Study on the Translation of Some New Terms in "General Provisions of Civil Law" Based on Corpus

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ABSTRACT

In "General Provisions of Civil Law" of the People's Republic of China, there are some important new terms such as "gongxuliangsu" (公序良俗, public policy and ethics), "bingchichengshi, keshouchengnuo" (秉持诚实, 恪守承诺, uphold honesty and honor commitment) and "shanyixiangduiren" (善意相对人, the good-faith third party or the good-faith opposite party). Although the concepts expressed are originated from the continental law system, they fit into China's traditional legal culture and become legal terms with Chinese characteristics in the new era. Under the guidance of the concept of "term relevance", this paper explains their meanings and origins from a multidisciplinary perspective. Based on self-constructed composite corpus, this paper makes data mining and corpus analysis, and offers constructive or deliberative translations of the new terms with cross validation.

Keywords: "General Provisions of Civil Law", Gongxuliangsu (公序良俗), Chengxin (诚信), Shanyixiangduiren (善意相对人)

I. INTRODUCTION

"General Provisions of Civil Law of the People's Republic of China" (hereinafter referred to as "General Provisions of Civil Law") was adopted and promulgated at the Fifth Session of the 12th National People's Congress on March 15, 2017, and shall come into force on October 1, 2017. Based on "General Principles of Civil Law of the People's Republic of China", "General Provisions of Civil Law" makes provisions on the basic civil system by "extracting common factors", which not only establishes the basic framework of China’s civil legal system, but also provides the basis for the provisions of the various subdivisions. "General Provisions of Civil Law" is the beginning of the civil code and plays a leading role in the civil code, which is the hot spot that domestic and foreign legal personage wants to know. But so far, no official English translation of it has been found. Some important new terms or expressions appear in "General Provisions of Civil Law", such as "gongxuliangsu" (公序良俗), "bingchichengshi, keshouchengnuo" (秉持诚实, 恪守承诺) and "shanyixiangduiren" (善意相对人). Although the concepts expressed in these new terms are derived from the continental law system, they are consistent with the traditional legal culture of China in which morality and law are complementary and co-governing. In the new era, they have become the legal terms with Chinese characteristics to promote the core socialist values. Their common points are that they pay attention to the moral education, carry forward the traditional Chinese virtues, and nourish the spirit of the rule of law with morality. Moralizing the people not only changes people’s bad nature, but also bad customs, improves backward and ignorant customs and makes them tend to be rational.

From a diachronic point of view, these words have their development context at home and abroad. However, the great differences in legal culture between the common law system and the civil law system make the legal concepts in the two legal systems not completely equivalent or even completely unequal. The legislative expressions of the same concept in different languages are often different and constantly changing, and even there are intralingual and interlingual differences in different legislative texts and their translations in the same country. Therefore, legal translation should establish the awareness of "terminology relevance", put single term in the world legal system, and establish the relationship between Chinese and English and different languages (such as Latin, English, German, French, etc.). In view of this, we collected the current Chinese mainland civil legal texts from the official website, and then built a Chinese English parallel bilingual corpus. Secondly, we collect the Chinese Version (limited by language ability, with the help of Chinese translation) of the civil law texts of the representative countries (regions) of the continental law

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system as the reference corpus, and then use the English native language corpus and the Supreme Court Opinion Database of the United States as the analogy corpus to develop and construct the composite corpus. We first explain these new terms from the perspectives of history, culture, law and linguistics, and then translate them into English to be understood and accepted by English speakers based on corpus cross examination.

II. GONGXULIANGSU (公序良俗)

"General Provisions of Civil Law" is the first law in China to explicitly use the term "gongxuliangsu" (公序良俗). Previous laws, such as "General Principles of Civil Law, Contract Law" and "Property Law" (the three laws are stipulated in article 7) all have provisions on social morality, social public interests and social and economic order, which are generally regarded as the principles of public order and good customs by the legal community. In "General Provisions of Civil Law", the term "gongxuliangsu" (公序良俗) was used for the first time in legislation to replace the expression of social morality, social public interests and social and economic order, which is more concise and more meaningful. When translating from Chinese to English, the legal translator should, on the one hand, have an accurate understanding of the Chinese legal terms in the original text, avoid understanding them into obscure words and avoid deviating from the meaning of the original text. On the other hand, Chinese legal terms should be translated into English legal terms according to the general principle of "term translation". Therefore, in order to accurately translate the term "gongxuliangsu" (公序良俗) in "General Provisions of Civil Law", we need to understand the meaning of the term.

