued utterance.** A discontinued utterance in the courtroom usually occurs when two or more speakers speak at the same time or when the speaker himself/herself discontinues the utterance and then restarts. The former often occurs when an objection is raised; the latter takes place usually because the speaker changes the lining of question or answer.

**Example (c). Case of theft**

L: 被告人, 你是否头上戴了眼镜, 同时包里还放了一副眼镜? (Defendant, you were wearing glasses on your head and also had another pair of glasses in your purse?)

P: # 你不能这样引导被告人。既然她没有说包里还放了眼镜, 那就没有。 (# You must not lead the defendant in this way. Since she did not say there was another pair of glasses in her purse, there should be none.)

J: 辩护人, 那个↑(.)不要问引导性问题。你把(.)把简单的事情复杂化了。(Defense counsel, errm↑(.), do not ask leading questions. You are making (.) making a simple matter complicated.)

I: *The defense counsel asked...*

J: 翻译, 不用翻译了。(Interpreter, no need to interpret this.)

I: 但是 ↑(.) (But ↑(.))

J: 好吧, 翻译吧。(Ok, interpret it.)

I: *The defense counsel asked ... He was interrupted by the prosecutor who said ... The judge said ...*

In this extract, the defense counsel and the prosecutor simultaneously speak, and then the judge rules on the prosecutor's objection. This three-person conversation does not provide the interpreter a chance to interpret. When the interpreter begins to interpret in a narrative manner, the judge stops her, implying the conversation is a "private" one in which the defendant is not an intended listener. Then the interpreter moderately complains about not being allowed to interpret by saying "but" in a rising tone. The judge then grants permission to interpret. Finally, the interpreter resumes interpretation by resorting to the third person narrative style. In the first place, the interpreter's complaint is conspicuously a fight for her right and obligation of accurate and complete interpretation. When the judge defers to the request for interpreting, the interpreter regains her control, eliminating the risk of excluding the defendant from the exchange at the same time. Secondly, as simultaneous voices and consecutive turns at talk make interpreting extremely difficult, the interpreter begins to use the third person in the rendition which, by the same analogy to Example (a), puts the blame on other speakers for not allowing her to interpret, which she deems threatening to her negative face (Brown & Levinson, 1987). Thirdly, the third-person rendition dramatically weakens the original speakers' power and control in the eye of the defendant. Lastly, the leading question, which the prosecutor and the judge intended to keep the defendant from hearing, is finally revealed to the defendant, which subtracts from their power. Although the defendant is not misled

as the conversation unfolds, if she had read between the lines and taken advantage of the defense counsel's power game, she would have steered the conversation as a powerful participant.

**Volunteering information or offering a personal opinion.** Topic control is a strong sign of exercising power (Owsley & Scotton, 1984; Bogoch, 1994). A court interpreter is very likely to control the topic when it comes to a language issue. Due to the differences between the two languages, some subtle meanings are only accessible to the interpreter. When other participants miss or misunderstand such subtle meanings, the interpreter is induced to offer personal comments or opinions. Such being the case, the interpreter empowers himself/herself as an expert.

**Example (d). Case of drug trafficking**

J: 被告人, 你收到起诉书了吗? (Defendant, have you received the indictment?)

D: I don't know.

I: 我不知道。

J: 就是你在看守所的时候, 法院有工作人员给你送交了起诉书, 你收到了吗?

I: *When you were in the detention house, the court officers served the indictment on you. Did you receive it?*

D: I don't understand.

I: 我不明白。审判长, 被告人应该是不明白 "起诉书" 这个单词的意思。(I don't understand. Presiding judge, it should be that the defendant does not understand the word "indictment".)

J: 起诉书就是, 嗯 (.), 那个(.)公诉机关起诉你犯罪的文书。(An indictment is, err (.), that is (.), a document by which the prosecution department charges you with a crime.)

I: *The prosecutor used the indictment to charge you with the crime.*

In this example, the interpreter considers herself as an expert by providing her personal opinion that the reason for the defendant to say "I don't understand" is that he cannot understand the word "indictment". Such personal opinion seems to assist the judge to have a better understanding, but it actually initiates a new topic, allowing the interpreter to steer the conversation in the direction of her choosing. As a result, the judge becomes less powerful while appearing insensitive to language and having to follow the interpreter's opinion; the defendant, not hearing the conversation between the judge and interpreter, also loses power.

**Directly interrupting a discourse as a result of extra empowerment.** The high frequency of the interpreter's direct interruptions in the data without any rebuke from the court makes us overwhelmingly believe that it is a "legal" practice. The possible reasons are: (i) the interpreter intends to confine an utterance to a manageable size for interpreting; (ii) the interpreter is allowed or advised to intervene when an answer deviates from a question. In the latter case, the interpreter's subjective judgment is easily noticeable. As an ideally invisible person, an interpreter should retain the natural flow of information. However, when the interpreter has his/her own judgment of what is a wanted answer, he/she surely usurps the position of questioner.

**Example (e). Case of illegal possession of drugs**

J: 你拿了袋子后做了什么?

I: *What did you do after receiving the bag?*

D: I don't know there are drugs in the bag. William (.) gave me the bag and ...

I: *我不知道袋子里有毒品。袋子是威廉给我的。(I didn't know there were drugs in the bag. The bag was given by William.)*

J: *我问的呀(.)不是谁给你这个袋子。这个问题呢之前已经回答过了。(.)问题是拿了袋子后做了什么?(What I asked (.) was not who gave the bag. You've already answered this question. (.) My question is what you did after getting the bag.)*

In this example, finding the defendant begins to provide an answer that has been provided before and does not fit into the question, the interpreter interrupts. It seems that the interpreter helps the judge detect a relational style (Conley & O'Barr, 1990, 1998), but it is actually an intrusion into the judge's power and control. It is unarguable that it is the judge who has the institutional power to decide whether an answer is subversion or whether an interruption is necessary. However, our data are convincing that some judges relinquish their power and vest confidence in the interpreter to generate a faster process and save court time. Moreover, in Example (e), by curbing the unwanted information from being introduced into the topic, the interpreter also restricts the defendant's discursive freedom.

**Answering instead of interpreting questions.** It is not surprising for a foreign defendant or witness to address a question to an interpreter who is the only person understanding the two languages. However, when a defendant or witness does so, and the interpreter takes it upon himself/herself to answer the question directly, on the one hand, the interpreter breaches his/her default role of interpreter and acquires the power of the responder; on the other hand, the rest of the courtroom is actually excluded from the exchange which is conducted in other language than the working language of the court, without being given an opportunity to hear the private conversation and thus losing control.

**Example (f). Case of drug smuggling**

P: *你一个人去的机场吗?*

I: *Did you go to the airport alone?*

D: *I go there with Ted. O (.) Ok, should I tell you who's Ted, madam?*

I: *Yes, please.*

D: *Ted is my business partner. I buy leather belts from him.*

I: *我和泰德一起去了机场。泰德是我的生意伙伴。我向他买皮带。(I went to the airport with Ted. Ted is my business partner. I buy leather belts from him.)*

In this example, the interpreter intuitively takes the question as one addressed to her probably because the defendant uses the address "madam", and the prosecutor is a male. The interpreter does not interpret the question but answers it, granting the defendant leave to continue with his narrative. The interpreter obviously transcends her role of switching between the two languages by doing so, working as the mouthpiece of the prosecutor not only discursively but also institutionally. When providing an answer to a question, the interpreter is ostensibly prone to voicing his/her personal opinion.

It suffices to conclude from the above examples that interruption is instrumental to the interpreter's mediation of power and control in the courtroom discourse. This type of interpreter participation in the criminal courtroom in Mainland China stems not only from the inherent nature of interpreting but also from the Chinese court's tolerance and even ignorance of the interpreter's intrusion.

## Conclusion

The interpreter is often believed to be a conduit, and his/her role as a mediator is usually underestimated by the Chinese criminal court who has not received proper training of working with an interpreter. In such a less restrictive context, the interpreter is susceptible to unjustified power and control to the detriment of other participants on many occasions. Such mediation of power and control, although ineluctable, should be limited to moderation as excessive exercise of it impairs the interpreter's impartiality and ultimately jeopardizes justice.

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# Understanding, Interpreting and Translating the Law: A Case Study of “gonggongliyi (公共利益)”

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*[Abstract] Legal translation should not be word-by-word. First of all, translating legal terms or documents is not expected to be effective unless the translator thoroughly interprets the legal systems of both languages (Chinese and English); then, explanations or definitions of legal terms are necessary in both linguistic contexts; thirdly, elements behind the superficiality of the definitions or explanations in the two languages should be sought; at last, the translation can be processed. In this paper, the author will focus on the third step. It is clear that the determinants (e.g. history, culture, and social cognition, etc.) of defining a legal term are diverse and inexhaustible. The author will first discuss how social cognition and legal systems of the source language and target language interact with each other. Second, the paper will demonstrate how different social cognition exert influences on defining the same legal terms. At last, the paper will seek a solution that can handle the non-overlapping parts and process a sound translated version of the term. In conclusion, the goal of legal translation is to create a similar or at least quasi-similar legal system in the target language (English).*

*[Keyword] legal translation; social cognition; legal term*

## Introduction

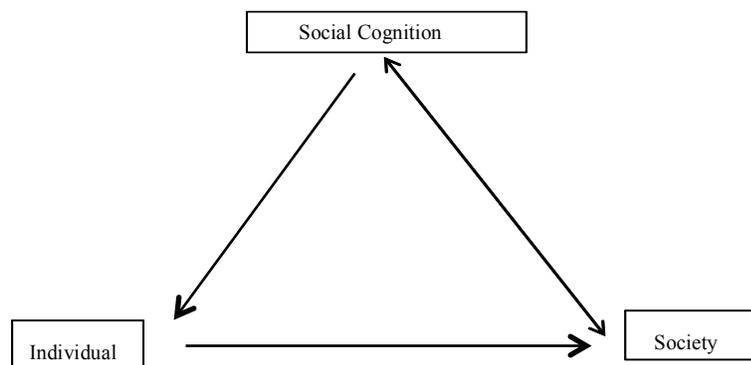
Legal translation, in brief, is a means that helps to interpret, at least partially, legal terms or documents in other languages. The value of legal translation is domestically and globally immense. However, converting the items from source languages to target languages is not easy, and the translation is not always effective. Therefore, it is of necessity to solve such dilemma. The difficulty can explicitly be handled from two different aspects: of the language or of the law. In addition, the interpretation of law and language varies with different social cognition. Thus, in the follow sections, the problems of legal translation will be detangled via the aide of analyzing social cognition.

“Gonggongliyi (公共利益)”, a simple term in the Constitution of the People’s Republic of China, can arouse different interpretations in English-speaking countries. “Gonggongliyi”, literally, can be translated as “Public Interest”. However, there are two questions: Is the concept of “Gonggongliyi” the same as it is of “Public Interest”? Does the definition of “Gonggongliyi” equal that of “Public Interest”?

## Social Cognition

Social cognition, as a tremendously significant element, belongs to the subject of social psychology. Originally, social cognition focused on dealing with the intra-individual process. However, Howard and Holland in their work, published in 1997, suggested that cognition should go beyond intra-individual information processing. Social cognition is structured and transmitted, and it reflects values and norms of a society. Each type of social cognition is, at first, a concept or an idea drawn from past experiences. Then, as such experiences become common and widespread, this kind of social cognition is formed. Social cognition potentially shapes the psychological schema of individuals. This schema provides the basis of daily code of conduct for individuals. Therefore, social cognition offers a society basic and

schematic code of conduct. The relationship between social cognition, the individual and society is illustrated by Figure 1.



**Figure 1. The relationship of social cognition, individual and society**

In China, “Gonggong (公共)” and “Liyi (利益)” are not modern concepts; they actually existed or appeared as concepts in Ancient China. “Biography of Zhang Shizhi” (Historical Records, Han Dynasty) reads: “Law should be abided by the Emperor and the public. If the punishment is more severe than the law has been enacted, no individual will trust the law anymore.” That indicates that the Law was issued by the Emperor, and was communal. Nowadays, “Gonggongliyi” is more prevalent, and its concepts are both stratified and unified. “Gonggongliyi” is national, public and collective, and it is difficult to draw lines between them.

The situations in English-speaking countries are different. In English-speaking countries, especially in the United States, the individual, the public, the government and country are four independent bodies, which correlate with each other. The individual is a constituent part of the public. Government administrates the public and the country. In fact, a country, to some extent, resembles a large public, but the difference is that a country is more functionalized, and is organized more tightly, while the public is groups of people loosely organized. Sometimes, the “public interest” of a small group reflects that of a larger group or a society. Here comes the dilemma: an individual is a constituent part of the public, but the conflict between an individual and public is inevitable.

### **“Gonggongliyi (公共利益)”, Under the Legal System of the People’s Republic of China**

Generally, laws can be defined into two categories: private law and public law. The People’s Republic of China is not allowed to have private law due to the structure of the country. It is not peculiar that individual affairs are conducted with public or governmental administration or interference. However, there are still some interims between the public and individuals. Basically, civil laws can be regarded as private law, but the problem is that the border between the public and the individual is obscure, and lawsuits that individuals are involved in may bring about some public impact, and eventually intertwine with public interests or “Gonggongliyi”. Therefore, in the following passages, issues on “Gonggongliyi” will be discussed in two aspects: legal events that are involve in “Gonggongliyi” of the nation or the whole society and those that give rise to impacts or effects on “Gonggongliyi”.

“Gonggongliyi” is presented in the Constitution of People’s Republic of China; in Article Ten of Chapter One in the Constitution, it is written, “The state may, in the public interest and in accordance with law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisition.” Also, in the Article Thirteen of the Constitution, “The state may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.” Then, Article Twenty and Twenty-One in Chapter Two of Criminal Law can convince this point: “An act that a person commits to stop an unlawful infringement in order to prevent the interests of the State and the public, or his own or other person’s rights of the person, property or other rights from being infringed upon by the on-going infringement, thus harming the perpetrator, is justifiable defense, and he shall not bear criminal responsibility.” and “If a person is compelled to commit an act in an emergency to avert an immediate danger to the interests of the State or the public, or his own or another person’s rights of the person, property or other rights, thus causing damage, he shall not bear criminal responsibility.” There are other legal terms that include “Gonggongliyi” and they will not all be listed here, but we can already see that its meaning is broad.

In a verdict by the Second Intermediate People’s Court of Shanghai (YING Jie vs. Shanghai Administration for Industry and Commerce, 2013), the Appellant, Ying Jie used to be a board member of Shanghai Hong Hua Certified Accountants Co., Ltd. from 2000 to 2001, and owned 5.6% of the company’s stocks. He left the company in 2001. In 2004, the company changed the statutory representative and transferred Ying’s stocks without his endorsement. Therefore, Ying Jie sued the company and requested them to annul the change and the transference. The Shanghai Administration for Industry and Commerce, Hongkou Branch rejected his request: Revoking the change and the transference was likely to impair the public interest. Then, the Second Intermediate People’s Court of Shanghai processed Ying’s appeal. The final verdict affirmed the original judgment. In this case, there are two tiers of public interest: first, public interest equals the interests of other entities. The company takes charge of the audit, annual audit and other relevant items that involve commercial secrets of other companies. Thus, the annulment could do harm to the interests of those companies, and can give rise to more severe consequences. Then, Ying argued that the original judgment was a legal mistake. However, the court considered that according to the Administrative License Law of the PRC, the judgment was appropriate. As a result, under such circumstance, the public interest is the interest of the appropriateness of the laws and the executors.

Then, in Property Law of the People’s Republic of China, “Gonggongliyi” appears in Article Forty-Two, and states: “In order to meet the demands of public interests, it is allowed to requisition lands owned collectively, premises owned by entities and individuals or other realties according to the statutory power limit and procedures.” Unlike the Criminal Law whose functions are to define the crimes and punish illegal activities, the Administration Law and laws are to protect legal rights. Therefore, from this standpoint of view, “Gonggongliyi” in society is the “legal rights and interests”. Here arises a question: Does this “Gonggongliyi” belong to certain group of individuals or collectives?

In a case (YAN Qin and the People’s Government of Hongkou District, 2014), the defendant launched a resettlement project, which was to renovate an area called “91 old residential area”. Before the resettlement Project began, the defendant collected residents’ opinions about it, and if 90% supported this project, it would be launched. Opinions of 97.65% of the residents were collected and 94.5% of them

expressed support. The appellant (plaintiff), YAN Qin insisted that his residential place was not within this area and it was inappropriate to relocate his place.

Then, the plaintiff regarded that the process of relocation (assessment, relocation and compensation) and the amount of compensation were improper, and this project did not meet the need of “Gonggongliyi”. Moreover, whether this project met the need of “Gonggongliyi” was one of the focuses in this lawsuit. The renovation of this area was based on the comprehensive analysis and investigation of the developmental and economic conditions, and the local government had finished some risk assessment before launching this project. Hence, the final verdict considered that the project run by the defendant was reasonable, as well as the compensation. Evidently, “Gonggongliyi” in this context is neither individual or individuals’ “Liyi (利益)” “interest”, nor national or social interest because it just correlates with a refined object, the development of Hongkou District. This “Gonggongliyi” is not a national or social interest, but a collective interest. Collective interest reflects a certain facet of public interest, but “public” extends much further than “collective”.

“Gonggongliyi” does not just exist in national and social activities, it also involves civil events. In Article Seven of the Contract Law of the People’s Republic of China, “Gonggongliyi” is written as: “In concluding and performing a contract, the parties shall abide by/comply with the laws and administrative regulations, respect social ethnics, and shall not disrupt the social and economic order or impair the public interests.” Also, in Article Fifty-Two of the Contract Law of the PRC, “Gonggongliyi” is shown in the context of: “A contract shall be null and void under any of the following circumstances... (4) Damaging public interests.” Also, in Article Seven of the Property Law, “The law shall be observed and social ethics shall be respected in acquiring or exercising the property right and public interests and the lawful rights and interests of another person shall not be jeopardized.” “Gonggongliyi” under such circumstance may exert potential influences on the society, but it actually correlates with certain individuals.

In “Cao vs. Gan and Lu, 2012”, the plaintiff, Cao, claimed that the defendants, living downstairs, did unauthorized construction, covering about 21 square-meters, in their own terrace, on August 15th, 2008. Then, the defendants built metal fences on this affiliated construction, and the plaintiff considered that this construction and fences hampered his residential security and other personal interests. Therefore, the plaintiff insisted that the defendants should dismantle the unauthorized part. Article Fifty in “Shanghai Residential Property Management Regulations, 2004” states: “Activities that impair public interest and interests of other individuals are prohibited: Illegal erections, changing facades of buildings, unauthorized reconstruction, occupying public properties, etc.” Based on this Article, the People’s Court of Putuo District, Shanghai made the following two decisions: First, the plaintiff’s request that the defendants should dismantle the affiliated structure was not supported; second, the plaintiff’s demand that the defendants should remove (upper parts of) the metal fences was approved. “Gonggongliyi” was the key point that decided this case, and it consisted of two strata: Of the plaintiff and of the society. The plaintiff, in relevance to the defendants, was within the range of “Gonggong (公共)” or public. On one hand, given the plaintiff’s residential place is above the unauthorized structure, his interests were not prejudiced. On the other hand, according to the Regulations and in a wider scope, the defendants’ action hampered the interests of the public because their prejudicial activity exerted passive effects on the society and the public. Under this circumstance, Party B, the plaintiff(s) to Party A, and the defendant(s), are the “public”. As a result, “Gonggongliyi” in this aspect, equals “individual(s’) interest”.

In summary, “Gonggongliyi” exists in every aspect of the country, and it is complicated and complex. Therefore, the categorization of it is simply an overview. It is more appropriate to analyze it

under different circumstances, and more research remains to be done to unveil what “Gonggongliyi” is or what hides below the surface of “Gonggongliyi”.

### **“Gonggongliyi”, Under the Legal Systems of English-Speaking Countries**

“Public interest”, or “Gonggongliyi”, in an English-speaking country, is expected to be different. Then, the following sections will mainly be based on juridical cases and legal acts in the United States. In Federal and State cases of the United States, “public interest or public interests”, or “Gonggongliyi”, appears hundreds of times, and its core is reflected in judicial processes and its impact on the nation and society. The verdict of any case in the U.S. depends on several aspects: the Constitution, the Acts passed by the Congress and different states, and the spirit of Law.

In “Guidelines for the Determination and Use of Public Interest Values in Land Acquisitions in Alaska, 1992”, the importance of respecting and serving the “public interest” has been shown. The Guidance, which is only valid in Alaska, was issued in three respects: First, if public interest values are sufficient at present on acquired Alaskan lands, the acquisition of the land may be exchanged with other lands that are higher than market price; second, the magnitude of public interest values should not be measured by money; third, the level of compensation that reflects the presence of public interest values on lands being acquired must be determined through negotiations with land owners (Federal Register 57 FR 54407, 1992). According to this guidance, several conclusions can be drawn: first, “public interest(s)” are the values of parties concerned with certain events. Therefore, under such circumstances, “public interest” equals “individuals’ interest” but it is bound by geography and context.

In a lawsuit between Carnegie Mellon University, Plaintiff and Marvell Technology Group, Ltd., et al. (2013), “public interest” is measured in a different aspect. This lawsuit was an open trial. Therefore, the defendants, Marvell Technology Group, sought to seal the records of the trial because it might injure the benefits of the company. However, the court considered that this was not a compelling reason to seal the records. The court stated that: First, the financial information is important to understand the calculation of the damage to the plaintiff; second, the public could get to know better what had happened during this trial. The second point meets the spirit that “a better understanding of the operation of government, as well as confidence in and respect for our judicial system.” Moreover, the court considered that information of this case had been open to the public for over three months, and had been filed in several documents. It is concluded that “public interest” in this case can be defined as “judicial interest” and “juridical interest”. Besides, it reflects the interests of individuals who hold patents of intellectual properties.

In another case, (Texas Citizens for a Safe Future and Clean Water vs. Mr. James G. Popp, 2007 and 2008), the company, Pioneer Exploration, Ltd., needed a permit to operate a commercial injection well for disposal of oil and gas waste and the Railroad Commission of Texas granted this permit, but the environmentalists argued that the Commission failed to properly consider public interest. The court led that the Commission put “public interest” in such a narrow scope and it should reconsider the stretch of it. However, the Commission thought that “public interest” would only involve gas or oil production. Previously, the judgment of the district court acknowledged the permit. In the end, the courts (both first and second trials) considered that: “the Commission does not violate Texas Citizens’ due process rights by recessing and reconvening the hearing on Pioneer’s injection well permit”, but it should not fix “public interest” in such a narrow scope. Therefore, the court reversed the Commission’s request of a rehearing.

Thus, in this case, except for explicit and concrete “public interest”, it indicates something existing in a perception. The reason why the perception of “public interest” becomes public interest is that: this case is a public event, which exerts great influences on the public, and which, in turn, pays enormous attention to this event. Hence, the official judgment of this case may promote or impair the potential cognition of “public interest”. In this aspect, it can be concluded that “public interest” is compound and rather sophisticated.

### **The Methodology of Translating “Gonggongliyi”**

As discussed above, there exists a gap between social cognition of China and that of English-speaking countries, as well as divergence in the laws. Therefore, literal translation may cause distortion and misunderstanding. Therefore, an appropriate translation should be able to minimize the gap and to promote general public perception.

The difference in political structures, legal systems and linguistic backgrounds is unable to be eliminated or even minimized, but an approximate understanding of “Gonggongliyi” is still reachable. As a result, the methodology of translating “Gonggongliyi” should be able to minimize distortion and misunderstanding.

Although there are several layers of “Gonggongliyi” (as discussed above), it is unlikely to apply them distinctly on the translation. The reason is that it would impair the objectiveness of law and legal documents. To some degree, legal terms are neutral unless they are applied to certain cases. Therefore, the translation should carry on such characteristics of law.

Moreover, the general methodology of translating “Gonggongliyi” is to analyze its context. Hence, it differentiates from case to case. At last, an appropriate methodology is to set a universal and general frame, and distinguish the difference according to diverse contexts.

### **Conclusion**

The author aims to search a methodology to the translation of “Gonggongliyi”. According to the above research, it is concluded that such methodology should be based on the analysis of the legal systems, documents and judicial interpretation. Functions and meanings of certain legal terms vary in accordance with different legal systems and judicial scenarios. Therefore, a literal translation is not applicable. A sound legal translation should be able to minimize the gap between two different languages and legal systems. As a result, legal translation is similar to legal transplantation instead of an activity that only involves languages.

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# Study on the “Minor Language + Law” Training System for China’s Professional Foreign Language Talents<sup>1</sup>

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*[Abstract]* According to the results of this author’s investigations at over 20 universities, there are different training methods for minor language + law inter-disciplinary talents in all three stages (undergraduate, graduate and doctorate) of the tertiary education system of China. This paper offers reasonable suggestions for majors of minor languages to establish a scientific training system of professional foreign language talents from the perspective of objectives, models, and performance evaluation methods, etc.

*[Keywords]* minor languages, law, legal, training system, talent, inter-disciplinary, professional

## Introduction

The English Teaching Program Outline for Chinese Tertiary Education (Foreign Language Teaching and Research Press and Shanghai Foreign Language Education Press, April 2000, First Edition, pp. 37-38) points out “Each year, China only needs a small number of professional inter-disciplinary talents of foreign language and literature, and foreign language and languages for teaching and studying foreign literature and linguistics, but needs a great amount of inter-disciplinary talent for foreign languages and other related disciplines, such as diplomacy, business, law, journalism, etc. The education of foreign languages is required by the socialist market economy to train these kinds of inter-disciplinary talents, and is also a requirement of the new era.” (Ma, Q., 2002). The National Plan for Medium and Long-term Education Reform and Development (2010-2020) indicates that China “is severely lacking innovative, practical and inter-disciplinary talents”, and we need to promote “disciplinary integration, and expand the training scale of practical, inter-disciplinary and skilled talents” in tertiary education.

Researchers of tertiary education generally believe that “inter-disciplinary talents” refers to talents who have a profound and wide range basic knowledge, know basic theoretical knowledge and practical skills of at least two majors and disciplines, and are able to connect the knowledge and skills together, and form new knowledge, ways of thinking and comprehensive abilities; the talents should also give play to the overall functions of the majors and disciplines in practice; and solve problems in theories and practices in a creative manner (Li, M., 2012).

Among the training methods of inter-disciplinary talents, the inter-disciplinary talents of law and foreign languages are an important representation, which conform to the requirement of “cultivating a large number of international talents with an international view, knowledge of international rules, and capacity for participating in international affairs and competition” in the National Plan for Medium and Long-term Education Reform and Development (2010-2020).

