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Preface

Internationally, there is a growing interest from the academia and legal professionals in the study of the interface between language and law. Locally, Language and Law is one of the core postgraduate programs, which can be traced back to the early 1990s at City University of Hong Kong. In recent years, exchanges and collaborations in language and law between the City University of Hong Kong and other universities, including Aston University, China University of Political Science and Law, Columbia Law School, Georgetown University, and Peking University, have been frequent and productive. With Hong Kong, as an international city, playing an important role of the meeting point of different cultures and with China being the convergence of various jurisdictions, a new association – the Multicultural Association of Law and Language (hereafter, as MALL) was founded in 2009 with the Secretariat located in Hong Kong.

The MALL aims to provide a platform for scholars from different jurisdictions and cultures to exchange views on the interface between law and language, with a specific focus on the interdisciplinary and multicultural nature of law, language and discourse. Affiliated with the MALL, there are two international conferences: the *International Conference on Law, Language and Discourse*, and the *International Conference on Law, Translation and Culture* and one international journal, the *International Journal of Law, Language & Discourse* (www.ijlld.com), and the founding president is King Kui Sin (formerly of the City University of Hong Kong), who has served on the Bilingual Laws Advisory Committee of Hong Kong and has been appointed MBE (Member of the Most Excellent Order of the British Empire) by the British Government for his contribution to the translation of Hong Kong laws into Chinese.

The Fifth International Conference on Law, Language and Discourse focuses on Communication and Fairness in Legal Settings, and includes the following subtopics:

- Communication and interaction in a fair trial;
- The significance of communication and interaction in the procedural paradigm;
- Civil and Criminal proceedings;
- Court rhetoric and fairness;
- Communication and fairness in mediation – civil- and criminal matters;
- Communication and fairness before trial;
- Communication and fairness at means of compulsion;
- Children and communication in legal settings;
- Vulnerable groups and communication in a fair legal setting;
- Gender and communication in a fair legal setting;
- The cost and benefit of communication and fairness in legal settings;

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Keynote Speech I

Functions of Chinese Modal Verbs in the Civil Legislation of the People's Republic of China: A Sociosemiotic Perspective

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[Abstract] This study examines Chinese modal verbs in the Civil Laws of the People's Republic of China (hereafter P. R. C.) promulgated by the National People's Congress and the Standing Committee of the National People's Congress. Modal verbs are one of the distinctive features in legislation. Modal verbs function in legislation and shape the nature of social practices and actions where they are embedded. In this study, first, a corpus containing the legislative texts is created; second, frequency and concordance of modal verbs in legal texts are examined and analyzed semantically; third, collocations of the modal verbs are visited. Successively, the results are integrated into the findings in the semantic exploration, and the discussion is grounded on a sociosemiotic perspective.

[Keywords] Chinese modal verbs; value; functions; legislative civil laws; sociosemiotics

Introduction

Modal verbs are linguistic indicators of modality which were studied philosophically, logically and linguistically. However, no consensus on classifying modality has been reached until now (Li, Cheng, & Cheng, 2016): von Wright (1951, pp. 1-2) proposed that modality can be classified into alethic modality, deontic modality, epistemic modality and existential modality; for Lyons (1977, pp. 787-841; 1995, pp. 327-336), (alethic, epistemic or deontic) modality used by locutionary agents is expressing factuality/truth, subjectivity or objectivity. Additionally, Lyons discussed modality on the level of the sentence. According to Palmer (1979/1990, pp. 50, 69, 83), modality can be epistemic (expressing possibility and necessity), deontic (imposing obligation or permission/performative) or dynamic (describing a circumstance neutrally); further, Palmer (2001, pp. 8-10) classified modality as epistemic modality, evidential modality (both belong to propositional modality), deontic modality and dynamic modality. Though Lyons and Palmer categorized modality differently, they agreed that there are distinctions between mood and modality (Lyons, 1977, pp. 725-841; Palmer, 2001, pp. 3-4).

Except for the above scholars, there were scholars who dichotomously classified modality into root modality and epistemic modality (Sweetser 1991, pp. 56-65; Coates, 1995; Papafragou, 1998; Butler, 2003; Larreya, 2009; Salkie, 2009); for Systemic-Functional Linguists, modality consists of modalization and modulation (Halliday & Matthiessen, 2008, pp. 618-625), and can expand to metaphorical expressions and implications. Additionally, debates on defining certain modal verbs and deciding the functions prevailed: Coates (1980) regarded that though both “may” and “can” express possibility, the former is epistemic and the latter conveys root possibility; Tregidgo (1982) considered that “may” is the permission for demands imposed by deontic “must”; Bybee (1985, pp. 165-169) proposed that deontic modality is “agent-oriented”; Narrog (2005) recognized that modality interacts with factuality; Verstraete (2005) argued that scalar quantity implicature is unlikely to affect deontic modality; Straßer (2011) took a dyadic view in modeling obligation (“actual” obligation and “binding” obligation) projected from deontic modality; An and

Verstraete (2011) redefined deontic modality as “an agent's expression of desire for a doer to do/not do” instead of imposing obligation or permission.

Modal words, from the scenario of Chinese (language), entail auxiliaries and interjections (Li, 2007, p. 23). Discussions on Chinese modal verbs have emerged since early twentieth century (see Table 1):

Table 1. Studies on Chinese Modal Verbs and Modality

| Names of Scholars | Classifications | | | | |
|---|----------------------------------|--|---|---|--|
| Li (2007, pp. 117-127) | Pre-Attachment: | Possibility (<i>ke2yi3/ke3</i> [may]; <i>bu4fang2</i> [may.....as well]; etc.) | | | |
| | | Willingness (<i>yao4</i> [would like to]; <i>da3suan4</i> [intend to]; etc.) | | | |
| | | Ought-to-do (<i>ying1gai1</i> [should]; <i>ying1dang1</i> [shall]; etc.) | | | |
| | | Must-do (<i>yi2ding4</i> [will definitely do]; <i>bi4xu1</i> [must]; etc.) | | | |
| | | Probability (<i>huo4xu3</i> [probably]; <i>kong3pa4</i> [be afraid that]; etc.) | | | |
| | | Passiveness (<i>bei4</i> [be done]; <i>ai1</i> [suffer]; etc.) | | | |
| | | Tendency (<i>lai2</i> ; <i>qu4</i>) ¹ | | | |
| | Post-Attachment: | Possibility | | | |
| | | | Completeness | | |
| | | Continuity of a State | | | |
| Gao (1986, p. 87) | Function Words | Categorical Function Words | <i>neng</i> -Word | | |
| Lyu (2015, pp. 327-359) | Function Words (Category) | Possibility (<i>neng2</i> [can]; <i>hui4</i> [could/would]; etc.) | | | |
| | | Probability (<i>xu3</i> [perhaps]; <i>pa4</i> [be afraid that]; etc.) | | | |
| | | Must-do | Factual | (<i>bi4xu1/xu1</i> [must]; etc.) | |
| | | | | | |
| | | Should-do (epistemic): <i>dang1ran2</i> [should be]/ <i>ying1dang1</i> [should do]; etc. | | | |
| Ought-to-do (factual): <i>ying1dang1</i> [shall]; <i>gai1</i> [shall]; etc. | | | | | |
| Wang (1984, p. 26; pp. 99-108) | Auxiliary Verbs | Optative Form | Potential Form (Expressing a speaker's intention) | Permission: <i>neng2/ke3/ke2yi3</i> [can/be permitted to/may]; Mere necessity: <i>xu1/bi4xu1</i> [must], etc. ; Moral necessity: <i>ying1/ying1dang1</i> [shall], etc. | |
| | | | Volitive Form (Expressing an agent's tendency) | | |
| Ma (1998: p. 237; p. 238, etc.) | Function Words | The meanings and functions were embedded in different contexts. | | | |

Apart from the studies listed in the above chart, Ma (1998) proposed that Chinese modal verbs like *ying1(gai1)* coexist with other independent verbs whose dynamics are embedded by the former; Peng (2007, p. 94) proposed that Chinese modal verbs can be categorized into epistemic modality, deontic modality and

¹ Functionally equivalent translation would be unattainable without referencing specific contexts and voice.

dynamic modality; Tsai (2010) divided Chinese modal (auxiliary) verbs into epistemic modality (speaker-oriented), deontic modality (subject-oriented) and neng modality (subject agentivity).

Previous Studies

The discussions on how to define modal verbs and modality in the language of law also haunted scholars. Some researchers believe that statutory language is formulated by performing something, such as permission, or prohibition, etc. (Hiltunen, 2012). For example, Cao (1999), by using the Speech Act Theory, interpreted that Chinese modal verbs (*ying1dang1/bi4xu1*) in laws formulated in Chinese are performative and indicated that such performativeness implies wider social and cultural ideologies. There are scholars, who refer to language as a sign, and seek connotations of modal verbs and modality in a wider context: Li (2007) analyzes functions of main modal verbs in English legal texts and discusses their Chinese translation; Cheng and Sin (2011) comprehensively study modality (both in verbal and adverbial forms) in Chinese court judgments of Hong Kong from a formal, semantic, functional and semiotic perspectives; Garzone (2013) sketches the history of evolution, progression and trend of *shall* in legal documents in the United Kingdom, and concludes that *shall* is disappearing as time goes on; Cheng & Cheng (2014) conduct a corpus-driven study (the framework of SFL is also utilized) on epistemic modality in court judgments of Hong Kong and Scotland; Li (2015) studies modality in the Criminal Law of the P. R. C. and its English translation and the scholar concludes that the translation from Chinese modal verbs and their English counterparts should pay attention to the equivalence of values; Li, Cheng and Cheng (2016), by utilizing the adapted hexagon to model modal verbs, indicate that negation is a strong indicator of modality in Chinese legislation in Hong Kong.

Meanings of laws/legal semiotics (Wagner, 2010) can not only be reflected by words and texts, but also by their linguistic, legal and social surroundings as well (Austin, 2003, p. 18; Sin & Roebuck, 1996; Cheng, 2014). Therefore, in this study, it is supposed that functions of Chinese modal verbs in civil legislation are affected by agents collocating with or fulfilling them. Simultaneously, the power of the agents to shape the modal verbs should be taken into reference from a sociosemiotic context.

Data and Methodology

This corpus-based study explores Chinese modal verbs and their collocations in civil laws (promulgated by NPC and/or SCNPC) of the P. R. C. In this research, 32 legislative laws were selected (Word Tokens: 159,869). All legislative texts are from the database of PKUlaw, and they are all currently authentic and valid. First, segmentation (via Segtag²) is applied to all texts; secondly, AntCon 3.4.4 is utilized to count the frequency, and to examine collocations/clusters and view concordance.

Result and Discussion

Primarily, the number of Chinese modal verbs is presented in Table 2.

² Segtag is developed by Prof. Shi, Xiaodong at Xiamen University.

Table 2. Frequency of the Chinese Modal Verbs in the Civil Laws of the P. R. C.

| Chinese Modal Verbs | Frequency |
|-------------------------|-----------|
| <i>ying1dang1/ying1</i> | 2091/60 |
| <i>bu4de2</i> | 520 |
| <i>ke2yi3/ke3</i> | 1,079/24 |
| <i>bi4xu1/xu1</i> | 157/21 |
| <i>neng2gou4/neng2</i> | 30/15 |
| <i>bu4neng2</i> | 163 |
| <i>bu4xu3</i> | 5 |
| <i>wu2xu1</i> | 7 |

Information provided by frequency is limited, therefore, a set of formulae concerning modality is introduced here (see Table 3).

Table 3. Formulae Concerning Modality

| Titles | Formulae |
|---------------------|--|
| Deontic Possibility | \diamond deontic (A does B) (Rules: Provisions of Laws and/or Regulations) |
| Deontic Necessity | \square deontic (A does B) (Rules: Provisions of Laws and/or Regulations) |

Deontic possibility indicates what is allowed or permitted within rules, while deontic necessity points to what is required or compulsory, or what someone is obliged to do within the set of rules determined by the content (Kearns, 2013, p. 82). Thus, a first-step categorization can be presented as follows (Table 4).

Table 4. Categorization (First-Step) of Modal Verbs

| Deontic Possibility | Deontic Necessity |
|---------------------|-------------------------------------|
| <i>ke2yi3/ke3</i> | <i>ying1dang1/ying1; bi4xu1/xu1</i> |

On one side, in the case of *neng2gou4/neng2*, one of its functions is presenting either internal or external “conditions”. An internal “condition” means that an inanimate entity can be used in a certain way or it has a certain nature, and external “condition” indicates that either an inanimate entity or an animate entity whose functions or natures enable the fulfillment of an event or an action (Wang, 2000). By canvassing concordance of *neng2gou4/neng2*, such a definition is applicable. Nevertheless, *neng2gou4/neng2* is unlikely to fall into either deontic modality or epistemic modality. In the domain of logics, a proposition can be necessarily true/false or possibly true/false: a necessarily true/false proposition works in a whole set of the world, while a possible true/false proposition is true or false in a possible/defined world (Cann, 2010, pp. 270-274; Kearns, 2013, pp. 79, 83). In the legislative texts in this study, *neng2gou4/neng2* is formulated as: (if) A *neng2gou4/neng2* do B, (then) C. Therefore, *neng2gou4/neng2* in the context of this study belongs to Logic Possibility. At this point, logic formulae are applied to the Chinese modal verbs (See Table 5).

Table 5. Logic Formulae of Chinese Modal Verbs

| Chinese Modal Verbs | Logic Formulae | Categorization |
|-------------------------|----------------------|---------------------|
| <i>ying1dang1/ying1</i> | \square P | Deontic Necessity |
| <i>bi4xu1/xu1</i> | \square P | Deontic Necessity |
| <i>ke2yi3/ke3</i> | \diamond P | Deontic Possibility |
| <i>neng2gou4/neng2</i> | \diamond P | Logical Possibility |
| <i>bu4de2</i> | $\sim\diamond\sim$ P | Deontic Possibility |
| <i>bu4neng2</i> | $\sim\square\sim$ P | Logic Necessity |
| <i>bu4xu3</i> | $\sim\diamond\sim$ P | Deontic Possibility |
| <i>wu2xu1</i> | $\sim\square$ P | Deontic Necessity |

Necessity and possibility are interchangeable with negation (Kearns, 2013, pp. 85-87), therefore, the Chinese modal verbs without negation and those with negation are on the opposite sides of each other. Firstly, though a preliminary categorization labels different modal verbs, their discrepancy needs to be further clarified. According to Halliday and Matthiessen, modal verbs with the median value are those whose negation can freely transfer (2008, p. 620). Thus, negation is applied as follows (see Table 6).

Table 6. Patterns of the Modal Verbs Applied Negation

| The Original Format | Negation Applied | Transferability | Value |
|---|---|-----------------|------------------|
| ni <i>ying1dang1/ying1</i> zuo. (You shall do.) | ni ~ <i>ying1dang1 (bu³ying1dang1)</i> zuo.= ni <i>ying1dang1bu</i> zuo. (You shall not do.) | Yes | Median => Median |
| ni <i>bi4xu1/xu1</i> zuo. (You must do.) | ni ~ <i>bi4xu1 (bu bi4xu1)</i> zuo. = ni <i>ke2yi3bu</i> zuo. (You do not have to do.) | No | High => Low |
| ni <i>ke2yi3/ke3</i> zuo. (You may do.) | ni ~ <i>ke2yi3 (buke2yi3)</i> zuo. = ni <i>bi4xu1 bu</i> zuo. (You must not do.) | No | Low => High |
| ni <i>neng2gou4/neng2</i> zuo. (You can do.) | ni ~ <i>neng2gou4 (buneng2gou4)</i> zuo. (You cannot do.) | Yes | / |
| ni <i>bu4de2</i> zuo. (You must not do.) | ni ~ <i>bu4de2 (bubu4de2)</i> zuo. = ni <i>ke2yi3</i> zuo. (You may do.) | No | High => Low |
| ni <i>bu4neng2</i> zuo. (You cannot do.) | ni ~ <i>bu4neng2 (bubu4neng2)</i> zuo. = ni <i>neng2gou4</i> zuo. (You can do.) | Yes | / |
| ni <i>bu4xu3</i> zuo. (You are not allowed to do.) | ni ~ <i>bu4xu3 (bubu4xu3)</i> zuo. = ni <i>bei⁴ yun2xu3</i> zuo. (You are allowed to do.) | No | High => Low |
| ni <i>wu2xu1</i> zuo. (You are not required to do.) | ni ~ <i>wu2xu1</i> zuo. = ni <i>xu1yao4</i> zuo. (You are required to do.) | No | Low => High |

The distinction between *ying1dang1* and *bi4xu1* is evident when negation is applied: the negation does not affect the value of *ying1dang1*, while the value of *bi4xu1* shifts from high to low when the negation is applied. Value is not assigned to *neng2gou4/neng2* and *bu4neng2* since this pair of antonyms are expressing the capability/incapability to do something. From this stance, value echoes to the degree of bounding force in legislative civil laws: an agent/a subject attached to a modal verb with high value is more legally circumscribed than an agent/a subject attached to a modal verb with median value; similarly, an agent/a subject attached to a modal verb with median value is less autonomous in laws than an agent/a subject clung to a modal verb with low value. The next paragraph will further explore and justify this proposal.

Secondly, by examining concordance of the Chinese modal verbs, it is found that the clauses/sentences the modal verbs were embedded in meet the criteria of Theme-Rheme structure proposed by Systemic-Functional Grammar (Halliday, 2001, p.129; Halliday & Matthiessen, 2008, p. 58 & pp. 64-105; Martin & Rose, 2014, p. 35). For example, in “Civil activities *bi4xu1* (must) be in compliance with the Law; where there are no relevant provisions in the Law, they *ying1dang1* (shall) be in compliance with state policies⁵”, “Civil activities” and “they” are the themes and the rest are the rhemes. In such a structure, the theme, as a departing point conveys message, functions textually and creates a mode in the discourse of this specific context in this study (Halliday, 2001, pp. 128-133; Halliday & Matthiessen, 2008, pp. 64-105; Halliday & Hasan, 2012, p. 26). Therefore, themes are examined by searching collocations and concordance (see Table 7).

³ "bu" or 不 is a Chinese negation.

⁴ "bei" or 被 indicates passive voice in Chinese.

⁵ Article 6, the General Principles of the Civil Law of the P. R. C. (2009 Amendment).

Table 7. Collocations of the Chinese Modal Verbs

| Collocations (Sort by frequency) | Chinese Modal Verbs |
|-----------------------------------|-------------------------|
| -er ⁶ | |
| Private Entities/Civil Activities | <i>ying1dang1/ying1</i> |
| Governmental Entities | |
| Private Entities/Civil Activities | <i>bi4xu1/xu1</i> |
| -er | |
| -er | |
| Private Entities/Civil Activities | <i>ke2yi3/ke3</i> |
| Governmental Entities | |
| -er | |
| entities | <i>neng2gou4/neng2</i> |
| -er | |
| Private Entities/Civil Activities | <i>bu4de2</i> |
| -er | <i>bu4neng2</i> |
| -er | <i>bu4xu3</i> |
| Objects | |
| -er | <i>wu2xu1</i> |

It is found that a government agency does not collocate with Chinese modal verbs with high value such as *bi4xu1*, *bu4de2* and *bu4xu3*. As “Language disguises thought. So much so, that from the outward form of the clothing it is impossible to infer the form of thought beneath it, because the outward form of the clothing is not designed to reveal the form of the body, but for entirely different purposes” (Wittgenstein, 1921/1961/2001, p. 4.002), such a pattern means more than it appears. On one side, civil laws, or private law under the Common Law System, interacts closely to social norms, though such laws do not follow the norms in a holistic manner (Goldberg, 2012). On the other side, “duty”, “rights”, “liability”, “privilege” and “immunity” (Goldberg, 2012) are keywords in the civil domain. Therefore, governmental entities, as symbols of power, are by no means leading roles in this context, albeit they do play a role (Goldberg, 2012). In the 157 appearance of *bi4xu1* and the 520 appearance of *bu4de2* in this study, all agents are applied a certain duty/certain duties by the laws. In this situation, the power, the governmental entities, is acting in the backstage, and is enforcing agents to abide by, or to undertake, what has been formulated (Zhu, 2012). The only difference between *bi4xu1* and *bu4de2* lies in: the former designates a bounding duty/duties to do, while the latter indicates a binding duty/duties to not do. The duties are multi-faceted: e. g. a duty for a company to protect the staff’s lawful rights, or a duty for any private entity or individual to abide by the law while conducting a civil action. On this stance, the violation of *bi4xu1* leads to illegitimacy. In terms of *bu4xu3*, 4 of the 5 occurrences collocate with *zhu4zuo4ren2* or *zuo4zhe3* (author) and are embedded in conditionals expressing presupposition. From a perspective of the New Private Law Theory (Goldberg, 2012; Zipursky, 2012), the laws, unlike social regulations, are enforcing citizens’ demands to safeguard their legitimate rights. In such an interpretative framework, *bu4xu3* is assisting *zhu4zuo4ren2* or *zuo4zhe2* to protect their demands for authorship.

Second, in a rough sense, civil legislation defines the rights and duties of individuals and private entities as they relate to one other, and it is not public regulation (Goldberg, 2012). However, the public force or state power does permeate and reshape the civil laws. In civil activities, any party is granted certain rights, and at the same time bears certain liabilities. *Ying1dang1* declares what the liabilities are when collocating with private entities or individuals, e. g. “Where an insurance contract is entered into by using

⁶ "-er" means an agent (natural person) involving in a certain civil activity, e. g. insurer in an activity of insurance.

the standard clauses of the insurer, the insurer shall (*yingldangl*) provide an insurance policy with the standard clauses attached and explain the contents of the contract to the insurance applicant. For those clauses exempting the insurer from liability in the insurance contract, the insurer shall (*yingldangl*) sufficiently warn the insurance applicant of those clauses in the insurance application form, the insurance policy or any other insurance certificate, and expressly explain the contents of those clauses to the insurance applicant in writing or verbally. If the insurer fails to make a warning or express explanation thereof, those clauses shall not be effective”⁷. While *yingldangl* collocates with a governmental entity, it sketches a should-do list for the public force, e. g. “The people’s governments at and above the county level shall (*yingldangl*) integrate the cause of disabled persons into the national economic and social development plan, intensify the leadership, make comprehensive coordination and incorporate the operating funds for the cause of disabled persons into the fiscal budget so as to establish a stable operating fund guarantee mechanism”⁸. Thus, if a private entity violates the *yingldangl* provisions, an action would be nullified or torts may be caused; if a governmental entity fails to fulfill such provisions, negative feedbacks may be received from the society.

Thirdly, an individual or a private entity is endowed with rights to some degree. *Ke2yi3* fulfills such a proposal. Nevertheless, *ke2yi3* in civil domain is not an authorization (Cao, 1999), but permission (Li, Cheng & Cheng, 2016). If *ke2yi3* indicates that the law was authorizing an individual or a private entity to conduct something, such an authorization would be a right. Contradictorily, there are rights that an individual cannot forsake, e. g. rights of status. If *ke2yi3* is regarded as “one is permitted to do something by the law”, such a paradox would be circumvented: one is able to apply all permitted patterns at once or to choose one from a bundle of permitted items, or even to give up all, e. g. “A civil Juristic act may (*ke2yi3*) be in written, oral or other form”⁹, which means that the form of a civil juristic act is unlikely to affect the act itself. When the agent of *ke2yi3* is a governmental entity, what a *ke2yi3* denotes is not permission, but a privilege, e. g. “If it is difficult to determine the losses incurred to the patentee, the gains obtained by the infringer as well as the royalty obtained for the patent, the people’s court may (*ke2yi3*), by taking into account such factors as the type of patent, nature, and particulars of the infringement, etc., decide a compensation in the sum of not less than 10,000 yuan, but not more than 1 million yuan.”¹¹. Under this circumstance, no entity except the people’s court has the power or privilege to decide the sum of the compensation. Lastly, in terms of *wu2xu1*, the agents are mostly implicit and the undergoers always collocate directly with the modal verb, e. g. “No presentation for acceptance is necessary (*wu2xu1*) for a draft payable at sight.”¹³. Linguistically, *wu2xu1* indicates “no requirement to do something”; in the context of law, such a linguistic feature means an agent is immune from doing something.

From a sociosemiotic perspective, on one hand, a discourse is an extension of social actions in real life, fulfilled by social actors (van Leeuwen, 2005, p. 103), so therefore, the modal verbs and the collocations create the mode of law for individuals and entities to refer to. On the other hand, different aspects of the Chinese modal verbs embodied by diverse agents echoes the idea that the society is grouped by collective entities instead of a sum of individuals; and different groups create diverse social facts (Durkheim, Lukes & Halls, 1982, p. 129). At this point, a quote from Wittgenstein offers a similar

⁷ Article 17, the Insurance Law of the P. R. C. (Promulgated in 1995 and amended in 2015).

⁸ Article 5, Law of the P. R. C. on the Protection of Disabled Persons (Promulgated in 1990 and amended in 2008).

⁹ Article 56, the General Principles of the Civil Law of the P. R. C. (Promulgated in 1986 and amended in 2009).

¹¹ Section 2, Article 65, the Patent Law of the P. R. C. (Promulgated in 1984 and amended in 2008).

¹³ Section 2, Article 40, the Negotiable Instruments Law of the P. R. C. (Promulgated in 1995 and amended in 2004).

resonance: “The world is the totality of facts, not of things” (Wittgenstein, 1921/1961/2001, p. 1.1); therefore, if civil legislation is an organic discourse extended from social practices and actions, through the language vehicle, the hidden meanings (Cheng, 2016) emerge from a wider context of law and society.

Conclusion

In conclusion, the interpretation of Chinese modal verbs should not be isolated from legislative contexts. Just as J. S. Bach would not compose his Suites in a manner that Handel used, linguistic signs are formulated and reshaped by different agents in diverse social facets. In this study, it was found and justified that the natures of the entities acting as agents would reshape the functions of the Chinese modal verbs in civil legislation of the P. R. C. A shortcoming of the study is that the corpus employed by the study is relatively small and is unitary, therefore, in future studies, a larger corpus would be created and the findings would be further sustained by an examination from a reference corpus.

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Biography

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Keynote Speech II

The Notion of Contemporary Asymmetry and Access to Justice of a Vulnerable Group: Focusing on Domestic Violence Victims in Japan

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[Abstract] Domestic violence (DV) occurs across the world in various cultures. However, DV is dependent of customs, religion, culture, economic situations, and gender structure. Recently, many countries have attempted to prevent or reduce DV through various strategies, including legal measures. The aim of this paper is to re-consider DV cases as a failure of communication between the victims and the legal profession, for example, the judge, secretary and law clerks; in other words, as a problem of access to justice by a group of vulnerable people who are situated in an asymmetrical relationship due to gender structures. We will focus on this new type of asymmetrical relationship (contemporary asymmetry) that comprises the majority of DV cases. The contemporary asymmetric relationship is new and very rigid for the legal system, due to gender structures. It is important that there is a discrepancy, or gap, between assumptions about this relationship in the modern legal system and the relationship in actual DV cases.

There are several principles in a modern legal system involved in dispute-resolution procedures between equal parties, such as the adversarial system. As we know, DV situations cause victims to suffer a temporary decline in their ability to make judgments. Therefore, it is not suitable (and inadequate) that provisions based on the system of modern law apply to DV cases without considering the relationship of the parties and taking into account the condition of the victim. Yet, since the contemporary asymmetric relationship is hidden and is hard to understand, in Japan, we cannot take this point into account at all. As a result, access to justice for DV victims as vulnerable persons is an infringement. This problem that has occurred due to contemporary asymmetry cannot be resolved through a traditional response to older types of asymmetric relationships (traditional asymmetry), such as in the field of labor law or consumer law, because contemporary asymmetry is different from traditional ones. It is necessary to incorporate functions with a new expertise, such as social work in the legal system.

[Keywords] domestic violence; gender; social work; vulnerability; access to justice

Biography

Prof. Inoue Masako, in on the Faculty of Law Department/Department of Local Government, Kanagawa University, Japan. His present specialized fields include Legal Philosophy, History of Legal Ideas, Theory of Feminism, Theory of Gender, Philosophy, Applied Ethics, and Bio-Ethics.

Keynote Speech III

Reception of the Evidence of Vulnerable Witnesses in Legal Proceedings in Nigeria

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[Abstract] Generally, ensuring the quality and accuracy of witnesses' viva voce (verbal) evidence in court proceedings is central to achieving fairness and transparency in legal proceedings. Incidentally, there are occasions where such witnesses may be vulnerable and whose quality and accuracy of evidence may be negatively affected due to various inherent variable factors. Under the Nigerian legal system, testimonies of vulnerable persons where relevant and vital are admissible in the court of law in order to achieve fairness. Persons such as children, the aged, mentally disabled, physically challenged, intimidated witnesses and victims may be compelled to testify as witnesses in legal proceedings. Sections 175 and 176 of the Nigerian Evidence Act 2011 provides for competence and compellability of witnesses, including those that may be classified as vulnerable persons to testify where their evidence is relevant, vital or indispensable, and will aid the Court in arriving at a just conclusion. This paper examines the legal framework for receiving testimony of vulnerable and intimidated witnesses in legal proceedings in Nigeria, and it interrogates the adequacy of extant provisions.

[Keywords] evidence; testimony; vulnerable witness[viva voce, competency

Biography

Dr. Philip Osarobo Ddiase is currently teaching at the Department of Commercial Law of Adekunle Ajasin University, Akungba-Akoko (AAUA), Ondo State, Nigeria. His research interests are in the areas of Business and Commercial Law, Law of Banking, Arbitration, Equity & Trust, and Insurance.

Keynote Speech IV

‘Doing Sanctions with Words’: Legacy, Scope, Fairness and Future (?) of a Reprimand

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[Abstract] The paper aims at presenting a short analytical expose of a phenomenon of a reprimand as a matter of the legal process and, more specifically, the specific – linguistic – way of punishing. The main underlying issue raised in the analysis is the question that could we still ‘do sanctions with words’ in law and, in particular, the penal one after the critique of the inherence of psychological violence, paternalism and even primitivism in this approach to the process of punishing? Skipping the vast historical background, the research proceeds with more theoretical and current relevant analysis of the linguistic-performativity-rich and persisting ‘reprimandish’ nature of law. The juxtaposition of this nature, with the contemporary tendencies of the insisted reforms in the fields of crime control and the system of punishments allow presenting with the perspective/future of a reprimand as the part of a broader linguistic and educational process/project of changing a criminal and whole society. The research concludes with the underlying idea that the transformation of the system of law and, especially, the field of punishments from affecting primarily the body, to affecting primarily the mind, requires reconsideration, and in such instances as that of a reprimand, rehabilitation of the overall linguistic performativity of law and its socio-holistic educational role.

[Keywords] *reprimand, legal sanction, punishment, criminal, linguistic performativity*

Biography

Dr. Tomas Berkmanas is a professor at the Department of Public Law, Vytautas Magnus University, Kaunas, Lithuania. Professor Tomas Berkmanas is currently serving as Dean of the Faculty of Law.

Keynote Speech V

Communications of Autonomy and Vulnerability in Criminal Proceedings

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[Abstract] In some high-profile Swedish cases on violence in intimate relationships, policemen and judges have been blamed for missing important aspects of the victim's vulnerable situation and the ongoing violence, and indirectly causing the deaths of these women victims. When these types of cases enter the criminal justice system, two seemingly opposites are confronted: autonomy and vulnerability. In determining whether a penalty should be imposed, autonomy is vital in the sense that freedom and rationality of the bounded individual is fundamental for criminal responsibility. Violence in intimate relationships, on the other hand, is clearly related to the vulnerability of the individual exposed to the violence. This vulnerability represents something contextual, where power relations are crucial, and is also connected to its structural context. This author argues that a move towards a vulnerable subject as a starting point would affect the criminal justice system. This concept assumes a potential for all humans to experience vulnerability during a life span, and does not prevent autonomy. In the judgments explored in this article, this view is already reflected when it comes to the positioning of the defendant, who is seen as highly autonomous, and at the same time as his vulnerable situation is taken into account in determining the penalty. However, the communications regarding the victim do not include these nuances. A move towards establishing a more accurate definition of the subject in this field of law, the vulnerable one, would emphasize an awareness of a more complex notion of the subject and be more consistent with the embodiment of the everyday individual encounter with the criminal justice system.

[Keywords] criminal legal subject; autonomy; vulnerability; communication; violence in intimate relationships

Biography

Ulrika Andersson is an Associate Professor of Criminal Law at the Faculty of Law at Lund University, Sweden. Her main research focuses broadly on questions concerning law and power. She is particularly interested in issues of sexuality and gender, in addition to power relations in regard to class and ethnicity. She has done research on sexual offenses, highlighting the gendered structure of legal definitions, as well as the proof process. She has also done research on human trafficking regulations. In an interdisciplinary project she has dealt with juvenile crime and delinquency issues in connection with gang activity. Presently, she works in a multidisciplinary project with researchers from the Department of History, Ethnology and English Literature. Together, they study contemporary narratives on sexual violence in different contexts, such as the press, social media and the law.

The Systemic Functional Approach to the Legal Text*

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[Abstract] *With the emergence of Systemic Functional Grammar, the scope of linguistic analysis has been broadened. Systemic Functional Grammar shifts from describing language alone to further explaining functions of the text, which stands as a semantic whole. Register, a term interpreted in Systemic Functional Grammar by Halliday, is used to correlate linguistic features with specific situations. It will, therefore, give insight to the practice of analyzing legal text, which is generally considered as the configuration of register variables.*

[Keywords] *Systemic Functional Grammar; legal text; register*

Introduction

English legal text has become a topic of interest among linguists and other social scientists since the 1970s. From Mellinkoff's (1963), and Chrystal and Davy's (1969) attempts towards systematization in the 60s, until the modern studies carried out by Bhatia (1983, 1993) on legislative texts, by Kurzon (1984) on cohesive structures and, in Spain by Alcaraz (1994) on the peculiarities of the English legal structure and its language, it is relatively common to analyze legal text from the perspective of morphology, syntax and grammar. Since the 1960s, the scope of linguistic analysis has been broadened with the emergence of systemic functional grammar. The founder of systemic functional grammar, Halliday, states in *An Introduction to Functional Grammar* (2001), "The aim has been to construct a grammar for purposes of text analysis." There are as many different text types as there are recognizable social activity types, conveying specific functions, as Hatim states, "A common core of grammatical and lexical features appropriate to many situation tokens can be identified. These are here the seeds of a theory of text type." (Hatim & Mason, 1990, p. 48). According to Halliday, each text type can be described as the possible configuration of the register variables of field, mode and tenor which are allowed within a given culture. Therefore, this paper tries to explore the legal text in communicative interactions from the new perspective of systemic functional grammar, elaborating on the metafunctions of being ideational, interpersonal and textual, together with a detailed description of the legal register. The paper first, from a communicative perspective, identifies the concept of text and legal text. Second, it presents register analysis within the framework of systemic functional grammar. Finally, it applies register analysis as the possible way to show the specific functions that legal text may have for communicative purpose.

Analysis of Text and Legal Text

The concept of text has not been an easy one to define due to its comprehensive nature and the variety of disciplines that claim interest in it. Perhaps the most relevant definitions to our discussion of textual analysis are those provided by Halliday and Hasan. According to Halliday and Hasan (1976, pp. 1-2),

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“The word text is used in linguistics to refer to any passage, spoken or written of whatever length, that does form a unified whole...A text is a unit of language. It is not a grammatical unit like a clause or a sentence...A text is best regarded as a semantic unit: a unit not of form but of meaning.”

The above theoretical view emphasizes, among other things, two aspects of texts. One is text as a semantic whole, and the other is the communicative nature of text to perform certain functions. Though the text itself is composed of a sequence of words, phrases and sentences in form, it is actually the carrier of the message between the addresser and the addressee, constituting a semantic unit as a whole. Just as Wilss (1982) stated that linguistic communication always appears in text, which is produced for defined recipients with a defined purpose. While showing different functions, the text is “indeed the totality of communicative signals used in a communicative interaction” (Nord, 1991, p. 14). Since texts are embedded in a communicative situation, they are always sets of linguistic signs with the communicative function. Thus, the communicative and functional factors are of decisive importance for text analysis, rather than concentrating merely on linguistic details at different ranks.

Of all the functional text types, legal text, the actual use of English in a legal interactive context, is usually divided into two basic types: written and oral. In its general sense, written text refers to communication that is more permanent and more useful for reference, as these are words put down on paper and will not disappear upon delivery. On the other hand, the oral type of legal text is temporary in nature. Once uttered, it may be lost if steps are not taken to write or type it down. In this paper, the focus is particularly on the written legal text as it is of great authority and has the least ambiguity. Moreover, the meaning of terms used in legal text may either be in its ordinary or technical sense. The phrasing, the organization, and the overall form of the written type have legislative intent that brings forth legal analysis.

Register Analysis

The concept of a “whole language” is so broad and therefore, rather loose; it is not altogether useful for many linguistic purposes. Just as Catford held (1965, p. 83), “The concept of a ‘whole language’ is so vast and heterogeneous that it is not operationally useful for many linguistic purposes, descriptive, comparative, and pedagogical. It is, therefore, desirable to have a framework of categories for the classification of ‘sub-languages’ or varieties within a total language.” In other words, the concept of language as a whole is theoretically lacking in accuracy, and functionally rather useless. Consequently, the need arises for a scientific classification of varieties within the total range of one language. The method of register analysis is then applied as an approach to the discussion of the legal text. And such application proves register analysis to be an effective method in analyzing the legal text.

As for the concept of register, various definitions have been put forward. Leech and Short point out that “register is the term commonly used for language variation of a non-dialectical type, e.g. differences between polite and familiar language; spoken and written language; scientific, religious, legal language, etc.” (Leech, Geoffrey, & Svartvik, 1974). In *A Communicative Grammar of English* (1974), Leech and Svartvik divided register into three groups: written and spoken, formal and informal, and polite and casual. Drawing from the above description, register tends to be seen as an abstract term which serves to correlate patterns of distinctive linguistic features with the dimensions of their immediate situation. In this paper, I shall adopt Halliday’s definition of register, since register analysis is one of the most important theories of Halliday’s systemic functional grammar which is perhaps the most widely taught version of functionalism. In his description of language variation, Halliday (1964) defines register as “a

configuration of meanings that are typically associated with a particular situational configuration of field, mode and tenor.” Field refers to the total event, in which the text is functioning together with the purposive activity of the speaker or writer. According to field, texts can be classified into the literary text, technical text, and legal text, etc. Tenor relays the relationship between the addresser and the addressee in a communication, i.e. the text producer and the text reader. This may be analyzed in terms of basic distinctions on a scale of categories that range from formal to informal. It is important that these should be seen as a continuum and not as discrete categories. Mode is slightly more problematic, since Halliday’s initial definition of mode as “the medium or mode of the language activity” (1964, p. 91) is somewhat circular. He later clarifies this as “the symbolic organization of the text, the status that it has, and its function in the context, including the channel” (1985, p. 12). Mode is, thus, the medium of the language activity, and the manifestation of the nature of the language code being used, that is primarily spoken or written.

Each of the register planes corresponds to one of the metafunctions realized by language which every text exhibits. Field mainly determines ideational function, in which language is used as a means of reflecting on or describing things. Tenor is represented by interpersonal function, in which language is used as a means of acting upon readers, and the relationship between the sender and the receiver of the text, attitudes and emotions are revealed. And mode is finally realized through textual function which enables the other two to be realized and forms a coherent textual whole.

Although it is convenient for the purpose of analysis to separate the three dimensions of field, mode and tenor, the division is an artificial one. They operate simultaneously, mutually constraining and mutually determining. “A given level of formality (tenor) influences and is influenced by a particular level of technicality (field) in an appropriate channel of communication (mode)” (Hatim, & Mason, p. 51). A change in one dimension, for example from a spoken mode to written mode, will have the effect of producing greater formality and distance in the tenor and as selection of different lexis and grammatical structures in the field. As a result, the values accruing from those three dimensions of language use help us define and identify register.

Legal Text and Register

Legal text is a complex type of discourse, so therefore, its style is very complex and different from others. It covers the very complicated subject of law and a more complex area of language. Though legal language has been simplified in the past centuries in western countries, certain idiosyncrasies are still found in the way associated with how lawyers and legal scholars speak and write, which is originated from the irreplaceable and indispensable nature and function of Law. With more and more importance having been attached to the research on the legal text, this text type, as an indispensable medium, functions as documents with binding force.

Example 1:

A legal person shall be all organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

In Anna Trosborg’s words, “Legislation belongs to the serious and formal end of the linguistic spectrum. The whole situation of legislation is one of sincere intention, real meaning, and conforming action” (1997, p. 177). One of the typical features of the legal text is that formal, complex and unique

legal lexical terms are found all over the text, i.e., words specific to the register. This sentence has extensive use of field-specific vocabulary, such as “a legal person”, “civil rights”, “civil conduct”, and “civil obligations” etc. These technical terms are certainly unfamiliar out of this context but they sound formal, divine and authoritative. It is largely through the recognition of these field-specific words that we are able to identify the topic of a text. And the ideational function is therefore fulfilled with the original register feature being reproduced. As the use of terminology among members of the same area is convenient, providing a short-cut, an economical and precise norm, it satisfies the ideational function of legal text of conveying or imparting knowledge.

One more example from the sidebar conference of O. J. Simpson case can clarify the interpersonal function through tenor.

Example 2:

Mr. Cochran: Your honor, we would like to put something on the record if we might.

Perhaps, the court may want us to approach the bench.

The court: What is the topic, counsel?

Mr. Cochran: With regard to the jury, we have a request.

The court: A request?

Mr. Cochran: A request, yes.

The court: All right. Madam reporter.

(sidebar request, 6 July, 1995)

The tenor shows the set of relationships among the participants, i.e., the social roles and status of speakers. This example is a dialogue between the counsel and the judge in the court. Their relationship affects the kind of language chosen, particularly in terms of the degree of formality. Emphasizing the impersonality and distance, it relies heavily on the formal and rigid words, such as “Your honor”, and “counsel,” etc. As legal texts function as an authoritative statement to guide people’s conduct, words with an emotional impact are to be avoided, resulting in the impersonality and objectivity of the legal writing. That is a vivid representation of the legal register, indicating peculiar interpersonal function.

Example 3:

The validity of an arbitration clause or an arbitration agreement shall not be affected by the modification, rescission, termination, invalidity, revocation or non-existence of the contract.

Example 4:

These rules are formulated in accordance with Arbitration Law of the People’s Republic of China and the provisions of the relevant laws and...

As the above two examples show, abundance use of the passive voice is one feature of the legal text. The passive voice shows the agent of the action indicated by the verb and the “true as well as the grammatical subject of the verb when it is transformed into its active form” (Trimble, 1985, p. 118). The extensive use of passive voice also aims at creating the impersonal and authoritative legal atmosphere, creating the appropriate interpersonal function.

Example 5:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general

welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain this Constitution for the United States of America.

The mode of the legal text is to regulate people's behavior. It intends to be complicated in grammatical structures, but definite in the target the provision aims at. The example consists of 52 words. The subject is "We the people of the United States", and the predicate verb and object are "do ordain this Constitution for the United States of America". Inserted between the, main parts are an adverbial clause, six verbal phrases and some modifiers. Legal text often contains complex sentences with many clauses and modifiers, but these clauses and modifiers function to guarantee the comprehensiveness and completeness of the main structure. These semantic methods are the expression of the textual metafunctions in accordance with its mode..

Conclusion

The term *text* has been analyzed, evaluated and extensively discussed from different points of view and has been approached from many different perspectives. The first discussion of the notion of text initiated the further elaboration of the term by contemporary theories. Even the brief outline of the issue indicates its importance within the framework of the theoretical reflected in systemic functional grammar. In this paper, Halliday's theory of functional grammar, including metafunctions and register presents a new impetus to the discussion of legal text. Defined as a semantic configuration that is characterized on the basis of three variables – field, tenor and mode – legal text is recognized as the unit of communication and its communicative occurrence as a semantic whole. Therefore, not only linguistic features, but also the communicative functions. have to be taken into account. Register is supposed to produce the commutative purpose, with the central concern intending to achieve the function. Function should be regarded as the most important symbol, in which the writer works systematically towards the best possible solution for particular communication problems. Function here refers to the ideational, interpersonal and textual metafunctions interpreted by Halliday in his systemic functional grammar.

Halliday's theory of functional grammar has caused, and it seems quite probable that it will continue to cause, heated debates within the field of discourse analysis. Its importance can never be ignored. Therefore, the analysis of legal text in view of the theory and register analysis provides a different perspective, which still needs further studying.

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Analysis of Pragmatic Presupposition in Police Interrogation

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[Abstract] Pragmatic presupposition has received increasing attention recently, particularly its manifestation in police interrogation. Based on relevance theory, this paper focuses on three main features of pragmatic presupposition used in police interrogation, which ensures the effectiveness and legality of police interrogations. It is hoped that the research will be beneficial to not only researchers of legal language but also professionals of legal science.

[Keywords] pragmatic presupposition; relevance theory; police interrogation

Introduction

Police interrogation happens in a dynamic communication context which requires pragmatic presupposition as one of the major interview strategies. The concept of pragmatic presupposition was first put forward by Robert Stalnaker. He believes that a proposition P is a pragmatic presupposition of a speaker in a given context just in case the speaker assumes or believes that P , assumes or believes that his addressee assumes or believes that P , and assumes or believes his addressee recognizes that he is making these assumptions, or has these beliefs (Stalnaker, 1974). The definition of pragmatic interrogation has become more specific and broader with the development of this field. Givón (1979) stated that pragmatic presupposition are assumptions made by the speaker on what the hearer may accept undoubtedly. Levinson (1983) defined pragmatic presupposition as common knowledge, which is held by the two sides in the communication and is a necessary condition for successful communications. The definition of pragmatic presupposition can be classified into three aspects: pragmatic presupposition is a propositional attitude; pragmatic presupposition is common knowledge shared by the two sides in specific communicative environment; pragmatic presupposition is the condition that enables a statement to be appropriate in the process of communication (Hu, Zehong, 1996).

Furthermore, many scholars at home and abroad have made investigated further into pragmatic research from the properties, triggers, types, functions and projection problem. This paper will start from features of pragmatic presupposition which have been concluded as mutual knowledge, appropriateness and imperceptibility to analyze the conversation between the police and the suspect.

As an effective pragmatic strategy in forensic linguistics, study on the pragmatic presupposition of courtroom discourse has been increasing in recent years in China. A presupposition must be mutually known or assumed by the speaker and addressee for the utterance to be considered appropriate in context. As Peng Jie (2014) states in *The Analysis of the Pragmatic Presupposition in Courtroom Discourse*, that as a pragmatic strategy, presupposition becomes an effective way for judges, prosecutors and lawyers to control witnesses and litigants and to achieve their intended purposes

However, as a crucial stage before the courtroom trial, studies on the pragmatic presupposition used by police in the police interview and interrogation have been rare. Police interviews are classified by Shuy (1997) as “an elicitation interview, not an information interview” (p.178), emphasizing that the interviewer in such an interaction is not asking questions for the purpose of self-illumination, but in order

to “elicit answers that they believe, know or suspect to be true” (pp. 178-1789). Police interrogation, as an institutional discourse, requires specific power to realize the assumed aim. As known to all, the typical police interview opens with a series of questions aimed at eliciting demographic information and then followed by a turn-taking, question-answer format between the police and the suspect. In order to collect more useful information for the case and the courtroom trial, the police need to employ some linguistic strategies in the question-answer procedure. Through the application of pragmatic presupposition in the interrogation, police can control the suspects effectively and realize their interview goals.

This paper analyzes the pragmatic presupposition employed by police during police interrogation in criminal cases at home and abroad. Based on relevance theory, we analyze police-suspect interviews from the features of pragmatic presupposition. The examples analyzed in this paper were excerpted from the full transcripts of the Jimmy Savile interview with the Surrey Police in October 2009 and our country’s criminal investigation files.

