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# A dialog between Sino-Western legal traditions: Yan Fu's translation of "natural law" in Montesquieu's *The Spirit of Laws*

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As an integral component of legal culture, legal concepts possess distinct cultural characteristics. Translating legal concepts between different cultures to facilitate effective cultural exchange and mutual understanding poses a significant challenge for legal translators. This paper examines Yan Fu's Chinese translation of "natural law", a key concept in Montesquieu's classic *The Spirit of Laws*, as a case study to analyze the connection between legal translation and cultural traditions in the socio-historical contexts of the early 20th century China. By analyzing Yan's choice of words, the paper unveils how Yan Fu reinterpreted Western natural law from both religious and ethical perspectives, thereby creating a dynamic dialog between Sino-Western legal cultural traditions.

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## Introduction

Concepts provide the mental architecture by which people understand the world and are ubiquitous in humanities and social sciences. A legal system endows legal concepts with meanings by embedding such concepts (the terms expressing them) within certain legal norms. (Sarter, 2009) Legal concepts are a part of legal culture, mainly referring to the aspects of legal culture related to attitudes, values, and psychology, representing a conscious and stable understanding and evaluation of law and legal phenomena. As an integral component of legal culture, legal concepts exhibit distinct cultural characteristics, and thus cannot be easily transplanted from one culture to another without a proper process of localization. This was the enormous challenge faced by Yan Fu in early 20th century China when translating *The Spirit of Laws* by Montesquieu.

In the original masterpiece, Montesquieu expressed the legal concepts of French intellectuals which were deeply rooted in European culture in the mid-18th century. On one hand, these concepts were deeply influenced by Roman legal traditions and medieval theology; on the other hand, they also reflected the demands of the emerging European merchant class at that time. So how could Western legal concepts be translated in a way that Chinese people could understand? What kind of cultural dialogues, conflicts, and integrations occurred during the localization process?

To answer these questions, this article focuses on the translation of “natural law”, a representative concept in the book *The Spirit of Laws*. Through analyzing Yan Fu’s choice of terms, the article examines Yan Fu’s approaches to translating and rewriting the concept of natural law in Montesquieu’s original work and unveils the links between his translation and Chinese cultural traditions and relevant social-historical contexts. The findings of this historical study shed light on patterns in the practice of translating legal concepts for cross-cultural communication between Chinese and Western law in the future.

## Literature review

Yan Fu is one of the most renowned translators in modern Chinese history, and over the past century, the academic community, both at home and abroad, has produced a wealth of research on his translations (Schwartz, 1964; Editorial Department of the Commercial Press, 1982; Ma, 1996). Studies on Yan Fu’s translation primarily fall into two categories. The first explores his translation theories, such as the translation criteria of “faithfulness, expressiveness, and elegance”, training of translators, and translation copyright. The second focuses on Yan Fu’s specific translated works, examining his translation practices. This category can be divided into two approaches: translation criticism and historical/ideological research. Scholars in the field of language and literature usually analyze the translation strategies or summarize the translation techniques, while historians tend to investigate the thoughts reflected in the translated works. Compared to Yan Fu’s other translated works such as *Tianyanlun* (*Evolution and Ethics*) and *Yuanfu* (*Wealth of Nations*), research on *Fayi* (*The Spirit of Laws*) is not only scarce but also one-dimensional. Translation critics merely assess the quality of the translation without discussing the relationship between the translation and the specific historical context. (He, 1925; Gao and Wu, 1992) Historians, on the other hand, considering the translated text as Montesquieu’s original ideas, explore only Yan Fu’s commentary to discuss his thoughts, completely overlooking the complexity of the translation activity itself and the intellectual value within the translated text (Zhou, 1940; Li, 1979; Wang, 2006).

In the process of introducing Western legal knowledge to modern China, *Fayi* represents one of the earliest Western legal

works directly translated from English by Chinese scholars, marking a significant milestone. Some scholars state that the formal introduction of Western legal thought and legal systems into China began with Yan Fu’s translation of *The Spirit of the Laws* (Liang, 1997; Liu, 2012). Before the 1960s, this translation circulated in China for half a century and was the primary resource through which most Chinese people understood Montesquieu’s ideas. Additionally, Yan Fu’s translation of Western knowledge contrasted sharply with the translations via Japanese by Chinese students studying in Japan, representing two distinctly different channels of knowledge transfer in modern China. Yan Fu’s translation possesses unique value both in terms of terminology and ideological connotation. (Chen, 2019).