Cultivating foreign language talents in special areas is a method adopted by departments of foreign languages in accordance with era development. Foreign language talents specialized in law refer to those

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<sup>1</sup> This paper is the research achievement of the “funded project of program supporting the training of excellent young and middle-aged teachers of CUPL”.

who have a solid foundation in foreign languages, have acquired the basic theoretical knowledge and application skills of foreign languages and law, and are eligible for translation or research related to law, or those who have the ability to conduct cross-culture law research and academic exchange in law science, and are eligible for providing law research and services. In recent years, driven by the prosperity of legal English, training methods of “minor language + law” aim to cultivate foreign language talents in special areas have emerged in the Chinese universities. In China, “minor languages” mainly refer to nine popular foreign languages apart from English, and they include: French, German, Italian, Spanish, Portuguese, Russian, Japanese, Korean, and Arabic.

According to my investigations on several key universities in China over recent years, in the sector of higher education, at the stages of undergraduate, postgraduate, and doctorate, there are different methods of “minor language + law” training aimed to cultivate foreign languages; at the stage of undergraduate, more attention is paid to minor language/law inter-disciplinary talents, while at the stages of master and doctor, cultivating talents of legal foreign languages is the priority.

By drawing on training experience of legal English talents, this paper provides sound suggestions to help majors of minor languages build scientific and sound training systems for cultivating foreign language talents in special areas starting from the core content of training objectives, training methods, and training results evaluation.

### Training Objectives

We can divide the methods used to train “minor language + law” specialized minor language talents offered by universities nationwide into the following types:

**Table 1. Methods to Train Minor Language Talents**

		<b>University</b>	<b>Minor Language</b>
<b>Undergraduate</b>	<b>“Training method for inter-disciplinary talents of minor language/law science”</b>	School of Foreign Languages of China University of Political Science and Law	Dual degree in “German and law science”
		School of Foreign Languages of East China University of Political Science and Law	Japanese (law and business related to foreign affairs)
			German (law and business related to foreign affairs)
		School of Foreign Languages of Northwest University of Politics and Law	Korean
		School of Foreign Languages of comprehensive universities including Xi’an International Studies University, Peking University, Tsinghua University, Fudan University, Heilongjiang University, Yunnan University, Sichuan University, and Lanzhou Jiaotong University	Minor language + law science: minor subject system, dual degree in two majors, second bachelor degree system

**Table 1. Methods to Train Minor Language Talents (continued...)**

		<b>University</b>	<b>Minor language</b>
<b>Postgraduate</b>	<b>Training method of talent in legal minor foreign languages</b>	School of Foreign Languages of China University of Political Science and Law (the school plans to offer minor-language MTI program)	French (legal translation)
			German (legal translation)
			Russian (legal translation)
		Research Institution of Legal Language of Guangdong University of Foreign Studies	Russian
			German
<b>Doctorate</b>		Research Institution of Legal Language of Guangdong University of Foreign Studies	French
			Japanese
			Spanish
			Russian
			German

The major characteristics of the above talent development methods are as follows. First, at the undergraduate stage: Each college adopts the compound talent training method of “minor language / law”, with such specific forms as optional courses, minor subject systems, double majors and double degrees, and second bachelor’s degrees. Among them, the schools of foreign languages under universities of politics and law rely on their strong law education background, while the other schools of foreign languages of comprehensive universities use the complementary advantages in foreign languages and the law major. The training objective is generally to cultivate application-oriented and all-round talents accomplished both in foreign languages and law.

I am of the opinion that such talent training methods and objectives completely follow the rules of talent development. The development of all-round talents in minor languages/law should get a foothold in the talent development rules of the minor language and law major, which are both assignment heavy with high credit requirements, and long-term in terms of study period. To truly develop such all-round talents, students should establish double majors at the undergraduate stage, so they can choose to undertake further study either in the law major or the foreign language major at the postgraduate or doctoral stage, which is quite a reasonable arrangement.

“China is a poor country running big education with small investment, and the ratio of state financial education expenditure to GDP ranks at the level of underdeveloped countries, with a relatively low gross enrollment ratio in secondary education, and a low level of popularization for high education, which requires the students with a high education background to quickly adapt to social needs, and also have the stamina to play a role long-term with strong career adaptability in a society with rapid science and technology development” (Fan, W., 2010). The prerequisite for emphasized liberal education for undergraduates in foreign universities is that students specialize in one academic field during four years of college education and have some understanding of the breadth and depth of the field. Undergraduate education in China should not remain at the shallow and misunderstood liberal education, but rather give consideration to the actual situation in China, and let undergraduates make purposeful choices of other disciplines that have great connections with the major in liberal education, so they can grasp certain expertise to quickly adapt to the professional job needs (Li, L., 2001).

According to a report by the China Human Resources Network, “Foreign Legal Talent: The Status Quo, Prospects and Cultivation” (sofia\_yuan, 2006), there are only around 2,000 people who can apply the foreign languages and the legal knowledge skillfully to negotiate and sign contracts with foreign customers in China; and lawyers familiar with international law, international trade law and WTO rules are especially scarce, with only 50 or so lawyers having such qualities and abilities among the more than 5,000 lawyers in Shanghai. The market demand for foreign legal talent is five-times larger than that of current supply and can thus be said to have broad prospects. Therefore, the development of “minor language/law” inter-disciplinary talents is a positive response of the universities towards social needs.

Second, at the postgraduate and doctorate stage, the institutions all adopt objectives of developing professional legal & foreign language talents. Specifically, the development objective for the School of Foreign Languages of CUPL is to cultivate professional law translation talents that are competent at various kinds of legal translation and interpretation, thus the degree of Master of Interpreting and Translation (MTI) in the school has devised a translation master’s degree to cultivate minor languages + law; the Forensic Linguistics Research Institute of Guangdong University of Foreign Studies has two training objectives: first, to develop research talents in legal language, emphasizing a more theoretical education and meeting the objective of cultivating academic postgraduates for college teachers and science institution researchers; second, to develop specialized legal translators in MTI system, but it’s currently only limited to an English major.

Professor Wen Qiufang once said, during over 30 years of reform and opening up, our objective in talent development underwent three stages of adjustment: “The first stage was from the end of the 1970s to the end of the 1980s, when the objective was to develop senior talents in foreign languages, mainly English, corresponding with the need for quality foreign language talents in socialist modernization. The second stage was in the early 1990s. Following social and economic development in China, social relations become more diversified and the purely foreign language talents were unable to meet social needs. Thus, the objective became to develop all-round talents with expertise both in foreign languages and other professions. The third stage began at the end of the 1990s and is still ongoing; during this period, the knowledge economy began to reveal its importance on the global stage, and technological innovation grew rapidly. The cultivation of innovative talents became the need of the time. Also, as for foreign language education, the cultivation of innovative talents has been specifically to cultivate innovative foreign language talents (2002).” According to the *National Plan for Medium and Long-term Education Reform and Development* (2010-2020), higher education should “optimize the structures of majors, categories and levels of disciplines to promote the crossing over and integration of multiple disciplines, emphasizing the expansion of the scale of developing application-oriented, compound and skilled talents.” Therefore, we believe that innovative foreign language talents should be “compound foreign language talents with innovative qualities” (Li, L., 2012). In M. A. K. Halliday’s *The Linguistic Sciences and Language Teaching*, published in 1965, the concept of ESP (English for Specific Purpose) was put forward, which refers to English that has a specific connection to certain jobs, disciplines or purposes, such as Legal English, Business English, English for Science and Technology and others, whose purpose is to develop students’ ability in applying English to the work in a specific environment” (Yang, J., 2012). Currently, ESP has raised a wave of nation-wide reform in the teaching and researching of the English language. The reform in minor languages has already started. For example, there is *Français sur Objectifs Spécifiques* (FOS). FOS refers to conduct specialized teaching on the basis of the French Language, which is commonly called “language + major” teaching and emphasizes that language

serves a specific discipline or industry. At present, about 20 universities in China provide the major of applied French. This major is close to the demand of the job market, cultivating French talents who can use French at the frontline of related industries. And generally speaking, there are such orientations as tourism, foreign trade, business, science and technology, accompanied interpretation, and aviation, etc. (Wang, N., 2014). But unfortunately, there is still no training method for legal foreign language talents. The existing FOS program is mainly carried out in the undergraduate stage, which is rarely seen in the post-graduate or doctoral stage. One reason is that there are very few graduate and doctoral programs for minor languages, and a lack of qualified teachers with compound professional backgrounds, but the more important reason is the fact that the sense of urgency for minor-language is not as strong as it is for English major and does not have innovative thinking. Against this background, the talent development method of “law + foreign language” initiated by the China University of Political Science and Law and the Guangdong University of Foreign Studies is a very valuable exploration.

Judging from the current employment situation of China, employers are in urgent need of talents who can go to work directly, which displays the realism of employment and requires the students to have a solid foundation of professional knowledge with strong hands-on skills. Legal translators and interpreters were listed as scarce talents in contemporary China by the Ministry of Human Resources and Social Security of the PRC in 2009. But in reality, the development of legal translation talents is far from optimistic. Huang Youyi, deputy director of the China Foreign Language Publishing Administration and the director of the China National Committee For MTI Education, pointed out at the 6<sup>th</sup> representative members meeting of the Translators Association of China on November 23, 2009 that, “there are about 100,000 people in China engaged in translation, but senior legal translators make up less than 20 people.” Therefore, the development of legal translators in China has broad prospects.

## **Training Methods**

### ***Methods for Training Minor Language/Law Inter-Disciplinary Talents***

A “minor” refers to when a student applies for a second specialty in the end of the freshman year, and begins the minor in the sophomore year. The length of schooling is four years, and the student is only awarded a degree in the first specialty. A “dual major” refers to when a student begins to study the second specialty in the sophomore year or upon entry, and is awarded degrees for both the foreign language and law. A “second bachelor degree” refers to when a student studies the second specialty after graduating from the first specialty, and is awarded a degree in the second specialty. All these systems are based on trans-school cooperation, namely the cooperation between the school of foreign languages (the first specialty) and the school of law (the second specialty).

In general, the curriculum of a school of foreign languages consists of the course series of general-purpose foreign language, cultural accomplishment, legal foreign language and foreign legal system. The series of legal foreign language is normally made up of legal foreign language, legal translation, court interpretation, and legal foreign language writing, etc. The foreign legal system series is made up of an overview of foreign legal systems, laws of main departments, procedural law, and legal practice concerning foreign affairs, etc. The curriculum of a school of law in general consists of the fundamentals of law science and major courses.

In such cultivation methods, there are two points worth attention: one is providing curriculum of foreign laws taught in foreign languages and the other is legal practice.

**Providing curriculum of foreign laws taught in foreign languages.** Professor Hu Zhuanglin believes that in order to learn foreign languages well in the foreign language context of China, those who make efforts in simulating or structuring the environment of using or accessing foreign languages will achieve a better teaching effect (Hu, Z., 2004). Teaching curriculum of foreign laws in foreign languages can simulate or structure an environment suitable for foreign laws, which allows students to comprehend the context of legal foreign language and foreign legal cultures most directly, and develop their abilities of understanding and communication in the context of foreign languages, thus improving their abilities in legal translation between Chinese and foreign languages, as well as comparative studies on the Chinese and foreign legal systems. In both ECUPL and CUPL and others, there are course series on foreign legal systems conducted in foreign languages, of which practice has shown positive results.

According to the explanation of Dudley Evans, the teaching of English for special purpose is in the shape of a triangle. One vertice is the students, while the other two are language teachers and specialty teachers, respectively. This theory also applies to the teaching of FOS (Wang, N., 2014). There are many training projects of special talents under the cooperation between the Chinese and French governments, such as the “Project of 100 Chinese Architects”, the “Project of 30 Chinese Emergency Physicians” (Ding, S., 2012), and the project of 100 judiciaries. All of these projects adopt the method of cooperative teaching between French teachers and foreign specialty teachers. Chinese universities can hardly recruit foreign specialized teachers, but have Chinese teachers who have gained professional doctorate in foreign countries. So the universities can recruit these teachers to give lessons of foreign laws, which will produce the similar effect of teaching by foreign teachers. The School of Foreign Languages of CUPL has employed its own French teachers, who have gained the degree of doctor of law in foreign countries, to give lessons of foreign laws, which is highly appraised by the students.

**Legal practice.** As indicated in an investigation (Xu, H., 2012), under the training method mentioned above, the students all study in the school of foreign languages for the first three to four years, where education for all-round development is completed, and then study in the school of law for the remaining one or two years. During their time studying at the school of law, what is learned is no more than legal knowledge, and they are seldom trained for professional legal abilities (legal application, and case analysis, etc.). Given this, adding legal practice courses is an effective guarantee for pushing students’ simultaneous progress in law science and foreign languages.

### ***Method for Training Legal Foreign Language Talents***

In the method of training legal foreign language talents, there are three points worth paying attention to: the design of the curriculum with features of legal minor languages, the selection of teaching materials, and joint school-running.

**Design of curriculum with features of legal minor languages.** For legal foreign language talents, there are two professional emphases: legal language, and legal translation. The first professional emphasis is represented by the Legal Language Science Research Institute of GUFs. The institute has formed a legal language talent training system matched with postgraduate and doctorate training, and is distinctive with attention paid to research of legal language theories.

The second professional emphasis is represented by the School of Foreign Languages of CUPL. This school was China’s pioneer in founding legal translation master’s degrees for French, German and Russian, and plans to recruit students for MTIs of these three minor languages. Since the author works in

the school as a French teacher, the method of training legal translation talents will be discussed below with French as an example.

“The teaching of FOS aims for the needs of specialty or the society, and is a teaching program of French oriented at specific discipline or professional field.” “The design process of FOS curriculum most commonly used in the Europe is as below:” (Ding, S., 2012).

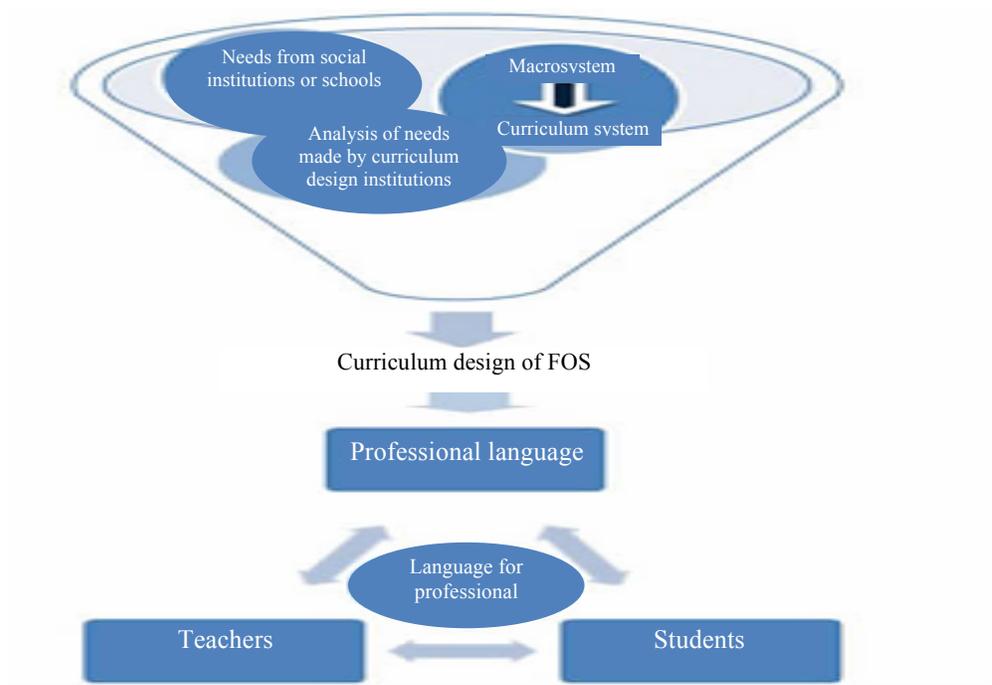


Fig 1

**Figure 1. The Design Process of FOS Curriculum Most Commonly used in Europe**

“From the figure above, we can find that the needs from social institutions or schools, the curriculum having interaction with the social macrosystem, and the analysis of needs made by curriculum design institutions (training units) are the basic factors of the curriculum design of FOS” (Ding, S., 2012). What needs to be explained are: the macrosystem mentioned here includes such factors as schools, training agencies, and projects of social, economic and international cooperation. These factors can change the contents and arrangement of the curriculum system; otherwise, the curriculum system also reflects the macrosystem’s requirements and training objectives. In addition, “the needs from social institutions or schools are the starting point of the curriculum design of FOS. Training agencies determine the contents of curriculum through analyzing these needs” (Ding, S., 2012), and then design curriculum which meets the social needs.

In summary, the translation curriculum is divided into the two main categories of “interpretation” and “translation”. Under the two divisions, more specific specialties can be established, such as business translation, scientific translation, literary translation, legal translation and media translation (Wen, J., & Mu, L., 2009). However, when designing legal translation curriculum for minor language majors, we should take the needs of the above-mentioned social macrosystem, social institutions and schools into consideration, and make pointed references when designing the curriculum.

*Interpretation courses.* Interpretation courses are divided into two types. One is the court interpretation course, which features strong legal professionalism. The other is the legal special interpretation course, whose topics cover all legal fields (legal meetings, business legal negotiation, and legal foreign affairs, etc.).

As a special category of interpretation with strong professionalism, court interpretation requires the interpreter to master two languages, have a background of legal knowledge, intimately know court processes and related legal proceedings, and be familiar with legal French and legal provisions. “In addition, since the legal system varies from country to country, the interpreter is expected to not only be familiar with the legal culture and judicial system of his own country, but also know those of the other country” (Du, B., 2003). Among MTI programs providing the orientation of legal translation in China, court interpretation is provided as a curriculum or a series of curricula independently, and there’s no exception in minor languages.

However, apart from this, an interpreter involved in legal meetings, business legal negotiations or legal foreign affairs is not always required to undergo professional training on law science, he or she only needs to undergo interpretation enhancement training, become acquainted with the legal vocabulary of different fields and master basic legal knowledge, since interpretation focuses on the smoothness of communication rather than professional knowledge. When lecturing for the 11th “French-to-Chinese Interpreters Training Plan” initiated by the French Embassy, the author once consulted the full-time interpreter of the French ambassador and the official in charge of interpreter training. Both were of the opinion that legal knowledge is not always required for legal meeting interpretation or negotiation. This accords with what the author observed many times from interpreters in multiple international seminars on law science. Therefore, for specialized legal interpretation, a student can be comprehensively trained as the ordinary training model for interpretation in the aspects of simultaneous interpretation, consecutive interpretation and sight interpretation.

*Translation courses.* Different from ordinary translation, legal translation mainly targets legally bonding texts. Legal texts can be divided into the main categories of legislative text, judicial text, administrative text, commercial text and legal academic writing and each of these types can be divided into a few sub-categories. Therefore, legal texts are numerous and jumbled. However, it is impossible for minor language teaching to cover all categories and texts, and the translation curriculum of minor languages should accord with the characteristics of minor language specialties.

With the needs of the social macrosystem, social institutions and schools taken into consideration, the characteristics of minor language specialties are mainly: first, given the limited number of teachers and opportunities for student employment, a college cannot carry out teaching of all types of texts; second, since the countries speaking minor languages are limited, the opportunities for using minor languages may not be as numerous as those for English; third, as for the needs, minor languages are mostly applied for academic, foreign affairs and research exchanges in the fields of public law (constitution, administrative law, criminal law, and international public law, etc.) and procedural law; most translations in these fields target legislative texts and legal academic writings; in the fields of department law (civil law, commercial law, and international private law, etc.), there is a large amount of non-governmental communication, and most translation therein targets civil and commercial legal texts; fourth, the employment of minor language talents has the following characteristics: (1) most minor language jobs are in first-tier cities (Beijing, Shanghai, and Guangzhou, etc.); (2) most of these talents are employed in state organs or agencies directly under them, public institutions under the central

government, large state-owned enterprises, foreign enterprises or foreign-related enterprises, broadcasting stations, TV stations, state-owned banks, foreign tourism authorities, law firms and so on; furthermore, arbitration agencies and notary authorities also have heavy demand for these talents; (3) these talents are engaged in translation and business, have numerous opportunities for going abroad, and can be stationed abroad long term.

Given this, the author thinks that written translation courses should be divided into two main categories: general legal translation, and specialized legal translation. The second category should mainly cover translation of legislative text, business legal text, legal academic writing, notary text, arbitration text, and legal news, etc. Of course, a powerful college can also offer other courses according to local demands. This is also suitable for the curriculum provision modes of foreign language departments, which gives priority to compulsory courses and the core curriculum of the specialties, and takes the optional courses of the translation module as supplementary (Ban, W., 2012).

**Outline of legal translation:** The content of a course aimed at systemically introducing the characteristics of legal translation should cover the terminology, texts and literary forms that have relatively intensive legal language characteristics. If conditions allow, a college can offer a course respectively for each of them.

*Translation of legal terminology:* “By the scope of use, legal vocabulary can be divided into core legal vocabulary, common legal vocabulary, law-popularizing vocabulary and daily vocabulary” (Du, J., 2004). They decrease in difficulty progressively. Among them, representative core legal vocabulary is called “legal terminology”. There are strict standards on the use of legal vocabulary. The first principle for the translation of legal terminology is accuracy and precision. To interpret a legal term accurately, one must correctly comprehend the source language and find the corresponding or most similar term in the target language. Given this, the translator should have a certain amount of legal knowledge in addition to an adequate language level so that he can correctly select the corresponding term. There are two methods of teaching translation of legal terminology. One is to annotate legal terms in legal literatures and have students memorize them. This method is time-consuming and is suitable in a limited scope in class. The other is using the large amount of time students have outside of class to list numerous legal terms and require them to search for their definitions themselves, and search for sample sentences and then translate them, by which students can accumulate the required quantity of vocabulary.

*Translation of legal texts:* Many legal texts are subject to fixed formats and fixed expressions, and are specified legally or by a special authority. When translating, any addition or deletion of any structural component or content is not allowed. Moreover, there may be stylized, formulated expressions in a legal text. Associated with a specific context, such expressions (for example, “prospectus”, “international commercial contract”, and so on) have “conventionality, reproducibility and predictability” (Li, K., & Zhang, X., 2010). Given this, when teaching the translation of legal texts, a teacher should introduce common formats and formulaic expressions as examples, and require students to accumulate fixed formats and formulaic expressions in practice as a required knowledge reserve.

*Translation of legal literary forms:* Although different legal texts are translated in similar ways (“faithful, strict, standardized, steady”, accurate, clear, and professional, etc.), they differ in literary form. For example, the literary form of legal academic writing is different from that of legislative text, which is different from that of commercial text. Given this, a teacher of legal translation should explain the differences among and principles of translation corresponding to different literary forms to students. In

short, legal translation is particular about seriousness, must be true to the original and match with the original in linguistic style.

**Translation of legislative texts:** By source of law, legislative texts of China can be divided into eight categories (constitution, laws, administrative regulations, international treaties, Special Administrative Region [SAR] laws, local regulations [including regulations of autonomous regions and the like], regulations of Special Economic Zones [SEZs], judicial interpretation and so on) laid down by law making bodies at different levels and differentiated in legal validity. Legislative texts of foreign countries are divided similarly, except for regulations of autonomous regions, SAR laws and SEZ regulations, which have Chinese legislative characteristics. Legislative comparison is a key point in legal academic research. Many foreign legal codes or representative slip laws have been or are waiting to be translated into Chinese. Given this, the translation of legislative texts is an important part of special topic legal translation. In teaching, it is necessary to discuss translating the constitutions, civil law, criminal law and administrative law of foreign countries into Chinese and translating foreign department laws into Chinese and the foreign translations of Chinese department laws.

**Translation of business legal texts:** In a broad sense, business legal texts can be divided into two categories. One is business affair texts (mainly includes letters of intent, invitation for bids, bidding documents, business contracts, and business letters). The other is business legal texts (mainly including claims on economic disputes, responses to economic dispute claims, petitions for appeal on economic disputes, counterclaims on economic disputes, execution application on economic disputes, arbitration petitions, application for notarization, and bankruptcy petitions etc.). A large amount of minor language graduates join state-owned enterprises, foreign enterprises or foreign-related enterprises. In addition, I've learned from Transn, a reputed company in the translation circles, that state-owned enterprises have a great demand for French legal translation talents in Africa, in which the translation of contracts plays a major part. Given this, the translation of business legal texts, especially the translation of contracts, could be regarded as a key point in the teaching of legal translation with independent curriculum.

**Translation of legal academic compositions:** A legal academic composition is a research-oriented text with profound legal philosophy, which distinguishes it from other legal texts. An excellent legal academic composition often offers a brand-new idea and a theoretical contribution, and is a summary of the politics, laws, ideas and cultures of a country in a specific period or a significant innovation based on such summary. To translate a legal academic composition, the translator must comprehend the meaning of the academic thoughts in the original text and the connotations behind them in their entirety and in depth, and also have a Chinese level high enough to correctly and completely express the original and its ideas with appropriate Chinese wording. "An excellent and rigorous translator can reach the standard of 'faithfulness, expressiveness and elegance' only if dedicated to time-consuming arduous practice. Chen Jiaying has translated works by Heidegger and Wittgenstein; Deng Xiaomang has translated works by Kant and Deng Zhenglai has translated works by Hayek, all spending many years or even more than a decade" (Liu, Q., 2010). These words can offer a glimpse at the hardship involved in translating academic writings. Therefore, special training for translating legal academic writing is significant for improving students' abilities to comprehend an original and express it with the target language, and lays a foundation for them to join a college or legal research institute.

**Translation of notary texts:** Notary texts consist of two parts (notarization on foreign affairs, and domestic notarization). The importance of translation for a notarization on foreign affairs is obvious. Domestic notarizations can be divided into two categories (civil legal relationship notarization, and

economic contract notarization). Anyone preparing materials for going abroad must translate the notarized documents on his or her civil legal relationship into the foreign language, and economic contract notarizations are in heavy demand for translation. According to Ms. Xifeng, Director of Sino-French Notaries Training Center, the field of notarization has a great demand for Chinese-French legal translation talents. Therefore, notarizations is a field that needs a large number of translators to join, and should be developed as soon as possible for the teaching of legal translation.

**Translation of arbitration texts:** According to whether the underlying dispute involves foreign interests, arbitrations can be divided into domestic arbitrations and arbitrations concerning foreign affairs. A domestic arbitration targets a domestic commercial dispute that arises between parties in the same country without foreign interest involved. An arbitration concerning foreign affairs targets a civil or commercial dispute involving a foreign country or foreign laws. With the internationalization of the modern economy, transnational arbitrations are often seen. International factors are playing a role more and more frequently in sources of arbitration, parties, composition of arbitration court and execution of arbitration. I have visited Beijing Arbitration Commission and learned that arbitrators, especially those of arbitration committees in first-tier cities (Beijing, Shanghai, and Guangzhou, etc.), must have a command of at least one foreign language. For legal translation talent, introducing the translation of arbitrary texts to the teaching of legal translation can lay a foundation for entering the field of arbitration.

