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On the Standardization Process of Modern Chinese Legal Terminology

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ABSTRACT

The study of the standardization of legal terminology is actually a research of the legal expression system of Chinese civilization, and promotes the professionalism and expressiveness of this ideographic system. Since the law reform in the late Qing Dynasty in 1905, Chinese law has not yet formed a set of precise and professional legal ideographic systems, but it is being formed and is generally formed. Therefore, it has already established the basis for the standardization of legal terminology. In the process of the development of legal system and subject theory, the confusion of legal terminology is an inevitable phenomenon, but we should face up to the problem and carefully analyze its causes in order to solve it.

Keywords: Legal terms, standardization process, concept, professionalism, expressiveness, legal translation, legal characteristics.

INTRODUCTION

Language is a tool used in lawmaking and in the daily lives of people, and legal terms are the main elements of legal language. The National Committee for the Approval of Scientific and Technical Terms in its 2010 “Principles and Methods for the Approval of Scientific and Technical Terms” (hereinafter referred to as “Principles and Methods”) states: “Scientific and technical terms are linguistic references and are the linguistic names of scientific and technological concepts in professional fields. Our study below also shows that legal terminology is not only a terminological reference, but also belongs to the linguistic system of legal concepts in the field of legal sciences. Chinese linguist He Jiahong, in an article published in the journal “Renmin (People)”, puts forward the idea that “Scientific and technological nouns are linguistic references to scientific and technical concepts in professional fields, that is, the names of scientific and technical concepts in the language” [1]. The naming, definition and wider use of each professional term for a professional field are closely related to the level of development of theoretical research, and sometimes the characteristics of scientific research results, which have become a matter of controversy among scholars. The unification and standardization of professional terms should often be based on the high stage of the system of scientific and technological development. The Chinese legal system has undergone a difficult and complex development process, and the stage of term formation has been observed to this day. However, the Opium War in 1840 marked the end of the long period of feudal social law in the Chinese legal system and gave impetus to the beginning of the process of a modern legal state. This process, in turn, is recognized as a factor that has led to major changes in the legal system, legal concepts and legal culture in China. According to Chinese historical chronicles, compared with the century-old struggle after the industrial revolution in developed capitalist countries in the West, Chinese legal sciences are still in the process of maturation. After the reform period, China's legal system has flourished and developed significantly, but at the same time, with the rapid growth of professional knowledge and information, the number of similar terms has also increased, resulting in the emergence of "foamy" knowledge. This has been proven in practice to inevitably lead to confusion in the use of terms in the field of legal

sciences and to significantly damage the expressiveness and professionalism of legal language. For example, the legal terms “国际人道法” [guójì réndào fǎ] and “国际人道主演法” [guójì réndào zhǔyì fǎ] are translated into Uzbek as “International Human Rights”, but in the PRC these two legal terms differ significantly in terms of their scope of application, specific content, and control mechanisms. While the content of the first term is to focus on norms of behavior and protective measures during armed conflicts, the meaning of the second is to seek to protect the fundamental rights and freedoms of people in all circumstances. In turn, the term “主演” in the term “国际人道主演法” [guójì réndào zhǔyì fǎ] is an independent word, referring to moral principles and thoughts, a certain idea or ideological system [2], which is translated as a word-forming suffix such as “principle”, “ideology”, “idea” or “-ism”, depending on the context. For example, terms such as “恐恐主演” [Kǒngbù zhǔyi] “terrorism”, “民主演主演” [mínzhǔ zhǔyì] “democracy”, “爱国主演” [àiguó zhǔyì] “patriotism”, “自由主演主演” [zìyóu zhǔyì] “liberalism” can be used.

Over the years, the naming of relative disciplines in the Eastern legal system has formed a traditional method. For example, with the development of science and technology, it is preferable to unify the names of legal norms with the names of newly emerging legal disciplines, due to their interdisciplinary characteristics, while in modern Chinese legal disciplines, there is a phenomenon that it is difficult to unify the names of some disciplines, especially newly emerging ones, and they have formed different schools based on different names. [3] The reason for this phenomenon is, on the one hand, a process related to the history of the development of Chinese legal norms, and on the other hand, law has always been a method of interpreting legal codes for practical purposes. As a special knowledge that ancient Chinese justice officials had to know and apply in practice, modern jurisprudence has also been recognized as one of the main features of the spread of Western doctrine to the East.