Theoretical Framework

Relevance theory is a cognitive theory focusing on communication and cognition. It holds the idea that during human communication, the communicator’s and the audience’s cognition is relevance-oriented. The communicator produces a stimulus which makes it mutually revealing to the communicator and audience that the communicator intends to express or express more to the audience a set of assumptions (Sperber, & Wilson, 1995). People hope that the assumption being processed is relevant and they try to select a context which will justify that hope (Sperber & Wilson, 1995). Based on the communication model established by Sperber and Wilson, asking questions is an extensive process from the perspective of investigators. As we all know, police, as institutional representatives, normally have the right to ask questions. In the process, police make great efforts to ensure their questions can elicit more useful information or verify some doubts in cases. To achieve this effect, they resort to the use of some verbal stimuli. Stimuli must meet two requirements: to attract the audience’s attention and to focus it on the communicator’s intentions (Sperber & Wilson, 1995), that is, to direct the audience towards the optimal relevance.

In addition, context is equivalent to a set of contextual assumptions which are brought to bear on the interpretation of an utterance on a given occasion. It is a subset of the mutual cognitive environment of communicator and audience. A mutual cognitive environment is the intersection of two people’s total environment. Context is not predetermined during the process of communication, and context adjusts to the concrete situation of the audience. Therefore, the generation of context is a dynamic process. It is constructed during the communication process. The selection of proper context is crucial to interpretation of an utterance (Yule, 1996). In order to achieve the optimal relevance during the conversation with suspects, investigators should also conform to a changeable context in order to accomplish this process. Two interesting planes of reality are manifested in courtroom discourse: the primary courtroom reality, consisting of the courtroom itself and the people present; and the secondary reality, which consists of the events that are the subject of the litigation (Gibbons, 2003). Police investigation and questioning likewise has these two layers – the current reality of the interview room and the reality under investigation. With regards to the transition from the primary reality to the secondary reality, namely, the change of context and the specific goals of the police, pragmatic presupposition is among the linguistic devices the police may use the most.

Properties of Pragmatic Presupposition

Since pragmatic presupposition is rooted in linguistics, many linguists have been working to explain it thoroughly. This section will employ the features of pragmatic presupposition concluded by He Ziran (1998) to analyze the police interrogation discourse. The major properties to pragmatic presupposition are as follows:

Mutual Knowledge

Mutual knowledge is a property of pragmatic presupposition, which holds that presupposition refers to the information that both parties of communication know. There are three types. First, presupposition is the information mutually known by communicative parties or average people, which is closely connected with the context. Second, mutual knowledge is implied in the speaker's utterances and then can be understood by the hearer. Third, sometimes, mutual knowledge only refers to the things mutually known by communicative parties, so the third party may not really understand the content of the discourse if he or she doesn't know the presupposition and just relies on the context (He Ziran, 1998, p. 138). Let us look at the following two interrogation utterances:

Example 1

Police: 你知道为什么拘留你吗?

Suspect: 你们怀疑我们厂技术科笔记本电脑被偷的时是我干的, 我冤枉。

Police: 你先别激动, 你把9月5日晚上8点到第二天早上你的活动情况讲一下。

English version

Police: Do you know why you were detained?

Suspect: You doubt that I stole the laptop of our factory. I was wronged.

Police: Calm down. Tell us about your activities during the period from 8 pm on September 5 to the next morning.

In the above conversation between the police and the suspect, the police employed the mutual knowledge of pragmatic presupposition to ask a general question, “你知道为什么拘留你吗?” (Do you know why you were detained?), with the aim to elicit some unexpected information and to find a hook to ask the next question. The suspect was detained on the charge of stealing the laptop, and this is the information shared by the police and the suspect. If the police directly ask a rigid question like, “You stole the laptop?”, it will result in a hard transition from the primary reality to the secondary reality for the suspect and constrain the obtainment of other information connected to the case.

Example 2

Police: And would you drive that yourself, or would you get someone accompany you to those things?

Suspect: No, drive myself

Police: Did you ever have anyone accompany you, or go with you to those events, like a chauffeur?

Suspect: Not really, no.

Police: So you didn't have a chauffeur or-

Suspect: No

As noted above, the police asked the same questions repeatedly in different ways. At first, the police didn't know the information about whether the suspect drove the car by himself. After the suspect gave some answers, the police asked in detail the same question. Meanwhile, the police have employed the mutual knowledge of pragmatic presupposition to elicit the accurate answer from the suspect. The suspect gave the negative answer "not really, no", which was an indication of some hesitation in the answer. Then the police used a declarative sentence to ask directly, "so you didn't have a chauffeur or..." with the mutual information shared by both sides. In this way can the investigator reduce the inaccuracy of the interrogation and elicit useful as much information as possible.

Appropriateness

The appropriateness of presupposition means only when presupposition is appropriate can verbal communication go smoothly. Presupposition can be objective facts or the things that the speaker views as facts in his mind or assumptions. Let's explain this from the following two examples:

Example 3

P: And did you want to have a solicitor present?

S: No, not at all.

P: OK, as stated, any time you want this stopped, it stops.

S: No, you do your job...

This discourse happens at the beginning of the interrogation. The police reminds the suspect of the rights he has to avoid some unnecessary troubles and make the suspect realize that he will make narratives about the case in the interview room, namely the context of the primary reality and the secondary reality. Police in this conversation employed the appropriateness feature of pragmatic presupposition to make the rules and rights clear to both sides so that the conversation could progress smoothly.

*Example 4

***Police: 我们是**市公安局的民警, 现在依法对你进行讯问。你叫什么名字?*

*Suspect: 我叫姚**。*

Police: 还用过什么名字?

*Suspect: 初中毕业前用过姚**这个名字。*

English version

*Police: We are police from ** municipal public security bureau. Now we shall interrogate you according to the law. What's your name?*

Suspect: My name is Yao.

Police: What's your former name?

*Suspect: I was called Yao** before graduating from middle school.*

From the conversation above, the police introduced their identities according to the necessary procedure and informed the suspect of the facts that he was under investigation. This statement made by the police is reminding the suspects of the primary reality and the secondary reality. When asking the question, "还用过什么名字" (Have you used any other names?), the police wanted to verify the assumptions he/she viewed as facts connected to the case. The police employed the appropriateness

feature of pragmatic presupposition to elicit more information that will contribute to the investigation of the case. Thus, the interview could progress smoothly between the investigator and the suspect.

Imperceptibility

Imperceptibility means that the information sent by the speaker is indicated in the utterance and communicative context. This feature possessed by presupposition is highly deceptive (Yule, 1996). The addressee could have accepted the elusive presupposition resulting from a momentary distraction. Let's look at the following example:

Example 5

P: 这些电脑部件是谁拆下来的?

S: 部件是由阿峰拆下来的。

P: 都拆了什么部件?

S: 我知道有硬盘, CPU, 内存条。

P: 你怎么知道这些电脑部件的名称的?

English version

P: Who dismantled these parts of the computer?

S: A Feng did.

P: What parts?

S: Hard drive, CPU, memory module

P: How did you know the name of these parts?

In the above interrogation, the police constantly monitored the suspect, as well as adapted their context accordingly in order to be able to conduct interrogations appropriately and competently. When the police asked the question, “这些电脑部件是谁拆下来的?” (Who dismantled the computer parts”) with an elusive presupposition that the computer parts had been dismantled, the suspect answered unconsciously, admitting the fact that this computer had indeed been dismantled. When the suspect explained what parts had been torn down, the police made a detailed inquiry of how the suspect knew the name of the parts. In fact, the suspect answered the question without realizing that this had revealed some hidden information. The police keep track of all relevant context factors, which usually creates extraordinarily good interrogation effects.

Conclusion

Throughout the analysis of pragmatic presupposition of police interrogations, this paper reveals one of the important linguistic strategies employed by the police to realize their specific goals. Ever since the concept of presupposition has been put forward, the study has aroused heated discussion among the fields of philosophy, logistics and linguistics. In consideration of the pragmatic presupposition's close relation with context, this paper constructs the theoretical basis to analyze the police interrogation rationally from the perspective of the three main features of presupposition.

However, the police usually insist on the question-answer format during the investigation period. Questioning is one area where institutional talk can differ substantially from everyday conversation. There is a tendency for the more powerful speaker not only to give more directives, but also ask more of the questions, and for the less powerful speaker to be expected to provide more answers (Mumby, 1988). Therefore, constant questions from the police in the dynamic context sometimes adds extra physical and

psychological pressure to the suspects. As a consequence, the answers from suspects may be inaccurate that cannot be the evidence to the case. In short, the employment of pragmatic presupposition must conform to the principles of flexibility and prudence. The proper and accurate use of this strategy is of great help to the investigation of the case.

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Standardization of Drug-Related Court Interpreting: From the Perspective of Adaptation Theory

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[Abstract] The globalization, as well as the reform and opening-up policy since late 1970s in China, are accompanied by an increase of foreign-related lawsuits. As a consequence, court interpreters are in urgent need for such an increasing demand. However, no regulations or codes of practice have been formulated to standardize court interpreting in China. Aimed at filling the void, this research attempts to solve some problems court interpreters may encounter at court trials from the perspective of adaptation theory, particularly from three aspects: variability, negotiability and adaptability of language. The results are that the status quo of court interpreting is that, besides lacking basic legal knowledge, most court interpreters are influenced by the Chinese culture and habits. By examining a drug-related court interpreting, the writer suggests that court interpreters comply with the rules of adapting to the court occasion, to different legal systems and to speakers' identities. It is hoped that the study may help court interpreters release stress and ensure smooth court proceedings.

[Keywords] court interpreting problems; adaptation theory; court interpreting standardization

Introduction

Integrated extensively with the international community, China has witnessed a great influx of foreign direct investment (FDI) and people from overseas since the late 1970's as China started its reform and opening-up policy. With investment and people pouring in, the ever increasing complexity of lawsuits has driven the need for court interpreters to bridge the communication between two languages and sometimes two legal cultures.

Court interpreters in China, however, are usually selected from teachers in universities or interpreters from translation companies. These people are not well-qualified for the arduous and complicated challenge of court interpreting. In addition, it is difficult for them to master the skills for interpreting and the knowledge of law or the case. As a result, with the ongoing increase of foreign parties involved in lawsuits, there is a glaring need for standardization and specialization in the position of court interpreting, as well as a strict certificate and testing for qualification. After all, the role of court interpreting is concerned with flawless proceedings and the human rights of the foreign parties.

This paper attempts to answer three questions: 1) What major problems do court interpreters encounter during court proceedings? 2) What are the rules court interpreters should abide by for catering for a special occasion – the court? 3) How to apply the adaptation theory to the analysis of court interpreting? The writer adopted Adaptation Theory to examine the status quo of court interpreting and whether the theory could be applied to court interpreting in China by analyzing a drug-related court interpreting.

Adaptation theory, initiated by Jef Verschueren in 1978, concluded that language in use is a consistent process of choices because the language in use has the characteristic of diversity, negotiability and adjustability, respectively referring to the possibilities, to the flexible process of choosing, and to the chains when making choices within one language (Qian Guanlian, 1990). The theory, as its origins, was used to analyze language itself rather than its translation. It defines the characteristics of language as dynamic. Thus, the communication among different languages has various possibilities. The interpreters, when

choosing from the target language then can make choices from the perspective of the adaptation theory. Due to the specialty of the occasion, the litigant participants have different statuses, educational backgrounds, and cultures, etc. Thus, it demands that court interpreters translate close to the context, using legal terminology, know the common words used in daily life into law contexts, protect the authority of the interpreting and the law. Using language is a process of constant linguistic choices (Verschueren, 1999, p. 55), during which process demands the interpreters translate closely to the original meanings. But during the interpreting, interpreters are faced with many choices. Because one word or one meaning in the target language may have many ways of expression. But all the interpreting happens in some occasion with special contexts. It requires that interpreters translate in accordance with the situation.

This paper proceeds from the concrete court records – the micro level, while most of the previous studies focused on the macro level – the construction of court interpreting systems, and the obstacles they come across in the proceedings.

As a result of the late start of court interpreting, there is a lack of relevant regulations and standards. Gao Jianxun (2007) felt that the establishment of this system includes legislation, an accreditation test for court translators and court interpreters, training, and a registration system. Except that, to complete the system, the treatment standard of the interpreters must be regulated. In addition, Lan Yang analyzed the status quo of the court interpreting and suggested that the codes of practice should cover legislation, training and treatment (2009). In the thesis, the writer also generalizes some specific ways to establish the system, and a registration system (for example: interpreters can be registered based on their location, ability, and primary field, etc.). This method of registration simplifies the selection of the often time-consuming process and paves a practical way for China to establish its own system. Through the analyses of the translation rules and practices in ancient China and the overseas' system of regulations, the legislation of court interpreting should cover: “the treatment of court interpreters, the court interpreting procedure, codes of practice, qualification, supervise and recruitment” (He, 2013). All these prospective covered in the legislation, the court interpreting system would be reasonable.

The court interpreting, though affiliated to professional interpretation, has its unique characteristics. Consequently, the court poses more challenges for the interpreters. Except for the basic qualifications, they should master some knowledge of the law so that they can function as a bridge between different languages, different cultures and different legal systems. Wang Jian and Yang Bingjun concluded the challenges that court interpreters face are concentricity, instantaneity and orality (2007). In addition, they confront the obstacles of “vacancy of words, long and difficult sentences, cultural barricades, the nerve-wracking environment of the court, as well as lack of specialized knowledge” (Du, & Tan Jianying, 2013, p. 107). Out of the concern to maintain authority, most of the legal terms tend to use long and complicated sentence structures. Simultaneously, in court interpreting, the literal translation often fails to satisfy the need of communication because of cultural barricades. “Except for the etiquette, body language, another common reason causing the differences in legal culture is the untranslatability, which means the difficulty to find the counterpart in the target language” (Chen, 2012). Due to the imparity of legal systems, it is often the case that some of the legal terms or conceptions are absent in China or in other countries.

Compared with previous studies, there is a gap for a micro-level analysis of the specific rules or standards for court interpreters to refer to. Therefore, this thesis, through the analysis of real drug-related cases' interpreting records offers a sample for interpreters in order to maintain their authority of the law and legal procedures, as well as release their pressure.

Analyses of Combining the Application Theory with Examples from Real Cases

The Contextual Correlates of Adaptability

The contextual correlate of adaptability is a part of the adaptation theory. Verschueren thought it includes three aspects: the physical world, social world and the psychological world. The three parts overlap with each other. The speaker is just some identity instead of the “human” in the normal sense. In addition, its identities are continuously changing and sometimes turn into some kinds of “intermediary” (Verschueren, 1990, p. 76-85).

It is the same with the court, the interpretation must correlate with the identities and the statuses of the participants. The interpreters must use legal terminologies. Then the interpreters may become nervous in the court due to the importance of the judgment to the participants.

Example 1

Source Language: 审判长: “XX 市中级人民法院刑事审判庭第一庭, 今天依法对 XX 市人民检察院提起公诉的被告人 XXXXXX 走私毒品一案, 进行公开开庭审理, 法警带被告人到庭。”

Target Language A: “The first Court of the XXX Intermediate People’s Court of XXX now holds a public trial of the case of drug trafficking filed by the XXX People’s Procuratorate against the accused XXX. Would the bailiff please bring the accused to court?”

Target Language B: The court is now in session. Today, the First Criminal Division of the Intermediate People’s Court of XXX is to hear in public the drug-smuggling case filed by the People’s Procuratorate of XXX against the defendant XXX. Please bring the defendant to court.

These are two similar Chinese sentences, while the translated versions are different. The opening statement in Chinese is relatively fixed in structures and information. So it would be better to standardize the English version to maintain the authority of the judges and to release the pressure of the interpreters. Comparing the two sentences, the discoveries are as follows:

1. 毒品走私: Translation A is “drug trafficking” and Translation B is “drug smuggling”, and these two versions refer to two different crimes. According to the procedure law, section 7: crimes of smuggling, trafficking, transporting and manufacturing drugs, drug trafficking is “贩卖毒品罪”. So choosing the right word demands that interpreters be exact and master some knowledge of the law.
2. 第一庭: Translation A is court, while translation B is division, according to BNC (British National Corpus)

第一庭: First division is related with sports more often: for example: “Their second defeat in four days by a London club means that a quick return to the present Second Division is more likely than ever for the First Division’s bottom team.” First court, though it has few entries, relates more with the law, for example: “When sitting as a first instance court (i.e. the first court to try the case at issue), the High Court binds all inferior courts (i.e. County Court).”

In the last sentence “请法警带被告人到庭”, Translation A: Will the bailiff please bring the accused to court? Translation B: Please bring the defendant to court. A is a question, while B is a declarative sentence. Comparing the two versions, in my humble opinion, B is much more appropriate in such an occasion and for the status of the judge. In B, it fails to translate the subject of the act: Who bring the defendant to the court? So the whole translation may be: Please bring the accused to court, the bailiff. The interpreting happens in special occasions with different people. So the situation and the speakers’ status are the factors taken into consideration when choosing the words (Gong, 2008, p. 2).

Example 2

Source Language: 被告人: He is named XXX. This guy is one of my clients; I buy the cell phones from him. I told XXX that I was going to China to buy some mobile phones. XXX then told me that he would offer me some help if I could do him a favor to bring something to China.

Target Language: 叫 XXX, 这个人是我的一个顾客, 我是从 XXX 处买手机。我告诉 XXX 我要到中国买手机, XXX 告诉我如果我帮他带 14 粒东西到中国, 他就给我提供帮助。

The “client” was translated into “顾客”, according to IOS, the meaning of “顾客” is someone who receives the products or services. But in the sentence, the defendant said he bought phones from XXX as his client. So XXX is not the customer of the defendant, maybe “客户” is. Moreover, customer means buying something from others, which contradicts the meaning of the context. Verschueren pointed out that the language used in the communication must correlate with the context. The famous linguist J.R. Firth said that each word, when used in a new context, is a new word. This means the same word can change its meanings with different contexts, which explains the influence the situation and context have on a word (Huang, 2001). So when the interpreters encounter a word with more than one meaning, they have to make the right choice that adheres to the context. Besides, the interpreters must have a clear mind, taking the whole picture with hand, paying attention to the meanings within the sentences and the subject of the utterances (Gong, 2008, p. 82).

Structural Objects of Adaptability

From the word choices, Chinese tends to be elegant while English tends to simple. Thus, it can be seen that there are differences between English and Chinese in syntactical structures, and more, so when interpreting, the interpreters must supplement some parts (Gong, 2008, p. 102).

Source Language 审判长: 被告人姓名, 曾用名, 化名, 绰号, 出生年月, 民族, 籍贯, 文化程度, 工作单位, 职务, 户籍地, 居住地?

被告人: My name is XX. I was born on XX. I am a primary school graduate. And my passport number is XX, and my Nationality is XX. My domicile is in city XX, state XX, east of XX.

Target Language: Judge: Will the accused tell the court your name, nickname, birthday information, nationality, educational background, work unit, professional title, domicile, and other personal information?

Accused: 我叫 XXX, 中文译名 XXX, 男, XXXX 年 XX 月 XX 日出生, 文化程度小学, XXX 国国籍, 护照号码: AXXXXXX, 住 XXX 东部 XXX 州 XXX 市。

The first translation lacked some information, but then it is translated as “other personal information” vaguely, which shows the techniques of the interpreter and quick reaction. But in court, the defendant is not familiar with Chinese, let alone the judicial system. So “other personal information” easily confuses the defendant and as a result, he may omit some information the court may need, thus, it’s a waste time if the judge asks again. Translation A is used and it’s an easier way instead of the way in Chinese to list the information, making it clearer to the participants, which can be learned in court interpreting.

The Dynamics of Adaptability

Verschueren thought that language has variability, negotiability and adaptability. Interpreting is a dynamic process of understanding and expressing in a new way. The speakers and listeners, the contexts, and the logic of the interpreters are also dynamic and correlated. Following the dynamic process of interpreting makes the translation loyal, natural, proper, and presents the information and style of the source language in a new way (Gong, 2008, p. 80).

The dynamic adaptability emphasizes more on the constant changing, including the speakers, the contexts, different syntactical structures, words and pronunciation. These changes imply the freedom the interpreters have during the process but with the restriction of contexts so as to be loyal.

In this case, it involved “提交” the evidence and “出示” the evidence. The interpreter, in line with different speakers, translated into “present”, “submit”, “exhibit”, “adduce”, showing the dynamics in translating.

The Salience of the Adaptation Process

Linguistics choices include many factors such as cognition, and mind states. Through these factors the salience of the adaptation process can be studied (Verschueren, 1999, p. 167). Verschueren pointed out that the linguistic behavior of human beings is colored with one’s consciousness, but between conscious and unconscious (1999, p. 183). The salience of the consciousness reflected in the linguistics choosing process is the adaptation made by the speaker (Gong, 2008, pp. 5-77).

Example 3

Source Language A: 审判长:… …依照刑事诉讼法第 28 条的规定, 被告人对上述人员有申请回避的权利, 也就是说… …被告人是否有这种要求?

Target Language: …Based on Article 28 of the Criminal Procedure Law of the People’s Republic of China, the accused enjoys the right to challenge the qualification of the …Do you want to challenge them?

Source Language B: 依照刑事诉讼法第 28 条的规定, 被告人对上述人员有申请回避的权利, 也就是说, 如果你认为上述人员与本案有利害关系可能影响本案公正审理的, 可以申请换人… …被告人是否有这种回避的申请?

Target Language: In accordance with Article 28 of the Criminal Procedure Law of the People’s Republic of China, the defendant may demand the withdrawal of any one of the abovementioned personnel…Do you have/apply for such demand?

Comparing A and B, in A “申请回避” was translated into “challenge the qualification”, but there are no such expressions in some related laws. So it is the understanding of the interpreter. At last, the interpreter asked the defendant whether he or she has such application. In B, the interpreter used the word withdrawal, which can be found from the criminal procedure law. This is the result of Chinese consciousness reflected in the interpretation. Because in the British and American legal system, they do not use withdrawal to mean “回避”. They use “disqualification. But in Chinese “withdrawal” has the meaning of not presenting, which is similar to the Chinese meaning, showing the consciousness of the interpreter or the law makers.

The problems and the rules to obey

The problems.

1. Not being fully prepared, such as the mistranslation of some words – Material evidence, withdrawal, etc.
2. Lacking legal terminology: In court interpretation, it demands the interpreter to avoid daily language and to follow the complex features of legal English.
3. The Chinese consciousness mirroring the interpreting.
4. The cultural difference between languages and the legal systems bring challenges to the interpreters.

The rules of court interpretation.

1. The interpreter must adapt to the court: the court is a place of authority, which is the presence of law enforcement, a fair judge, and the rule of law, as well as human rights.
2. The interpreter must adapt to people with cultural differences with different legal backgrounds.
3. The interpreter must adapt to the different tones of the speakers based on their status in the court.
4. If there are some legal terms, the interpreters had better to translate closely to the official versions and be consistent from beginning to end and explain them in plain language to the listeners. As in the word “行为犯”, for example, we can translate it literally and then make an explanation for it: Where a person has already taken the action, no matter what the result is, he or she is the offender of such crimes.
5. The interpreters must taper their consciousness of their native language.
6. The interpreters must be dynamic and flexible during their interpretations.

Discussion

This paper makes an analysis on the standardization of court interpretations from the perspective of adaptation theory through the combination of cases and theory, finding that there are some patterns for the court interpreters to follow in practice. However, the materials used in this thesis are not enough and only related to drug cases. Therefore, this sample fails to be applied to different cases, which needs interpreters to change according to the real situations. In addition, interpreting is a process of creation as well. So the interpreters do not have to follow the sample reference exactly and word for word.

In the analysis of the contextual correlates adaptability, it concludes some situations in which the interpreters use daily English's legal meanings – “service,” for example. It distinguishes between the defendant and the accused and finds that “defendant” can be used both in criminal procedure and a civil procedure, while “accused” is used in criminal procedures only. So in the drug-related court, both words can be applied. There is another word share that has the same meaning – plaintiff, which is used in civil procedure solely. The translation of “第一庭” is “first court” rather than “first division”. As for the translation of “回避”, and “disqualification” outweighs “withdrawal”. The analysis of structural objects of adaptability highlight the differences in sentences structures. The analysis of the dynamics of adaptability explain that the same word can be translated into different meanings in line with the context. The salience of adaptation theory emphasizes the cultural awareness reflected in the process of interpreting.

These analyses only include three interpretation records. Therefore, the research materials are far from enough or sufficient, which calls for regulation and standardization on this sphere.

Conclusion

The standards to appraise whether a court interpretation is precise and objective can be justified by the adaptation theory. For interpreters, they had better adapt to the contexts and structures dynamically and summarize some legal terms and be familiar with some laws. This paper finds the correlation between adaptation theory and court interpreting. By adhering to the four angles of adaptation theory: contextual correlates of adaptability, structural objects of adaptability, and dynamics of adaptability, the court interpreters are more likely to ensure the correctness and authority of the court proceedings. It provides a

sample to the court interpreters that they can refer to when encountering drug-related lawsuits in order to relieve the stress and maintain the authority of the court.

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Appendix

Opening stage:

现在开庭。XX 省 XX 市中级人民法院刑事审判庭第一庭，今天依法就 XX 市人民检察院提起公诉的被告人 XXXX 走私/运输/贩卖毒品一案，进行公开开庭审理。请法警带被告人到庭。

The court is now in session. Today, the First Criminal Court of the Intermediate People's Court of XXX is to hold a public trial on the case of drug smuggling/transporting/trafficking filed by the People's Procuratorate of XXX against the accused XXX. The bailiff, please bring the accused to court.

被告人姓名，曾用名，化名，绰号，出生年月日，民族，籍贯，文化程度，工作单位，职务，户籍地，居住地？

Please state to court your full name, former name, alias, and street name, date of birth, nationality, educational background, institution/business address, professional title, domicile, and home address.

被告人因何事被拘留？何时被拘留？何时被逮捕？

Why were you detained? When were you detained? When were you arrested?

被告人以前有无受过刑事处罚？

The accused, did you have any criminal record?

被告人有无收到 XX 市人民检察院的起诉书？有无收到起诉书的英文版？何时收到的？距今天是否有 10 天了？

Did you receive the indictment filed by the People's Procuratorate of XXX? Did you receive the English version? When did you receive it? Has it been ten days since you received it?

现在宣布法庭有关事项：今天负责审理本案由审判员 XXX，代理审判员 XXX，代理审判员 XXX 组成，由审判员 XXX 担任审判长。速录员 XXX 担任法庭记录，书记员 XXX 担任法庭其他工作。XXX 省 XXX 市人民检察院 XXX 出庭支持公诉。担任法庭翻译的是 XXX。

I now announce the relevant issues concerning today's court session. The collegial panel for this case consists of Judge A and Acting Judge B and C, with Judge A as the presiding judge. Mr./Miss D, the Stenographer, is responsible for the transcript. Mr. E/Miss E, the court clerk, is in charge of other relevant issues. Mr. F/Miss. F, acting prosecutor on behalf of the People's Procuratorate of XXX, appears in this court session to support the ongoing of the prosecution. XXX, from XXX, will be the interpreter to this trial.

依照刑事诉讼法第 28 条的规定，被告人对上述人员有申请回避的权利，也就是说，如果你认为上述人员与本案有利害关系可能影响本案公正审理的，可以申请换人。

In accordance with Article 28 of "the Criminal Procedure Law of the People's Republic of China", the accused may demand the disqualification of any one of the aforesaid personnel.

That is, you may demand the disqualification of any one of them if you believe he or she has an interest in this case and may thus affect the impartial handling of the case.

“申请回避的理由有：1 是本案的当事人或者是当事人的近亲属；2 本人或者他的近亲属和本案有利害关系的；3 担任过本案的证人，鉴定人，辩护人，诉讼代理人的；4 与本案当事人有其他关系，可能影响公正处理的；5 上述人员曾经接受当事人及其委托的人的请客送礼；违反规定会见当事人及其委托人的。”

The reasons for making such demand are as follows:

1. If he or she is a party or a near relative of a party to the case.
2. If he (she) or a near relative of his (her) has an interest in the case.
3. If he (she) has served as a witness, expert witness, defender or agent ad litem in the current case.
4. If he (she) has any other relations with a party to the case that could affect the impartial handling of the case.
5. If he (she) has accepted the invitations by or gifts from a party or anyone entrusted by the party, or met with the, in violation of regulations, a party or anyone entrusted by the party” (The Criminal Procedure Law of the People's Republic of China, Article 123, 2012 version).

被告人对以上合议庭，书记员，公诉人以及翻译是否听清楚了？被告人是否有这种回避的申请？

The accused, are you clear about the identities and qualifications of the members of the

Collegiate Bench, the clerk, the public prosecutor and the interpreter? Do you have such demand of disqualification?

“依照法律规定，被告人有权获得辩护。除自己辩护外，还可以委托辩护人为自己辩护” (the Criminal Procedure Law of the People’s Republic of China, Article 11).

In accordance with the law, the accused shall have the right to defense. Besides self-defense, he or she shall have the right to entrust a defender on behalf of him or her.

“按照法律规定，庭审期间，被告人，辩护人可以提出新的证据，传唤新的证人，调取新的证据。进行新的检查或勘验，被告人是否有这样的申请？”

“During a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held. The accused, do you have such application?”

“控辩双方在申请举证时，应当说明所举证据的来源和所需要证明的内容。控辩双方向法庭提交证据，应当提供原件，原物，不能提交原件，原物的，应当说明理由。经法庭同意并核实后可以提交副本或者复印件。”

“When presenting the evidence, both parties are required to state the source of the evidence and the content which the evidence is intended to prove. Both parties shall present an original. In the absence of the original, the party shall state the reasons. Only upon approval and verification of the Court can the party present a duplicate or photocopy.”

公诉人有无新的证据需要在法庭上提出 75-143 被告人及辩护人有无新证据需要在法庭上提出？

Mr. Prosecutor, do you have any new evidence to present to court? Does the defense have any new evidence to present to court?

今天的庭审分三个阶段：法庭调查，法庭辩论，被告人最后陈述。现在进行法庭调查。首先由公诉人宣读起诉书。

Today’s court proceedings are divided into three stages: courtroom investigation, courtroom argument, and a final statement by the accused. Now the courtroom investigation stage commences. First, Mr. Prosecutor may read the indictment.

下面开始进行法庭调查。被告人是否听清楚公诉人宣读的起诉书内容？对起诉书指控的事实有何意见？

Here commences the courtroom investigation. The accused, are you clear about the content of the indictment read out by the prosecutor? Do you have any objections to the facts stated in the indictment?

China's Legal News in the Rule-of-law Context: Distinctive Functions, Problems and Tactics

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[Abstract] With the 13th Five-Year Plan (2016-2020), a series of social and economic development initiatives approved by the Central Committee of the Communist Party of China (CPC) in 2015, China envisions to build a law-based society by 2020, which raises a widespread concern in both domestic and international media. Thus, China's legal news reports have become a major platform to demonstrate and review its gains and losses. This article starts with the distinctive functions of China's legal news, and then focuses on the problems that may be caused during the fulfillment of these functions. Finally, it proposes some concrete tactics to tackle the problems in legal news practice.

[Keywords] legal news; rule of law; functions

Introduction

“Legal news” in China, like political news, financial news, sports news, entertainment news, science and tech news, etc., is a popular subject in Chinese news reports. Roughly speaking, “legal news” in China equals the entire set of “court news”, “crime news”, “police news”, and “news on legislation”, etc. in western news reports when news is categorized by the content (Liu, 2014). The significance of legal news has increased markedly ever since the concept of “rule of law” was fully focused on for the first time by the 18th Central Committee of the Communist Party of China (CPC) in its fourth annual policy-setting meeting in 2014, and since the vision of building a rule of law society by 2020 was established by its fifth meeting in 2015. Legal news stories on China's anti-corruption campaign, improvement of laws and regulations, and sensational trials and cases, etc. have become a window through which progress and problems of China's rule-of-law can be displayed, discussed and debated, both at home and abroad.

Through decades of work by legal news journalists and scholars, the quality of China's legal news reports has been promoted significantly. Various report angles, especially humanistic care, are taken rather than one single political propaganda perspective (Yao, 2012). Social media has also become one of the platforms of legal news dissemination (Li, 2014). However, due to various factors such as the good-news-only tradition, a lack of professional legal news journalists, and insufficient rationality of the public, there is still room for improvement in China's legal news reports. Problems like invasion of privacy of the victim or defendant, trial by media, heavy official tone and over-emphasis on positive energy are still lingering in legal news coverage – these will all severely challenge the communication effect of the media, the authority of the courts and judges, and the construction of a positive national and international image of China.

Therefore, this article intends to clarify the distinctive functions of legal news in the rule-of-law context, the major problems it contains in the present circumstances, and some tactics to tackle those problems, so that legal news in China can be perceived as a transparent and trustworthy window by the audience, both at home and abroad, to witness the process of China's building its law-based society.

Distinctive Functions of China's Legal News

Legal news in China generally serves five major functions: to inform, to educate, to guide, to serve, and to supervise. To be specific, legal news can **inform** the public of new developments and problems in law-related issues, both at home and abroad; legal news **educate** the public in a general knowledge of laws and regulations; legal news can **guide** public opinion to establish good social conduct, **supervise** the performance of legislative, administrative, and judicial organizations and personnel, and **serve** the public by providing professional legal opinions on legal puzzles in their daily lives.

Among all these functions, “to inform” and “to serve” are also two basic functions of western newspapers. “To educate” and “to guide” are unique functions “with Chinese characteristics”, which are rarely seen in western media. Most western news reports on the publication of new laws and regulations, cases (especially criminal ones), and trials are just for the purpose of informing and entertaining the public. The function “to supervise” is similar to the watchdog function in western news. However, watchdog reporting generally “covers an array of malfeasance: from sex and personal scandals to financial wrongdoing, political corruption, enrichment in public office, and other types of wrongdoing” (Coronel, 2009). But due to some inherent defects within China's legal system, such as the unsatisfactory professional quality of judges, judicial corruption and power abuse, and the administrative intervention in court cases, the scope of media supervision in China is not limited to the improper or unlawful behaviors of public officials, but extends to those of the judiciary, and even legislative, figures. Therefore, this article will focus on the problems caused by the improper fulfillment of the three distinctive functions of legal news: to educate, to guide, and to supervise.

Current Problems in Legal News

In the process of realizing the three unique functions of China's legal news, three major problems may occur if the media tries to educate, guide or supervise extravagantly. These problems are the lingering propaganda tendency, ignorant of the communication effect, and trial by media or public opinion.

Lingering Propaganda Tendency

If the function “to educate” is used appropriately, legal news will inspire significant “positive energy” to help people overcome difficulties. Whether it was at the beginning of the founding of the People's Republic of China, during the entire process of China's reform and opening-up, or in this new era with China's ambition of building a moderately prosperous and law-based society by 2020, the news media has always been perceived by the Party and Chinese government as an effective tool to spread “positive energy”. However, if the function is over-emphasized in news coverage, the adverse effect of propaganda will be inevitable. For example, the headline of one of the cover page stories in the *Legal Daily*, a Chinese state-owned newspaper under the supervision of the CPC's Central Commission for Political and Legal Affairs that primarily covers legal developments, was written as:

1) With CPC as its surname, with strengthening the military as its orientation, with innovation as its priority, the PLA Daily should provide ideological support and guide the public opinion for the realization of Chinese Dream and the dream of building a strong army. (28-12-2015, trans. by the writer)

Compared with the strong official tone that seems to be inherited from the Mao Zedong era and shared by almost all the state-run national newspapers, such as the *People's Daily*, the *Guangming Daily*,

and the *PLA Daily* even today, *China Daily*, the only national English-language newspaper in China, does a better job in its headline writing on the same issue.

2) *President Xi stresses importance of military newspaper (27-12-2015)*

Obviously, the plain two words “stresses importance” not only conveys the gist of Example 1 which include 43 words, but also diminishes its rigid and stereotyped official tone and political implication.

Ignorance of Communication Effect

The function “to guide” is not as easy to fulfill as it used to be, because of Chinese readers’ growing consciousness of citizenship, the development of various media platforms, and the increasingly extensive and massive news coverage of western mainstream media on China’s major issues. With the competition of media influence power, western media may easily take the lead because of their professional competence in news production. Take the recent controversial Pu Zhiqiang Case as an example.

Pu, a renowned civic lawyer, was arrested in 2014, suspected of creating a disturbance and illegally obtaining personal information. On December 22nd, 2015 he was sentenced to a suspended three-year prison term for inciting ethnic hatred and disturbing public order. The controversy caused by this trial focuses on whether one of his basic human rights, freedom of speech, is violated in China. To be specific, whether malcontents should be punished by law for their derogatory comments posted on social media.

On the same day of the sentence, Xinhua News Agency released a commentary entitled “Lawyer or not, Pu Zhiqiang broke the law” to refute the opinions of Amnesty International, a non-governmental organization focused on human rights, which cried that Pu was “no criminal” and that the verdict had “shackled one of China’s bravest champions of human rights”. It was an instant response, but unfortunately it was not well prepared. The tone of it was quite superior, just like a teacher criticizing a student. For example:

3) *Are the naysayers of the opinion that lawyers should enjoy impunity?*

4) *Why not focus on what he has been found guilty of?*

5) *If this is not justice, what is? (Xinhua, 22-12-2015)*

Except for its tone, the entire argument of the commentary has tunnel-vision, with 379 words repeating one argument: Pu confessed to his crimes in a public court of law, accepted the sentence, and chose to waive his right to appeal. Both the superior education tone and the self-centered logic easily arouses an immediate aversion and minimizes the communication effect of the news coverage. And no communication effect means minor influential power to guide public opinion.

In contrast, the news coverage on the same trial from *The Economist* knows better and illustrates an impressive example on how to influence public opinion effectively by quoting the opinions posted by Chinese people on their social media, and by depicting a scene in front of the court where the trial was held.

6) *“If you can be found guilty on the basis of a few Weibo postings, then every Weibo user is guilty, everyone should be rounded up,” wrote a Beijing-based journalist to his more than 220,000 followers.*

7) *Outside the court,... Several protesters were dragged away, some after chanting “Pu Zhiqiang is innocent”. (The Economist, 02-01-2016)*

Obviously, this way of reporting seems more trustworthy and persuasive than that of Xinhua’s. When confronted with this tactic of “defend your shield with your spear”, China’s legal news media

sometimes has failed to give an instant and effective response. There has been no news coverage yet to counterattack this one.

Trial by Media or Public Opinion

If the function “to supervise” is properly practiced, “in many cases media supervision has helped courts to deliver fair justice” (Yang, 2010). However, China’s media outlets are sometimes unable to distinguish media supervision from intervention. Thus, the news media often takes the side of the prosecutor (or the accused), rather than maintain neutrality, or jump to conclusions BEFORE the courts pass the verdict, or even blame the court for injustice if the court’s rulings fail to meet their expectations. The consequence is that the legal and proper function of media’s supervision is reduced to the unlawful “trial by media”, and to misguiding public opinion.

Here, look at the Nie Shubin Case as an example. In 1995, Nie was sentenced to death and executed for rape and murder. But in 2005, clues pointing to his possible innocence were revealed, and his family petitioned for a review. In 2013, the Supreme People’s Court assigned the job to a high people’s court in Shandong Province, East China. In December 2015, the court announced, for the third time, that its judgment will be delayed another three months due to the complexity of the case. A lot of the media commented on this case and some of the headlines such as “Justice has been late”, “When will justice be done”, and “Let justice come”, indicated their stance that the sentence was wrong and should be corrected (*China Daily*, 2015). And an editorial with the same standpoint in *The Paper*, a news website managed by Shanghai United Media Group, was reposted vastly online.

8) Nie Shubin Case: Justice cannot afford to be late again (The Paper, 15-12-2015)

Under the rule of law, the media is welcome to play a constructive role in society by supervising the judiciary and preventing it from abusing its powers, but they should not intervene in the judicial process and impose their views upon professional judges. That constitutes a fatal violation of the rule of law and hurts social justice.

Tactics for Improving the Quality of China’s Legal News

From the above, it is clear that if the three distinctive functions of China’s legal news – to educate, to guide and to supervise – are fulfilled improperly, news coverage will inevitably fail to achieve an ideal communication effect, misguide public opinion, and possibly interrupt a fair trial. Therefore, the tactics that China’s legal news should take are to educate attractively, to guide smartly, and to supervise legally.

To Educate Attractively

It is not an easy task to educate people through legal news nowadays. Firstly, the readers are becoming more sophisticated and better educated than ever before and they hate to be preached to. Secondly, the traditional propaganda style of news reporting normally leads to nothing but people’s aversion. Thirdly, legal issues are instinctively serious and professional. However, wisdom (an objective and professional tone) never conflicts with attractiveness. In Table 1, Examples 9, 10 and 11 illustrate several approaches to fulfill the education function of legal news (See Figure 1 below).

Grasp the gist of a lengthy new law. The tedious and legal-document-styled news has no strong attraction to common readers, and thus, the education function can hardly be realized. Example 9 demonstrates how to summarize a lengthy new revision of law into eight highlights that are easily understood.

Inspire critical legal thinking. Example 10 first shows the danger of texting and driving, and then leads to a legal discussion on whether texting and driving should be criminalized, just like drunk driving. The topic is closely related to people’s daily life, it promote people’s awareness of safe driving, and finally, leads to a professional legal discussion on law amendment. It is an ideal example on how legal news can achieve its educational function.

Adopt a story-telling style. Criminal reports are more appealing than other contents of legal news. The story-telling style of Example 11 impressively reveals a new telecom swindle trap, and also provokes people’s self-protection awareness, which we call “kill two birds with one stone”.

Table 1. The Function of Educating: Purposes and Examples

| | | |
|------------|---|--|
| To Educate | a. interpret the professional legal terms, laws and regulations to the public | 9) Eight Highlights make “harshes law ever”: Interpretation of Food Safety Law (2015 Revision) by CFDA (Xinhuanet, 03-07-2015) |
| | b. promote public awareness of the rule of law | 10) Texting while driving top cause of road fatalities: police (<i>China Daily</i> , 14-11-2014) |
| | c. develop public’s ability of self-protection against all types of crimes | 11) “Guess who am I”: upgraded telecom swindle trap emerges (<i>Legal Daily</i> , 06-12-2014) |

To Guide Smartly

It is always extremely challenging to guide public opinion. Especially nowadays, surrounded by various voices from all around the world, people can visualize issues from various perspectives. China’s news media is not isolated from the world media any more. Mainstream western media like *BBC*, *The Economist*, and *The New York Times*, all keep an eye on Chinese issues. Their reports are almost released as simultaneously as China’s, though most often than not, they tend to make derogatory comments. If the voices from western mainstream news media sound louder and smarter than China’s, the Chinese audience may follow their voices and become influenced by the western ideology, which is against the original purposes of the function of guidance. Generally speaking, there are three approaches that can be adopted to fulfill the challenging task of “guiding” (See Table 2 below).

Table 2. The Function of Guiding: Purposes and Examples

| | | |
|----------|--|---|
| To guide | a. guide a positive public opinion on legal issues | 12) <i>China steps up crackdown on food and drug safety crimes (Xinhua, 03-01-2016)</i> |
| | b. defend the purposeful distortion of the foreign media | 13) <i>Western media coverage of Kunming’s terror attack shows sheer mendacity and heartlessness (People’s Daily, 03-03-2014)</i> |
| | c. build a positive national image of rule of law | 14) <i>Cross-Straits judicial cooperation to be strengthened (China Daily, 30-12-2015)</i> |

Use multiple reporting angles. As mentioned above, the superior tone and the self-centered logic held by Xinhua News Agency in the reporting of Pu Zhiqiang Case was not favorable. Instead, the report of Zhou Kehua, a series killer and an A-level wanted criminal of the Ministry of Public Security in China, illustrates a typical example on how to smartly guide by adopting multiple reporting angles.

- 15) *Relief after fugitive armed robber is shot dead in Chongqing (Xinhua, 14-08-2012)*
- 16) *Media mercy called for serial killer’s family (Xinhua, 15-08-2012)*
- 17) *Shooting victim’s wife faces big bills (China Daily, 17-08-2012)*

In Example 15, the content of the report adds many close-to-life details on the manhunt for Zhou on the basis of official publication. The interviewing of local citizens, the comments of the netizens, and the

memory of the police who participated the manhunt were also supplemented to construct an all-around, vivid picture of the entire process. In Example 16 and 17, two humanistic care topics were discussed, respectively. All of these reporting angles lead to a trustworthy report and a positive national image – the evil are punished, the killers’ family has the right to say “no” to the news media, and the victims’ damages issue is concerned by the media and government.

Interact with international media. Facing their sophisticated western counterparts, China’s media need to prepare more before the report, and respond instantly when being challenged. For instance, in their reports on The 2014 Kunming attack – a terrorist attack carried out by Xinjiang separatists in the Chinese southwest city of Kunming with 23 dead and more than 140 injured – the Associated Press used the term “described by the authorities as” to modify the word “terrorists”, and the *New York Times* and the *Washington Post* insisted on calling the terrorists “attackers”, regardless of the solid proof of “pictures of innocent victims lying in pools of their own blood” (See Example 14). Confronted with such remarks, the state-run newspaper *People’s Daily* fought back with a direct accusation that Western media adopted “double standards” on terrorism and terrorists. After this instant and rational counterattack, *CNN* removed the quotation marks on March 2nd, one day after the event, describing it as “deadly Kunming terror attacks”. The function of guiding international public opinion was achieved to a certain extent. In summary, since domestic reports will be simultaneously reviewed and commented on by western media, the Chinese media needs to fully prepare beforehand by predicting all the possible controversial angles that could be used, making counter arguments accordingly, flexibly adjusting the pre-arranged plan based on concrete circumstances (Wang & Li, 2014).

Integrate with social media. Social media is not only a platform for journalists to collect people’s responses and attitudes, but it’s also a channel for media to guide public opinion. Internationally, realizing the influential power of Twitter and Facebook, Reuters, The Associated Press (AP), Agence France-Presse (AFP) and other world mainstream news agencies have already operated accounts on these social media platforms for a long time. From the above-mentioned Example 6, it is clear that the western media also keeps close attention to Chinese social media like WeChat and Microblog, quoting the Chinese bloggers’ comments to frequently support their arguments.

Nationally, Chinese media outlets also noticed their significance and embarked on the operation of their own social media accounts. *Legal Daily* started its Microblog entitled “Legal Daily V” in 2011. The official account of Xinhua News agency @ XHNews on Twitter started operation in 2013, with “visualize China with global perspective” as its major task (Liao & Zuo, 2015). However, the employment of social media as a supplement to newspapers, TV programs and websites is still at an initial stage; it is inevitable that there are many problems that still need grappling with, such as the lack of interaction between the media and the readers, the shortage of linkage between fragmented posts of follow-up reports, and the insufficiency of readability with too many long news coverages directly forwarded from the newspaper without the use of multimedia (Li, 2014). However, the influential power of social media cannot be underestimated, and a tighter integration between traditional media and social media needs to be promoted.

To Supervise Legally

Under the rule of law, the media is welcome to play a constructive role in society by supervising the judiciary branch and preventing it from abusing its powers, but they should not intervene in the judicial

process and impose their views upon professional judges. To achieve all the purposes in the supervising function legally (See Figure 3 below), the media needs to adopt at least three basic reporting principles.

Report the facts objectively. Here, the word “facts” means the information that has been proven to be true after the media’s investigation, but not any random “denouncement”, “complaint”, or “news clues” without being proven. The reports of such facts can help the public learn the objective truth, and obtain the same opportunity as the media to think and comment independently. Don R. Pember, a renowned American media law expert, also offers a list of seven common kinds of stories that American legal critics say can endanger a defendant’s rights (2014), which should be taken as a reference to China’s news media.

Maintain a neutral position. In reports with disputed facts, the media should maintain an impartial and unbiased position, providing the two parties with an even proportion of opportunity to speak and argue. Thus, the public may have a sufficient and comprehensive knowledge of the whole case.

Provide professional opinion. The media is no judge or legal professional. Therefore, the opinion of the news report should be summarized or quoted from a legal authoritative or expert that is relevant to the case. “The opinion should be related to social interest, based on the analysis of the facts, toward the issue rather than any individual, and without malice” (Mu, 2005).

Table 3. The Function of Supervising: Purposes and Examples

| | | |
|--------------|--|---|
| To supervise | a. Comment on the court’s decision | 15) <i>Innocent man who spent 11 years on death row gets compensation (China Daily, 30-12-2015)</i> |
| | b. Reveal the corruption and malpractice of the public officials | 16) <i>Former Guangzhou Party chief on trial (Xinhua, 25-12-2015)</i> |
| | c. Comment on laws and regulations | 17) <i>New Chinese Marriage Law Interpretation Protects Men’s Assets, Angers Women (Beijing Morning Post, 14-08-2011)</i> |

Conclusion

With the ambitious target of building a law-based society by 2020, China’s legal news should make its contribution to publicity by the fulfillment of its educating, guiding and supervising functions. However, if these functions are served improperly, then the underlying propaganda tendency, the ignorance of communication effect, and trial by media or public opinion will be inevitable and China’s national image of rule-of-law will be tarnished accordingly. Therefore, three general tactics of legal news coverage are proposed and illustrated with concrete approaches, respectively. However, these principles are still tentative, and should be testified, adjusted and refined by the legal news reporting practice.