Therefore, Yan Fu’s *Fayi* holds indispensable importance and awaits further exploration, whether viewed from the perspective of translation studies or from the transfer of legal knowledge and terminology from the West to China.

## The concept of natural law in the Western tradition

**The definition and development of natural law.** The concept of “natural law” (or “law of nature”) is one of the most fundamental notions in Western jurisprudence, deeply rooted in the history of the Western tradition. It has consistently sparked the attention of generations of legal scholars on topics such as law and human rights, justice, freedom, and morality. It is viewed by legal scholars as a hallmark feature of the Western legal system. The British legal scholar Sir Henry Sumner Maine (1822–1888), a contemporary of Montesquieu, highly praised the significance of the concept of natural law in the Western legal system, stating that “Indeed, it is not easy to say what turn the history of thought, and therefore, of the human race, would have taken, if the belief in a law natural had not become universal in the ancient world.” (Maine, 1920, p. 80).

According to the definition given in the *Encyclopaedia Britannica*, by “natural law” means a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society, which is known as “positive law”. (Britannica 2023) In *Black’s Law Dictionary*, the term “natural law” has two interpretations: one is the scientific sense, referring to natural laws such as the law of gravity, and the other belongs to a philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action. (Garner ed., 2009, p. 1127) The discussion in this article pertains to the latter sense of natural law, with its core idea being that natural law is a system of justice independent of positive laws, deriving from either the will of God or human reason, and its existence is self-evident. The contrasting concept to natural law is positive law, also known as enacted law or man-made law. Scholars of the natural law school believe that natural law existed before positive law and has a higher authority.

The specific meaning of natural law has evolved throughout different historical periods. In the historical context of Western civilization, the development of the concept of natural law can be roughly divided into four stages: (1) ancient naturalism, (2) medieval theological natural law, (3) modern Enlightenment rationalist natural law, and (4) the contemporary revival of natural law. (Bodenheimer, 1962, pp. 31–59) During the ancient Greek and Roman eras, the essence of natural law was associated with reason, considering it as universal and eternal, the fundamental order governing all things in the world, which humans can only obey but not alter. In the Middle Ages, Christian theology, represented by figures like Thomas Aquinas, unified natural law with divine law, placing the core of ancient

natural law thinking within the framework of Christian political and legal philosophy. Natural law was regarded as God's rational command to rule over humanity and guide humanity toward the ultimate good, providing concrete norms for the application of eternal law in the human world. (Aquinas, 1963, pp. 111–125) In the late Middle Ages, with the development of the commercial economy and the upcoming Renaissance and the Reformation, natural law gradually evolved into a theoretical resource for the emerging capitalist political revolution. Montesquieu's ideas on natural law in *The Spirit of Laws* belong to this stage, which was significantly influenced by the first two stages. Enlightenment thinkers started to draw from the rationalist elements of previous natural law theories, abandoning the simplistic naturalism and theological elements of Catholicism, and ascribed natural law to human reason.

**Natural law in the book *The Spirit of Laws*.** The late 17th to the first half of the 18th century, when Montesquieu lived, was a period of great prosperity for natural law theory in Europe. Works by natural law scholars such as Hugo Grotius (1583–1645), Samuel von Pufendorf (1632–1694), Thomas Hobbes (1588–1679), John Locke (1632–1704), and others were continuously translated and reprinted in France. (Waddicor, 1970, p. 15) Montesquieu's admiration for the concept of natural law was deeply influenced by these natural law thinkers while also possessing distinct characteristics of his own. (Courtney, 2001, pp. 42–46).

Natural law is a foundational concept throughout the book *The Spirit of Laws*, and it serves as a crucial keyword for understanding Montesquieu's legal thought. Apart from a dedicated section titled “Of the Laws of Nature” in the first chapter “Of Laws in General”, natural law is also discussed in various other chapters, covering different aspects of legal theory, war, and international law, slavery, religious law, marriage and inheritance law, among others. Montesquieu believes that natural law is an immutable set of principles that existed before the establishment of human society, and human society is built upon these principles. The reason it is called “natural law” is that it derives its force entirely from human existence. Unlike Hobbes' “state of war” theory, Montesquieu considers the natural state of humans to be a state of peace.

