Designing an English-Chinese Bilingual Legal Dictionary

Matthew Wing-kwong LEUNG
Department of Chinese, Translation and Linguistics
City University of Hong Kong
Tat Chee Avenue, Hong Kong
ctmleung@cityu.edu.hk

Abstract
De Groot and Rayar (1995), after a review of two bilingual legal dictionaries, express dissatisfaction with the current state of affair and suggest 10 desiderata for bilingual legal dictionaries. Their major complaint is that many bilingual legal dictionaries are only glossaries to which suggestions for their translation have been provided. These 'translational equivalents' are then often employed without reference to the appropriate context of use. The present paper agrees with their judgment, but seeks to review critically the 10 desiderata suggested in the context of Hong Kong. With its return to China in 1997, Hong Kong is allowed to keep its common law system, inherited from its former colonial master Great Britain. China, however, uses the civil law system and Chinese is not a legal language in the common law system. These pose serious problem to legal bilingualism. A bilingual legal dictionary can be a useful educational tool, and has to be a bilingual dictionary and a law dictionary combined. Rather than giving translational equivalents, it must demystify the authority a bilingual dictionary often bestows on its translations and provide explanation and illustration of the uses of the translations in various legal contexts.

1. Introduction

De Groot and Rayar, after a review of two bilingual legal dictionaries, express dissatisfaction with the current state of affair and suggest 10 desiderata for bilingual legal dictionaries (1995, pp. 209-210). Their paper represents a serious and comprehensive attempt to counteract the deficiencies of many so-called bilingual legal dictionaries available in the market – "[t]he majority fail to offer much more than glossaries containing unsubstantiated translations" (p. 210), with little attention paid to the appropriate context of use, and thus "[i]n the hands of inexperienced translators, these dictionaries constitute dangerous tools" (p. 205). However, are these desiderata practicable? Or new ones need to be added? The present investigation discusses these questions in the context of Hong Kong and the design of an English-Chinese bilingual legal dictionary. Whereas part of De Groot & Rayar's concern is with the matching of equivalence between two languages, each of a different legal system, the present paper concerns itself only with the use of Chinese as a legal language in the British common law
system.

2. Hong Kong Context

Before 1997, Hong Kong, as a British colony, had a legal system based on the British model - the common law system. After its return to China in 1997, it was allowed to keep this system intact. Legal bilingualism, however, is to be practiced. New legislation is to be enacted in both English and Chinese, and the legal profession is encouraged to use Chinese

in legal proceedings. China itself adopts the civil law system and Chinese has not been much used as a legal language in the common law system. These pose a serious difficulty to the bilingual legal drafter and legal translator. The Hong Kong Government's Department of Justice publishes glossaries of legal terms (1998), with a web version (www.justice.gov.hk/homeglos.htm) – the Bilingual Laws Information System (BLIS). BLIS has a search function that allows the user to locate all the translations of a legal term in the database of Hong Kong legislation, and these translations can also be viewed in context. The glossaries and BLIS are of course treated as the authoritative references; but they are only glossaries. Other reference works call themselves bilingual legal dictionaries, yet they are deficient in the same way as de Groot and Rayar have stated. In fact, most are inadequate as bilingual dictionaries (see Leung 2003 for desirable requirements a bilingual dictionary should satisfy), let alone bilingual legal dictionaries. (See **References** for dictionaries consulted.)

3. The Ten Desiderata

To make bilingual legal dictionary more relevant to the users, De Groot & Rayar propose 10 desiderata (1995). They recognize that some of their suggestions may appear idealistic, and this paper concurs. Disregarding that, the present paper attempts a critical review and further elaboration of these ten desiderata.

(a) "In a preface, users of this type of dictionary should be alerted to the problems involved in translating legal terminology and cautioned as to its use" (de Groot & Rayar, 1995, p. 209).

The rise of the discipline of translation studies (see introductory text by Munday 2001) has shown that there are many more perspectives to take toward translation than the age-old debate between literal and free translation. The bilingual dictionary should be demystified as the so-called translational equivalent provided represents but one possible way of translating and has no particular claim to authority. The preface should clearly identify the translation approach adopted in the dictionary and illustrate with examples ways of assessing the relative degree of success of the application of the translation approach to the actual translation. This greater transparency will help in the demystification. However, not many users actually read the preface, let alone read it carefully and critically. The bilingual dictionary is treated usually as a reference tool, and is not a book that one reads from back to back. So, the alerting has to be in the dictionary entry where the user's attention can be more readily captured.

(b) "Ideally (but perhaps not always commercially feasible), the dictionary should contain a separate section introducing the legal systems involved" (de Groot & Rayar, 1995, p. 210).