A. The expression of the principle of public order and good customs in the civil law of various countries

The principle of public order and good customs originates from Roman law and is expressed in Latin as Boni Mores, meaning good customs. This principle is stipulated in the civil law in most countries, but the wording is slightly different, some only stipulating good customs and some covering both public order and good customs. The former is like Article 138 of the German civil code: "Transactions against good customs are invalid"; the latter falls into the following two cases: one is the juxtaposed public order and good custom. For example, Article 6 of the French civil code states that an individual shall not violate laws concerning public order and good customs by special agreement; the other is the alternative. For example, Article 90 of the Japanese civil code states that a legal act against public order or good customs is null and void, and Article 2 of the Taiwan civil code states that customs applicable to civil matters shall be limited to those not contrary to public order or good customs. There are no relevant provisions on the principle of public order and good customs in common law. A similar concept is public policy, which aims to achieve justice on both sides of disputes and ensure public interest.

Because the meaning and expression of the principle of public order and good customs are not consistent in different countries (regions), the English version is also different. At present, there are two common versions. One is public policy. As mentioned in Article 138 of the German civil code: "A legal transaction contrary to public policy is void." The other is public policy or (and) morals. As mentioned in article 6 of the French civil code: "Statutes relating to public policy and morals may not be derogated from by private agreements." Another example is the translation of article 2 of the Taiwan civil code: "Only those customs which are not against public policy or morals shall be applied to civil case."

B. The use, meaning and English translation of "gongxuliangsu" (公序良俗) in "General Provisions of Civil Law"

The term "gongxuliangsu" (公序良俗) in "General Provisions of Civil Law" is the combination of "public order" and "good custom". The term appears four times in the act, namely, articles 8, 10, 143 and 153. After analysis, the summary is as follows. First, from the perspective of language, "gongxuliangsu" (公序良俗) is only used with the word "violation", because it is only a minimum requirement, and it refuses from the negative side, so as to provide performance enforcement for the legal acts trampling on the social bottom line; second, from the perspective of logical relationship, "gongxuliangsu" (公序良俗) ranks behind laws and regulations, indicating that its legal effect, as one of the sources of law, is lower than the former two, which is actually a supplement to the mandatory provisions of law; third, from the point of view of legal function, it mainly regulates how the "civil subject" engages in civil activities and civil legal acts, and from the perspective of negation, it requires not to "violate public order and good customs"; however, Article 10 stipulates that "public order and good customs shall not be violated" is "applicable" "custom" when "handling civil disputes". As the source clause of civil law in China, it is a kind of authorized provision to the court in nature to make up for the deficiency of prohibitions.

"Public order" refers to the basic order and basic idea in politics, economy, culture and other fields. It is the basic principle, value and order related to the overall interests of the country and society. In the previous civil and commercial legislation, it was called social public interest and social economic order. It is recommended to translate the term into public policy since public policy is translated as "public interest criterion" in Yuanzhao Anglo American Law Dictionary, and its meaning is interpreted as: "Generally speaking, it refers to the principles and
standards that are regarded by the legislature or the court as being fundamentally related to the whole country and society.” The principle requires that the general public interest and the good of society should be taken into consideration. Therefore, the court may refuse to recognize the legal effect of certain transactions or other acts of the parties.