After briefly examining the natural state of humanity, Montesquieu deduces four principles of natural law. In order of priority, these principles are peace, subsistence, sexual attraction, and the desire to live in society. (Montesquieu, 1896, pp. 4–5) The core of Montesquieu's concept of natural law is self-preservation. In the natural state, humans remain in a state of peace because their primary concern is preserving their own lives, and in this state, humans are weak and timid, not desiring to attack each other. Thus, peace is a means of self-preservation and the first principle of natural law. As for seeking food, it is the most compelling physiological need of humans after satisfying safety needs, representing the most fundamental requirement for self-preservation. The mutual attraction between sexes is a necessary premise for the reproduction and growth of human populations. The fourth principle of natural law, social life, is also related to human self-preservation because once humans enter society, living in an organized community becomes essential for their preservation.

In addition to these fundamental principles, Montesquieu presents other specific natural laws in other chapters (chapters 3/10/15/16/21/25/26) including the right to self-defense, the preservation of chastity, respect of wives for husbands or sons for fathers, parental care for children, and opposition to homosexuality, which are all derived from the aforementioned fundamental principles.

## The translation of natural law in China

Does the concept of natural law exist in the traditional Chinese legal culture? This is a controversial topic in the field of law. (Tian, 2008) In the late Qing, Liang Qichao first proposed the idea that Confucian thought represents ancient Chinese natural law. Subsequently, the question of whether ancient China had natural law became a hot topic of discussion in legal, philosophical, and historical circles. Many scholars further developed Liang's viewpoint by categorizing the thoughts of Laozi, Confucius, Mencius, Xunzi, Zhu Xi, and others—such as *faziran*, *fatian*, *wuwei*, *tianming*, *tianli*—under the umbrella of natural law. (Wang, 2014) A typical representation of legal naturalism in ancient Chinese legal culture is the use of *Tian* as the basis for legislation, and the consideration of seasonal changes and natural disasters as prerequisites for enforcing penalties. (Cui, 2003).

On the other hand, some scholars argue that ancient China did not have Western-style natural law thought. They point out that Western natural law is theological and speculative, while Chinese natural law is humanistic, empirical, and intuitive. (Yu, 1998) Furthermore, the dichotomy between Western natural law and positive law reflects respect for the rationality of humans as subjects, whereas Chinese natural law emphasizes the unity of nature and humanity and the ethical equivalence to nature. (Fan, 2001) We may summarize that the cultural traditions of China and the West have given rise to two different types of natural law. While there are similarities in content between Western and Chinese natural law, there are also significant differences.

It is certain that in traditional Chinese culture, there is no exact equivalent concept to “natural law” as understood in the Western context. It is generally believed that the concept of Western natural law entered China during the late Qing Dynasty through the translation of and commentary on Western legal works and gradually became an important intellectual resource for the establishment and development of modern Chinese jurisprudence. At that time, there were two different translation paths for the Western concept of natural law in China: one was by Western missionaries in China, the other through Japanese translations.

**Translations by Western missionaries in China.** Previous studies have shown that the earliest formal Chinese translation of “natural law” was *xingfa* 性法, which was coined by the American missionary William Alexander Parsons Martin (1827–1916) in the 1860s when translating Henry Wheaton's *Elements of International Law* into Chinese. (He, 2003, pp. 22–23; Cheng, 2007, p. 96) However, this is not the full picture, as the term *xingfa* was already proposed by Jesuit missionaries no later than the early Qing Dynasty.

In 1654, the Italian Jesuit Ludovico Buglio (1606–1682) translated part of Thomas Aquinas's *Summa Theologiae* into Chinese and published it as *Chaoxing Xueyao* 超性学要. (Zhang, 2004, p. 78) This work extensively discussed various types of laws in religious theology, including many Western legal terms. Buglio translated the Latin term “*lex naturalis*” (natural law) as *xingfa*, along with terms like *yongfa* 永法 (eternal law), *renfa* 人法 (human law), and *tianzhufa* 天主法 (divine law), forming a complete legal system. However, Buglio's translation did not have a significant impact, and the series of legal terms he introduced did not leave a lasting mark during the Qing Dynasty. (Leeb, 2017, p. 260) In 1839, when the Chinese official Lin Zexu (1785–1850) commissioned Peter Parker (1804–1888) and others to translate Emer de Vattel's *The Law of Nations*, “law of nature” was translated as “*tuodang daoli* 妥当道理 (proper reason)” and “nature has given man right” was translated as “*tianxing suofuzhili* 天性所赋之理 (principles of nature)”. (Cui, 2007, p. 192).