Furthermore, this article discusses legal news from the media perspective. But except for the media, the judiciary branch and the public also need to take efforts to promote the progress of legal news. The judiciary branch needs to strengthen judicial transparency and authenticity. The public needs to cultivate critical thinking rather than being manipulated easily by the media. This article just puts legal news in the rule-of-law context and expects that more constructive academic opinions could be put forward to improve the legal news practice, and hence, the building of an objective national image for China.

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Metaphor in Lawyer's Argumentative Courtroom Discourse

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[Abstract] Oratorical skills are essential for lawyers in the courtroom attempting to sustain a clear-cut stand. While most closely related to human thoughts, metaphor strategies are obligated to play an important part in a lawyer's courtroom discourse. Although traditionally categorized as a special form of rhetoric, the metaphor has already become a hot focus in the fields of philosophy, psychology, sociology, general linguistics and literary criticism, except applied linguistics. Metaphors in a lawyer's argumentative courtroom discourse can make his/her debate immune to attack and defeat the opponent by surprise. From the perspective of applied linguistics, this research will focus on conceptual and strategic metaphors in the lawyer's arguments, including root, new, explanatory, presupposed, comparative and contextual metaphors.

[Keywords] Metaphor; presupposed; lawyer's argumentation; courtroom discourse

Introduction

There is no doubt that lawyers are of crucial importance in the courtroom with argumentative language playing the vital role in determining case facts, implementing legal interests, and even guiding the final success or failure of the lawyer. Few professions are engaged so constantly in communications as lawyers. Lawyers cannot carry out their job without communication, so as Allen (1964) pointed out, lawyers are professional communicators. Oratorical skills are essential to lawyers in the courtroom attempting to sustain a clear-cut stand, while most closely related to human thoughts, metaphor strategies are obligated to play an important part in the lawyer's courtroom discourse.

Metaphor is the linguistic application of a word or phrase to a concept, which it doesn't literally denote, in order to compare it with another concept by means of entailment, reflection and euphemism. Metaphor is crucially involved in the extension of basic physical spatial meanings into non-physical, non-spatial ones and has been extensively researched by cognitive linguistics (Lakoff & Johnson, 1980). Metaphor study has a long history. As early as 2,000 years ago, Plato (Taylor, & Han, 2003) presented the "heliotrope" theory. The idea was then discussed by Aristotle, whose definitions are the best known and most influential in western philosophy and the arts of rhetoric. The last 30 years have been witness to the emergence of both metaphor research and Corpus Linguistics as thriving subfields within Linguistics. In the last 20 years, the metaphor has already become a hot focus in the fields of philosophy, psychology, sociology, general linguistics and literary criticism, except for applied linguistics.

Courtroom discourse study is an important branch of Forensic Linguistics, which is a new pragmatic research area. In the late 1970's, Britain and the United States gradually started the research, represented by Atkinson, & Drew (1979), O'Barr (1982), Stygall (1994) and so on. In 2003, Chinese study began with Courtroom Dialogue and Interaction Research by Liao Meizhen. In 2006, the linguistic column of Foreign Language Study published some related theses and the demand for lawyer's courtroom discourse strategy research became more urgent.

Conceptual Metaphor in Lawyer's Argumentation

Conceptual metaphors are used very often to understand theories and models using one idea and linking it to another for better understanding. Conceptual metaphors shape not just our communication, but also shape the way we think and act. In George Lakoff and Mark Johnson's work, *Metaphors We Live By* (1980), we see how everyday language is filled with metaphors we may not always notice. Like an invisible hand, a metaphor can make a lawyer's argumentative discourse more convincing.

Conceptual Root Metaphor

"Root Metaphor" is derived from the "Poverty of Reflection", but its metaphoricity can only be recognized after the acquisition of a certain quantity of cognitive abilities. A root metaphor is one that is so embedded within a language or culture that it is often not realized as being a metaphor. The tough tone and direct expressions of the root metaphor can enhance a lawyer's discourse power.

On March 18th, 2014, I attended the court trial about a traffic accident (NO. COA12-1579) of North Carolina in the United States. Lawyer Michael R. Paduchowski successfully applied conceptual root metaphors in the courtroom live debate, as follows:

"He erred by denying my client's motion to suppress evidence. Drunk driving is suicide and my client is surely unwilling to see that travesty of life..."

Michael compared "drunk driving" to "suicide" making the expression strong and firm. The usage of the root metaphor sentence pattern, "Life is a journey", made the client's attitude clearer and also foreshadowed further arguments. What's more, the following word "travesty" made full use of root metaphor. "That travesty of life" is the same as "that life is a travesty". "A is B", the typical root metaphor sentence pattern, clearly described the dangers of drunk driving, explicitly stated the client's attitudes, resonated with the listeners and laid a solid foundation for further debate victory.

Conceptual root metaphor is a kind of language transfer, which has been a central issue in applied linguistics, second language acquisition, and language teaching for at least a century. According to Lakoff (1980), to understand the meaning of a metaphor, the source domain is usually reflected onto the target domain in order that the latter can be comprehended from a new angle. There are three important factors in metaphor – tenor refers to the original image which is "drunk driving" in Michael's metaphor; Vehicle "suicide", is used to describe tenor; Ground is the similarity between tenor and vehicle.

Conceptual New Metaphor

Our objective world is infinite, but language is limited, so language has to develop all the time to keep up with the quick development of this modern society. When we cannot find the corresponding language to describe a particular concept or meaning in the objective existence, a conceptual new metaphor will be produced.

In New York City there was once a very brave policeman, John Joseph Broderick (1894-1966). He often used rough treatment to criminals, which made it very difficult for lawyers to find accurate words to describe his behavior in courtrooms. But every time Broderick's name was mentioned, all the people were very clear about its meaning without any further explanation. Later, in many reports, columnists used the name "Broderick" as a new verb – "broderick" especially referred to rough behaviors.

"Broderick", this average name, became an expressive conceptual new metaphor for lawyers. Likewise, British novelist Ian Fleming's spy "007" and his name James Bond have already been used to

refer to “brave people” in different countries as a new metaphor. While “Shylock” refers to the greed and cruel miser and bell ringer “Quasimodo” is used to describe people with ugly appearances but kind hearts.

Conceptual new metaphors exist everywhere in our language, such as “bottle neck”, “Watergate”, “cold war”, “computer mouse” and so on. In the process of argument, a reasonable usage of conceptual root metaphors can promote, improve and strengthen the identity on the concept and action from the audience of lawyers.

Conceptual Explanatory Metaphor

When the metaphor in the source language cannot be paraphrased into the target language or there is no similar conceptual metaphor domain in the target language, lawyers could first paraphrase the original vehicle and then add an explanation of the ground in order to smooth away the abruptness. Explanation of ground can be a statement or an illustration. In this way, the image of vehicle and the meaning of the metaphor in the source language can be reserved as much as possible, which is also called reservation of image.

Many metaphorical tenors represent features of a specific nation such as living habits, conventional customs, regional climates, or literary quotations. These may seem strange to people in other cultures and it is unlikely for them to figure out the implication of the vehicle. Sometimes the vehicle of metaphor in the source language doesn't have the equivalent image in the target language, and even if there are shared vehicles, the meaning could vary from culture to culture. Under this circumstance, both translating word-for-word or completely abandoning the original image won't receive satisfactory results.

“What he had said to the leader was no more than a Judas Kiss.”

Here, a “Judas Kiss” is a metaphor originating from the Bible, and it was mainly about Juda's betrayal of Jesus by means of a kiss. The metaphor implies the superficial intimation with evil inside. However, due to cultural and religious difference, non-English people can compare the tenor “what he had said to the leader” with the vehicle “a Judas kiss”. Therefore, it is the lawyer's task to add a brief explanation after paraphrasing the sentence.

Lawyers can paraphrase the original language style “Judas kiss” and at the same time, express the metaphorical meaning in the target language. This strategy, in fact, is a supplement to the first one. The advantage is to illustrate the meaning of vehicle without sacrificing the original image of the tenor. This kind of reservation can make up for the disadvantages of the paraphrase and reinforce the effect of expression.

Strategic Metaphor in the Lawyer's Argument

The court trial is of great importance in jurisdiction, so it is with the lawyer's courtroom discourse for a court trial. The participants in the courtroom can be both active and passive to achieve their own particular purposes and every word or sentence might become the evidence of the judge or collegial panel. For the purpose of the best discourse effects, various language and speech strategies should be employed by lawyers in his arguments.

Presupposed Strategic Metaphor

In the 1960s, the concept “presupposition” came into the field of linguistics, referring to the assumptions the speaker would make before giving out the statement. A presupposition is an implicit assumption about the world or background belief relating to an utterance whose truth is taken for granted in discourse.

Lawyers aim to have their speech strongly tinted by the professional discourse of law, so presupposed strategic metaphors will often be applied to make the nervous defendant inconsistent in his answers.

The O.J. Simpson Murder Case is now known as the most public-concerned case of criminal trial in American history. Presupposed strategic metaphors were highly frequently used by both parties of prosecution and defense:

Lawyer: Okay. Is it also true, sir, that in the course of your relationship with Nicole, the two of you knew how to push each other's buttons?

Simpson: Yes.

Lawyer: Okay. It is also true that, from time to time, the two of you boiled with great rage that resulted in Nicole moving out for a day or two or a week at a time?

Simpson: Yes.

Lawyer: Okay. And there were incidents when pictures would be thrown and lamps would be broken, things like that, right?

Simpson: Yes.

Lawyer: And there were also physical altercations, true, Mr. Simpson? I'm referring to the time when the two of you began a relationship in 1977, up until the time you stopped that journey.

Simpson: Yes, we had a physical altercation.

This lawyer put forward four questions continuously, each of which includes one or two presupposed strategic metaphors. This strong and vivid expression forced Simpson has to answer all the questions with "Yes".

"Push each other's buttons" is a metaphor referring to their provoking each other in their unhappy marriage. "Boil with great rage" is a presupposed metaphor vividly describing a state of anger that may lead to Nicole's leaving home for a day or two, or even a week. "When pictures would be thrown and lamps would be broken" uses metaphor to presuppose domestic violence. "Altercations" emphasize "physical" to presuppose the assault. "Stopped that journey" implies that the substantial changes have taken place in their relationship and the preset Nicole's death will end their relationship. All these presupposed strategic metaphors have helped the lawyer's argumentation to be clear, economical and convincing.

Comparative Strategic Metaphor

In linguistics, the comparative method is a technique for studying the development of languages by performing a feature-by-feature comparison of two or more languages with common descent from a shared ancestor, as opposed to the method of internal reconstruction, which only analyzes the internal development of a single language over time. The introduction of strategic metaphors to comparison in lawyers' arguments is sure to sharpen the contrast and enhance speech power.

Lawyer: "You said you received a number of phone calls to talk about your boss?"

Witness: "Yes."

Lawyer: "From the defendant?"

Witness: "Yes."

Lawyer: "Isn't it the fact your boss has been paying just lip service and you have an unlisted phone number as your guide?"

Witness: "Yes."

Lawyer: "So you are the root to give the defendant your number and both of you got a short fuse at your boss?"

Witness: "Err..."

Lawyer: "Comparing the above, it is really tight coupling."

In this case, this lawyer exposed the collusion between the witness and the defendant by series of metaphoric comparisons. "Lip" implies the insincere attitude of the boss, only words no action at all, which is the cause for the conflict with his employees. "Guide" clearly points out the defendant's premeditation. "The root" is a metaphor implying the witness is the root of the incident. "Fuse" indicates the contradiction between the defendant and the boss has already developed to the max.

Contextual Strategic Metaphor

A metaphor is a means of adopting linguistic form to express the tiny characteristics of paralinguistic behavior, and therefore it must come into being under special language environment; that is to say, context plays a crucial role in metaphor. Context information makes up the theme, which is the potential tenor and makes preparation for reflection.

Lawyer: "The defendant said they lost their luggage and they arrived two days late."

Lawyer: "Their whole journey was really a nightmare!"

In this example, the context "they lost their luggage and they arrived two days late" is admitting for the later metaphor "nightmare". Some metaphors have the same meaning in different cultures. Both in English and in Chinese, "Red face" means embarrassed or ashamed; "raise one's eyebrows" means to show surprise or mild disapproval; "green-eyed" equals jealousy. However, different cultures have various metaphors. For example, Chinese readers won't quite understand the old English saying "Life is not a bed of roses". Therefore, metaphor is deeply based in cultural and social cognition, which is a fact we must bear in mind.

Furthermore, many source domains of metaphor must be culture-based. For example, it is well known that common source domains include the family, festival and living places. It seems unlikely that these source concepts are universal, but it is obvious that the fabric of the family, the figuration of the houses, and the conduct of festivals, etc. vary from culture to culture and from time to time.

Conclusion

Metaphor has been traditionally categorized as a special form of rhetoric, however, it has already come into different fields in recent years. Lawyers cannot work without language, literally or orally, in which metaphor is a kind of strategy with great significance, especially in the lawyer's courtroom discourse. Metaphors in the lawyer's argumentative courtroom discourse can make his debate immune to attack and defeat the opponent by surprise. Analysis of lawyers' metaphor strategies can also promote further deep research into courtroom discourse in forensic linguistics.

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New Researches into Noticing in Language Learning

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[Abstract] *This article explores the role that noticing plays in language learning or communication. After analyzing the limitations of levels of awareness and the advantages of the quality of noticing in language learning or communication, the article goes deeper into the key factors enhancing the quality of noticing so that students will learn the language well, and finally, students will be more able to interact or communicate well.*

[Keywords] *noticing; learning; factors*

Introduction

It is well recognized that noticing is essential to learning. The Focus-on-Form approach proposed by Long (1991) acknowledged the role of noticing. It stated that learners' attention has to be drawn to language forms accidentally in meaning-centered communication. Long's definition greatly needs improving. The authors agree with Cheng (2006): language learning is both systematic and complex. Only a good plan can make language learning possible. Accidentally drawing learners' attention cannot ensure successful learning. Later on, Ellis (2001) improved Long's definition claiming that a planned attention to language forms also constitutes part of focus-on-form. Then additional researchers have done a lot of research into how to engage learners' attention. In addition, some researchers put forward some relevant formulations such as levels of awareness, and quality of noticing, etc. Although many researchers stated that there is much truth for levels of awareness, however, the authors' empirical research shows that levels of awareness cannot provide solutions to many phenomena. With quality of noticing, there is no research into or systematic theoretical description of it. Given all of the above factors, this research will matter greatly in furthering research into levels of awareness and quality of noticing.

Limitations of Noticing and Levels of Awareness

Noticing and Learning

Three level information processing says that a complete memory system consists of three parts (Wang & Wang, 2004): sensory memory, short-term memory, and long-term memory. First, information enters the sensory memory system. Then, part of its information is transferred to the short-term memory system and remains there for 15-30 seconds, if rehearsed. Without being rehearsed, the information vanishes quickly. Therefore, the longer the information stays in the short-term memory, the more likely it is to enter the long-term memory. Based on this model, learners can control what becomes part of their short-term memory, consciously or unconsciously (Wang & Wang, 2004). The importance of noticing can be identified. If the target form is noticed, it will likely enter the short-term memory, and if the noticed target form is further rehearsed, it may become part of the long-term memory.

In addition, according to Schmidt (2001), with a lot of interference in comprehension and production, and the limited nature of attention, allocation of human resources is necessary. Theoretically, we can try to focus the learner's limited attention on the target forms so that they can learn the forms better and more

quickly. Some researchers have already figured out the role of the selective attention. Selective attention can mediate the learning process (Long, 1996).

Through memory processing model, we have a better understanding of the relationship between noticing and learning. Noticing is the prerequisite for learning (Schmidt, 1990). The above processing model says that rehearsal is key to helping the noticed form become part of the learner's interlanguage. However, in the simple rehearsal, for example, the mechanical production cannot allow the information to be further processed by integrating related information. For example, the mechanical production enables the learner to notice the linguistic forms, however, without context, and the learner cannot have an integrative understanding of the target form connecting the target form and contextual information. The target form can only be kept in the short-term memory. Only integrative rehearsal can play its part.

Limitations of Levels of Awareness

Schmidt (1990) claimed that a low level of awareness means a noticing of the form, but a failure to further process the form, while a high level of awareness means both the noticing and further processing of the form. For vocabulary, noticing the spellings of the linguistic form is a low level of awareness; inferring its meaning and usage is a high level of awareness (Schmidt, 1995). The author states that the classification is obscure. Noticing is a complex mental activity. It is hard for us to judge whether learners further process the form. In addition, there are different levels of further processing. The author proposes that the different levels of awareness are too general, but do not account for the noticing of different depth. Besides the depth of noticing, there are also factors that affect the effect of depth of noticing. For instance, the same level of awareness may have effects on different types of forms to different extents. For example, based on learners' prior knowledge of the target forms, the target forms can be classified into different types. In addition, the current means of measuring the noticing and deeper processing is not effective. For example, the questionnaire cannot cover what the learner noticed at the very moment, because noticing occurs in very short amount of time.

Importance of the Quality of Noticing

Advantages of the Quality of Noticing

Only a few researchers have mentioned the quality of noticing, nor conducted empirical research into it. A good quality of noticing means both noticing and a deep analysis of the linguistic form and belongs to the high level of noticing (Schmidt, 1995). With a good quality of noticing, the learner must focus more attention on the target form. Of course, a focused attention is key to the learning of the linguistic forms. To get the target form noticed, the researcher will try to make the target form more explicit. However, the experiment by Song (2011) revealed that explicitness is not proportionate to the effect of learning. More explicitness with external enhancement promotes the learning of the complex and abstract forms, but not the learning of forms with high communicative value. For the latter, output alone will allow the learning to occur. The quality of noticing provides a better explanation to this phenomenon. Because the complex syntactic items have a low communicative value, the learners have a lot of difficulty noticing them. External enhancement can help to draw learners' attention to the target forms. What is more, the abstractness and complexity of the target form also forces the learners to process the target forms deeper. So, external enhancement primes the deeper analysis of the target form.

Conversely, for the target form with high communicative value, there is no need to turn to external enhancement to drive the learner to conduct further analysis of the form. The quality of noticing that output

promotes is sufficient to learning of forms with a high communicative value. This conclusion is consistent with Qi & Lampkin's statement (2001): the quality of noticing and learning are closely related. Of course, the research into the quality of the noticing will involve its factors. If we figure out these factors, then effective learning can happen.

Major Factors

Language proficiency, aptitude and others. Learners of high language proficiency and aptitude are seldom affected by interfering factors. They are likely to notice the target forms better. In addition, the qualities of the target forms also matter in promoting the quality of the noticing. Han, et al., (2008) explored how communicative value, formal complexity, functional complexity, semantic load, and physical salience affect textual enhancement. For example, it is likely that textual enhancement is more effective in promoting the noticing of some linguistic forms. Han (2008) predicted that prior knowledge about the target form also can influence how some means such as external enhancement intensifies the noticing and learning of the target forms. Under equal conditions, there is a positive correlation between prior knowledge and learning. It is shown that prior knowledge of the target form is also one factor affecting noticing. In addition, tasks also affect noticing. Well planned tasks can allow the learner to notice the linguistic forms of low salience (Long, 1991; Schmidt, 1990). For example, a problem solving task can internally enhance the salience of the linguistic forms (Song, 2011; Leow, 1999a). These types of tasks are referred to as utility tasks. These tasks can enable learners to get involved in the task actively and force them to apply the linguistic forms to the greatest extent (Loschky & Bley-Vroman, 1993). Thus, a better quality of noticing is promoted.

Means of promoting noticing. As revealed by the model, learners can control what forms need to be further processed. The experimental research confirms that different means cannot prompt equal noticing. A complete learning process includes hypothesis formation, hypothesis testing and hypothesis confirmation (Larsen, Freeman, & Long, 1991). Therefore, learning will more likely occur if the means of influencing noticing is helped hypothesis formation. Many researchers (Qi, 2001; Swain & Lampkin, 1995 etc.) have proven that output can drive learners to notice the linguistic forms spontaneously. According to Gass (1997), learning is very complex. Learners' internal factors drive learning forward. Interlanguage studies have shown that output reveals how interlanguage hypothesis forms (as cited in Shehadeh, 2005; Ellis, 1994); in other words, output is a process of testing new language forms. For example, as Swain (1995) claimed, the past 20 years of research have indicated that output, especially wrong learning, signifies that the learner has already formed an hypothesis and is testing it. Some evidence has shown the relationship among output, hypothesis formation and hypothesis testing. Therefore, output has its part in improving the quality of noticing.

Feedback

Feedback and learning. Feedback can help learners notice the gap between interlanguage and the target language and provide opportunities for them to modify errors (Mackey, 2006). Noticing the gap can result in restructuring (Gass & Varonis, 1994). The quality of noticing that feedback produces is related to hypothesis formation. Hypothesis formation sets the first step in learning. To test hypotheses, learners will focus on the relevant information in handling feedback, thereby confirming or refuting the hypotheses. The authors' experiments have concluded that feedback is very effective when combined with output. Production can help learners notice the forms spontaneously. Thus, hypotheses may arise, including wrong hypotheses. Therefore, feedback counts greatly in assisting learners in solving problems (Song, 2011; Swain & Lapkin, 1995).

Furthermore, the feedback must be proper and timely. Only timely feedback enables learners to focus their attentions on the linguistic forms. Thus, noticing of better quality arises. Without feedback, learning is less likely to occur. To be specific, the feedback following output is very effective in learning the target form. Pica (1989) found that when the learner responded to clarification or confirmation, more than one-third of the errors were modified. Loewen (2002) showed that three-fourths of the errors were revised when teachers offered immediate feedback. Although no evidence signifies that revision of errors means that restructuring occurs. This reprocessing promotes second language learning (Swain & Lapkin, 1995). To sum up, output and feedback constitute a complete learning process. In the process of production, hypotheses occur. With proper feedback, hypothesis testing and confirmation are completed. Output in combination with feedback will generate a better quality of noticing. Finally, effective learning arises.

Providing feedback. The above discusses the relationship between feedback and learning. But how can we provide feedback? Based on Mackey's (2006) research, proper feedback will raise the salience of the target form. Therefore, to learn the target form well, when providing feedback, we need to use feedback to enhance the target form. Feedback, at its best, can allow the learner to notice the gap between the target form and their interlanguage form. Therefore, feedback involves the learners' internal factors, which is closely related to learning. Still, the type of feedback needs to consider the communicative value of the target form. For the abstract and complex linguistic forms, more explicit feedback will be necessary such as detailed instruction so that the learner will notice the gap between their interlanguage and the target language. For the items with high communicative value, even though the feedback is obscure, the learner himself can discover the gap between their interlanguage and the target language and fill the gap, finally learning these items.

Conclusion and Implications

This article relates the role of noticing in learning and the inadequacy of the levels of awareness in explaining the learning. It is concluded that quality of noticing is the key to learning. This article elaborates on the factors that influence the quality of noticing.

In view of the importance of the quality of noticing and its factors, in future teaching, instructors have to deal with the relationship among output, feedback and learning well. For complex and abstract items, it is necessary to enhance their physical salience, so thereby, the learner can learn them sooner and better. For those linguistic items with high communicative value, the instructors need not raise their salience. If learners are given the opportunity of producing them, they can learn them well. Of course, the importance of feedback cannot be disregarded. However, it has to be proper and timely in order to produce its best effect on learning.

Acknowledgements

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An Adaptation-Based Analysis of the Rhetoric Used in Public Legal Slogans in Chinese Legal Culture

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[Abstract] This study explores the use of rhetoric in public legal slogans in the unique Chinese legal culture from a micro perspective under the guidance of Adaptation Theory, with a hope to shed light on how rhetoric helps to achieve the functions of public legal slogans in China. In a quantitative study based on the adaptation-based explanations of the corpus, the rhetoric used in public legal slogans is analyzed based on the three properties of language proposed in Adaptation Theory. It is found that variation is primarily achieved by the use of rhetoric which adapts to the mental world of the readers, the physical world, as well as the legal culture of China once negotiability has been created so as to achieve communicative needs.

[Keywords] public legal slogans; Adaptation Theory; pragmatic analysis

Introduction

Slogans are a user-friendly form of signs that are extensively used for public education. As in many other countries, China uses slogans with written words to create an outdoor setting closely related to its politics, law, economy, society and people's value orientation. Legal slogans have been possessing a significant place in China's external legal publicity in that they not only provide guidelines to people's code of conduct, but they also record the path along which China has proceeded to a modern law society and mirror the major values in its unique legal culture.

Functions of Public Legal Slogans

Language function falls into six types: informative function, expressive function, vocative function, aesthetic function, phatic function, and metalingual function (Newmark, 2001). According to the author, as a way to generate publicity to national laws and policies among the public, public legal slogans mainly have four functions: an informative function which stresses pure facts including information, knowledge and viewpoints; an expressive function which attaches great importance to the form and authors' attitude; a vocative function which centers on the readership, or the addressee, to influence readers and get the desired results by achieving the communicative effects of information and arousing emotional concord among readers; and the aesthetic function which pleases readers' senses and offers an aesthetic feeling to impress, touch and motivate them to act by avoiding the use of expressions that sound dry and tasteless.

In order to achieve the above-mentioned functions with as few words as possible, legal slogans have to be abundant in stylistics. In a pragmatic sense, the use of rhetoric, in particular, is significant to public legal slogans.

Rhetoric as an Inalienable Part of Legal Slogans

The use of rhetoric is purpose-driven. Rhetoric produces persuasion, which is its ultimate goal (Posner, 2001). In the field of judicial practice, judges use rhetoric to effectively minimize hostility, urging both sides to reach a consensus. Lawyers use rhetoric to defend their clients, forming emotional concord (Du,

2006). However, legal rhetoric in judicial practice is not the only field to manifest the significance of rhetoric. Another field of law is also the perfect target for rhetoric to play a role, i.e. public legal slogans.

As a one-way communication, public legal slogans are a speech act with the absence of turn-taking; that is, the process of this special communication is not continuous, but fractured. Therefore, in order to attain their distinctive communicative purposes – encouraging and instructing the public to set up lofty ideals and develop moral characteristics, gradually enhancing their ideological and political qualities, and strengthening legal publicity and education so as to promote legal practice – more factors are involved in public legal slogans. For example, they are not only short in form, concise in wording, clear in content, impressive in vision, powerful in function, but also abundant in the use of rhetoric.

An Adaptation-Based Analysis of the Rhetoric Used in Public Legal Slogans

Verschueren, in his book *Understanding Pragmatics*, proposed the concepts of Adaptation Theory which define the functions of language in a social and cultural context. The central claim of this theory is that “using language must consist of the continuous making of linguistic choice for language-internal and language-external reasons” (Verschueren, 2000, p. 56). This indicates that once language is used, choices are inevitably made at any level of internal-language or at any aspect of external-language to meet the needs of communication. Verschueren (2000, p. 59) goes further in suggesting the three properties of language (variability, negotiability and adaptability) which make it easier to understand his theory. Public legal slogans, as a specific form of communication and a linguistic choice-making process, are also subject to these three properties.

Variability

Variability is the property of language which “defines the range of possibilities from which choices can be made” (Verschueren, 2000, p. 59). Since public legal slogans have to be short in wording, clear and straightforward in semantics without fussiness to pass the implied messages to the public, variation is primarily achieved through the use of rhetoric which, when exerting their political and legal influence, will better impress the public so as to affect their action to achieve the goals of laws and politics (Li, 2013). Accordingly, more rhetoric devices are used in legal slogans. Based on the corpus provided at www.3lian.com/cha/2015/06/52618.html, various types of rhetoric are used, such as parallelism as in Example 1, simile in Example 2, metaphor in Example 3, personification as in Example 4, end rhyme as in Example 5, palindrome as in Example 6, parody as in Example 7, hyperbole as in Example 8, and climax as in Example 9, etc.

Example 1: 培育法治文化, 创建法治城市; 树立法律权威, 构建和谐社会。(Cultivate the culture of the rule of law; establish the cities by the rule of law; promote the authority of law; build a society of harmony.)

Example 2: 违法, 法如一把利剑; 守法, 法如一盏明灯。(When law is violated, it is like a sword; when law is abided, it is like a beacon.)

Example 3: 同筑法治长城, 共享法治阳光。(Build the Great Wall of the rule of law; share the sunlight of the rule of law.)

Example 4: 守法, 法有情有义; 违法, 法铁面无私。(Law is sympathetic and righteous when abide; law is upright and disinterested when break.)

Example 5: 用深情的目光伴幼苗茁壮成长, 凭知识的力量托起明天的太阳。(The seed grows with the power of courage; the sun of tomorrow rises with the power of knowledge.)

Example 6: 我为人人; 人人为我。(One for all; all for one.)

Example 7: 学法知法懂法事事讲法, 守法用法护法人人普法。(To learn, know, understand the law; to abide, use, protect the law.)

Example 8: 实现全球一片红。(Achieve a red globe.)

Example 9: 毒莫沾, 沾必悔。(Do not addict to drugs, or you will regret.)

It is true that there are legal slogans which are plain in language. However, this does not undermine the significance of rhetoric in them in that even the most straightforward legal discourse is, in its essence, a special form of rhetoric, namely the so-called passive rhetoric (Chen, 1997).

Negotiability

Negotiability is the property of language “responsible for the fact that choices are not made mechanically or according to strict rules or fixed form-function relationships, but rather on the basis of highly flexible principles and strategies” (Verschueren, 2000, p. 59). Negotiability of language implies that there is no such a rule to indicate what kind of expressions should be used and when to use them. Choice of language use can only be made according to the communication principles of a particular society and the target people’s cognitive environment.

Verschueren (2000, p. 87) claimed, “Verbal interaction is no doubt communication from mind to mind”. In order to be easily remembered and understood, legal slogans have to be catchy and rhythmic in phonetics to catch the instant attention of the public. The use of rhetoric helps public legal slogans fit the cognitive capability of the target public with more “linguistic flavors”, making them easy in processing the information.

Example 10: 禁止盗窃, 违者必究。(Theft is prohibited, or will be punished.)

Example 11: 坚决打击盗窃犯罪, 躲过初一躲不过十五。(Resolutely crack down on the crime of theft; one may get off today, but not necessarily tomorrow.)

Example 10 simply employs a parallel structure to warn the public. Although it is short in wording, it does not impress the public of the consequence compared to Example 11, which quotes a traditional Chinese saying indicating that no one will get away with thievery without being punished. The use of the quotation closely links the consequence of the crime with the readers’ past knowledge implied in this saying so that a more effective deterrent effect is produced.

It seems that the readers of legal slogans, i.e. the target public, can also decide which way of expression is more powerful and effective. This best explains why Verschueren (2000, p. 57) says that language choices are made both in producing and in interpreting an utterance, and both types of choice-making are of equal importance for the communication flow and the way in which meaning is generated.

Negotiability indicates flexibility in language use which might lead to indeterminacy in the choice-making process on the side of the interpreter. That is to say, this notion indicates indeterminacy in both utterance production and interpretation. In order to reach successful communication, Verschueren puts forwards the third notion of language, which is adaptability.

Adaptability

Adaptability is the property of language that “enables human beings to make negotiable linguistic choices from a variable range of possibilities in such away as to approach points of satisfaction for communicative needs” (Verschueren, 2000, p. 61). Verschueren (2000, p. 7) defines it as a general

mental, physical and social-cultural perspective on linguistic phenomena in relation to their usage in forms of behavior.

The use of rhetoric in legal slogans should adapt to the mental world of the target public, such as their emotion, desires, personality, motivations, and beliefs, etc. Legal slogans in prisons are good examples for this.

Example 12: 坦白从宽, 抗拒从严。(Leniency to those who confess; severity to those who resist.)

Example 13: 失足未必千古恨, 今朝立志做新人。(A false step may not cause a lifelong regret; a strong will may make a new person.)

Example 12 used to be a popular legal slogan in interrogation rooms. The antithesis used in this eight-word parallel structure creates a strong deterrent effect that increases the possibility of confession by the potential convict who is emotionally unstable. In contrast, Example 13 is commonly used in prisons where rehabilitation and correction matter more. The parody employed in this legal slogan motivates the prisoners, making them believe that they can be changed.

According to Verschueren (2000, p. 109), the physical world primarily focuses on spatial, as well as temporal deixis. The dimension of time and location is always reflected in linguistic choice during the process of language use. People in different geographical and natural environments with different physical features may have different thinking patterns of language use.

Example 14: 女儿不比男儿差, 谁说女子不如男。(Who says women are inferior to men.)

Example 15: 男女“平”分秋色, 和谐“等”量齐观。(Men and women have equal shares.)

Example 14 and 15 best explain how the use of rhetoric adapts to the spatial deixis of the physical world. Sexual equality has been a major issue in publicity in China. Not surprisingly, popularizing the concept of sexual equality has an important place in society. Example 14 is a typical slogan of this kind in the rural areas where the educational level of the target public is relatively low. The rhetorical device of parody is used by borrowing a well-known sentence from a Henan opera popular in rural areas. The message of sexual equality is filled into such an artfully recreated slogan so that it can be easily remembered. The use of parody also bridges the gap by producing an acceptable text to the public in rural areas. In contrast, Example 15 is commonly seen in cities. It employs a “deeper” rhetorical device which does not overload the target public in cities very much since their educational background permits them to be more capable of processing such a message. The use of intertextuality, a traditional Chinese rhetoric device, to change the linguistic shade of the two characters in quotation marks not only attains the purpose of education and publicity, but achieves an aesthetic function, enabling the public to give more thought to the message behind the words.

With the progress of time, the public’s cognitive context will also change accordingly, which will inevitably affect the choice of the use of rhetoric. As another ingredient of adaptability, adaption to the social-cultural world always goes side-by-side with the adaption to time. The change in the use of rhetoric in public legal slogans regarding Family Planning is a case in point. Family Planning, also known as the “one child only” policy, has been a major national policy in China for decades. Public legal slogans with their functions in education and publicity serve as a significant tool to make known this national policy. However, the use of rhetoric in these slogans has been changing according to time, as well as the unique legal culture manifested in different periods of national development.

Example 16: 为了革命, 计划生育。(Family Planning is for Revolution.)

Example 17: 谁不实行计划生育, 就叫他家破人亡。(Those who do not follow Family Planning

die with their family.)

Example 18: 家庭子女多, 小康会滑坡。(More children bring to the landslide of economy.)

Example 19: 全国人民要想富, 少生孩子多种树。(More trees but not more children lead to the prosperity of the people.)

Example 20: 地球妈妈太累了, 再也背不起太多的孩子。(Mother earth is too tired to hold more children.)

Example 21: 家事国事天下事, 计划生育是大事。(Family Planning is a significant event for the family, country and world.)

Family Planning started in the 1970s when both the national politics and Chinese people still lived in the shadow of the Cultural Revolution. Example 16 is a typical legal slogan produced in this period. Similar to many others, it rarely adopted rhetoric devices, except parallelism and hyperbole. Legal slogans publicizing such a policy in this period were more like threats warning the public as in Example 17. They were straightforward in content, rude in attitude and indifferent to the rights of the public because such a policy was primarily implemented through executive measures with an iron hand.

Later, the 1980s and 1990s witnessed changes in how the message of Family Planning was delivered. During this period, the government stopped forcing the public but tried to convince them of the importance of such a policy, and the choice of wording was changed accordingly. More parallel structures with rhymes, as in Example 18, were commonly used to make the message easier to remember, and more pleasant to the ear. The use of rhetoric in legal slogans of this kind not only indicates the change of the legal culture in China, but maximizes the likelihood that the policy is accepted by the public, especially when the content is closer to the needs of the public who at that moment were longing for improvement in living standards, as Example 19.

Now the Chinese government is strengthening the socialist spiritual civilization and construction of a harmonious society. The use of rhetoric helps to create a warm and less threatening atmosphere to implement the policy. Personification used in Example 20 and parody used in Example 21 increase the appellative function of these legal slogans by removing the public's adverse feelings to such a large degree that they start to give sufficient thought to the necessity of family planning.

Based on the above analysis, it can be seen that Verschueren's three properties of language are essentially inseparable and complementary to each other. Variability describes what linguistic choices are available; negotiability indicates how linguistic choices are made; adaptability explains the reason why appropriate linguistic choices can be made. Variability and negotiability are the condition and base to adaptability which is essential for successful linguistic production and interpretation.

Conclusion

Public legal slogans, as a uniquely applied writing style, express the intention of informing, warning, requesting, educating and sometimes deterring, and constitute an important part of social and legal phraseology. As a specific form of communication and a linguistic choice-making process, in order to attain such intentions, the producer of the legal slogans would negotiate with the public before he makes rhetoric choices from a range of possibilities. The negotiation is mostly carried out in such a way that he would mentally construct a virtual interpreter, i.e. the ideal public, and would suppose how to effectively communicate with the interpreter by means of rhetoric. When the negotiation is done, he would make concrete choices, i.e. variability, to adapt to the public so as to reach the specific communicative goals.

The rhetoric is the magnificent attire making public legal slogans majestic and amiable, popular and refined, elegant and just, which can be accepted and admired by the public (Nie, 2013). With the help of rhetoric, by reading legal slogans written on the row width or put up in public places, people get to know degree of the spiritual civilization of a society. Meanwhile, the integrated cultural quality, moral cultivation and mental outlook are also revealed through legal slogans.

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A Progress in Disguise: How was the Concept “RIGHT” Smuggled into Imperial China in the Translation of *Elements of International Law* (1864)

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[Abstract] Starting from the theory of Super-Signs raised by Lydia Liu, this paper attempts to provide an account of signification, representation, and reference of the concept “RIGHT” in western common law system and to explore how its meaning was reconstructed by codes and conventions in Chinese legal context, thus revealing the origin and formation of the Super-Signs “right/Quan/Quanli” across languages and cultural boundaries. The research is a semiotic analysis of a legal text that deals, instead of themes and general meaning, with the way in which meaning is produced. It is in hope of enriching studies on legal translation at this significant period as well as paving a path for legal discourse analysis.

[Keywords] international Law; right; translation; Super-sign

Introduction

Translation does not guarantee the reciprocity of meaning between two languages and thus Lydia Liu¹ raised the concept of Super-signs (1995) based on Derrida’s “Meta-sign” (Derrida, 1967) narration, adopting approaches of semiology, discourse analysis, and postcolonial criticism. A “Super-sign” can induce, compel, and order the migration and dispersion of prior signs across different languages and different semiotic media. The sign is not an individual word, but a hetero-cultural signifying chain. Such a notion simultaneously crisscrosses the semantic fields of two or more languages, makes a notable impact on the meaning of recognizable verbal units, emerges out of the interstices of existing languages across the abyss of phonetic and ideographic differences, and requires more than one linguistic system to complete the process of signification for any given verbal phenomenon. In this sense, it is often formed in the process of translation.

Drawing upon such an idea, the author attempts to provide an account of signification, representation, and reference of the original concept of “Right” in the western common law system, and to explore, with translator W. A. P. Martin’s efforts, how its meaning was reconstructed by codes and conventions in the Chinese legal context in the translation process of *Elements of International Law*(1855), thus depicting the origin and formation of the Super-Signs “Right/Quan/Quanli” across languages and cultural boundaries. At the end, this paper calls on domestic translation scholars to approach Lydia Liu’s “interlingua writing” and “trans lingual practice” in order to systematically study the problematics of what has happened and how it has happened in a cultural contact or cultural dialogues by researching discontinuity, complexity and concerned fragility.

¹As a passionate constructor of the American Chinese academia-based “New Translation Theory”, Lydia Liu took translation as a primary agent of token making in its capacity to enable exchange, producing and circulating meaning as value among languages and markets.

Data & Method

The data used for this paper is the translation work named *Wanguogongfa* (1864), which was translated by an American missionary W. A. P Martin from Henry Wheaton's *Elements of International Law* (1855) with the help of eight Chinese scholars assigned by the Imperial Court. The first one of its kind, *Wanguogongfa* played a crucial role in ushering late-Qing China into the community of the western international legal system. However, apart from abundant research from legal and historical perspectives (Wang, 2001; Svarverud, 2007; Masini, 1993; Li, 1998; Shen, 2005; Qu, 2012) on the significance and impact of the works later on, a discussion based on text analysis from the perspective of Sign Theory is still lacking.

If we take a closer look at the works and make a comparison between parallel texts, it can be found that Martin and his entourage did not simply reproduce what the source text conveyed, but also adopted the method of manipulation, hence changing the function of the ST from a legal textbook to a statute book (Yang, 2015). With multiple translation shifts taken place, *Wanguogongfa* accords with the international request stemmed from western strength and domestic expectations, resulting in a relatively easy acceptance in the target culture.

In order to locate changes taken place during the translanguing practice, this paper attempts to use the Super-Signs “Right/Quan/Quanli” as a pilot study object and discuss the formation, application, amplification of the signs mostly within the text. The exploring steps are as follows:

First, under the assumption that no notions in different cultural backgrounds carry the same token of value, the study starts with an investigation of the original meanings of “right” in the western legal context and the Chinese word “Quan” along its literary history, hence revealing an inherent meaning “gap” between them.

Then, the first chapter of the *Wanguogongfa* has been purposely selected by the author for the purpose of which the conversion of “right” in the ST into TT in it are manually located, noted and discussed in succession. Meanwhile, the author attempts to survey all coupled pairs of “right” with their Chinese counterparts in the chapter, and identify and categorize their translation strategies such as “normalization”, “modalization”, and “zero-replacement”. Among all these approaches, the “normalization” process deserves the most attention from the researchers since it serves as an agent of token, ushering in a chain of meanings across semantic fields.

In the next step, the author observes and verifies how a repetitive translation pattern has occurred throughout the sampling chapter, especially in case of normalization, as we've mentioned, which leads to a wide-acceptance of “right/Quan/Quanli” formation in the text. Rules of shift are also summarized.

Last, the author applies logic of reciprocity to testify the findings by screening out and analyzing the English equivalents of “Quan/Quanli”, reversely, in the source text, to see how the Chinese meanings of “Quan” have been gradually added and altered in the translation process of the international law book, symbolizing a meaningful breakthrough in China's history of political ideology.

Results and Analyses

The first step starts with an exploration of “right” and “Quan” in their original languages and cultures. According to *Black's Law Dictionary*, in English, connotations of the word “right” consist of the following: (1) proper under law, morality or ethics; (2) something that is due to a person by just claim, legal guarantee, or moral principle; (3) a power, privilege, or immunity; (4) legally enforceable claim that another will do or will not do a given act; (5) a recognized and protected interest the violation of which is a wrong; (6) interest, claim or ownership that one has over property; (7) privilege of corporate shareholders; and (8) a

negotiable certificate granting such a privilege (Garner, 2004, pp 1436-1437). To summarize, the semantically synonymous field of the word “right” in the western context includes power, privilege, immunity, claim, interest, ownership and something due. It also relates to justice and moral principles in defense of public interests, that “all under the heaven are created equal”.

Nevertheless, a survey into ancient literary manuscripts reveals that in Chinese classics such as *Han’s Classics* (Han Dian) and *Post-Han Scripture* (Hou Han Shu), “Quan” had been used exclusively to refer to the strength and power of superior classes and had been guaranteed and realized under the state authorities (Mei, 1943, p. 32; Li, 1998, p. 115; Wang, 2001, p. 167; Shen, 2005). To put it in another way, “Quan” indicates China’s rank-based hierarchy of a feudal society on a state level, granting itself to a limited number of a political (and equally higher-ranked) communities. Between the western idea of “right” and the Chinese reality of “Quan”, there exists “internal differentiation” (Liu, 1995, p. 26), which leaves room to the occurrence of a Super-sign later on.

Even as it is unclear to us how Martin, leading the translator entourage, came to associate the two terms in his translation work, the truth is, as they started rendering the terms “privileges of ambassadors” and “ambassadors... their rights” repetitively in the first chapter of the source text into “state ambassadors’ right (GuoshiQuanli)” (Martin, 1864/2003, pp. 7-8) in Chinese, a tie (weak, though it seemed to start with) was established and the changes of meaning in “Quan/Quanli” was about to begin.

Of course, for the beginning chapter of *Wangguogongfa*, such a move can be interpreted as a tentative one on the side of translator. While transferring both “privileges” and “rights” into synonymous terms of “Quan” and “Quanli”, the expression of Chinese is still hinged to profits and gains of a higher rank of social class, posing no barriers of understanding and acceptance to target readers².

However, just a few pages away, another occurrence of “Quan” as a substitution of “right” may bring in a new concept of value. The instance is:

ST: *In treating of the rights of neutral navigation in time of war, he says, “Reason commands me to be equally friendly to two of my friends who are enemies to each other; and hence it follows that I am not to prefer either in war” (Wheaton, 1855, p. 8).*

TT: 论战时局外者航海之权, 彼云: “我有两友, 同结怨仇, 我均当以友谊待之, 不可助此以害彼, 此理也” (Martin, 1864/2003, p. 12).

By attributing the “right (Quan)” to the “neutral party (局外者)”, someone or certain state that is other than “oneself” or unaligned with one’s own interest, Martin has accorded a new sense of meaning to the term “Quan” in the context. Now, it may belong to a group of people beyond the previously designated domestic authorities.

The connotation of “Quan” is even expanded to cover the rights of commoners, a rare indication of equality among Chinese literacy records, when the western idea of “human rights” (a core concept to the state of *rule of law* instead of *rule of people* eventually) was first introduced. Here is the example:

ST: *I do not recognize any other natural society between nations than that which nature has established between all men. It is the essence of all civil society, (civitatis) each member thereof should have given up a part of his rights to the body of the society, and that there*

²It should also be noted that “Quanli” and “Quan” share the semantical root of “Quan” and the latter is logically viewed as a shortened form of the former. By using and applying “Quan” as the Chinese equivalent of “(ambassador’s) privilege” in the English version, Martin successfully established substitution of the term “Quanli” for “Quan”, resulting in the formation of a Super-sign of “right/Quan/Quanli” in the first chapter of the book.

should exist ***a supreme authority capable of commanding all the members***, of giving to them laws, and of punishing those who refuse to obey (Wheaton, 1855, pp. 11-12).

TT: 诚以上古而来, 世人即天然同居, 并无所谓诸国天然同居也。夫国之赖以立者, 须二事以成: 有因众人以**治己之私权**归之于公, 一也; 有**统权之君**以为之制法。(Martin, 1864/2003, p. 16).

The expression of “a part of his rights” was rendered into “the individual right/Quan of ruling oneself (治己之私权)” in the target text. As the words “己” and “私” refer to “oneself” and “individual” in Chinese respectively, by stating and reinforcing the expression of “one’s own rights”, it can be drawn that the idea of “personal rights” or “civic rights” has subtly and successfully wormed its way into Chinese ideology through the translation work. As a result of these efforts, the beneficiaries of “Quan” have been enlarged to include both the imperial Chinese state and international countries, both the superiors and the commoners.

In the following text, Martin translated most of the word “rights” that occurred into “Quanli” and “Quan” when applying the strategy of “normalization”, making no differentiation between the right that is entitled to superiors and the right for the commoners; the Super-sign of “right/Quan/Quanli” has hence emerged as a steady and frequent pattern throughout the whole chapter, and, as it could be predicted, throughout the whole book.

The recast of the term goes even further. The example below shows how the meaning focus of “Quan” becomes associated with the binding power of law in a different context:

ST: As a treaty ***binds*** only the contracting parties, it is evident that the conventional law of nations is not a universal, but a particular law (Wheaton, 1855, p. 13).

TT: 夫盟约章程之**有权**者, 惟在于立之之国, 乃是特立而非通行也 (Martin, 1864/2003, p. 18)。

By replacing the word “binds”, an attribution of the “treaty”, with “has the right (You Quan)”, the Chinese term “Quan” is equal to “a restraining power of order associated with law”, a slight deviation from its original connotation and yet a significant step toward the direction of western conceptualization of “right” in the discourse community of 19th century’s China.

