



## Chinese Thoughts vs. Western Notion on Author's Translation Rights

### PENSEES DES CHINOIS VS DE LA NOTION OCCIDENTALE DES DROITS DE LA TRADUCTION DE L'AUTEUR

LU Wei<sup>1,\*</sup>

<sup>1</sup> School of Intercultural Studies, Jiangxi Normal University, Nanchang 330022, China; School of Foreign Languages, Shandong University, Ji'nan 250100, China.

LU Wei studied translation in Shanghai International Studies University from 2002 to 2005. After being awarded master's degree for Translation Studies by that university, he has been teaching English-Chinese translation for six years at School of Intercultural Studies, Jiangxi Normal University, Nanchang, China. Presently he is a doctoral candidate at School of Foreign Languages and Literature, Shandong University, Ji'nan, China. His doctoral program is under the supervision of Dr. LI Defeng at Department of Linguistics, SOAS, University of London, United Kingdom.

\* Corresponding author.

Address: School of Intercultural Studies, Jiangxi Normal University, 99 Ziyang Avenue, Nanchang, Jiangxi, 330022, China.

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#### Abstract

When apprenticed to the big powers, China thought it justified to translate without considering international copyright so as to enlighten the Chinese people and change the then backward China at the lowest cost. Such thoughts, deeply rooted in China's academic tradition, have been in conflict with the Western notion of copyright for over a century. Although from the perspective of modern international copyright conventions, China was wrong in the past to infringe upon the source-text author's translation rights, yet if power is taken into consideration in the process of translation, things are not that simple. Translation has been regarded as "a catalyst for social change" in China, however, with great power differentials between China and the big powers, this catalyst would not have been possible if China had been completely submissive to the Western notion of copyright. While wrestling with other powerful countries on the issue of translation-related copyright, China is striving to dialogue with them on a relatively equal footing. On the other hand, as the nature of translation is revealed more and more in Translation Studies, scholars are calling for the translator's visibility, which raises an issue concerning the

authorship of the translator and limiting the source-text author's translation rights. In this case, traditional Chinese thoughts on the source-text author's translation rights would contribute a subversive power in deconstructing the Western concepts of the original authorship.

**Key Words:** The Source-Text Author's Translation Rights; Conflict; Power Differentials

#### Résumé

Lors de l'apprenti aux grandes puissances, la Chine a estimé qu'il est justifié de traduire sans tenir compte du droit d'auteur international, afin d'éclairer le peuple chinois et de changer l'arrière, puis le coût de de la traduction le plus bas se trouve en Chine. De telles pensées, profondément enracinées dans la tradition académique de la Chine, ont été en conflit avec la notion occidentale du droit d'auteur pour plus d'un siècle. Bien que du point de vue modernes conventions internationales sur le copyright, la Chine a eu tort dans le passé pour porter atteinte aux droits de traduction de l'auteur texte-source, et pourtant si l'alimentation est prise en considération dans le processus de traduction, les choses ne sont pas aussi simple que cela. La traduction a été considéré comme «un catalyseur pour le changement social» en Chine, cependant, avec des écarts de grande puissance entre la Chine et les grandes puissances, ce catalyseur n'aurait pas été possible si la Chine avait été complètement soumis à la notion occidentale du droit d'auteur. Bien que luttant avec d'autres pays les plus puissants sur la question de la traduction liée à droit d'auteur, la Chine s'efforce de dialoguer avec eux sur un pied relativement égale. D'autre part, que la nature de la traduction se révèle de plus en plus dans les études de traduction, les chercheurs appellent à la visibilité du traducteur, ce qui soulève une question relative à la paternité du traducteur et de limiter les droits de traduction de l'auteur-source texte. Dans ce cas, traditionnelles pensées chinoises sur les droits de traduction de l'auteur-

source texte contribuerait un pouvoir subversif dans la déconstruction des concepts occidentaux de l'œuvre originale.