There is no doubt that the person who truly popularized the term *xingfa* was the American missionary William Alexander Parsons Martin. *Wanguo Gongfa* 万国公法, his translation of *Elements of International Law*, was the first systematic introduction of Western international law to China and caused a great impact among the upper-level officials in China after its publication in 1864. In his translation, Martin highlights the theological aspect of natural law: “其所谓‘性法’者，无他，乃世人天然同居当守之分，应称之为‘天法’。盖为上帝所定，以令世人遵守，或铭之于人心，或显之于圣书。” (Back translation: The so-called *xingfa* is nothing but the natural obligations that everyone should observe when coexisting in this world. They should be called *tianfa*, the law of Heaven, because they are set by God to command people to follow. They are either engraved in people’s hearts or clearly stated in the sacred books.) Besides *xingfa* and *tianfa*, the translation of natural law in *Wanguo Gongfa* also includes terms such as “*tianli zhi ziran* 天理之自然 (natural justice of heaven)” “*renxin zhi xingfa* 人心之性法 (natural law in people’s hearts)” “*ziran zhi fa* 自然之法 (law of nature), and “*tianli ziran zhi yi* 天理自然之义 (justice of heaven and nature)”. Furthermore, the term *xingfa* was also introduced to Japan when *Wanguo Gongfa* was translated from Chinese into Japanese in 1865 and had a significant impact on Japanese politicians and scholars. (Shinobu, 1951).

Following the publication of *Elements of International Law*, several translations of other Western legal works in China also mentioned the term “natural law”. In 1877, the six-volume compilation *Gongfa Bianlan* 公法便览, based on Theodore Dwight Woolsey’s *Introduction to the Study of International Law*, translated “natural law” as *lifa* 理法 (law of reason). Between 1898 and 1902, the book *Geguo Jiaoshe Bianfalun* 各国交涉便法论, written by British legal scholar Robert Phillimore (1810–1885) and translated by British missionary John Fryer (1839–1928), offered three translations of “natural law”: *tianran lvli* 天然律例 (laws and regulations of nature), *tianlv zhi fa* 天律之法 (law of heaven), and *tianran zhi li* 天然之理 (reason of nature). (Li and Yu, 2002).

**Translations through Japanese resources.** The other translation of natural law, *ziranfa* 自然法, emerged a little later than *xingfa*. In 1877, the Dutch missionary Guido Herman Fridolin Verbeck (1830–1898) used the term *ziranfa* in the table of contents of *Hôgaku shishin* 法学指鍼, his Japanese translation of Louis Prosper Auguste Eschbach’s *Introduction générale à l’étude de droit*. In the 1880s, Oshima Sadamasu (1845–1914) used *ziranfa* as a synonym for *xingfa* in his translations of John Austin’s legal works.

Japanese scholars had already noticed the difficulty in the translation of natural law. Inoue Misao (1847–1905) provided a note of explanation in his translation of *Sêhō kôgi* 性法講義, stating that the direct translation of “natural law” in Japanese is *ziranfa* but the chosen translation *xingfa* is justified because it refers to “the laws of heaven and nature”, which reflects the essential characteristics of natural law. (Inoue, 1877, p. 14) Therefore, during the Meiji era, both *xingfa* and *ziranfa* were accepted as translations of natural law.

Japanese legal terms were later brought back to China during the fervent translation movement in the early 20th century and were used simultaneously by the Chinese legal community for quite some time. In the first issue of *Yishu Huibian* 译书汇编 (A monthly magazine of translated political works from Japanese) in 1900, the term *xingfa* was used in the translation of Montesquieu’s *The Spirit of Laws*. However, in the same magazine in 1902, translators used the term *ziranfa* in the translation of *Hôritsugaku kôryô* 法律學綱領 by the Japanese

legal scholar Tomonao Hosui (1861–1935). It was common to find both *xingfa* and *ziranfa* as translation options for natural law during that period.

To sum up, the earliest Chinese translation of natural law, *xingfa*, was proposed by Western missionaries and can be traced back to the mid-17th century by Jesuit translators. Later, the term was popularized through William Alexander Parsons Martin’s translation of *Elements of International Law* and further influenced Japan. By the early 20th century, a large number of legal magazines and books translated from Japanese reintroduced both the original Chinese term *xingfa* and the Japanese term *ziranfa* back to China, both of which were used in the Chinese legal community.