In the context of Hong Kong, a succinct treatise on English-Chinese comparative law may not be easy to come by. In contrast, a short general introduction (to make it commercially feasible) to the legal systems involved is more readily available. Yet, if the introduction is to be short and general, then the information is probably best placed, when appropriate, in the dictionary entry.

(c) "The relation of the entries and their proposed translations to their respective legal system must be made explicit by offering linguistic context, encyclopedic and bibliographic references, thus ensuring verifiability" (de Groot & Rayar, 1995, p. 210).

As in a bilingual dictionary, the entry should be provided with definition and/or explanation of the headword, not just a series of translational equivalent (so claimed). Examples of usage should be given, not only to illustrate the linguistic context, but also to demonstrate its use. These examples should also show how different Chinese translations of the English headword are used, in cases where the context demands different Chinese version. It is important that encyclopedic and bibliographic references, for examples, of legislation and past cases, be included to allow the extended legal context needed for the understanding of the headword. It will be best (but idealistic) if the texts referred to by the references exist in Chinese as well, and that the references are to local legislation and cases. At present, only a very tiny amount of case law is available in both English and Chinese. Judicious selection of case law for reference and its translation will be a first step in a very long process when ultimately legal professionals in Hong Kong can refer to Chinese or Chinese version of case law readily in their work.

(d) "Compilers of bilingual dictionaries should not present their proposed translations as "standard" equivalents. Alternatives should be identified according to area of law, system and use" (de Groot & Rayar, 1995, p. 210).

It is in the nature of a dictionary to claim authority and standardization. But its authority will not be diminished because there are several Chinese versions of the English headword in various contexts of use. The dictionary entry should clearly list and explain the various senses of the headword in use, backed by examples of usage.

(e) "Mention should be made of the absence of an equivalent term in the legal system(s) related to the target language" (de Groot & Rayar, 1995, p. 210).

The absence of an equivalent term is less problematic than its apparent presence when that presence turns out to be a false one. Absence can be filled by a new coinage. Presence may lead to confusion when the two matched terms overlap to a certain degree and then differ in a major way in their respective roles in their corresponding legal systems. Chinese is used as a legal language in China, which unlike Hong Kong, adopts the civil law system. Chinese legal expressions in the civil law system need to be avoided, but semi-legal expressions which have their ordinary non-legal senses are much more difficult to avoid, and extreme care is required. A 'precedent' in the common law system is generally legally binding. In the civil law system used in China, it is not. The term has a transparent Chinese translation, but its interpretation will be affected by the readers' legal background, and the context of its use. (Under which jurisdiction is the legal text?)

(f) "The dictionary should indicate the degree of equivalence: whether the translation suggestion is a full equivalent, the closest approximate equivalent (acceptable equivalent) or a partial equivalent" (de Groot & Rayar, 1995, p. 210).

Setting up an objective and transparent system of assessing the degree of equivalence: full, approximate or partial will be no easy task. The classification may warn users of possible abuse, but they will be hard put as to what to do with a partial equivalent. An alternative is to label the translation in terms of the translation approach employed: interlinear, literal, functional or others. These labels are explained and illustrated in the front matter. The reference to the approaches would have the advantage of relativizing the various translations, and at the same, focusing on use. The matching then is translation situation with translation approach.

(g) "Neologisms must be identified as such, so as to avoid that these will be used by those consulting the dictionary as terms belonging to the legal system related to the target language. Ideally, the suggestion for a particular neologism should be reasoned" (de Groot & Rayar, 1995, p. 210).
Since Chinese is not a legal language in the British common law system, creating neologism will probably be a common strategy in translating the foreign concept. The resulting neologisms should be foreign enough to make the Chinese users recognize them as neologisms. Learning these neologisms will be part of the learning process to allow Chinese to take root as a legal language in the common law system. The neologism should also be contrasted with other possible non-neologism translations to explain the reason for the new coinage.
(h) "Bilingual legal dictionaries should be restricted to offering suggestions for translations based on legal areas, tying both SL-term and TL-term to a particular legal system. If this is not complied with, the make-up of the dictionary becomes unclear and precludes easy and reliable consultation" (de Groot & Rayar, 1995, p. 210). Sin & Roebuck writing about the shift to legal bilingualism in Hong Kong after 1997 suggest that "all common law terms in Chinese, however they are produced, must accordingly be understood with reference to the common law" (1996, p. 248). Fixing the common law as the semantic reference system is a useful strategy, and for people who are conversant with the common law system, this presents no real problems. However, for those who are less conversant, and who do rely on a literal interpretation of the term for understanding, the problem is a huge one. Probably, what is needed is the compilation of a bilingual legal dictionary in accordance with this principle as a first step in a long education process.
(i) "Source terms and their proposed translations are not suited to reverse use. Reversing the functions of the source terms and their partial equivalents, descriptions or neologisms will create false translation suggestions" (de Groot & Rayar, 1995, p. 210). Translators are aware of the limited use of back-translation in practice. Bi-directionality in bilingual legal dictionary will no doubt face similar restrictions.
(j) "The proposed translations must be reconsidered in the event of changes in either the legal system related to the source language or that related to the target language/ In other words: legal dictionaries must be frequently reassessed and updated" (de Groot & Rayar, 1995, p. 210).
With China joining the WTO and contacts between nations increase, the civil law system and the common law system will influence one another, and certain accommodations made in the fringes. The dictionary should surely reflect any changes.