**Mots clés:** Droits de traduction de l'auteur-source texte; Les conflits; Les différences de pouvoir.

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## INTRODUCTION

As early as the year 1068, when China was in the Song Dynasty (960-1279), a ban was put on the nine Confucian classics being printed by those other than the highest educational administration *Guozijian*, the Imperial College. That ban is regarded as the world's earliest edict of copyright protection, about 400 years ahead of similar ordinances in the West. The first written copyright law in China, however, has not come out until the year 1910, when the Qing Dynasty (1644-1912) promulgated *Copyright Law of the Great Qing*, thus lagging behind its first counterpart in the West, the British *Statute of Anne* enacted in the year 1709, for about 200 years.

Needless to say, ancient China's earliest awareness of copyright protection arose from its advanced printing technology at that time. In sharp contrast with that awareness, however, its sluggish resort to formal law enforcement was, so to speak, mainly caused by the following factors: 1) the long-standing self-sufficient natural economy, 2) the totalitarian feudal regime under the doctrine of Confucianism (Sheng & Xu, 2006, p.91-92). Generally speaking, the two factors have thwarted ancient China's establishment of legal systems. Nevertheless, there should be a third important factor that lies in the Chinese academic tradition. This tradition attaches so great importance to the teacher's noble role of disseminating knowledge that the intelligentsia would usually feel uneasy or even regard it a shame if they have made some little economic profits by selling their books or collected some little money by teaching a number of students. The dissemination of knowledge, in the traditional Chinese eye, should be first and foremost aimed at the advance and well-being of human society. Therefore, this academic tradition also entails the belief that it is an honor for the teacher if one of his students surpassed him or attained a much higher position than him in the future, an honor that is much more significant than what some little money he might have gained in writing books or teaching students. To a large extent, this academic tradition is directly related to the traditional Chinese attitudes towards and thoughts on copyright.

In China, such culturally-rooted attitudes and thoughts

continued to exert influences until modern times, which have aroused many conflicts with the Western notion of copyright. Such conflicts are especially prominent when it comes to the source-text author's translation rights, a hot issue raised after the year 1840 when China's door was opened by force. After that time, China became gradually aware of its own backwardness and began to draw more and more on other advanced cultures, i.e. the big powers such as the Great Britain, the United States, Japan, etc., thus bringing about a translation boom in modern Chinese history.

This paper will present a cursory historical review of Chinese thoughts on the source-text author's translation rights from the end of the 19<sup>th</sup> century to the years before 1992 when China joined the Berne Convention and the Universal Copyright Convention, exploring their conflicts with the Western notion of copyright from the perspective of power and translation.

## 1. CHINA'S INFRINGING ON THE SOURCE-TEXT AUTHOR'S TRANSLATION RIGHTS

After the Opium War in the year 1840, China was forced to open its eyes to see the world in virtue of translating from other advanced cultures. The translation activities at that time were generally backed up by the then enlightened literati and officialdom. With many informative books translated into Chinese, the progressive intelligentsia in China began to be apprenticed to the big powers, eagerly learning science and technology, politics, philosophy, etc. from them, and hoping that China would catch up with or even surpass them some day in the future, like the student would surpass the teacher as indicated by the traditional Chinese academic belief. Such motivations of translation at that time are sufficiently reflected in the slogans "Strive to become stronger by learning from other powerful countries" and "Resist other powerful countries by learning from them" put forward in the Westernization Movement (1861-1894) of the late Qing Dynasty. As a result, the Chinese government was forced to get entangled with international copyright issues.

At first, when there was no copyright law in China, many foreign countries' copyright interests were frequently encroached upon in the Chinese market. Unsatisfied with this situation, in the year 1902 when negotiating with the Qing government a renewed business treaty, the United States first proposed that such international intellectual property as copyright should be given due protection in China, thus stirring up a heated discussion among some Chinese government officials, scholars, and publishers. Zhang Baixi, the then minister of education, contended that such a proposal would do more harm than good. He once telegraphed two high-ranking governors, Liu Kunyi and Zhang Zhidong, stating

his reasons: 1) In dire need of learning from the big powers, China would definitely get blocked in education if restricted by copyright protection; 2) When the Chinese people were deprived of freely getting more knowledge from other advanced cultures due to copyright protection, it would also do no good to the big powers, for their business association with China would be adversely affected (Zhang, 2005, p.108, my translation). However, confronted with the strong, the weak Qing government had no option but to sign with the United States and Japan respectively the renewed treaty of commerce and navigation, in which international copyright protection was made as one of the agreements.