"Liangsu" (良俗) is "good custom", that is, the "social public morality" appearing in the legislation of our country; in other words, it is the social public morality. It refers to the custom based on the mainstream moral concept of the society, and is the moral standard generally accepted and followed by all members of society. As a code of conduct that all citizens should abide by, "liangsu" (良俗) is an external norm of society for individual moral behavior. What it emphasizes is not the individual’s moral level or moral standard, but the external moral norms and standards formulated by the society as a collective for the individual in it. Both the English versions of Taiwan’s civil code and French civil code use the word "morals" to translate the "good customs" of their own civil codes, while Gao Lingyun translated it into "good morals". Therefore, it seems appropriate to translate "liangsu" (良俗) into "good morals". However, comparing "morals" and "ethics" in English, it is thought that the translation of "liangsu" (良俗) into "ethics" is more appropriate. The reasons are as follows.

In Oxford Advanced English Chinese Dictionary, morals is interpreted as follows: "[p.l.] standards of behavior; principles of right or wrong. That is, the standard of behavior; the principle of right and wrong: morality; ethics.” The meaning of "ethics" is system of moral principle, or provisions of conduct. When translated into Chinese, it is "daodebiaozhun, xingweiguifan" (道德标准，行为规范). Therefore, the English definitions of "morals" and "ethics" both mean principles, which represent a kind of "principles and criteria for evaluating the right and wrong behavior". Although the Chinese interpretation of morals and ethics contains the meanings of "morality", "ethics" and "norms", both of which can represent a kind of "moral norms", the paper analyzes the meanings of "morals" and "ethics" from the aspects of word frequency and collocation based on the Corpus of Contemporary American English (hereinafter referred to as COCA). "Morals" mostly refer to the individual’s moral character, which changes with the individual, and belongs to the individual’s internal moral attribute; while "ethics" is the collective’s moral constraint on the individual, which refers to an industry or collective’s stipulation on the individual’s moral character. It is the moral standard and criterion that the industry or the collective expects the individual to follow, and belongs to the external moral standard.

To sum up, “gongxuliangsu” (公序良俗)in "General Provisions of Civil Law" is more appropriate to be translated into "public policy and ethics".

III. "BINGCHICHENGSHI, KESHOUCHENGNUO"

(秉持诚实，恪守承诺)

Article 7 of General Provisions of Civil Law: "The civil subject shall abide by the principle of good faith, ‘bingchichengshi, keshouchengnuo’ (秉持诚实，恪守承诺) in civil activities,” which not only stipulates the "principle of good faith", but also further interprets the principle as "bingchichengshi, keshouchengnuo" (秉持诚实，恪守承诺). This expression of the principle of good faith can’t be found in the civil code of other countries or regions, which not only reflects the traditional philosophy of the unity of etiquette and law in China, but also is the unique legislative language of the new era with Chinese characteristics. The English translation of "chengxin"(诚信) will be discussed together with "shanyi" (善意) below. Here, we will only discuss how to translate "bingchichengshi, keshouchengnuo" (秉持诚实，恪守承诺). This expression was originally not used in legal language, but now it is given legal meaning. It is a typical non-specific term derived from daily language, but its daily meaning can serve as the starting point for understanding it in law.

With the development of history, the connotation of Chinese national morality has been enriched, mainly including integrity, honesty, fraternity, loyalty and filial piety and kindness. Since the people’s Republic of China, good faith has appeared in the laws of our country. Now it is stipulated in "General Provisions of Civil Law" as a basic principle, in order to "complement each other and promote each other". To teach the people with morality can arouse people’s honest and good nature, make them consciously move away from evil to good, away from illegal crimes, and reach a noble ideological realm. This is not only the essence of Chinese traditional legal culture, but also one of the characteristics of Chinese legal system. "Bingchichengshi" (秉持诚实) is to ask people to do things honestly without cheating, not only to maintain the tradition of honesty, but also to continue to practice this traditional virtue. It is suggested to translate the term as "uphold honest", because "uphold" can accurately express the above connotation: "to support sth. that you think is right and make sure that it continues to exist."