The research does not stop here. Based on the logic of reciprocity, the counterparts of “Quan” in the source text also demonstrate how the translator perceived the term. A quantitative analysis may find that in Chapter one, the term emerges 33 times in the target text. Of all the source expressions of “Quan”, once it is in the term of “exception (Congquan)” and 3 times in the term of “deliberation (Quanheng)”, which would be excluded from our discussion since the meaning focus of such terms are not forms of the word “right (Quan)”.

However, for the rest of the instances, a qualitative analysis may reveal that counterparts of “Quan/Quanli” in the English text are terms such as “privilege”, “duties”, “authorities”, “immunities”, “binds”, and “effect (of the ordinances)”. “Quan” is even used to express the idea of being “perfectly free”. Such a language phenomenon provides evidence that in the imported legal text of international law, traditional meanings of “Quan”, which used to be entitled exclusively to sovereign status, now co-exist with innovated meanings including the rights of other nations, the rights of commoners, law-binding force, and the natural rights of people (freedom). Thanks to Martin’s intentional and innovative application of the term “Quan/Quanli”, the western concept of “right” offered by Henry Wheaton in the source text, a symbol of equality under the rule of law, has been imported formally into the oriental context and has embarked on a journey of impact on Chinese political life since then.

Conclusion

An investigation of historical conditions of translation and discursive practices enables us to examine the process by which new words, meanings, discourse and modes of representation arise, circulate, and acquire legitimacy within the host language. The study so far displays how the translator of *Elements of International Law*, in way of metonymic thinking, managed to renovate the traditional meaning of “Quan” into a term that is morally and legally embedded.

The research is a semiotic analysis of a legal text that deals with the way in which meaning is produced, instead of themes and general meaning. While dismissing misunderstandings concerning translation of the term “right” in the previous studies, it searches how a universalistic understanding of international law began to shape the historical reality during nineteenth-century imperialist expansions and facilitates the application of semiotics in legal translation studies beyond the traditional field of historical linguistics and its studies of translation and etymology.

Exploring the Super-sign “right/Quan/Quanli” benefits the theoretically clear representation of the discourse-generating process and the exhibition of the link of the clash of empires to the globalization as well as the furthering of transdisciplinary studies at home. Most importantly, it may as well inspire us to make a severe criticism of colonialism and realize the dream of a “new internationalism”.

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Task Characteristics Model: A New Approach to L2 Learning Motivation

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[Abstract] *This article explores studies on motivation and task in the field of both SLA and other related fields. It emphasizes the importance of narrowing down the motivation construct into several more manageable and operational units. Further, it tentatively proposes a conceptual framework, the “Task Characteristics Model,” which aims at investigating the relationship among certain task properties, L2 learners, and task outcomes.*

[Keywords] *motivation; task; task motivation; Task Characteristics Model*

Introduction

“Motivation” and “task” have been two fascinating topics in SLA research. The significance of motivation has been widely agreed upon among SLA researchers (e.g., Brown, 1990, 1994; Clément, Dörnyei, & Noels, 1994; Crookes, & Schmidt, 1991; Dörnyei, 1994a, 1994b; Gardner, 1985; Oxford, & Shearin, 1994; Skehan, 1991). However, since motivation is a complex and dynamic construct, less research on motivation has been done in the actual learning situations. Fortunately, the appearance and popularity of tasks and TBLT might shed some light on the motivation research. By using the term task motivation, we are able to break down the otherwise complex and dynamic motivation construct into several more manageable and operational units. Nevertheless, there’s still a lack of frameworks that can accommodate all these motivational components in the design of tasks for the classroom context. This article proposes a conceptual framework for enhancing L2 learners’ motivation through task design, and describes in concrete terms how to create task motivation for L2 learners who participate in them.

Studies on Motivation

The Socio-Educational Approach

Learning a L2 language is socially and culturally bound, which makes language learning a deeply social event that requires the incorporation of a wide range of elements of the L2 culture (cf. Gardner, 1979; Williams, 1994), which results in the incorporation of a prominent social dimension into most comprehensive constructs of L2 motivation. Gardner’s approach offered a macro perspective that allowed researchers to characterize and compare the motivational patterns of entire learning communities and then to draw inferences about intercultural communications and affiliations. This approach is appropriate for examining a wide range of important socio-cultural issues. However, the existing socio-psychological construct is not as applicable in some areas of the L2 learning process as in some others; in certain educational contexts – or as Crookes and Schmidt (1991) stated, “in the real world domain of the second language classroom”, traditional motivational categories did not appear to have high enough explanatory and predictive value with regard to actual students’ behavior. It cannot be assumed that the same model is appropriate to all foreign language contexts, where learners are limited to interacting in the target language within the confines of the classroom. The social educational model leaves out many possible influences on motivation (Crookes, & Schmidt, 1991; Dörnyei, 1990; Oxford, & Shearin, 1994; Skehan, 1989).

Non-SL Approach to L2 Learning Motivation

Gardner's macro perspective is insufficient for the instructed SLA, which takes place primarily in language classrooms. This recognition led to a new generation of motivation researchers in the 1990s to start expanding the socio-educational approach so that it could accommodate a variety of educational issues (for a review, see Dörnyei, 2001).

In the last few years, there has been a major shift in research on second language motivation. During this time, several researchers (e.g., Brown, 1990, 1994; Clément, Dörnyei, & Noels, 1994; Crookes, & Schmidt, 1991; Dörnyei, 1994a, 1994b; Oxford, & Shearin, 1994; Skehan, 1991) have attempted to reopen the agenda of motivation researches by suggesting modifications to Robert Gardner's and his associates' social psychological construct of language learning motivation (e.g., Gardner, 1985b; Gardner, & Clément, 1990; Gardner, & MacIntyre, 1993) and introducing new concepts rooted in other areas of psychology. A lot of concepts and conceptual constructs have been borrowed from the fields of general, industrial, educational, and cognitive developmental psychology that have not yet been directly applied to the L2 field.

The non-SL approach to language learning motivation looks at "new" psychological variables and other factors that have not been included in the traditional psychological theory of language learning motivation. They expand the framework by considering important ideas offered by other branches of psychology: general, industrial, educational, cognitive developmental, and socio-cultural psychology. However, problems still exist. Gardner and Tremblay (1994) proposed the question, "In order to integrate various theories of motivation in the area of second language learning, what kind of framework should we adopt?" This question raised an important issue. Until now, studies from the non-SL approach involve more approaches than well-defined constructs. They fall short of the mark in terms of precision and elaboration of the constituent components. (Dörnyei, 1994b; Oxford, & Shearin, 1994).

Task Motivation – Linking Motivation and Task Together

Link Motivation and Task Together

The key assumption underlying the research that has attempted to examine the motivational impact of the various aspects of the learning context, is that the classroom environment had a much stronger motivational influence than had been proposed before. This situated approach characterized by a micro perspective appears to be a particularly fruitful direction for future L2 motivation research. Under this situated approach, there are several research directions: (a) the willingness to communicate (WTC), (b) task motivation, and (c) the relationship between motivation and the use of language learning strategies.

Interest in the motivational basis of language learning tasks can be seen as the culmination of the situated approach in L2 motivation research. "Recognizing the significance of tasks in shaping learners' interest and enthusiasm coincides with practicing classroom teachers' perceptions that the quality of activities used in language classes and the way these activities are presented and administered make an enormous difference in students' attitudes toward learning" (Ellis, 2000).

Julkunen (1989) first highlighted tasks in L2 motivation literature, and in a recent theoretical discussion of task motivation, he (2001) has revisited this issue and contends that students' task behavior is fueled by a combination of generalized and situation-specific motives according to the specific task characteristics.

Motivation Through Task Design

Learning tasks and activities decisively influence how and what students learn from instruction; they organize the student experience (Bennett, 1987; Brophy, & Allenman, 1991; Doyle, 1983; Winne, 1987). Different tasks affect motivation and learning in different ways. Consequently, the study of instruction has to pay attention to learning tasks and activities, that is, to what the learner has to do in the classroom. In addition, tasks have an important role to play in examinations. Interestingly, task type, response mode, and format have produced gender differences in examination type; for example, some tasks favor girls and some favor boys (Gipps, & Murphy, 1994).

By using the term task motivation, the focus of attention in motivation is on task characteristics. Gagne (1985, p. 307) views task motivation as one of the major types of motivation (the others being incentive and achievement motivation). Referring to Ausubel (1968), he noted that the motives are intrinsic to the task, and the completion of the task satisfies the underlying motive. Task motivation refers to the characteristics of the task and to task design. Maehr (1984) pointed out that certain tasks are more interesting, more attractive, and more motivating than others. Tasks that include an optimal amount of uncertainty and unpredictability attract the learner. Keller (1983, 1994) formulated four determinants of motivation that affect an individual's (students') choices of goals and tasks and the degree of effort he/she will exert in learning: interest (attention), relevance, expectancy (confidence), and outcomes (satisfaction). Csikszentmihalyi (1991, p. 49) has listed eight components that are characteristic of an activity (or a task) providing enjoyment.

The term "task motivation" shows a place where motivation and task researches should meet. Approaching motivation by using the task as the basic unit demonstrates the importance of the classroom context, the learning situation, and sets of other factors. Investigating the task from the motivational perspective highlights the importance of motivation, and furthermore, it differs from the traditional motivational research in that motivation is treated as an end instead of a means in the single unit of a task. However, just as Gardner claimed, problem still exists as to the question of what kind of framework should be adopted in order to integrate all of these motivational components.

Task Characteristics Model – A Proposed Framework

Task Characteristics Model

On the basis of reviewing the existing studies in motivation and tasks in the field of SLA and the related literature in other fields, a model is proposed here to specify the conditions under which L2 learners will become internally motivated to perform effectively on the tasks. The model focuses on four classes of variables: (a) the critical psychological states of L2 learners that must be present for internally motivated task behavior to develop, (b) the characteristics of tasks that can create these psychological states, (c) the attributes of individuals that determine how positively a person will respond to a complex and challenging task, and (d) the positive task outcome – the internal task motivation.

The Task Characteristics Model is an attempt to extend, refine, and systematize the relationships between task characteristics and individual responses to the task. The basic task characteristics model is presented in the following figure. At the most general level, five "core" task dimensions are seen as prompting three psychological states which, in turn, lead to the beneficial task outcome – the internal task motivation. The links between the task dimensions and the psychological states, and between the psychological states and the outcome, are shown as moderated by individual growth need strength.

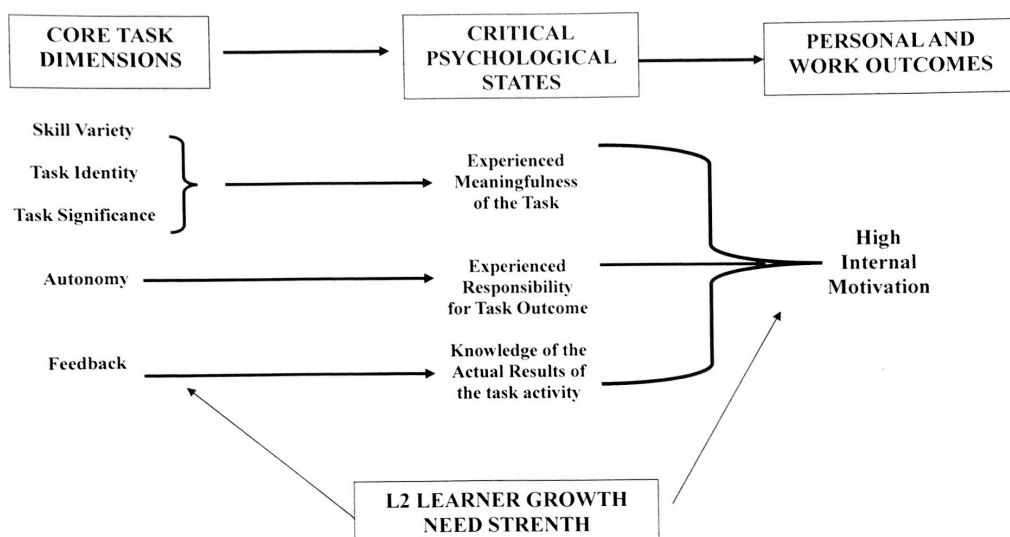


Figure 1. Task Characteristics Model

As Figure 1 indicates, the three psychological states (experienced meaningfulness of the task, experienced responsibility for the outcomes of the task and knowledge of the results of the task activities) are the causal core of the model. The model postulates that an individual experiences a positive effect to the extent that he learns (knowledge of results) that he personally (experienced responsibility) has performed well in a task that he cares about (experienced meaningfulness). Of the five characteristics of tasks shown in Figure 1 as fostering the emergence of the psychological states, three contribute to the experienced meaningfulness of the task, and one each contributes to experienced responsibility and to knowledge of results. As noted earlier, there is now substantial evidence that differences among people moderate how they react to their tasks, and an individual needing strength appears to be a useful way to conceptualize and measure such differences. The basic prediction is that people who have high need for personal growth and development will respond more positively to a job high in motivating potential than people with low growth need strength.

Significance of the Conceptual Framework

The Task Characteristics Model incorporates variables that are otherwise studied individually in a systematic way to be studied together. It is supposed to be able to provide a framework for us to design a motivating task, and diagnose an existing task and even improve it. It can also be used to identify whether certain type of tasks have greater potential to motivate L2 learners than others do. Furthermore, although the model pinpoints the importance of task properties and L2 learners' psychological states in enhancing internal task motivation, it never downplays the significance of individual difference. The model also points out that a task of high motivating potential does not work as equally effective for every L2 learner.

Conclusion and Implications

Based on the existing literature and abundant studies on motivation and task in SLA and enlightened by some theories from a broader range of fields, this article adopts a new approach to investigating L2 learning motivation, tasks, and their relationships. It links task and motivation together, and combines L2

learning theories and broad psychological theories together, reflecting a cross-sectional and cross-disciplinary perspective. The Task Characteristics Model offers a conceptual framework for improving the motivating potential inherent in the task design through manipulating the core task dimensions of skill variety, task identity, task significance, autonomy, and feedback. Nevertheless, an instrument to test this model and further empirical studies are called on to test the model.

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Successful Expressions or Malicious Misleading: A Pragmatic Study on the Rhetorical Devices in Legal Texts¹

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[Abstract] *Judicial opinion and literature are regarded as two writing categories that are totally different from each other. The most striking features of judicial opinion are calmness, objectivity, doubtlessness, and no compromise. However, the labels for literary writing are elegance, departure from convention, ambiguous expression and multi-explanation. It seems that these are just the striking differences between literary writing and judicial opinion. But in these two totally different writing categories, similarities are found. Rhetorical devices like simile, metaphor, parallelism, wording, voice, and analogy, etc., not only exist in literary writing, but also in judicial opinion. In this essay, the Speech Acts Theory of John R. Searle has been adopted to analyze if Cardozo has successfully implemented the required speech acts, and if the illocutionary point, the direction of fit between words and the world, the psychological state expressed, and the propositional content that led him to adopt the corresponding rhetorical devices are proper for the situation and the context. On the basis of studying Cardozo, a conclusion will be drawn about whether the adoption of rhetorical devices in judicial opinions is proper, and what the guiding principles for adopting rhetorical devices in judicial opinions are.*

[Keywords] *legal text, rhetorical devices, speech acts, psychological state*

Introduction

Judicial opinion and literary writing are regarded as two writing categories that are totally different from each other (Posner, 2002). The most striking features of judicial opinions are calmness, objectivity, doubtlessness, and no compromise. However, the labels for literary writing are elegance, a departure from convention, ambiguous expression and multi-explanation. It seems that these are the striking differences between literary writing and judicial opinion. But in these two totally different writing categories, similarities are found. Rhetorical devices like simile, metaphor, parallelism, wording, voice, and analogy, etc., not only exist in literary writings, but also in judicial opinions. According to Judge Cardozo, the expression in a judicial opinion should be convincing, sincere and full of passion so that people can be deeply impressed, so therefore, rhetorical devices like alliteration and antithesis should be adopted to help people remember the content, or idioms and sayings should be used so that rich meanings can be expressed concisely and the argument can be most powerful (Cardozo, 1937). But can ideal effects be achieved through the rhetorical devices proposed by Cardozo?

In this essay, John R. Searle's Speech Acts Theory is used to analyze the rhetorical devices used by Cardozo in his judicial opinions to see if these devices are properly and effectively used. Searle divides speech acts into five categories according to four criteria (2001). These four criteria are: the illocutionary point, the direction of fit between words and the world, the psychological state expressed, and the propositional content. A further study finds that these four criteria not only decide the categories of speech acts as a whole, but also have influences on each other. At the same time, in the criterion of "the

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propositional content”, not only the “content” per se matters, but the expression forms of the content are also very important. For example, the combination of the illocutionary point and the psychological state cannot only decide the content of the proposition, but also its expression forms. Based on Searle’s theory and a further study, this essay will analyze if Cardozo has successfully implemented proper speech acts in his judicial opinions, and if the illocutionary point, the direction of fit between his words and the world, the psychological state expressed, and the propositional content that guide him to adopt the corresponding rhetorical devices are proper or not for the context and the situation of the time.

At last, following the study on Cardozo’s expressions in his judicial opinions, a conclusion will be drawn about whether the rhetorical devices used in them are right or not, and at the same time, guiding principles for using rhetorical devices in judicial opinions will be provided.

Theoretical Basis

The Speech Act Theory

The founder of Speech Act Theory is L. J. Austin who thinks that the original function of language is a way of acting instead of the expression of ideas. His thoughts mainly include three aspects (Austin, 2002). First, every sentence, even every expression, can implement an act. Second, the same expression, or the same sentence, can implement different acts in different contexts or situations. For example, the sentence “what do you mean” can be a question in Context 1, or a blame or expression of dissatisfaction in Context 2:

Context 1: What do you mean by the word “complicated”?

Context 2: A: You are a fool! B: What do you mean?

Third, one meaning can be expressed in different forms, and each form implements a particular act. For example, to ask if it rains, both of the following two sentences are ok, i.e. “is it raining?” and “I ask whether it is raining?”. They are totally the same in meaning, but different in the acts that they have implemented. In the former expression, the act of inquiry without any eagerness is implemented, while in the latter, a close question with great eagerness is implemented.

The successor of Austin was his student J. R. Searle, who divided the speech acts into five categories according to four criteria (Searle, 2001). These four criteria are the illocutionary point, the direction of fit between words and the world, the psychological state expressed, and the propositional content. The five categories of speech acts are assertives, directives, commissives, expressives, and declarations.

The study in this essay will be based on Searle’s study, but not limited to his circle. Instead, his theory will be developed here, with his original study as the basis, following his study principles, meeting the study objective of this essay and in accordance with the actual features of the language. The development mainly lies in the following two aspects: first, the division of the speech acts is not limited to these five categories, instead, it is made according to the actual situation and the actual speech acts fulfilled in the corresponding contexts; second, while Searle only pays attention to the content of the proposition, my concern will be extended to the expression form of the proposition.

Definition of Rhetoric

It seems that “rhetoric” is a simple word, but its definition has various versions and a final and definite conclusion has not been reached until now. No matter what the particular definition is, it is certain that rhetoric is a kind of method or tool, or more accurately, it is a kind of operation, the function of which is to finish and perfect the process of linguistic communication and improve the expressing effects (Xu, 2007).

So, in this essay, rhetoric refers to the proper linguistic devices that are chosen according to the particular context and for the purpose of accomplishing a certain purpose and achieving excellent effects of expression. At the same time rhetoric can be defined both in a broad and a narrow sense. In this essay, the broad sense of the term is adopted; the study here will include both the regular uses and irregular uses of language and involve words, sentences, discourses, and the styles of discourses. On the other hand, the study on rhetorical devices not only includes their adoption, but also their avoidance. In other words, the author's purpose of using the rhetorical devices and the reasons why the author avoids using the rhetorical devices will both be studied.

Study on the Rhetorical Devices in the Judicial Opinion

Application of Voices

The very beginning part of the judicial opinion is to sketch the case and the judgment. This part involves the defendant Palko, the jury, and the Court of Final Appeal. In Cardozo's statement, the following two sentences are used: "A jury found him guilty of murder in the second degree, and he was sentenced to confinement in the state prison for life" (Cardozo, 1937). "And the jury returned a verdict of murder in the first degree, and the court sentenced the defendant to the punishment of death" (Cardozo, 1937).

It is very obvious that in the first sentence, the Cardozo adopts both a passive voice and active voice, but in the second sentence, he only adopts an active voice. Does Cardozo happen to write in this way, or does he make the choice with a certain purpose? Based on Searle's theory, the analysis of these three sentences is as follows:

For the first sentence, the illocutionary point is to describe the fact that already exists; the direction of fit is from words to the world; the psychological state is to be objective, to believe, and to represent the judicial institutions; the propositional content is that the jury convicted him of the second murder and he was sentenced to life imprisonment; the expressing form of the proposition is to adopt both a passive and active voice to form a comparison; the fulfilled speech act is to describe the reality; the function of the rhetorical device is to make the contrast between the two sides in ideas sharpened through the different forms of expression.

For the second sentence, the illocutionary point is to describe the fact that already exists; the direction of fit is from words to the world; the psychological state is to be objective, to believe, and to represent the judicial institutions; the propositional content is that the jury convicted him of the first murder and the court sentenced him to death penalty; the expressing form of the proposition is to use active voice only; the fulfilled speech act is to describe the reality; the function of the rhetorical device is that through the same form, the unity of the two is strengthened.

By comparing these two sentences, we make the following findings: first, whether Cardozo decides to use the rhetorical device of "passive voice and active voice in comparison" or the rhetorical device of "the same voice for unity" is directly decided by the content of the proposition. When there are two contrasting factors in the content and this contrast is vital in the expression of the sentence, he makes the forms in comparison to emphasize the contrast in meaning. When there is only one element in the content of the proposition, or there are two elements that belong to the same group or the same standpoint, Cardozo will make the form in unity to show the unity or unification of the meanings and ideas. Second, the same rhetorical device fulfills the same speech act and expresses the same psychological state (Jiang, 2003). So

the rhetorical device of “voice” is not limited by the category of the speech act or the psychological state and therefore, does not have any influence on them either.

Use of Metaphor

In the judicial opinion of *Palko vs. Connecticut*, Cardozo used metaphor in two sentences: the first one is “There is here no seismic innovation” (“here” refers to the retrial of the case of Palko) (Cardozo, 1937). And the second sentence is “the edifice of justice stands, its symmetry, to many, greater than before” (Cardozo, 1937). The analysis of the use of metaphor is as follows:

For the first sentence, the speech act is assertive, the illocutionary point is to guarantee that the retrial of Palko is just what is described in the sentence and to explain why there’s no problem for the retrial; the direction of fit is from words to the world; the psychological state is to believe the authenticity of the sentence and intend to persuade the readers; the propositional content is that no great changes exist in the retrial of Palko, compared with the former cases. The form of expression is metaphor in which “earthquake” is used to express the idea of “giant”; the expressing effect is that the expression of the meaning is not clarified because “no seismic innovation” does not show “whether there is any innovation, the degree of the innovation and the accurate influences of the innovation on the case”, but all of these are important for the case.

For the second sentence, the speech act is assertive, the illocutionary point is to guarantee that justice is not destroyed and that the retrial of Palko does not violate justice; the direction of fit is from words to the world; the psychological state is to believe the authenticity of the sentence, and intend to persuade the readers; the propositional content is that the symmetry of the edifice of justice is more beautiful than before. The form of expression is metaphor in which “edifice” is used to represent justice and the “symmetry of the edifice” to describe the same rights of the appellant and the state in the right of appeal; the expressing effect is that the expression is not properly used here because symmetry is a concept in aesthetics, and it is not proper to use an aesthetical concept in the legal field and the analogy here is not reasonable.

From the above analysis, we can find that when the speech act is “assertive”, the illocutionary point is “to guarantee that something is true/right”, the psychological state is “to believe the content of expressed in the sentence”, and the propositional content is “an objective reality”, the context and the situation are not proper for adopting the rhetorical device called “metaphor”. In the process of adopting a metaphor, the psychological state of the speaker is that “he believes that the statement of the sentence in which he uses the metaphor is right and true”, but the psychological state that the speaker should have is that “he believes that the plain statement without the use of metaphor is right”. However, in the process of adopting a metaphor, the speaker avoids the accurateness and objectivity in the plain statement without using any rhetorical device. In metaphor, the speaker uses the figurativeness and indistinctness of the metaphor to cover the reality. In this way, they mislead the reader consciously or unconsciously.

When these happen in the legal context, the former mentioned conflicts are more serious because the statements and the speech acts fulfilled in the statements in the legal texts must be both accurate and objective. Any expression that may destroy these two features cannot be used in legal texts. So, Cardozo’s adoption of metaphor in his judicial opinion is an unsuccessful attempt. The rhetorical device “metaphor” is more proper for expressing subjective emotions and speech acts, and because the speech acts must be fulfilled in an accurate and objective way, we should be very careful in adopting metaphor.

Use of Complex Sentences

Cardozo likes to use complex sentences in his works. In this part, two long sentences are chosen from his judicial opinion. Based on these two sentences, their function in the context, the speech acts fulfilled by them, and their corresponding features related are analyzed here. These two sentences are: “A statute of Connecticut permitting appeals in criminal cases to be taken by the state is challenged by the appellant as an infringement of the Fourteenth Amendment of the Constitution of the United States” (Cardozo, 1937). And “the execution of the sentence will not deprive the appellant of his life without the process of law assured to him by the Fourteenth Amendment of the Federal Constitution” (Cardozo, 1937).

For the first sentence, the speech act is to describe; the illocutionary point is to describe the state of the present case; the direction of fit is from words to the world; the psychological state is objective; the propositional content is that the statute of Connecticut allows the state to appeal in a criminal case, and the appellant thinks that this is against the Fourteenth Amendment of Constitution; the expression form is a complex long sentence in which the key structure shows the statute of the Connecticut and the appellant’s appeal, the present participle shows the state’s decision and the prepositional phrase shows the appellant’s opinion; the effects of the use the complex structure is that with this long and complex structure, the content described is comprehensive, and the logical relationship between each part is clear and closely structured.

For the second sentence, the speech act is to deduce; the illocutionary point is to guarantee that what is said is going to come true in the future; the direction of fit is from the world to the words; the psychological state is to believe the authenticity of the statement and to persuade the readers; the propositional content is that the Fourteenth Amendment to the Constitution endows the appellant with the right to go through proper legal processes before the sentence is announced, and the court does not have the right to deprive the appellant of his life without proper legal procedures; the expression form is a complex long sentence of which the main clause is to state the theme that the appellant’s life will not be deprived, and the prepositional phrase shows the situation of this theme; the effects of using the complex structure is that the theme is emphasized, the situation is clear, and the relationship between them is effectively expressed.

From the above analysis, we can see that in Cardozo’s judicial opinion, the use of Speech Act Theory in these several sentences is a great success. If there is more than one meaning to express, the complex sentence structure is the best choice because only in the complex sentences, can the complex relationship be made clear through clauses, participles, prepositional phrases, adverbial phrases and various other linguistic forms, and at the same time, the integrity of these meanings as a whole is not destroyed.

Conclusion

Based on the Speech Act Theory of Austin and that of Searle, this essay develops their theory and according to the objective of the present research and the actual features of language, this essay studies the use of rhetorical devices in legal texts. From the above analysis, it can be concluded that the traditional and simple comments on whether magnificent rhetorical devices can be used in legal texts or any kind of texts is not right. What is directly related with the use of the rhetorical device is the speech act of the sentence in which the rhetorical device is to be used, the author’s intention, and the four aspects that decide the category of the speech act.

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The Process Approach to English Contract Writing in Mainland China

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[Abstract] On the issue of how to train students to acquire the competence of writing English contracts, many teachers recommend the Product Approach, which includes three elements: model, imitation, and correction. But after examining the differences between skilled and unskilled writers, this article discovers that the Process Approach, which emphasizes rehearsing, drafting and revising, is superior to the Product Approach, because via the Process Approach, learners' autonomy is encouraged, classroom interaction is promoted, quick feedback is provided, and real-life writing opportunities are increased.

[Keywords] Process Approach; English contract writing; Product Approach; MTI

Introduction

English contract translation and writing is considered to be one of the most important compulsory courses in the MTI (Master of Translation and Interpreting) curriculum for universities of political science and law in Mainland China. Not only should prospective graduates be capable of translating English contracts, but be expert in English contract writing as well. Regarding how to train students with high-demanding competence, most teachers prefer the Product Approach, because it is easy to apply in the class and explicit learning is involved in this approach (Rodrigues, 1985). Via Product Approach, teachers provide model contracts first, then students recite them until they can write the same contract by imitation, and finally, teachers make comments, mainly structure-focused. Does the Product Approach benefit, to a large extent, the MTI students in universities of political science and law in Mainland China? In order to answer this question, we are going to examine three elements: features of English contracts, MTI students' background, and vital factors of making skilled writers.

Features of English Contracts

English contracts have their own specific features, which are summarized as unique text structure, particular words and expressions, sentence structure, and tense (Wang, 2007; Wang, 2008). In terms of the text structure, an English contract consists of five parts (title, preamble, operative part, schedule, and attestation). For the words and expressions, the English contract is always composed of terminologies, formal terms, parallel synonyms, and archaic words, which collectively have to be professional, formal, and accurate (Wang, 2007). Then, for the sentence structure, prolixity, preciseness, and perplexity are major characteristics (Wang, 2008). In addition, negative fronting, and anastrophe, together with passive voice, are frequently applied in sentence writing. For the tense of English contracts, "shall" is widely used, as "shall do" or "shall not do" carries an obligation or a duty in legal texts, as opposed to its common function in general English, which expresses futurity. Therefore, it can be concluded that to be skilled in writing English contracts, one is expected to be equipped with the language skills, knowledge of law, and writing skills.

Students' Background

A majority of MTI students in the universities of political science and law used to be English-major undergraduates. For example, at ECUPL (East China University of Political Science and Law) in 2015, 28 of the 35 MTI students enrolled majored in English during their undergraduate study, but only one chose Law as a minor. For the remaining seven students, only 2 majored in Law (See Figure 1). The above data reflects that most MTI students of ECUPL do not have a problem with language skills. For the writing of English contracts, though most of them did not take the Legal English course, due to the solid language skills they grasped, they quickly acquired the legal structures and legal expressions, but they lacked the knowledge of law, as well as the specific contract writing skills, which are the main obstacles to understanding and writing an English contract. Though the Product Approach does provide students, to some extent, with law knowledge in terms of model contracts and legal terms, it is not enough. What students need is comprehensive training on law knowledge and contract writing skills, and they are supposed to be trained to think like a real-life English contract drafter instead of being given structure-focused feedback only. Therefore, the Product Approach does not really benefit the MTI students of ECUPL.

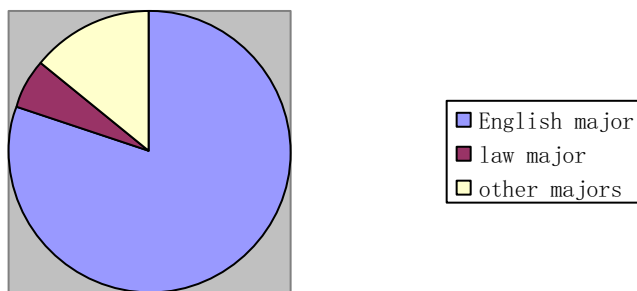


Figure 1. Undergraduate Majors of MTI Students in ECUPL

Differences Between Skilled and Unskilled Writers

According to Lapp (1984), Raimes (1985, p. 229), Hedge (1988, p. 23), Richards (1990, p. 109) and Nunan (1998, p. 90), the differences between skilled and unskilled writers can be described as follows:

Before writing, skilled writers spend time planning the task, thinking about the purpose and audience, gathering, and organizing information. Unskilled writers spend little time planning and, as a consequence, are confused when they begin. At the same time, unskilled writers seldom take readers into consideration.

During writing (the first draft), skilled writers take time to let their ideas develop, then they write quickly and fluently, and spend time reviewing what they have written, concentrating on constructing the structure while leaving the details for later revision. In contrast, unskilled writers go back to the task to trigger writing, and spend little time reviewing what they have written, concentrating on the grammar and spelling.

After writing (the first draft), skilled writers polish the material via revisions: they revise it from different facets (lexical, sentence and discourse), and adjust paragraphs, as well as change the structure if needed, making the final draft maximally accessible to the reader. Compared to skilled writers, unskilled writers do not make thorough revisions after the first draft. They revise primarily at the lexical and

sentence levels, and do not always clarify meaning, seldom considering whether the overall structure is clear to the reader.

Enlightenment to the Teacher

“Studying the differences between skilled and unskilled writers provides information which can be transformed into pedagogy” (Nunan, 1998, p. 90). Knowing the disparity, in order to train students into skilled writers, teachers tend to understand what should be done and what should be avoided. From this perspective, this information plays a significant role in teaching writing skills. Richards (1990, p. 109) reported, “...an unskilled writer is not simply one who cannot produce a good writing product, it is one who uses inappropriate writing behaviors and processes when writing.” Thus, it can be concluded that a skilled writer is the one who has the ability to apply appropriate behaviors and processes when writing. Therefore, we have to discover the best approach that can achieve the aim of helping students with appropriate writing behaviors and writing processes.

Process Approach to Writing

The Process Approach is an approach focused on how a writer actually composes text. With this approach, writing is considered as a complex developmental task, and the writer’s ideas are dug into and explored thoroughly (Hedge, 1988; Murray, 1980; Raimes, 1987). The goal of this approach is to “nurture the skills with which writers work out their own solutions to the problems they set themselves, with which they shape their raw material into a coherent message, and with which they work towards an acceptable and appropriate form for expressing it” (White, & Arndt, 1991, p. 5).

The Process Approach emphasizes redrafting and revision rather than error-checking exercises, and it advocates that students should participate in evaluating the texts more than teachers alone. Unlike the Product Approach, by which feedback focuses on the form (grammatical rules), the feedback from the Process Approach focuses on both the content and the form. In this approach, model text is not introduced, or if so, it is introduced after students finish writing. The model text is used as a source for further ideas rather than for imitation. This approach encourages students to “communicate their own written messages while simultaneously developing their literacy skills in speaking and reading” (Heald-Taylor, 1994). This approach, compared to the Product Approach, provides students with more opportunities of becoming skilled writers.

Implementing the Process Approach in English Contract Writing

To implement the Process Approach in English contract writing, Hedge (1988, p. 25) suggests “the classroom needs to provide an environment in which students can experience being writers, thinking about purpose and audience, drafting a piece of writing, revising it, and sharing it with others.” Thus, the activities are divided into three stages – “rehearsing, drafting and revising” (Murray, 1980).

Rehearsing

“Generating ideas is clearly a crucial part of the writing process” (White, & Arndt, 1991, p. 17). In fact, getting started is regarded by most students as one of the most difficult steps of writing. At this stage, it is possible that students might have no ideas on their topic or might not know how many ideas are relevant to the topic. Referring to the example of the MTI students of ECUPL, due to the lack of law knowledge and the lack of contract writing skills, they were not sure what each specific contract meant and which contract clauses should be adopted in a specific contract. Therefore, teachers should apply activities to

encourage students to think about the title, to speak out as many ideas as possible, and to consider the readers as well. The activities are as follows (Richards, 1990, p. 112):

- Brainstorming: students rapidly exchange information about a topic.
- Free association: students quickly say whatever words come to mind seeing the topic word.
- Values clarification: students compare attitudes towards a variety of specific problems.
- Clustering or word mapping: the writer organises related words and concepts in clusters around the central concept.
- Ranking activities: students rank a set of features according to the priorities.
- Quick-writing: students write as much as they can in a given time.

For example, the teacher tells the students that today's task is to write a Distribution Contract. Students are divided into small groups, discussing the title within the group, brainstorming as many relevant contract clauses as possible, and one of the students writes them down on the paper.

Drafting

At this stage, students begin to pick ideas generated in the rehearsing stage, and develop them on paper. It is necessary to regularly review what has been written. Meaning is given priority, and form is considered as well. The activities are as follows (Richards, 1990, p. 113):

- Strategic questioning: students examine a set of questions to help them select ideas for writing.
- Reduction exercise: students are given a complex paragraph and break it down into simpler sentences.
- Jumbled paragraph: students are given a jumbled paragraph and reorder the sentences.
- Writing thesis statements and topic sentences.
- Quick-writing: students quickly write various sections of their composition.
- Group drafting: students work jointly on drafting different sections of a composition.

For example, after brainstorming the contract clauses of a Distribution Contract, the teacher asks each group to think about the questions, such as "How many parts do you want to write? What clauses will be selected? What clauses are the general clauses applied to all the contracts? What are the special clauses specifically adopted in this contract? Who will be your readers? What difficulties have you foreseen and what is the solution?" These questions not only help students select ideas and produce meaningful writing, moreover, they lead students to reflect on the features of English contracts, and to behave like a real contract drafter as well. Then each student in a group writes a part of the contract. During the process, they might need to look through what others have written in order to get further ideas to continue.

Revising

At this stage, what has been written will be adjusted so that it looks coherent and is easily understood. Richards (1990, pp. 113-114) suggests the following activities:

- Peer feedback: students work in groups and read, comment, and proof-read their own writing.
- Group-correction activities: students are given essays containing certain focused deletions and must supply the missing elements.
- Rewriting exercises: students are given essays containing awkward sentences and confusing paragraphs, and they need to rewrite them.

- Revising heuristics: students examine a set of questions that prepare them for revision activities.
- Teacher feedback: this may take place at several stages during the writing process, rather than at the end of the process.
- Checklists: students may have short checklists, drawing their attention to specific features of sentences, paragraph, or text organisation that they should attend to in revising.

For example, after finishing the first draft of a Distribution Contract, the teacher asks each group to evaluate their own writing, as well as the writing from another group, both of which are evaluated by same criteria, such as whether it is well-organized or clearly-expressed, whether it includes all necessary clauses, and whether it reads like a real contract used in real life. Then the teacher joins each group and provides his feedback based on those criteria. The whole process focuses on the content, while the choice of the words and the grammatical rules are put into second consideration, but not neglected. According to the three pieces of feedback, each group rewrites the contract. In this stage, students can discover their progress and improvement by comparing the first draft with the final one.

Advantages of Adopting Process Approach in Tutoring English contract writing

The above clearly shows that the Process Approach gives students reader-based feedback and the editing of grammatical errors is placed in the final stage. Students are given the opportunity of being involved in a real-life writing circumstance, which includes the stages of brainstorming, selecting, drafting, revising and redrafting. The advantages of applying the Process Approach to the teaching of English contract writing can be summarized as follows:

The Process Approach will Encourage Learner Autonomy

The concept of learner autonomy advocates that learners have the “freedom and ability to manage their own affairs” (Scharle & Szabo, 2000, p. 4). With the conduction of self-evaluation and peer-evaluation in the process approach, students are no longer passive followers of their teachers; they become active learners in terms of participating into evaluating their own work and their classmates’ work, instead.

According to the classroom observation carried out in Salford University, Cambridge University and ECUPL, compared to the students of Western countries, Mainland China’ students rely more on their teachers, and have much more of a tendency in believing in teacher authority. They listen to what the teacher said, they take down notes, but they seldom have their own ideas, and they lack confidence of studying by themselves to some extent. All these result in that they take little responsibility for their learning and doubt their learning ability.

By self and peer evaluation, students can “formulate an idea of their level of proficiency: discover weak and strong points and plan the directions of progress. Setting targets for themselves, they are more likely to consider these targets of their own and feel responsible for reaching them” (Scharle, & Szabo, 2000, p. 8). At the same time, Gillam, (1990, p. 99) comments that self and peer evaluation “help the students to develop confidence in their capacity to learn from one another and for themselves”.

Taking responsibility and feeling confidence are the key factors leading to learner autonomy. From this perspective, the Process Approach will encourage learner autonomy.

Process Approach will Promote Interactions Between Students

Most English contract writing classrooms are silent, in which students write contracts individually, submit them to the teacher when finishing, and the teacher gives the feedback respectively to each individual after a few weeks. However, a silent classroom is not beneficial to students.

The advantage of “interaction” has been discovered widely by experts. Rivers (1987, pp. 4-5) commented, “Through interaction, students can increase their language store as they listen to or read authentic linguistic material, or even the output of their fellow students in discussions, skits, joint problem-solving tasks...students can use all they possess of the language in real-life exchanges.”

With the Process Approach, the opportunity of doing group work is greatly increased. Within groups, students interact with each other by brainstorming ideas and evaluating drafts. Via interaction, students can “develop positive attitudes towards writing” (Nunan, 1998, p. 87), and they can get more chances to speak and read as well, besides they tend to have an idea of their peers’ learning results. Gousseva (1998) points out the effectiveness of student interaction for improving the quality of writing and developing the students’ skills as critical readers and independent thinkers.

Process Approach will Help Students Acquire the Writing Skill

Most English contract writing focuses on the usages of language and grammatical rules only, in which students are required to write with accuracy. For teachers, one of their main responsibilities is to correct students’ errors, which cannot lead to a good teaching effect, however. Richards (1990, p. 109) commented, “...an undue concern with the formal aspects of writing can impede the development of efficient writing strategies.”

Compared to the traditional method applied to English contract writing, the Process Approach gives priority to writing skills. It advocates that in the beginning, writers should be encouraged to get their ideas on paper in any shape or form without worrying too much about formal correctness (Nunan 1998, p. 87).

In fact, the Process Approach reflects the process of real-life writing, in which people think, write and revise, therefore the teacher is required to organize the class “functioning as a community of writers” (Richards, 1990, p. 112). Students are provided with more opportunities for meaningful writing rather than mechanical ones. Brown (2001, p. 57) reports “meaningful learning will lead toward better long-term retention than rote learning.”

By means of a certain amount of practice, students are bound to acquire writing skill. At the same time, within the process of regular writing opportunities students will gain control of those sub-skills such as the use of the words and the grammatical rules (Heald-Taylor, 1994)

The Process Approach will Provide Students with Quick Feedback

In most English contract writing classrooms, the teacher collects students’ works and corrects them after class. Due to a large number of students in a class, it will take at least three weeks that the teacher can give his feedback to students. This tends to result in that students have forgotten what they wrote and why they wrote in that way, thus the feedback cannot play an effective role on improving students’ writing.

With the Process Approach, students not only get direct feedback in class, but they also can get feedback at the drafting stage. White and Arndt (1991 p. 117) report “*it is especially helpful to have feedback from other people at the drafting stage, because things which are not clear or which could be improved upon can still be changed.*”

Moreover, with the Process Approach, the feedback is not only from the teacher, but also from classmates. This is much like real-world writing, in which what a person writes will be read by many other people, thus the students will take readers into consideration when they write.

Limitations of the Process Approach to English Contract writing

Despite the positive contributions by the Process Approach to improving English contract writing in different aspects, its limitations are inevitable: it is, primarily, time-consuming, and, secondly, instructions from it are indirect.

The Process Approach is Time-Consuming

The Process Approach is a long-run approach, which does improve students' writing skills, but will take a rather long time for students to grasp the skill. In other words, with this approach, students hardly feel the progress at the early stages. Therefore, some students might feel frustrated at the beginning, which results in that some teachers lose the confidence of applying this approach then.

Also, if the class-size is large and the teaching hour is limited, it may be difficult to apply this approach in the class. Without adequate time given to the students in class, the learning result can by no means be achieved with this approach. Hedge (2000, p. 319) commented, "The process approach to writing is not without its critics, and the questions of time and large classes are certainly issues of implementation which any teacher needs to take into account."

The Process Approach Lacks Instruction

Though the Process Approach does provide feedback on the form, this kind of feedback is not given until the final stage. The Process Approach encourages writing without instruction. Although it might lead to students' creativity, it ignores the fact that "students need structure, they need models to practice, they need to improve even mechanical skills" (Rodrigues, 1985, pp. 26-27), especially when they write English contracts, which consist of the fixed structures and the fixed legal terms. Horowitz (1986) claims that the Process Approach fails to prepare students to write examination essays. Nunan (1998, p. 88) comments that the approach depends on an inductive approach to learning which only suits some learners, the learners who are well-prepared before the class, and the learners who get used to take their own responsibility in learning.

Conclusion

The Product Approach mainly focuses on the form. Via the Product Approach, first of all, students are given model texts, then they are required to recite and imitate them. Teachers make one comment in the end, and that comment usually emphasizes the grammatical rules. Compared to the Product Approach, the Process Approach mainly focuses on the meaning, which consists of three steps: rehearsing, drafting and revising. Teachers are not the only ones making comments, students who composed the text, together with students from other groups, will respectively make comments too. Via the Process Approach, revision is not limited to grammatical rules only, students need to revise what they have written from different facets, and the content is always taken into the first consideration.

By means of discussing the above two writing approaches and analyzing the differences between skilled and unskilled writers, it can be seen that the Process Approach is superior to the Product Approach, especially for the MTI students of ECUPL. A majority of those students have majored in English during their undergraduate study, but they generally lack the knowledge of law and they are not familiar with contract writing skills. In terms of writing English contracts, based on those students' academic background, it is easy for them to be good at lexical and grammatical rules, but it is difficult to be skilled at discourse or coherent meaning. Therefore, the Process Approach should be applied in the class like this. The Process Approach will encourage learners' autonomy, promote classroom interaction,

provide quick feedback, and increase real-life writing opportunity. It will help students acquire the competence of writing English contracts. But the limitations of the Process Approach are inevitable. First, this approach is time-consuming, and second, this approach lacks direct instruction, and students have to be well-prepared before the class. For the teachers of English contract writing, they should apply the Process Approach mainly in the class, and adopt the Product Approach as the supplement to the Process Approach, thus achieves better teaching effects.

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A Study on the Standardization of Court Interpreting of China's Minority Nationality Languages

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[Abstract] *China is a multi-ethnic country with 56 ethnic minorities. The right of using national languages is granted by the Constitution. In recent years, the un-standardized practice of court interpreting has become a serious problem in legal cases concerning minority defendants. In addition, the lack of standardized practices has triggered a series of other problems in judicial proceedings. Based on the analysis of the current phenomenon in court interpretation concerning minority languages in China, this author puts forward some suggestions on the standardization of court interpreting for China's minority nationality languages.*

[Keywords] *court interpreting; minority nationality languages; language right*

Introduction

With the progression of reform and opening up and the development of the economy in China, the number of cases involving ethnic minorities is increasing (Wang Na, 2014), while laws and regulations on minority language translation are not yet inclusive. This has caused many problems related to language barriers in cases with minority defendants. In judicial practice, the language barrier acts as a major obstacle to communicating smoothly, clarifying the facts of the case, or even obtaining the evidence. The standardization of the court interpretation system for minority languages is a necessary guarantee for the realization of language rights for ethnic minorities.

China's National Policy and Guidance to Minority Language Translation

Languages and Dialects of Ethnic Minorities in China

It is known to all that China is a nation with 56 different ethnic groups and each one has its own language. According to China's National Policy and Common Prosperity and Development of all Ethnic Groups, there are over 80 dialects in China in use today and the number of ancient languages that have died out is astonishing. Among them, 61 are regarded as the main languages used by Chinese people and they are divided into five major language families, which are, respectively, Sino-Tibetan family (corresponding to 31 ethnic groups), Altaic family (corresponding to 17 ethnic groups), Austro-Asiatic family (corresponding to 3 ethnic groups), Austronesian family (corresponding to 1 ethnic group), and Indo-European family (corresponding to 2 ethnic groups) (Ha, 2009). In addition, among the 61 languages, 85% have their own language varieties, namely, local dialects. For example, there are two local dialects for each of Zhuang language, Kam language, Monguor language and Kazakh language, and three dialects for each of Zang language, Miao language, Mongolian language, Uyghur language and Wa language. At present, linguists usually classify all of these local dialects into seven major dialect areas in China: the Northern dialect area, Wu dialect area, Xiang dialect area, Gan dialect area, Hakka dialect area, Min dialect area, and Cantonese area (Mu, 2015).

There is no doubt that the diversity and complexity of the language system in China exerts great influences on the development of court interpreting and greatly increases its difficulty. Moreover, not

every language in China has its own handwritten characters. Relevant statistics show that there are 40 kinds of characters in total that correspond to 27 ethnic groups (the Han ethnic group included).

Laws and Regulations on Court Interpreting for Ethnic Minorities in China

Since the 1954 Constitution of China until the fourth amendment of the Constitution in 2004 and other laws, several legislations have been formulated to protect the rights of ethnic minorities to use their own languages and to enjoy court interpreting service. Promulgated in 1979 and revised in 1996, Article 9 of the Criminal Procedure Law of the People's Republic of China stipulates that citizens of all ethnic groups have the right to use the language of their own nationality in administrative proceedings. The people's court, the people's procuratorate and the public security unit should provide translation for those who are not familiar with the local language. In the minority-inhabited or multi-ethnic mixed areas, the commonly used language in the locality should be used in the trials, and judgments, notices and other documents should commonly be issued in local text.