### Case study: Yan Fu’s translation and rewriting of natural law

Yan Fu (1854–1921) was probably one of the most successful Chinese translators of the 20th century, famous for his translations of Western social science classics. When he began translating *The Spirit of Laws* in 1903, he had at least these two terms, *xingfa*, and *ziranfa*, as references. However, Yan Fu chose neither of them as a fixed translated term for “natural law” in *Fayi* though he did use *ziranfa* once. How did Yan Fu understand Montesquieu’s concept of natural law? Is there any difference from Montesquieu’s original intention? Does his translation have any connection with traditional Chinese legal thought? These questions remain of great importance but relatively unexplored.

To answer the above questions, a parallel corpus of English text and Yan Fu’s Chinese translation is built by keyword search.<sup>1</sup> It is found that Montesquieu’s original text contains 42 explicit occurrences of English terms related to natural law. In Yan Fu’s translation, there are a total of 41 corresponding translated terms and one instance of using pronoun without terms. Additionally, in the added comments by Yan Fu, there are another two mentions of natural law, bringing the total to 43 instances. Based on the characteristics of these translated terms, these 43 instances can be divided into three categories, as shown in Table 1.

Overall, Yan Fu’s translation of the English term “natural law” is not consistent. Not only does he use up to 27 different translated terms throughout the book, but the terms within the same chapter often vary as well. Taking the first chapter as an example, where the concept of natural law appears most frequently, the English terms “natural law(s)” and “the law(s) of nature” occur ten times, but Yan Fu provides seven different translated terms. Additionally, the term *ziran gongli* 自然公例 appears in the added comments. From a practical perspective, the lack of uniformity in translated terms hinders the dissemination and reception of the translated work, and indeed, many of these translated terms did not become widely accepted. However, from a cultural research perspective, these different translated terms provide rich clues for examining Yan Fu’s thoughts. His choice of words in specific contexts often hides ideological sources that differ from Western traditions. Such a rewriting, which includes cultural awareness or cultural subjectivity, is what has been overlooked in previous studies. Below, discussions will be made on the first two categories, which account for the vast majority of the translated terms, to explore how Yan Fu rewrites Montesquieu’s concept of natural law.

**Concealed religiousness: *xingqi ziran zhi fa*.** The first type of rewriting for Montesquieu’s natural law is to replace the divine origin of natural law in the Western tradition with *xingqi* 形气 (*xing* 形 refers to the concrete physical entities while *qi* 气 refers to the vital force forming part of any living entity) and *ziran* 自然 (nature).

In the Western context, the concept of natural law is intricately linked to religious beliefs. Cicero once described it as follows:

**Table 1 Translated terms of “natural law” in Yan Fu’s translation.**

Category	A	B	C
Frequency	18	23	2
Keywords	<i>xingqi</i> 形气 <i>ziran</i> 自然	<i>tianli</i> 天理 <i>renlun</i> 人伦	<i>gongli</i> 公例 <i>gongli</i> 公理
Full translations	<i>xingqi ziran zhi fa</i> 形气自然之法 <i>genyu xingqi zhi fa</i> 根于形气之法 <i>genyu ziran zhi fa</i> 根于自然之法 <i>ziran fa</i> 自然法 <i>fa zhi bingyu ziran</i> 法之稟于自然 <i>ziran zhi fa</i> 自然之法 <i>ziran zhi lvling</i> 自然之律令 <i>ziran zhi lv</i> 自然之律 <i>ziran lv</i> 自然律 <i>lv zhi benyu ziran zhe</i> 律之本于自然者	<i>tianshe zhi dafa</i> 天设之大法 <i>tiandao</i> 天道 <i>tiandao zhi ziran</i> 天道之自然 <i>tianxing</i> 天性 <i>tianli</i> 天理 <i>tianli renqing</i> 天理人情 <i>tianlv</i> 天律 <i>tian</i> 天 <i>li</i> 理 <i>tianze zhi ziran</i> 天则之自然 <i>lv zhi chuyu tianshezhe</i> 律之出于天设者 <i>tianshe zhi lv</i> 天设之律 <i>renlun</i> 人伦 <i>rendao zhi benran</i> 人道之本然 <i>chang</i> 常	<i>ziran gongli</i> 自然公例 <i>ziran zhi gongli</i> 自然之公理

True law is correct reason congruent with nature, spread among all persons, constant, everlasting. It calls to duty by ordering; it deters from mischief by forbidding...There will not be one law in Rome, another at Athens, one now, another after, but one both everlasting and unchangeable will encompass all nations and for all time. And one god will be the common teacher and general, so to speak, of all persons. He will be the author, umpire, and provider of this law. (Cicero, 2014, pp. 98–99).