In addition to signing a renewed treaty with the Qing government, the big powers also urged that a copyright law be enacted in China. In the year 1905, when the first copyright law was still in the making, Zhang Yuanji, once a member of the literati and officialdom of the Qing court and then an outstanding publisher, drew up *Position Paper on the Draft of Copyright Law and Publishing Regulations*, in which he specially referred to the source-text author's translation rights, making the following arguments:

The stipulation that copyrighted books can not be translated, let alone be reproduced, should be reconsidered carefully, because it is rather unfavorable in practice. Lagging far behind, China is desperate to introduce science and technology from other powerful countries. Nowadays, most textbooks used in schools are translated from Japan or the West, so long as they bear even a little specialized knowledge. As to textbooks for learning and studying languages of other countries, none but the current copies from those countries are adopted and translated. If copyright protection comes into effect, none of the much-needed books can be translated. Would not it be very hard when we had to compile those books ourselves? Even if we could buy every original copy from other powerful countries, it would be beyond the ability of so many poor Chinese people to afford. Thus, for all our intention to catch up with the big powers, now we would only find ourselves lagging further behind them (Chen, 2000, p.132, my translation).

As regards the stipulation in the draft that if other countries would protect China's copyright, China should also protect their copyright, Zhang simply dismissed it as "nothing but a smokescreen", "sacrificing China's actual interests and rights for nominal copyright protection of Chinese books", because at that time very few Chinese books were translated into the native languages of other countries, especially into the languages of the big powers such as the United States and Japan, who "of course would not be stingy about protecting China's copyright" (ibid.).

Needless to say, both the renewed business treaty and the first copyright law were resulted from and driven by

the force and pressure from the big powers. Therefore, regardless of objections from many Chinese government officials, scholars and publishers, rules for international copyright protection were eventually formally established in China. Even so, it cannot be said that the Qing government was completely repressed in that issue.

For one thing, in the renewed business treaty it was stipulated that only books specially written for the Chinese people or already translated into Chinese by the local people in other countries should not be translated or reproduced by the Chinese people. Considering that the big powers initially intended to completely ban all China's translation activities that in their eyes would be infringes upon their copyright, this compromise had protected China's interests to a certain degree, reducing some adverse effects on China's education by allowing the Chinese people to translate from other advanced cultures, regardless of international copyright, some much-needed books that are outside of such restrictions. With that stipulation in the treaty, it should not be strange that the Chinese part won the translation-related copyright lawsuits of *Masanori's English Course Book* by Japan in the year 1908 and *Webster's Collegiate Dictionary* by the United States in the year 1923 (Shu, 2006, p.132). In a sense, the two typical winning cases were very significant to develop China's education at that time.

For another thing, what really made the Qing court interested in enacting a copyright law was *de facto* the promise from the big powers that they would like to abandon their extraterritorial jurisdiction after China had established a sound legal system. This could be regarded as the then weak and timid Qing Court's casual struggle against the big powers in the aspect of legislation and jurisdiction. The following comments have made this point quite clear:

As a matter of fact, the Qing court regards protecting other powerful countries' copyright as a means to an end, its real purpose being to get rid of their extraterritorial jurisdiction so as to construct a modern independent state that would be on equal terms with the big powers (Zhang & Li, 2004, p.45; my translation).