Promulgated in 1991, Article 11 of the Civil Procedure Law of the People's Republic of China provides that all citizens have the right to use the language of their own nationality in civil proceedings. In the minority-inhabited or multi-ethnic mixed area, the commonly used language in the locality should be used in trials and legal documents. The court should provide translation of the legal proceedings for the people who are not familiar with the language and the language of the local people.

According to the above provisions, the use of spoken and written languages of ethnic groups in legal proceedings is the sacred right conferred by the Constitution. It is the duties of the people's court, the people's procuratorate and the public security units to guarantee the parties and other participants in the proceedings to be able to use their native spoken and written languages in litigation, and the issuance of judgments, announcements, notices and other documents in the commonly used language(s) in the locality in minority inhabited areas and ethnic regions.

The Role of Court Interpreting in Legal Proceedings involving Ethnic Minorities

Procedural justice is extremely important to guarantee substantive justice (Zhang, 2004). One of the contents of procedural justice is to protect the legal rights of litigant participants, especially the litigants, which is in line with the principle of controlling crime and protecting human rights. Only by fully and effectively protecting the rights of the participants in the proceedings, could the facts of the case be correctly identified (Sun, 2010). However, if the accused cannot understand the language and text used in the proceedings, it would be difficult to exercise their litigation rights. Therefore, the use of their national language in the proceedings is one of the basic conditions to achieve justice.

Interpreters have long played a pivotal role as linguistic and cultural intermediaries. Interpretation, the transfer of meaning from a source language to a receptor or target language, allows oral communication between two or more persons who do not speak the same language. In a court of law, interpreters make it possible for defendants and witnesses from culturally and linguistically diverse backgrounds to "hear" the proceedings in which they are involved, and for judges, attorneys, court reporters, and other key courtroom personnel to understand the testimony of defendants and witnesses from culturally and linguistically diverse backgrounds. Those with limited proficiency are at an obvious disadvantage in crucial situations, perhaps most notably within the judicial system, where qualified interpreters are critically necessary to protect the constitutional rights of these individuals (de Jongh, 1991, p. 286).

Court interpreters should always maintain their independence, impartiality, and integrity. Interpreters should not give any extra help other than their translation responsibility, nor should they have any tendency toward or defend the participants in their translation in the proceedings. In the process of interpretation, the interpreter should make sure that their interpretation is faithful to the party's meaning, and they should not optimize the language of the participants in the proceedings. They shall not distort, conceal or forge the translation.

The Present Situation of Minority Language Translation in Judicial Practice in China

No Special Translation Agencies of Minority Languages

Since the relevant law does not specify the procedure of employing translators and interpreters, and the number of such cases in the court does not account for a high proportion, instead of building talent pools of court translators and interpreters, the court temporarily appoints translators or interpreters when it needs to deal with these kinds of cases in practice. As a result, the court's choice of translators is often arbitrary, employing minority university students or teachers who can communicate with the minority defendants (Fang, 2013). Some of them do not have sufficient knowledge of the law or the language of the law, thus the quality of the interpretation cannot be guaranteed.

Lack of Relevant Responsibility Assigning Mechanisms

Currently, only Article 305 of the Criminal Law in China has provisions on the translators' responsibilities, namely, if the translator has been involved in the case, deliberately provide false translation, frame the intention of others or conceal evidence, he will be sentenced to 3 years following a set term of imprisonment or criminal detention; if the circumstances are serious, he will be sentenced to 3 to 7 years in a set term of imprisonment. However, delays in litigation or mistakes in sentencing caused by the translators' significant mistakes, are not included in the provisions.

Too Much Contact with the Court and Its Impact on Interpreters' Neutrality

In China, the power to engage an interpreter is granted by the judicial agencies. In other words, the court is equivalent to the employer of the court interpreter because of its payment for the interpreting service. As a result, the interpreter's position, in reality, is impossible to be absolutely neutral, and eventually, judicial justice is undermined. Discrimination of the defendant in the court's natural affection and subconscious emotion will influence translator's neutrality. Besides, too much contact with the court may easily lead to the defendant's misunderstanding, which may have a negative impact on the trial.

No Clear Provisions on Translators' Rights and Obligations

What rights should a translator/interpreter have? What obligations do they have? These are not clearly stipulated in the law or relevant judicial interpretations of China. All parties, including the translators themselves, do not have the concept of rights commensurate to professional translation. Both the court and translators have the misunderstanding that anyone who knows a minority language can do translation and interpretation. In judicial practice, translators rarely take the initiative to negotiate with the court about their legitimate rights. The court only has a vague idea of the duties, rights and obligations of translators in trial. The translators perceive their relationship between the court mostly as an employment relationship, causing an insufficient sense of professional responsibility.

The Establishment of the Translation System of Chinese Minority Languages in Judicial Proceedings

To establish and improve the translation system of minority nationality languages in litigation activities is not only the duty of the country's legislation, judicial and administrative departments, but also the best way to help the minority nationality safeguard their legitimate rights and interests.

The Training of Court Interpreters of Minority Languages

Qualified court interpreters need to have excellent bilingual competence, a good command of interpretation skills and legal knowledge. They should have encyclopedic knowledge, with strong social insight, and a high degree of social responsibility and public awareness. Since minority languages vary greatly from one to another, the judicial administrative department should decide specific operations of minority legal translators according to the actual situations in ethnic minority areas.

At present, students from law schools of minority universities have a good command of both the minority language and legal knowledge. The law schools in these universities can set up minority language legal translation talent pools, training legal translators and interpreters to provide professional translation services.

The Establishment of a Specialized Legal Translation Association of Ethnic Minorities

The "Chinese National Language Translation Bureau" under the State Council State Ethnic Affairs Commission is the special translation agency for minority languages in China, but it is a government institution whose main duties include the translation of Marx, Engels, Lenin, and Stalin works and various government documents, and the simultaneous interpretation for ethnic minority representatives at the National People's Congress. Providing court interpretation for ethnic minorities in judicial proceedings is not included in the institution's duties (Anisha, 2009).

To facilitate the management of legal translators, a specialized legal translation association of ethnic minorities should be established. The association can develop a series of regulations related to minority language legal translation, such as professional ethics. Through the cooperation with judicial administration department, the association can establish a legal translation qualification certification system, so as to meet the requirements of legal translation and interpretation, and achieve the optimal allocation of translation resources.

The Appointment and Management of Legal Translators of Minority Nationalities

On the level of legislation, a complete and unified set of appointment and management system concerning court interpreters of minority languages must be formulated. When hiring minority language legal translators or interpreters, the court shall make a comprehensive review, including the translators' or interpreters' character, work experience, age, and other aspects. There should be specific provisions regarding interpreter-involved court trial proceedings so as to resolve problems such as when it is appropriate for court interpreters to engage in the court trial, who else, except the judge, is entitled to appoint a court interpreter, what steps should be taken to employ court interpreters, and so on (Anisha, 2009).

Explicit Rights and Obligations of Legal Translators and Interpreters

In order to ensure the development of legal translation, the legal translation system must be affirmed and guaranteed by law. The law should clearly stipulate the minority language legal translators' position, and

the corresponding rights and obligations of the translators. The rights of translators include the right to request that the public security or judicial organizations provide relevant materials on trial; the right to access the record of translation or interpretation of other trials; the right to receive compensation; the right to obtain protection from relevant departments to ensure personal safety during the proceedings; the right to obtain personal accident insurance, and so on.

The obligations of court interpreters include the obligation to perform their duties strictly, the obligation to avoid providing suggestions, advice or interpretation of legal procedures to any parties, which is beyond translation duties; the obligation to stay objective and neutral to ensure their independence from judges, the accused, and other litigation participants, the obligation to take the initiative to apply for withdrawal if he or she has any interests in the case, the obligation to maintain and respect the confidentiality of sensitive information of cases obtained in the course of translation (Shi Jin, 2012).

The Perfection of the Supervision and Responsibility Assigning Mechanism of Court Interpreters

In order to ensure the impartiality of court interpreting, the entire court trial should be recorded. On the one hand, the record of the trial could be used to check the correctness of the interpretation. On the other hand, the record could also urge interpreters to perform their duties properly, and prevent collusion with the defendant. If permitted, a double translation system should be implemented in court, so as to allow the two interpreters to supervise each other (Wang, 2014).

The responsibility assigning mechanism of court interpreters must be included. In accordance with China's criminal law, the one and only provision about the interpreter is perjury in Article 305, which is committed when the interpreter deliberately has provided a false interpretation for the purpose of concealing criminal evidence in the court. Furthermore, in spite of this provision, in real practice, it seems too difficult to reach the standard of "clear facts and ample evidences" and impossible to impose punishment on the violators. A feasible and applicable responsibility assigning mechanism for court interpreters facilitates efficient supervision of the court interpreters through legal sanction. Translators' false or negligent translations violate the criminal law, and therefore should be sentenced to fines, revocation of translation qualifications, or even imprisonment, according to the seriousness of the case and whether the false translation is intentional.

Conclusion

China's economic and social development have intensified the flow of population and integration of ethnic minorities. Population migration of ethnic minorities due to higher education, work, life development and other reasons has increased the number of legal disputes and legal crimes. The court interpreting of minority languages plays a crucial role in ensuring equity and justice in minority involved cases. Court interpreters serve as a bridge between participants, which ensures the progress of the proceedings. It is necessary for China to establish and improve the legal system of minority language translation in legislation and judicial practice to ensure the fairness and justice of the law, and maintain the prosperity and stability of the country. Given a number of problems in the current legal translation system, we can take a series of measures to realize the standardization of court interpreting of minority languages in Mainland China. Law schools of minority universities should set up special programs to train court interpreters of minority languages to provide translation services to the court. A specialized legal translation association of ethnic minorities should be established to facilitate the certification and

management of legal interpreters. Furthermore, legislation concerning the appointment, the rights and obligations of court interpreters is urgently needed. Apart from these, a feasible and applicable responsibility assignment mechanism for court interpreters would facilitate efficient supervision of court interpreters through legal sanction.

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A Study on the Legal Setting of Definition Clauses in P. R. China

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[Abstract] *To avoid any ambiguity, vagueness and unnecessary redundancy, it is required to make some clear claims about the definitions of some terminology in legal texts, also called definition clauses. “Definitions” used in legal texts mainly has three patterns – descriptive definition, regulative definition, and the combination of both. Based on the situation the words first appear in the legal texts, the setting of their location can be in the general provisions, specific provisions and supplementary provisions. There are problems like misplacement of the location, mistakes of the method and inconsistency of the system that occur in legal texts in the People’s Republic of China (hereafter P. R. C.). There needs to be further improvement in the definition of rules, legal settings and consistency, including the unity of the legal system.*

[Keywords] *legal setting; definition clauses; patterns; legal texts*

Introduction

Daily communications in our lives are dispensable from concepts and terms. Likewise, drafters of legal texts or legislators need to use certain concepts or terms when they draft documents of laws and regulations to form laws for citizens to acknowledge and obey. “In laws, it is required to give a clear definition to a word, a phrase or a symbol, which is the part that definition clauses come in” (Li, 2005). “Drafters of the laws often apply definition clauses to claim the definitions of the terms they use in the motions” (Seidman, 2013). Some of the definition clauses in legal texts are called explanatory articles of law terms, and some are called explanatory articles. There are many concepts, patterns or terminologies in laws and regulations, and legislators want to make clear declarations of their definitions, which are established as part of the article system of the law. Definition clauses in legal texts are common in both Chinese and foreign law systems. From the perspective of standardizing the law system, it is highly important to study the standard of definition clauses in the system of Chinese legal texts.

Literature Review

There has been a long-term dispute over “Do definition clauses need to be set in legal texts?” In other words, why does there need to be a clear definition of a word in regulative documents, and what is the necessity of it? In the 12th article of *Rules of Unifying and Normalizing Legislation Drafting* of the United States, the usage of “definition clauses” in the laws is stipulated under the following three circumstances:

1. Such a word usually has multiple meanings;
2. The meaning of such a word in the specific sentence has a wider or narrower meaning than its usual usage;
3. In case of the burdensome repetition of the phrases.

Some scholars such as Wang (2004) believe that legislative language and nouns have specific meanings to avoid the possible ambiguity in the understanding and to set a clear parameter of the internal and external meaning of such concepts, it is a common and necessary act to explain some concepts and display in the form of definition articles in legal texts. Other scholars (Tao, 2004) believe that the function

of setting definition clauses in regulation and legal texts mainly lies in unifying the meanings of terminologies and avoiding disturbing repetitions. Some scholars have studied the reasons for setting definition clauses and below are some of the results:

1. Some concepts involved in the articles are esoteric and only acquired by some experts, instead of the public. They need to be further clarified in the legislation process. An example of this would be the explanation of Category A infectious disease, in Section 3, Article 330 in Criminal Law of P.R.C.
2. Some concepts might be frequently used but have ambiguous meanings and are hard to pinpoint. So a clear clarification and explanation is provided in the legislation. An example of this would be the explanation of “severe injure”, in Article 95 of criminal laws.
3. Some terms may have misleading interpretations in practice, and thus, are necessary for clarification. The explanation of “above, following, including” in Article 99, Criminal laws is an example.
4. The meaning of some terms are not clear enough for jurisdiction action and require a deeper explanation. Setting up descriptive articles solves the above issues and are beneficial for the understanding and application of criminal norms.

Types of Settings of “Definition Clauses” in Legal Documents

The main purpose for providing a definition is to differentiate a concept or wording from others, and allowing people to have a clear understanding of the specific meaning used. According to different definition methods, the types of “definition clauses” in legal documents will certainly be different.

Descriptive Definition Clause

A Descriptive Definition Clause is listing out regulations of the objects or content, intended to reveal as much internal and external meaning as possible. Such clauses are a major part of Chinese laws. An example of this would be found in Criminal Law: Article 54, Deprivation of Political Rights refers to deprivation of the following rights: “the right to vote and to stand for election; the rights for freedom of speech, of the press, of assembly, of association, of procession and of demonstration; the right to hold a position in a State organization; and the right to hold a leading position in any State-owned company, enterprise, institution or people's organization.” This article set regulations for interpreting the extended meanings of political rights.

Prescriptive Definition Clause

“Legal stipulations often include certain concepts. To understand these concepts, one needs to make judgments containing values and norms” (Bernd, 2013). These concepts with the prescriptive and regulative features are similar to the “internal definition” understood by Chinese scholars (Seidman, 2013). In legal texts of the P. R. C., many definitions like this can be found. Concepts like “commit a crime”, “criminal attempt”, “crime termination”, “joint crime”, “principal criminal”, “accessory criminal” and “abettor” are involved a lot in the Criminal Law. They reveal the features of the concepts from the connotation level. Clauses that include the above concepts belong to Prescriptive Definition Clauses.

Criminal Law is no exception. Many legal documents (i.e. Civil Servant Law) weigh on revealing the core features from the connotations of the legal terms. Like in Article 2 of Civil Servant Law: The term “civil servant” as mentioned in this Law refers to those personnel who “perform public duties according to law and have been included into state administrative staffing with wages and welfare borne by the state

public finance.” Similar articles like Article 2 of the Archive Law which states the definition of archives, and Article 2 of the Law on Guarding State Secrets which states the definition of state secrets, are both examples of Prescriptive Definition Clauses.

Mixed Definition Clause

Mixed Definition Clauses refer to clauses that give insight on the connotation of the legal terms or concepts, and also clarify their extension in legal documents. This kind of concept is also very common in legal documents. In Article 2 of Company Law, “A company referred to herein means a limited liability company or a joint stock limited company established within China in accordance herewith.” Article 3 states that “limited liability companies and joint stock limited companies are enterprise legal persons. In the case of a limited liability company, the shareholders are liable to the extent of their capital contributions, and the company is liable for its debts to the extent of all of its assets. In the case of a joint stock limited company, its total capital is divided into stocks of equal value, and the shareholders are liable to the extent of their shareholdings, and the Company is liable for its debts to the extent of all of its assets.” The above two articles are both definition clauses and altogether they can be called “mixed definition clause”. Article 2 made it clear the extension of the company in Company Law, and Article 3 clearly states the connotation of a Company, a Limited Liability Company and a joint stock limited company.

Problems and Drawbacks of Standardizing “Definition Clauses” in the Current Legal Documents

The systematization and standardization of laws not only lies in the entire law system, like the systematization of the general rule, specific provisions and supplementary provisions, but it also lies in the systematization of specific articles that build up the entire structure. From this perspective, standardizing the “definition clauses” in legal documents is also required. Looking into the current setting of our country, it is revealed that some problems and drawbacks stay in the standardization process.

Certain Confusion of Setting the Location of “Definition Clauses”

Some scholars in our country believe that “Definition Clauses” can be set in the general rule, specific provisions, or supplementary provisions, and they have provided some proof for that. Yet, it still shows some confusion in legislation practice. For example, in Article 40 of the supplementary provision of Teachers Law, the definitions of “schools of various levels and categories or other institutions of education” refer to two concepts that only appear in the General Provision. Article 2 of the General Provision states that “This Law shall apply to teachers specially engaged in education and teaching at schools of various levels and categories or other institutions of education.” According to the principle that “Any definitions that refers to the basic concepts of understanding the entire laws and regulations should be located in the General Provision”, and these two concepts should be clarified in the General Provision instead of the Supplementary.

“Definition Clauses” Disobey the “Definition Rule”

Definitions of certain law terms or concepts must obey the “definition rules”, otherwise they would be unscientific and inappropriate. And what would be the rules? Some scholars believe that usually the following rules can be applied:

- Definitions should not include essential questions;
- All the referred laws in the definition should be accurate and specific;

- Definitions cannot be given with the words that are not included in the law;
- If a word is defined in the explanatory law, it should not be redefined in the law;
- A definition should be complete to avoid a second definition within, and cannot be looped.

In fact, some definition clauses in practice disobey the above mentioned rules (Wang, 1987).

The Definitions Remain Inconsistent in the Entire Legal Texts and the National System

As a law term or concept, it should have the same meaning in the legal documents and the national law system, which means the definition of a certain word should remain consistent. But in practice, some legal terms show different expressions, if not meanings, in different legal documents, which will affect the unification and accordance of the country’s entire law system. As in the concept of a “close relative” leads to different understandings from the current law principles. In Article 12 of the Opinions of the Supreme People’s Court on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People’s Republic of China (For Trial Implementation): (12) The close relatives as prescribed in the General Principles of the Civil Law shall include: spouse, parents, children, brothers and sisters, paternal or maternal grandparent, grandchildren, and maternal grandchildren (Wray, 2002). On the other hand, according to Article 11 of Administrative Procedure Law, a close relative includes spouses, parents, offspring, siblings, grandparents on both sides, grandchildren and any other relative bonded with fostering or supporting relationship.

“Definition Clause” Contradicts or Conflicts the Usual Setting Among Nations

With the frequent intercultural communications, laws and regulations should integrate among nations. One important point here is that understanding towards “legal terms “should reach a consensus, which is the premise for cross-country law conversations (Zhu, 2009). If huge disagreements occur upon the understanding of legal terms or concepts, it is inevitable for disturbing the coordination and communication among different countries. For instance, every country has laws regarding Protecting Consumer Rights, but each country may have a different understanding of “consumer”. Even though our country’s *Law on the Protection of the Rights and Interests of Consumers* does not state clearly the meaning of “consumer”, from the perspective of legislation intentions, it mainly refers to “social members who buy or use products and receive services for an individual purpose.” That is to say, the purpose of his or her purchase is for personal or household needs, instead of selling, which is the core feature of a consumer.

Some Thoughts on the Standardized Setting of “Definition Clauses” of our Country

Set a Particular Chapter or Sector in the General Provisions for “Definition Clauses” of Legal Documents

Chinese law practice determines “definition clauses” in general, as well as separate or supplementary provisions, based on different circumstances. There may be good reasons for this, but this author personally thinks it is a bit confusing. “In foreign country’s legal practice cases, all the definitions of laws are normally located in the general provision.” In fact, this author studied various countries’ legal documents and noted, that it is a common rule for a lot of countries to put the “definition clauses “of the law at the general provision, or in the first chapter of the legal document (usually the content of the general provision). Such examples can be found in United States, Britain, Austria, Belgium, Denmark, Holland, Portugal and Argentina (Ma, 2010).

It is believed that our country can set all the “definition clauses” involved in legal texts in the general provision. If there are relatively less clauses, they can be set by the order of appearance or in a certain alphabetic order. If there are a large number of definition clauses, a separate section can be created to list all the definition clauses included in the legal documents.

A setting like this is more standardized for the following reasons. First, it is more convenient for readers of the law document to learn the basic legal terms and their meanings before they read the document, which suits people’s mindset and reading habits. Second, putting them together is easier for searching their uses and letting people get a basic idea of all the terms that are involved or clarified in the document. Third, it allows people who draft and legislate the law to arrange articles, in case there are many omissions on the explanation of the terms. And last, it is in accordance with the practice taken by many countries internationally (Miu, 2003).

Respect the Definition Rules and Ensure the Scientificity When Setting the “Definition Clauses”

“Definition clauses” in legal texts need to obey certain forms and rules:

1. No far-fetched definitions;
2. They do not include substantial contents;
3. Use either “refers to” or “include” instead of both phrases at the same time;
4. The word being defined shouldn’t appear in the definition;
5. Avoid using quoted definitions;
6. Do not use ambiguous wordings (Sarcevic, 1997).

In a word, the purpose of a definition is to clarify a concept. Therefore, explicit scientific language should be applied when defining a legal term or concept. Meanwhile, “one main feature of the law concepts is that legislators can set certain extensions or a boundary of the extension for the concept should be considered.”

Explanations of the Definition Clauses Should Remain Consistent in One Legal Text, as well as the Entire Legal System and Institutions

In a law text, as well as the entire law system and institution, legal terms should be standardized, normalized and unified. “The so-called legal term standardizing, refers to the actions that normalize and unify the language and definitions of a specific concept applied in the law field, which includes two main aspects. First, the standardizing of the expression of the term itself, which is the choice and naming of the term; secondly, the standardizing of the concept inferred by the term, which is the description of the definition.” With regard to the three different ranges of understanding the “close relative” in criminal laws, civil laws and administrative laws, legislation institutions should set an authoritative definition and unify the referred extension (Tiersma, 2001).

Respect the Usual Legislation Usages Among the Nations, Borrow the Experience and Absorb Reasonable Parts, and Improve the Determination of “Definition Clauses” in Our Country

In the era of globalization, integration of the economics have set new requirements for domestic legislation to develop them, and two legislation trends have emerged upon that change. One is the “domestication of globalization”, which means that “treaties and regulations of the national groups are adopted by the country and transform into laws that has domestic constraints”; the other is “globalization of the domestication”, which means that “laws or legal thoughts that are popular nationwide or region-wide transform into a national trend for some reason, and become popular in the country or region affected by them and even

nationwide.” In fact, legislation in different countries influence upon each other. “Chinese legislation happens in an era with open globalization, and should pay attention to be consistent with the global pace.” Therefore, our country’s legislation should respect the usual methods and practices of foreign countries, learn from and absorb the meaningful parts, whether in form or content, especially in the setting of internal and external boundaries of legal terms, to improve the setting of “definition clauses” in legal texts.

Conclusion

Legal texts are a specific writing type with systemic terminologies, patterns and contexts. Taking the stylistic features of legal texts into account, we could easily find that “definition clauses” play an important role. Therefore, four setting principles are mentioned in this study. They are as follows:

1. Set a particular chapter or sector in the general provisions for “definition clauses” of legal documents.
2. Respect the definition rules and ensure the scientificity when setting the definition clauses.
3. Explanations of the definition clauses should remain consistent in one legal text, as well as the entire legal system and institutions.
4. Respect the usual legislation usages among the nations. Borrow the experience and absorb reasonable parts, and improve the setting of “definition clauses” in our country.

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To Translate or To be Translated: A Comparative Study of Treaties Concluded in the Late Qing Dynasty*

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[Abstract] This paper is based on a comparative study of selected Sino-West treaties signed in the Late Qing Dynasty. It analyzes the wording discrepancy in different language versions, and explores the role that translators played during treaty conclusion and translation, with the aim to point out that Qing's perception of treaties and the Sino centric approach to international relations led to reliance on foreigners as translators at the cost of its own national interests.

[Keywords] Late Qing; treaties; wording discrepancy; Celestial Empire; Sino centric

Introduction

During the Late Qing (1840 - 1911) period, the Qing government signed a series of treaties with Western countries, to which Qing granted the “favored nation clause”, consented to the practice of extra-territoriality within her dominions, and agreed to pay vast sums of money as compensation and a range of other national humiliations that humbled Qing's sovereignty. These unequal treaties sacrificed the fundamental interests of the country for satisfying the avarice of Western countries, and their influence on modern Chinese society has become a frequent topic within legal and political studies (Li, 2011). In the meantime, the treaties signed in the Late Qing Dynasty have also aroused concern from translation studies, of which some authors have analyzed the language styles and characteristics of their sentence structures (Fan, 1992), some have concentrated on analyzing specific treaties, such as the Treaty of Nanking (Guo, 2003), and some explored the conflicts between traditional Chinese thinking and imported western ideas through case studies on translators like Wang Tao (Wang, 2011).

When a treaty is negotiated and concluded in more than one language, translation is especially important because if left uncontrolled it may lead to serious misunderstandings and even material differences between the language texts. By way of control, when the Treaty of Nanking had been concluded, each copy had a Chinese and English version bound together to prevent anybody from adding or subtracting pages. Nevertheless, there are still some inconsistencies between the two language versions, which will be analyzed in the following section.

The purpose of this essay is to examine the Late Qing Treaties from the perspective of translation, based on a comparative study of selected treaties concluded during this period; to explore the role that translators from both sides played in the establishment of these unequal treaties; and finally, analyze the underlying reasons behind the discrepancy wording between the different language versions.

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The Discrepancy between the Chinese and English Versions of Treaties

It is widely acknowledged that treaties are the main instrument of the development and expansion of modern European international law (Zhou, 1976). Since the 1840s, as Sino-Western relations evolved and deepened, a series of treaties such as the Treaty of Nanking (1842), The General Regulations for Trade and Tariff (1843), The Supplementary Treaty (1843), the Treaty of Wangxia (1844), the Treaty of Peking (1860) and the Treaty of Shimonoseki (1895) were concluded, through which the foreign nations gained many important benefits and advantages over the late Qing government.

However, if we had a word-for-word comparison, it would not be difficult to find in the Chinese texts, which Western countries and Western individuals provided, some inconsistencies and differences with the original English version, which can be categorized into three types.

In the first place, some commonly used neutral English words were translated in such a way that it would seem that a great tribute is given to the Late Qing Emperor. See Table 1.

Table 1. Examples in Treaty of Nanking

| Treaty and Article | English Text | Chinese Text | Chinese-English Translation |
|--------------------------------|--|---------------------|---|
| Treaty of Nanking, Article III | “His Majesty the Emperor of China cedes to Her Majesty the Queen of Great Britain the Island of Hong-Kong...” | 今大皇帝准将香港一岛给予大英国君主 | His Majesty the Emperor of China <i>bestows</i> Island of Hong-Kong to British Queen |
| Treaty of Nanking, Article V. | “His Imperial Majesty <i>agrees</i> that ...” | 大皇帝准以..... | His Majesty the Emperor of China <i>grants special privileges</i> to British Subjects |
| Treaty of Nanking, Article IX | “The Emperor of China agrees to punish and promulgate, under his Imperial sign manual and seal, a full and entire amnesty and act of indemnity...” | 大皇帝俯降谕旨，誉录天下，恩准全然免罪 | His Majesty the Emperor of China by an special decree <i>graciously forgiven</i> their offences |

In the above table, the neutral English term for “agree” is simply a normal expression in treaties and compacts, referring to an agreement reached by rulers from both countries. However, in the Chinese version the term is aggrandized to evoke a false sense that the late Qing Emperor is bestowing gifts to his inferiors. Indeed, trade with westerners had been traditionally considered as a favor bestowed by the Qing government. According to a report from Lin Zexu, who took the post of the Imperial Inspector Minister in Guangzhou and Guangxi in 1839 and worked on the banning of opium, it was the honor of westerners to proceed with trading with Chinese, and what’s more, it was the privilege granted by the Emperor of Qing (Li, 2011).

In the second place, there were ambiguities inherent to the English-Chinese translation, which were used by Western countries to aggressively interpret the texts in their favor. There were multiple violent conflicts around the issue of entering into port cities, arising from the different interpretation over “ports” under Article II, Treaty of Nanking (Qu, 2013). The English provision “...at the cities and towns of Canton, Amoy, Fu Chau, Ningbo and Shanghai” had been translated to “in the five sea ports of Canton, Amoy, Fu Chau, Ningbo and Shanghai” in the Chinese texts. The Chinese term for sea port, 港口, can be interpreted as either the city port or a port city, depending on the context. Clearly the Qing government understood the term as meaning the port area of the mentioned cities, while the English description of “cities and towns” has a far more general scope.

In the third place, there are additions and omissions in the translated texts. The Sino-France Convention of Peking in 1860 was the culmination of the Second Opium War. Article VI of its Chinese

texts provided that, "...The French missionaries shall have the right to rent or buy land, construct buildings as they wish." There is, though, no counterpart provision for it in the French version of the treaty to the effect that the translators, not by coincidence being French missionaries, took advantage of their position, and the lack of rudimentary foreign language skills of their hosts, to include a clause that contributed to legalizing the purchase of estates for the establishment of churches and to develop their missionary enterprise in China.

Another example of blatant additions and omissions involved the Angell Treaty of 1880. When Burlingame was appointed as Envoy Extraordinary and Minister Plenipotentiary to head the Chinese diplomatic mission to the United States, he had once been appointed to sign the so-called Burlingame Treaty to encourage Chinese immigration to develop the United States. However, the treaty was soon objected to by other politicians, and hence, President Rutherford B. Hayes authorized James Burrill Angell to renegotiate the treaty in 1880. According to this treaty signed on 17th, November, 1880, the US government kept the right to "amend or to suspend" Chinese immigration. While in the Chinese version, "suspended" was intentionally omitted to prevent disagreement with the Qing government. Soon, a series of Chinese Exclusion Acts were passed to forbid Chinese laborers to work in America (Cao, 2007).

The examination of discrepancies between the original texts and the translated versions suggests that during late Qing, the supposed neutral translations were not only partial in some cases, but could even be considered to be bold and aggressive editing of the original. Thus, it is called for to understand the person behind the translation, as well as to hypothesize their motives

The Role of Translators from Both Sides

The first problem to overcome in any inter-cultural exchange is the language barrier, which is especially true for a Sino-West exchange. During international communication, the lack of language skills of the late Qing government was fully exposed. While Western nations anxiously explored the Middle Kingdom with its abundance of wealth and mystery, they sought out chances to study Chinese, in stark comparison to the Qing government which did not take such measures to overcome the language barrier. Instead, the Qing court consolidated and strengthened their closed-door policies (Ji & Chen, 2007), eventually contributing to Qing's future isolation.

To the extent that the Qing government had a minimal language competence, it has been noted that "missionaries, and missionaries only, can undertake the role of translators between China and foreign countries" (Wang, 2004). This opinion reflects the fact that the Qing Government relied more on the missionaries to carry out translation instead of native translators.

Missionaries who knew Chinese did become the main force of dealing with Sino-West communication, such as Morrison, Peter Parker, Bridgman, George Tradseent Lay (李太郭), Samuel Wells Williams, William Martin, Walter Henry Medhurst, David Abeel, William Jones Boone (文惠廉) and Calvin Wilson Mateer (狄考文). Just as US envoy William Bradford Reed, who concluded the Treaty of Tianjin with late Qing in 1858 noted that "without [missionaries] being translators, we cannot deal with all these issues. Without their assistance, we cannot even read, write or understand one word, nothing could be done. But with them, all difficulties or obstacles are gone" (Dennett, 1941).

As for the Chinese, this was not the case that no one in the country understood the so-called "Barbarian language". Before the first Opium War, international trade was commonplace in the Guangzhou area and the usage of English grew there. A new industry emerged specializing in English translation and its practitioners being the *Tongshi* (通史) (Wang, 2011). The Opium Wars amplified the

need for foreign language talents, however because they were stigmatized early on with collusion, the *Tongshi* occupation was quickly viewed as being without prestige (Yang, 2014).

On some occasions, the *Tongshi* were even at serious risks. After participating in the treaty negotiation, they were conveniently used as scapegoats by the Qing government to cover for their own poor decisions and weaknesses (Ji & Chen, 2007). Bao Peng, the translator for Qi Shan, was one of such unfortunate cases. After Qing lost the Opium War, Bao Peng was treated as a traitor and was severely punished by the Emperor (Wang, 2011). Since then, during the negotiation of the Treaty of Nanking, the Treaty of Bogue, the Treaty of Wanghia, the Treaty of Tin-tsin and the Treaty of Peking, the representatives of Qing gave up their right to involve their own *Tongshi* for negotiations, and used foreign translators to represent them at the negotiation table, as well as for their translation work.

However, despite the Late Qing belief that it was the “Celestial Empire” and that the Chinese language was superior over European languages – even to go as far as to label them as “barbarian languages”, “gibberish” and “ghost talk” (Wang, 2012), it became apparent that with the growing number of unequal treaties, the need for linguistic talents was more and more urgent. Thus, foreigners who claimed to be familiar with foreign issues, capable of speaking Chinese and other languages were usually entitled to the chance to take part in major diplomatic affairs directly, and they began to dominate the Late Qing’s diplomatic stage, and controlled almost every treaty’s negotiation and translation. For instance, the article drafting in the Treaty of Nanking was undertaken by the British, while the Chinese version was translated from English by Morison. What Qi Ying, who was the chief representative for Qing court and other ministers did was simply copy the draft and submit it to the Emperor. In other words, the Qing Government had handed over the entire role of translation to its opponent, and thus, completely lost its diplomatic initiative.

Another typical case was Sir Robert Hart (1835-1911), once appointed the Inspector General of Imperial Customs by the Late Qing government (1863-1908) and a key figure in China’s 19th century history. He participated in negotiations of several significant cases such as the Yunnan Case, the Zhenjiang Case and the Myanmar issue between Qing and the UK, and hence, played a crucial role in China’s diplomatic relations with the West. Hart even recommended and supervised his brother, James Henry Hart, to be the translator for Qing during discussions concerning the Tibet and India Treaty of 1890. James Henry Hart always followed Robert’s instructions: to clarify the bottom line of both sides and to uncover their intentions, then to submit Robert’s drafted proposals while ensuring that any differences in interpretation of translations favored the interests of Robert Hart (Jiang & Zhang, 2013).

Differences in the Guidelines

The “multi-functional” roles of translators resulted in the imbalanced situation that negotiations over treaties were controlled by foreigners in China. When disputes inevitably occurred, the Western countries relied on interpreting the texts in their favor. Yet, are the translators themselves the final deciding factor on the discrepancy in treaties?

The answer is negative as the Qing government failed to understand the significance of these treaties. This author believes that beyond the translators, the world view of Qing and the perception of the treaties were the underlying reasons leading to the Qing court lacking the capability to offer their own Chinese version of the treaties and having to rely on third parties, or even their rivals from the opposite side of the negotiating table, to provide drafts.

As noted above, the Late Qing government stuck to its Celestial Empire position, believing that everything and everyone is ‘under’ heaven, which crystalized its world view that “Central China is superior to China’s periphery”. Any requirements to visit the Emperor and establish diplomatic relations with Qing was an act of subordination.

Such a view may be attributed to Confucius philosophy. On the Confucian view of international relations, the world is a whole and there is a hierarchical system of constituents with China as its center. Also, Chinese had developed a superiority complex, in particular in its culture, over the neighboring peoples, who were labeled as Yi (夷), or “barbarians”. Such notions had a direct impact on Sino-foreign exchange. The tribute system gradually formed, with formalities meant to reflect and reinforce a distinctly Confucian and hierarchical order (DeLisele, 2000). In the Qing dynasty, countries that wanted to establish relations with China had to respect a set of rules and etiquette, and pay homage to the Emperor. Thus, in the 17th and 18th centuries, westerners were all regarded as barbarians, and anything related with the West were systematically dubbed as “barbarian”, such as barbarian thieves, barbarian ladies, and barbarian customs, etc. (Ji & Chen, 2007).

This mentality remained unchanged in the 19th century, even when Qing was defeated in the first Opium War and forced to pay reparations even though the self-righteous idea of being ‘Celestial’ was not surrendered. In the eyes of the Qing court and its officials who conducted diplomacy along the lines of Confucius, the concession of territory, extortion and damage to its jurisdiction were all of lesser importance compared to stopping the defiance of the “barbarians”. They believed it was imperative to take measures to secure the pride and self-esteem of the Celestial Empire, to prevent foreign diplomatic agents to visit Beijing, and to make the barbarians show reverence to the Qing Emperor (Li, 2011). Therefore, the overriding priority in concluding treaties was to maintain the position of superiority, however symbolic, over the Barbarians.

No wonder that, despite facing a huge indignity during negotiation, the Late Qing representatives of the Nanking Treaty made no objections and instead reported to the Emperor that the treaty was a prized gift to remove the barbarians’ military threat at such a small price because both the emperor and ministers from Qing focused more on finishing the negotiations as quickly as possible, and getting the foreign nations out of China. In 1860, Emperor Xian Feng wrote in the Edict, “Recently the barbarian bid defiance to Qing and caused disturbance to the capital. Although there are related treaties, the implementation is not easy. I am worried for the suffering of the people, so I decided to look at the big picture and agreed to sign the treaty. [...] Ministers serving at borders should manage to comfort and thus, place control on these barbarians within the treaty systems” (Jia, 1979). In this context, entering into treaties was simply temporarily expedient, while the choice of language used was often neglected.

Nevertheless, its polar opposite, the western nations, placed great attention on the issue of language (Ji & Chen, 2007). As early as 1840, Lord Palmerston ordered in a confidential letter to Charles and George Elliot to “make sure to adhere to English forms of expression; and in order to prevent any disputes in the future, clauses related to the interpretation of the Treaty must be according to the English version of treaty” (Morse, 2006). After the second Opium War, Palmerston gave instructions to Elgin “in order to prevent any misunderstanding, issues over treaty interpretation must be based on the English version only.” UK, being one of the leading powers and experienced in the rules of engagement, was exploiting every opportunity to expand her interests. Their value on the issue of language during creating treaties finally brought Late Qing a great indignation and other humiliating concessions that humbled China’s spirit.

Conclusion

China was confronted with the Western concept of international treaties under unfavorable historical conditions. In the 19th century, treaties were used by the Western powers as an instrument to force China to open up and trade with other countries (Heuser, 2002). As mentioned above, during the negotiation and conclusion of treaties, because of the lack of qualified and competent local translators, the translation of the treaties fell on foreign translators competent in the Chinese language and sometimes even appointed by the Qing court. Every time the foreign side proposed a draft concerning rights and obligations, the representatives of Qing could do nothing but a *pro forma* discussion of the wording.

The exchange of reciprocal terms in treaties is, nowadays, an important instrument of international diplomacy. The absence of reciprocity takes away all reasonable motives and common ground on which nations negotiate and conclude treaties. It is unthinkable that a nation concludes treaties merely for the purpose of conferring privileges and benefits onto others, especially relying on foreign countries to carry out the negotiation and translation of detailed provisions. However, it was the late Qing's perception of treaties and world view that led to the loss of its language rights during intra-state negotiations. It was late Qing's rigid adherence to its Celestial Empire dream and desperate preservation of its pride, in stark contrast with the western world-view driven by positive law, mercantilism and technocratic superiority, that contributed to the loss of initiative in international relations in the first half of the 20th century.

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Distrust of Law: Uncertainty in Montaigne's *Essays*

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[Abstract] *Michel de Montaigne's contact with law for thirteen years impressed him with more doubt than trust, and more controversy than authority. With a close reading of his well-known "Essays (Montaigne, trans., 1877), the following paper aims at identifying the bond between the uncertainty that is abundant in "Essays" and his growing distrust of law, with a focus on the controversial role of the judge, and the uncertainty of the ruling and testimony.*

[Keywords] *distrust of law; uncertainty; judge; ruling; testimony*

Introduction

Michel de Montaigne (1533-1592)'s exposure to and practice of law (Tournon, 2005, p. 98) could be the sordid basis of his opinion on law. Thirteen years as the counselor (1557-70) at the Chambre des Enquêtes of the Parlement of Bordeaux (Langer, 2005, xvi) left him with more doubts than certainty and trust. Both his post and his mode of thinking put him in a position to question his practice of law. Law, in this sense, can refer to "legislative laws and legal documents formulated by authorities". Thus, in the domain of the licit, his practice of law chiefly aimed to ascertain the use of law in a strictly reasonable way and prevent the law from being misused through juridical subtleties (Tournon, 2005, p. 112). But the status quo of the law in sixteen-century France also increased the difficulty in his practice of law and aroused his growing mistrust. Law in the Renaissance is an area of controversy more so than an area of investigation (Tournon, 2005, p. 97). The case in France was even more confusing in view of the amount of law in practice. As the most significant figure in the sixteen-century revival of ancient skepticism, de Montaigne knew how to apply it to the lives of men in the rapidly changing world of France and succeeded in steering the Renaissance skepticism. The *Essays* are typically known as the "classic and standard exposition of modern skeptical thought". The composing (1572-73) (Langer, 2005, xvii) may inevitably bear the mark of his reflections on the practice of law. Suspension of judgment is typical of de Montaigne's belief in uncertainty and philosophical element. The following essay aims at identifying the bond between the uncertainty that is abundant in *Essays* and de Montaigne's growing distrust of law, with a focus on the uncertainty of law, the role of the judge, and the uncertainty of testimony and ruling.

Mistrust in the Authority of Law

Above all, the status quo of the law in sixteen-century France greatly influenced his attitude toward law and aroused growing mistrust in the authority of the law. The place legal knowledge manages to find in the sixteenth century is uncertainty. With uncertain foundations, as well as obscurity and discontinuous articulations, the law failed to claim for itself a sacred authority and appeared to be an area of controversy (Tournon, 2005, pp. 97-98). One of the major hindrances to becoming a sacred authority would be the openness of law to interpretations. During the Renaissance, such openness did not make people clearer and more intelligent. On the contrary, it left plenty of ambiguous gaps for people to fill, generally and specifically. In the case of France, the law would be even more perplexing in view of the amount of laws

in practice (de Montaigne, 1877). De Montaigne ironically commented on the uncertainty of the law-making business deriving from the freedom and position designated to them, because “we have left so much to the opinions and decisions of our judges that there never was so full a liberty or so full a license” (de Montaigne, 1877). The justification of the applicability of law is further questioned when he asks: “[w]hat have our legislators gained by culling out a hundred thousand particular cases, and by applying to these a hundred thousand laws?” (de Montaigne, 1877). Moreover, he didn’t think very highly of those law-makers and even doubted their qualifications. “They are often made by fools, still oftener by men who, out of hatred to equality, fail in equity, but always by men, vain and irresolute authors. There is nothing so much, nor so grossly, nor so ordinarily faulty, as the laws” (de Montaigne, 1877). Therefore, both the authority in law-making and law application needs to be ascertained in a forceful way to regain the faith in law. But de Montaigne’s sarcastic tone in his search for certainty reveals his distrust in the promulgation of law: “the laws keep up their credit, not for being just, but because they are laws; ‘tis the mystic foundation of their authority; they have no other, and it well answers their purpose” (de Montaigne, 1877).

The shaky basis the law relies on arouses questions and doubts. If the law makers are not qualified or conscientious enough to fulfill their duties, their prejudice and incapability would impair the trustworthiness of the law. If the mistrust people have in law discredits its authority and the faith in the law-making business diminishes, there should have been some measures to change the law for the better. But de Montaigne dissuades us from such an attempt in the chapter, “Of Custom; We Should Not Easily Change a Law Received”. As he unequivocally points out that it is the conventions, accepted laws and customs which people admittedly and unanimously follow that contribute to the decisive part in the norms of conventional life. That’s the part which is the least likely to be changed. It applies to “received” laws, that are ratified by the practice and the assent of the civic body, following the model of customs, whatever their origin (Tournon, 2005, p. 100). The power of customs has been recognized since ancient times and de Montaigne just joins them in their recognition. In Diogenes Laertius (c. 300 CE)’s *Life of Plato*, Plato pinpointed that custom is no little thing (Diogenes Laertius, trans, 1972). In Cicero’s words, the power of custom is very great. For Pindar, it’s the ruler of the world (de Montaigne, 1877). And de Montaigne even likens it to a violent and treacherous schoolmistress (de Montaigne, 1877). As people are accustomed to where nature has planted them, the impact of the “schoolmistress” upon them would be strangely irresistible, either in making a judgment or changing beliefs. It’s more than manifest that the combination of customs and accepted laws would initiate change as a driving force. On the contrary, laws on the basis of customs would not be susceptible to change if the custom refuses to take the initiative to change (de Montaigne, 1877). If we trace the origin or the basis of the custom, it would be dissatisfying to find its weak foundation. What counts more is this confession of mistrust in the origin, foundation and even feasibility of custom would intensify the distrust for the authority and applicability of accepted laws.

The Role of the Judge

In addition to the uncertain basis of law, the application of the law to concrete cases would be diversified. In de Montaigne’s case, the magistrate is supposed to take the lead in deciding what can be applied to the specific case and how to do it. But what he is supposed to do might contradict and differ from what he actually could do. That’s why de Montaigne’s notion of the role of the magistrate puts him in a dilemma.

For one thing, the magistrate is endowed with authority and decisiveness. Even more significant is his concept of the role of the counselor who represents his authority: he exercises a regulative function on

the “affairs of the city ... lend[ing] a shoulder to make them easy and light” (de Montaigne, 1958, iii. Chap. 10, p. 783), and works to build “a state that is in a healthy condition” (de Montaigne, 1958, i. Chap. 23, p. 89). It is up to him to make sure that the law is in place and in practice in a due and proper manner. As with the manner, the law should and can be adapted, and the judge may feel weakened and frustrated when the affairs of the city vary greatly. De Montaigne ironically commented on the characteristic of French laws: their irregularity and deformity, lending, in some way, a helping hand to the disorder and corruption that manifested in their dispensation and execution (de Montaigne, 1877). Thus, the application of law to the affairs remains tricky and there may end up with abuses of law. The law itself remains open to interpretations and is far from definite. How to apply the law to a specific case requires a lot of deliberation and extension which might not be fairly relevant and just.

The application of laws “by some wrested, biased, and forced interpretation” (de Montaigne, 1877) requests that the judges make great effort to identify the connection between the case and the law, enlarge the scope of its applicability and correlate the specialty with generality. They may wind up by exercising their authority in a flexible and loose manner as “[r]esemblance does not so much make one as difference makes another. Nature has obliged herself to make nothing other that was not unlike” (de Montaigne, 1877). The diversity and complicity of the affairs of the city may compel the judges to multiply distinction and unusual likenesses. In order to reach an agreement on the ruling, the judge is bound to go through the procedures on the basis of an incisive adaptation of the law. But the flexibility and looseness, possibly in the form of judicial subtleties, would put the application of law at risk by going to extremes and being led astray, as well as pose a potential threat to the judgments on equity, and the ruling itself may not be well-grounded.

The Uncertainty of Judgment

Moreover, such a judgment is not subject to any changes despite its imperfections. The ruling which proceeds from the application of law must be assertive and final. But “the discussion and stirring up of the diverse and contrary reasonings which the matter of the law allows” (de Montaigne, 1958, ii. Chap. 12, p. 378) would challenge these assertions and call forth responses. Assertions and contrary reasonings stand opposite to each other, but both of them might be typical of de Montaigne in view of deciding and meditating. Assertions stand for the end result of the obligation to judge. In order to reach an agreed judgment, the judge should overcome the difficulty of possible doubts and divergence and aim at a verdict regardless of disagreement. He “cannot simply reserve his opinion, since he would be guilty of a ‘denial of justice’” (Tournon, 2005, p. 106).