This passage is considered one of the classic interpretations of Western natural law theory, conveying two main meanings: first, that natural law is eternal and unchanging, applicable to all people in all nations and eras; second, that God is the creator and judge of natural law. During the Middle Ages, the authority of the Church, Thomas Aquinas, further strengthened the association between natural law and Christian divinity. Natural Law is the specific application of God’s Eternal Law in the human world, providing rational commands for humanity to achieve ultimate good.

Along this religious tradition, Montesquieu’s concept of natural law also reflects clear Christian theological influences. In the 18th century, the oppressive rule of the Church had loosened after the Renaissance and the Reformation, but religious influence on social and cultural life remained irreplaceable. The transcendent view of natural law was still prevalent, “as the foundation of positive law, the natural law is absolute and necessary because it comes from a transcendent world, either the absolute ideas of Plato or the divine absolute existence of Christianity.” (Liang, 1997, pp. 335–336) Montesquieu himself remained a devout Catholic until his death. In the opening of the first chapter, he clearly stated that God made all laws; in the second section, he mentioned a prevalent European belief at the time:

Example 1:

The law which, impressing on our minds the idea of a Creator, inclines us towards Him, is the first in importance. (1–2)<sup>2</sup>

法之稟于自然，而关于人道最重者，莫若知天人之交。

Facing such a specific religious connotation of “natural law”, Yan Fu neither translated the idea of inclining to God nor explicitly translated the concept of God or the Creator. Instead, he used the Chinese traditional concept of *bin yu ziran*稟于自然 (out of nature)

and *zhi tianren zhi jiao*知天人之交 (to understand the relation between man and nature) to replace expressions “impressing on our minds the idea of a Creator” and “inclines us towards Him”. The latter phrase bears the influence of the Chinese traditional philosophical idea of *tianrenheyi* 天人合—(harmony between man and nature). It is a philosophical concept in ancient Chinese thought and one of the fundamental ways of thinking for Chinese people. It is manifested in the understanding of the relationship between man and nature, and Taoism, Confucianism, and Buddhism have all adopted this concept though different philosophical schools have varying interpretations through history. The basic idea is to seek commonalities between man and nature and achieve harmony, coordination, and unity. (Tu 1991; Hansen, 1992; Feng, 2000; Zhang, 2014, p. 59) Some even regard *tianrenheyi* as “the final destination of Chinese traditional culture”. (Qian, 1992, p. 39) What Yan Fu expresses is precisely such a traditional Chinese philosophical idea of harmony between man and nature, rather than Montesquieu’s natural law with God viewed as an anthropomorphic deity with willful intent. From Yan Fu’s translation, there is no existence of another world beyond worldly experience, nor an omnipotent Creator and natural laws guiding humanity to submit to God.

Since the natural law understood by Yan Fu does not originate from God, then where does it come from? Yan Fu believes that the source of natural law is *xingqi* 形气 and *ziran* 自然. These two terms are sometimes used together and sometimes used separately. For example, Yan Fu translates the title “Of the Laws of Nature” in the second section of the first chapter as *xingqi ziran zhi fa*形气自然之法. Later, he uses both *genyu xingqi zhi fa*根于形气之法 (laws rooted in *xingqi*), and *genyu ziran zhi fa*根于自然之法 (laws rooted in nature), to refer to the same term natural law, indicating that *xingqi* is to some extent synonymous with nature in this context. This is illustrated in the following examples:

Example 2: the Deity (has) His laws, the material world its laws.(1-1)

天有天理，形气有形气之理。

Example 3: But the intelligent world is far from being so well governed as the physical.(1-2)

心灵之守法，远不逮形气之专。

It is not difficult to see that *xingqi* used by Yan Fu refers to the material or physical world (power), which is closely related to Chinese culture. The concept of *xingqi* is an essential category in ancient Chinese materialist philosophy, used to explain the formation of the universe, the generation of life, the structure of the human body, physiological functions, pathological changes, and so on. *Xingqi* refers to concrete physical entities or tangible substances, while *qi* refers to the fundamental but intangible element that constitutes everything in the universe. Different schools of thought in pre-Qin and Han dynasties had their explanations of *xingqi*, but they all considered it the basic substance of the world, essential to the origin of all things, and having transformative power. (Zhang, 2014, pp. 22–23, 283–284).