After the founding of the People's Republic of China, legal norms have also undergone tremendous changes in the process of legal modernization, as a result of which the development of Chinese legal norms has undergone a complex process of transplantation and localization. The definition of legal concepts, including the names of legal disciplines, naturally requires an analytical process and cannot be achieved in one step. On the other hand, Chinese scholars cannot treat the names of disciplines as separately as Western scholars, because it is assumed that the names of disciplines can be a specific subject of debate and discussion among scholars. Different subject names represent separate "higher schools", and therefore this phenomenon requires practical application, especially in developing disciplines. Different subject names confuse not only legal specialists, but also beginners, and hinder the exchange and dissemination of legal knowledge in our country. The development of scientific technology and knowledge, if it is not possible to unify the names of sciences using scientific naming methods, the continuous emergence of "name innovations" will increasingly aggravate the problem of confusion in the system of scientific knowledge. There are two problems associated with the confusion of the names of subjects of several sciences: one is the uncertainty of the subject's belonging and the location of the subject; the other is the confusion in the conceptual system. Both of these issues are closely related to legal concepts, since legal concepts are the main elements of legal science.

First, the issue of disciplinary affiliation. Under the influence of the development of sciences and foreign languages, the terms we use for related concepts in the same science are constantly expanding. If the names of sciences are not unified and standardized, it is inevitable that it will be impossible to determine the exact attribute of interconnected concepts, that is, the system of legal concepts will become vague and chaotic. The terms used to express these concepts may have the same, similar, or overlapping meanings. If scientists use these terms according to their own understanding and preferences, this will lead to the use of different expressions to describe and discuss the same objective thing, which will inevitably seriously affect the exchange and dissemination of legal knowledge.

Second, the confusion of the conceptual system. Legal terminology refers to legal concepts, so standardized legal terminology is considered to be a parallel to the system of legal concepts. A conceptual system is a set of concepts consisting of relationships between concepts. An ideal conceptual system should have clear levels and a reasonable structure, accurately reflect objective things, be easy to define and standardize, and be convenient for coordinating and accommodating corresponding terminology systems in different languages. The conceptual system is usually based on genus-species relations. The place-whole-part relations are supplemented

by sequence relations and associative relations. For example, civil rights, property rights, and personal property rights are among them. In order to infer the content of the law from statutes or cases or both, it is advisable for lawyers to systematize or classify them according to the subject matter they deal with.

Legal acts or judicial decisions should be classified as belonging to private law or public law. In addition, private law norms are analyzed more precisely, as those related to contracts, torts, property, family and inheritance, as well as substantive and procedural rules. Indeed, in legal practice, there are many possibilities for classifying or systematizing legal norms or rules. These efforts, of course, try to determine the basic logic of legal systematization. For example, the attribution and classification of the two legal concepts of international humanitarian law and international human rights, in short, their place in the conceptual system, is the same issue. International humanitarian law is a set of international rules that directly address humanitarian problems that arise in international or non-international armed conflicts. International human rights law, as a rule, refers to the general term for the principles, rules and systems of international law that ensure the universal recognition and implementation of fundamental human rights and freedoms [4].

There are different views on the relationship between international humanitarian law and international human rights law in the world. On the one hand, international humanitarian law in the broad sense includes human rights law, and human rights law represents only a higher stage in the development of general humanitarian law. Another view is the opposite, and humanitarian law stems from the laws of war, while human rights law is an important part of the "law of peace" and takes precedence over international humanitarian law [4]. Indeed, judging from the history of the development of the two concepts, they are interconnected and have a sphere of interaction. In addition, the current debate on the logical relationship between "Personal Non-Property Rights" 人格权 [réngé quán"] and "Personal Rights" 人身权 [rénshēnquán] in the drafting of the civil code should also be seen as a question of which one belongs to the higher-level concept in the conceptual system. The disagreement between "Personal Non-Property Rights" 人格权 [réngé quán"] and "Personal Rights" 人身权 [rénshēnquán] may lead to logical confusion in the system of general and private rules of Chinese civil law. In short, with the development of science and technology, the scope of legal regulation objects and social relations is expanding, and the issues of disciplinary and conceptual attributes of emerging disciplines such as artificial intelligence law and Internet information law are receiving more and more attention.

Regardless of whether it is in scientific research or in the language of legislation and the courts, the process of using legal language, professional terminology, is the transparency of legal concepts, i.e. disclosure of ordinary legal norms, and since it is a highly abstract distillation of objectively existing legal facts formed in the development of law, the use of legal concepts allows us to make legal language correct and concise, which corresponds to the objective requirements of the law. For example, the term "Contractual management right of rural land" was originally introduced by economists. In essence, it is a type of usufruct right in property law, and is a specific application of the property law system and related theories to rural communal lands. "The transfer of the right to manage a land contract to another person is not a legal term, its meaning is similar to the disposal of usufruct rights in the theory of property law, which is the legal disposal of an object. [5] The Property Law, in turn, does not use professional legal terminology and continues to adopt the "right to conclude and manage contracts for rural land" in the general principles of civil law. This makes it difficult to achieve deductive justification of concepts in the system, undermines the harmonization of the legal system, and hinders the international exchange of civil law.