But prior to the judgment, there would be tremendous pain and torture in the face of de Montaigne when he was obliged to deliberate, meditate and eventually decide. De Montaigne would be willing to keep the skeptical suspension of judgment as long as possible if allowed. This quest for certain truth is in great resemblance to an endless circle starting from nowhere. “When some new doctrine is offered to us, we have great occasion to distrust it, and to consider that before it was produced its opposite was in vogue...a third invention that will likewise smash the second” (de Montaigne, 1958, ii, Chap. 12, p. 429). In other words, the attainability of truth may not be the aim but “to make more room for faith; neither disbelieving nor setting up any doctrine against the common observances” (de Montaigne, 1958, ii. Chap. 12, p. 375). This exactly echoes with de Montaigne’s “desired mode of speech, best expressed by the interrogative rather than the affirmative” (Montaigne, 1958, ii, Chap. 12, p. 393). Extensive discussion of forming the judgment in *Essays* (Walton, 1988, p. 89) indicates Montaigne’s preference in

this skeptical mode of speaking and thinking. What always lingers in de Montaigne's mind would be the question, "What do I know?" Contradictorily, what is required of a ruling would put an end to such a quest. In the endless pursuit of truth, the definiteness of a ruling actually is intertwined with a sense of uncertainty in decision-making.

Pronouncements made by the magistrates are meant to be irreversible with any objection prohibited, though the magistrate himself might not find this verdict 100% agreeable and verifiable. "Judicial sentences form the ultimate point of dogmatic and decisive speaking" (de Montaigne, 1958, Chap. 12, p. 377). This explains why the existing uncertainty of the ruling is what legal practice at court attempts to remove. "We who deprive our judgment of the right to make [decrees] look mildly on opinions different from ours; and if we do not lend them our judgment, we easily lend them our ears" (de Montaigne, 1958, iii, Chap. 8, p. 704).

But in reality, justice achieved under this circumstance may incur abuses and fail to ascertain true fairness. "Many abuses are engendered in the world... by our being taught to be afraid of professing our ignorance, and our being bound to accept everything that we cannot refute" (de Montaigne, 1958, iii, Chap. 11, p. 788). The uncertain elements concerning the judgment are intentionally ignored and removed in order to reach an agreement. That's why "the injustices, cruelties, and murders committed in the name of the law, by its 'abuses' are perfectly within its regulations, in sixteenth-century France" (Tournon, 2005, p. 107). Inability to face one's ignorance contradicts what de Montaigne has in his mind, as he would not be afraid of recognizing his ignorance. We can find evidence in his favored expressions. "I like these words which soften and moderate the rashness of our propositions: 'perhaps,' 'to some extent,' 'some,' 'they say,' 'I think,' and 'the like'" (de Montaigne, 1958, iii, Chap. 11, p. 788).

While neither his post, nor his responsibility would grant him enough freedom and autonomy to remain doubtful and skeptical, his personality and mode of thinking would never surrender to certainty and conclusiveness. Thus, there aroused the diverse and contrary reasoning. The abundance of dogmatic ways in both words and acts at court disheartened him in determining the lives of people and intensified his reluctance to judge. This mode of thinking at court gradually turned out to be contrary to the way of thinking in his mind. And he even wrote, "[j]udgment holds in me a magisterial seat...it leaves my appetites to take their own course, hatred and friendship, nay, even that I bear to myself, without change or corruption" (de Montaigne, 1877). Neither can he refuse to pronounce a verdict upon the request of his job, nor will he reach a definite conclusion and judgement upon second thought. The characteristic of the role of the judge, the requirement of the court and the shortcomings of the law may have worked together to urge de Montaigne to renounce the "right to pass judgment". Such renunciation may be taken as a sign of his defiance of authority because it's disappointing to see authority itself overriding all possibility, setting limitations on interpretations, and depriving the freedom to indulge in meditations.

The Uncertainty of Testimony

The difficulty that originates from the shaky basis of law and the uncertainty of the role of the judge and ruling may be doubled when the testimony is taken into view to bring everything into justice. What the judge relies on most would be the testimony. But the problem lies in the credibility of the testimony as well as to what extent it can be trusted. "Proof by witness" serves as the basis for the judgment to be made. But sometimes it's risky and precarious to simply rely on the written record. It has been pointed out that the supreme court of appeals must be "limited to the texts and facts of the case since the persons'

subject to judgment did not appear before the court: trials were judged ‘by writing’, and the counselors had at their disposal only elements that had been in the record” (Tournon, 2005, p. 105).

Thus, the difficulty and risk that are likely to emerge in their deliberation absolutely increases as neither face-to-face interrogations, nor one-on-one interactions would help them to ascertain their judgment and inference. De Montaigne’s favor in interrogation and interaction may be conducive to his quest for certainty and his formation of judgment. Without it, there would be no better way to approach the truth. That’s why most of the presumption must be based on the precondition that testimony is all but lies. By this means, the practice of law can be justified. However, problems can never be few. The proof by witnesses can pose a threat or even a crisis if the reliability of the proof remains to be verified.

De Montaigne straightforwardly spoke of the issue of sincerity in the chapter, “Of Giving the Lie”. He claimed its sincerity as the only guarantee of the work, but knew that nothing could guarantee his sincerity, since a liar could say the same thing (Tournon, 2005, p. 103). What if the testimony given is everything but truth? As de Montaigne kept asking the question, “But whom shall we believe when he talks about himself, in so corrupt an age...?” (1958, ii, Chap. 18, p. 505). The doubt in what people say in general is the very reason why de Montaigne indulged in the suspension of judgment. The ability and willingness to say the truth are things to improve but it’s more than that. It opened the door for de Montaigne to boundlessly and formlessly imagine. Furthermore, de Montaigne prefers to regard them as “fabulous testimonies, provided they are possible, serve like true one... if I knew how to attain it, would be to talk about what is possible to happen” (de Montaigne, 1958, i, Chap. 21, p. 75).

As a result, mistrust in testimony offered him a possible escape from the literal meaning of the text. Thus, he usually reflected on the useful matter to explore the possibility and constantly search for truthful elements. “We must not judge what is possible and what is not, according to what is credible and incredible to our sense...to balk at believing about others what they themselves could not do – or would not do” (de Montaigne, 1958, ii, Chap. 32, p. 548).

But it’s worth pointing out that Montaigne was well aware of the opportunity and risks he might encounter as he was totally absorbed in the “this openness to the possibility of the unpredictable chance for freedom” (Hartle, 2005, p. 196). That’s why he knew how to set limits to the scope of his search, neither too large nor too small, to shun both the falsehood and triviality. In the epilogue to his chapter, “On the Power of the Imagination,” he declared, “[I]n the examples that I bring in here ... I have forbidden myself to dare to alter even the slightest and most inconsequential circumstances. My conscience does not falsify one iota; my knowledge, I don’t know” (de Montaigne, 1958, i, Chap. 21, p. 76). Despite the confusing effort to ratify the definitiveness and verifiability of testimony, de Montaigne enjoyed considering both what had been offered and what could be reasoned, without being forced to choose or abandon.

To sum up, the uncertainty of testimony meant not only a challenge, but also an opportunity for de Montaigne. Firstly, it compelled him to doubt the trustworthiness of what people said, question the credibility of people, and eventually deepen his mistrust in the practice of law in general. On the other hand, it exactly corresponded to his featured way of thinking, as well as finding its echo in the suspension of judgment. “The skeptical act with respect to human testimony is the initial suspension of the judgment... It is an act of openness to the possible, to the unfamiliar... De Montaigne’s skepticism...but rather an openness to what is possible and an overcoming of presumption at the deepest level” (Hartle, 2005, p. 193).

Conclusion

De Montaigne's skeptical way of thinking and reasoning is what *Essays* can forcefully impress upon readers. It also presents the vivid image of de Montaigne's inner self which is bound to recognize the existing uncertainty in the practice of law. Factually, his long-term and constant contact with law, as the one to judge, required him to reserve some of his beliefs and even occasionally discard his suspension of judgment. It is his first-hand experience at court that enabled him to witness the shaky basis of law, the controversial role of the judge, as well as the questionable ruling and testimony. Thus, in an all-round manner, he formed his idea of law with growing and indelible distrust.

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Applying of Listening Strategies in English as a Foreign Language

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[Abstract] Learning strategies determines EFL effect. Teaching and applying the learning strategy training into English listening teaching has practical significance. This paper presents the specific application of learning strategies in English listening learning, which provides useful attempt and exploration in the training of students' English listening learning strategy.

[Keywords] autonomous learning; English listening; learning strategies

Introduction

Due to the importance of listening comprehension among the four basic language acquisition skills in EFL (English as a Foreign Language), considerable attention has been given to the learning strategies to improve listeners' proficiency since the early 1970s. A language learning strategy determines much of the success of language learning. Learning strategy can make foreign language learners devote themselves to cognitive activities consciously, help learners to regulate self-expressions in language learning, help and promote learners to solve the problems encountered in the process of language learning. Language learning strategy leads learners to adjust their output constantly according to the specific circumstances to obtain the capability of language handling effectively. It can also help learners choose appropriate methods of foreign language learning and gain feedback from the learning outcomes based on knowing their language expression abilities, related knowledge, and personalities in order to evaluate the effectiveness of the methods.

Literature Review

Krashen (1981), as a representative of authors studying this topic, considers listening as a tool for understanding and a key factor in facilitating language learning; he believes that comprehensible input plays an important role in the process of second language acquisition. According to Stern and Rubin (1975), a good language learner may be successful precisely because of using effective strategies for particular tasks and not because he has an ear for languages. According to Weinstein and Mayer (1986), learning strategies take learning advancement as a learner's goal or intention. Dickinson (1987) believed that learning strategies play important roles in the improvement of learner autonomy because the use or adoption of appropriate strategies allows students take responsible for their own achievements. O'Malley & Chamot (1990) conducted a series of experiments, and the results showed that listening strategy training could enhance a learner's learning performance.

In China, many studies have been conducted on language learning strategies, and most studies were focused on changes in strategy beliefs and strategy use (Wen, 2004). From summing up successful experiences and failures, and adjusting our learning behaviors in a timely manner, we can make ourselves become real masters of learning. The training of learning strategies are helpful for students' second language acquisition, especially for those who have poor learning abilities (Dang, 2014).

Classification of Learning Strategies

The classification of language learning strategies is the framework for the classification of listening learning strategies. According to the Cognitive Psychology Theory (O'Malley & Chamot, 1990), the learning strategies can be divided into three categories – metacognitive strategies, cognitive strategies, and social/affective strategies. We usually use metacognitive strategies in the process of evaluating, managing, and monitoring cognitive strategies, and use cognitive strategies in language learning activities. Using social/affective strategies can have more opportunities in contact with the language. O'Malley & Chamot believed that metacognitive strategies are higher than the other two categories in specific learning. Through empirical research and a lot of systematic and representative research, O'Malley & Chamot's classification of learning strategies has been widely approved by most scholars. This paper intends to carry on the classification research on listening learning strategies in accordance with O'Malley & Chamot's method.

Classification of Metacognitive Strategies

The self-management strategy refers to the method where learners make their plan, arrange their time reasonably, choose suitable listening materials, and determine their method of listening training in their daily studies, in order to reduce the blindness of listening learning and improve learning quality. After listening practice, the learners would test their listening comprehension abilities and the use of listening strategies, in order to understand their own advantages and disadvantages, in order to adjust their learning plans and improve their competence in listening comprehension. This strategy is the self-evaluation strategy.

In the process of listening, learners extrapolate the contents of the article with the development of listening content to monitor their use of listening strategies properly or not, namely a self-monitoring strategy. Advanced preparation strategy indicates that the learners preview new words and the cultural background of the listening material before listening in order to help them grasp the main meaning of article overall. A directed attention strategy refers to one that before listening, the learners pay attention to the task; in the process of listening, the learners focus on information that is relevant to the listening task so they can accurately understand the listening material and finish the task.

Specifically Applying Metacognitive Strategies to English Listening Learning

The application of metacognitive strategies in listening comprehension includes the following three stages: pre-listening, listening and post-listening. These three stages can obtain the necessary information of correct listening comprehension through mental activities, and meanwhile, can facilitate the acquisition of metacognitive strategies in planning, monitoring and evaluation.

Preparation and Implementation of Pre-Listening Management Strategy

The pre-listening monitoring cognitive strategy is the strategy that learners use before beginning listening activities, preparing for the listening stage. Listening comprehension converts sound into meaningful signals in the brain, and is a process where the listeners use their phonological, semantic and syntactic knowledge to actively participate in the process of "information reconstruction". In the listening process, a listener has to use all kinds of language and non-language knowledge to actively filter, recombine, code and store the acoustic information. The learners should set their learning goals according to their actual situations. Those students who have poor English should aim to easily distinguish confusing words and phonemes, and master the pronunciation skills, including intonation, stresses, weak reading, and

unreleased-stops, etc. For those competent learners, they can listen to BBC, VOA, and CRI, etc., independently. In addition, they should pay attention to the combination of intensive and extensive listening, and obtain the language knowledge through learning. Empirical studies have proven that it greatly improves knowledge and comprehension by teaching and learning some background knowledge. For capable learners, they aim to master the cultural background, customs and habits of the target language by reading many English newspapers and magazines.

Design and Implementation of Listening Monitoring Cognitive Strategy

The listening monitoring cognitive strategy requires instructors/mentors to monitor the process of listening during the learning activities. During the cognitive activities, this strategy conducts the ongoing cognitive activities as the conscious object, constantly using active and conscious monitoring. Whether the learning strategies are appropriate, whether they understand the learning content, whether they are focused and whether they grasp the main idea are top priorities for listening comprehension. The monitoring strategies are applicable for all these facets. In the monitoring stage, at first, the learners should understand that the attention should be highly concentrated on the listening process. There are two aspects: the first is paying their whole attention to the listening materials, and the second is selecting certain information on purpose. In the process of listening, if learners find themselves stopping to think or becoming too entangled in a word when they are listening to the materials, they should resolutely adjust their attention to keep up with the idea of the materials. In addition, the learners should also learn to grasp the cohesion and coherence words, pay close attention to the discourse markers, understand the discourse process and better understand the central idea by focusing on the cohesion methods in the discourse. Self-questioning is the main issue of the monitoring strategy in listening learning, from which the learners can judge their answers and use effective strategies to deal with the problems in the process of listening comprehension through multi-angle analysis and reasoning.

Design and Implementation of Post-Listening Evaluation Strategy

One of the cores of metacognitive strategies is that the learners conduct self-reflection and self-evaluation of their cognitive activities. Only the learners that successfully manage the whole process of their language learning, timely reflect on their learning progress and strategy effect, and make adjustments in time when problems appear can become successful learners who grasp the initiative in learning. The post-listening strategy means that the students evaluate their strategies used in their listening activities. Evaluation can help students find their weak points and problems in time during their listening process. If we are accustomed to depending on external feedback to evaluate our learning, evaluating the effectiveness of a certain learning strategy or the achievement of certain learning stage, our behavior can lead to blindness and passivity of monitoring. After a learning stage, we should summarize which strategies are successful, which strategies are more difficult to master and need more training, which strategies need to be improved and how to improve them. We can also organize group discussions and simulate real communication scenarios through a variety of ways to mutually exchange successful experiences, evaluate and summarize the strategies used by the learners, and provide answers to the problems encountered in the learning process.

Conclusion

The Department of Higher Education published and executed College English Curriculum Requirements, and it became the main basis of carrying out teaching and learning at the Chinese university and college

levels. College English Curriculum Requirements definitely states that the goal of College English Teaching is to train students' abilities, especially their listening and speaking abilities, so that they can have effective communication in study and work. Students should strengthen their autonomic learning abilities and improve their cultural qualities so that they can meet the needs of Chinese development and international exchanges. Nowadays, English teaching should transform from being teacher-oriented into becoming student-oriented, and change from teaching language knowledge and ability only into training the students' abilities in using the language and autonomic learning. It is very necessary to carry out the training of strategies in English listening practice.

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Discourse Analysis in Civil Execution Procedure: A View from a Static and Dynamic Context

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[Abstract] The communication problems of the executive officers, the creditors and the debtors in civil execution procedures are analyzed. This paper is based on the view of static and dynamic context. The purpose of communication in a civil execution procedure is to realize debt or to facilitate understanding. The civil execution procedure is the static context of the communication, and it presets the context for all participants. In order to realize the communicative purpose, the executor complements the existing context in expression and reasoning. [Keywords] civil execution procedure; the purpose of communication; context; expression; reasoning

Introduction

As a formal legal system, a civil execution procedure helps to achieve the content of the legal instruments and ultimately resolves the civil disputes through the operation or the threat of the operation of mandatory statutory measures. In China, the civil execution procedure is presided by the internal mechanism of the people's courts, such as the executive board, while the staff who actually implement the case are the executive officers, or executors. The party who has rights is called the executive creditor, or creditor, and the other party who bears the obligations is called the executive debtor, or debtor, in the procedure (Tan, 2010, p. 6). In one sense, a civil execution procedure is a process of communication and interaction of the executor, the creditor and the debtor in a legal context.

In the practice of a civil execution, there are many difficulties and crises in the process of communication and negotiation. Numerous executive cases are not really completely fulfilled. For instance, 20%-30% of the cases have no property, hence the "difficult to execute" problem is serious. Simultaneously, an executive officer is also facing questions such as, "What have you been doing? Why haven't you distributed the money that the people's court awarded to me seven years ago?" The executor is often challenged by creditors. For most conscientious executors performing their duties, this question is the consequence of a lack of communication. Therefore, effective communication is a way to facilitate execution and avoid conflicts among the subjects in a civil execution procedure.

Communication is a process in which people share information, ideas and feelings, not only including verbal language and written language, but also containing body language, personal habits, and material environment (Hybles, & Weaver, 2005, p. 6). In order to achieve the best results, people must work hard to eliminate the negative influence of external noise, passive beliefs, emotions and prejudice. People send and receive information containing ideas and feelings in a certain context, which is both dynamic and static. In specific communication, the keynote and the content of the interaction may have inherent consistency and continuity from the beginning of the discourse to the end. On the other hand, context is dynamic. In the entire process of communication, the speaker expresses his thoughts and feelings in a certain way, and tries to construct his own cognitive context. The context is created by the speaker and the recipient (Liu, 1987, p. 59). The communicators are restricted by the context, thus, the

speaker should be related to a certain context. At the same time, it is the target of the communicators to construct a favorable context through manipulating contextual elements.

The Civil Execution Procedure – The Static Context of the Communicators

In terms of interpersonal relationships, people often behave with either competition or cooperation (Yang, 2010, p. 59). In the entire civil execution process, the executor, the creditor, and the debtor are also in competing and cooperating states. The implementation of the civil execution is not absolutely compulsory without considering the consequences. On the contrary, it is kind of compulsory on the basis of the common development of all parties, both the creditor and the debtor. Based on the successful realization of the creditors' rights, rather than the purpose of revenge or punishment, sometimes the creditor and the debtor also exist in a harmonious relationship, and hence, the creditor will not strongly urge to take measures probably leading to the bankruptcy of the debtor. After entering the procedure, the executor and the creditor have a common goal, which is to ensure the effective implementation of referee instruments. In some ways, the executive officer and the creditors are in a cooperative state as well, such as confirming the time and the method of the implementation of the obligations under the consideration of the normal operation of the debtor.

Effective legal instruments only have determined the parties' claims and liabilities. It is the civil execution that turns the draft rights into realistic and actual properties. It can be said that civil execution is a redistribution of property from the debtor to the creditor, so conflicts between the two parties are not hard to find. Meanwhile, the competition of the executor against the creditor or the debtor, respectively, is very obvious in the communication of the civil execution procedure. On the one hand, when the creditor's rights are found unable to be realized, the confrontation state of the creditor to the executive member will be very intense. The civil execution can only provide a possibility for the creditors to obtain debt repayment, but it cannot guarantee that such a result must occur because in a civil execution, whether or not the creditor's rights can be achieved are closely related to the economic performance ability of the debtor. On the other hand, the executive member is the person who directly deprives the debtor of his property and delivers it to the creditor, so the competition between the debtor and the executive in the civil execution procedure is the most straightforward. From this stance, Civil Procedure Law also grants the executive power to dispose of the debtor's property or his personal belongings.

The executive needs to achieve two objectives in the interaction of a civil execution: first, to facilitate the achievement of the effective judgments of the instrument; second, to promote the participants understanding of the civil execution. For one thing, when the contents are objectively and impossible to fulfill, the executive should get an understanding of the creditor by opening the campaigned activity, the course experienced and so on. For another thing, the executive needs an understanding of when he takes steps to find out, to control and dispose of the debtor's property. With the main aims of communication, the executive will make use of language and non-linguistic channels, and along the way he will continue to add any related factors to supplement the context.

While the case is filed and accepted, the executive body will send the creditor and the debtor some written notices to establish the fundamental premise context. For a creditor, when the court accepts his application, he will get the "Notification of Informing Executive Risk" and the "Notification of Providing Property Clues". He will be notified of the risk of not providing the whereabouts or clues of the debtor's property, the risks of the debtor's whereabouts remaining unknown, or the risk of the debtor without property or without enough property, etc. For example, the "Executive Document Style" (for Trial

Implementation) issued by the Supreme People's court states that the "Notification of Providing Property Clues" should specify: if the creditor cannot provide evidences or clues of the debtor's property status, and the court has not found the debtor's properties, the executive case may be suspended and the property rights and interests of the creditors may be temporarily unable to be achieved. For the debtor, the people's court will send him the "Notification of Mandatory Implementation" and the "Order of Reporting Property within a Deadline" to inform him of his obligations and the possible compulsory measures. According to "Several Provisions on the Publication of Information on the List of Dishonest People" issued by the Supreme People's court, the notice may have provisions as follows: where the debtor has the property strength to perform his obligation, but he takes the following measures to refuse, people's court shall include his name in the list of dishonest debtors: (1) to forge evidence, or to use violence, threats and other methods to prevent and resist execution; (2) to evade the execution through false litigation, false arbitration or to conceal or transfer property; (3) in violation of the property report system.

In nature, the executive body has already established the context beforehand with the notices on paper. The preset context is static. "The static understanding of the context has two characteristics: (1) the contextual elements are a group of individuals prior to the process of communication; (2) the context has two functions: interpretation and restriction. The function of interpretation is that the context can be used to explain the meaning of the language which cannot be explained by traditional semantics; the restriction function refers to the boundaries of context on the communication between the two parties in the use of language" (He & Jiang, 1997, p. 16). The basic context of the civil execution is the same in all cases. This rule based on public power is a common cognitive context, which is not to be questioned or argued, and it puts a constraint on the words and actions of the communication parties. The executive member constructs the context for the realization of the purpose of communication by a conscious manipulation of the common knowledge.

In a communication of the civil execution procedure capable of achieving the goal, the executor should control the overall situation and guide the entire process. The leadership of the communication, first rooted in the law, has to maintain its continuation and the authority of the program, and it is based on services. Specific to the case of communication, the role of the executive often requires individual performance, that is, according to the expectations of the society, especially the expectations of the parties, with their own subjective abilities, the executor adapts to the actual needs of the operation. The executive, as a leader, is based on the service of the parties, rather than simply managing and controlling the followers. As a type of service leader, the execution officer generally has the following characteristics: has the idea of justice, self-awareness and the consciousness of the whole; is good at listening to the sender's expressed or implied information; displays an effort to understand and grasp the thoughts and feelings of others; uses persuasion to convince others in decision-making; predicts results that may arise in the future by forethought of the past, present and future. All these characteristics are found through communication among the participants.

Discourse Analysis of the Executor and the Creditor-Focus on Ostension

In ostensive-inferential communication, from the perspective of the speaker communication, is a process of expressing or implying, and the speaker expresses his informative intention and communicative intention; from the perspective of the listener, communication is a reasoning process, and the listener deduces the speaker's intention from his explicit information (Sperber & Wilson, 2001, pp. 163-164). In a

dynamic context, the executive makes use of a variety of available means, which are easy to be accepted by the other side, to deliver information conforming to intentions. The executive will exert himself in listening and looking at other's expressions, and provoke all of his knowledge and skills to carry out reasoning. After the inference of the speaker's communicative intentions, the executive will apply some well-crafted phrases and sentences or non-verbal expressions to modify the cognitive context of the other. In a word, in the communication of a civil execution, the executive will continue to supplement the context in the exchange of information, which is based on the communicative purposes of the realization of the creditor's rights and the promotion of understanding. The executor will guide the creditor and debtor to modify their original cognitive context, and to shape a new one in accordance with communicative intentions. The following discussion is about the communication between the executor and the creditor, as well as the executor and the debtor.

It is suggested that the context is constructed in the process of communication by the joint efforts of two communication parties; the process of co-construction can be called contextualization; the process of contextualization is composed of a large variety of contextual cues and the participants' background knowledge; contextual hints are likely to be in the language, or in the body language, and the significance of the presentation is determined by the significance of the other hints appearing at the same time in the same cognitive framework or in different cognitive frames; background knowledge is composed of the overlapped and related cognitive frame of the two sides of the communication, which is restricted the understanding of the cue (Zhu, 2005, p. 33).

In the process of communication, the listener has a deliberate choice of the information and intention from the speaker. He only focuses on the information which is related to his own context. The listener understands the meaning of words by reasoning, and thus, changes his cognitive context. Therefore, the more closely the expression of the speaker is related to the background knowledge of the listener, the more easily the signal stimulation reaches to the listener, and thus, the best cognitive effect and communication efficiency can be achieved. The following is an example of an expression from the executor to the creditor.

This is a civil execution case this author has encountered in work in court. *A* has applied for the implementation of *B* because *A*'s son was killed by *B* and the court has ruled a civil compensation. *B* was sentenced to life imprisonment, and now he is in prison. *B*'s wife divorced him after the incident. Now *B*'s old father (69 years old) takes care of *B*'s mother (67 years old, in February this year, and paralyzed in bed due to a stroke) and *B*'s son (3 years old), by himself.

Creditor A (excited, angry): *Murderers pay back by death. You hand him to me and I will kill him. I don't need his money anymore.*

Executor, (holding *A*'s right elbow, lets *A* sit down) said, *Aunt, come, Nin* ("Nin" is the honorific title of you in Chinese) *sit. Aunt, we have been working together for five years. I am so happy to see Nin being in good health. Mao said, "The body is the capital of revolution"*.

Creditor A (brows expanded) said: *Yes, I am old, I must take care of the body. We are very concerned about this.*

Executor said: *Aunt, we have a lot of contact, and I know Nin are a reasonable man. Nin*

and B are in the same village, and Nin and his parents, Nin son and B were very good friends. Nin know his family.

Creditor A said: I am not unreasonable, but my son died. My daughter-in-law is in pain, both mentally and physically. My husband and I can't take care of the farmland, and all we can do are just doing housework and warding my grandson. I know his family is not as good as my home. "Feel for others", I don't want to make them. The accident is a drunken mess thing. ah. (A sighs and keeps silent).

In this case, first, the executive held *A*'s elbow, and help her to sit down. "Having the skills to get a body contact with each other will enhance the possibility of making the other party reached your wish" (Pease & Pease, 2007, p. 80). An elbow belongs to the category of public space, and people will not feel their privacy of space is violated while his elbow is being touched. For a 70-year-old female, the movement of supporting an elbow is not unexpected. In China, there is usually no physical contact between strangers, so just a contact is not to be refused, and will give each other a deep impression. An elbow contact will establish an instantaneous link between strangers and narrow the distance.

Second, the executive calls *Creditor A*, "aunt". In the context of civil execution, the identity of the two parties is fixed as the creditor and the executive, which is completely based on the environment of work. However, in this case, the executive has deliberately changed the scene of the conversation. "A scene is the space and the social framework of language communication. In the process of the dynamic verbal communication, the space frame and social framework can be organized or re-organized by a conscious speech act, which is conducive to the realization of the purpose" (He & Jiang, 1997, p. 18). In communication, the executive officer, by repeatedly calling her "aunt", and using the demonstrative pronoun "Nin", has given *Creditor A* a senior social role based on the age gap. Now, the cold working relationship between the executor and creditor has changed to a warm relationship with emotional color as nephew and aunt. In the scene, the creditor, as an elder, must speak the truth in their own identity, but not shooting out irony enantiosis with an angry emotion just like before.

In addition, the executive here made use of Mao Zedong's words. For those born in China in the 1940s, who have undergone the most difficult period of China, and also experienced the development of new China, the great leader Mao Zedong is respectable and worthy of worship. The executive also seized this key, and applied the words of Mao.

From *A*'s reflection, she has entered the social role constructed by the executive member. She admits she is happier than *B*'s family; at least she has daughter-in-law and grandson, and life still has hope; she also knows she must face the actual difficulties and dilemma for now. Through a series of expressions, the executor successfully adds the new information (*A* has a good body and a harmonious family) to reject the old information (she didn't get the money she deserved, and she is very tired).

In this case, facing the real situation that the debtor is in jail and no property is available for the implementation, the execution officer expresses himself with common background knowledge, discourse features with elders, and appropriate body language. The creditor accepted the ostensive stimulus, and gained a positive cognitive effect. Finally, the creditor expressed sympathy and understanding to the debtor and the work of the executive. Accordingly, in the case that the debtor has no property to be executed and the right cannot be successfully realized, the executive has been understood by the creditor, and the purpose of the communication in the civil execution has been realized.

Discourse Analysis of the Executor and the Debtor-Focus on Inference

When people follow the principle of cooperation, the meanings of the words are their literal meaning. However, when the expressions of the speaker negligently or deliberately violate the principle of cooperation, it will produce a conversational implication. According to whether to comply with the principle of cooperation, the conversational meaning can be divided into general conversational meaning and special conversational meaning (He & Ran, 2002, pp. 93-96). For the sake of evading the debt, the debtor's discourse in the execution communication is often a violation of the cooperative principle with a special session meaning.

In order to understand the speaker's explicit language, the listener needs to use inference to learn the speaker's literal meaning and intention of communication. The hearer in the reasoning process uses non-demonstrative reasoning, of which the essence is probability and chance. This is a typical reasoning process without middle term, so it cannot be described by highly formalized means. In the process of information inference and obtaining meaning, the listener will consciously or unconsciously use cognitive context to deduce.

"Cognitive context can be abstracted systematically into three derivation mechanisms in operation: the knowledge script, psychological schema, and social-psychological representation. In the process of usage, the language itself only activates the knowledge script. Then the knowledge script constitutes a mental schema according to the knowledge in the specific situation, and communicative criteria arrange in the standard of the social psychological representation in the light of the different cultural knowledge. At last, different inference conclusions came into being" (Xiong, 1996, p. 5). Reasoning activities of the executor can be found in the following case this author undertook, in which the debtor had an arrear of 6 million yuan.

***Debtor B** said: I really do not have the money, or I will give it to him. Please don't give me the compulsory measures. I promise, I will give him 1 million yuan before November 30th, and the rest 5 million yuan I will pay him next year.*

Executor said: This year you did not repay a penny. How can I trust your words? You know, for the people's failure to cooperate with our executive activity, we have legal power to take all kinds of measures to the person or to his property.

***Debtor B** (worried) said: I won't lie to you. We got through all formalities and my mine has been resumed since October 1st and the capacity of production is bigger than before.*

Executor said: You are a real man and you have a very good credit. I know you have adequate leeway. The creditor is indeed in economic difficulty and you two are long-term business partners. I advise that we all make a concession: you come up with 2 million yuan at the end of November; the rest 4 million yuan will be paid off before June 30th next year. Ok?

***Debtor B** (vacillatingly) said: Ok.*

In this case, the executive member doubled the amount of the first payment and advanced the time of paying the remaining funds for half a year on the basis of **Debtor B's** proposal. The executor got the communication intention beyond the Debtor's literal meaning after his deduction of the ostensive expression. Therefore, the executor proposed an acceptable payment plan.

First, the executor, in his communication, constantly strengthened the debtor's cognitive context. It is obvious that the debtor is afraid of the court taking coercive measures. The executor emphasized the compulsory measures against the person and his property, and implied if the debtor did not cooperate, he

may be subject to legal sanctions. The debtor, who tried to avoid the adverse consequences, chose to make a concession.

Second, the executor abides by the principles of face and politeness. Face is public self-image. The demand for face in communication is universal. No matter in what social culture, the listener wants to get other people's recognition, love and praise. Respect for other people's face, even when violating the principle of cooperation, can also tactfully achieve the desired results. The executive praised the debtor at the right time and reminded him of his cooperation with the creditor, and urged the debtor to be pleased to accept the proposal.

Last, the executor has a speculation that the debtor did not totally tell the truth in view of his psychological schema. Generally speaking, the debtor's discourse is not in line with the principles of cooperation, so he will hide his true performance ability. The executor expresses his suspicion of the performance of 1 million yuan by November 30th, and provoked the debtor into saying something real. When the debtor tells the basis and sources, the executive staff fully mobilized his understanding of his background knowledge, vocabulary and encyclopedic knowledge. Combined with the previous investigation about the annual production capacity of the debtor's coal mine, coal sales prices, and other circumstances, the executor assumed the debtor could perform far more than his proposal. Then the executor himself proposes a suitable plan to test and prove his hypothesis.

This scheme is based on the creditor's expression, but it originated from the executor's reasoning. This kind of reasoning cannot use formal logic to represent. Experience, speculation, even deception and flexible threats jointly increased the inference of the ostension. Judging from the results of this case, the debtor clearly promised to fulfill the debt in a certain period of time, and also fulfilled his words. The creditor's right has been realized and the purpose of the communication in the civil execution has been realized.

Conclusion

"The program can indirectly support the appropriateness of the conclusion" (Zhang, 2007, p. 182). In a civil execution procedure, a relatively isolated space is constructed, in which participants are granted the opportunity to have equal dialogues. This is a helpful attempt to complete the task of civil execution and to justify the executive authority. In the civil execution procedure, the executor, the creditor and the debtor interchange their information and intention in a specially appointed context, which is both static and also dynamic. The executor is the service-oriented leader and plays a major role in the entire exchange. How should the executive act? There is a lack of theoretical research, which mainly relies on the personal experience of the executive. The civil execution procedure needs more theoretical guidance. This is a useful idea to promote justice and harmony in the Chinese civil procedure through communication. The purpose of this paper is only to initiate ideas, and we hope more experts pay more attention to the communication problems in the legal environment.

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Speech Conflict in Chinese Civil Litigation Mediation and Countermeasures of Judges¹

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[Abstract] *This paper, being corpus-based, analyzes transcribed real recordings of court mediation via pragmatic analysis methods. In this paper, the research findings of the Relevance Theory, the Principle of Cooperation and Functional Analysis were applied to the analysis of mediation discourse and the judge's countermeasures. In this way, we are looking forward to presenting comprehensively the judge's diversified means of resolving mediation disputes.*

[Keywords] *litigation mediation; speech conflict, countermeasures of judges, Relevance Theory, Principle of Cooperation; Functional Analysis*

Introduction

Litigation mediation refers to “the activities in which judicial officers of People’s Court, judicial organizations and enterprises and public institutions, social organizations entrusted by such organizations or other organizations and persons’ prompt parties involved and other relevant personnel to reach reconciliation agreement in a voluntary manner through equal negotiation by means of persuasion and counseling in order to settle disputes” (Zhu, 2013, p. 5). From 2002, the litigation mediation system has covered civil, criminal, administrative and execution cases, as well as the whole procedure involving pre-litigation mediation, filing mediation, pre-trial mediation and retrial mediation, becoming an institutional presence in current social governance (Supreme People’s Court, 2010). Litigation mediation is realized through verbal communication in which the verbal expressions and skills are main factors in judicial mediation. “The litigation mediation shall follow the voluntary, lawful, neutral and efficient principles” (Zhu, 2013, p. 16.).

Judging from the principle of law, judges hold “two folds of roles” in civil litigation mediation, the “Mediator” and the “Arbitrator”. “On the one hand, they serve as mediator to persuade parties involved to understand each other and finally reach agreement to settle disputes with the help of laws and morality while respecting their rights of disposition. On the other hand, they are spokesperson of laws, they are arbitrators, and they shall act in a law-based manner to realize justice and equal fulfillment of laws and regulations. This requires judges to follow procedures of mediation and suitably control mediation results in order to maintain the least lawful justice” (Chen, 2005). In other words, they represent both “public

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power” and “private right”, manipulate between “private” and “public” and integrate judicial authority and rights of disposition.

This determines that the tone of mediator judges shall be neither like trial judges who represent public power and absolute authority and manage to hold off with others and maintain a calm voice, nor like civil mediators who are totally equal with both parties involved due to absence of public power. In general, the speech tones of mediator judges shall be kept in between, representing a balance of public and private power.

In civil case trials, the two parties are communication subjects that are conflicting and opposing each other. The plaintiff is the party who litigates and requires court to maintain its rights and interests on specific disputes. And, “the defendant is the opposite party who passively enters the litigation procedure and court trial due to litigation by the plaintiff” (Shen, 2010). Conflicting speech between the two parties due to different appeals of interests is the main form of such communication.

In mediation, the judges, being listeners, shall first understand communicative intentions of parties involved when dealing with speech conflicts resulting from parties involved. Then, they shall help parties involved to express or clarify communicative intentions in order to lead to mediation. The article targets the above point via pragmatic analysis methods to analyze the strategy that judges can adopt to settle speech conflicts.

The authors of this article collected 12 court mediation cases from the First and the Second Civil Division of Intermediate People’s Court of Qujing. The transcribed texts include a total of 100,000 words, covering several major civil case areas as marriage and family, labor disputes, contract disputes, property disputes, tort and damages. This paper has chosen six typical cases for analysis.

Speech Conflicts Due to Difference of Cognition of Parties Involved

In 1986, Sperber and Wilson provided the Relevance Theory in the book named *Relevance: Communication & Cognition*. The main idea of Relevance Theory boils down to two principles:

“In *Relevance*, we make two fundamental claims, one about cognition, the other about communication:

1. Human cognition tends to be geared to the maximization of relevance.
2. Every act of ostensive communication communicates a presumption of its own optimal relevance.

Claim (2) is what we called the Principle of Relevance” (Sperber, & Wilson, 1996).

Relevance Theory regards communication as a process of ostensive-inferential communication based on a cognitive psychological point of view. This process includes two parts. First, communication is an ostension process from the point of view of speakers who express their intentions of information and communication. Second, communication is an inferential process from the point of view of listeners who get to know their counterparts’ intentions through reasoning. Communication is an ostensive-inferential process involving informative intentions (e.g. natural information) and communicative intentions (e.g. underlined meaning of speech). Communication intention is hidden right behind any ostension’s informative intention (Liu, 1997).

Therefore, once we are doing more on hypotheses, mental analysis, and inference in speech and context, the internal relevance will be clearer, and a better context effect will be obtained without too much effort, thus, correctly understanding speech and realizing successful communication and optimal relevance. In other words, adequate effects for unjustifiable efforts in understanding speech are realized. The only purpose for communication is optimal relevance, e.g. mutual manifestness.

Relevance Theory takes “mutual manifestness” as the basis for a hypothesis. One fact, or hypothesis, reflecting upon somebody means that such fact or hypothesis can be perceived or reasoned by this person in order to obtain new information. In communication, it means that the two parties involved understand the same fact or the shared topic. “The extent of understanding of listeners about the speech by speakers determines whether the communication could last or how long it could sustain” (Grice, 1975).

However, mutual manifestness is only a satisfactory status. In realistic speech, no matter what requirements the listeners might propose, we shall not always expect speakers to generate speech with optimal relevance. From the point of view of speakers, their intentions have dynamic variables. However, on the other way round, listeners differ in their cognitive abilities and perceptions, as well as psychological factors and social status. Therefore, listeners may have different understandings over the same issue. At the same time, they manage to understand to what speakers are saying in order to learn the intentions of the speakers for inference again. All of these processes will directly influence successful communication.

Judging from the cognitive abilities of parties involved in communication, speakers sometimes fail to provide the most relevant information, or manifest information, through the most suitable means due to their reluctance in speaking, thus they are unable to meet the intentions of their counterparts for more information and communication. This can lead to a potential conflict between speakers and listeners (He & Ran, 1998).

According to the author, with six years of professional experience as a judge, conflicting speech can be observed between judges and parties involved due to dialects, jargons or legal terms. Jargon refers to language commonly used in a certain industry, in practices and productions over a past long period of time. It is quite specific in use, and therefore, outsiders seldom understand. Legal terms also fall into the scope of jargons, e.g. legal relations, litigation object, rights and obligations. They are usually used by members of the legal community. In terms of contextual implications, “given his or her unfamiliarity with the legal terminology, the interrogated cannot display adequate mental response to the significance of the given legal discourse. Therefore, the information imbibed is not sufficient to construct a thesis or preconception. In the absence of preconception, the contextual implications are nowhere to be found” (Sperbe, & Wilson, 2015).

In the conflicts, judges usually do not understand jargon used by the parties involved. For example, in an employment contract mediation, the jargon, “One Working”, which means one working day, is usually used. And, in cases in relation to the coal industry, the terms “Political Coal” and “Electricity Coal” are usually referred to, “Trailer Well” and “Affiliated Well” are used when referring to the mouth of wells. and “Backman” and “Tonnage” when calculating salary. Under such circumstances, the judges usually ask questions and the parties involved answer. If judges could generally understand the jargon while not quite sure about their own understandings, they many offer general questions. And, the parties involved could just offer a positive or negative reply or just provide further explanation.

On the other hand, in such conflicts, the parties involved may also not understand the legal terms of judges. Under such circumstances, those who raise questions are the parties involved in the cases. However, in more cases, the parties involved will not ask questions about the language they don’t understand. Therefore, the judges shall observe the expressions and body language of the parties involved and shall voluntarily repeat or explain with simple language when parties involved feel puzzled. Let’s find the following disputes related to Mr. Zhang’s lawsuit against Mine A to restore mines in accordance with a lease contract:

Zhang: *We have agreed before. He could use the land, and if he does not use it, I will take back. No matter whether there is an agreement or not, I am the owner of the land. Now, he*

stacks slags there, so he shall restore the land and give it back to me.

Judge: *You have just referred to two legal relations, a contractual relation and an infringement relation.*

In other words, Mr. Zhang has mentioned two different things. First, he have reached agreement. And the two shall follow that agreement. This is the contractual relation. Second, the land is Mr. Zhang's. He has the legal rights to use the land because the government distributed the land to him. If Mine A occupies his land without justifiable reasons and therefore, infringes upon his rights to use the land, Mine A infringes Mr. Zhang's rights. This is the infringement relation.

In this case, the judge explained the legal relations, reminded them of the litigation risks and encouraged them to settle their problems through mediation. Also, the judge shall make clear the legal relations and distribution of evidential burden. However, the parties involved were totally confused about what the judge said. Therefore, the judge explained it with rather simple language.

Conflicts Due to Euphemistic Speech and Solution Strategy

The Principle of Cooperation put forward by Grice is composed of four dimensions: quantity maxim, quality maxim, relevant maxim, and manner maxim. Irony, according to Grice, acquires its semantic significance from its deviance from the quality maxim. The parties involved in disputes usually employ irony for venting or the expression of a certain emotion, such as anger, sarcasm, or denigration of the opponents.

Before the court accepts the case, the parties involved might quarrel or privately negotiate for a long period of time. They are familiar with each other's opinion. Therefore, in litigation mediation, the conflicts caused by misunderstanding are rare for parties involved and their euphemistic speech may confuse the judge. For example, Zhang sued Li for disputes about the abatement of nuisance. Zhang and Li are neighbors. Zhang's house is at a lower position and the sewer of Li's house was blocked. Therefore, the sewage water accumulated in the sewer permeated into the foundation of Zhang's house. A large amount of water could be seen permeating into the ground. Zhang lodged a lawsuit with the court, requesting Li to cleanse the foreign matters in the sewer.

Zhang: *We live in a water cellar.*

Judge: *Do you mean that water from his house permeates into your room, and your room is now immersed with water?*

Zhang used a metaphor of "Water Cellar" to describe his "house", trying to emphasize the influence of water that permeated into his house. If handling this case for the first time, the judge might be confused about the word and may speculate that there might be an underground water cellar in Zhang's house, and the sewage water from the sewer permeated into the cellar and contaminated the water inside. Therefore, the judge shall try to grasp the profound meaning of the euphemistic speech by the context of both parties' speech, the plea documents, and the evidence materials. If this failed, the judge could ask questions to ensure the correctness of information. The judge in this case asked general questions. However, he could ask special questions, for example, "Water cellar? What do you mean?"

The Strategic Core for Judges to Solve Discourse Conflict: Reformulation

According to Leech and Short, reported speech can assume five forms as listed: "Direct Speech (abbreviated as DS); Indirect Speech (abbreviated as IS); Free Direct Speech (abbreviated as FDS); Free Indirect Speech

(abbreviated as FIS); and the Narrative Report of Speech Acts (abbreviated as NRSA). Among these five kinds of reported speech, Free Direct Speech, a variant of Direct Speech, is what remains after the cancellation of the quotation mark, or the introductory clause, or both, from the Direct Speech. Devoid of reported clauses, Free Indirect Speech is usually a blending of the voices of both the speaker and the sayer, semantically or pragmatically speaking. The Narrative Report of Speech Acts, or NRSA, is a speech act featuring a mere report of other's remark, hence more indirect than Indirect Speech. In terms of the degree of intervention by the speaker, these five forms exhibit the following sequence, with the arrow pointing to the enhancement of the degree of intervention" (Hao X., & Li, H., 2014):

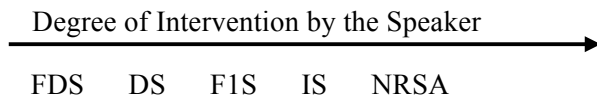


Figure 1. Degree of Intervention by the Speaker

When the litigant's litigation capability is limited, his expression is often ambiguous and fails to present an explicit answer about the subject stated by the judge. When presenting their views, a large number of litigants do not know how to focus and they speak out peremptorily about what they have experienced in a long-winded manner. The mediation judge has to re-generalize and summarize what the litigant wants to express according to the judge's own understanding. This is reformulation often defined by us. The object of the judge is to abstract and stress important information in the discourse and extract what is agreed upon by the litigants from both parties, in order to improve the mediation efficiency and control the mediation subject.

"The judge generally interrupts the litigant and uses the method of 'the meta-pragmatic review + the additional question: Do you mean ..., right?' to summarize the litigant's statement so that it becomes more explicit" (Fairclough, 1992) so that the litigants from both parties know clearly the other party's views and the dispute focus, which lays a foundation for future negotiation. After "the meta-pragmatic review" ("Do you mean..."), the judge usually uses Free Indirect Speech and the Narrative Report of Speech Acts. This suggests that the involvement of the judge is very strong.

When the litigant makes a presentation, he often uses a vivid description method to express himself. In addition, in the expression process, in the view of different standpoints and interests, the litigant uses languages with his own value judgment and often with strong emotional tendencies to belittle the counterpart and praise himself for the purpose of occupying a moral highground to win the judge's sympathy and favor. For example, in the following divorce case, the plaintiff (the wife) and the defendant (the husband) have a dispute over the guardianship of their child and they refuse to give into each other.

*The **Plaintiff** (the wife): He should not raise my son.... He is topsy-turvy outside and never stays at home. From my son's birth to now, he takes care of him for a few days... He says that he is busy with his business every day. Busy with the business every day, I don't know what he is busy with and where he is fooling around. I suspect directly that he has been illegally cohabiting with that seductive woman outside. If you allow my son to be taken care of by him, and he marries that seductive woman in the future, I don't know how she tortures my son. Are there a few examples of the stepmother torturing the stepchildren?*

*The **Defendant** (the husband): You learned in school for a few days. Even you go to work and the boss even complains that you are not well-educated. If I don't earn money outside,*

you have nothing to eat. If you take care of the son, you cannot support yourself. If we really get divorced, can you promise that you won't seduce that wild man to home? Don't take me as an idiot that I know nothing about what you are doing.