Therefore, Yan Fu's translation of natural law as *xingqi ziran zhi fa* emphasizes the material essence of law and highlights that natural law is the law governing the material world. It inadvertently obscures the Christian roots present in Montesquieu's original text, replacing them with elements of traditional Chinese philosophical thought. This philosophical inclination, which emphasizes the importance of the material world and seeks harmony between man and nature, also reflects the common ideological characteristics of a fusion of Confucianism, Buddhism, and Daoism. It aligns with the inherent cosmic view and thought pattern of the Chinese—the development and harmony of all things in the universe are not determined by an external authority, but rather, each entity follows the command of its own nature as part of a hierarchical order within the whole. From this perspective, Yan Fu's translation replaces the Christian characteristics of the original text with universal or secular values of the concept of “natural law” that transcend specific religious affiliations.

**From rights to obligations: *tianli* and *renlun*.** Another way Yan Fu rewrites natural law is by using a number of concepts related to *tian* (heaven) and *ren* (man), which highlights the moral obligations that are not originally present in the Western concept of natural law.

According to previous statistics, this category of translation as the equivalent of “natural law/the law of nature” appears 23 times, which accounts for more than half of the total occurrences. These terms include *tianli* (heavenly principle), *tianxing* (natural disposition), *tiandao* (way of heaven), *renlun* (human ethics), and *rendao* (human ways), etc. Yan Fu frequently uses them to denote the natural laws that individuals need to follow within specific social relationships. They encompass obligations such as filial piety, parents' responsibility to raise their children, inheritance laws between generations, moral principles governing marital relationships, and conditions for the deprivation of others' right to life.

The term *tian* (literally translated as heaven) in ancient Chinese philosophy has multiple intertwined and evolving meanings, making it highly ambiguous. It has at least five meanings in Chinese: (1) the material aspect of the sky, opposite to the earth; (2) the ruler of the sky, referring to the Supreme Deity with personal characteristics; (3) fate and destiny, which represent aspects of life beyond human control; (4) the operation of nature; (5) the highest principle of the universe. (Feng, 2000, p. 35) In different historical stages, the connotations of *tian* presented different emphases, with the most significant transformation being from the concept of a ruling deity to the notion of the highest principle. During the Song Dynasty, it further evolved into the concept of *tianli* centered around the ethical obligations known as *renlun*. (Zhu, 1996, p. 3656) It is believed that the order and ethics in human relationships are all

governed by the constraints of *tianli* and *renlun* so that they are in harmony with the natural order.

Western natural law also has a moral dimension, but its moral principles differ from those in Chinese thought. Ancient Greek and Roman natural law thinkers stressed the principle of equality among individuals. During the medieval period, Aquinas proposed the primary principle of natural law as “good is to be sought and bad avoided”, from which all other natural law principles derived. (Aquinas, 1963, p. 116) This perspective easily led to a focus on individual rights since recognizing that humans, as rational beings, have a natural inclination towards the good implies recognizing their rights to self-preservation, reproduction, the pursuit of knowledge, and happiness. In the modern era, with the development of the commodity economy, natural law further evolved into the concept of “natural rights”, where various thinkers like Hugo Grotius, Thomas Hobbes, John Locke, and Montesquieu, all emphasized rights as a central feature. They believed that natural law endows every individual with inherent rights to life, health, property, freedom, equality, etc., leading to the development of rationalism, individualism, social contract theory, and theories of separation of powers. (Haakonseen, 1996, pp. 28–29; D'Entrèves, 1970, p. 62).

Due to the fundamental difference between the Western and Chinese views of the moral aspect in natural law, Yan Fu's repeated use of *tianli* and *renlun* and other traditional ethical concepts to translate Montesquieu's natural law add to the concept of a strong sense of moral obligations, as shown in the following example.

#### Example 4:

They will abandon, nay they will slay a parent, if the prince so commands; but he cannot oblige them to drink wine. The laws of religion are of a superior nature, because they bind the sovereign as well as the subject. But with respect to the law of nature, it is otherwise; the prince is no longer supposed to be a man. (3–10).