Thanks to the Revolution of 1911 overthrowing the Qing court, the 1910 copyright law was not actually enforced. However, it had great influences on later copyright laws made by the Northern Warlords government (1912-1927), the Nanking Kuomintang government (1927-1949), and other puppet governments. After the year 1927 when the Nanking Kuomintang regime was established, China had gradually got rid of other powerful countries' extraterritorial jurisdiction, becoming completely independent in legislation and jurisdiction as formerly promised by the big powers. Therefore, the copyright law enacted by the Kuomintang government is especially worth mentioning here. Along with this copyright law, there also issued *Rules and Regulations for*

*Implementing the Copyright Law*, in which it stipulated that the copyright of other countries' works should be protected in China, yet with a proviso that except music scores and drama scripts, other countries' works should confine their copyright in China solely to the rights of reproduction, thus basically ruling out the protection of the source-text author's translation rights. As a result, although from the standpoint of the big powers, China in the 22 years rule by Kuomintang had still been constantly prejudicing the copyright of many of their works, yet "in most cases it was only the source-text author's translation rights that had been infringed upon" (Li, 2005, p.176, my translation), which, judging by the Chinese copyright law, should not be considered as an infringement. Now that the big powers could no longer exert their extraterritorial jurisdiction, there were few international-copyright-related lawsuits during that period.

Finding out that neither the renewed business treaty nor the Chinese copyright law could provide them with due copyright protection as expected, the big powers then repeatedly urged China to join the alliance protecting international copyright or to join such international treaties as the Berne Convention and the Universal Copyright Convention, thus provoking another discussion in China. Like the previous one in the late Qing Dynasty, many objections were voiced with similar reasons being brought forward: 1) Joining the alliance protecting international copyright would greatly stunt China's development by making it impossible for China to freely translate, let alone freely reproduce, advanced academic achievements of other powerful countries; 2) According to the precedents of the United States, it would be unwise to join such conventions when a nation's overall strength could not run neck and neck with that of other powerful countries. Nonetheless, unlike the previous discussion, a minority of approvals were also voiced, albeit still with some reservations about the source-text author's translation rights. This indicated that China, after years of struggle and development, began to form an international awareness of copyright protection.

With the development of economy and education, the People's Republic of China in 1990 enacted its first copyright law, and in 1992 joined the Berne Convention and the Universal Copyright Convention. After entering WTO in 2001, China has adopted all-round amendments to the 1990 copyright law, making it more integrated into international conventions. From then on, there have been fewer and fewer disputes over the question of international copyright.

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## 2. CHINESE THOUGHTS VS. THE WESTERN NOTION: A WRESTLE OF POWER

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When apprenticed to the big powers, China thought it

justified to translate without considering international copyright so as to enlighten the Chinese people and change the then backward China at the lowest cost. Therefore, for over a century China has remained indifferent to the source-text author's translation rights. In the Western eyes, China was definitely wrong in translating illegally. However, consciously or unconsciously, the Chinese people would hold a contrary opinion about that issue. Such a dispute over translation-related copyright is worthy of a study and analysis from the perspective of power and translation.

China's disregarding the source-text author's translation rights has its deep root in the Chinese academic tradition, which makes the intelligentsia feel uneasy or even ashamed to concentrate on making profits in the process of disseminating knowledge to others. With this kind of thoughts put into action, China did get developed at a lower cost by learning from other powerful countries through translation. Although this is a so-called illegal action, yet it is justified from two aspects.

Firstly, this action should be a wrestle of power between cultures in the process of translation, therefore, labeling it simply as legal or illegal, right or wrong, could not give this action a good explanation. In his first hypothesis on translating across power differentials, Richard Jacquemond (see Robinson, 1997, p.31) points out, "A dominated culture will invariably translate far more of a hegemonic culture than the latter will of the former". It is a self-evident case that China, who, as a dominated culture, has to translate far more of the big powers than the other way around. Meanwhile, in a poor economic situation, China has no option but to remain indifferent to the source-text author's copyright, otherwise its own interests would be greatly impaired. Had China been completely submissive to the Western notion of copyright, translation could not have been "a catalyst for social change in China" (Lin, 2002, p.160-183), which makes China become stronger, eventually having power to communicate with the big powers on relatively equal terms.