"Keshouchengnuo" (恪守承诺) is to keep one’s promise, not only to admit the promise, but also to fulfill it. In English, “promise” and “commitment” are similar in meaning. However, "promise" mainly refers to the oral agreement between individuals, while "commitment" mainly refers to the agreement on obligations formulated by contract. The principle of good faith requires civil
subjects to be honest, trustworthy, exercise their rights and perform their obligations properly when they are engaged in civil activities. Therefore, "chengnuo" (承诺) in the term "keshouchengnuo" (恪守承诺) should be translated as "commitment". The original meaning of "keshou" (恪守) is to observe cautiously and respectfully. In English, there are several words or phrases with the similar meaning, such as "observe", "abide by" and "comply with" etc., but "abide by commitment" appears in COCA only once, and the others are never matched in the word "commitment". However, it is found "Honor commitment" appears frequently. According to Oxford Advanced English Chinese Dictionary, "honor" means "keep promise" as a verb: "honor sth. (formal) to do what you have agreed or promised to do." Therefore, the meaning of "honor commitment" is: keep and realize the promise, which is consistent with the meaning of the term "keshouchengnuo" (恪守承诺).

To sum up, it is suggested to translate the Chinese term "bingchichengshi, keshouchengnuo" (秉持诚实, 務守承诺) as "uphold honesty and honor commitment".

IV. "SHANYIXIANGDUIREN"(善意相对人)

The term "shanyixiangduiren" (善意相对人) consists of the adjective "shanyi" (善意的) and the noun phrase "xiangduiren" (相对人). The translation of the two parts will be discussed in the following sections, and the translation of the term will be given on this basis.

A. The English translation of "shanyi"(善意): based on the comparison with "chengxin" (诚信) abbreviations and acronyms

1) The meaning and expression of "chengxin"(诚信): "Chengxin" (诚信) is "bona Fides" in Latin. "Fides" comes from the verb "fieri". It originally means "done", but later it means "faith". "Bona" means good, which is combined with "fides" as "good faith", but it is often translated into "chengxin" (诚信). "Bona fides" initially appeared as a procedural tool in the Roman legal system to enable Roman judges to create substantive law principles to adjudicate contract disputes between Roman citizens and non-Roman citizens. The earliest integrity in the history of Roman law was objective. Later, it was divided into objective and subjective. However, it was expressed by the term "bona fides", which was retained in the civil codes of many modern countries as a Latin model. The German began to use different terms to express two kinds of integrity. Article 242 of the German civil code on the performance of debt expresses objective good faith in "true und glaube", which comes from the oath made by ancient German merchants to guarantee the safety of transactions; the "good faith" in article 932, which stipulates the good faith in possession, is expressed in "guter Glauber", meaning "good faith", which is literal translation of Latin "bona fides". The treatment of this problem in Swiss civil code is different from that in German civil code. The similarities lie in that the two terms are used to express the objective and subjective good faith respectively; the difference is that the Swiss civil code has raised the two kinds of good faith into the basic principles of civil law. Since the Draft of Civil Law of the Qing Dynasty, China has been following the German model, using different terms to express two kinds of good faith. The term "chengxin" (诚信) is used to express objective integrity, and the term "shanyi" (善意) is used to express subjective integrity. Influenced by the Swiss civil code, Article 4 of "General Provisions of Civil Law" establishes the principle of good faith covering all civil relations. Different from Switzerland, China does not promote subjective good faith as a basic principle at the same time, but distributes it in the civil sector law in the form of "shanyi" (善意). For example, Article 6 of Contract Law stipulates that "the parties shall abide by the principle of good faith when exercising their rights and performing their obligations", which is about objective good faith; Article 47 (2) of the same law stipulates that "Before the contract is ratified, the bona fide counterpart has the right to cancel the contract..." This is about the provisions of subjective good faith. "General Provisions of Civil Law" attaches equal importance to objective good faith and subjective good faith. While establishing the principle of (objective) good faith as one of the six basic principles, there are 8 articles using the term "shanyixiandui" (善意相对人).