**Gathering or translation of legal news.** The 21<sup>st</sup> Century is the Age of Internet, so applying the Internet and various multi-media technologies into the teaching of translation is a necessary method in the reform of classroom teaching of translation (Ban, W., 2012). The selected reading or translation of news and newspapers is a compulsory course in many colleges teaching foreign languages, and good effects are made by virtue of their realistic themes and contemporary wording. Providing legal news gathering or translation classes, and timely tracing the legal news sections of websites and newspapers can not only make the latest trends in legislation and the newest legal events known to the students and analyze them in depth, but also inspire students to learn more, expand their legal vocabulary and acquaint them with angles of legal analysis, so that they can creatively apply what they have learnt.

### ***Selection of Teaching Materials***

As for the selection of translation teaching materials, there are two trends in China: one is to choose the teaching materials recommended by the Ministry of Education and the second is to choose those related to the preferences of teachers, but teaching materials with a complete collection of each literary form are more commonly chosen. There are also some universities using their own teaching materials (Wen, J., 2004).

Given the fact that the minor language teaching of China is lacking of teaching materials of legal foreign languages, legal foreign language teachers of minor languages may prepare their own teaching materials, or introduce the original teaching materials from foreign countries. According to translation teachers of each language in my school, there are teaching materials for legal foreign languages in France, Japan, Russia, and Germany, etc., which could be introduced to China.

In 2001, Chantal Parpette specially proposed the curriculum design plan of FOS. The biggest difference between it and the above-mentioned one in Europe is that it has the collection and treatment of materials. “Chantal Parpette believes that we should use materials collected from real context as the teaching materials in the curriculum, which will help the students to master and use the professional French language” (Ding, S., 2012). Therefore, legal contracts, document, and legal precedents from real

context could be used as teaching materials of legal foreign language, which may make up the disadvantage of lacking teaching materials of legal minor languages.

### ***Joint School-Running***

Making use of high-quality teaching resources from foreign partners, joint school-running can improve students' awareness of foreign legal systems and languages as well as their abilities in legal translation. It is important for improving the quality of talent training. All the schools teaching foreign languages dedicated to training legal foreign language talents under universities of politics and law have signed cooperation and exchange agreements with foreign universities. For example, the School of Foreign Languages, CUPL exchanges with the Law Faculty of the University of Montreal and the Law Faculty of Montesquieu University – Bordeaux IV; the School of Foreign Languages, NWUPL exchanges with Gangneung-Wonju National University.

### **Methods of Training Evaluation**

“The subsequent follow-up evaluation is essential for the smooth completion of any project. However, it is the weakest link in international talent training at home” (Li, G., & Li, D., 2012). “As a measurement of knowledge and capacity, the professional qualification certificate system provides a reference mode for the training of talents in institutions of higher learning, and an effective method for us to strengthen the training of applied talents” (Wang, X., & Wang, A., 2008).

The national unified test, the LEC (Legal English Certificate), has been founded for the field of legal English. For the field of legal minor languages, some certificates should be introduced to examine legal practitioners' abilities in applying minor languages. For example, for French, the legal professional French certificate (B2) issued by the Paris Chamber of Commerce can be introduced as a means for the evaluation. The certificate is a language certificate, aimed at examining legal practitioners for required common legal knowledge and application of legal language. “B2” stands for the level B2 in the Common European Framework of Reference for Languages (CEF). Applicable throughout Europe, CEF divides examinees' language competence into three incremental groups: A (basic level), B (independent user), and C (proficient user). Each of the groups is divided into two levels. The level B2 means the examinee can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialization; interact with a degree of fluency and spontaneity that makes regular interaction with native speakers; produce clear, detailed text on a wide range of subjects. Only excellent postgraduates from minor language specialties can reach the level of B2. Therefore, the certificate fits well with the objective of training legal minor language talents, and can be promoted throughout the country for legal French certification.

In summary, minor language specialties have their own characteristics. When building a “minor language + law” system for training professional foreign language talents, each college should comprehensively consider the characteristics of minor language specialties, characteristics of the region and its own characteristics.

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# Court Interpreting and Judicial Justice

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**[Abstract]** *Court interpreting is of increasingly vital importance in China, where the number of foreign-related cases is on the rise with the rapid development of globalization and the further expansion of the reform and opening up policy. Seen from both the aspects of law and language, court interpreting and court interpreters are playing important roles in upholding basic human rights and the individual's equality before the law.*

**[Keywords]** *court interpreting; court interpreter; judicial justice; competence; accuracy*

## Introduction

As globalization penetrates, international exchanges have become increasingly frequent. Especially after China's entering the WTO, China has had more cooperation, as well as competition, with other countries and areas in the fields of economy, finance, transportation, industry and so on. Consequently, foreign-related disputes are unavoidably on the rise, indicating an enormous demand for court interpreting in mainland China and the significance of studying court interpreting.

Studies conducted by western scholars on court interpreting are fruitful, such as the studies on the court interpreting systems in certain countries or areas (De Mas, 1999, pp. 12-14; Nicholson & Martinsen, 1999, pp. 259-270), the analysis on the role of court interpreters and their manipulation of certain interpreting strategies (Berk-Seligson, 1990; Hale, 1997; Colins & Morris, 1996, pp. 201-211) and the comprehensive introduction to court interpreting regardless of specific judicial systems and countries (Mikkelsen, 2008). Researchers in mainland China have also done a remarkable job in introducing court interpreting systems in other countries and areas such as America and Hong Kong (Zhao & Chen, 2008, pp. 19-22; Guo, 2007, pp. 157-160), discussing the strategies and standard of court interpreting (Cao, 2012, pp. 55-60; Cai, 2009, pp. 20 & 57; Li & Cao, 2010, pp. 120-123), investigating the current situation about court interpreting in China and discussing the standardization of court interpreting systems in mainland China (Du, 2010, pp. 261-264; Wang & Yang, 2007, pp.115-120).

In this paper, court interpreting has a definition narrowed down to the interpreting service provided by court interpreters in courts to facilitate communication among parties from different linguistic backgrounds and to guarantee justice. Court interpreting, as a kind of translating activity that takes place in court and a linguist right granted to the party who does not speak the language of the proceedings, is worth studying from both legal and linguistic facets. This paper aims at discussing the relationship between court interpreting and judicial justice in the context of mainland China from these two aspects. This paper consequently consists of two parts: one striving to clarify the function of court interpreting in protecting basic human rights and the right to be tried by due process, and the other expatiating how court interpreters' performance and regulation on court interpreters serve judicial justice.

## Why Court Interpreting Counts in Promoting Judicial Justice

That all people are equal before law has been widely recognized and accepted worldwide, but to bring this notion into practice and pursue justice, however, is not an easy task. According to Gibbons (2003), language in the judicial system is marked by formality, complexity and decontextualization, and hence, a

register that enables lawyers to exert power over human behaviors. The imbalanced language power requires the supplement of language rights. Cheng (2008) remarks that three mechanisms can be exploited to compensate the inequality and unfairness resulting from the imbalanced language power, namely lawyers, linguist experts and court interpreters. Court interpreters can at least offer language equality guaranteed to non-trial-language speaking participants in court for procedural justice.

Access to court interpreting guarantees the accused's right to present in the courtroom at every stage of his trial to ensure his right to have due process protections, as well as his basic human rights to understand the content of the trial if he is not familiar with the trial language. In accordance with the Article 14 of the International Covenant on Civil and Political Rights ("International Covenant", 1976), all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against someone, they shall be entitled to be informed promptly, and in detail in a language that they understand of the nature and cause of the charge against them. Access to free assistance of an interpreter is explicitly endorsed.

In many countries, litigation and the administration of justice concerning court interpreting guarantees both entity and procedural justice. In the famous English case *Simmons v. Du Barre*, the Comtesse du Barry, who is French, was accused of being in league with the British government and was tried by the Revolutionary tribunal. The case involved affidavits given by people who were "unacquainted with the English language" and the interpretation of the affidavits given by an interpreter who had sworn that he was acquainted with the two languages concerned. The ruling of this case at length preserved the interpreted version of the affidavit written down and duly sworn to by both the deponent and the interpreter, hence having helped the development of legal interpreting in England down through the ages (Morris, 2000, p. 17).

In the United States, two cases stand out in making it a convention that the accused should linguistically be represented in the courtroom. One is *Arizona v. Natividad*, in which Jose Natividad, the defendant in this case, was charged with the crimes of possession of marijuana for sale and transportation of marijuana. The issue the defendant raised in his appeal was the failure of the court to provide him with the continuous assistance of a competent interpreter during the pretrial hearing, pretrial conferences with his defense counsel, and during the entirety of the trial, has denied him due process of law. The Supreme Court of Arizona pointed out in this case, "It is axiomatic that an indigent defendant who is unable to speak and understand the English language should be afforded the right to have the trial proceedings translated into his native language in order to participate effectively in his own defense, provided he makes a timely request for such assistance" ("*Arizona v. Natividad*", 1974). Another case was the *People v. Chavez*, in which the defendant, a Spanish-speaking Mexican national, contended that although his attorney was bilingual, the trial court committed constitutional error in failing to appoint competent interpreters for him at any stage of the prosecution, with the consequence that he was unable to understand the nature of the proceedings. The court cited Article I, Section 14, of the California Constitution: "A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." The Court of Appeals of California eventually concluded that defendant was denied his constitutional right to an interpreter when his attorney acted as one ("*People v. Chavez*", 1981).

In Chinese legal systems, the accused's right to be equally armed in language is also entitled in several laws and interpretations on laws. Article 401 of the *Interpretations of the Supreme People's Court on the Application of the "Criminal Procedure Law of the People's Republic of China"* (2012) stipulates,

“A people’s court shall use oral and written languages commonly used within the People’s Republic of China when trying a foreign-related criminal case, and shall provide interpreters for the parties concerned who are foreign nationals”. Article 262 of the *Civil Procedure Law of the People’s Republic of China* (2012) prescribes that “The people's court shall conduct trials of civil cases involving foreign element in the spoken and written language commonly used in the People's Republic of China. Translation may be provided at the request of the parties concerned, and the expenses shall be borne by them.” Article 11 of *Hong Kong Bill of Rights* (1997) also prescribes, “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him” and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

In a nutshell, court interpreting levels the playing field of each party in court, guarantees the accused’s basic human right to be linguistically equally present in court and compensates the inherently imbalanced power distribution in court, hence counting in promoting judicial justice.

### **How Court Interpreters Serve Judicial Justice**

Court interpreting intertwines with judicial justice not only in the aspect of law, but also language. Putting litigants who do not speak the language of the proceedings on an equal footing with those who do, court interpreters make communication possible despite language barriers that exist between litigants and court personnel (Mikkelsen, 2008, p. 2). There are two facets where court interpreting contributes to judicial justice through language: the court interpreters’ competence, as well as their performance, which are listed in many official codes of ethics in other countries and areas such as America, Australia and Hong Kong. To begin with, a court interpreter should acquire language skills qualified enough to facilitate the proceedings in court. According to the *Code of Ethics and Professional Responsibilities of National Association of Judiciary Interpreters and Translators* (2014), court interpreters should “strive to maintain and improve their interpreting and translation skills and knowledge”. Suffice it to say that both knowledge about language and law are essential for court interpreters to complete their work. Later on, a competent court interpreter is supposed to work in accordance with certain canons in their performance. To help the court interpreters have a comprehensive understanding of the moral philosophy of practice, many institutions and court systems have established codes of ethics for court interpreters, most of which contains the canons such as accuracy, confidentiality, and impartiality, demanding the court interpreters be qualified both in language and morality. Furthermore, court interpreters’ competence and performance alone is insufficient to promote judicial justice. Official involvement such as specific laws, regulations and institutions to regulate and supervise the selection of court interpreters and their performance in court.

Du (2010, p. 262) remarked that, court interpreters’ fulfilling of their ethics and accurately and completely rendering the information of different parties of the proceedings will contribute to the realization of judicial justice, which puts stress on court interpreters’ accurate performance in language. The court interpreters, hence, have to negotiate between their role in ensuring smooth and effective communication and the legal force of courtroom language. Canon 1 in the *Code of Professional Responsibility for Interpreters Serving in Virginia Courts* (2002) states, “Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting or adding anything to what is stated or written, and without explanation.” It is also pointed out in the commentary of Canon 1

that being accurate not necessarily mean word-for-word interpretation is the most appropriate strategies if it will distort the original meaning.

It is axiomatic that court interpreters' accurate manipulation could promote judicial justice. Synthesizing the provisions in the codes of ethics for court interpreters of NAJIT, Virginia Courts, New York State Unified Court System and the Crown Prosecution Service of UK, the following are the instructions for court interpreters to accurately manipulate language. First, the court interpreters should be accurate in the form of language without altering, adding and omitting, or explaining. Given the complex nature of courtroom language, literal interpreting is preferred to achieve the most adequate and effective communication. It is also important for court interpreters to work in the first person to better understand the intent of the speaker and to refrain from misunderstandings of any party. Second, the court interpreters should be accurate in semantics. As the code of Ethics and Professional Responsibilities of NAJIT indicates, the register, style and tone of the source language should be conserved. Either the formal words used by the judge or the derogatory remarks given by the accused should be rendered faithfully. Third, the court interpreters should be accurate in rendering non-linguist elements such as tone of voice, gestures, facial expression and body language. Mikkelson (2008, p. 50) pointed out that though parties presented in court can see the gestures made by the accused or witness, some culture-specific gestures should be explained to refrain from misunderstanding.

There are some examples reflecting how accurate language contributes to and how inaccurate language hinders the smooth and efficient communication in court.

#### **Example 1**

In a criminal trial in Hong Kong court, the suspect is accused for the suspicion of illegally possessing heroin. (Zhan, 2010, preface)

被告: 我将包白粉放咗落我个裤袋。

Interpreter: I put the pack of heroin in the pocket of trousers.”

Considering the suspect was arrested for drug possession, the court interpreter chose to interpret “白粉” directly into “heroin” and was objected by the defense attorney that “白粉” should have been interpreted in a literal way into “white powder”. According to the *Contemporary Chinese Dictionary*, “白粉” has three meanings: lead powder, lime powder used to paint the wall, and the alternative name for heroin. In this case, the judge commented that interpreting “白粉” into “heroin” conforms the intent of the accused and the fact, hence, feasible. However, if the accused was not aware of the fact that the pack of white powder was heroin, such interpretation would distort his meaning and have a legal effect, which indicates that verbatim interpretation may distort the original meaning, though it is generally held that the court interpreter should not paraphrase.

#### **Example 2**

In a foreign-related criminal tried in Guangzhou Intermediate People's Court of Guangzhou (Li & Zhang, 2005, pp. 436-503), the accused is an American who threatened his Chinese girlfriend to send her naked photos to her family and friends.

被告: Because she had promised to repay my US \$20000, I asked her to deposit the money in a bank account before deleting the photos.

Interpreter: 由于被害人主动要偿还我的 2 万美元, 我就要求被害人先将钱存到帐号中, 之后我再按照被害人的要求去做, 下一步删除裸体照片。

First, “she” was interpreted into “被害人”, which means “the victim” in Chinese. There is widely accepted ethics that the interpreter should use the same person as is used by the people he or she serves. Therefore, “she” should have been interpreted into the pronoun “她”. In addition, interpreting “she” into “the victim” presumes the accused’s being guilty, hence, indicates the court interpreter’s partiality. Second, if retranslated in a literal way, the court interpreter’s words are “I asked the victim to deposit the money in a bank account, then I will meet the victim’s requirement, and then delete those naked photos”. The court interpreter added information “then I will meet the victim’s requirement” and “naked”. Since the accused emphasized afterwards that he had never promised to delete those naked photos because he believed they belonged to his privacy, the court interpreter’s adding information would cause inconsistency and the accused would then be suspected lying.

Example 3 is cited from the verdict of the extortion case in Example 2. Since the court will announce publicly the judgment on the case, it is sometimes the court interpreters’ work to translate the verdict and interpret it in court.

### **Example 3**

**Original Chinese version:** 本院认为, 被告人史密斯无视我国法律, 以发布裸照相威胁, 勒索公民财物, 数额巨大, 其行为已构成敲诈勒索罪, 依法应该处以 3 年以上 10 年以下的有期徒刑.

**Interpreted English version:** This court holds that the Accused Smith disregarded the law of China and his conduct of extorting money from the citizens by threatening to distribute naked photos has constituted the crime of extortion and the amount involved was huge. The court holds that the Accused Smith will be sentenced to a fixed imprisonment of more than 3 years but less than 10 years according to the law.

The language of verdict is typically formal and complex with formal vocabulary and complex syntax. The style of formality is well preserved and rendered though the accurate performance of the court interpreters. The power of law and justice is hence manifested.

### **Example 4**

In the court trial of a civil case (Cao, 2010, p. 57), the plaintiff was asked by the attorney “It is you divorced your wife or your wife divorced you?”

The plaintiff: My wife deserted me.

The interpreter: 是我妻子要与我离婚。

If retranslated, the court interpreter’s words are “My wife want to divorce me”. First, the form of the plaintiff’s answer was distorted since the plaintiff did not give a direct answer to the attorney’s question. Second, the interpreter interpreted “deserted” into “离婚”, which means “divorce” in English. According to *Webster Dictionary*, “desert” has the meaning of “to no longer be with (someone) in a time of need” while “divorce” has the meaning of “to legally end your marriage with (your husband or wife).” The court interpreter distorted the intended meaning of the plaintiff by expanding the meaning of “desert” to “divorce”. This inaccurate performance will put the plaintiff at a disadvantage in court.

## **Conclusion**

Foreign-related disputes are on the rise in mainland China. In this context, court interpreting, a bridge connecting parties of different linguistic cultural background, is playing an increasingly significant role in promoting judicial justice. The research purpose of this paper is to analyze the correlation between court

interpreting and judicial justice from both legal and linguistic aspects. From the aspect of law, court interpreting levels the playing field of each party in court, guaranteeing the accused's basic right to be linguistically present in the courtroom at every stage of his trial. While from the aspect of language, court interpreters' accurate performance will promote or hinder judicial justice. Given the inherent connecting between court interpreting and judicial justice, not only the court interpreters are supposed to abide by code of ethnics, but also the country should enact specific laws and regulations to regulate the selection of court interpreters and supervision on their performance.

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# A Case-based Study of Translating Legal Terms

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*[Abstract] In translation practices and studies, legal text has been regarded as one type of text with its own special textual features and therefore, in need of distinct translation strategies. This study is intended to describe and explain the approaches of translation shifts on legal terms by focusing on the linguistic features of legal language and the functions of specific regulations and rules among legal documents. Legal terms play a crucial role in legal activity, though the “legal term” is defined and delimited diversely under different linguistic and cultural environments. Based on this situation above, this thesis presents three main origins of legal terms, translation shifts of the names of regulations and rules, as well as homonyms and synonyms in legal documents in more delicate ways with regard to both meanings and linguistic realizations, expecting to achieve a broader vision and give some suggestions for further studies on translation shifts of legal terms.*

*[Keywords] translation; legal text; legal term; linguistic features*

## **Introduction**

Legal translation is the translation of texts within the field of law. As law is a culture-dependent subject field, legal translation is not a simple task. Legal translation, as an independent subject, has drawn great attention for several decades in China. Before that, people intended to do legal translation within the field of technical translation. Thanks to the great achievement of mainland China’s reform and opening-up, China needs to study and understand the law abroad. And in the meantime, China has to make sure foreign countries get to know the Chinese law system well, which would contribute a lot to the international communication of politics, trade and culture between China and the rest of the world (Li, et al., 2007; Wang, 2006).

As Joos (1962) pointed out, the degree of formality of language application could be divided into five levels as follows: 1) The frozen style; 2) The formal style; 3) The consultative style; 4) The casual style; and 5) The intimate style. Legal language has the highest level of formalization, which is the frozen style, among the various types of language. The formalization of legal language is mainly reflected in the usage of professional legal terms. The forms of legal text are various, including law, statutes, regulations, contracts, guarantees and so on; however, all of the activities concerned are related to the imposition of obligation and conferring of rights, which indicates that in both processes of translation practice and theoretical research, legal texts have been regarded as a type of text with its own special textual features, calling for distinct translation strategies. Moreover, legal term translation is one of the most important, as well as difficult parts in the process of legal translation. The legal terms have particular definitions and functions under different linguistic and cultural environments; therefore, we cannot neglect the cultural context and the historical origins of different types of legal documents when we study legal terms. We have to pay great attention, especially with regard to the names of regulations and rules, as well as homonyms and synonyms in legal documents.

## Origins of Legal Terms

There are three main origins of legal terms: French, Latin and archaic words, among which French and Latin are the two most important sources of legal terms. French directly influenced the formation of legal English terms to a large extent during the 18th and 19th centuries (Li, et al., 2007). In 1066, the Norman Conquest took place in England, and since then, England, for the first time in the history, got a uniform law system, which was actually the rudiment of common law. Meanwhile, the Anglo Saxons, ancestors of the British, carried on the old customs of their tribes, but the customary law had such a little influence that only a small part of it got carried on. Besides the aggression of the law system, the French also applied a language isolation policy, which meant French became the official language of England, whereas English could only be spoken in private daily life. At that time, French was the only language applied in courts. During the Middle English period, because of the Hundred Years War (1337-1454) and the Black Death (1347-1351), the status of English improved and started to be used in the legal field. Although French remained to be the only official language during this big conflict, the earliest forms of a French and English mixture arose because of the request to express legal terms and the realistic features of limited English legal expressions (Garner, 1999). Many words were even totally assimilated at that time, for example: *justice* (正义), *judgment* (审判), *crime* (罪行), *plea* (抗辩), *suit* (诉讼), *plaintiff* (原告), *defendant* (被告), *attorney* (律师), *complaint* (控告), *summons* (传票), *verdict* (裁决), *sentence* (判决), *punishment* (刑罚), *prison* (监狱), *bill* (法案), *inquest* (审讯), *evidence* (证据), *slander* (诽谤), *libel* (诽谤罪), and *innocence* (无罪), etc.

Another important source of English legal terms is Latin. Latin also took the absolute dominant position during the period of the Norman Conquest. Referring to the numbers of assimilated Latin words and French words, Latin words were much fewer, but they played a significant role in the legal field just like French by maintaining the same morphology, pronunciation and meaning. A large amount of legal English terms originated from Latin directly during the Middle English period and the Renaissance (Garner, 1999). For example, *custody* (拘留), *homicide* (杀人), *legal* (法律上的), *legitimate* (合法的), *malefactor* (犯罪分子), *mediator* (调停者), *minor* (未成年人), *notary* (公证人), *prosecute* (对……起诉), *testimony* (证词), *declaration* (申诉), *advocate* (辩护人), *appeal* (上诉), *civil* (民事的), and *jurist* (法理学家), etc.

The third primary origin of legal English terms is archaic words. Although archaic words are not used in the modern English common nowadays, and are even gradually becoming an extinct language, they were still widely applied in legal English. According to David Crystal and Derek Davy, “It is especially noticeable that any passage of legal English is usually well studded with archaic words and phrases of a kind that could be used by no one but lawyers.” However, because of historical reasons, the archaic words in legal English do not really express the meaning of some specific legal terms (Garner, 1999). They are divided into two types:

1. Compound adverb, which expresses grammatical relations, and is usually composed by etyma of here, there and where with one or more prepositions as post-modifiers. For example: *hereafter* (从此以后), *hereof* (在本文中), *hereon* (于是), *hereto* (至此), *hereinafter* (在下文), *thereby* (因此), *therefore* (为此), *thereafter* (在下文中), *thereof* (由此), *thereon* (关于那), *whereat* (对那个), *whereby* (靠什么), and *whereof* (关于那事), etc. The application of those archaic words makes legal documents more formal, brief and rigorous.

2. Some common legal words, which could be used to express some general legal definitions such as *witnesseth*, *named*, *said*, *duly*, *deem*, *expiration* and so on. These words reflect the textual features of legal English in many ways.

## Translation Shifts of the Names of Regulations and Rules

Legal translation mainly covers three subjects: law, linguistics and translation. The translators should be strictly faithful to the source text and apply their professional skills to do the work, which requires that the translators not only be familiar with the knowledge of law, but also good at legal English and Chinese. It is a big challenge to translate all of the statutes and regulations correctly due to numerous complex legal terms embedded in the legal documents (Wang, 2006). For example, in the Chinese legal language, terms like “条”, “款”, “项”, and “目” have different versions in the English translation. There is not any acknowledged or agreed target text existing, so it is necessary to discuss and study on it.

In legal English, the terms that could express the meaning of “条款” are many, as follows: 1) Article; 2) Section; 3) Subsection; 4) Paragraph; 5) Subparagraph; 6) Item; 7) Clause; 8) Rule; 9) Regulation; 10) Provision; and 11) Stipulation.

Usually the word “Article” is translated into “条”. For example, there are seven Articles in *The Constitution of the United States of America*, 1789, and we can translate them in this way: 美利坚合众国宪法共有七条. Article means “A separate and distinct part (as a clause or stipulation) of a writing, esp. in a contract, statute, or constitution” (Garner, 1999, p. 106), as well as “subdivision of a written instrument; particularly a.) a subdivision of a statute or constitution, usually subdivided into sections; b.) one of the items or clauses in a contract, treaty, or other agreement” (Clapp, 2006, p. 36). Therefore, it is proper to translate “article” into “条”, which is better than “节” or others. “Articles” is another term that has different meaning and usage that we need to distinguish. On most occasions, “articles” should be translated into “条例”.

“Section” usually could be translated into “节”, and sometimes into “条” or “款”. For example, in the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, there are eight sections concluded in the second part of *Standards Concerning the Availability, Scope and Use of Intellectual Property Rights*, and there are several articles included in each section. Therefore, while “article” is translated into “条”, “section” and “subsection” should be translated into “节” and “款” respectively.

Usually the term “item” and “clause” should be translated into “目” because it is always the subpart of a subparagraph, which should be translated into “项”. The definition of “item” could be given in this way: In drafting, a subpart of a text that is next smaller than a subparagraph.

“Rule” should be translated into “规则”, such as in *Federal Rules of Civil Procedure* (联邦民事诉讼规则) and *Rules of Evidence* (证据规则), while “regulation” should be translated into “条例, 规章”. According to *Black’s Law Dictionary*, regulation means “A rule or order, having legal force, issued by an administrative agency or a local government” (Garner, 1999).

The two words “provision” and “stipulation” cannot be inter-used. Stipulation means “1. A material condition or requirement in an agreement. 2. A voluntary agreement between opposing parties concerning some relevant point”. So “stipulation” should be translated into “(契约)规定”, as in “stipulated damages” which should be translated into “约定损害赔偿金”. “Provision” means “(法律)规定” in most occasions.

## Translation Legal Homonyms and Synonyms

To achieve the requirements of simplicity and clarity, legal language has to be edited carefully in lexicon and grammar by selecting specialized vocabulary and brief sentence structures. The authority of legal texts is reflected on the selection of legal terms, so the translators should be extremely careful when translating, especially during the process of translating homonyms and synonyms (Wang, 2006).

### *To impose obligations and duties*

Source text: “人民法院有权要求当事人提供或者补充证据”。

Original target text: “A people’s court shall have the authority to request the parties to provide or supplement evidence.”