The main requirement of legal language is the correctness, clear expression and absence of ambiguity of legal ideas. If different legal concepts use the same form of expression, this will lead to confusion and contradiction. From the perspective of legislative language, incorrect expression of legal concepts can lead to errors in understanding and application. In serious cases, it can affect the rights, obligations, life and property of citizens, corporate activities, and the responsibility of state organs, and it can also affect the rule of law. At this point, in the Chinese Civil Procedure Law (2017), the term "participants in the trial" appears four times (Articles 101, 102, 123 and 133), but some include all citizens and organizations participating in the trial according to the law, such as witnesses, appraisers, while others only refer to the defendant. [6] For example, the following term "不要" [chí yǒu] "possession" appears in five articles of the Criminal Law (2015). In Article 128 of the crime of illegal

possession of firearms and ammunition, "possession" means carrying them on a person, whether openly or secretly. Article 172: Possession and use of counterfeit currency; Article 282: Illegal possession of state secrets and confidential information. Article 348 provides for the crime of illegal possession of narcotics, and Article 352 provides for the crime of illegal sale, transportation, possession and possession of seeds and seedlings of narcotic plants. The word "possession" in the above articles is broad and includes possession, transportation, storage, concealment, storage and storage. [7]

Also, legal terms that have the same meaning but are expressed in different ways can negatively impact the quality of legal interpretation due to incorrect translation. This situation is very common in Chinese law, and the legal term 違法官网 [wéifǎ yuánzé"] "principle of illegality" is an important attribution principle of the Law on State Compensation, because the legal basis for the state to pay or provide compensation is to confirm the illegality of administrative behavior. Therefore, the word 違法 [wéifǎ] "illegal" is used as a single-meaning legal term.[8] In addition, Article 36 of the Criminal Law (2015) contains provisions on 違法经济法制多 [Péicháng jīngjì sǔnsh] "compensation for economic losses" and Article 37 on 違法经济法制多 [Péicháng sǔnshī] "compensation for damages". For example, the names of non-individual legal entities also vary greatly in different laws (see Table 1).[9]

Names of legal entities that are not natural persons in different legal systems

组织	Organization	《消费者权益保护法》	Consumer Rights Protection Law
单位	Units	《传染病防治法》	Law on the Prevention and Control of Infectious Diseases
机关、单位	Administrative bodies and units	《税收征收管理法》	Tax Collection and Management Law
机关、组织	Administrative bodies and organizations	《文物保护法》	Cultural Relics Protection Law
机关、企事业组织、社会团体	Administrative bodies, enterprises and organizations, public groups	《义务教育法》	Compulsory Education Law
机关、社会团体、企事业组织和 其他组织	Administrative bodies, public groups,	《未成年人保护法》	Minors Protection Law

	enterprises and organizations		
国家机关、社会团体和企事业 单位	State bodies, public groups and enterprises, organizations	《妇女权益保障法》	Women's Rights Protection Law
企业、事业单位、机关	Enterprises, institutions and administrative bodies	《工会法》	Trade Union Law

While it is undeniable that the use of different terms in legislation may be customary by legislators, it is difficult for the public to assess the difference. In particular, there is no significant difference in the concepts of "person" in Articles 5 and 20 of the Law "On National Security" (2015) and "citizen" in Articles 19 and 22 in terms of their concepts as subjects of legal relations. [10] However, it is known that the law has a guiding and educational function. From this perspective, the use of different terms for the same legal concept may cause confusion among the public.

Many legal terms in modern Chinese are directly derived from Japanese kanji translations. Today, this set of terms has become the main language tool for analyzing legal concepts and conducting academic research. However, its historical origin has long been unclear. It is also important for the current Chinese legal system and the effective results of scientific research to be recognized and studied by the international community. The study of standardized legal terms, whether it is a brief interpretation of the defined terms, naming and explaining controversial terms, or identifying Chinese and foreign translation terms, is a very important and necessary factor for Chinese law. The main purpose of the study of standardization of legal terminology is to understand and reveal the essence and characteristics of legal concepts, clarify the relationship between legal concepts and concepts, and master the general laws of legal concepts. Because the issue of standardization of legal terminology involves not only the internal factors of linguistics, but also history, culture and other factors in addition to linguistics. Therefore, standardization of legal terminology cannot be achieved in one day, but is a long and complex process.

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