4. An English-Chinese Bilingual Legal Dictionary

A bilingual legal dictionary has to be a bilingual dictionary and a law dictionary combined. So it is to be expected that a dictionary entry will be long, with explanation of legal concept and bibliographic references, in addition to the linguistic materials. As a bilingual dictionary, translation is involved. If one is to accept the assumption that there is no one perfect translation, the authority that a bilingual dictionary often bestows on its translations must be demystified (but a dictionary thrives on its authority!). To be effective, this must be done at the dictionary entry level because it is where the user's attention is focused. With, for

example, coded reference to translation approach, comparison of alternative translations, use of different translations in different contexts, the translation process can be made transparent. This can act as a timely reminder to users of the nature of the target language materials, and dampen their faith in the translational equivalents found in a glossary of terms.

The Chinese language, though not a legal language in the common law system, is of course employed as a legal language in the civil law system used in China. Because of a lengthy period of separation between Hong Kong and China, and the difference in legal system, so although written standard modern Chinese is a shared language, in its actual application in legal terminology, there are strange congruities and incongruities. A common term like 'contract', for example, is consistently translated differently in Hong Kong and in China, though the two Chinese terms are very similar in form and equally comprehensible at the literal meaning level. This can be a source of confusion – it may be just a difference in language habit of no real consequences, or a difference in legal meaning. Such confusion is particularly problematic in the area of semi-technical legal terms (Alcaraz & Hughes 2002).

Another factor to consider is the matter of language change, as reflecting conceptual change. With the opening of China in the economic aspect in the 1980s, it is accumulating experience regarding business practices and economic laws. To do business, some form of convergence becomes necessary between China and its foreign investors. The process can be a bitter one, and both sides have to adapt to the new circumstances. China's legal system is evolving as it comes into contact with other legal systems and starts to adopt new concepts and terminology, For example, Hong Kong's common law system is having an impact on China's civil law system, and vice versa. In such a state of flux, the determinacy in meaning of the legal terms, either in the source language or in the target language, is proving difficult to establish. The bilingual legal dictionary should alert its users to such a problem.

5. Conclusion

Unlike a bilingual dictionary, a bilingual legal dictionary is a combination of a bilingual dictionary and a law dictionary. Rather than giving so called translational equivalents, it must demystify the authority a bilingual dictionary often bestows on its translations by making the translation process transparent, and provide legal explanation and illustration of the uses of the translations in various legal contexts, alerting its users to the working of different legal systems and how sometimes these systems interact with one another and effect language change.

References

Dictionaries

He, G-D. (ed.) 2001. English-Chinese and Chinese-English Dictionary of Law. Shanghai: Shanghai Jiao Tong Da Xue Publishing House.
Legal English-Chinese dictionary. 1988. Taibei: Wu Nam Tu Shu Publishing Co.
Li, Z-G. and Pan, H-Y. (eds.) 1998. English-Chinese Dictionary of Law. Hong Kong: Shang Wu Publishing Co.
Peng, J-R. (ed.) 2001. A new English-Chinese Law Dictionary. Beijing: Zhongguo Fa Zhi Publishing Co.

Other References

Alcaraz, E. and Hughes, B. 2002. Legal Translation Explained. Manchester: St. Jerome.
De Groot, G-R. and Rayar, L. 1995. 'Bilingual Legal Dictionary: Criteria for Assessment' in M. Thelen an B. Lewandowska-Tomaszczyk (eds.), Translation and Meaning Part 3. Maastricht: Rijkshogeschool Maastricht, Faculty of Translation and Interpreting.
Department of Justice, Hong Kong Government. 1998. The English-Chinese Glossary of Legal Terms. (Third edition.) Hong Kong: Government Printer.
Leung, M. 2003. 'A Bilingual Dictionary for Translation Students' in M. Murata, S. Yamada, & Y. Tono (eds.), ASIALEX '03 Tokyo Proceedings: Dictionaries and Language Learning: How Can Dictionaries Help Human & Machine Learning? Tokyo: The Asian Association for Lexicography.
Munday, J. 2001. Introducing Translation Studies: Theories and Applications. London: Routledge.
Sin, K-K. & Roebuck, D. 1996. 'Language Engineering for Legal Transplantation: Conceptual Problems in Creating Common Law Chinese'. Language & Communication, 16(3), 235-254.