The Judge: *I got what you said just now. Both of you have no dispute over the divorce to which you agree. It can be noticed that you two are particularly concerned with your son. Who is in the better position to raise the child? Who is more favorable for the child's growth and education? I think that both of you should think about it calmly. Next our communication will focus on the child's guardianship, all right?*

From the above-mentioned dialogue, it can be noticed that the couple has been married for many years and they have a son. They used to be very close. Now they are hostile to each other and hate each other. They neither restrain themselves, nor take other's feeling into consideration. Obviously they use words to belittle the other side. When mediating, if the judge follows the litigants' way of thinking and relays the language of insult and contempt by the litigants, both litigants may become firmer on their own claims as a result. For this reason, the judge should pay attention to the following two points in reformulation:

First, the judge should take into account the discourse cognitive ability of the litigants from both parties, especially the emotional color of the discourse. Discourse has not only its own referential sense, but also an appraisal-derogatory sense and stylistic sense, etc. Emotional color and usage context of words with the same referential sense are prescribed. In accordance with tone, discourse is classified as six categories – greeting discourse, serious discourse, polite discourse, deliberative discourse, causal discourse and intimate discourse (Wang, D., & Chen, R., 2000). Deliberative discourse, in the relatively neutral position in style with the euphemistic tone, belongs to the sharing core part in language. In language use, the deliberative discourse enjoys the relatively highest frequency and it is easily understood and accepted by most people. It is often used in talks between strangers and discussion between acquaintances. During the mediation process, the judge uses the deliberative discourse to avoid repeating the belittling words of adopted by both parties so that the judge's talk becomes neutral and decent, and it is easily accepted by both litigants.

Second, the judge shall make the reformulation in the manner of synonym replacement. In other words, the discourse of the speaker is represented in a different way with the appropriate synonymous means. Its function is to clarify the litigant's expression, control the direction of the mediation subject, bypass their emotional confrontation and guide the litigants to weigh the pros and cons. This is conducive to promoting the mediation task with higher efficiency.

Conclusion

Scholars on Chinese mainland have analyzed mediation discourse from the perspective of game theory, principle of sincerity, and information processing strategies etc.. This shows convincingly that the judge mediation strategy analysis angle can be diversified. Via combination of more than one theoretical framework, we are looking forward to comprehensively presenting the judge's diversified means of resolving mediation disputes.

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Presupposition & Implicature: Analysis on Rhetorical Devices in Commercial Advertisement

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[Abstract] Advertisement, not merely a commercial activity, but a social phenomenon, has been ubiquitous in modern life. The analysis of advertisement from the perspective of conversational implicature, especially the violation of cooperative principles can well explain the optimal persuasive effects advertisements can achieve.

[Keywords] advertisements; presupposition; cooperative principles; violation; conversational implicature

Introduction

The word “advertise” comes from Latin “advertere”. The Macquarie Dictionary (2016, online) defines it as “make public announcement of, by publication in periodicals, by printed posters, by broadcasting over the radio, television, etc.”, while the definition from the American Marketing Association (AMA) is “the non-personal communication of information, usually paid for and persuasive in nature, about products (goods & services) or ideas by identified sponsors through various media”. In the modern age of “Information Explosion”, to attract others’ attention and expand their influence or sales, people have been trying every means, especially advertisement, which is so pervasive and powerful that it has become an integral part of people’s daily lives.

Advertising language, apart from the dazzling visual and aural effects produced by modern techniques and of critical importance to the persuasiveness and effectiveness of advertisements, has developed into an independent pattern of language with its unique style and aesthetic value (with the wide use of rhetorical devices in advertising language) and increasingly heeded by people of all walks of life. From the perspective of systemic functional linguistics, function is “a fundamental property of language itself” (Halliday, 1985), and is necessary to explain the organization of the semantic system of language. Halliday (1985) also claimed that meta-function is composed of three functions (ideational, interpersonal, and textual), which is a set of principles that are necessary to explain how language works. For advertising language, it must coincide with the context of situation in its contents, forms and styles, and take into consideration the three paradigms in the context of situation. First, the ideational function decides the advertising language, its strong intention to promote sales, and its effectiveness in their functions if richly inborn with economic values. The golden “AIDAS formulae” (Attention, Interest, Desire, Action, Satisfaction) for advertisement innovation and the “5I Principle” (Idea, Immediate impact, Interest, Information, Impulsion) for successful advertisements require that advertisements must satisfy the rules of the changes of consumers’ states of mind, and make full use of these rules to realize the goals or functions of the advertisements, because different advertisements call for different language forms to achieve different functions, and different needs (Lin, 2008). Advertisers are also taking advantage of every means of advertisements possible to realize the maximum effects, to attract the consumers’ attentions, arouse their desires and persuade them to purchase the items advertised.

Literature Review

Pragmatics, a subfield of linguistics and semiotics, studies the meaning in context, and it involves how the transmission of meaning depends not only on structural and linguistic knowledge (e.g., grammar, and lexicon, etc.) of the speaker and the listener, but also on the influence that a given context can have on the message. Pragmatics encompasses presupposition, speech act theory, conversational implicature, cooperative principle, politeness theory, relevance theory and other approaches to language behaviors in philosophy, sociology and anthropology; all of these have been widely used in the multi-dimensional analysis of advertisements (Chen, X., 2015).

Presupposition defines shared information of the communicators or the felicity conditions required to perform a certain speech act or the shared knowledge or the common ground between the communicative parties, and with the pre-conditions set by presupposition, people can process conversational implicatures all of the time, though they are mostly unaware of it (Yule, 2000). It plays an active role in enhancing the effects of persuasion of advertisement and making advertisement concise, humorous and appealing by conveying more information than what is said.

People are often, by all means, interacting within a particular context of communication, when the speaker speaks or the listener tries to understand what he/she has heard, they are likely to react on the basis of the context that their communicative activities are conducted. Conversational implicatures are, roughly, context-oriented or setting/scheme-based. For example, if someone asks, “Could you close the door?”, the hearer does not usually answer, “Yes”, but instead they perform the non-linguistic act of closing the door because they have understood it to be a request.

Usually, for addressers and addressees, conversations, to some degree, have to follow certain rules in order to communicate effectively (Grice, 1975; He, 2000). According to the Cooperative Principle (hereafter CP) and four *Gricean maxims*: “Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged” (Grice, 1989, p. 26). CP illustrates how people normally behave in conversation or how people interact with one another. The observance of CP and its maxims can be thought of as a sort of “quasi-contract” with parallels outside the realm of discourse (Grice, 2001, p. 29). This allows for the possibility of *implicatures*, which are meanings that are not explicitly conveyed in what is said, but that can nonetheless be inferred, or “how a hearer gets from what is said to what is meant, from the level of expressed meaning to the level of implied meaning” (Thomas, 1995, p. 56).

There are many occasions when people fail to observe the maxims in various ways: flouting, violating, infringing, opting out and suspending a maxim (Grice, 2001). When these maxims are not observed, there’s more to the literal meaning of the utterance. In other words, flouting of the maxims can account for any desire on the part of the speakers to generate a conversational implicature (Thomas, 1995, p. 74). Vocalization of an expressed implicature are thus, to be interpreted by the hearer. For the apparent violation of Grice’s relevant maxims, the success of the correct interpretation is also attributed to the cooperation of the communicative parties to work out the conveyed implicature. It’s hard to deem presupposition and implicature as irreconcilable theories.

Common Rhetoric Devices Adopted in Commercial Advertisements

Rhetorical devices in advertising language account for the distinctive features of the language itself and the non-observance of CP as a promoting strategy. The pragmatic features concerning the non-observance

of CP are not so apparent and cannot be detected from first sight; pragmatic analysis often targets advertising texts as a whole and requires a lot of interpretation and reasoning work. The frequently exploited mechanism by the rhetorical devices underlying the well-structured persuasive language through pragmatic approach – presupposition and implicature are of great significance to create attractive and successful advertisements. Trap-setting, allusion, mockery and comparison can be best explained by pragmatic presupposition theory; hyperbole, irony, and euphemism find possible solutions in implicature; regarding metaphor, we can analyze it through the combined efforts of pragmatic presupposition and implicature theory though it's a relatively complex device (Williams, Moriarty, & Burnett, 1995; Yang, Zhou, Lu, 2010).

Trap-Setting

Trap-setting, perhaps the most apparent rhetorical device of presupposition, is essentially a psychological intervention of the customers' preconception aiming to let the customers perceive, approve, and accept the products by means of altering their current value, predisposition, and psychological plane, etc. Primarily, there are four kinds of trap-setting: fact presupposition, belief presupposition, state presupposition, and behavior presupposition. The presupposition in Example 1 is the statement that many people have bought the Chula Brand Air-conditioner. The assertive statement sounds more like truth, no matter whether it's true or false, because no customer bothers to investigate its validity. Obviously, the advertising agency is capitalizing on the customers' habit of jumping on the bandwagon and taking too much for granted. As studies suggest, a man's attitude is mainly shaped by his views of the world, life, and other things as well. Advertisers usually shake customers' fundamental beliefs by resorting to belief presupposition. Pragmatic presupposition here in Example 2 is that this good air-conditioner is predominantly for export. Influenced by such an ill preconception, domestic products suffer greatly. However, the advertising language shatters the ingrained belief, creating an extraordinary convincing power for the Haier Brand Air-conditioner.

For state presupposition, it falls into two categories: presupposing an unpleasant state before awakening customers to change through an indirect description of an unpleasant past (surely with the help of the advertised goods) or presupposing a pleasant state afterwards with its emphasis on the pleasant state after using of product advertised. Example 3 presupposes that you were concerned previously, now it's appealing to the customers to get rid of that chronic worry weighing on them.

Example 1: 春兰空调广告:为什么许多商家选择了春兰空调? (Ad for Chunlan Brand Air-conditioner: Why Chunlan Brand Air-conditioner is popular with the sellers?)

Example 2: 海尔空调广告:好空调不分国界. (Ad for Haier Brand Air-conditioner: Good air conditioning without boundaries.)

Example 3: 防盗保险柜广告:有了它你还用担心受怕吗? (Ad for a safe: Are you still worried about that?)

Behavior presupposition is another ordinary phenomenon in advertising language. Three behavior presuppositions have been identified so far. The first is about the previous customers' behavior against their interests, which is synonymous to the customers' previous state. For instance, the underlying presupposition in Example 4 is, "you had paid unnecessary money before". Apparently, advertising language caters to the interests of the customers, and it follows that the products on sale find easy entry into the customers' houses. Another kind of behavior presupposition switches the attention to customers' present needs, which can be met quite easily by the products for sale. The presupposition, Example 5, has

is that consumers will videotape the Olympic Games. Thus, the advertising agency provides the right instrument for their recording. The other kind of behavior presupposition is predominantly advertising with peculiar characteristics. The advertisement in Example 6 presupposes that it's quite likely that some profiteers are counterfeiting a patented product. It involves complex psychological strategies, which lie in whether anyone will take the risk of counterfeiting illegally. However, the pragmatic presupposition makes it a sure thing that fake products come into existence on account of the excellent quality of the initial products.

Example 4: 平价商店开业广告: 从今以后你可停止付不必要的钱. (Ad for a parastore: Stop paying unnecessary money.)

Example 5: 用松下名品,录百年奥运 (电器广告). (Ad for an electric appliance: Using Panasonic products, recorded Olympic Games of a hundred years.)

Example 6: 专利产品,仿冒必究 (电蚊拍广告). (Ad for electric mosquito pat: Patented product, counterfeiting prohibited.)

Mockery

Mockery intends to modify or mock the existing phrase, proverb or discourse to produce certain effects. It is a pragmatic presupposition, i.e. the shared knowledge between the reader and the advertiser that enables the customer to get the right interpretation. Here, we may draw an analogy to an allusion so as to understand the mockery device. Example 7 mocks the universal knowledge “贤妻良母” (an ideal housewife in Chinese culture). In this way, the characteristics of a washing machine are crystal clear to the would-be customers. Example 8 mocks the four character axiom “一心一意” (dedication). Literally, fishing is a dedicated sport, but here, it turns into a concomitant gain outside all its fun. Since you can successfully fish absent-minded, you may easily understand the superior quality of the fishing tool. Example 9 is a mockery of Bai Juyi's poetry in which a literal line depicts Yang Yuhuan, one of the four beauties throughout the history of China. The skillful substitute of “味” (flavor) for “媚”(charm) exhibits all attributes of the nuts advertised. Example 9 is a mockery of the entire poetry by Du Mu. Thanks to its popularity with the young and the old alike, the advertising effect of the smart mockery is self-evident.

Example 7: 某洗衣机广告: “闲”妻良母. (Ad for washing machine: An idle wife and ideal housewife)

Example 8: 自动钓具广告: 一心二意,照样钓鱼. (Ad for fishing pole:Ffishing with scattered mind.)

Example 9: 回眸一笑百味生. (开心果广告) (Ad for pistachios: Smile with a hundred flavors.)

Example 10: 防霉灵广告:清明时节雨纷纷,万物生霉欲断魂.借问妙方何处有,专家齐提防霉灵. (Ad for Anilazine: The rain flies heavily as Qingming draws, live sadly along the molds grow; I wanna know where the nostrum is, experts all recommend Anilazine. – Parodied from Du Mu's poem Qingming: The rain flies heavily as Qingming draws, move sadly along the way the passengers; I wanna know where the tavern is, He points at a distant hamlet nestling amidst apricot blossoms.)

Hyperbole

Generally, there are two features of hyperbole:

- a. Beyond the truth – The exaggeration of the truth, which distinguishes it from the truth –nonobservance of Grice’s quality maxim, implicature theory is involved in working out the hidden message;
- b. Based on the truth – The customers feel the exaggeration artistically and aesthetically true, albeit in facts that are not true in terms of quantity or quality).

Three kinds of hyperbole have been widely employed. Quantity hyperbole (see Example 11): Since no one believes that it can cover the globe, consumers will arrive in length at the implied message involved: their commitment to superior quality leads to its domination of the global market. Through this technique, this paint’s popularity is boosted to gain more momentum. Quality hyperbole (Example 12): By claiming that it can turn an old lady into a young maid, we can draw near to the implicature with ease: the beauty parlor there has adroit skills like a magician. Embodied is also the American sense of humor. The advertising effect is far more satisfactory than a normal one. Sequential hyperbole (Example 13): This is a deliberate transfer of what will happen to what it is present. As known, time is lineal in any way. The claim in the advertisement thus implies its technical capabilities so amazing that the corporation can even incorporate future excellence to modern products.

Example 11: 威廉油漆广告公司: 覆盖整个地球. (Ad for William Paint: Cover the Globe.)

Example 12: 美国某美容院广告: 不要对刚刚从我们这里出来的姑娘使眼色,她很可能是你的奶奶. (Ad for beauty parlor: Don't wink to the girl from our parlor; she might be your grandma.)

Example 13: 哈德金属制品广告: 哈德将明天引入今天. (Ad for Hard Metal Product: Hard introduces tomorrow to today.)

Irony

Irony, again a violation of Grice’s quality maxim, and, sometimes the manner maxim, is just a universal phenomenon in advertisement for the special effects it has produced. Successful employment of irony adds humor, fun, and inspiration, etc. to the advertisement, which can be well expounded upon by Grice’s theory of implicature and post-Grecian theories. In Example 14, instead of awakening the smokers directly to the consequences of smoking, the advertisement clearly states the advantages of smoking, contrasting the “good” and “bad” ironically. Cigarette addicts, as well as non-smokers, can easily grasp the implication of the message: it’s persuading people to quit smoking. The implicature in Example 15 is: We are setting the price of our shaver exactly right for its quality disallows any discount.

Example 14: 某禁烟公益广告: 吸烟有三大好处: 一是保持冷静---香烟刺激神经; 二是盗贼躲避 – 吸烟人咳嗽; 三是永葆青春 –吸烟人死亡较早. (Non-commercial ad for smoking ban: Smoking has three major benefits: 1. Keeping calm –smoking stimulates your nerves; 2. Thieves evade – smokers cough; 3. Staying young –smokers die very early.)

Example 15 法国某刀片厂广告: 我们公司制造的刀片,总比别的牌子贵一些; 工人曾经努力研究降低成本, 但是无法做到,我们因而想到,刮脸刮得干干净净, 总比刮去一点重要的多. (Ad for a French shaver: The shavers produced by our company are often

a little expensive than others; our workers have been striving to cut down the cost, but it doesn't work, and we deem that a clean and fresh shave is better than a messy one.)

Metaphor

Metaphor has been a hot issue to linguists across the globe. Grice's claim that metaphor is a violation of the quality maxim seems to be problematic; he manages to simplify the problem by analyzing it with an implicature theory, an attempt to recognize metaphor, rather than unveil the rudimentary characteristics of metaphor (He, 2000). Studies show that metaphor is usually based on the similarities between objects, which corresponds to shared knowledge or common ground (pragmatic presupposition). Implicature theory seems weak when it comes to the examples below: Freud lived here. It could be the fact that Freud did live here or the academic spirit of Freud is prevalent here. It is the shared knowledge about Freud that guarantees successful communication. Therefore, the hearer or reader must come up with pragmatic presupposition and implicature theory to decipher the coded utterance. Implicature theory helps us identify the encoded message and discover the relevance between "eagle" and "sky", "horse" and "meadow" and thus, the presupposition that an eagle hovers in the sky while a horse gallops in the meadow.

In Example 16, the company is seeking talent and providing good opportunities for them to display their potential to the full. Again, we may follow the three steps to arrive at the correct comprehension of the advertisement. More often than not, we may combine presupposition and implicature theory to have an effective understanding of the advertisement (Example 17). This testifies that pragmatic theories aren't alone, but essentially collaborated to make a systemic framework for gaining insights into the world of language.

Example 16: 某重工业有限公司人才招聘广告:你是雄鹰,我们给你一片浩瀚的蓝天;你是骏马,我们给你一片辽阔的草原。(Employment Ad from a heavy industry company: If you are an eagle, we are the endless sky; if you are a steed, we are the vast grassland. / We are the endless sky for eagles and the vast land for steeds.)

Example 17: 某空调机广告:炎热的夏天是一片雪地;严寒的冬天是一炉炭火;空气污浊时是一股清风;阴雨潮湿之日是一个烤箱。(Ad for Air-conditioner: Snow ground in heating summer, charcoal in freezing cold, breeze in polluted air and oven in humid weather.)

Conclusion

Commercial advertising language is a special type of language with its unique features in the field of morphology, syntax and rhetorical devices, which not only impresses people with its great sense of sight, but also sense of hearing effect, art, elegance and succinct use of rhetoric language that combines the profound effects of literature, esthetics, psychology, marketing and consumer behavioral science. On the basis of Grice's Cooperative Principle, pragmatic presupposition and implicatures build a solid foundation for the analysis of commercial advertisement texts, and facilitate the fulfillment of attracting more buyers as well as the realization of economy, advertisers are more likely to add more charm to their products and achieve their goals of drawing the customers' or readers' attention, stimulating their interests or desires, and thus encouraging the purchase of the target commodity or service. Still if we know more about the features of advertising language, we will better understand and appreciate the advertisements, including commercial advertisements.

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Pragmatic Communication in Legal Language Translation – On the Transference of Cultural Connotation in Legal Texts

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[Abstract] Legal pragmatic rhetoric refers to culture-loaded legal terms that demonstrate the semantic characteristics and striking features of a language. To achieve the precision and accuracy in the translation of legal texts, translation needs to deliver the meaning of the original version, not only at the morphological or syntactical level, but also at the cultural level. The semantic effects and the pragmatic features reflecting the cultural connotations in the texts need to be reproduced in the translation. This article tries to study the interaction between legal language and legal culture for the achievement of functional equivalence of translation for the purpose of conveying the cultural connotations in the original text in translation.

[Keywords] pragmatic communication; legal language translation; legal culture connotation

Introduction

Pragmatics is the science of studying the use and interpretation of languages. It explores the speakers' processes of expressing their meaning by means of external contexts and language. It also studies the process of the hearers' processes of decoding and reasoning of the language (Zhang, & He, 2001). Pragmatics studies the meaning of language, not the abstract meaning of the language system itself, but the meaning in a particular communication scenario the communicator tries to convey, as well as the process of understanding and communicating. With its power of description and interpretation of language use and communication in various aspects, it has become a theoretical discipline. Translation study looks into how the translator interprets the original text and reconstructs the meaning in the target language. Both translation and pragmatic study share the common object of study, namely language comprehension and expression.

Due to the complexity of translation, the diversities of translation research and the differences in the sources of current translation theories, translation study has not established its own discipline as of yet. This fact shows that there is still a lack of a comprehensive and thorough understanding of translation. In turn, translation study needs to draw nutrients from other disciplines with the introduction of more relevant theories. Pragmatics is just the theory being applied to language teaching, intercultural communication, language acquisition, intralingual studies and language translation. Its role as a theoretical guide is becoming increasingly evident. The achievements that pragmatic study have made in various areas of research provide scientific analyzing methodologies for the study of translation, which are applied to translation studies and practices.

Pragmatic Features in Legal Language and Communicative Translation

Pragmatic rhetoric study is ascending in Chinese linguistic study circles. Pragmatic rhetoric refers to the words carrying implications of the culture, history and customs of a language, in addition to their semantic meanings. It is always difficult to understand the meaning of language units fully without the cultural contexts. Pragmatic rhetoric is common in language use and legal language is no exception. As

American legal linguist, P. M. Tiersma, said in a sense, “Our law is a law of words” (1986). Legal terms are the carriers reflecting the legal culture and historical origins of a nation. In the developing process of the law during hundreds of years in human history, it is inevitable for legal terms to have the pragmatic rhetoric reflecting the cultural characteristics of a nation in their semantic meanings. Legal culture is the peculiar style and phenomena that legal language users have in their expression. As the functional variant in language, legal language is the product and the carrier of the legal culture. Legal pragmatic rhetoric is considered culturally-loaded legal terms, featured with distinctive characteristics of its legal culture (Song, & Cheng. 2006). Correct understanding of the pragmatic features in legal language plays a key role in achieving interlingual conversion and ensuring the maximum information retention from the original text.

The Equivalence in Legal Pragmatic Rhetoric

Despite the disparity between English and Chinese legal cultures, there are still some equivalent culturally-loaded words (Wu, 1999). For example, the word “wall” in Chinese “墙” has the connotation of “prison”, as Chinese prisons are always closely guarded by towering walls. The semantic meaning of “prison” is added to this concept meaning of “wall”. “Big Wall – 大墙” and “Tall Wall – 高墙” have been gradually used as Chinese metaphors indicating imprisonment or detention. Likewise, the word “wall” in Britain and the United States is also closely related to “prison”.

The Difference of Legal Pragmatic Rhetoric

Legal rhetoric not only embodies the stylistic features of the legal language, but also reflects the typical features of the legal system in a certain legal culture. Due to the special social functions and practical values of legal texts, legal translation, apart from requiring the equivalence of linguistic function, also requires the equivalence of legal function. Thus, it is of great significance to study the differences of pragmatic rhetoric and the strategies in legal translation. The differences of pragmatic rhetoric in legal translation are mainly due to the specific legal traditions, real life situations, social systems, and a country’s psychological norms in the legal culture of English-speaking countries.

From the perspective of comparison, one thing is intriguing and affords much food for thought: in Chinese, what we call “leniency” and “severity” correspond with “soft” and “stiff/tough” in English. The same is true for the other language modification strategies. Color words often imply distinctive cultural features of a nation. For instance, French people prefer the color of pink, while avoiding the color of dark green, as it reminds them of the color of Nazi military uniform; in contrast, people in the Islamic regions are fond of green while avoiding the color of yellow as it symbolizes death.

In terms of the cultural connotations of Chinese and English words and expressions, some connotations in one language may not even exist in another. The Chinese correspondence of “bar” is “栅栏”, and “behind bars” means “in prison/a jail”. We cannot literally put “bars” into “栅栏”. But if it is put into “监牢 - prison”, though accurate in meaning, the effect of rhetoric in the original text is lost. The employment of a corresponding Chinese rhetoric might be a better translation in this case. Since the ancient times, “iron” has been used to make various instruments of torture for places like jail. This practice is engrained in the Chinese legal culture. The national cultural connotations rising from the characteristics of “iron”, thus, are reflected in some law-related words, such as “铁窗 (iron-barred windows)”, and “铁证 (ironclad or irrefutable evidence)”. In this context, the Chinese translation can be “铁窗” instead of “监牢”.

In Chinese judicial cases, there is a term “第三者插足” which means that a “third person” steps in between a married couple, aiming to possess someone else’s spouse. The “third person” not only intervenes in someone else’s family, but also wants to break up someone else’s marriage. In this sense, none of the English terms like “put one’s foot in”, “participate”, or “take part in” can be an accurate equivalence to it. In this case, a more feasible method is, based on a correct understanding of the connotation of the original term, to put across the emotions attached to it in translation. Considering that the consequences that the “third person’s intervention” might have is to break and disturb the legitimate marriage, the translation of “step in” for “插足” is more appropriate, because “step in” itself has the double meanings of “participate” and “intervene”. In addition, “step”, as a verb, carries the exact meaning “stretching one’s leg”.

Pragmatic Features of Legal Languages in Different Legal Systems

From the perspective of the legal culture, the Chinese Law System is more akin to the Civil Law System and significantly different from the Common Law System. So inter-translation cannot be achieved between Chinese and English laws in the strictest sense. Pragmatic features of legal languages in different legal systems are mainly demonstrated in the diversities between the Chinese Legal System and the Common Law System, as well as the differences among various departments of law.

Differences Between Chinese Law System and Common Law System

A legal system is a classification method of laws based on the commonality in legal practices and legal consciousness shared by several countries and regions in view of historical traditions. It is a general term for laws having commonalities or sharing the same traditions. There are two legal systems in modern western society, the Continental Law System and the Common Law System. The Continental Law System, also known as the Roman Law System, is the general term of laws in various countries developed on the basis of Roman Law. The representative countries are Germany, France, Spain, Portugal, Netherlands and their past colonial countries and regions, also including Japan, Egypt, Thailand and some Central America countries. It is worth noting that the law in Old China, when under the governance of the Kuomintang, referred mostly to the laws in Continental Law countries practiced in Japan and Germany, accordingly belonged to Continental Law System. It is unavoidable that the self-contained Chinese Law System has trials of Continental Law System because of legal inheritance. The Common Law System, also known as the Anglo-American Legal System, was developed based on the common law of England. In addition to Britain (excluding Scotland) and America, the representative countries are mainly countries and regions once colonized by or affiliated to Britain, such as India, Pakistan, Singapore, Australia, New Zealand, Hong Kong, and China, etc. Meanwhile, laws in some countries and regions feature the characteristics of both legal systems, such as Louisiana in America and Quebec located in Canada. Some countries and regions have adopted bilingual legislation and jurisdiction, such as Hong Kong, China and Quebec in Canada, which provides abundant materials and valuable resources for (especially inter-legal system) legal translation. The significant differences between the Continental Law System and the Common Law System are manifested in the sources of law, legal structures, judges’ powers, judicial organizations and legal proceedings that are ultimately reflected in legal cultures. The modern and contemporary Chinese laws mostly characterize the Continental Law System under the influences of the laws in Japan, Germany and the former USSR. Therefore, the difficulties and mistranslations in legal English translation practices are mainly due to the lack of understanding of the differences between the

two legal systems. For example, there is tort law in the Common Law System that is not in the Continental Law System; while in the Continental Law System, there is a classification of public laws and private laws that does not exist in the Common Law System.

In different legal systems, the same linguistic sign may reflect different concepts. For example, in the Common Law System, “juror” means “陪审员”, while in China, “(人民) 陪审员” is translated into “judicial assessor”. The same is true for the linguistic sign “盗窃罪” in the law of Mainland China and the criminal law in Hong Kong. The definition by the former is the crime committed by “those who steal relatively large amounts of public or private property, or money, or have committed several thefts”. The law in Hong Kong defines it as, “a person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving another of it”. Another example is the translation of “jail” and “prison”. In most dictionaries they are all translated into “监狱, 牢狱”. However, James A. Inciardi, the Professor of Criminal Procedure Law in Delaware State University, America, believes that “A jail is not a prison. Prisons are correctional institutions maintained by the federal and state governments for the confinement of convicted felons. Jails are facilities of local authority for the temporary detention of defendants awaiting trial or disposition on federal or state charges, and of convicted offenders sentenced to short-term imprisonment for minor crimes” (1999). In this regard, we can see that “jail” is different from “prison”. “Prison” is equivalent to “监狱” in China and “jail” is equivalent to “看守所” in China. Therefore, the distinction between these two words shall be made in the translation in order to achieve accuracy.

Differences in Branches of the Law System

Branches of the law system, also known as the legal system, is an integrated entirety composed of all the laws in effect of a country in accordance with a certain structure and hierarchy. Although the differences in the humanistic environment are on the decline from ancient to modern times, it has always been important for the formation of the structural characteristics in the national legal systems. So far, no legal system is identical in two countries. It is the difference among legal systems, as well as among branches of law that make it more difficult to translate legal language. It also highlights the importance of finding equivalent terms in cultural contexts. According to semiotics, the same term (language symbol) in legal English may have different meanings in different branches of law, so it should be understood on the basis of the legal context. For example, “dominion” means “full ownership” in civil law, but “sovereignty” in public international law; “estoppel” means “cannot go back” in contract law, but “precluding a person from asserting something contrary to a previous statement of that person” in criminal procedure law. In addition, some of the synonyms should be strictly distinguished. For example, “action” is litigation in common law and “suit” is litigation in equity. “Defendant”, “the accused”, and “suspect” also have different meanings. Although some scholars believe that the legal terminology polysemy makes it difficult to understand and undermine the dignity and unity of the legal system, we sometimes have to face the contradiction between the infinity of legal phenomenon and relatively limited language symbols, and determine the exact meaning of words in a specific context.

Different Pragmatic Features in the Expressions in Language of Law

Western culture emphasizes individuality and the English expressions are more diversified, which is also a major factor leading to difficulties in translation. Examples can be found in the use of case names. The Chinese are used to putting “the plaintiff” before “the defendant”, just as “Company A v. Company B”;

“Company A” is “the plaintiff”, “Company B” is “the defendant”. In western countries such as Canada, the courts have different customs. Some courts in Canada (such as the Ontario Court of Appeal) have the same approach as the Chinese court, putting “the plaintiff” before “the defendant”. However, some courts (such as the Supreme Court of Canada) are just the opposite. Thus, when translating the name of precedents of the Supreme Court of Canada, such as *Smith V. Jones*, it is best to add a comment or follow the principal of domestication by translating it into “*Jones v. Smith*”; otherwise it will be misleading for Chinese readers. Here is another example. Most of the US states’ higher courts are called Supreme Court, but New York is an exception. The New York Supreme Court is the state’s intermediate court. Its higher court is the Court of Appeals of New York. It is best to add comments in translation.

The understanding and interpretation of the same terminology often have essential differences in different countries or regions. In the *International Rules for the Interpretation of Trade Terms*, FOB means “free on board”. In the USA, FOB refers to “delivery on transportation”. Its business practice is to use a vessel in addition to FOB so as to distinguish it from FOB warehouse or FOB train and the like. In Brazil, FOB is considered equivalent to FAS (free alongside ship). In addition, there are often differences in choosing a word or phrase for the same item in different countries or regions. For example, Americans are accustomed to using cover for “earnest money”, while British prefer using “margin”. Americans usually use “installment” for a “progressive payment”, while the British are accustomed to using “hire purchase”. Civil law countries commonly use “security” to represent a formal pledge to pay debt or to perform another person's obligation, while common law countries prefer using “guarantee”. Another example is “the ex-dock”, the British and Canadians commonly use “Ex Quay” to mean “free on quay”, but Americans prefer using “ex dock”.

Conclusion

As a functional language variant, legal language is the product and carrier of legal culture. In interlingual conversion of legal language, there is often the loss of cultural connotations. In the legal culture of English-speaking countries, the specific legal concepts, legal system, the cultural context and national psychology of legal terms may be found beyond the discourse. Thus, readers from different cultural backgrounds can’t possibly get their meanings. They can’t get a coherent understanding of the text for the lack of schemata, and finally, it leads to the loss of cultural information. Especially in translating culture-loaded legal pragmatic rhetoric, legal language translators are facing dual challenges from two legal and language systems (Sarcevic, 1997). This article aims to observe the problems in legal language translation from the cultural pragmatic perspective, further evoke cross-cultural awareness of linguists and judicial workers in legal language communications so that there will be more concern about the cultural pragmatic factors in legal language, and this will ultimately promote the development of forensic linguistics.

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A Transitivity Analysis of Lawyer Discourse in a Court Trial

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[Abstract] *This paper attempts to analyze lawyer discourse from a systemic-functional perspective. The paper tries to give a precise interpretation of the stylistic features of lawyer discourse. It employs the feature of transitivity to analyze the processes used by the lawyer in a criminal trial. It is found that the processes used by the lawyer are determined by the purposes or the functions of the discourse in court.*

[Keywords] *systemic-functional grammar; transitivity; lawyer discourse*

Introduction

Socio-legal studies of the courtroom have adopted a variety of theoretical perspectives and research tools, often stressing the importance of extra-linguistic variables: such as power, and inequality, etc. Though there have been a number of linguistic perspective studies of the courtroom (e.g., Atkinson & Drew, 1979; Bulow-Moller, 1991; Danet & Bogoch, 1980; Lane, 1985; Matoesian, 1997; etc.), it is still far from enough. Investigations on lawyer language in court have also been numerous (e.g., Drew, 1990; Sarat & Felstiner, 1990; Mauet, 2003; Liao, 2003), however, rare studies have been done from the systemic-functional perspective. This paper tries to analyze lawyer discourse in court within the theoretical framework of systemic-functional grammar.

Halliday (1994) argued forcefully that “a discourse analysis that is not based on grammar is not an analysis at all” (p. xvi). Systemic-Functional Grammar (SFG) is thorough in stylistic analysis as it goes beyond language itself and deals with the social environment of language and considers the language system as a meaning potential, thus entering the socio-semiotic field. The theory has been proved to be both highly theoretical and practical. SFG has been widely applied in the study of discourse analysis, mainly focusing on the literature text, news, advertisements, and speeches. Halliday (1994/2000) argues that SFG can also be applied to analyze legal language, which can be of help to the trial or case investigation.

This paper is a case study which intends to apply SFG to the analysis of the lawyer discourse in a criminal trial. In order to discover the actual style of lawyers’ discourse in a Chinese court, the author uses real courtroom discourse. The examination of courtroom language usually is based on specially transcribed videos or audiovisual recordings. However, it’s not easy to use either a video or audio tape recorder since the courts normally do not allow individuals to use them. Thanks to the website of Shanghai High People’s Court, it provides nicely transcribed transcriptions of the court trials, including the identity of each addresser (e.g., judge, lawyer, and secretary, etc.), the transcription of each clause, and the proper time that each clause was addressed. For each trial, aside from the transcription of the whole trial, there is a virtual host giving a brief introduction of the case before the transcription of the trial. In the present case, the public prosecutor accused the defendant Wei, who borrowed a loan from the victim Li for stock. After losing money in stock, Wei had a huge disagreement on the interest of the loan. On July 15, 2015, at the time 11:30, Wei induced Li to meet at the ATM booth in the Hua Ling Branch of a bank with the excuse of paying the money back. Wei stabbed Li in his chest with a blue-handled knife that he prepared, which caused Li’s death.

Theoretical Framework

According to SFG, any clause is the realization of the three metafunctions: the ideational, the interpersonal and the textual, which constitute the semantic structure of language. In the present study, the experiential aspect of ideational meaning will be much emphasized. The description of the experiential strand of meaning will involve one major system, that of transitivity (process type). In analyzing the transitivity structure of a clause we are concerned with describing three potential components of the clause: the process, participants in the process, and the circumstances associated with the process.

Transitivity may be familiar as a way of distinguishing between verbs in terms of whether they have objects or not. But in SFG, “transitivity is explained in relation to the clause as a whole” (Sinclair, 1990, p. 137). It focuses on the verbal group, but it also explains the relations among subject, verb, and object. According to Halliday (1994), “The transitivity system construes the world of experience into a manageable set of process type” (p. 106). He divided the transitivity system into six processes: material, relational, mental, verbal, behavioral, and existential (Halliday, 1994/2000).

The principal processes are: material, mental, and relational. The material process is the process of doing. It involves two participants: an obligatory Actor, and optionally, a Goal. This kind of process expresses the notion that some entities do something, which may be done to other entities. Mental processes are processes of sensing that involve two participants: The Senser and the Phenomenon, which includes the options of perception (seeing, and hearing, etc.), of affection (liking, and fearing, etc.), and of cognition (thinking, knowing, and understanding, etc.). Relational processes are processes of “being”. That is to say, “a relation is being set up between two separate entities” (Halliday, 2000, p. 119).

Besides the three principal processes mentioned above, there are three other types of processes: behavioral, verbal, and existential. Behavioral processes are processes of physiological and psychological behavior, such as breathing, dreaming, smiling, and coughing, etc. The participant is labeled as Behaver, typically a conscious being. Verbal processes are processes of saying, accommodating four participants: The Sayer who says the thing, the Receiver whom the saying is directed, Verbiage is what has been said, and Target is what is targeted by the process of saying. Existential processes are processes of existing or happening, typically expressed by the verb “be”, “exist”, “remain”, “rise”, and “emerge”, etc. Only one participant labeled, Existent, is involved in this process. The following Table 1 may help us understand the different process types.

Table 1. Illustration of the Six Process Types

| | | |
|----------------|----------------------|----------------------|
| <i>The boy</i> | <i>kicked</i> | <i>the ball.</i> |
| Actor | Process: material | Goal |
| <i>She</i> | <i>is thinking.</i> | |
| Senser | Process: mental | |
| <i>She</i> | <i>is</i> | <i>a student.</i> |
| Identified | Process: relational | Identifier |
| <i>She</i> | <i>told</i> | <i>me.</i> |
| Sayer | Process: verbal | Receiver |
| <i>She</i> | <i>waved</i> | <i>her hands.</i> |
| Behaver | Process: behavior | Range |
| <i>There</i> | <i>is</i> | <i>someone else.</i> |
| Existent | Process: existential | |

Transitivity Analysis

In China, the discourse of lawyers in court mainly appears during these two parts: direct examination and cross examination. At the time of direct examination, the lawyers are permitted to ask the defendants questions about the details of the case. For the case in the present study, the lawyer asked the defendant a few questions. We will have a closer look at the lawyer’s discourse in the part of direct examination.

The following table shows the transitivity processes in the extracted direct examination.

Table 2. Transitivity Types in the Direct Examination

| Transitivity Types | Amount | Frequency |
|--------------------|--------|-----------|
| Material | 7 | 58.3% |
| Mental | 0 | 0% |
| Verbal | 2 | 16.7% |
| Relational | 2 | 16.7% |
| Existential | 0 | 0% |
| Behavior | 1 | 8.3% |

From Table 2, we can see that the four processes used in this part are the processes of material, verbal, relational and behavior. No mental and behavior processes are used in the direct examination.

The most frequently used type is the material process. Direct examination in court serves the purpose of going over what happened between the defendant and the victim. As we know that the dispute between the defendant and the victim was triggered by the usury, in the beginning the lawyer started with the question, “When you asked Dong Wei and Li Kecheng to lend you a loan, how much did you borrow?” The first-used material process in the lawyer’s question is very much concerned with the cause of the event. Then, the lawyer goes straight to the heart of the matter, “How many stabs did you stab Li Kecheng?” The material process “stab” is the action of doing on the crime scene between the defendant and the victim. This material process “stab” consists of the goal, “the victim” – “Li Kecheng”. Among the material processes with ‘you’ (the defendant) as the actor, aside from the material process with a goal, the rest of the material processes are the type of process without goals, for example, “escape” or “resist”. Those material processes clearly indicate the things “the defendant” did at the crime scene and after the crime. The limited number of material processes used by the lawyer clearly brings up the things that happened. From this, we could see meaning and form are closely related.

The lawyer presented the questions with a series of actions by using short, simple sentences from which all comments or emotional rhetoric had been eliminated. These sentences are composed largely of nouns and verbs, with few adjectives and adverbs. It shows in court that the lawyer is striving to be as objective and honest as he possibly as he can.

The less frequently used processes are verbal and relational. Let’s look at the verbal process. The verbal processes “ask” are concerned with the cause of the event. The defendant “asked” Dong Wei and the victim “Li Kecheng” to lend him money. The second “ask” appears when the victim “asked” the defendant to pay back the money. “Ask” is a very neutral word, and reflects no mental operations. Again, it is an indication of being honest and objective

The two relational processes both used the verb “was”, which were used to identify the amount of money the “defendant” borrowed and that on the IOU, which was used to serve the purpose of accusing the victim’s behavior of usury.

As we can see, the processes that occurred are in the discourse addressed by the lawyers. There is not a single process that occurred in the defendant’s discourse. This might be a strategy used by the lawyer.

From the expressions used by the lawyer, it can be seen that the lawyer tried to blame the cause of the event on the victim, which is an indication of showing that the victim was also guilty and trying to reduce the negative image of the defendant.

Atkinson & Drew (1979) pointed out that there is a pre-determined format for talk, namely question and answer adjacency pairs. The direct examination is a perfect illustration of the question and answer adjacency pairs. The purpose of the lawyer's questions to the defendant is to represent the truth of the event; in the meanwhile, he also tries to minimize the negative effect caused by the questioning of his own client. The defendant tried to answer his lawyer's questions with simple and short answers, without verbs, which only gave the necessary information to the question. The ellipsis of the verbs could reduce the negative effect of the defendant's crime.

In Chinese criminal court, the cross examination is usually presented in the form of the questioning between the prosecutor and the defender, which seldom has any witness to testify, especially for the defendant (Liao, 2012). The present case is totally in accordance with this general feature of Chinese criminal court. There were no witnesses in this case. Therefore, the cross examination in this case is basically the direct examination between the prosecutor and the defendant. The argumentative discourse follows the direct examination between the prosecutor and the defendant. Usually, the argumentative discourse begins with judge's declarative language, "Now the end of court investigation. Let's begin the debate. First, it's the prosecutor's turn to state the indictment." The frame of debate consists of the indictment of prosecutor, the self-defense of the defendant, the defense for the defendant by the lawyer, and the reply of the prosecutor (Liao, 2012). Since the present study only focuses on lawyer discourse in court, the other major part of lawyer discourse in court dwells on the part of debate, which is the defense for the defendant. The present paper will also investigate the transitivity process of the argumentative discourse or the lawyer's defense for the defendant.

Table 3 shows the transitivity processes in the argumentative discourse

Table 3. Transitivity Types in the Argumentative Discourse

| Transitivity types | Amount | Frequency |
|---------------------------|---------------|------------------|
| Material | 13 | 50% |
| Mental | 6 | 23.1% |
| Verbal | 1 | 3.8% |
| Relational | 5 | 19.2% |
| Existential | 1 | 3.8% |
| Behavior | 0 | 0% |

Comparing Table 2 with Table 3, there is a huge difference on the numbers of types of processes used. The number of processes used in the argumentative discourse is almost double than that used in the direct examination. Unlike Table 2, two more types of process are adopted in the argumentative part, i.e. the mental process and the existential process.

The lawyer's defense started with an existential process, "There is no objection to the facts listed and the charges of the prosecution", which clearly showed that the defendant pleaded guilty, and tried to leave a very good expression on the prosecutor and the judge.

Another distinctive process used in this part is the mental process. Almost all the types of process are concerned with "the defendant". The lawyer is the person who is the representative for the defendant. The defendant is the only participant who initiates the mental processes voluntarily. The lawyer was only

speaking on behalf of the defendant. Unlike the direct examination, for this part, the lawyer used some mental processes to express the deep regrets of the defendant, for the purpose of winning pity from the families of the victim, the prosecutor and the judge. It showed that the defendant was keen on showing his sympathy and his love.

Conclusion

This paper applies Systemic-Functional Grammar in the case study of lawyer discourse in a Chinese criminal trial. The author proposed to interpret it from the feature of transitivity, which is very helpful in understanding the potential meaning and style of lawyer discourse. The number and types of processes used by the lawyer vary greatly in the direct examination and argumentative discourse, which shows that the meaning and the form are closely related. This could also be related to the fact that the discourse must meet the requirements of the trial procedure, as well as the purposes and the functions of lawyer discourse in court. All in all, transitivity analysis provides an insightful perspective to understand and interpret lawyer discourse in court.

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Appendix 1

The following clauses were extracted from the direct examination.

[Defender] when you asked Dong Wei and Li Kecheng to lend you money, how much did you borrow?
[16:08:59]

[the defendant] said: 200 thousand yuan. [16:09:11]

[the defender] said: how much was it on the IOU? [16:09:23]

[the defendant] said: 320 thousand yuan. [16:09:36]

[the defender] said: what was the actual amount of money you got? [16:09:51]

[the defendant] said: 187 thousand yuan. [16:10:02]

[the defender] How much did they ask you to pay back? [16:10:17]

[the defendant] said: (first) 247 thousand yuan, and later became 252 thousand yuan. [16:10:32]

[the defender] said, "How many stabs did you stab Li Kecheng?" [16:10:49]

[the defendant] said: one stab. [16:11:01]

[the defender] said, "And then you ran away?" [16:11:13]

[the defendant] said: Yes. [16:11:24]

[the defender] said: When you got to the neighborhood, the residents tried to stop you, did you try to escape or resist? [16:11:35]

[the defendant] said: No. [16:11:46]

[the defender] said: That's all. [16:12:01]

Appendix 2

The following clauses form the argumentative discourse.

There is no objection to the facts listed and the charges of the prosecution. The defendant was fully aware of his guilt after arrest, fully cooperating with public security organs, truthfully confessed his crimes; according to the provisions of the criminal law, a lighter punishment shall be applied, therefore, the defendant requests collegiate tribunal to punish leniently accordingly. It was the first offense of the defendant, who has not received any punishment previously. The defendant's statement of the facts of the crime, as well as the investigation and the evidence of the public security organs has confirmed the case of the crime. The defendant only stabbed the body of the victim once, also with no deliberate choice of the place of the body, and then fled the scene, which shows that the defendant did not want to cause the death of the victim, the defendant did not intend to run away, for the defendant did not give any resistance to the alarm of the residents and the enforcement measures of the police. The defendant's crime is not made out of deep malignance. The defendant pleaded guilty, and he is willing to do their best to compensate the family of the victim. Before the trial, the family members of the defendants and the families of the victims have reached an agreement; we will soon submit to the court the letter of understanding from the families of the victim. In this case, the victim was also at fault (for the usury), and the defendant was under threat. The investigation notes from the public security organs can further confirm that the defendant was on revenge due to the threat from the victim for usury. The victim and the defendant are both the victims of usury. The defender is extremely sorry for the death of the victim. Besides, on behalf of the families of the defendant, the defendant would also like to express deep regret to the families of the victim. It is sincerely hoped that the court will mitigate the punishment accordingly, and give the defendant a chance to show his genuine repentance.

An Analysis of Some Strategies of English-Chinese Sight Interpreting

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***[Abstract]** Sight interpreting, as a type of interpreting in itself, is characterized by the efficiency of oral communication. As a result, the general principle of sight interpreting is to follow the word order of the source text in the rendition. In order to achieve this, a series of strategies should be adopted as English and Chinese are very different languages, which makes the maintenance of word order challenging. In this paper, some of the strategies are discussed. As the strategies are not exhaustive, further studies can be made to explore other strategies of sight interpreting.*

***[Keywords]** sight Interpreting; strategies; interpreting efficiency; word order*

Introduction

Sight Interpreting, serves both as an end of equipping the students with the ability of this particular type of interpreting to be used in court interpreting, and daily interpreting in their future work, as well as a means of training the students with quick reaction in language switching that is needed for interpreting. Therefore, North China Electric Power University has included the program of Master of Translation and Interpreting. Because of the time pressure that is inherent in the practice of interpreting, and because English and Chinese are very different languages, it seems that strategies need to be explored in order to complete this task, especially in the process of training, when the students have yet to develop their ability of sight interpreting. The analysis of this strategy can help students to consciously use relevant strategies in their exercises.

Literature Review

The basic requirement of Sight Interpreting is synchronous with the speaker (Qin, & He, 2009, p. ii) if there is one or to deliver the output in a normal speed of speaking. This particular requirement makes it different from document translation in that one has to be aware of the efficiency in oral output. It seems that the difference between sight interpreting and other types of interpreting is that the former mainly relies upon visual input of information while the latter relies on audio input.

In order to make it possible to be synchronous with the speaker, or to be in the normal speed of speaking, basically following the word order of the original version is necessary, which makes it possible to guarantee the efficiency of sight interpreting. The way of following the word order is also called “syntactic linearity” (Chen, 2011, p. 121). There are some advantages of syntactic linearity though the sentence rendered may be a little bit loose. “Most of the materials of sight interpreting are prepared with long and complex sentences. If the interpreter reads the complete sentence before starting to interpret, the delivery cannot be fluent. In adjusting information, the eyes have to move back and forth and the interpreter may be confused by which parts they have already dealt with and which they have not. Syntactic linearity can lessen the burden of memory for the interpreter, which in turn, guarantees smooth and rhythmic interpretation” (Chen, 2011, p. 121).