以王之命，使之弃其亲可也，使之杀其亲可也，然且以为大义，独至使之饮酒，则以宗教之约而不行。盖宗教之约，天条也，虽王者为其所约束；而父子之亲，人伦也，王者非人也，故人伦之说，有所不必行。

The original text contrasts “the laws of religion” with “the law of nature”, emphasizing that religious laws often have a greater binding effect on monarchs than the law of nature. By “with respect to the law of nature, it is otherwise; the prince is no longer supposed to be a man”, Montesquieu criticizes the notion that the despotic monarch can violate natural law without restraint.

In the translation by Yan Fu, the term “the law of nature” is specified as “父子之亲，人伦也”，referring to the general sense of kinship and filial piety. It is emphasized that the monarch is not necessarily obliged to observe the general sense of kinship between fathers and sons. (“人伦之说，有所不必行”) and the act of subjects killing their fathers upon the ruler's demand is, as Yan Fu adds the phrase, “然且以为大义(considered as a greater righteousness)”.

This choice of words by Yan Fu reflects the influence of his own cultural tradition, particularly Confucian ethical views. The expression of *renlun* has its origin in the works of Mencius. Although the priority of different relationships varies in early texts, it is either husband-wife or father-son, with the natural order and blood ties being central human relationships. However, later on, the understanding of human relationships starts to emphasize the social aspect, highlighting the roles and obedience between ruler and subject, father and son, husband and wife.

(Jing, 2008, pp. 51–57) This ethical hierarchy, prioritized by the ruler-subject relationship, has profoundly influenced China's political and social life since the Han Dynasty. When loyalty to the ruler and filial piety obligations conflict, choosing the former is often regarded as choosing the “greater righteousness”. This explains why Yan Fu would translate the natural law related to filial piety as *renlun* and the act of killing one's father in obedience to the ruler as an act of righteousness.

In short, it is found that in Yan Fu's translation of natural law, his choice of terms directly correspond to those Chinese concepts like *tianli* and *renlun* that emphasize “moral obligations in social relationships” (Kim, 1981, p. 62) found in traditional Confucian thought rather than individual rights in relation to man and nature.

## Conclusion

This case study of translation is placed against the background of the history of Chinese and Western legal thoughts. It finds that Yan Fu's translation of Montesquieu's concept of natural law can be regarded as a rewriting in two aspects. Firstly, he highlights the material essence of law which obscures the Christian aspect of natural law in Montesquieu's original work; secondly, he emphasizes moral obligations rather than individual rights in social relationships.

While Yan Fu's choice of translating this Western masterpiece displays strong concern for the legal reform at the beginning of the 20th century, his choice of terms such as *xingqi*, *ziran*, *tianli*, and *renlun* upholds traditional Chinese values of materialism and moral obligations. Therefore, the translation itself presents a complex dialog and integration of Chinese and Western influences. Compared with the fanatic revolutionary wave in the outside world, the collisions, conflicts, and exchanges of Chinese and Western cultures in this translated book happened quietly. However, the seemingly quiet process of translation was, in fact, a fierce battlefield of ideas, reflecting the arduous intellectual journey of China's modern transformation.

This case study also offers significant insights into contemporary legal translation practice. Firstly, when translating Western legal concepts, it is advisable to fully leverage indigenous Chinese legal resources or legal vocabulary to mitigate the sense of unfamiliarity that foreign concepts may evoke during legal transplantation. Secondly, when selecting translation equivalents, careful consideration should be given to the inherent connotations of the term within the source language culture, thus avoiding misunderstandings stemming from differences in cultural implications between Chinese and Western legal concepts.

## Data availability

The datasets generated during and/or analyzed during the current study are available from the corresponding author upon reasonable request.

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## Notes

- Note: Yan Fu's translation is based on the English version of *The Spirit of Laws*. The English text quoted in this article is from Montesquieu. (1896). *The Spirit of Laws*, trans. Thomas Nugent, London: George Bell & Sons. The Chinese translation is from Wang et al. (2014). *Yan Fu Quanji. Volume 4: Fayi*. Fuzhou: Fujian Education Press.
- Note: The underlines in all examples are added by the author to highlight words in discussion. The mark a-b indicates that this passage is from chapter a, section b of the book.

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## Ethical approval

This article does not contain any studies with human participants performed by the author.

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## Additional information

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