There are three main words to express “要求” in English, which are “ask”, “request” and “require”. “Ask” is not formal and official enough to be used here and it always refers to something in general. “Request” is usually used as “make a request”, which means someone at a lower level requests their superior to do something. “Require” means order or demand, so it is the most proper word to be used in this sentence. The proper target text should be like this: “A people’s court shall have the authority to require the parties to provide or supplement evidence.”

### *To indicate legal, lawful and legitimate*

Source text: “公司职工依法组织工会, 开展工会活动, 维护职工的合法权益”

Original target text: “The staff and workers of a company organize a trade union in accordance with the law to carry out union activities and protect the lawful rights and interests of the staff and workers.”

There are three homonyms to express “合法的” in English and they are “legal”, “lawful” and “legitimate”. “Legal” means “connected with, in accordance with, authorized or required by the law”, which, in Chinese, stresses that “合乎国家正式颁布的法律的, 或经法律许可的”. For example, “诉讼过程” should be translated into “the course of legal proceedings”, “法律行为” is “legal act”, “法定地址” is “legal address”, and “司法协助” is “legal assistance”, etc. “Lawful” means, “follow by the law, according to law”, and in Chinese it means “合理合法的”. For example, “合法行为” should be “lawful action”, “合法财产” should be “lawful property”, and “合法婚姻” is “lawful wedlock”, etc. “Legitimate” means “lawful, regular, reasonable”, which stresses the meaning of “合法的, 正当的” in Chinese. For example, “合法防卫, 正当防卫” should be translated into “legitimate defense”, “合法收入, 正当收入” is “legitimate income”, and “合法的宗教活动” is “legitimate religious activities”, etc. Therefore, “职工的合法权益” in the source text should be understood as “合法正当权益”, and so should be translated into “legitimate rights and interests of the staff and workers”. The proper target text should then be: “The staff and workers of a company may, in accordance with the law, organize a trade union to carry out union activities and protect the legitimate rights of the staff and workers.”

### *To formulate and enact*

Source text: “为了发展对外贸易, 维护对外贸易秩序, 促进社会主义经济的健康发展, 制定本法。”

Original target text: “This law is formulated with a view to developing the foreign trade, maintaining the foreign trade order and promoting a healthy development of the socialist market economy.”

“Formulate” means “express clearly and exactly”, such as formulate one’s thoughts or a doctrine, so it is not proper to be used as “formulate a law”. In legal English, the word “enact” is the exact word to express the meaning of “make a law or decree, ordain”. For example, “制定法律” should be “enact a law”, “制定条文” should be “enact clauses” and so on. Therefore, the target text should be as follows: “This law is formulated and enacted in order to developing the foreign trade, maintaining the foreign trade order and promoting a healthy development of the socialist market economy.”

### **Conclusion**

The above examples remind us that translating legal terms, especially homonyms and synonyms, requires a thorough understanding of the meanings, both in English and Chinese, and the translator should make sure the target texts have the same legal implication and function with the source text. As a type of functional languages, legal language’s main characteristics are professional and veracity, so the translation version should obey the most important principle of accuracy as well, keeping the texts to be clear and specific enough.

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# Examining the South China Sea Arbitration Case from the Media Discourse Perspective

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**[Abstract]** *On January 22, 2013, the Philippines brought a territorial dispute with China before an International Arbitral Tribunal based on the provisions of Article 287 and Annex VII of the United Nations' Convention on the Law of the Sea (UNCLOS). China responded to the Philippines' action by refusing to participate in the arbitration case. By interpreting the media coverage of the South China Sea Arbitration case, this paper attempts to examine how this issue was discussed by the mainstream media in both China and the Philippines, centering on four aspects: legitimacy, the purpose, the influence and the outcome of the case. The research will be advantageous to China's discourse sent to the international community on this issue, and it tries to put forward advice on how China should fight back through the channel of public opinion and win international support.*

**[Keywords]** *international arbitration; the Philippines; China; South China Sea disputes; news discourse*

## Introduction

South China Sea Islands<sup>1</sup> refer to the half-closed waters with the neighboring countries of Philippines at its East, Malaysia, Brunei, Indonesia at its South, and Vietnam at its West, and Chinese mainland at its North, consisting of Dongsha Islands (Pratas Islands), Xisha Islands (Paracel Islands), Zhongsha Islands (Macclesfield Islands) and Nansha Islands (Spratly Islands). In 1947, the Chinese government publicly released the names of all the islands, shoals, and reefs included in these waters and its nine-dash line at the same time. After the People's Republic of China was founded, the newly established government immediately claimed its sovereignty of the South China Sea Islands and recognized the nine-dash line (Zhang, 2013, p. 8).

However, the disputes on the South China Sea Islands began to arise in the 1960s and continued to increase from the 1970s to the 1990s. These have escalated into a hot potato globally when situated in the present context of China's naval modernization, and the US strategy of "returning to Asia", as well as ASEAN countries' stronger abilities to deal with their own affairs. Therefore, the rise of South China Sea came as no surprise. This has become the core dispute of China with some of the ASEAN member states. The Philippines was one of them.

On January 22, 2013, the Philippines handed a Note Verbale detailing the Notification and Statement of Claim of Nansha Islands (the West Philippine Sea) to Chinese Ambassador. The Philippines filed a plea for international arbitration against China on the South China Sea disputes under Article 298 and Annex VII of UNCLOS. The Philippines claimed to resort to international law so as to "achieve a peaceful and durable solution" to the disputes. China dismissed its claim as the response. On February 19, 2013, the Chinese government returned the Philippines' Notification and Statement of Claim through a

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<sup>1</sup> Geographically, South China Sea Islands refer to half closed waters located between north of 23°37' N and South to 3° 00' N, spanning about 2000 kilometers latitudinally, between west of 99°10' E and east of 122°10' E, spanning about more than 1000 kilometers longitudinally (Cui, 2013, p. 9).

Note Verbale handed to the Philippine Department of Foreign Affairs. Despite China rejecting the Philippines' attempt, it went on since the Philippines invoked compulsory proceedings. In June 26, 2013, the five-member arbitration panel was drawn up completely. In March 30, 2014, the Philippines submitted its Memorandum to the Arbitral Tribunal (Available from <http://baike.baidu.com>).

This paper attempts to examine how the South China Sea arbitration case was discussed by both of the Philippines and Chinese media, mainly centering on the four questions:

1. How is the legitimacy of the case presented in the media of these two nations?
2. What are the purposes of the case?
3. What is the influence of this legal case brought to the dispute?
4. What is the outcome of the case predicted in the media?

## **Literature Review**

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

Scholars at home have done many researches on Sino-Philippines disputes relating to the South China Sea, mainly from the perspective of international relations (Zhang, 2013; Qiao, 2010; Wang & Cai, 2014). Scholars abroad mainly approached the topic from the perspective of international law (Thao, 2009; Raine & Miere, 2013). However, up to the moment when this article was written, only eight researches concerning the South China Sea arbitration case have been found, all of which have been done by Chinese scholars.

Scholars Wu Hui and Shang Tao took the South China Sea arbitration case as an example to analyze how judges and arbitrators can influence the procedures, and they finally suggest that China make use of advantageous human factors within the legal framework if, in the future, China may take participation in the procedures (Wu & Shang, 2013). Xing Guangmei first looked at what basis the Philippines filed the case, and analyzed the motives of this action. Then the authors examined the legal basis on which China put forward its claims and highlighted the distorted facts the Philippines presented, and finally mentioned the potential consequences of the Philippines' action (Xing, 2013). Li and Zhou divided the Philippines' claims into three categories – claims of nullifying the Chinese nine-dotted line, claims on sovereignty of certain islands and submerged reefs, and claims of stopping Chinese exploitation activities. By raising the doubts that whether the Arbitral Tribunal had the jurisdiction over the matter and whether the submission can be legally accepted, the author thought that “initial opposition” to the Philippines' filing was the direct, active and effective way (Li, & Zou, 2014). Yu Mincai held a quite different view from Li's. He argued that China's refusal of any involvement in the arbitration might not be an ideal solution. Instead, positive participation might be a better option since “opposition to the arbitration and nonparticipation in the arbitral proceedings are unlikely to be effective in settling the matters. China has strong arguments to present to the Arbitral Tribunal that it lacks jurisdiction and admissibility over the present dispute” (Yu, 2014).

All of the scholars approached the South China Sea arbitration case from legal perspectives. It lacks studies from the media discourse perspective. It might be a good attempt to approach this as an international issue from the media discourse perspective.

### ***Why was Media Discourse Used as a Perspective to Examine this Issue?***

The power embodied by discourse can fall within soft power, a concept initially created by Joseph Nye, who attached high priority to a nation's international influence exerted by the great capacity of opinion-

shaping instead of military power (Nye, 1990). The international communication field is a battle site for national power, especially for soft power. As for any international issue, the related political or media discourses are important because they determine what can be accepted as true and why it can be defined as true. China is now ranked as the second economic power, but still does not have a big say in international affairs, even in those directly linked to national interests. We need to be aware of discourse from other powers and then transmit well-focused information and gain international support. Thus, examining this international legal issue from a media discourse perspective is highly significant.

## **Methodology**

### ***Data***

Data for this article is based on the media coverage of the South China Sea arbitration case from *China Daily* (English version) and *Philippines Daily Inquirer* (English version), including news articles, letters, comments and editorials, as well. Both *China Daily* and *Philippines Daily Inquirer* fall with the mainstream media in their countries, respectively. There has been a sea of media reports concerned with the South China Sea issue until now. Only those related to the arbitration case are subject to the research object. As for the coverage from *China Daily*, “arbitration” and “Philippines” or “Manila” as key words were typed in HLEAD with the timeframe between November 22, 2012, two months prior to the moment when the event took place on January 22, 2013, and May 31, 2014, the moment when the research was done. As for the coverage from *Philippines Daily Inquirer*, “China” and “arbitration” or “arbitral” as were used as key words. Altogether the sample for this research was comprised of 40 articles, 10 were from *China Daily* and 30 were from *Philippines Daily Inquirer*. All the searches were done in the database of *LexisNexis*.

### ***Content Analysis***

In the current study, it served correctly for the quantitative analysis of media coverage. Each article was defined as a coding unit. The coding scheme had 10 variables – news number, ID of newspapers, date, length, news sources cited, other countries or areas mentioned, perspectives to discuss legitimacy (or illegitimacy), purposes, influences, and outcomes.

### ***Discourse Analysis***

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

## **Findings**

As shown in Table 1, there were 30 news articles selected from *Philippines Daily Inquirer*, altogether with a total length of 18386 words – an average 613 words in each article, while 10 related news articles were found in *China Daily*, with an altogether total length of 7949 words, and an average of 794 words in each article. In terms of the number of words, this event has received far greater media attention in the Philippines than in China. However, some articles in *China Daily* really transmit a large amount of information, though the number of articles in *China Daily* was merely one third of those in *Philippines Daily Inquirer*. The longest article in *China Daily* had 1792 words and the shortest one with 361 words, while the longest article in *Philippines Daily Inquirer* had 1215 words and the shortest one with 166 words. The majority of the articles in *China Daily* touch upon the issues of illegitimacy of this

international legal case, the purposes of the Philippines' filing, and the right way to solve the disputes. The topics for articles in *Philippines Daily Inquirer* ranged from legitimacy of this case, their motivation, to the supporters, and the outcome prediction.

**Table 1. Media Attention to the South China Sea Arbitration Case**

Media	The number of articles	The number of total words	Average words per article	The longest article	The shortest article
<i>China Daily</i>	10	7949	795	1792	361
<i>Philippine Daily Inquirer</i>	30	18386	613	1215	166

***Legitimacy or Illegitimacy of the South China Sea Arbitration Case***

This is one of the focal points in the media articles selected. Undoubtedly, the Philippines claimed the legitimacy of filing the plea before the Arbitral Tribunal, while China recorded several fallacies to prove its illegitimacy. It is easy to detect the logic of claiming the legitimacy by the *Philippines Daily Inquirer*. First of all, they have exhausted all possible avenues for a peaceful settlement of the dispute (Dumlao, *Philippines Daily Inquirer*, 2013, January 26). One article even uses the quite misleading metaphor of God to say that it ends up nowhere for the Philippines to consult with China as “it is impossible dealing with God”. The article points out that the so-called bilateral negotiation put forward by China are based on an unfair basis with “one side insisting that you must first admit that you are the land-grabber” or the one-on-one basis of “he is right and you are wrong, and you should accept his utterance as given truths” (Quiros, *Philippines Daily Inquirer*, 2014, April 8).

Under this circumstance, the legal route has naturally become the last recourse. On one side, the Philippines think that they have the right to defend their interests, which cannot be denied by any nation; and international law is fair and impartial, which can solve this dispute peacefully and durably (Doronila, *Philippines Daily Inquirer*, 2014, April 4). As signatories to UNCLOS, the Philippines cannot see any reason why China does not participate in a dispute settlement mechanism (Dumlao, *Philippines Daily Inquirer*, 2013, January 24). On the other side, China is the second largest economy in the world and “has the naval right to enforce the decision on its own” (Torres-Tupas, *Philippines Daily Inquirer*, 2013, May 23) so that international law is the ideal route because “China, as a member of the community of nations is bound legally to accept and implement it” (Avendaño, *Philippines Daily Inquirer*, 2014, March 31).

As for the Chinese side, undoubtedly the Philippines' filing is groundless and illegitimate. The Philippines plea is based on distorted facts. The islands in the South China Sea, including the Nansha Islands have been China's territory since ancient times. The Chinese government recovered these islands and reefs from Japan in 1946 based on a series of postwar international documents. The Philippines raised no objection to China's sovereignty over the islands and reefs in the South China Sea until the moment when the United Nations predicted a great abundance of resources under these waters at the end of the 1960s. From the 1970s, the Philippines officially claimed sovereignty and brazenly occupied no less than 60 islands. The Chinese government made firm oppositions to the Philippines' occupation and demanded its withdrawal from the Chinese territory on numerous occasions (*China Daily*, 2014, April 1).

China's claiming of the illegitimacy of the arbitration case is based on three major misinterpretations of international law by the Philippines. First of all, China and the Philippines reached a series of agreements – the Joint Statement on the Issue of the Nansha Islands in August 1995, the Joint Statement Between China and the Philippines on the Framework of Bilateral Cooperation in the 21st Century in May 2000, the Declaration on the Conduct of Parties in the South China Sea (DOC) signed in 2002, the

Joint Statement of the People's Republic of China, and the Republic of the Philippines in September 2011, among all of which there is an important consensus that the two nations settle the South China Sea disputes through consultation and negotiation (*China Daily*, 2014, April 1; Chu, *China Daily*, 2014, April 11). What the Philippines did has breached the bilateral consensus and its commitments to the DOC.

Second, according to Article 286 of the UNCLOS, only if no settlement can be reached through negotiation or other peaceful means, can any party involved in the dispute resort to jurisdiction (Jin, *China Daily*, 2013, May 3). The fact is, that China has always adhered to direct bilateral negotiations with countries involved to solve the South China Sea disputes. As for the Philippines, in March 2010, China officially put forward establishing a regular consultation mechanism for China-Philippine maritime disputes, but the Philippines made no responses to the proposal (Pu, *China Daily*, 2014, March 31).

Third, the Philippines' filing is based on the 1982 Convention on the Law of the Sea. But any sovereignty dispute is not subject to the Convention, although the Philippines did not mention any sovereignty issue, the core of its claims, such as the nullification of China's nine-dotted line and its right to Exclusive Economic Zone center around the sovereignty of the isles of the Nansha Islands. Thus, the UNCLOS is not applicable to the Philippines' claims. In addition, China made a statement in 2006, stating clearly that the disputes over maritime boundaries and historical rights did not apply to compulsory dispute settlement mechanism (Chu, *China Daily*, 2014, April 11). That is to say, the Arbitral Tribunal has no jurisdiction over this matter.

Therefore, as for the Chinese side, the Philippines distorted the facts and made mistakes in legal interpretation. China stood firm to claim the illegitimacy of the Philippines' filing.

### ***Purposes of the South China Sea Arbitration Case***

To the Philippines, the purpose of the arbitration case is merely one – settling the dispute and defending its interests. The logic for the Philippines is simple and clear that China is such a superpower that the Philippines can only resort to international law for defending its interests peacefully since all the other possible initiatives have been tried and turned out to be futile. As for the Chinese side, the purposes can be diversified – political gesturing, image tarnishing, tension escalating, and sympathy earning, all of which are respectively mentioned four times, twice, twice, and four times.

Political considerations behind the Philippines' filing are categorized as internal and external factors. It is said that the President was actually playing the nationalism card, because “Aquino wants to divert his compatriots' attention from domestic problems and boost his own popularity through whipping up nationalistic sentiments in the country” (Wang, *China Daily*, 2013, July 29). The external consideration must be interwoven with the U.S. factor. The Philippines want to build itself up in the US' Asia-Pacific strategy by filing the case against China. On the one hand, the case attracts worldwide attention that may lead the U.S. to take care of the Philippines. On the other hand, the Philippines just tells US President Obama in a silent way that he still gets one card in hand to play with China, which is beneficial to the U.S. countering China in this region. “Since June 2011, the Philippines have repeatedly asked the US to explicitly include the disputed waters in the South China Sea into the defense area under the Philippines-US Mutual Defense Treaty. However, the US has been loath to give a definite reply” (Chu, *China Daily*, 2014, April 11).

As for the purposes of image tarnishing and tension escalating, several articles manifestly mentioned that ill-grounded maritime territorial claims “taint China's image in the world arena” (*China Daily*, 2014, April 1; Chu, *China Daily*, 2014, April 11). The groundless claims “muddle the waters” and provide the

Philippines an opportunity to “play up the issue of international arbitration” (Wang, *China Daily*, 2013, July 29). In addition, the Philippines simply wants to beautify itself as “the ‘good guy’ who is resorting to international law” and at the same time degrade itself as “an underdog” who is avoiding a full-scale war with China because he cannot afford it” or “a victim bullied by China” to seek international sympathy (*Philippines Daily Inquirer*, 2014, April 23; *China Daily*, 2014, April 2).

### ***Influences of the South China Sea Arbitration Case***

The Philippines’ action first turned a bilateral Sino-Philippine dispute into a sub-regional issue, then escalated it to a regional issue, and finally upgraded it to an international issue. Articles in the *Philippines Daily Inquirer* have mentioned sixteen different countries and areas. In terms of frequency, the first five are the United States (eight times), ASEAN (seven times), Japan (six times), Brunei (six times), Malaysia (five times), and Vietnam (five times).

*Philippines Daily Inquirer* mentions Brunei, Malaysia and Vietnam in the context of “other claimants” or the bitter enemies China has made (Quiros, *Philippines Daily Inquirer*, 2014, April 8; Ubac, *Philippines Daily Inquirer*, 2013, June 22). These Asian claimants are also referred in the context of ASEAN, of which the Philippines is a founding member and plots to put pressure on China under the framework of ASEAN. The Philippines is trying to initiate a sub-regional mechanism to settle the dispute and they have attempted hard to push forward the discussion of the South China Sea issue on the ASEAN ministerial and summit meetings with the aid of Brunei as the ASEAN’s rotating chair (Quismundo, *Philippines Daily Inquirer*, 2013, April 4).

Then it is immediately expanded to a region issue when it attracts the full attention from Japan. *Philippines Daily Inquirer* depicts a picture of an elder bother giving a hand to the younger one. It got closer to Japan by saying that “Japan is also locked in a maritime dispute with China for ownership of territories in the East China Sea” (Quismundo, *Philippines Daily Inquirer*, 2014, April 16). Japanese governmental officials, at different levels, from Prime Minister Shinzo Abe to Foreign Minister Fumio Kishida to Japanese Ambassador to the Philippines-Toshinao Urabe, all expressed their support for the Philippines’ action (Bordadora, *Philippines Daily Inquirer*, 2014, March 29; Quismundo, *Philippines Daily Inquirer*, 2014, April 16; Quismundo, *Philippines Daily Inquirer*, 2013, March 26).

The dispute was soon heightened to an international issue, which drew close eyes from superpowers, like the EU and the United States:

*The European Parliament has expressed support for the Philippine decision to take China before the United Nations’ (UN) arbitral tribunal to settle disputes in the West Philippine Sea (South China Sea) ... .. (Philippines Daily Inquirer, 2013, April 24).*

The Philippine media highly publicized support from the US side for the matter.

*“The members of the US congress expressed their very strong support for our efforts to resolve the situation there in a peaceful manner and in accordance with the UN Convention on the Law of the Sea (Unclos)... ..” (Philippines Daily Inquirer, 2013, January 29).*

In *China Daily*, the U.S. is mentioned only once when explaining that the Philippines’ action is to strengthen itself in the U.S. strategy in Asia-Pacific region (Chu, *China Daily*, 2014, April 11). From the Chinese articles selected, China has stood firm against escalating the bilateral issue into an international one.

### ***Outcome of the South China Sea Arbitration Case***

Strangely enough, all the Philippine articles have no optimistic prediction of this case. What is surprisingly odd is there is one article taking a pessimistic stance towards its outcome. Senior Associate Justice Antonio Carpio was cited. He believed that “even if the Philippines wins its case, there is difficulty in enforcing such ruling” since “there is a law but there is no justice” in international rule of law. He raised the question: if the case turns out to be an adverse decision for China, who would compel China to enforce this decision? There is no enforcement mechanism for the International Tribunal on the Law of the Sea (ITLOS) ruling under the United Nations Convention on the Law of the Sea. Under the United Nations Charter, the Security Council is entitled to enforce decisions of the International Court of Justice, but only act on a unanimous decision reached among the five permanent members. “China is a permanent member of the Security Council and will naturally veto any enforcement measure against itself” (Torres-Tupas, *Philippines Daily Inquirer*, 2013, May 23). But in *China Daily*, four articles among ten predict that this case is doomed to futility.

### **Conclusion**

This interdisciplinary study is carried out on media discourses about the South China Sea arbitration case that the Philippines filed against China in January 2013. Adopting the methods of content analysis and discourse analysis, the study has selected a sample consisting of 40 articles, 10 from *China Daily* and 30 from *Philippines Daily Inquirer*, and then comparatively analyzed how this issue was discussed through media discourse, since international media is very influential in shaping the opinions of the global audiences with its special effects.

There is a contradiction hidden in the coverage by *Philippines Daily Inquirer*. This case received more media attention in the Philippines than in China, in terms of either the number of reports and the length of coverage. The topics of these reports mainly centered on why the Philippines have taken this action and how the international community reacts to it. But none of the reports have expressed confidence in winning the legal case. It is worth asking the question: why do you take this channel if you cannot reach the goal? Probably doubts would be raised if settling the dispute is the goal of this action. It seems that the Philippines government cannot justify what she has done, since it is easy to detect the contradiction from the Philippines’ mainstream media coverage.

As for *China Daily*, readers can easily feel its efforts in presenting the historical evidence to prove China’s claim of its sovereignty and pointing out the Philippines’ misinterpretation of law from a professional manner. China stands firm on the sovereignty issue, as well as the response to the matter. From the media coverage, China is logically clear and legally right. Maybe it lacks something emotional. Media coverage of international sympathy may be a good weapon in the battle of public opinion. No coverage of supporters may be a problem of the press itself, but what is more important may reflect China’s position of being isolated in this arbitration case, even in the South China Sea dispute.

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# **The Study of Language and Law in the United States (2000-2014) and Its Implications for China**

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*[Abstract] The study of language and law in the United States has advanced to the areas of language and criminal law, language and intellectual property law, language rights and constitutional law, legal interpretation, and legal language. However, it has not yet become a booming enterprise. The limitations lie in the relatively small number of scholars working in this discipline and the lack of appreciation from legal professionals. These findings have implications for the development of forensic linguistics in China.*

*[Keywords] language; law; interdisciplinary study; United States; China*

## **Introduction**

With the proliferation of interdisciplinary studies, the scholarly interest in the intersection of language and law is growing around the world. However, this is a multi-faceted discipline, and the emphasis of research into language and law more or less differs country by country. For example, in Canada this research focuses on the use of the two legal languages (French and English) and is closely bound up with the science of legal translation (Mattila, 2006). In the United Kingdom, scholars have made significant headway in forensic linguistics (Heikki, 2006). In the past decade, American scholars with varied academic backgrounds have shown a continuing interest in the study of language and law. This paper, first, makes a survey on the interdisciplinary study of language and law in the United States (2000-2014). Second, it examines and analyzes achievements and limitations of the study. Finally, it discusses their implications for the development of forensic linguistics in China.

## **Major Research Areas of Language and Law in the United States**

### ***Language and Criminal Law***

Language and criminal law are the most heavily studied areas of language and law in the United States. Research topics range from false confessions and linguistic expert witnesses to speaker identification and author attribution. False confessions arising from police interrogation have been an important research topic by American scholars (Garrett, 2008; Leo, 2008). One research concluded that 14-20% of erroneous convictions in the United States involved false confession (Leo, 2008). For the causes of false confessions, scholars focused on the problems existing in police interrogation strategies. These include the presumption of the suspect's guilt, police use of trickery, lies and false evidence, confrontational and coercive forms of interrogation, and the construction of the suspect's narrative of events by the police (Kassin, 2005; Leo, 2008). Miranda warnings are regarded to be an effective shield for suspects from coercive police interrogation in the United States. But studies reveal that courts have increasingly watered down the protections provided by the Miranda warnings. Ainsworth (2008) has criticized some cases in which the judges have used hyper-literal parsings of the language of suspects who attempt to assert their rights and ignored the power asymmetries inherent in custodial police interrogation. As a result, Miranda

warnings actually serve the interests of prosecutors in admitting confessions into evidence, rather than aiding defendants in resisting police coercion (Ainsworth, 2008).

Berk-Seigson (2009) paid special attention to a false confession problem involving a suspect with limited proficiency in English (his/her native language was Spanish). She made a linguistic analysis of the excerpts from the police interrogation transcripts and revealed the problematic police interrogation tactics. Based on the analysis, she put forward three recommendations: (1) police agencies should record interrogations; (2) standard Miranda warnings in each language should be adopted; and (3) qualified and professional interpreters should be used in the interrogations instead of bilingual police officers or other untrained persons. Shuy, drawing on his decades of experience as a forensic linguistics expert, focused on tape-recorded conversations in criminal investigations. He described 11 different conversational strategies used by police in criminal investigations and argued that the police are sometimes guilty of using “conversational power strategies” in order to manipulate tape-recorded conversations and create language crimes (Shuy, 2005). In his most recent work, Shuy (2014) turns to examine the relationship of legal terms – intentionality, predispositions, and voluntariness (describing the mental states of defendants) and the language evidence in murder cases. He analyzes the language used by suspects, defendants, law enforcement officers, and attorneys from aspects of speech events, schemas, agendas, speech acts, and conversational strategies, as well as smaller language units as syntax, lexicon, and phonology. Drawing on his personal experience as an expert language witness in 15 murder cases, he explains how vague legal terminology (intentionality, predispositions, and voluntariness) can be clarified by analysis of the language.