Although hegemony in the process of translation is essentially inevitable, the ultimate aim of translation is still supposed to facilitate egalitarian intercultural communication, which can only happen when the dominated culture has got improved or promoted by learning from the hegemonic culture through abundant translation, whatever translational inequalities exist in this process. Therefore, during the period of apprenticeship, the dominated culture's remaining indifferent to international copyright could be regarded as a resistance to hegemony, aiming at an ultimate equal intercultural communication. Thus, before China joined the Berne Convention and the Universal Copyright Convention, infringing upon the source-text author's translation rights manifested that China, as a weak culture, was struggling

for an equal position with the big powers.

Secondly, as originality in writing is deconstructed and the nature of translation is revealed more and more in Translation Studies, it is definitely true that the source-text author's translation rights should be restricted. If this could be realized some time in the future, China's infringement at that time would be more understandable when looked back.

The Western notion of copyright is based on the respect of individualism, which regards it as God's truth to protect the individual's originality in writing. When defining originality, the text has been dichotomized according to the Western jurisprudence into expression and idea. For the sake of easy handling, the copyright law protects originality only in expression, not in idea. Nevertheless, even this notion of originality has been challenged by deconstructionism. As Roland Barthes argues:

We know now that a text is not a line of words releasing a single 'theological' meaning (the 'message' of the Author-God) but a multi-dimensional space in which a variety of writings, none of them original, blend and clash. The text is a tissue of quotations drawn from innumerable centres of culture... the writer can only imitate a gesture that is always anterior, never original. His only power is to mix writings, to counter the ones with the others, in such a way as never to rest on any one of them (Barthes, 1977, p.146).

Since no texts can be mere self-expression in that it is drawn from innumerable centers of culture, it is quite questionable how the Western copyright law could perfectly handle originality in expression, thus making individualism in the Western concepts of authorship untenable. Therefore, "to a certain degree, copyright is not so much of legal significance as of political and economic status (Li, 2006, p.106, my translation).

To enhance the translator's political and economic status, Venuti (1995) calls for the translator's visibility, striving to recognize the translator as an author. And when it comes to such legal problems as restricting the source-text author's control over the translation, Venuti (1995, p.311-312) suggests, "The foreign author's translation rights should be limited to a short period, after which the foreign text enters the public domain, *although only for the purposes of translation*" (italics original). This suggestion, in a sense, sees almost eye to eye with traditional Chinese thoughts on the source-text author's translation rights.

Thus, on the one hand, Chinese thoughts on the source-text author's translation rights are deeply rooted in ancient China's academy, which is rather incompatible with the modern Western notion of copyright, thus making conflicts on this issue inevitable. While on the other hand, Chinese thoughts are in some way justified and even have the potential of enhancing the translator's visibility. The dispute over translation-related copyright between Chinese thoughts and the Western notion can only be

well explained when power in translation is taken into consideration.

## CONCLUSION

China has at last joined the international copyright conventions, which is a progress in human civilization as well as the result of repression wielded by the Western power. Power, in the Foucaultian sense, is couched in the schema of struggle-repression (Foucault, 1980, p.92). This schema has been clearly revealed in the process of traditional Chinese thoughts disputing with the Western notion in copyright issues. On the one hand, the Western power has eventually repressed China's illegal actions in translation; on the other hand, China has struggled against the Western power by infringing upon international copyright law and traditional Chinese thoughts have contributed a subverting power to the deconstruction of the Western notion of copyright.

The wrestle of power between traditional Chinese thoughts and the Western notion in copyright issues has proved that "the workings of power are not simply "top down", a matter of inexorable repression and constraint; instead, translation, like other cultural activities, can be mobilized for counterdiscourses and subversion, or for any number of mediating positions in between" (Gentzler & Tymoczko 2002, p.xxxi). Indeed, translation negotiates power relations, and the negotiation of power in copyright issues has in one way helped China eventually enter the Western world.

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