2) Sorting out and confirming the English translation of "shanyi"(善意): The noun phrase "shanyixin" (善意), short for "shanyixinynong" (诚实信用), is translated into English as "good faith" in both the Mainland and Taiwan, without controversy or difference. And this is consistent with Black Law Dictionary: "bona fides, n. [Latin] GOOD FAITH." This means that the three terms from different languages can be considered equivalent, meaning that they are translatable and not necessarily conceptually equivalent. The English translation of "shanyi" (善意) is quite different. The expression "shanyixiandui" (善意相对人) is respectively used in article 47 and 48 of China's Contract Law, and is translated as "bona fide counterpart". "shanyi" (善意) appears 10 times in China's Property Law. It is used as an adverb to modify "acquisition" for only once, while it is used as adjectives for nine times, only one used as a predicative, and the others used as attributives, collocating with the nouns "third party" (appears 5 times), "assignee" (appears 2 times) or "possessor" (appears 1 time). But its English translation is different. When used
as adverbial and predicative, it appears in the form of "in good faith", but when used as an attributive, sometimes it is used as "bona fide" in Latin and sometimes "with good faith". This shows that there is a certain degree of confusion in the current translation of "shanyi" (善意), which needs to be discussed and amended.

According to the foregoing, "shanyi" (善意) means subjective good faith, corresponding to "chengxin" (诚信) expressing objective good faith, but they both are "bona fides" in Latin. Although there are different terms to express these two different kinds of good faith in the German civil code, its English version is only one — "good faith". At the same time, it is "good faith" not "bona fide (s)" that appears in the English version of the French civil code, and the same is true for that of Germany. only in the Swiss civil code, "bona fide" is found three times, appearing with "inquirer" twice, meaning "bona fide possessor", and with "buyer" once, meaning "bona fide buyer". Therefore, the Latin term "bona fide (s)" is not commonly used in the English versions of European codes. The reason is unknown, but the obscurity of Latin and the complexity of its grammar and vocabulary are important factors that can’t be ignored.

In fact, Latin, as a kind of Western classical language which has disappeared from daily spoken language, is generally only used as a literature language for research, or borrowed some words by other languages. The grammar of Latin is complex. The adjective must be the same as the noun it modifies. Such as, bonus poeta (good poet), bona mater (good mother), and bonus bellum (good war). In other words, when adjectives modify different nouns, they should be changed accordingly. According to Black Law Dictionary, "bonae fidei possessor" means a good faith possessor, and "good faith purchaser" means bona fide purchaser. A careful observation shows that good faith in English is equivalent to "shanyide" (善意的) in Chinese, while in Latin, "good faith" varies according to the different nouns modified, sometimes "bonae fide", and sometimes "bona fide". This shows that when translating Chinese law into English, we must fully master and accurately use Latin legal vocabulary, and when both English and Latin terms can express the meaning of Chinese terms, English terms should be preferred over Latin ones.

So far, it is suggested to translate "shanyide" (善意的) as "good faith." In this way, it can also maintain the family resemblance with the English version of "chengxin" (诚信) to highlight the internal relationship between the two. For example, Canadian law believes that good faith is based on reasonable expectations, that is, it is good faith and reasonably trusts the other party. In addition, searching the key words in the foreign language database EBSCO in the past three years, we found that "bona fide" mainly appeared in biomedical papers, while "good faith" mainly in legal papers.

B. The meaning of "shanyixiangduiren" (善意相对人) and its translation

"Shanyixiangduiren" (善意相对人) appears in eight articles in General Provisions of Civil Law, which refers to two kinds of persons: one is the third party involved in civil legal relationship, namely the third party in good faith; the other is the counterpart of contract, that is, the counterpart of both parties who have entered into the contract relationship. The word has multiple meanings, which does not conform to the principle of "single name and single meaning" in legal terms, but this is the case in legislation, and the translator cannot and has no right to change it. The following will focus on how to translate them into different English terms according to their actual meanings in the context.