With the increasing use of linguistic expertise in criminal and civil cases, the question of a linguistic expert witness has attracted the attention of academia in the United States (Tiersma & Solan, 2002). The linguists view it a good opportunity to apply their expertise in the field of law. The scholarship concentrates on the role of linguistic experts and the credibility of expert testimony. As the role of linguistic expert, Shuy (2002a) suggests that the most useful services a linguist can offer are in the majority of the cases simply consulting with attorneys. For the credibility of expert testimony, Conley (2005) argues that the decisive factor in the admissibility of expert testimony is the reliability of the expert’s opinion. Those who seek to appear in court as linguistic experts must satisfy not only linguists, but also judges seeking assurances of reliability. Shuy (2005) describes the tension for the linguists between being too technical and being too straightforward in their testimony. “Being too technical” may risk that the judge will exclude their testimony as confusing and unhelpful to the jury. “Being too straightforward” may also lead the judge to exclude the testimony because it does not add to the current knowledge of jurors. Ainsworth (2010a) warns that discovery rules can create traps for the unwary expert that can undermine their credibility. The linguist must resist the seductive lure of becoming a “hired gun” of the lawyers.

Unlike the linguists, some law scholars question that increased emphasis on expert linguists might also skew the criminal justice system further in favor of wealthy defendants who can afford to pay the expert’s fees (Lininger, 2007). Courts should be wary about assigning non-legal experts an enhanced role in adjudication because these experts may likely overlook many of the policies and interpretive factors that inform law’s public outcomes, and that subtle legal training and experience have taught jurists to synthesize (Golanski, 2002).

Speaker identification and author attribution are most useful in criminal cases (identifying or eliminating a suspect as the perpetrator) and copyright cases. These have been heavily studied areas of

language and law in the United States. Juola (2008) thinks the discipline of authorship attribution is quite successful; however, the state of the art had less general acceptance than is its due. The current state of the art is that when it comes to identifying people by their voices or writing styles, linguistic expertise has not yet reached that level of reliability (Solan & Tiersma, 2004).

But Solan and Tiersma further argue that continuing advances in the language sciences can solve the question of reliability. The recent development in this area appears to echo the opinions. New works on speaker identification and author attribution have come from computational linguistics (Koppel & Argamon, 2009, Koppel & Argamon, 2011) and the interdisciplinary research of linguistics and bioengineering. Based on the neurological and physiological studies on voice production and perception, Kreiman & Sidtis (2011) discuss how to recognize speaker identity from voice in legal and forensic contexts. Their book has won the American Publishers Award for Professional and Scholarly Excellence for best book of 2011 in the areas of Language and Linguistics. Based on her computational skills, Chaski (2001) developed a method known as SynAID (Syntactic Author Identification) within ALIAS (Automated Linguistic Identification and Assessment System). In this method, she parsed the sentences of each document into every major part of speech: verbs, nouns, adjectives, and so on, and then computed the ways in which each of these categories were used. When analyzing speaker identification and author attribution, she looked at the ratio of more frequent, versus less frequent, syntactic features (Chaski, 2001, 2005). Chaski (2013) further discusses three approaches for forensic authorship identification evidence: forensic computational linguistics, forensic stylistics, and stylometric computing. She also puts forward the best practices for forensic authorship identification, stating that scientifically respectable and judicially acceptable methods for author identification should be litigation independent, based on a forensically feasible “ground-truth” dataset, and be established empirically.

### ***Language and Intellectual Property Law***

The technique intensive nature of intellectual property disputes makes it a battle of experts including linguistic ones. Linguistic expertise concerns itself with trademark law, patent law and copyright law. Shuy (2002b, p. 2) regards trademark law as a form of language planning involving “the right to monopolize the use of language” and direct state intervention through the courts in the public sphere. Trademark law involves the question of language ownership and the right of one segment in the speech community “to change the rest of that community’s use of language.

In practice, the linguistic expertise is especially needed in two areas of trademark law: strength of mark and likelihood of confusion. Butters (2007) suggests that linguistic expertise may help to provide evidence for the determination of fame and the validity of the mark where genericness issues are raised by the defendants. Linguistic expertise may also help to determine the likelihood of blurring and tarnishment with respect to the phonological, morphological, and semantic characteristics of the mark. The likelihood of confusion is another area where linguistic expertise can help (Shuy, 2002). For example, the case of *AutoNation, Inc. v. Acme Commercial Corp. d/b/a CarMax* is about the likelihood of confusion. The legal issues involved in this case were (1) whether “AutoNation USA” was confusingly similar to CarMax’s “AutoMation” trademark (the name of its computerized inventory system); and (2) whether AutoNation’s slogan, “The Better Way to Buy a Car,” was confusingly similar to CarMax’s “The New Way to Buy Used Cars.” Shuy and Butters were respectively hired by both sides’ lawyers to prepare reports on the linguistic issues: phonetic similarities and differences, morpheme differences and pragmatic meaning differences (pp. 125-143).

In patent law, the ambiguity of language in patent claims is considered to be the most important problem and causes uncertainty about patent rights (Cordani, 2010). Accordingly scholars have paid a lot of attention to developing better linguistic tools to help courts understand patent claims. Bassinger (2003) argued that a balance between the public interest in clarity and the patentee's interest in property rights can be struck by overly limiting the application of the doctrine of equivalents. But Chang & Solum (2013) posit that linguistic ambiguity is not a major cause of the uncertainty in patent law today. Instead, the uncertainty most typically arises because judges have core policy disagreements about the underlying goals of claim construction.

Tiersma (2004) encouraged forensic linguists to look beyond plagiarism and start investigating copyright law. He suggested that because the similarity of one text to another is a critical issue in copyright law, a corpus-type analysis might have much to offer. But few linguists have responded to the suggestion. Two important exceptions are Shuy and Butters. Shuy (2007) identified three important issues that linguistic plagiarism and copyright violation have in common: (1) the amount of putatively plagiarized material that makes up the allegedly violating work; (2) the degree of similarity of the passages in the works; and (3) the independent originality of the works both from each other and from generally accepted knowledge or format. Butters (2012) discusses three historical developments that have created new complexities between linguistics and copyright. First, copyright law has been impacted by various technological innovations that combine spoken language with visual images. Second, the notion of language has expanded. Finally, new quantitative methodologies in author identification techniques have created controversies among forensic linguists.

### ***Language Right and Constitutional Law***

Language right is the right of an individual or a population group be taught in their own language, and of the public use of that language. Some discuss the question of language rights from perspectives of linguistic pluralism and education in the United States (Knott, 2008). However, others regard language rights as a developing form of civil rights, arguing that the First Amendment to the Fourteenth Amendment of the U.S. Constitution provides the legal basis of language rights (Del Valle, 2003).

Language right in the courtrooms – the right of citizens to require courts and authorities to use a language they clearly understand has attracted much attention. Del Valle reviews language right problems in criminal proceedings arising from interrogation, searches, plea bargains, trials, sentencing procedures and the treatment of language minorities in prison. She states the awareness for the need for interpreters and the translation of documents in criminal proceedings “seems to run relatively high” (Del Valle, 2003, p. 159). But trial courts are given too much discretion in deciding under what circumstances interpreters ought to be provided. The demands placed on judges to move cases quickly through the system and their own cost consciousness are additional stresses. The solution to the problem of the English-only courtroom is “a defendant should get an interpreter upon request” (Del Valle, 2003, p. 185).

Enforcement of “English-only” rules in the workplace is another developed research area of language right. Ainsworth (2010b) criticizes the judicial “commonsense” linguistic ideology that language is only a transparent medium of referential communication rather than a means of indexing social identity. “Ignoring the existence and functions of code-switching by bilingual individuals” (Ainsworth, 2010b, p. 243), courts can easily accept employers’ claims that bilingual workers willfully violate ‘English-only’ rules. She concludes “in the absence of explicit protection in law for linguistic minorities, civil-rights law

as currently interpreted is unlikely to provide legal redress when bilingual workers who fail to comply “English-only” rules in the workplace” (Ainsworth, 2010b, p. 250).

### ***Legal Interpretation***

Language is of inherent indeterminacy. As Hart (1961) concluded, “in all fields of experience – there is a limit, inherent in the nature of language, to the guidance which general language can provide (p. 123). The English legal language is not immune from imprecise and ambiguous expressions (Solan, 2004). Indeterminacy of language results in uncertainty of law and makes legal interpretation inevitable. Accordingly, legal interpretation, especially the interpretation of statutes, has been another important research area of language and law in the United States.

For the linguistic approaches used in legal interpretation, there are debates between textualists and intentionalists. In essence, the controversy is between those who claim that the only focus should be on the words used in statutes and those who refer to legislative history, preparatory documents and other legislation to ascertain the intended meaning of the words. Textualists usually criticize that intentionalists are simply selecting whatever tool to assist them in achieving the results they want, and the absurdity or general acceptability of results. Bix (2012) further points out there is the complication of different types and levels of intentions when determining how intentions can or should be used in interpreting statutes, and constitutional provisions. On the other hand, Intentionalists believe that in many practical instances textualism is at odds with the commonsense attitudes and lived purposes of the law’s users. Tiersma (2010) narrates the development of textualisation in four different areas of the law (wills, contracts, statutes and judicial opinions), and shows how problematic the modern view of the law as a body of published, autonomous, authoritative texts can be. He suggests reforms of backing down from the one-size-fits-all framework of textualism. Solan (2010) defends the intentionalism by analyzing the concept of legislative intent, and argues that it is neither undemocratic nor incoherent to conclude a legislature or judges having a single intent. Solan favors that in statutory interpretation judges do have the option of using legislative history and information from sources other than the text of an Act itself.

For the debates between textualists and intentionalists, the attitude of some scholars is quite positive. Solan (2010) argued that competing approaches to word meaning in statutory interpretation provide the judgment with “sufficient leeway” (p. 95) to remain faithful to the language of the statute while being consistent with their own values. Others seem more critical. Bix (2012) argues that general rules of legal interpretation cannot be determined by such theories and concludes “a better theory of language, meaning, intention, or reference will not save us from having to make what are basically moral and political choices” (p. 155).

### ***Legal Language***

Berman (2013) argues that the language of law “is spoken and heard, written and read, to bring people together, to make community” (p. 76). Like legal interpretation, legal language is another traditional research area of language and law in the United States. The Plain English Movement in the United States expanded to the field of law aiming to simplify and modernize legal language. Scholars have been advocating that the language in the law (including the legal documents, warnings and jury instructions) should be made more understandable to the public. These efforts can be found in legal writing teaching in law schools (Garner, 2013), legal writing advice for law practitioners (Wydick, 2005) and advocacy on judicial reforms (Kimble, 2005; 2012).

Due to the advocacy from scholars, jury instructions in a number of states have been rewritten, most notably California. The legalese that is traditionally used to explain the law to juries was replaced with instructions in more ordinary English (Tiersma, 2008; 2009). Scholars further argue that the efforts to render legal language more accessible to the public should be extended to expert evidence in the courtroom, and outside the courtroom, to police warnings issued to suspects who are being arrested or searched (Solan, 2010).

### **Some Comments on the Study of Language and Law in the United States**

The interdisciplinary study of language and law in the United States has achieved continuing progress in the past decade. Linguistic expertise has been utilized in criminal trials, civil cases, and trademark litigation (Ainsworth, 2006). “In some areas, such as reforming jury instructions, policymakers in the United States have welcomed linguistic advice” and that “judges have not been afraid to cite the work of those engaged in the study of language and law to justify their decisions” (Tiersma & Solan, 2012, p. 2). More important, the research of scholars (e.g. Ainsworth) challenged the commonsense mindset and usual practices in the legal community. Though most of the research works do not provide ready-to-use solutions to the problems, they do help the legal community to identify and clarify the problems themselves.

Several scholarly organizations in the United States are involved in furthering the study of language and law, including the International Language and Law Association, the Law and Society Association, International Roundtable for the Semiotics of Law, Association for the Study of Law, and Culture and the Humanities, etc. In the International Association of Forensic Linguists, American scholars also play an active role, i.e. both Solan and Tiersma have been president, and Solan is also on the editorial board of the International Journal of Speech, Language and the Law. In the Brooklyn Law School, the Center for the Study of Law, Language and Cognition has been established. In the Loyola Law School, a website ([www.languageandlaw.org](http://www.languageandlaw.org)) has been created that is devoted to the study of language and law.

Though a growing number of linguists and law professionals have begun to focus their scholarly attention on the intersection of language and law, the study of language and law, as Tiersma (2008) observed, is still a smaller one, or “remains a relatively obscure and marginal” discipline (p. 12). As an interdisciplinary research area, it is still incomparable with other substantial areas of law and economics, and law and society. It generally remains to be true that “in a vast legal literature the portion devoted to the language of the law is a single grain of sand at the bottom of a great sea” (Mellinkoff, 2004, p. vii).

What makes many linguists more frustrated is the lack of appreciation of their research from the legal professionals. Lawyers, judges, and the legal academy still have little idea about linguistics and “fail to fully appreciate” the ways in which it could be useful or illuminating to law (Ainsworth, 2006, p. 652). Mertz (2010) also argued that there is a systematic lack of appreciation among lawyers and legal scholars for the value of indeterminacy in social science findings. The discrepancy between the existence of indeterminacy in social science research and the demand for determinacy in legal decision-making may partly account for the lack of appreciation. Though indeterminacy, as to law and facts, may be unavoidable, the goal of legal work is to resolve that indeterminacy. The need for determinacy in legal decision-making may lead legal professionals to “overinterpret” the indeterminacy they find in social science studies (Mertz, 2010, p. 404). Another factor leading to the lack of appreciation lies in the different research methods adopted by scholars with different academic training. The study of language and law is a mixture of legal, linguistic, psychological, social and anthropological approaches.

Researchers with linguistic training often apply quantitative methods in their studies – for example, computational linguistics. Lawyers, in contrast, rarely research language quantitatively and measure the occurrence of word or other language elements (Heikki, 2006).

### **Implications of the Study of Language and Law in the United States for China**

As a discipline, the study of language and law (forensic linguistics) came into existence in the 1980s in China (Li, 2008). Over three decades, it has advanced to as many areas as the study of language and law in the United States, though the emphasis of research more or less differs. On the other hand, the development of the discipline in China faces similar problems as in the United States. Among those problems, the lack of appreciation on research from legal professionals is the most challenging. Few lawyers, judges or prosecutors attend the conferences and seminars on forensic linguistics and few works on forensic linguistics are publicly cited by policymakers. Almost no linguist is substantially involved in the judicial process (e.g. as a linguistic expert witness).

Some Chinese scholars have observed the problem and advocate the “practical turn” of forensic linguistics (Du, 2000; Pan, 2013). This “practical turn” also receives support among American scholars. Solan & Tiersma (2012) suggest the study of language and law should focus on themes of interest to both law and linguistics, and should focus on resolving significant problems in the practice of the law. As fruit of the advocacy, China’s first forensic linguistics laboratory was launched in Guangdong University of Foreign Studies in 2012. Currently, the laboratory focuses on forensic discourse analysis, forensic phonetics analysis and forensic psychology.

This paper favors the “practical turn” and argues that “serving the needs of the law” can be a way to improve the appreciation from the legal professionals. But “serving the needs of the law” does not require the study of language and law to substitute its linguistic research methods for legal methods. Instead, the study of language and law should continuously refine its linguistic methods and make its theoretical research better meet the demands for determinacy in legal decision making.

Now what is more imperative for academia in China is to improve the mutual understanding between linguists and legal professionals. Academia should make efforts to render the area of language and law more relevant to lawyers, judges, and the legal academy. Possible means may include offering courses on language and law to the students in law schools, offering training programs on the use of language to lawyers, and establishing scholarly organizations and holding conferences that bring scholars of language and law together. These activities can help the legal professionals understand the questions of the goals and methodologies of forensic linguistics and how this research might be utilized by law practitioners and scholars.

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# German and Romanian Legal Terminology in Bukovina

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**[Abstract]** *This paper explores the context and reasons for the extensive translation of legal texts from German into Romanian in Bukovina during the Habsburg period (1775-1918) and right after the unification with the Romanian Kingdom. According to the administrative changes in the area, there could be identified three periods of translations, during which there were specific methods and bodies responsible. This paper focuses on the translation of the Austrian codes of law and their impact on the Romanian legislation, legal terminology and juridical style.*

**[Keywords]** *Habsburg Bukovina; translation; codes of law; Romanian legislation; legal terminology*

## Introduction

As part of the reforms for the centralization and uniformization of the administration, the Emperor Joseph II introduced German as the official state language in all the provinces of the Habsburg Empire in 1792, motivating his decision as follows: “Anyone can see how many advantages there are for the general well being, when there is used only one language in the entire monarchy and it is used in all matters, how all parts of the monarchy bond with each other and the inhabitants are united by a powerful bond of brother love, and will be convinced by the example offered by the English, French and Russians” (Onciul, 1898, p. 7). In the Eastern European region Bukovina, the northwestern region of the former Principality of Moldavia, occupied by the Austrian Empire in 1775, recovered by Romania after the first world war, and divided between Romania and Soviet Ukraine by the 1940 Soviet ultimatum, the majority of the population (around 68%) was constituted by Romanians in the beginning of the Habsburg period (Stoleru, 2014). In time, this policy relaxed and other languages were recognized as official languages in the empire, among them Romanian and Ruthenian. Nonetheless, German became the *lingua franca* of the public servants, of the courts of law and later, of Bukovina’s bourgeoisie. All procedures and trials were carried out in German. Because the most spoken language in the region was Romanian and in order for everyone to have access to the legal procedures, all laws, codes of laws and decrees had to be translated into Romanian.

The present paper aims to explore the reasons for the extensive legal translations in the Habsburg Bukovina (1775-1918), delimit the periods of translations in regard to the context, translated texts and employed translators, and examine the most important translations of the Austrian codes of law and their impact on the Romanian legislation and legal language.

## The Use of German in Bukovina

German has played a very important role in the insertion of the political experience of Europe during the Age of Enlightenment in Bukovina, more exactly of Josephinism, with consequences of great importance for the entire subsequent evolution of this province. In fact, German represented the means through which the central institutions in Vienna could control and acclimatize the local population. Another means through which they exercised their authority were the Austrian clerks, who were employed to hold central positions in the administrative, judicial, military, economical-financial and cultural-educational sectors

(Schar, 2010). Because the region was a military district during the first period (1775-1786), the Austrian military personnel was of crucial importance for the administrative apparatus. At the same time, Vienna employed representatives of the Romanian nobility for inferior positions, because someone had to translate the legislation and ensure the communication and relationship between the central authority and the local population: this represented also the recognition of the importance of the local nobility. In order to improve the work within the administrative system, the Habsburg authorities also introduced fixed salaries for the Bukovina civil servants (Ceașu, 1998). The work of the translators improved, as well as the relationship between the Romanian ethnic group and central authorities. The translators represented the intellectual elite and fought for the rights of the Romanians in the region, with their political and socio-cultural activity being directly or indirectly responsible for later acquiring the autonomy of the crown land.

Right after the annexation, the local civil servants were only partly capable to deal with the new, foreign legal system, because most of them didn't know it and couldn't speak the official language. According to Ceașu (2007), only the next generation could emerge as a social class of the regional elite, which had access to a juridical and political education in Vienna and play a crucial role in gaining the autonomy after 1848. Here, in the capital of the Empire, regional nobility comes in contact with the Josephian reforms and the new, modern Western European ways of thinking that were estranged from the stiff traditions of the Ottoman Empire. Under the impact of Josephinism, the University of Vienna developed from a Jesuit and scholastic institution into a modern academic educational establishment, which saw its goal in forming an enlightened and cultivated administrative corpus, especially within the faculties of philosophy and law. Education was intended as the transformation of Romanian, Croatian, Yugoslav or Hungarian young men into enlightened citizens and devoted subjects of the Empire, and through access to studies at the University of Vienna, the local noblemen had the opportunity to climb the social hierarchy (Ceașu, 2007). Another measure was the foundation of German schools in the most important cities of the provinces of the Empire for the children of the Austrian military and civil servants, to which also the Romanian population was drawn, in order to learn to read and write in German (Zieglauer, 1899).

The official language and the process of translation constituted a more serious problem after 1787, when Bukovina (named Kreis Chernivtsi after its capital, now part of the Ukraine) became part of the Austrian constituent Kingdom of Galicia and Lodomeria and was governed from Lviv, the capital of Galicia. Nonetheless, the region was characterized by an ethnic particularity and historical life tradition different from those in Galicia, so that the emperor decided that the regulations, patents and local legislation were to be translated in Romanian in the capital of the Empire. All written or oral procedures of the local administration in German, proved overwhelming for the very few existing translators and secretaries in Chernivtsi. Moreover, the court of appeal in civil and penal matters for Bukovina were in Lviv (Schar, 2010), where again all procedures and documents had to be drafted in German.

### **Periods of Translation**

After analyzing the corpus of legal translations in relation to the historical context, this author identified three periods of translation of legal texts, which are also periods of the major administrative transformations:

1. **Between 1775, when Bukovina was occupied by the Austrian troupes and 1849**, the year when the region gained its autonomy, becoming a separate Austrian *crown land* under a *local*

*governor*. In this period, the Austrian legislation was introduced in Bukovina and translated by qualified translators, who mastered both languages, German and Romanian, and completed their law studies in Vienna.

2. **1849-1918.** The period between gaining autonomy and unification with Romania. Bukovina had its own government, which issued *Landesgesetzblatt*, a yearly publication containing all decrees and laws of the local government. *Reichsgesetzblatt*, the same kind of annual publication of the central government was also translated into Romanian, but not regularly. Responsible for the translation were committees employing fixed translators. In the first two periods, almost all legal texts were published in both languages: the Romanian version on the left page, the German one on the right page. The Romanian version was written in Cyrillic script until around 1860, when the ruling Prince of the Romanian principalities, Alexandru Ioan Cuza, officially introduced the Latin script, after a period of transition that lasted several decades.
3. **In the third period, between the unification with the Romanian principalities and 1938,** when the Romanian legislation was totally extended in Bukovina through decree-laws No. 3406 and 3735. In this period, the former Austrian legislation was partly still in force. For the task of translating, the Austrian legislation appointed local nobleman Vasile Balș (1759 in Jassy – 1832 in Vienna) by Emperor Joseph II himself, who made his acquaintance during his visit in Bukovina. Balș, who in the year 1775 was the only nobleman (*bojar*) in Bukovina who could speak several languages, including German, and studied law in Vienna, became the public servant and translator at the Court War Council in Vienna (Ceașu, 2007).

It seems that the Austrian government made enquiries in 1872 with regard to Moldavian common law a few years after the annexation: the Moldavian noblemen answered 26 questions, and the information gathered was used for the new Josephian legislation from 1787 (Berechet, 1928). This author believes that this information could also have been necessary for the translations, and the extent to which it was used for both purposes has still to be researched.

The first documents to be translated into Romanian were the land ownership documents, which were necessary in the great number of trials regarding land ownership just after the annexation (Ceașu, 2007). Because one of the main concerns of the Court in Vienna was the improvement of the peasants' fate (in order for them not to leave Bukovina and to settle in Moldavia) (Ceașu, 2007), the Imperial Patent from 1786 was issued and translated into Romanian by Balș. His activity as a translator continues with Josef II's law regarding the Bukovina forests from 1786, two tax laws, the succession patent, and laws for hunting and cadastral survey.

### **Translations of the Austrian Codes of Law and Their Impact on the Legislation of the Principality of Moldavia**

The most important translations are, of course, those of the criminal and civil codes. In order for this to happen quickly, and because after the annexation there aren't many people in Bukovina who can speak German and know the Austrian legal system, there are imported civil servants from Transylvania until the younger generation can complete their studies in Vienna and can be employed. This is why Balș requests the temporary employment of the Transylvanians Ion Budai-Deleanu, who he had met and befriended in Vienna during their studies, and Georg Oechsner.

Under the supervision of Vasile Balș, the translation of the civil code (CLP 1787) was made in an accelerated rhythm by Budai-Deleanu and published in 1787 in Romanian and German in Vienna at the court publisher and bookseller Josef von Kurzbeck, and printed in 400 copies (the number corresponding roughly to the number of localities and parishes in the province). The second part wasn't translated. Oechsner translated, in the same year, the court proceeding code, *Allgemeine Gerichtsordnung*, published in Vienna in German and Romanian at the same publisher. The text was also translated in Latin, as it was custom in those times. In the promulgation act, there was mention of the date of its coming into force, a procedure imitated later in Moldavia in the civil code of Scarlat Callimachi (RJO 1787).

Budai-Deleanu accepted, parallel to the translation of the civil code, the translation of the penal code (*Allegemeines Gesetz über Verbrechen und derselben Bestrafung*), issued on the 13th of January 1787 by Joseph II. Because the transposition of the Latin and German legal terms in Romanian caused the translator numerous terminological difficulties, the translation was finished at the end of the year and published in 1788 at the same publisher in Vienna (PO 1788). Balș writes to the High Court of Law in Vienna to indicate the difficulties in the translation of the penal code and other Austrian legal literature, deriving from the fact that there weren't proper dictionaries and a considerable number of German and Latin terms didn't have correspondents in Romanian. That means that the translator had to make use of foreign juridical dictionaries, translations of the code in other languages, laws or codes of the Romanian principalities, old juridical texts, and Romanian juridical literature published in Austria. He also had to come into contact with translators in other regions of the empire, likewise personalities of their times. Balș mentions the fact that there were previous translations of decrees that couldn't be understood by the Romanian people because of the bad translation. The remark preceded the first German-Romanian dictionary of juridical and administrative terminology written by Balș, Oechsner și Budai-Deleanu in 1787 in Vienna. The dictionary seems to have been catalogued in Budai-Deleanu's library with the title *Deutsch-Wallachisches Wörterbuch über Verbrechen* and unfortunately hasn't been found yet in any library in Romania, Austria or in Cracow and Lviv (Protopopescu, 1967). Through this project, Balș had an important contribution to the development of the Romanian language, especially of the legal terminology in a period, when at the European level, the legal terminology was already mature and the drafting of dictionaries was a common process. Along with the lexicon written and published by Budai-Deleanu later, it surely opened the way for the Romanian legal dictionaries from the beginning of the 19<sup>th</sup> century, for example the juridical dictionary by Christian Fletchenmacher and Anania Cuzanos published in Iași in 1815 (Fletchenmacher & Cuzanos, 1815).

In 1804, the proposal of the court counsellor Reichmann was accepted to introduce the new criminal code from 1803 in Bukowina. The translation employed Toma Moldovan, a translator of the government in Lviv, and for the revision Budai-Deleanu, who in fact had to re-translate the text, as he himself stated (Protopopescu, 1967). The penal code was published in Chernivtsi in 1807 into two volumes (CPL 1807; CPG 1807). The translation was much appreciated in Lviv and Chernivtsi – this is the reason why the translators were appointed for further works. In comparison to the former translations, this one is proof of the enrichment and clearing of the Romanian legal style and also of the evolution of the translator. In 1815, a new edition of this penal code appears in Vienna, with an annex at the end of every part containing new regulations and an alphabetical register of 366 pages with the main terms used in the entire work, which unfortunately wasn't translated into Romanian.

This code served as a model for the first original Moldovian penal code from 1820-1826, *Criminaliceasca condică* (CC 1820-1826), although the two commissions, the first from 1820 and the

second one from 1825, made out of noblemen entrusted with the drafting of the text, mentioned as sources only old Romanian laws and the common law. The Moldavian code is structured in the same way and has mainly the same content as the Austrian one, leaving out what didn't apply to the Moldavian reality or introducing new chapters (Berechet 1933). The punishments are also adapted to the Romanian reality and customs. The Moldavian authors drafted the code in a more laconic style and localized the facts (Berechet 1928a).

The new civil code (*Allgemeines bürgerliches Gesetzbuch*), which constituted a real breakthrough in the modernization of the juridical thinking from 1811, was the result of a ten years work of the professor Franz Aloys von Zeiller, and was based on the principles of the natural law, thus leaving out the norms of the rationalist philosophy characteristic of the previous civil code. Of course, the code had to be translated in the languages of all provinces of the empire. It was translated only one year later into Romanian by the same translators and published into three volumes at the court publisher Peter Ekhard in Chernivtsi (CLPO 1812), in what the translators and scholars, in the beginning of the 20th century, thought to be a pretty stodgy translation (Rădulescu, 1970). The difficulties in the translations are highlighted by the fact that the official translator, Moldovan, claimed a special recompense for the translation, taking into account the fact that the Romanian grammar was very hard and there weren't exist proper dictionaries. He requested a promotion or a considerable sum of money. The Galician government granted him the payment, appreciating the translation as being tiring, but nonetheless excellent, after the text was verified by the juridical and administrative circles in Lviv and Bukovina by Romanian-speaking jurists (Protopopescu, 1967). The Romanian edition follows the original one with its division into three volumes (corresponding to the three main contents: persons, goods and obligations) and special paging for each volume. At the end of the Austrian edition, there is a very detailed alphabetical register of the content of the three books, actually of the terms and concepts of the civil law, which wasn't translated into Romanian. After its application was extended also to Hungary, Transylvania and Banat in 1852 and 1853, the civil code was reedited in 1853 with slight modifications (changes to be applied to the inhabitants in Transylvania with regard to the orthodox, Jewish and military marriage, intellectual rights and emigration), translated into Romanian (also the register) and published between 1856-1860 in Romanian and German in three books in Vienna at the court and state publisher (CCA 1856-1960). This civil code was in force in Bukovina until 1938 and was re-translated into Romanian in 1937. In the foreword there are stated the reasons for the new translation: the older translations weren't clear, the original text not being exactly translated, were indebted to the German text and written in an aged, clumsy and sometimes confusing language. One had to resort to the German or Hungarian texts. The text aimed at the unification of the Romanian legal terminology, by making use of previous translations and Romanian laws, for example Callimachi's civil code from 1817 (CCAC 1937). The proposed translation aimed at a language, which could be understood by the jurists; while at the same time its meaning remains as close as possible to the original. The translators also made reference to special laws, some of them even being annexed to the text. Great importance was given to the jurisprudence of the High Court of Cassation, a fact which wasn't taken into account by the previous translators. The unification of the Romanian legal language meant for the translators was also a big step towards the unification of the legislation, achieved only one year later. The difficulties in the translation were constituted by the fact that the penal code had been written approximately 150 years before by people with a different mentality, in a legal language that wasn't mature yet.

Scarlat Callimachi and Andronache Donici organized, in the Principality of Moldavia in 1813, a commission of adopting legislation according to the state of rights. In this commission there were also Christian Flechtenmacher, who studied law in Vienna, Gheorghe Asachi, the founder of the first Romanian technology center, and Ananis Kusanos. The commission issued a new civil code in a few years, deriving 4/5ths from the Austrian civil code, and the other sources being the Byzantine Emperor's edicts, Andronache Donici's textbook, and the French civil code. The Austrian code was not directly mentioned in the promulgation act, the ruler making reference only to the new European codes. Although the Moldavian code was inspired from the Austrian one, which had 1502 articles, it had a total of 2044 articles, with the Austrian ones being segmented in two or three sections. The Callimachi code also contained 81 commentaries, including explanations to the articles and historical details. Some of the commentaries were, in fact, extracted from the doctrinaire works in which the Austrian code was based. As in the Austrian code, the Moldavian has both editions, the one in Greek and the one in Romanian, a summary of the paragraph on the margin of the page, to enable the finding of the matter (Berechet, 1933). Although the French culture and the values of the principles of Napoleon Code's (1804) had a great influence in Moldavia, the commission used the Austrian code as the source because it was based on the Byzantine legislation more than any other new European code. If the authors had used the French code as source, it would have been a too large a gap between the old juridical Romanian ideas and those of the French world. Such a mistake was made by Petru Manega in Bassarabia, who issued a new civil code after Code Napoléon, and who was then removed from his position because he didn't take into account the local laws and old customs (Berechet, 1933). The Moldavian commission is also responsible for the new codification of the private matter, respectively the penal matters. The example was followed also in Bucharest in the next decades. The influence of the Austrian legislation is also evident in the activity of the jurist Flechtenmacher, who, after he finished his studies in Vienna, became the first professor of law at the institution, which later became the first university in Romania: the Alexandru Ioan Cuza University of Iași.

### **Conclusion – The Impact on the Romanian Legislation**

The implementation of the Austrian laws, based on the Josephian principles, in this area had a great historical, cultural and linguistic impact, not only on Bukovina and its local population, but also on the Romanian principalities and their legislation. In Bukovina they helped improve the conflictual relationship between the central authorities and the local Romanian people. The jurists in Moldavia and Valachia have followed the Josephinian works attentively, to which they had access through the translations, and now try, as far as possible, to adapt the principles of the modern legislation to the local reality.

The translations of the Austrian laws convey the levels in which the process of modernization unfolded itself, from functional differentiation and socio-communicative rationalization to the specific relation between the center and the peripheries, and between the metropolis and the province. The reception of the translations and the additional works in the Romanian principalities constituted a condition for the emancipation from the penal practice of the Dark Ages, common in this area and these times, as well as from the class justice, and led eventually to the integration of the Romanian principalities in the Central European juridical thinking and to the introduction in 1895 of the private law oriented after Code Napoléon.

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# **Comparative Study on Hedges in Chinese and American Courtroom Discourse**

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***[Abstract]** This study mainly compares hedges in both Chinese and American courtroom discourse through two frameworks, the revised hedge model as an analytical framework and speech act theory as a theoretical framework. After data collection and analyses of the transcripts of 80,000 words in Chinese and 80,000 in American, this study shows some interesting differences, including modal verbs, rounders and epistemic evidential verbs, discusses them from their functions from the perspective of speech act theory and endeavors to explain them from different judicial culture and judicial procedures.*

***[Keywords]** hedges; courtroom discourse; Chinese courtroom; American courtroom*

## **Introduction**

Hedge, or hedging, has been a research topic in linguistics for over thirty years. Lakoff initiated this concept “hedges” as “words whose job is to make things fuzzier or less fuzzy” (1972), identifying the beginning of all researches on hedges and trying to form a formal semantic approach to hedges. However, this definition is less than satisfactory because of its vagueness, and it is also somewhat a hedge. Bussmann defined hedges as the “means for indicating in what sense a member belongs to its particular category” (2000, p. 205). This is more concrete and is less puzzling.

Researches on hedges in the primary period were relatively from a more formal and semantic perspective, only in words and expressions, or just from a pragmatic and discourse analysis perspective. However, then studies in hedges were genre-based with the extensive studies of LSP (Language for Specific Purposes) text, showing a multi-level and multi-dimensional trend (Myers, 1992; Rounds, 1986; Salager-Meyer, 1994; Hyland, 1998).

In these studies, hedges were identified as the strategy showing particular relationships within people’s communication, like oral communication, writing, or even communication in legal language, that is, forensic linguistics. Some findings from the courtroom discourse analyses indicated that hedges, or hedging, are frequently used, especially in lawyer’s arguments (Brown & Levinson, 1987; Lakoff, 1989; Lind & O’Barr, 1979; O’Barr, 1984).

Apart from these analyses of English courtroom discourse, Liao Meizhen (2003) showed his analyses on Chinese courtroom discourse. Later, data collections had more concentrations on American courtroom discourse rather than Chinese, or only on Chinese data rather than to hold a comparison study. From the review of all studies in hedges or hedging, it’s rare that a study holds a comparative discourse analysis from both American and Chinese courtroom discourse.

This study mainly compares hedges in both Chinese and American courtroom discourse, and endeavors to explain the differences from different judicial culture and judicial procedures.

## Theoretical Framework

A scientific analytical framework could bring benefit to the entire research. Many classifications of hedges are indicated as models to have analysis of specific language, including Prince, et al.'s (1982) and Hyland's (1998) classification. However, since their models are based on the written academic language, in legal language, even courtroom discourse, some changes are necessary. Since the courtroom discourse is based on the dialogue conversation, this study changes it from being writer-oriented into speaker-oriented and reader-oriented into hearer-oriented; it also equalizes speaker-oriented hedges with Prince, et al.'s shield, as these two have the same boundary. Therefore, analytical framework of the present study is a new framework, which shows as following.

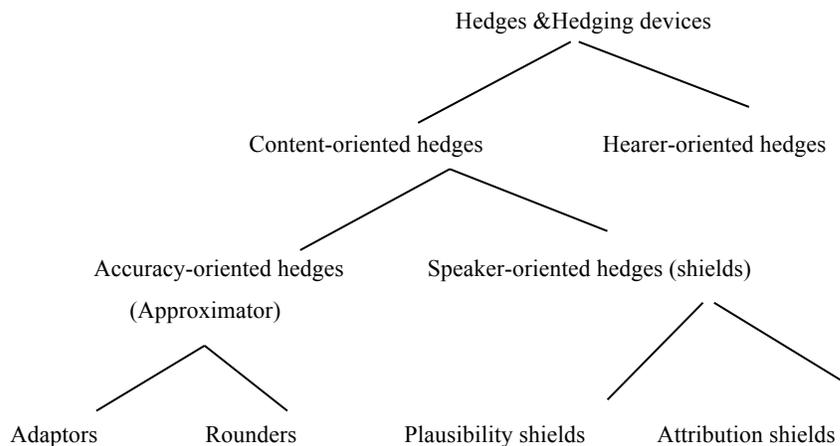


Figure 1. Hedge Model in the Present Study

## Methodology and Data Collection

Corpus linguistics is a methodology for studying the use of language, and a corpus-based approach is a bottom-up approach that looks at the full evidence of the corpus and analyzes the evidence with the aim of finding probabilities, trends, patterns, or the co-occurrences of elements, features or grouping of features (Teubert & Krishnamurthy 2007). The corpus search employed in this study is word frequency profile to hold a comprehensive and objective comparison. The corpus of Chinese courtroom discourse is based on two transcripts of two criminal cases, of about 80,000 words. At the same time, this study uses the transcripts of the Simpson trials as the American corpus, also about 80,000 words.

In this study, hedges or hedging devices are discussed from the aspects of lexical and syntactical, or non-lexical features, which are frequently used including modal verbs, disjuncts, epistemic verbs, phrases, tag questions, hypothetical conditionals, and the like. Table 1 summarizes all categories of hedges or hedging devices, classified by the hedge model the present study has discussed above. Within the table, some percentages of hedges of each category in Chinese and American discourse are shown, indicating some differences apparently.

**Table 1. Percentage of Each Item of Hedges**

Subjects					Chinese Percentages	American Percentages	
Hedges & Hedging Devices	Content-oriented hedges	Accuracy-oriented hedges	Adaptors	Modal verbs	10.48%	22.41%	
				Disjuncts	1.90%	4.32%	
			Rounders	7.78%	19.07%		
		<b>Total</b>				<b>20.16%</b>	<b>45.8%</b>
		Speaker-oriented hedges	Plausibility shields			15.87%	14.7%
			Attribution shields	Epistemic evidential verbs		35.40%	6.30%
	Direct quotations			2.06%	4.69%		
	<b>Total</b>				<b>53.33%</b>	<b>25.66%</b>	
	Hearer-oriented hedges	Appealing to hearer's knowledge				3.17%	5.89%
		Tag questions				15.71%	13.96%
		Hypothetical questions				7.63%	8.69%
		<b>Total</b>				<b>26.51%</b>	<b>28.54%</b>
	<b>Total</b>					<b>100%</b>	<b>100%</b>

**Analysis on Hedges in Both American and Chinese Courtroom Discourse**

Table 1 shows some differences existing in the variability of hedges or hedging devices, including modal verbs, rounders and epistemic evidential verbs. All of these, a greater difference of more than 10%, will be discussed in this research and attempt to provide an explanation from both judicial culture and judicial mechanism.

**Modal Verbs**

Modal verbs or epistemic modal verbs in some comments of Prince, et al.'s model have numerous researches in the description of this concept (Greenbaum & Quirk, 1990; Halliday, 1970; Leech, 1987), with some in modal verbs and some in modality. Hyland (1998b) made modal verbs like the modality of social and natural laws, and those concerning hedges as epistemic modality. Data shows people endeavor to express their own propositions through modal verbs. However, some interesting data are shown as follows.

**Table 2. Modal Verbs**

Modal verbs		Percentages	
Chinese	American	Chinese	American
应该、应当、应	should	63.64%	7.37%
可以	could/would/might/may	34.84%	91.18%
必须	must	1.52%	1.45%

Modal verbs stand as part of attribute accuracy-oriented hedges, enabling a speaker to distinguish how far a result approximates to an idealized state, specify more precisely the attributes of the phenomena described (Hyland, 1998b). Quantity variation occurs in “should” and “could” with specific reasons. “Should” means orders or obligations or responsibilities towards particular person.

**Example 1** (from Chinese data)

Judge: Don't say things about XXX. One more reminds, agent ad litem.

Agent ad litem: Objection! First, why I have objection, it is cross-examination...

Judge: If you have more, I'll write down your name...

Agent ad litem: Ah, you should write down the reason of my objection together. This question is asked by police, since he thought it is related with the case. I also think like this, but the prosecutor thinks they have no relation. Why do we judge cases based on prosecutor's saying? Cut off all words you don't like. You should let us say what should say in the court based on law, freely. That's the harmonious society....

(Translation by the author)

The subjects use modal verbs to express their statements within a more vague or invisible accuracy towards a particular proposition, indicating their real consciousness. Here, this somewhat breaks the usual rule that judges hold the largest power in Chinese court. The judge first has a threat to this lawyer, in which an illocutionary act is that something bad will occur to the lawyer if you still have objection while perlocutionary act is the refusal of this lawyer if he expresses to the judge that he should let him talk. These indications show the discrepancy between subjectivity and the logical assumption.

As overpower situations are shown between judges and lawyers, the deeper contradiction in the Chinese courtroom is that the judge wants to maintain his status and the lawyer wishes to have more speaking rights. American courts keep adversarial courts, which rarely have contradictions between lawyers and judges, since the two opposing parties have arguments showing more contradiction between them.

**Rounders**

Rounders are another kind of accuracy-oriented hedge in hedge analyses helping to achieve communication goals. As precision is the key feature in legal language, some vagueness in exact number could be acceptable in that absolute precision is just an ideological pattern. That is to say, the existence of rounders is not to make utterance more unclear, but instead more precise. This is the reason for its high rate in the American courtroom.

**Example 2** (from America data)

Mr. Darden: In your opinion, how many size extra large, brown in color, Aris Isotoner leather light gloves would have been sold by Bloomingdales during 1990?

Mr. Rubin: Between 200 and 240 pairs.

**Example 3** (from America data)

Bailey: How long did you spend looking around the area of the air conditioner?

Fuhrman: I would say a couple minutes, but I had to bring it down to minutes, two or three minutes.

These conversations happened between attorneys and witnesses (both own and hostile witness), which shows good cooperation for a better and reliable testimony. These two answerers, who proved the evidence, have an initiative willing to give a more accurate measurement to the attorneys. As known to all, many evidences are given by witnesses, and most are shown voluntarily or initiatively, since attorneys

have the responsibility to ask for or show evidence in examinations and cross-examinations. However, this holds great difference in the Chinese courtroom, or the Chinese judicial procedure.

**Example 3** (from Chinese data)

Prosecutor: ... The first evidence is a group of testimony, including the eight testimonies of WU Qianqian, ZHANG Hui, ZHENG Yuanzhang, SUN Jinxu, SHI Linyun, CAI Debao, ZHAO Feng and JIANG Xielao. WU Qianqian’s testimony is from Page 1 to Page 16 in Volume seven, ZHANG Hui’s from Page 18 to Page 26 in Volume seven, ZHAO Feng’s from Page 86 to Page 89 in Volume seven and JIANG Xielao’s from Page 91 to Page 94 in Volume seven. ...

(Translation by the author)

The hedge, “from...to...”, over 80% in rounders, simply shows the obligation for prosecutors in China to collect and show evidences because of rare witnesses. Compared with the conclusion discussed above, the difference between “voluntarily showing evidence” and “compulsorily showing evidence” could be found in the judicial distinction in the two countries. Prosecutors must ensure the evidence’s accuracy and effectiveness that this kind of hedges is of necessity. More witnesses could be found in American trials, and showing more witnesses are needed in Chinese trials in order to promote more vitality and less rigidity in the Chinese judicial situation.

**Epistemic Evidential Verbs**

As noted by Hyland (e.g. 1996a, 1996b, 1998a, 1998b), epistemic evidential verbs are generally used to hedge evidentiary justification, either based on the reports of others the evidence of the writer’s senses or the feasibility of matching evidence to goals (Cui, 2013).

**Table 3. Percentages of Epistemic Evidential Verbs in Both Courtrooms**

Epistemic Evidential Verbs		Percentages	
<i>Chinese</i>	<i>American</i>	<i>Chinese</i>	<i>American</i>
证明、证实	(sth.)shows	26.90%	23.85%
根据、鉴于	according to	18.38%	3.5%
(某人) 说、提到	(sb.)says	54.72%	10.17%
像、好像	appear/seem/ look(like)	0%	62.48%

Percentages of “(sb.) says” and “appear/seem/ look (like)” are rather different, but they do have the same function or aim in both courtrooms, as discussed in the following.

**Example 4** (from Chinese data)

Prosecutor: In your former testimony, you said that the man, the walker, has pulled up. Why is that different with your saying today?

HUANG Biao: Because FEI Liangyu (defendant) said, pulling up can reduce, law...

Prosecutor: You mean, the action of pulling up can reduce something?

HUANG: It can reduce this...

Prosecutor: Reduce the accident responsibility, yes?

HUANG: Reduce the accident responsibility....

(Translation by the author)

The two “said” in Example 4 have totally different functions. The “said” by prosecutor has the meaning that what HUANG had mentioned has some new unintentional doubts; while the one by HUANG, the witness for the defense, is the result of a range of prosecutor’s logic questions. The speech act theory holds a sub-concept of indirect speech act, to an indirect relationship between a structure and a function. The question by the prosecutor has a question structure with a directive function, showing the speech acts that the prosecutor uses to force the hostile witness to tell truth, or a more objective perception. And HUANG’s “said” could have the explanation of the hostile witness’s self-protection behind his so-called objective words, which are consistent with the function of attribution shields, the upper subject of epistemic evidential verbs, to shield the speaker’s personal responsibility through reasonable perception or apprehending.

**Example 5** (from America data)

Ms. Clark: As you seems, what happened next?

Mr. Park: He carried down what looked like a Gucci bag with him that folded in half, seemed to be some type of garment bag. He came out and set that on the ground next to the bags, from what I remember, and from there I picked up and put that into the trunk. At that time I seem to remember he walked over to the cars.

Ms. Clark: Really. But...

Mr. Park: Actually, however, ...

The hedge in Example 5 from American courtroom is quite similar with Example 4. The “seem” by the attorney is to force the witness to give a more objective statement and the two “seem”(s) by the witness are to make so-called perceptions. Therefore, “(sb.) says” and “appear/seem/look (like)”, is the strategy of the same functions and effects, even though the words meaning “seem/look like” are nearly forbidden in the Chinese courtroom, because these words can be defined as the uncertainty of a memory or evidence by taking more unreliability and incredibility from the judge.

### **Conclusion**

Hedges are multi-functional. They can convey a range of particular meanings from particular speakers in particular contexts. This study mainly explores of the comparative study on hedges in both Chinese and American courtroom discourse through two frameworks, and revises the hedge model as an analytical framework and speech act theory as a theoretical framework. After data collection and analyses of the transcripts of 80,000 words in Chinese and 80,000 in American, this study shows some interesting differences, including modal verbs, rounders and epistemic evidential verbs.

More modal verbs usage in America indicates the less contradiction between judges and attorneys, since more distributions could be found in Chinese because of the power discrepancy between judges and lawyers. More rounders in the Chinese courtroom express the burden of evidence mostly carried by prosecutors instead of witnesses in America; China needs more energetic and vital procedures for more witnesses. Two epistemic evidential verbs,“(sb.) says” in China and “appear/seem/look (like)” in America, are the strategies of the same functions and effects for lawyers to force witnesses to give more objective statements and for witnesses to make so-called perceptions. These conclusions show hedges as a new perspective to analyze the different judicial cultures and judicial procedures from China and America.

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# The Characteristics and Translation of Legal Terms in English and Chinese

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**[Abstract]** *This paper discusses the characteristics and translation methods in English-Chinese legal jargon. First, it introduces the concept of legal professional jargon, and then it moves on to the different characteristics between English and Chinese legal jargon, as well as their translation methods. Mastering the characteristics and ways of translation of legal jargon has been becoming an inevitable and necessary requirement in 21<sup>st</sup> century law study.*

**[Keywords]** *legal; jargon; characteristic; literal; free*

## **Introduction of the Concept of Legal Professional Jargon**

Legal professional jargon are playing an ever-increasing role in the mutual communication between the law affairs in both the East and West. Hence, when it comes to jargon, it is referred to technical words and expressions that are used mainly by people who belong to the same professional group and thus, are difficult to understand, such as “the accident liability assessment” and “adjustment flow” in transportation, “fractionation”, “solution” and “hydrolysis” in chemistry, or “complication” and “clinic diagnosis” in medicine. Professional jargon is one of social dialects in the society, which is created by all industries to adapt to their special demands. Professional jargon is used in a more extensive range, even including the terms of all kinds of sciences. Instead, the technological term is the special usage in different industries, representing the concept of scientific technology. Thus, people can master the concerned knowledge and promote the advancement of learning by such scientific terms. Like other industries, law also has its own special professional jargon, like “bail”, “mailbox rule” or “tort”, etc. As the disciplined and dignified nature of law, its professional jargon used in legislation has the following features, like precision, being explicit, fixed usage, and particular explanation. Therefore, we refer to such terms with professional legal features as the legal professional jargon.

As a kind of association jargon, compared with other associations, law language has its own professional vocabulary to a large amount and wide extent. It consists of legal professional jargon, the common words in lawsuits and other basic and non-basic words in native languages, among which, the legal jargon is the important constituent in the words system of law languages.

## **Characteristics between Chinese and English Legal Professional Jargon**

Legal professional jargon, compared with other basic or non-basic words used in the native languages, have professional characteristics, which can be concluded as follows:

### ***Monosemy in Words' Meaning***

In one academic field, one jargon can only be used to express one concept, and one concept can only be expressed in one jargon. That is to say, the most noticeable feature of all the scientific jargons lies in its

single and fixed meaning of words. The Chinese and English legal professional jargon is the same from the above perspective. Hence, when we begin to use these jargons, we must have the same explanation to one jargon under any circumstance. The monosemy of legal professional jargon can be seen from two sides. One is, each professional jargon conveys one particular legal concept, which cannot be replaced by any other words. For example, in English legal professional jargon, the word “negligence” cannot be replaced by the word “mistake”, the word “battery” cannot be replaced by the phrase “personal attack”, the word “exhibit” cannot be replaced by the phrase “object proof”, and the word “sentence” cannot be replaced by the word “judge”, etc. The other is, one legal professional jargon, even though it belongs to multiple meaning words in the native language, once it is used in law as professional jargon, it can only retain its only one meaning. For example the word “proceed” has multiple meanings in the dictionary as follows: 1) to continue to do something that has already been started; 2) to do something next, used especially about something annoying or surprising; 3) formal to move in a particular direction; 4) to begin a legal case against someone; 5) formal to happen or exist as a result of something. As the legal professional jargon, it can only adopt the fourth alternative meaning. The single and fixed meaning in Chinese and English legal professional jargons is determined by its own characteristic.

### ***Correspondence in Meaning***

The correspondence in meaning refers to words in legal professional jargon that have contradicting meanings to each other, that is to say, from the logic sense, each word expressed in the legal professional jargon is in the relationship of contradiction or opposite, such as “general” and “particular”, “upward” and “downward”, etc. In the native language, such words, with the contradicting or corresponding meanings, belong to extent of antonyms. In law language, we refer it to as corresponding words. Such a name is used to express all kinds of contradicting legal relationships to each other, through a group of words with contradicting meanings or opposite legal actions. In legal professional jargon, English and Chinese have the same usage. For example, plaintiff- defendant; higher number - lower number; discharged bankrupt - undischarged bankrupt; ordinary creditor- preferential creditor; and creditor- debtor, etc.

Such corresponding phenomenon in legal professional jargon is endowed by the nature of legal affairs, because the objects in legal affairs are always in the contradicting and opposite sides. Such as “behavior and victim” in the criminal cases; “plaintiff and defendant” in civil cases; and “Part A and Part B” in an economic contract, etc. Hence, it is inevitable there are a large number of corresponding words existing in legal professional jargon.

### ***Variety in the Usage***

The variety of legal professional jargon is referred to as the different usage of some jargon, compared with other ways of language usage in the native language. For example, in Chinese, we have such kind of legal jargon, like “Bu Zuo Wei (not behave)” and “Bu Neng Fan (not commit)”. From their structure, they all belong to the verbal phrase. “Bu (not)” is used to modify the verb “Zuo Wei (behave)” and “Fan (commit)”, which has no difference with the Chinese phrases like “Bu Xiao (not laugh)”, “Bu Zou (not move)” and “Bu Neng Kan (not look)”. But, in the native language, “Bu Xiao (not laugh)”, “Bu Zou (not move)” and “Bu Neng Kan (not look)” belong to verbal phrases, which can be used as a predicate in sentences, while in the law language, “Bu Zuo Wei (not behave)” and “Bu Neng Fan (not commit)”, as the legal professional jargon, no longer belong to verbal phrases, but they play the noun functions in law concept, and are often used as subject and object in the sentence instead of the predicate. Of course, there

is also the same phenomenon in English, but with fewer cases compared to the Chinese. For example, in the legal jargon of “not guilty”, “guilty” is an adjective, so “not guilty” is used by a negative adverb to modify an adjective, which can be used as predicative clause, but in legal professional jargon, “not guilty” is just a phrase, which can be used as subject or object in the sentence:

*Murray has pleaded not guilty to involuntary manslaughter in Jackson's death. Police said Murray gave Jackson an overdose of the anesthetic propofol.*

The above listed usages in legal jargon is contradicted with the Chinese native language, which is one kind of variety in the usage of legal professional jargon.