1) The translation of "shanyixiangduiren" (善意相对人) when meaning the third party in good faith: Article 65 of "General Provisions of Civil Law" stipulates that "if the actual situation of a legal person is inconsistent with the registered items, it shall not oppose ‘shanyixiangduiren’ (善意相对人)." The term "shanyixiangduiren" (善意相对人) here should be translated as "the good-faith third party”. Black Law Dictionary interprets the third party as: "n. A person who is not a party to a lawsuit, agreement, or other transaction but who is usu. somehow implicated in it; someone other than the principal parties. — Also termed third person." This is completely consistent with the meaning of "the third person" in China’s civil law. This legal concept is also expressed in articles 61, 85, 94 and 170.

2) The translation of "shanyixiangduiren"(善意相对人) when meaning the counterpart of both parties who have entered into the contract relationship: Article 145 of "General Provisions of Civil Law" is about the effect of a civil juristic act performed by a person with limited capacity for civil conduct, which stipulates that "the counterpart may urge the legal agent to ratify it within one month from the date of receiving the notice... Before a civil juristic act is recognized, ‘shanyixiangduiren’ (善意相对人) has the right to cancel it." Here, the term "shanyixiangduiren" (善意相对人) refers to the counterpart of the contract, that is, the counterpart of both parties entering into a contract or the opposite party with mutual interests, rather than the meaning of the third party in good faith. The meaning of "shanyi" (善意) is the same as above. One of the subjects who signs a contact is called "party" in English. As for the translation of "counterpart of two parties" or "opposite party with mutual interests", there are currently two versions: "the opposite party" and "the counterpart".
A search of the usage frequency of the two translations in the Corpus of US Supreme Court Opinions found that "the opposite party" was used quite frequently, while "the counterparty" was only used for 3 times. "Table I" below shows the details:

<table>
<thead>
<tr>
<th>Usage Frequency</th>
<th>Term</th>
<th>The opposite party</th>
<th>The counterparty</th>
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<tbody>
<tr>
<td>COCA Corpus PC</td>
<td>46</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>US Supreme Court Opinions</td>
<td>291</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

Therefore, when "shanyixiangduiren" (善意相对人) refers to "the counterpart of the contract", it can be translated into "the good-faith opposition party". This translation is not only applicable to Article 145 of General Provisions of Civil Law, but also applicable to two expressions of "shanyixiangduiren" (善意相对人) in Article 171.

To sum up, "shanyixiangduiren" (善意相对人) in "General Provisions of Civil Law" has different meanings in different articles, which should be translated into different versions in English, according to the actual meaning in the legal context. When "shanyixiangduiren" (善意相对人) means the third party in good faith, it is suggested to translate it into "the good-faith third party"; when it means "the counterpart of both parties", it is suggested to translate it into "the good-faith opposite party".

V. CONCLUSION

Under the guidance of the concept of "term relevance", this paper explains the meanings and origins of the three new terminologies in "General Provisions of Civil Law" from a multi-disciplinary perspective. Based on the cross-examination of a self-constructed composite corpus, it is suggested that the English translation of "gongxuliangsu" (公序良俗) should be "public policy and ethics", and "bingchichenshi, keshouchengnuo" (秉持诚实, 恪守承诺) should be translated into English as "uphold honesty and honor commitment". "shanyixiangduiren" (善意相对人) is translated into the "good-faith third party" or "the good-faith opposition party" according to its meaning.

The concepts expressed in the three new terms are derived from the continental law system, which is consistent with the traditional Chinese legal culture in which morality and law are complementary and co-governing, and become legal terms with Chinese characteristics reflecting the core socialist values in the new era. However, the target language, English, is the official common language of Anglo-American law system. Both the continental law system and the Anglo-American law system are rooted in specific social history and culture, and are closely related to specific political, social and economic life. They are different from each other in historical inheritance, legal system and culture, and also belong to different social value system from China. Therefore, it is not easy to translate Chinese legal terms into English across languages, cultures, systems and legal systems, and it is impossible for translators to achieve equivalence in all aspects between the original and the translated versions. This paper not only draws lessons from the international experience, but also explores the Chinese path, which not only enlightens the English translation of General Provisions of the Civil Law, but also benefits the translation and research of other laws and regulations.

References