### ***Synonymity***

Synonymity refers to the words that all belong to one particular category in meanings or logics, which is another important characteristic in English and Chinese legal professional jargon. For example, the words “wind, cloud, snow, rain and ice” all belong to the meteorological phenomenon. Synonymity is classified by the concept. Generally speaking, such words can be classified into the superordinate concept, and all the words with the same superordinate concept respectively represent several concepts in one superordinate concept. For example, “crime” is one kind of superordinate concept, and people can divide it into many different kinds of crimes in the branches, which in turn, are named as a subordinate concept.

There are many synonymities in legal professional jargon, because the law faces the entire society, and adjusts its legal relationships with its subjects on all the civilians, corporations, organizations and associations. The concepts used to express these legal relationships must have a bigger or smaller extent. When we are using these concepts, we need to classify them into different attribute parts from different angles and levels to clarify their extent fields. Then we can make it definite by adding adequate words, so as to avoid any enlarging or shrinking in understanding. So we have the superordinate and subordinate concepts belonging to the different levels, thus, the words used to express these concepts belong to the synonyms on different levels.

### **Translation between English and Chinese Legal Professional Jargon**

No matter whether it is the translation principle of “Faithfulness, expressiveness and elegance” advocated by Yan Fu, one of the greatest translators in contemporary China, or the present principle “accuracy and smoothness”, all of their purposes can be concluded into the same; that is to transform the source language into a target or receptor language, whose keys lie in how to deal with the form of the original work. According to the different approaching methods of language forms, the translation of legal professional jargon can be divided into literal translation and free translation. The literal translation, is referred to the way of translation in maintaining the original language forms of the works, including their words, sentences, structures and metaphor methods, etc., as well as retaining the language fluency and ease of understanding. Free translation is referred to the way of translation in expressing the main idea of the original work. It might as well neglect the details in translation, but leave the work to be natural and smooth. Generally speaking, in the practice of translation, either of the above methods is adaptable to the work. There is no straight way to choose one rather than the other. We always take the flexible method when facing the translation of legal professional jargon. Only by combining the above two methods, can we find the correct way of translation.

Legal language belongs to the formal language style. Its formal nature can be shown mainly in the usage of legal jargon. Legal jargon generally can be divided into the following two kinds; one is the

particular jargon in law, which only, or in most cases, appears in the law language. For example “tort” can only be used in the legal context, with its definite meaning. The other is not the particular legal jargon, which can also be seen in other language forms, but it has its own specific meaning in legal language, like “action”. Just as the meaning of legal jargon is single, without any personal coloring, we are supposed to stick to the “literal translation” when translating legal jargon. We should try our best to take a “one-to-one” translation method, like “Fixed-term sentence” and “Jurisdiction *ratione loci*”, etc. Of course, when we stick to “literal translation” when dealing with legal jargon; it does not mean we need to be opposed to “free translation”. For example, “yellow dog contract” can be translated literally as “Huang Gou He Tong (yellow dog contract)”, which leaves most foreign people at loss about its meaning. Here, it can be totally translated as “not allowing the staff to attend the company dinner”. For another example, “old leg” can be translated as “Guan Fan (habitual criminal)” instead of its literal meaning as “Lao Tui (old leg)” in legal jargon.

The translation of English-Chinese legal jargons is not bad currently in China. But because the time to start the translation of legal jargon is not too far off and there is no standardized regulation, there are multiple ways of translation and mistaken translation about one legal jargon. The following is the above example. “Client” is one of most usable legal jargons at present. Most local English-Chinese law dictionaries translate it as “Dang Shi Ren (client)” (in the English-Chinese legal vocabulary published in 1982 by Beijing University press); some translate it as “Ke Hu (client)” (published 1988 in Law Press; some other dictionaries translate it as “Dang Shi Ren or Ke Hu” (in the English-Chinese legal vocabulary published in 1999 by the Commercial Press in Hong Kong). As shown, it is unsuitable to translate “client” as “Dang Shi Ren”, as we cannot translate all the meanings of “Dang Shi Ren” only using the same word of “client”. For example, “Qi Yue Dang Shi Ren” can only be translated as “contracting parties” instead of “contracting clients”. Some of the native legal lawyers have been affected by the overseas Chinese-American usage of language, in order to influence and keep pace. Some refer to it as “Dang Shi Ren”, which reflects the commercial tendency to look after its influenced nature. The Law Dictionary has defined its meaning as follows, “client, a person who employs an attorney to appear in court, give advice, craft a written instrument or do any other thing which constitutes the practice of law”. As a consequence, the correct way of translation about the legal jargon “client” can be found as “Wei Tuo Ren (lawyer client)”, etc.

### **Conclusion**

Nowadays, with all the nations around the world advocating for “multi-culture” on one side, but striving to expand their native languages and cultural influence on the other, the law has become one of the most deeply influential subjects in the multi-cultural exchange. Mastering the characteristics and correct way of legal jargon translation, can contribute to develop mutual understanding about law in the Eastern and Western worlds.

All in all, the translation of English-Chinese legal jargon, required to possess the basic language knowledge between the English and Chinese language, should even be equipped with the expertized knowledge in law. The practice of legal jargon translation shows that if the translator possesses a higher ability in mastering English and Chinese, he or she can be better to get rid of the binds of the source language, and express the original meaning of the source language at will. On the other hand, if we are equipped with a certain understanding and expertise in the source language, we can choose the most appropriate expression of legal jargon to convey it honestly from the source language.

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# **Intertextuality in Legal English Discourse and its Inspiration in Improving the Competence of Legal English Writing for Chinese Undergraduates**

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*[Abstract] Intertextuality is a very investigated area in social science and social studies, but seldom in language instruction. So this paper attempts to learn its values in the competence of EFL students' legal English writing. The paper first analyzes the intertextual relations in legal English discourses vertically and horizontally. The vertical dimension includes thematic processing and generic structure, while the horizontal dimension includes ELP chunk models, ELP non-adjacent construction models, collocations of ELP legal terms, and stylized sentences and clause sentences. This paper goes further to the inspirations of intertextuality in improving students' ELP writing competence, i.e. increasing the awareness of both writers and readers. This dynamic literacy processing facilitates learners in their improvement of analyzing and integrating, judgment and reasoning, classification and organizational ability, and problem solving ability. Intertextuality prompts EFL learners to acquire the ability of idiomatic English and to cultivate their critical thinking.*

*[Keywords] legal English literacy; intertextuality; ELP instruction in China; inspirations*

## **Introduction**

Intertextuality is a very investigated area in social science and social studies. "Every academic text draws from and depends on other texts and discursal experiences in some way, and thus is intertextual" (Fairclough, 1992, p. 146) and it is generally classified into two dimensions: "horizontal and vertical" (Kristeva, 1986, p. 36). The concept of intertextuality points to the productivity of texts, and to how texts can transform prior texts and restructure existing conventions (genres, discourses) to generate new ones.

Intertextuality is a large concern in social sciences and critical discourse analysis in particular, but seldom in language instruction (Fairclough, 1992; Bakhtin, M. 1986; van Dijk, 1988). It is suggested as "a focus of educational research" (Lemke, 2004, p. 4). "All of these aspects of intertextuality are important for learning, in both mother-tongue and second-language contexts" (Flowerdew, 2012, p. 145). It is of particularly vital importance to Chinese EFL learners because under the simulated English contexts in China, EAP instruction is facing the challenge of the students' deficiency of written competence concerning academic discourses, causing students' or teachers' panic to linguistic forms. The major focus of this paper is concerned with the intertextual relations of legal discourses and their inspiration in improving the competence of legal English writing for Chinese undergraduates.

## **Intertextuality Relations in Academic Legal English Discourse**

Intertextual patterning is ubiquitous within legal discourses. The British Housing Act 1980, for example, contains "four major kinds of intertextual devices: signalling textual authority; providing terminological explanation; and facilitating textual mapping; defining legal scope" (Bhatia, 2014, p. 9). This classification of intertextual links is derived from author to author relations "to signal a variety of specific legal relationships between legislative provisions in the same document or in some other related document" (Bhatia, 2014, p. 9). In other words, Bhatia's findings mostly concern text external resources,

or interdiscursivity rather than text-internal ones for legal interpretations. So, this paper develops intertextual relations of legal discourses vertically and horizontally, as shown below.

***Vertical Dimensions of Intertextuality in Legal English Discourse***

The “vertical dimension of texts is between the text itself and other texts” (Kristeva, 1986, p. 36). This link in academic writings is found in most cases with genre of academic writing conventions for “genre is quintessentially intertextual” (Baumann, 2010) concerning both the coherence of thematic structure and discourse structure of rhetorical mode in academic legal genres.

**Thematic processing in legal discourses.** One feature of thematic structure is of coherence. “Part of the meaning of any clause lies in which element is chosen as its Theme” (Halliday, 1994, p. 38). According to Lemke (1985, p. 98), “A text has a two-fold coherence: an intratextual one, which guarantees the immanent integrity of the text, and an intertextual one, which creates structural relations between itself and other texts”. He proposes generic, thematic/topical, structural and functional intertextual relationship from the system functional perspective. A thematic unit is made up of two functions; the theme is linked to the Given information and rhyme is linked to the New information. The typical thematic process of native discourses mostly follows the arrangement of R1⇒ T2, R2⇒ T3, R3⇒ T4... The typical information chain is found in most native cases as the chain of Given ⇒ New ⇒ Given ⇒ New. The complex thematic structure of an ELP discourse can be termed as the continuous Thematic progression. Violating rules of information delivery may cause text to lose some degree of coherence.

**Generic structure of legal discourses.** Academic discourse structure follows Western thought patterns, and “the expected sequence of thought pattern in English is essentially a Platonic-Aristotelian sequence” (Kaplan, 1966, p. 12) showing top down dimensions and thematic conventions in the sources texts of native writers. The rhetoric mode of academic writing can be classified with such terms as ‘argumentative’, ‘expository’, and ‘descriptive’ styles as the academic types shown in Table 1 below. Table 1 is one attempt to offer a set of principles for ‘general expository academic prose’ based on the arguments of three writing experts concerning the nature, values and features of legal writing.

**Table 1. Some Legal Genres**

Written Genres		Spoken Genres	
Court verdicts	Legal dissertation	Lectures	Student presentations
Judicial documents	Legal opinions	Seminars	Letters and studies
Legislative provisions	Legal Textbooks	Tutorial sessions	Practicum feedback
Judicial documents	Business contract	Law reports	Dissertation defences
Juristic works	Legal textbooks	Negotiation	Court and defense

Table 1 is an attempt to offer a set of principles for ‘general expository academic prose’ based on the arguments of three writing experts concerning the nature, values and features of academic writing (Johns, 1997, pp. 59-64). “Academic writing is a product of many considerations: audience, purpose, organization, style, flow, and presentation” (Swales & Feak, 2004, p. 3). Transforming and imitating the source texts of academic writings by native writers are the chief ways of intertextuality. The organization of text can be realized in indictments or court verdicts, for example, through a set of “moves as follows”:

- Move 1: General introduction (introducing the court, the case, the parties and judges)
- Move 2: Presentation of facts, evidence and reasons (by plaintiff or prosecutor, or by defendant)
- Move 3: Arguing the case (presenting arguments, reasons or ratio decidendi for judgment)
- Move 4: Concurring/dissenting

Academic legal discourse structure follows Western thought patterns, and “the expected sequence of thought pattern in English is essentially a Platonic-Aristotelian sequence” (Kaplan, 1966, p. 12). This theoretical framework is transferred further to students’ writings through frequent references to academic discourses reading. Frequent reading is strictly practiced in class in both classical and contemporary academic discourses of English for General Academic Purposes and English for Specific Academic Purposes.

### ***The Horizontal Dimensions of Intertextuality in Legal English Discourse***

“Horizontal dimensions are between a text and those which proceed and follow it in the chain of texts”(Kristeva 1986, p. 36). The linguistic forms in Academic English discourses are largely different from oral types. “Written language is not spoken language written down” (Halliday, 1989). “These features of academic writing break down into three key areas: high lexical density, high nominal style, and impersonal constructions” (Hyland, 2006, pp. 13-14). The core academic linguistic forms, though various, are likely in possession of two features: chunks (multi-words models); collocations of de-lexicalized verbs; non-adjacent models in various constructions like subject-predicate and predicate-objects; impersonal construction. Genre conventions may be ‘reproduced’ from past discourses either through reproduction, transformation, or imitation via intertextuality.

**Chunk models in ELP prose.** Chunks other than words and sentences are seen as central to language. The chunks include polywords, more or less transparent/opaque idioms, and institutionalized sentences with recognizable pragmatic meaning (Lewis, 1993, p. 186). Chunks, a typical feature of EAP prose, takes various forms like subject, predicate, object, prepositional, and adverb trunks, etc. whose major components are nouns in intertextual writings as forensic (1), medical English (2), legal discourses (3, 4). “Written language, although using phrases which organize the discourse, has a much higher density of collocation, particularly relatively fixed collocations which make high information content noun phrases” (Lewis, 1993, p. 123).

1. *The seriousness and pervasiveness* of computer crime is well documented. (subject chunks of nominalization )
2. Around the world, as many as one in every three women has been *beaten, coerced into sex, or abused in some other way*---most often by someone,... (predicate chunks of verbs)
3. Some academics, whilst accepting that terms like *ratio decidendi* and *obiter dicta* are used in judgments. (Object chunks of nouns)
4. No person should be deprived of *life, liberty, or property* without due process of law. (Prepositional object chunks of nouns)

Chunks are likely to increase the lexical density in student Academic prose writing, for written language is dense; spoken language is sparse. “Broadly, written language achieves lexical density, and the resultant density of information, by using a relatively high proportion of complex noun phrases and subordinate clauses” (Lewis, 1993, p. 100). Lexical chunks are a possible way to enrich information density of linguistic constructions of various kinds.

**Non-adjacent construction models of ELP.** Non-adjacent constructions can be typically demonstrated by various types like subject predicate (5), compound predicates (6) and verbal phrases (7-9), of which the first type is most frequently used in academic discourses.

5. The Government, *in conjunction with industry*, already undertakes a range of high quality activity in the field of cyber security (Cyber Security Strategy of the U. K. 2009, p. 4).
6. Although the courts have *in many instances* adopted a broad interpretation of the scope of their powers, room for challenge has been limited (Cyber law in the U. K., 2010, p. 47).

7. The Seller shall *within one and a half months after signing the Contract* deliver all existing standards and codes of the Sellers country for the design of the Contract Plant (Legal English).
8. These shafts actually led, *via a series of interconnected shafts and tunnels*, into Fletcher's mines and land (Legal English).
9. In the event of any internal conflicts between the Community requirements themselves, OFCOM is *again to resolve this in the manner they think best* (Cyber law in the U. K., 2010, p. 29).

**Inanimate subjects and passive voice constructions.**

10. *The Agreement and any rights or obligations* hereunder are not transferable or assignable.
11. *The Fifth Amendment of the Constitution of the United States* provides that “no person should be deprived of life, liberty, or property without due process of law.”
12. *All states* **are entitled to** become parties to this Convention by signature or accession.
13. *This contract* **is made by** and **between** the two parties.

As the above shows, native written language is largely composed of collocations, most of which are free collocations, or non-adjacent collocations. Collocations as the non-adjacent type are believed to have the functions of the coherence about pragmatic linking and the connection between two communicative acts.

**Collocations of legal terms of ELP.** “Lexical patterns can be more powerfully generative as collocations than structural patterns” (Lewis, 1993, p. 34). Legal terminal collocations can be found **of noun determiners** like *the said, the payment of the aforesaid, Party A/B, the said subject matter, such legal advisor, the accused, the offender, of synonyms, ratio decidendi and obiter dicta, made and entered into, by and between, for and inconsideration of, covenant and promises, if and whenever, sufficient and necessary, revise or supplement*, **of doublets and triplets** like *null and void, dit and proper, like rights and interests, terms and conditions, complete and final understanding, customs fee and duties, losses and dangers*, **of jargon formulas** like *cause of action, letters patent, negotiable instrument, reasonable doubt, as and when, any rights or obligations, goods and chattels, breaking and entering...etc.* For these expressions, it is believed to be a better access in native legal discourse corpora than in grammatical books, where are abundant examples or illustrations of idiomatic and authentic collocations.

**Stylized sentences and Clause sentences.** It is a common phenomenon that legal discourses generally take frequent uses of stylizations and Sentence-as-Clause, as in Contract Case (14) and as a tree-shape Clause sentence in case (15).

14. THIS CONTRACT is made the \_\_\_the day of \_\_\_ (date) Between Mr. \_\_\_ of \_\_\_ Ltd. (hereinafter referred to as the Seller) and Mr. \_\_\_ of \_\_\_ Company (hereinafter referred to the Buyer), whereas the Seller has agreed to sell and the Buyer has agreed to buy \_\_\_ (hereinafter referred to as Contracted Products 2).
15. All states are entitled to become parties to this Convention by
16. a. Signature, not subject to ratification, acceptance or approval; or b. Signature, not subject to and followed by ratification, acceptance or approval; or c. accession.

**Intertextuality Inspiration in Improving Students' ELP Writing Competence**

“The concept of intertextuality points to the productivity of texts, to how texts can transform prior texts and restructure existing conventions (genres, discourses) to generate new ones” (Fairclough, 1992, p. 102). This is realized via consciousness-raising concerning reader's and writers' awareness chiefly in the process of transformation and imitation. Consciousness-raising is therefore designed to produce better writers from reader's point of view and better readers from writer's point of view.

### ***Increasing Readers' Awareness of Legal English Literacy Via Architextuality***

Raising the awareness of academic genres is acquired through the exhibition, demonstration, and reading of intertexts. Before the students' commitments of actual writing, teachers are supposed to offer related essays for students' discussion in class concerning writers' and readers' roles. This discussion is likely to enrich and improve the potential ideas and viewpoints of the students, enforcing the intertextual environments. The source texts, intertextual texts and new texts are integrated in the intertextual relations.

### ***Increasing Writers' Awareness of Legal English Literacy Via Intertextuality***

Writers' awareness of academic features of writings are supposed to be gained through various steps like deconstructing, modelling, independent construction as the main stages suggested by Hyland (2006, p. 85). The horizontal and vertical dimensions of intertextuality are processed via these stages chiefly as shown below.

**Deconstructing rhetorical form expressions of intertexts.** Intertextual texts offer EFL undergraduates a unique way of transforming linguistics conventions of source texts to readers' via deconstructing its sentential constructions. This intertextual imitation is likely to increase EFL students' generalization that single words are seldom used in native writings especially in academics. Instead, words are used in company with others such as a verb with an adverb, a noun with one or more adjectives, for example, as shown in horizontal dimensions as stated above. To undergraduates, much exposure to academic texts of native writers is expected to the gradual increase of the academic literacy of the undergraduates.

**Theme-based modelling of intertextual organizations.** "Theme-based models emphasize language competence while sheltered models attempt to help students master content material and so are more discipline-specific" (Brinton, et al., 1989, p. 18). In modeling, a writer transforms writer-based prose (common in first drafts) into reader-based prose. This theoretical framework is transferred further to students' writings through frequent references of academic discourses reading.

**Scaffolding principles of academic writings via related intertexts.** Intertextuality is instructive to EFL students' academic literacy through teacher-supported scaffolding. "Scaffolding emphasizes interaction with experienced others in moving learners from their existing level of performance, what they can do now, to a level of 'potential performance', what they are able to do without assistance" (Hyland, 2006, p. 91). Scaffolding writing promotes independent student writers through this collaboration.

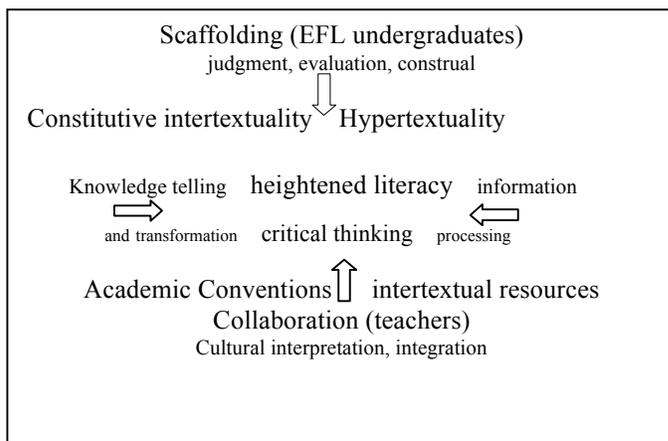
To students, native written texts are constructs "that can be discussed in quite precise and explicit ways and that can therefore be analyzed, compared, criticized, deconstructed, and reconstructed" (Hammond & Macken-Horarik, 1999, p. 529). Writing strategies from horizontal to vertical rhetorical features are exhibited through academic discourses in intertextual relation. In the independent stage, students are instructed to "engage, explore, extend and evaluate" (Trowbridge & Bybee, 1990).

Changes are made at all levels of writing concerning horizontal to vertical dimensions especially the content, style, and mechanics. Tests can be possibly given to the consistency/inconsistency and relevance/irrelevance of the content, to the effectiveness of organization, to the appropriateness of rhetorical expressions, to the credibility of logical coherence.

### **Concluding Remarks**

Intertextuality, as stated above, demonstrates the improvements of legal literacy concerning linear constructions, rhetoric and genre demonstrates for Chinese undergraduates and their critical thinking in particular, with the outputs of heightened literacy and critical thinking as depicted in Figure 1, based on

Hu Zhuanglin (2004, pp. 45-56). Figure 1 offers us a multidimensional concept of intertextuality from two directions: inner-textual and external-textual resources. Intertextuality especially “hypertext enhances an active, selective and independent reader” (Sajjadi, 2009, p. 66). The high efficiency of intertextual construction is an important advantage of student center with cultivated legal literacy, raised cognitive potentials, heightened abilities of critical thinking such as analysis, query, evaluation, self-regulation, and innovation. Intertextuality in instruction, a dynamic way of literacy processing, facilitates learners in their improved competence and critical thinking. First, it provides learners a dynamic process of scaffolding, collaborating, consciousness raising and etc. The second merit of this approach is multischemata of metatextuality, architextuality and hypertextuality along the different dimensions concerning multitexts, extra texts, and intratexts.



**Figure 1. Heightened literacy and critical thinking**

In addition, the dynamic intertextualization of these links facilitates learners in their improved competence and prompts EFL learners as well to raise critical readers’ awareness of academic literacy features, to acquire the ability of idiomatic English and critical thinking as critical readers and independent student-writers. The paper extends related previous studies in two ways: grammatical structure as a basic unit of intertextuality, and intertextuality as an endogenous links in the minds of student readers in legal discourses as well.

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# A Comparative Study on Modality in Chinese and American Criminal Judgments

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**[Abstract]** *The criminal judgment is an important component in criminal procedures and the language in criminal judgments is expected to convey legal force and interpretation of fairness and justice. In this paper, a comparative study is conducted on modality in Chinese and American criminal judgments from the perspective of functional linguistics. This comparative analysis is hoped to provide reference for the judicial and judgment reform in China.*

**[Keywords]** *comparative study; criminal judgment; modality; functional linguistics*

## Introduction

Language in criminal judgments contributes to the reconstruction of charging opinions, facts, and evidence analysis; clear language and logical structure of criminal judgments help uphold justice and provide legal education for parties to the case and the public (Zhao, 2013, p. 3; Wei, 2012, p. 48). However, Chinese criminal judgments are rife with such problems as a lack of pertinence and reasoning in core disputes, deficiencies in persuasion, and vague expressions resulting in ambiguities (Zhao, 2013; Tian & Zhang, 2005). Nevertheless, Chinese criminal judgments and American criminal judgments, belonging to the same realm of legal discourse study, function similarly in their respective judicial practices, but due to the differences between Chinese and English languages, and the distinctive features between civil and common legal systems, they show differences in language. This paper focuses on a comparative study on modality in Chinese and American criminal judgments from the perspective of functional linguistics, thereby providing suggestions for Chinese criminal judgment reform.

The study of modality was initiated in language philosophy, i.e., the discussion on the absolute authenticity of the proposition independent of the context (Van Leeuwen, 1999). Halliday (2000) thinks that modality is one of the means to achieve interpersonal function of language, a device deployed by language users to express estimation and uncertainties according to their knowledge on certain things. The issue of possibility is not limited to the choice of yes or no, but also includes a variety of intermediate degrees of modality judgments and expressions that speakers reflect towards propositions and proposals, thereby indicating the uncertainty area between the positive and negative range, such as ‘may’, ‘might’, ‘often’, and ‘sometimes’, etc. Halliday divides modality into two categories: modalization, which refers to the degree of probability or usuality, and modulation, which refers to the degree of obligation or inclination (Halliday & Matthiessen, 2008, p. 150).

Modality can take a variety of forms, and the verbal forms are modal auxiliaries (Rashidi, 2010, p. 45). Non-verbal forms are lexical items expressed as adjectives, adverbs, or nouns, such as, ‘possible’,

‘probably’ or ‘sure’. Halliday brings forward a system of modality which is divided into three levels of certainty: (1) high or certain, (2) medium; and (3) low or possible (Halliday & Matthiessen, 2008, p. 148). Modal verbs of a high level of certainty include ‘shall’ and ‘must’; medium, ‘will’ and ‘should’; low; ‘may’ and ‘might’ (Peng, 2000). In Chinese, there are no morphologic changes of verbs, thus categorizing verbs relies on functions rather than morphologic forms (Ma, 1992, p. 47). ‘能愿’ verbs, or ‘volitive auxiliaries’ in English literal equivalence, have similar semantic functions as modal verbs in English. Volitive auxiliaries in Chinese, usually part of the predicate, carry speakers’ attitude towards the discussed topic; that is, the speakers’ contribution to the truth of the proposition and to what extent the contribution realized (Ma, 1992, p. 57). Probability is thus expressed by ‘能够’ (could), ‘可能’ (could), ‘可能’ (may), ‘会’ (would), etc., obligation by ‘必须’ (must), ‘务必’ (must), ‘应该’ (shall/should), ‘应当’ (shall/should), ‘该’ (should), ‘要’ (should), etc., and inclination by ‘要’ (would like), ‘想’ (would like), ‘愿’ (will), ‘敢’ (dare), etc. The volitive auxiliaries are also divided into certainties of different levels. For instance, ‘必须’ and ‘务必’ belong to the group of high certainty, ‘愿’, ‘想’ and ‘要’ belong to the group of medium certainty, and ‘可能’, ‘可以’ and ‘会’ belong to the group of low certainty (Peng, 2000, p. 123).

### **A Comparative Study of Chinese and American Criminal Judgments**

A criminal judgment refers to a legally binding written decision based on the fact-findings and applicable laws issued by the court against the defendant after the case is concluded. In China where the legal system follows civil law tradition, the functions of criminal judgments issued by the people’s courts lie in providing the binding forces against the defendant after the trial, improving the national legal operation mechanism, and promoting public order and good morals (Zhao, 2013). However, the United States is a common law tradition country, where the criminal judgments are also embedded with a kind of legislative function.

The Chinese criminal judgment normally consists of five parts, including head, facts, reasoning, holding and ending. The head of Chinese criminal judgments consists of the full name of the court, names and number of the documents, identities of litigation parties, matter, sources of the case, the form of collegial panel and procedures of the trial, etc. (Zhang, 2009). American criminal judgments consist of head, facts, issue, applicable law and rules, reasoning, holdings and other components. The head of American criminal judgments (usually appellate court cases) includes the name of the court that accepted the case, case number, parties to the case, the court of first instance, the judge, date of acceptance, and date of the trial and the lawyers of both parties, and etc. (Ma, 2005).

Through general comparison in content and form, the fact part in both the Chinese and American criminal judgments are generally detailed in presentation, whereas the reasoning part of Chinese judgments is relatively brief compared with that of American criminal judgments, which normally gives detailed explanation for reasoning and applicable laws, accounting for a considerable proportion of the body. In the holding part of American criminal judgments, the court announces the applicable law and sentence imposed on the offender. In appeals, there is conventionally no ‘opinion for the court’, instead, the judges reviewing the case delivered their own individual opinions which, taken together, reveal the court’s disposition (Bader-Ginsburg, 2009, p. 2). In appellate cases, if the holding of the case cannot reach a consensus, there will be majority opinions agreed to by more than half of the members of the court penal and judges agree on the decision of the court, but have more or alternative reasoning to add with concurring opinions and one or more judges have disagreement with the majority opinion of the

court will form dissenting opinions (Samaha, 1996). The head and ending of both Chinese and American criminal judgments are static in content and form. This paper will compare and examine the modality in the main body of the judgments involving the facts, reasoning and holding part.

### ***Facts***

From a legal sense, ‘facts’ refer to the things that actually happened and are of absolute existence, including events and appearances of tangible objects instead of speculations or opinions. ‘Facts’ refer to the truth instead of fiction or fallacy. The use of ‘facts’ usually contrasts with that of ‘laws’; laws are the principle, things made and facts are things that happened. Laws are rules concerned with liability; facts are compliance or contravention of such rules (Xue, 2003, p. 525). Possessing the absolute authenticity, facts are not speculation or opinion from any litigant or judge. However, facts of a case are identified in the procedure of proof and cross-examination in the trial. The facts described in judgments are the facts proved by evidence rather than facts in the general meaning (Zhang, 2009).

**Fact part in American criminal judgments.** Facts are an indispensable part of American criminal judgments, which present a panoramic scenario of the case, providing the basis for further reasoning. In American criminal judgments, the fact part includes substantive facts and procedural facts.

In *Graham County Soil and Water Conservation District v. United States*<sup>1</sup> the fact part is stated as follows:

... In 1995 the United States Department of Agriculture (USDA) entered into contracts with two counties in North Carolina authorizing them to perform, or to hire others to perform, cleanup and repair work in areas that had suffered extensive flooding. The Federal Government agreed to shoulder 75 percent of the contract costs. Respondent Karen T. Wilson was at that time an employee of the Graham County Soil and Conservation District, a special-purpose government body that had been delegated partial responsibility for coordinating and performing the remediation effort. Suspecting ***possible*** fraud in connection with this effort, Wilson voiced her concerns to local officials in the summer of 1995. She also sent a letter to, and had a meeting with, agents of the USDA.

Graham County officials began an investigation. An accounting firm hired by the county performed an audit and, in 1996, issued a report (Audit Report) that identified several potential irregularities in the county’s administration of the contracts. Shortly thereafter, the North Carolina Department of Environment, Health, and Natural Resources issued a report (DEHNR Report) identifying similar problems. The USDA’s Office of Inspector General eventually issued a third report that contained additional findings... (Words in italic and bold are marked by the author.)

In this excerpt, the detailed scenario description almost allows no modality or metaphor of modality used (e.g. possible). The general feature is that the facts are objectively stated and detailed.

**Fact part in Chinese criminal judgments.** The fact part in Chinese criminal judgments accounts for a large proportion of the main body, which can be further divided into two parts: a statement of the facts of the case and the court’s recognition of the facts based on the analysis of evidence found.

The following is part of the facts in a criminal judgment issued by Beijing Intermediate People’s Court<sup>2</sup>:

...The court of the first instance identified that a dispute on apartment rent issues arose between the defendant Yuan and the victim Wang; the defendant Yuan hit the victim

Wang's head with his fists at 10 a.m. July 9, 2012 in front of No.56 Street Dashilan, Xicheng District, Beijing, resulting in fractures of orbital medial and inferior walls of the victim Wang's left eye, which was identified as minor injuries after a forensic analysis. The defendant Yuan fled the scene. After he knew it was reported to the police, the defendant Yuan came back to the scene and was arrested at the scene.

The evidence of the above facts identified by the trial court includes an assessment criterion of human body injury severity by Public Security Forensic Center of Xicheng District, Beijing, a diagnosis certificate by Beijing Tongren Hospital, a statement of the victim Wang, a confession of the defendant Yuan, an audiovisual clip, and materials of investigation provided by Dashilan police station of Xicheng Branch of Beijing Municipal Public Security....

The facts and evidence identified by the court of the second instance are identical with those found by the court of the first instance. Evidence cited in the judgment of the first instance court is verified, which is legitimate in form and sources, objective and true, and was testified and cross-examined in the court...

In this excerpt, no volitive auxiliaries are used, nor are other forms of metaphor of modality. The judgment gives a truthful description and factual statement of facts, and the recognition of the first and second instances. The fact part involves no modality expressions. The case demonstrates the general feature of the fact part of common criminal judgments, that is, no or few volitive auxiliaries appear in the fact part.

### **Reasoning**

Reasoning is the core component of the criminal judgment. Reasoning is based on objective grounds and takes laws as criteria, thus providing the theoretical and factual basis for the decision. The reasoning first gives an outline of *corpus delicti*, and conducts an analytic demonstration whether the defendant commits a crime, what crime, and the extent of injury based on those facts and legal provisions (Pan, 1988). Therefore, the reasoning part remains a pivotal constituent for application of law. In addition, since the United States follows the case law tradition, American criminal judgments possess a legislative nature. With concurring and dissenting opinions and precedent analysis included, the reasoning part in American judgment reflects the preciseness and rigor of law.

**Reasoning part in American criminal judgments.** Reasoning accounts for a large portion in American criminal judgments, reflecting its importance. Precedents have a binding effect upon future cases, which is often understood that each case has binding authority over future cases following the same category, and the rigorous reasoning of judges are embodied in the criminal judgments. For example, in *Arthur Andersen LLP v United States*<sup>3</sup>, the judges' reasoning is as follows:

...The jury instructions failed to convey properly the elements of a “corrup[t] persuat[ion]” conviction under §1512 (b).

(a) This Court's traditional restraint in assessing federal criminal statues' reach, see e.g., *United States v. Aguilar*, 515 U.S. 593, 600, is particularly appropriate here, where the act underlying the conviction — “persua[sion]” — is by itself innocuous. Even “persuad[ing]” a person “with intent to...cause” that person to “withhold” testimony or documents from the Government is not inherently malign. Under **ordinary**

circumstances, it is **not wrongful** for a manager to instruct his employees to comply with a valid document retention policy....

Thus, §1512 (b)'s "knowingly... corruptly persuades" phrase is key to what **may or may not** lawfully be done in the situation presented here... "[K]nowledge" and "knowingly" are **normally** associated with awareness, understanding, or consciousness... Joining these meanings together makes both linguistically and in the statutory scheme.(Words in bold and underlined are marked by the author.)

The doctrine of *stare decisis* contributes to the principle of justice, and legal stability, thus maintaining and improving the predictability of law and enhancing judicial efficiency (Lin, 2009). The reasoning part of the American criminal judgments cites precedents as a basis for judgment in the process of reasoning. From the excerpt above, the judges use modality expressions of medium and low certainty, such as 'may', and 'may not', manifesting discretion and prudence of American judges in the process of reasoning. On the other hand, the words of modality above also show polarity in the course of argument in order to demonstrate operability and flexibility of the court. Polarity refers to the choice between affirmation and negation. As opposition of affirmation and negation, polarity, a concept in semantic category, is mainly composed of assertive and negative form of the determining constituent, reflecting the distinction between assertive sentences and negative sentences. The words of modality, namely 'may' and 'may not' show the judges' discretion of possibility and obligation, whose meaning focuses on the area between absolute affirmation and negation, permission and prohibition (Halliday, 2000).

The Judiciary Act of 1925, also known as the Judges Act allowed the United States Supreme Court to enjoy more freedom in the cases accepted, and provided institutional room for judges to give opinions due to previous differences in judicial philosophy and constitutional interpretation; therefore, the American judicial philosophy shifted from formalism to realism (Hu, 2010). More attention is attached to justice balance in the course of the trial and it is harder to achieve exactly the same opinion in reasoning, which is rare in Chinese criminal judgments.

**Reasoning part in Chinese criminal judgments.** Chinese criminal judgments also show distinctive features in the reasoning part. For example, an extract of a criminal judgment from Yixing People's Court, Jiangsu Province is as follows:

...The Court finds that the defendant Fan broke and entered another's residence with the intent to illegally possess the properties within the residence, totaling to RMB 900 yuan. The defendant Fan committed larceny and **shall** (应予) be punished. The defendant Fan had been repeatedly arrested of larceny and sentenced to criminal and administrative punishments for his severe subjective culpability. The defendant Fan committed larceny again within five years after he was released from prison. The defendant **shall** (应当) be sentenced to a fixed-term imprisonment as a recidivist. Therefore, he **shall**(应当) be given a severer punishment. After being arrested, the defendant Fan truthfully confessed his crime and he also pleaded guilty in the trial; thus, he **could**(可) be sentenced to a mitigated punishment in accordance with the law. The defendant Fan is guilty as charged by the public prosecution organ. The sentencing recommendation is appropriate and **shall**(应) be adopted. Therefore, in accordance with the Article 264, the first paragraph of Article 65, and the third paragraph of Article 67 of the Criminal Law of People's Republic of China, it is so ordered that.....<sup>4</sup> (Words in bold are marked by the author.)

From the content above, the judgment identifies the crime committed by the defendant, pointing out the subjective intent and criminal record of the defendant, which was then followed by the conviction and sentencing decision of the court made based on the nature of crime and extent of injury. ‘应予’ and ‘应当’, volitive auxiliaries of high certainty, appear frequently in the text, with ‘可’, volitive auxiliaries of low certainty used only once in the text. The modality distribution reflects the mandatory and prescriptive character of criminal judgments. Nonetheless, since this is a relatively simple criminal case, the reasoning part is more concise and direct.

### ***Holdings***

The holding is a court’s determination of a matter of law based upon the evidence and issue presented in the particular case in accordance with specific rules. The holding is in line with the facts, reasoning and law.

**Holding part in American criminal judgments.** The holding part of the criminal judgment of *Arthur Andersen LLP v. United States*<sup>5</sup> is presented as follows:

For these reasons, the jury instructions here were flawed in important respects. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinions.

It is so ordered.

The passive voice is adopted to show solemnness; no expression of modality manifests the enforceability of judgment.

**Holding part in Chinese criminal judgments.** In Chinese criminal judgments, the holding part has a more specific and detailed presentation of the sentencing in comparison, such as the case in the criminal judgment with civil decision by Haidong Intermediate People’s Court, Qinghai Province:

Firstly, the defendant Sun Chengke is found guilty of intentional homicide, sentenced to life imprisonment and deprived of political rights for life.

Secondly, the defendant Sun Chengke compensates Liu Yongzhi, the plaintiff of collateral civil action, the funeral expenses of the victim He Yuhua, RMB 11,340.5 yuan, travelling expenses, RMB 1,101 yuan and other economic expenses RMB 3,000 yuan, RMB 15,441.5 yuan in total. (The compensation is paid within a month when the judgment comes into effect.)

Thirdly, the flick knife, tool for criminal purpose in this case, is forfeited in accordance with the law.<sup>6</sup>

No words of modality are found in the above extract, which reflects the normative, mandatory feature of criminal judgments. Based on the texts and materials researched, statistics show that expressions of modality seldom appear in the holding in Chinese criminal judgments. The holding part is the result of the provisions of applicable law, reflecting the authority and solemnness of judicial power.

### **Conclusion**

From the analysis above, the criminal judgments manifest its unique modality system. Generally, Chinese and American criminal judgments have similar modality distribution systems throughout their entire structures with each part involving different degrees of modality. First, since the fact part is the prerequisite to make the correct judgment possible, in both Chinese and American judgments, the

statement of facts reflects the rigorous, standardized characteristics of legal documents, allowing only a low degree of modality involved in detailed description of situation and scene. Second, the reasoning part in Chinese and American criminal judgments shows a higher degree of modality: possibility is concerned with modalization while modulation demonstrates the certainty of the obligations, responsibilities that are related to the judges, and enforceability of the law. As aforementioned in the above analysis, the volitive auxiliaries in Chinese and modal verbs in English, such as ‘必须’, ‘应当’, ‘应’, ‘shall’ and ‘must’ epitomize mandatory enforcement, which is fully embodied in the holding part of the judgments, whereas ‘可以’, ‘可’, ‘may’, and ‘can’, with the implicature of ‘being may not’ show uncertainty and preciseness of reasoning. Third, the holding part of the judgments does not involve modality of any form, because the holding part demonstrates the authority court decision and legal application.

On the other hand, the major distinctive part between Chinese and American criminal judgments is noted in the reasoning part. Since the U.S. follows the common law tradition, concurring and dissenting opinions are also found in the reasoning. When one or more judges give other grounds, ‘can’ or ‘may’, etc. appears in the text of judgment to indicate the possibilities, therefore resulting in a higher rate of modality deployed in U.S. criminal judgments. The American criminal judgments not only declare laws applicable to the case, but also render the entire analysis process of reasoning, clarifying how the conclusions are drawn in this case. The reasoning part of Chinese criminal judgments involves such modulation expression of high frequency as ‘应予’ and ‘应’.

This paper is only a descriptive comparative study of linguistic phenomena of Chinese and American criminal judgments, which suffers from a deficiency of materials and texts dedicated to a systematic and comprehensive research. Due to the limited number of cases studied and collected, and a lack of similar cases at similar levels of courts’ judgments compared, the findings are relatively limited. Comparison of criminal cases of the same category and property, quantitative analysis on the basis of corpus will be the direction of our future efforts and researches.

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<sup>1</sup>From <http://www.supremecourt.gov/opinions/09pdf/08-304.pdf>. Latest logged-on in 11/27/2014.

<sup>2</sup>From <http://bjgy.chinacourt.org/public/paperview.php?id=989650>. Retrieved in 12/10/2012.

<sup>3</sup>From <http://supremeobserver.com/case-document/?doc=14442>. Latest logged-on in 11/17/2014.

<sup>4</sup>From <http://www.chinacourt.org/paper/detail/2012/12/id/912144.html>. Retrieved in 10/26/2012.

<sup>5</sup>From <http://caselaw.findlaw.com/us-5th-circuit/1378395.html>. Latest logged-on in 11/17/2014.

<sup>6</sup>From [http://www.qh.xinhuanet.com/hdfy/2008-03/21/content\\_12762059.htm](http://www.qh.xinhuanet.com/hdfy/2008-03/21/content_12762059.htm). Latest logged-on in 11/17/2014.

# The Narrative Communication in Court Judgment

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**[Abstract]** Narration, as a kind of communication, aims at telling stories and conveying their meanings. In common with daily communication, narrative communication is concerned with the process of information transmission and reception. Different from daily oral narrative communication, the written narrative communication will involve the real author, the implied author, the narrator, the narratee, the implied reader and the real reader, etc. This paper aims at discussing the narrative communication proceeding of the court judgment and its features as an oral and written narrative text.

**[Keywords]** judgment, narrative communication, author, implied reader

## Introduction

Language is an interpersonal communication system. Structuralist narratologists also believe that narration is a kind of communication behavior that aims at telling stories and conveying their meanings. Therefore, narrative communication, in common with daily communication, is also concerned with the transmission and reception of the information.

## The Evolving Textual Narrative Communication Diagram

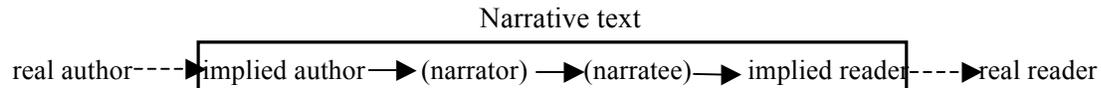
Theorists usually use the following diagram to show the proceeding of narrative communication:

speaker — information — hearer

The textuality property of textual narration decides that the relationship between “speaker” and “hearer” cannot occur so directly as in the daily context. Therefore, the diagram of the textual narrative communication is:

author — text — reader

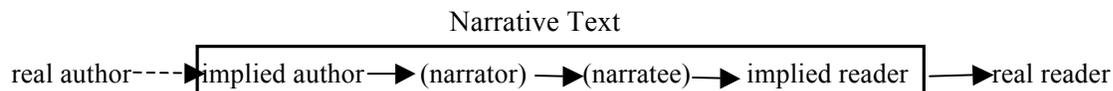
S. Chatman (1978) put forward the narrative communication diagram as follows:



Since this diagram shows the basic elements and patterns of the textual narrative communication, it is widely used and referred to. The real author and the real reader are excluded from this diagram, which means these two elements are not regarded as constructive constituents of the text. And the dotted line between the real author/real reader and narrative text indicates that they have no direct relation, thus beyond the analytic range of the main branch of the narrative communication construction.

In Booth (1961), the implied reader is an important concept, referring to the person who creates the textual work with a specific stance or method; that is, the alter ego of the author himself who carries a particular ideological stance in the text; the real author is the one who exists in daily life rather than in the text. Though outside the textual world, it is usually claimed that his background and experience will affect that of the implied author.

Shen Dan (1998) made some revisions to Chartman’s narrative communication diagram. From the perspective of coding, the implied author is the text creator out of the text, while from the perspective of decoding, the implied author is the image of the author as implied in the text, hence inside the text. Accordingly, she draws a full line between the implied reader and the real reader.

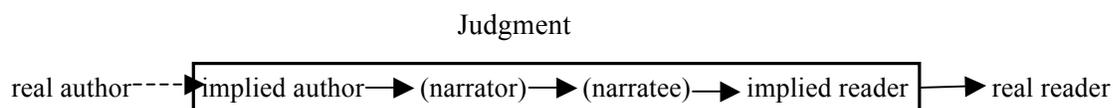


In her opinion (Dan, 2010), the so-called implied reader is the ideal reader in the mind of the implied author, or the reader preset by the text, who can completely keep up with the mind of the implied author and fully understand the text. While in the real case, it is usually hard for a real reader to meet the requirements as an implied reader, for different life experiences and ideological stances of real readers will prevent them from entering the reception state preset by the text. The implied reader is just a reading state presupposed by the text, while the real reader is the real receiver in narrative communication. When interpreting the meaning of the work, we play the role of an implied reader. When a critic says “the reader thinks”, he is in fact saying “the implied reader thinks”. The state of the implied reader, or the ideal reader as required by the text, can only be approximated. And of course, the implied reader in our mind will probably differ from the one presupposed by the text.

The narrator is the sender of the narrative information, the [story] teller; accordingly, the narratee is the receiver of the narrative information, the recipient.

### The Court Judgment as the Narrative Communication

Then what is the relationship among the author, reader, narrator and narratee in the judgment as a text? If we regard the judgment as an independent linguistic tradition like the novel, accordingly its narrative communication flowchart should be as follows:



We might first look at a real case below:

#### *A Case Study*

Judge: Summon the accused Gao.

(pounding the gavel) The criminal court of People’s Court in Shunyi district, Beijing, is now in session. According to the accused Gao’s case, this court in panel discussion have made a full consideration of the opinions of the procurator and the accused, conducted a thorough deliberation, and have now come to the verdict, which I will now announce.

Clerk: All rise!

Judge: (reading) This court believes that the accused Gao’s behavior of fabricating the fictional information of terrorist bombing, which has severely disturbed the social order and constituted the crime of fabricating terror information, should be subject to punishment according to law. The accusation of People’s Procuratorate in Shunyi district,

Beijing, has presented the fact clear with reliable and complete evidences, and the accused Gao is found guilty. In consideration of Gao's positive attitude in pleading guilty, he will receive a lenient penalty. According to Article 8 of Amendment III to the Criminal Law of People's Republic of China, and Article 297 and Article 64 of the Criminal Law of People's Republic of China, we declare that the accused Gao has committed the crime of fabricating terror information and shall be sentenced to a half and two years' imprisonment, from October 8th, 2004 to April 7th, 2007. If the judgment is not accepted, the accused Gao shall place an appeal via this court or directly to Intermediate People's Court, Beijing in 10 days from the second day of the judgment declaration. Presiding Judge: Liu, People's Assessor: Zhao, People's Assessor: Wang.

Is that clear to the accused Gao?

The Accused: Yes.

Judge: Appeal or not?

The Accused Gao: Yes.

Judge: Now this court is adjourned. Take the accused Gao out of court, and send him back to the Shunyi Police Station for further detention.

(pounding the gavel) Now is the end of the trial. Dismiss!

### ***The Author and the Narrator of the Judgment***

From the case above, we can see that in court, the judgment is announced by the judge. Hence, in a legal sense, the author of the judgment is the judge whose signature can be found on the judgment, e.g. Presiding Judge: Liu. In addition, if the case is misjudged, it is also the judge who will be chiefly held accountable. Yet from the words "*this court in panel discussion have made a full consideration of the opinions of the procurator and the accused, conducted a thorough deliberation, and have now come to the verdict, which I will now announce,*" we can see the judgment announced is the result of panel discussion rather than one judge's decision alone. Even the judge has some opposing opinions towards some points in the judgment, he/she has to conform to the principle of the majority rule. Last, the fact-findings and the judgment are made by the court ("*this court believes that*"), as the judicial power belongs to the court. From this perspective, the author of the judgment should be the court.

So the judge and the court are found in a both contradictory and unified relationship when the authorship of the judgment is involved. Consequently, a complicated relationship between the author and narrator has arisen. On the surface, the author of the judgment is the judge who is also the oral narrator in the court. However, only the court ("*this court believes that*") has the power to do so, though it does not have a physical body to function as that.

### ***The Narratee and the Reader of the Judgment***

The narratee and the reader of the judgment also present a complex situation. First of all, the judgment should include the comments of both parties. For example, in the case above, the comments on the prosecution are "*the accused Gao's behavior of fabricating the fictional information of terrorist bombing, which has severely disturbed the social order and constituted the crime of fabricating terror information, should be subject to punishment according to law. The accusation of People's Procuratorate in Shunyi district, Beijing has presented the fact clear with reliable and complete evidences, and the accused Gao is found guilty*" The comments on the defense side are "*In consideration of Gao's positive attitude in*

*pleading guilty, he will receive a lenient penalty.*” Secondly, the decision is also addressed to the accused. So when the judge asks *“Is that clear to the accused Gao?”* at the end of the trial, the accused is the direct narratee. Thirdly, from *“Take the accused Gao out of court, and send him back to the Shunyi Police Station for further detention,”* we can know that the bailiff, the clerk and the people’s assessor, e.g. *“People’s Assessor: Zhao, People’s Assessor: Wang”* are also the narratees in the court. Moreover, there may be some audience. All of these narratees above, as the direct or indirect participants in the court, are the hearer of the announcement of the judgment. Only after the trial or the deliverance of the judgment, do the People’s Procuratorate and the litigants in this case become the real readers. The relationship between the People’s Procuratorate and the official procurator is also subtle. Finally, according to Article 163 of the Code of Criminal Procedure that *“In all cases, judgments shall be announced publicly,”* the judgment, which has been announced in the court, should also be open to the public, who also become the narratee of the judgment.

Now let’s go back to the relationship between the implied reader and the real reader. What the implied reader emphasizes is the vision of the ideal reader whom an author has in mind when creating a text and when the text is finished the implied reader becomes a reading state presupposed by the text. The real receiver of the narrative communication is the real reader, who can only approach the ideal reader set by the text approximately. The implied reader in our mind will probably differ from the one that preset by the text.

According to J. L. Austin’s (1962) speech act theory, every utterance includes a locutionary act X, an illocutionary act Y, and a perlocutionary act Z. Among these three aspects, X (the locutionary act) means Y (the illocutionary act), which will produce Z (the perlocutionary act). The locutionary act is an act to express words, phrases and clauses in their literal meanings through the combination of syntax, lexis, and phonology. While the illocutionary act is an act to express the intention of the speaker, the perlocutionary act is an act caused by uttering words, a consequence or a change. For example, in the sentence *“It’s cold here”*, the locutionary act is the speaker uses this utterance to express his physical feelings, the illocutionary act (intention) means he wants the hearer to close the window, and the perlocutionary act is the hearer closes the window after understanding the utterance.

Then, after the announcement of a judgment, every narratee (real reader) will have different perlocutionary acts: the official procurator will think he achieves the purpose of prosecution (the accused is sentenced); the counsel also thinks his/her defense has made some difference (the accused receives a lenient penalty); the accused thinks this penalty is too heavy so he decides to appeal; the bailiff takes the accused out of the court for further detention; the audience may learn a lesson from the judgment (i.e. the education meaning of the judgment), etc.

The reason why an utterance will cause different perlocutionary effects can be attributed to the differences among the speech contexts and the perlocutionary acts. In the court, each of the official procurator, counsel, the accused and the bailiff play a different role, assuming different tasks, and behaving differently. This also proves that the implied reader is just the reading state set by the text, which the real receiver in narrative communication can only approximate infinitely.

## **Conclusion**

Narratologists mainly apply their research on the textual narrative communication to the discussion of the literary. They treat novels as independent linguistic entities and then study the communicational

circulation from the real author to the implied author, the narrator, the narratee, the implied reader, and the real reader.

The judgment, as the narrative communication of an oral/written narrative text, has different and complex features in terms of its author, reader, narrator and narratee, etc., due to its special institutional context of the court. The whole trial is a macro-speech act in terms of the illocutionary act. Among the participants, there are the judge representing the state to practice the judicial power, the official procurator representing the state to investigate the crime, the accused, the counsel, the witness, the bailiff and the audience, etc.

Because the judge represents the state to practice the judicial power, his/her identity as the author of the judgment appears to be both unified and contradictory. This also complicates the relationship between the author and the narrator. As the narratees and the readers of the judgment, such as the official procurator, the accused and the bailiff, etc., assume different roles and have different goals, they behave differently.

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