To follow the word order, it is essential to segment the sentence by its quasi-sense-group (Qin, & He, 2009, p. 26). There are several features of a quasi-sense-group. 1. It has meaning independently. 2. It is

within one scan. 3. It can be flexibly connected with the previous and the following units in sight interpreting (Qin. & He, 2009, p. 26).

Based upon this, it seems that the key to the success of maintaining the word order in an effort to be synchronous with the speakers mainly lies in the possibility of cutting the sentence by a quasi-sense-group. Therefore, strategies to make this happen need further discussion.

Analysis of the Strategies of Sight Interpreting

The method of research in this paper is the observation of the performance of the practice of students in class, and soliciting the opinions of the students on their exercises. Some of the challenges can be found in the performance of the students as they tend to use much more time when some of the language phenomena repeatedly appear in the materials handed out to them for exercise. At the same time, reflection by the students is also important input as they find out some challenging points in their exercises after class. However, although the students were exposed to a certain amount of practice materials, since the materials chosen were in accordance with the language ability of the students, the possible challenging points were by no means exhaustive. Therefore, the strategies summarized cannot possibly be exhaustive either.

At the beginning of the course of sight interpreting, some students found it difficult to follow the word order, trying to change the word order for many reasons. First, they have already gotten used to changing the word order of the sentence in their large amount of practice of document translation. Second, they found it difficult to accept the fact that without changing the word order, the sense of the sentence can basically remain unchanged. Third, they did not know how to maintain word order in sight interpreting as the dictionary meaning of the words are deep-rooted in their more than 10 years of English learning and in all their examinations.

However, with a certain amount of exposure of sight interpreting materials, analysis in class and reflection and summary after class, students gradually became used to the way of following the word order in their sight interpreting, and were able to find the strategies that suited their needs in sight interpreting.

Based upon the general principle of following the word order and the basic method of cutting the sentence into quasi-sense-group, there are several strategies that can be of particular attention: 1. Strategy of categorical words at the beginning of the sentence. 2. Strategies of interpreting the “of” structure. 3. Strategies of interpreting sentences that normally need major structural change in translation. 4. Strategies of interpreting English sentences of passive voice into Chinese.

Strategy of Categorical Words at the Beginning of the Sentence

Omitting some of the categorical words at the beginning of the sentence can be a strategy for sight interpreting, as some of the categorical words do not carry concrete meanings at first scan because their meaning only comes later in the sentence. Therefore, in sight interpreting, in order to be synchronous with the speaker or keep the normal speed of speaking, the strategic choice is leaving out the categorical words and directly interpret what follows. And if possible, add the categorical words in the parts of the sentence that follows. These types of categorical words may include “fact”, “questions”, “news”, “idea”, and “suggestion”, etc.

Example 1

Source: *The fact that movable type printing was invented by the Chinese is often*

forgotten.

Sight Interpreting: 活字印刷术是中国人发明的, 这一事实往往被遗忘了。

Example 2

Source: The question who should do the work requires considerations.

Sight Interpreting: 谁该做这项工作的问题, 还需要考虑。

Strategies of Interpreting the “Of” Structure

“Of” is a preposition frequently used in English, indicating a subordinate relationship. However, it can indicate time, place, reason, result, object, scope, and purpose, etc. As it boasts of the multiplicity of meaning, it seems that students may find it difficult sometimes to interpret under time pressure. There are, however, some strategies that could potentially help with the interpreting of the “of” structure.

Rendering the noun before “of” into verb. The English language marks a lot of nouns and noun phrases, whereas the Chinese language boasts verbs. Because of the differences of Chinese and English, many translation books made the conversion of the word classes as a very important technique in translation. (Qin, & He, 2009, p. 197; Xu, 2000, pp. 62-75; Song, 2003, pp. 60-99). Rendering the nouns before the “of” structure into verbs can be an important tool for sight interpreting.

Example 3

Source: I am very excited because this is a perfect example of a public-private partnership.

Sight Interpreting: 我也很兴奋, 因为这完美地例证了公私合作关系。

Example 4

Source: The protection of the environment, the promotion of international trade.

Sight Interpreting: 保护环境, 促进国际贸易。

Rendering the long segment before the “of” structure into an independent sentence. “Of” can be an important marker of segmenting the sentence whenever necessary. When the segment before “of” is long, scanning may just come at a pause here. Therefore, it is sometimes necessary to render the “what” is prior to “of” into one sentence, and the subsequent segment into another.

Example 5

Source: What must be clear is that the UN can be the instrument of achieving the global will of the people.

Sight Interpreting: 必须明确的是联合国可以成为这样一个工具, 实现全球人民意愿的工具。

Example 6

Source: Our engagement with China today deals with a wide range of the most pressing challenges and the most exciting opportunities.

Sight Interpreting: 我们跟中国的交往如今涉及很多方面, 这些方面带来最紧迫的挑战和最令人兴奋的机遇。

Example 7

Source: It must become the visible and credible expression of the globalization of politics.

Sight Interpreting: 它一定是成为了最为明显与可信的表达, 表达了政治全球化。

Strategies of Interpreting Sentences that Normally Need Major Structural Change in Translation

There are some sentences whose adverbial of time or place follows the main clause, a structure very much different from that of the Chinese. Translation of these kind of sentences may require major structural change to make the Chinese version more idiomatic, whereas sight interpreting does not have the luxury to do so. Therefore, some flexible adjustment may be needed to make the interpreted version basically follow the sequence of the original English.

Example 8

Source: Japan surrendered in 1945 after Americans dropped two atom bombs.

Sight Interpreting: 日本投降了, 时间是 1945 年。在此之前, 美国投下两颗原子弹。

Example 9

Source: China's grain output hit 607.1 million tons in 2014, up 0.9 percent year on year; its rural per-capita net income stood at 989 yuan, an increase of 9.2 percent after adjusting for inflation.

Sight Interpreting: 中国的粮食产量达到了 6.071 亿吨, 时间是 2014 年, 同比增长 0.9%。其农村人均净收入达到了 989 元, 增长 9.2%, 这是调整通胀率后的数量。

Example 10

Source: The former Russian partner will join a free trade zone with the EU by the end of this year.

Sight Interpreting: 这个俄罗斯的前合作伙伴将加入欧盟的自由贸易区, 在今年底之前将加入。

Strategies of Interpreting English Sentences of Passive Voice into Chinese

English, especially scientific English, features a passive voice, whereas traditional Chinese does not. Therefore, in order to make the rendition idiomatic, it is recommended to avoid using the passive voice, or at least, avoid using the “被” for passive voice might be a good choice for the sight interpreting while trying to keep the word order of the sentence.

Example 11

Source: Atomic energy must be used for the good of the people.

Sight Interpreting: 原子能的使用必须有利于人民的利益。

Example 12

Source: It is suggested that each speaker is allocated five minutes.

Sight Interpreting: 建议每个发言人的发言时间为五分钟。

Discussion and Conclusion

The strategies discussed above are derived from some of the challenging points in the exercise of sight interpreting of the MTI students of North China Electric Power University. They proved to be handy strategies for the students as the observation in class showed that the speed of delivery of sight interpreting by the students was significantly improved and their fluency became much better once they adopted these strategies.

In summary, because it potentially serves as an end of being a type of interpreting in itself, sight interpreting is characterized by efficiency of oral communication. Therefore, it does not give the students or interpreters a lot of time for rearranging the sentence, and as a result, keeping the word order of the sentence seems to be a good choice to guarantee the efficiency of this particular type of oral communication, as the production process proceeds with the thinking process. The strategies discussed above are just some of the strategies summarized in the teaching process, which are by no means exhaustive. Further studies are needed to find out more strategies in sight interpreting.

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Language Rights: Comprehensive Protection of Juvenile Criminal Defendants in the Circumstance of Rule of Law

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[Abstract] Rule of Law in all walks of life has been set up as the basic state policy in China since the Fourth Plenary Session of the Eighteenth CPC Central Committee, which made one giant leap from the proposals of “Improving” and “Strengthening” the judicial safeguard system of human rights successively in the Third Plenary Session in November, 2013 and the Fourth Plenary Session in October, 2014. Under these premises and contexts, how to safeguard the language rights for the disadvantaged groups is what the paper projects to expound. Based on field work at some juvenile courts in China, this paper evaluates the measures already undertaken by the juvenile courts to protect language rights of the defendants and then points out the problems in their practice and finally proposes suggestions and solutions to them.

[Keywords] rule of law; the juvenile courts; the defendant; language rights protection

Introduction

There are fifty-six ethnic nationalities in China with a variety of dialects and languages with different customs and traditions. There is a large population of the minors and other vulnerable groups, including ethnic minorities, the elderly, the deaf and the mute, the illiterate and the semi-literate. Those disadvantaged groups have the same litigation and other rights as others under the law and constitution. But in practice, those rights are always being exercised by language rights. Obviously, they had, have and will have, more difficulties in exercising their own language rights than others. So here comes the question, how do we protect the language rights of the disadvantaged?

In view of the third paragraph of Article 33 of the Constitution in our country which clearly stipulates, “the state respects and safeguards human rights” (The State Council of PRC, 2015), the proposals of “Perfecting” (Xinhuanet, 2015) and “Strengthening” (Zhang, & Yang, 2015) the judicial safeguard system of the human rights are presented successively in the Third and the Fourth Plenary Session of the Eighteenth CPC Central Committee. In addition, the people working in the field of law, like the judges, procurators and lawyers, are becoming more professional and more competent in legal languages after more graduates from law schools are recruited into their field and a series of criteria are introduced to measure legal cadres’ occupational capabilities, including their legal language proficiency levels. Under such circumstances, how to protect the language rights of the disadvantaged groups urgently needs to be solved, and we believe it can, in the context of rule of law

We are going to begin our exploration on the issue of how to protect the language rights of juvenile criminal defendants because they are numerous and immature, mentally and physically, and then extend the probe into the language rights protection of females, the elderly, the deaf and the mute, and other disadvantaged groups in our follow-up studies.

¹The paper was translated by Xue Chaofeng. The first writer of the paper is Pan Qingyun.

Literary Review

The language rights protection of juvenile defendants is a new study first carried out in China by the writers of this paper, although the relevant topic has been discussed in the western academic field, mainly by Mark Brennan and John Gibbons.

Following William Labov, in his study of social linguistics, Mark Brennan (1994, p. 195) describes with language analysis the reasons why these kids find themselves unable to understand the legal language ins and outs of courts and draws a conclusion from various tests on the kids that they have no idea of what is argued with forensic language. Children are under unfavorable conditions when cross-examined in criminal courts.

John Gibbons (2003) further points out at least four elements that can explain why the communication fails to go smoothly between the lawyer on one side and the kids on the other side. To be specific, there are the ways of questioning, interpersonal power and stress, the complexity of the language including terminology and unnecessarily complicated wording, and the lawyer usually asking for detailed information of time and place that leave the kids unable to reply accurately. John Gibbons, thereby, recommends several solutions like “information”, “mediation,” and “modifying legal procedures” to bridge the gap between the two sides.

Research Method

The writers investigated the juvenile courtrooms in a lower court and a higher court in a big city in China on the mechanism of the court’s hierarchical system and obtained a large number of trial data signed confidentiality agreements to be used only for academic research purposes. The juvenile courtrooms are set up with a special procedure system and opens with conditions to the juvenile defendants. The data, particularly about questioning and cross-examining the juvenile defendants and their responses are analyzed to uncover the status quo of their language rights protection compared with those of adult defendants.

Because the juvenile cases are all tried in chamber and not publicly in our country and the criminal recordings of the minor defendants are sealed for safekeeping in accordance with China’s Criminal Procedural Law, the data we have copied are the static court records, not the original live recordings, and therefore, screened in the process of transformation. Rather than a micro-dynamic linguistic analysis, this paper conducts a pragmatic investigation.

The Context of the Language Rights Protection of Juvenile Defendants

China has a huge population of young people. According to statistics issued by China’s National Bureau of Statistics on February 22, 2013, China has a population of 0.4 billion people, aged 18 and below, 0.22 billion aged 14 and below, 0.33 billion aged 4 to 18, and 0.18 billion aged 14 to 18 (National Bureau of Statistics of PRC, 2015). The number of juvenile defendants is so large that about 1.5 million have been judged in juvenile courts in the past 30 years. Since the creation of the juvenile court in 1984 until this day, thousands of millions of children have found themselves involved in cases handled by the juvenile courts in terms of their custody and life, health and education, and other personal rights.

China’s juvenile courts have developed and progressed a lot since 1984 from a collegiate bench to an adjudication division, from a court merely handling juvenile criminal cases to one that handles juvenile comprehensive cases including criminal, civil and administrative lawsuits. Until now, China has 2300 juvenile courts, 1246 collegiate benches, 405 juvenile criminal courts, and 598 comprehensive divisions.

Young people under the age of 18 are immature in mind, knowledge, language and cognitive competence. They have the right not to appear in a court when they are involved in such lawsuits as custody and education, life and health, traffic accidents, and other civil or administrative cases in which their rights can be claimed by their guardians or statutory agents rather than their selves, which can thus, reduce to a minimum the possible loss brought by their incapability of legal language. But according to the criminal law in China, minors aged from 14 to 18 are compulsory to show up in a court only if they are involved in a criminal lawsuit. In the past, such claims, without exception, would be brought to ordinary court for trial. Juvenile courts have been set up in many parts of China since 1984 to try criminal cases in which minors aged 14 to 18 are accused. The Juvenile Criminal Proceeding, as a special amendment, was written into China's *Criminal Procedure Law* in 2012. Up to now, juvenile courts have developed from a court only handling criminal trials to one handling comprehensive trials for the under aged, including criminal, civil or administrative cases. Juvenile defendants have to confront the power and authorities from courts together with other worries and challenges of their minds, knowledge and language capabilities shared by all minors.

In judicial activities, language is the key tool to balance justice and efficiency and to maintain equity and fairness. But language inequality prevails among court trials and other procedures in a lawsuit, which is partly due to the absolute authorities of courts, as John Gibbons considers the courtroom as "a place where power is unequally distributed, being overwhelming in the hands of the legal professionals" (2003, p. 201). The lawyers usually control the topics when facing parties related to the case, while judges and procurators have a larger voice in controlling topics and questions than lawyers. Obviously, the parties are in an inferior language position under the pressure from the above-mentioned multiple controls.

A child witness wins special attention among the disadvantaged group of numerous people. This paper discusses the language inferiority of the juvenile criminal defendants (meanwhile as witnesses) aged 14 to 18 whose cognition is growing, but not up to the sound and reasonable level of grown-ups and their expression is yet incompetent to state facts. Minors, aged 14 to 18, in China are used to lying to their parents and grandparents for everything including communicating with others, partly due to the arguable one-child policy. The first task in a court interaction is to solve a legal dispute, so a homelike environment is hardly provided for the juvenile defendants to express themselves so freely as at home because of the strict and serious legal procedures, although their weaknesses can be observed in the eyes of grown-ups. In addition, they are suspected of committing a crime and confined with such coercive measures as being detained and arrested, which surely intensifies their fears and helplessness and worsens their language inferiority.

Therefore, the following questions need exploring and expounding. What inferior positions are minors in before legal language? What measures have been taken by China's courts to maintain not only fair play, but also justice by law? What other problems are there concerning their legal language inferiority? And how are they solved?

Available Protecting Measures

At the Legislative Level, the Juvenile Criminal Procedure has been Enacted as an Amendment to the Criminal Procedural Law

- The system of juvenile delinquency (SJD for short) observes the policy "educating, reforming and redeeming".
- The SJD observes the principle "education first and punishment second".

- The SJD is in the light of the goal “fully protect for minors the litigation rights of the parties and the legitimate rights and interests of other relevant”.

Organizational Guarantee

Up to May 28, 2014, more than 2300 juvenile courts have been set up with over 7400 judges and over 2700 court clerks (The Supreme People’s Court of PRC, 2015).

Specific Methods

Psychological intervention mechanism. Psychological counseling rooms have been built together with other means of psychological intervention mechanism in the juvenile courts where the authors have visited and surveyed, which consist of 1) mental guidance before a session and an interview after a hearing; 2) other imperative psychological consultations; 3) community investigations before a session and revisiting the defendant after a hearing. Judges are compulsory to improve their overall competence; 4) making full use of social network like QQ and Wechat where the suspect can have a free talk with judges before he/she loses liberty.

Court of the Round Table (CRT for short). CRT is set up in the juvenile courts to try criminal cases in which either penalty is presumably sentenced to no more than three years or three defendants or less are involved. CRT is built to create a relatively relaxing environment for the parties in light of the principle “education first and punishment second”.

The system of Appropriate Adult Participation (AAP for short). The AAP in the criminal litigation system refers to the fact that state or public organizations responsible for the protection of minors shall be notified to select adults who meet certain conditions to be present at the time of interrogations and trials by the public security organizations, procuratorial organizations and courts to exercise the part of litigation rights, as the legal agent and fulfill their duties of supervision, communication, service, education and so on when the legal representative of the criminal suspect or the accused cannot or should not be present.

The legal terminology involved in the litigation procedure in trial shall be explained in plain language. Take the right to apply for withdrawal for example, the judge usually states after announcing to the list of the judges, the court clerk and the prosecutors, “the accused, the defender and the legal representative, according to the regulation of the Criminal Procedure Law of the People’s Republic of China, you have the right to apply for withdrawal of the judge, the court clerk and the public prosecutors. Do you apply for their withdrawal? In other words, if the accused, the defender and the legal representative think the judicial officers and the court clerk have an interest in the case or to be otherwise related to it, they can reason to request a transfer to avoid any unfavorable outcome against the defendant as a result of unfair trials” (*Bao XX and others accused of committing array crime, August 15, 2014*)

Problems of the Juvenile Defendant’s Language Rights Protection

Unconscious of Language Rights

With the development of the legal system, the litigants gradually have the right to know, to state and to debate and defend, but still not present a sound institutional guarantee. In this case, the judges and the prosecutors have not realized the language rights of the parties and their protection. The juvenile defendants lack language rights consciousness due to an immature mind and other various reasons.

Defendants Seldom Defend Themselves as Innocent or Guilty of a Minor Offense, Except for a Guilty Confession in Court, which is Concluded from the Trial Records the Writers have Read

The following is an example where the accused and their defenders haven't fully exercised their language rights.

Judge: The court investigation is over and now starts the debate stage. The public prosecutor first presents prosecuting opinions.

Prosecutor: (omitted)

Judge: The accused can defend himself.

Defendant: Nothing to say.

Judge: The legal representative can defend for the accused.

Legal Representative: Nothing to say.

Judge: The defender can defend for the accused.

Defender: No objections against the criminal facts and charges in the indictment. The following are comments on sentencing "...Ma XX is a first offender and a casual offender, induced by others. He is under the age of 18 when he committed crime. He cleaned breast of everything when appearing before the court. The defendant is pleaded with a better attitude to be sentenced to criminal detention."

Judge: Does the prosecutor need to reply?

Prosecutor: Ma XX indeed played a minor role in committing the crime, which shall be considered into the court's judgment. ...Ma XX is a first offender rather than a casual offender and confessed that he had been involved in such crimes twice, which does not exist because of insufficient evidence.

Judge: Does the defender have any new defense opinions?

Defender: No more.

(Ma XX and others accused of drug trafficking, 2014)

In criminal law, the concepts of "first offender" and "casual offender" are similar, but not identical. The latter refers to a suspected criminal by chance, while the former, corresponding to a habitual criminal, without any criminal record, is accused of the alleged crime for the first time, but possibly suspected of that crime more than once. The prosecutor charged, "Ma XX is a first offender rather than a casual offender and confessed that he had been involved in such crime twice which does not exist because of insufficient evidence." According to the criminal procedure principle "relying on evidence and not readily believing oral confession", any fact, except all that needs no proof as prescribed by law, shall not be considered valid before being verified with evidence. In this case, the defendant's language disadvantage is obvious in the face of the charge when he and his defender answered the judge's questions just with "nothing" as his defending opinion, but no further pleading.

The first paragraph of Article 193 of China's *Criminal Procedural Law* states that "all the facts and evidences related to conviction and sentencing shall be investigated and debated in court trial". In addition, the second paragraph states that "with the permission of the presiding judge, the public prosecutor, the parties, the defenders and agents' ad litem can comment and debate on the evidences and the facts of the case with each other". The first paragraph provides the court with the right to investigate the facts and the

evidences and both parties of the prosecution and defense have the right to debate on them. The second paragraph provides both sides with the specific ways to debate. After carefully reading the court records, these authors believe that there is a long way to go for the defendants and their defenders to comment and debate on the charged facts in juvenile courts with the prosecuting side.

The Defendant Arguing Absent in the Final Statement Stage

The third paragraph of Article 193 of China's *Criminal Procedural Law* states that "after the presiding judge has declared conclusion of the debate, the defendant shall have the right to present a final statement" which is the final and the best opportunity of self-defense for the accused in criminal cases in the ending stage of the trial. The final statement can impress the collegiate panel and influence the result of its vote. As such, the *Supreme People's Court Interpretation of "The Criminal Procedure Law of the People's Republic of China"* states in Article 235 emphasizing the implementation of the right, which reads "after the presiding judge has declared conclusion of the court debate, the collegial panel shall guarantee the right of the defendant fully exercising the final statement". However, no record of the defendant exercising their final statement right in juvenile courts has been found in the trial records that these authors have read.

The Filtering and Processing of the Trial Records Mask the Defendant Language Disadvantage

It isn't a surprise to note that in the trial records the accused juvenile answered without any hitch or hesitation to the questions raised by the judicial officers. The following is an example.

Judge: The accused Ye XX, Bao XX, Wang XX and Liu XX, do you receive the indictment copy made by the People's Procuratorate of XX District of XX City? And when did you receive it?

Defendant 1: Yes, I got it. On August 25, 2014.

Defendant 2: Yes, I got it. On August 25, 2014.

Defendant 3: Yes, I got it. On August 25, 2014.

Defendant 4: Yes, I got it. On August 25, 2014.

Defendant 5: Yes, I got it. On August 25, 2014.

(Ye XX and others accused of committing affray crime, September 22, 2014)

Judge: The defendant, do you have any objections against the criminal facts and the list of evidences charged in the indictment?

Defendant: No objections.

Judge: Do you plead the guilt?

Defendant: Yes.

(Ma XX and others accused of drug trafficking, September 25, 2014)

In the above trial record, the defendants' puzzlement, together with hesitation, incoherency and model particles are wiped out completely, which shows that the defendants are still in an inferior language position to which little attention has been paid so far.

Measures and Suggestions to Fully Protect Juvenile Defendants' Language Rights

Uncover the Inferior Positions Teenagers and Other Disadvantaged Groups Have with Legal Language

As mentioned above, obviously, the vulnerable groups, especially the young children, are in an inferior position with legal language. More prominent is the language disadvantage the juvenile criminal defendants meet in charges of the prosecutorial organizations and trials of courts under intense mental pressure. To this, we should have an objective and full understanding. We should be aware of the language rights, understand the importance of the language rights and gain an insight into the language disadvantages of juvenile defendants, which presumes the protection of juvenile defendant's language rights.

How to Protect the Language Rights of Young Children and Other Vulnerable Groups at the Legislative Level

The CPC Central Committee's Decision on major issues in relation to comprehensively promoting the rule of law in accordance with the law was enacted on October 23, 2014, which contains the fourth part "ensure fair justice and improve judicial credibility" that includes the fifth part "strengthening judicial protection of human rights" in which it is expounded how to strengthen the right to know, to state, to debate and defend and to appeal for the parties and other participants in the proceedings. The Language Rights Protection of Young Children and Other Vulnerable Group shall be written into the legal system of judicial guarantee of human rights and rule of law and be implemented by legislative, judicial and administrative measures, which is an indispensable part of how to comprehensively promote the rule of law strategy.

Help the Defendant Improve Language Capabilities

Language capabilities consist of (1) common and (2) legal language competence. As for the first part, help the defendants improve their language capabilities through such social networks such as Wechat and QQ during the period of the psychological intervention and guidance before a session and legal counseling.

As for the second part, the judges, prosecutors, defenders, legal representative and appropriate adults of the accused in the trial shall help the juvenile defendants and the minor witnesses understand the legal terminology, legal concepts and the trial procedure and so on.

How to Protect the Language Rights of Young Children and Other Vulnerable Groups at the Judicial Level

Protecting the language rights of the juvenile defendants shall be part of judges' professional studies and trial research and part of the standards to evaluate the performance of the judges and the courts. We suggest that the legal language protection should be listed into the investigation of the Judicial Reform Office of the People's Supreme Court and should be written into *the Fifth Five-year Reform Program of the People's Court (2019-2023)* when everything is ready that defines the specific requirements of how to protect the language rights of young children and other vulnerable groups, and the criteria and methods of how to evaluate the performance of the judges and the courts.

The judge's language ability plays a very important role in protecting the minor defendants' language rights. Alfred Denning, a great law reformer of the UK after WWII and once the president of the UK Court of Appeal, once said with deep feeling, "You have to develop your language ability in order to achieve a success in your career related to legal profession" (2015, p. 2). The judge's language ability training and improvement play a key role in order to keep pace with the evolution of juvenile trials.

Conclusion

John Gibbons (2003) introduced a new task of the language disadvantaged into forensic linguistics. The authors initiated language rights protection of the vulnerable groups in the context of rule of law in China. Through studying juvenile criminal defendant trials, this paper acknowledges that their language rights in legal circumstances have already been guaranteed to a certain extent in terms of their litigious rights and human dignity from the legislative and judicial levels. But unconscious of “the language rights”, we have never overemphasized such protections to them. The investigation of language rights protection to juvenile criminal defendants still remains a small step for us. We believe a big leap across China and even the whole world will be made by people of law and other social areas to better protect the language rights and other human rights, not only for the disadvantaged groups, but also for the whole mankind.

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Study on Chinese Civil Court Judgments: A Gricean Perspective

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[Abstract] The Internet openness of Chinese court judgments in 2013 is of great significance in strengthening the public trust and transparency, promoting social stability and perfecting citizens' educational legislation. However, since its openness, some mistakes, or flaws, have been found in literal expression, structural layout, statements of facts, and reasoning, etc. Through the text analysis of authentic Chinese civil court judgments, it is found that during the drafting of court judgments, violation of the four maxims of the Cooperative Principle is the main cause of these mistakes and flaws. Therefore, in this article, the Cooperative Principle of Grice is suggested to be the theoretical foundation to guide the drafting of court judgments so as to effectively enhance the quality of court judgments and provide feasible suggestions for drafting court judgments.

[Keywords] civil court judgments; cooperative principle; the drafting of court judgments

Introduction

As the written recording of the trial process and result, court judgments are not only the carrier of the results of litigious activities, but also the only certificate used to ascertain and allocate a party's entity rights and obligations by the People's Court. However, since the openness of the Internet, some problems have occurred due to the mistakes and flaws in literal expression, structural layout, statements of facts, and reasoning, etc. Although there are numerous studies on court judgments focusing on the mistakes or flaws, few of them have provided a feasible theoretical guide to minimize the mistakes, or flaws. After analyzing numerous court judgments, it is found that the Cooperative Principle can be regarded as a theoretical foundation to guide the drafting of court judgments, which can make the court judgments more accurate, reasonable and acceptable.

First introduced by Paul Grice (1975), the Cooperative Principle and its four maxims have been widely adopted in legal settings, at home and abroad. However, few studies have been conducted that apply the Cooperative Principle to guide the drafting of court judgments. In this article, the Cooperative Principle is considered as a theoretical basis for the drafting of court judgments to avoid making mistakes, or flaws, by analyzing numerous court judgments. First of all, a review of Chinese court judgments and the Cooperative Principle will be made. Then, the reasons why the Cooperative Principle can guide the drafting of court judgments are given by some examples. Finally, the conclusion demonstrates that the Cooperative Principle is applicable to guide the drafting of court judgments, which can make them more acceptable and reasonable. Moreover, this application can contribute greatly to the practical significance for drafting.

Literature Review

As a legal genre, a court judgment is a written document about the decision of a court of law or a judge prepared by the judge with the courtroom as the setting and the trial as the scene (Cheng, 2010). The previous studies concerning court judgments have been researched from the following two levels (the lexical-grammatical level and the discoursal level) with the application of the following theories and methodologies (semiotic approach, genre analysis, corpus-based or corpus-driven, legal rhetoric and comparative approach).

In light of the previous studies of court judgments at the lexical level, the most previous studies have focused on the phraseology (Khalifa, 2015), expression of evaluation (Masiulionytė, 2014) and hedges and boosters (Toska, 2012). When it comes to the grammatical level, studies on court judgments have been mainly conducted in modality (Cheng, L., & Cheng, W., 2014; Cheng, L. & Sin, K. K. (2011) and concessive studies (Szczyrbak, 2014). Regarding the studies of court judgments at the discoursal level, they mainly have focused on reasoning (Huang, 2015) and genre analysis with the comparative and corpus-based or corpus-driven approach. After the online openness of Chinese court judgments, the study on its reasoning has been paid great attention to about its problems and some strategies to solve them. The main problems lie in the poor judges' professional qualities (Lian, 2005), the lack of a system compared with the stare decisis in the Anglo-American legal system (Huang, 2015; Lian, 2005), the lack of the independent status of Chinese courts (Zhu, 2001; Lian, 2005), the lack of post-trial feedback mechanism and question-answer mechanism (Su, 2010).

Some scholars (Hou, 2012; Tang, 1996; Liu, 1986; Hong, & Chen, 2004; Li, 2011; Sun, 2011) have also conducted studies on the acceptability of court judgments from the perspective of legal rhetoric whose cores are speakers or audiences and consensus. As noted by Hou Xueyong (2012), in order to have correct court judgments, rhetoric must be applied so as to convince the disadvantaged side to give up some interests and accept the final results. The reasons why legal rhetoric can promote the acceptability and reasonability of court judgments lie in the following two aspects: First, it can remedy the lack of logical function; secondly, communication can be made between the speakers and audiences because they are valued in legal rhetoric (Chen, S., 2015). Some scholars (Sun, 2011; Lin, 2010; Guo, 1999) have also probed into the use of positive and negative rhetoric in court judgments so as to enhance language standardization and overall quality.

As can be seen from the review expounded above, most studies are confined to the legalese such as the lexical features and syntactic features in foreign counties. What's more, in China, most studies are limited to the reasonability and acceptability of court judgments at the superficial level. In other words, no specific theoretical foundation has been put forward to guide the drafting of court judgments and enhance their quality. In this article, after analyzing authentic Chinese civil court judgments, the author has found that the Cooperative Principle has the interpretive force on court judgments.

First introduced by Paul Grice (1975), the Cooperative Principle is to “make your contribution such as it is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged” (1975, p. 45). It consists of the following four maxims:

The Maxim of Quality

- Try to make your contribution one that is true, specifically:
 - Do not say what believe to be false.
 - Do not say that for which you lack adequate evidence.

The Maxim of Quantity

- Make your contribution as informative as is required for the current purposes of the exchange.
- Do not make your contribution more informative than is required.

The Maxim of Relevance

- Make your contributions relevant.

The Maxim of Manner

- Be perspicuous, and specifically:
 - Avoid obscurity;
 - Avoid ambiguity;
 - Be brief;
 - Be orderly.

(Grice, 1975, pp. 45-46)

As Grice (1975) stated, observing the above maxims can ensure the successful conversation and effective transitivity of information, while violating the maxims may generate “implicatures” such as the generation of humor. However, during the drafting of court judgments, the diction is required to be accurate, strict, standard and rigorous. In other words, if the judges violate the Cooperative Principle while drafting the judgments, the generated “implicature” may mislead the readers and lead to ambiguity, which causes serious information access barriers and failing communication.

In legal settings, the Cooperative Principle is mainly applied in courtroom examinations (Penman, 1987), police interrogations (Linfoot-Ham, 2006), contracts (Frade, 2002), jury summations (Walter, 1988), legal interpretation (e.g. Dascal & Wroblewski, 1991; Kaplan, 1998; Poggi, 2011) and jury instructions (Cheng, L., Cheng, W., & Li., 2015). For example, Cheng, L, Cheng, W., & Li suggest there is “a gap in knowledge between studies on jury instructions and the application of the Cooperative Principle (Grice, 1975) to jury instructions” (2015, pp. 40-41). Likewise, according to the literature review above, it can be seen that a gap is shown between studies on court judgments and the application of the Cooperative Principle to Chinese court judgments. To bridge this gap, the present study aims to examine Chinese court judgments so as to avoid the deficiencies or flaws effectively and shed light on the drafting of court judgments.

Application of the Cooperative Principle in Civil Court Judgments

Through the analysis of civil court judgments, it can be seen that most deficiencies, or flaws, are caused by the violation of the Cooperative Principle and its maxims. In this section, case studies were conducted, which aim to verify that the Cooperative Principle has enough interpretative force on court judgments. So in this article, the maxim of quality, the maxim of quantity, the maxim of relevance and the maxim of manner will be adopted, respectively, with concrete case studies. All the cases were extracted from the official China Judgments Online.

The Maxim of Quantity

Due to the rigorousness and accurateness of court judgments, they are required to be neither uninformative (not as informative as is required), nor over-informative (more informative than is required) (Grice, 1975, pp. 45-46). If the judges flout the maxim of quantity, the contribution to conversation between the judges and readers is not sufficiently informative. In other words, implicature can be generated, which may mislead the readers. Moreover, the aim of court judgments cannot be satisfied. This point can be illustrated from the following two cases.

Uninformativeness

[1] *“In terms of Mahan Corporation’s undertaking the obligation, according to relevant regulations, one party as the Developer has signed the project construction contract with the Contractor, if the Contractor requires all parties to undertake joint liability for the unpaid project funds, such request shall be upheld.”*

– Suzhou Province Supreme People’s Court (2015), No. 00573

[2] “As the original court noted, **according to relevant regulations**, employees have worked continuously for more than 12 months can be paid annual leave.”

– Shanghai No.2 Intermediate People’s Court (2015), No. 1583

In the above two cases, “according to relevant regulations” is used in the reasoning part of the court judgments. In fact, such kind of phenomenon can be widely found in the court judgments, which cannot be listed in full here. However, “relevant regulation” is too general a statement to make the whole case precisely reasoned. “Based on facts and taking law as the criterion” is the basic principle for judging cases. So the question about according to which regulation should be clear and definite because jurisprudential evidence plays an important role in reasoning. In addition, the audiences of the court judgments include not only the professional layers and law workers who have profound legal knowledge background, but also common citizens who are not familiar with the concrete legal regulations. “The judges are not simply the law enforcement machines, but the transmitters who transmit the legal principles and spirits to the public” (Yan, & He, 2001). On one hand, the uninformativeness of court judgments cannot give a tight reason or achieve a strong conviction; on the other hand, it is not conducive to the dissemination of law and regulations.

[3] *The retrial court judgment for the lease contract dispute between Fushun Tianchi Detong Real Estate Development Co., Ltd. and Liaoning Letian Supermarket Co., Ltd.*

– *The Supreme People’s Court of the People’s Republic of China (2016), No. 78*

As we know, retrial court judgments are required to be more strict compared with the first trial and the second trial court judgments. So, “the origin and trial process are required to be illustrated clearly so that the audiences can have a clear understanding of the cause and effect of the cases” (Shen, 2010). However, some court judgments are in lack of concrete statements of facts. For example, in the above No. 78 retrial court judgment, in which the information of facts is not stated completely or clearly at the beginning, may cause audiences to take more efforts to understand the entire case (this court judgment is so long that it is not attached here). Therefore, the nature of court judgments should be taken into consideration during the drafting process.

Over-informativeness

[4] “...but the Yangcheng Fan Industry didn’t provide the loan contract signed with Zou Huazhen to be the evidence, so his plea opinion is not agreed. **To say the least**, even though...”

– *Guangzhou Supreme People’s Court (2015), No. 5704*

In the above case, “to say the least” is used to reason. However, sentences beginning with “to say the least” are written to note that the fact cannot be denied even though the statements in the two contracts are different. On the surface, this sentence can strengthen the reasoning. In fact, it’s redundant, which may make audiences feel that the judges are not confident in his earlier reasoning or fact-finding. So such kind of over-informativeness may be counterproductive by shaking the reasoning or statements in the earlier parts of the court judgments.

Maxim of Quality

[5] *Chinese version: 2006 年 11 月 8 日, 张福贵立下遗嘱, 将该房屋指定由张华明继*

承。2009年6月11日,张福贵去世,该房由张华明所有。

English version: "On November 8th, 2006, Zhang Fugui made a will, which indicated that the house shall be inherited by Zhang Huaming. On June 11th, 2009, after the death of Zhang Fugui, the house was owned by Zahng Huaming."

– *Jingzhou Intermediate People's Court (2015), No. 00238*

In the above case, "death" (in the Chinese version, it is "Qu Shi" (去世)) is used to indicate that Zhang Fugui died. In Chinese, "death" can be interpreted into "Qu Shi"(去世) or "Si Wang"(死亡). In the Chinese version of *Law of Succession of the People's Republic of China*, "Si Wang"(死亡) is used to refer to "death" instead of "Qu Shi"(去世), because in the legal context, the professional word to indicate "death" is "Si Wang"(死亡) rather than "Qu Shi"(去世), which is a word used in daily life. So it will be more accurate to use "Si Wang"(死亡) in the Chinese version of the above case to denote "death", which can represent the accurateness of law and enhance the quality of court judgment.

[6] *Chinese version: 依据该证据本院可以认定, 李文志虽未农村户口, 但在城市生活多年, 其赔偿标准应当适用城镇标准。*

– *Shenyang Intermediate People's Court (2016), No. 71*

English version:

Interpretation 1: According to the evidence, it can be affirmed even though Li Wenzhi is a rural registered resident, the compensation standard shall be based on urban standard because he has been living in the city for many years.

*Interpretation 2: According to the evidence, it can be affirmed even though Li Wenzhi is **not** a rural registered resident, the compensation standard shall be based on urban standard because he has been living in the city for many years.*

In the Chinese version of this court judgment, a clerical error exists with the misuse of the negative word – “未”. The correct word should be “为” which is an assertive word. The two Chinese characters possess similar pronunciation but their meanings are completely opposite. So when it is translated into English, there are two opposite interpretations. Obviously, Interpretation 2 is self-contradictory and incorrect. Of course, some audiences could guess the real meaning through inference. However, it cannot be denied that it can cause misunderstanding and audiences may need to take more efforts to understand and correct the clerical error. So the clerical error is another way of flouting the maxim of quality. Sometimes clerical errors will exert minor influence, however, sometimes its influence is fatal.

Maxim of Relevance

[7] *"...In the trial of first instance, the case nature, fact finding and law application are wrong and paradoxical, which need to be corrected."*

– *Qinghai Supreme People's Court (2015), No.52*

In this example, it can be seen that in the trial of first instance, the fact finding and law application are paradoxical. Although it has been corrected in the retrial, it cannot be denied that the judges haven't dealt with the relevance of fact finding and law application in the trial of first instance. During the process of drafting court judgments, the fact finding and law application should be relevant. The maxim of relevance requires the conversation to be relevant to the topic. Once it is violated, some irrelevant information may be provided, which will mislead the readers. Therefore, whether fact finding or law application, it should be noted that they should be relevant so that efficient and accurate information is available to readers.

Maxim of Manner

[8] “...Obviously, the claim of Changrui Company obviously doesn’t conform to the contract involved and it is not evidence-based. So evidence affirmation is difficult to be adopted by the court”.

– Shanghai Supreme People’s Court (2015), No. 17

In terms of the maxim of manner, legalese should be used in court judgments. In other words, judges should draft their court judgments with normative legal language and avoid using some subjective expressions with emotional color. For example, in case [8], “evidence affirmation is difficult to be adopted by the court” is a little bit emotional. In this case, this kind of expression is used for three times. If the probative force of evidence is not enough and affirmed, it should be interpreted “evidence affirmation is not adopted by the court” instead of the “evidence affirmation is difficult to be adopted by the court”. In addition, in the earlier part of this court judgments, it is stated that “the claim of Changrui Company obviously doesn’t conform to the contract involved and it is not evidence-based”, which has definitely and clearly stated that the claim is not evidence-based. So, it is “evidence affirmation is not adopted by the court” that should be used.

During the reform of judicial documents, “post-holding script” is the newborn object that has various opinions. On one hand, some scholars insist “legalese” should be used due to the rigorous and authoritative characteristics of court judgments; on the other hand, some scholars believe that the use of “post-holding script” will not only break the rigid model of court judgment drafting, but also realize the combination of legal logos and legal sense, which can narrow the distance between the court and the parties involved (Zhu, Z., 2009). According to Cheng Le (2006), “post-holding script” is reasonable and valuable for its existence, and whose drafting principle and style should be regulated and guided by the Supreme People’s Court.

Conclusion

This study probes into how the mistakes, or flaws, can be minimized under the guidance of the four maxims of Grice’s Cooperative Principle. After analyzing concrete authentic cases of court judgments, the following conclusions can be made.

As for the theoretical guidance, it is noticeable that the Cooperative Principle, especially its four maxims, is feasible and applicable to guide the drafting of court judgments. With the four maxims observed, some unnecessary mistakes or flaws can be avoided by the judges, which can also provide a set of principles for them to draft the court judgments. However, if judges violate the four maxims, insufficient or inaccurate information will be provided to the readers, which will mislead them and make the court judgments less acceptable or reasonable.

In terms of practical significance, this study can contribute to the reform of court judgments by probing into their disadvantages. First of all, under the guidance of the maxim of quantity, the information provided by judges is required to be neither too overinformative, nor uninformative, in order to make the judgments generally acceptable and reasonable. Secondly, as for the maxim of quality, the overall qualities of judges are required to be enhanced including both their law professional knowledge and their standard drafting level. Thirdly, for the maxim of relevance, the judges are required to make their written information in the court judgments relevant, especially the relevance of fact finding and law application. Finally, guided by the maxim of manner, “legalese” is needed during the drafting of court judgments. Meanwhile, after regulating the drafting principle of “post-holding script”, it can be attached to the end of the court judgments, which can realize the combination of legal logos and legal sense and make the judgments more instructional.

In conclusion, the four maxims of the Cooperative Principle can be suggested to be a theoretical guide for the drafting of court judgments and shed light upon their drafting. However, there are also some limitations in this study. For example, these cases were mainly chosen from a number of online court judgments, while a corpus-based quantitative analysis was not conducted. In this aspect, the author will make more efforts in this area.

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On Verb Complement Clauses in the English Language

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[Abstract] This paper will deal with several aspects of the potential features of English verb complement clauses from the view point of Applied Linguistics. While briefly describing the main characteristics of the infinitive, ING and THAT clause functioning as the object of verbs, and some special features of infinitives we found, based on BNC, are explained, and necessary contrasts between complement clauses are provided. Attention is paid to the target situation where English is learned and taught as a foreign language.

[Keywords] verb complement; infinitive; ING; that clause

Introduction

The area of English complementation constitutes one of the greatest challenges to a theory of syntax based on semantic foundations (Wierzbicka, 1988, p. 23). In terms of the complement clauses of verbs, the most commonly used types are infinitives, ING forms and THAT Clauses. Now more and more people are showing special interest in the different meanings and functions of these complement structures. Many linguists have made a thorough study of them, among whom are Bolinger (1968), Dixon (1991), and Wierzbicka (1988). Comparatively speaking, the semantic nature of the contrast between TO and ING has been basically established, however, the exact meanings of the two constructions have not been fully explained. There is still plenty of room for improvement in this respect. As Wierzbicka (1988, p. 24) states: Bolinger (1968) speaks of “reification versus hypothesis or potentiality”; and he endorses, and generalizes, Jespersen’s (MEG5, p. 166) observation that “The infinitive seems more appropriate than the gerund to denote the imaginative (unreal)”. Another way Bolinger characterizes the contrast between TO and ING is in terms of “something projected versus something actually done” (1968, p. 123).

However, there are many TO complements that cannot be explained by the theories mentioned above. Sometimes different kinds of verbs will also affect the use of these complement clauses. The contrast between TO and THAT constructions needs to be explained more scientifically in different contexts.

The Infinitive and the Potential Tendency Toward Action

Quirk, et al. (1985, p. 1191) point out, “The infinitive gives a sense of mere ‘potentiality’ for action, as in *She hoped to learn French*, while the participle gives a sense of the actual ‘performance’ of the action itself, as in *She enjoyed learning French*”. We hold that when the verb such as *hope* followed by an infinitive indicating an information with future orientation, the potential tendency toward action is a powerful and convincing explanation. It is a useful criterion that can help non-native speakers decide whether they should use an infinitive in a certain context.

The most typical example is the use of *promise*. Why does *promise* take TO, not ING? Let’s see the component analysis given by Goddard (1998, p. 147). For a verb like *promise*, with its complex package of sincerity conditions, one could advance the following:

X promised Y (to do A) =

X said to Y:

I want you to know I will do A

When X said it, it was as if X was saying at the same time:

I know you want me to do this

I know you think that maybe I will not do it

I don't want you to think this

I know if I don't do it after saying this, people will think something bad about me

From this passage, we can see quite clearly that the infinitive phrase indicates the potential tendency toward action. Then some people may think why the word *consider* is followed by ING, instead of TO. To solve this problem, we need to analyze them from a semantic point of view. Verbs of strong commitment to a certain action, such as *Promise* or *Vow*, take TO, not ING, but verbs referring to mere thinking about a possible course of action take ING:

X promised/vowed to do Z/ doing Z.*

X considered/thought about/envisaged/deliberated about [the possibility of] doing Z.

(Wierzbicka, 1988, p. 70).

Sometimes, there are two or more constructions that can be used after one verb as the complement. Then how do we select? Many dictionaries fail to explain the difference between the complements. For example:

I have persuaded him to do it.

I have persuaded him into doing it.

Steel (2000) in the *Oxford Wordpower Dictionary for Learners of English*, regards three patterns as a class to give a general definition: persuade verb [T], persuade sb (to do sth), and persuade sb (into sth/doing sth) to make sb do sth by giving him/her good reasons: It was difficult to persuade Louise to change her mind. We eventually persuaded Sanjay into coming with us. The dictionary does not provide any different meanings for each of the patterns.

In order to see the subtle differences in meanings between the two constructions, it might be helpful to cite the semantic elements provided by Wierzbicka (1988, p. 42).

X V-ed Y into doing Z. →

X thought this: I want this: Y will do Z

X did something because of that

Y did Z because of that (i.e. because of what X did)

Y did it not because Y wanted it

From the last line, 'Y did it not because Y wanted it', we can see the two constructions are different in meaning. When we say X persuaded Y to do something, it means Y has the intention to do something after X's persuasion. The infinitive has intentional function (Wu, 2005, p. 74).

The Judgment TO Complement

Dixon (1984, pp. 589-590) stated, "We (...) need to recognize at least two varieties of TO complement construction. The first kind of TO complement clause refers to some as yet unrealized activity: the TO indicates the desirability, necessity or inevitability of its taking place. (...) There is another kind of TO complement that is semantically quite different and invokes a judgment concerning the subject of the TO clause". For example:

I know that Mary hit John/I know Mary to have hit John.

I know that Mary is clever/I know Mary to be clever.

To classify the two infinitive constructions, the Modal (for)TO and Judgment TO, makes the study of infinitives much better than ever before because the two constructions are quite different not only in syntax, but also in semantics. It is even more important for non-native speakers to make a clear distinction between them.

However, there are quite a lot of problems that need to be solved in the respect of Judgment TO complement. There are some situations in which a certain judgment is made. Dixon (2005, pp. 244-245) points out: Most often the Judgment is about some state or property which is either transitory, e.g. *I noticed John to be asleep*, or else a matter of opinion, e.g. *They declared Fred to be insane*. A Judgment TO construction is unlikely to be used to describe some permanent, objective property, and thus, one would be unlikely to hear – *He noticed her to be Chinese* (only *He noticed that she was Chinese*). And most often the subject of the judgment TO clause is human – *I believe that glass to be unbreakable* sounds rather odd. A Judgment TO construction is frequently found with the main clause passivized, often so as to avoid specifying who is responsible for the judgment, e.g. *He was declared to be insane*. In fact, the verb *say* only takes a judgment TO complement in the passive, e.g. *Mary is said to be a good cook* (but not* *They say Mary to be a good cook*). The predicate of a Judgment TO clause most often begins with *be*.

From the above, we can see there are four special features of the Judgment TO construction pointed out by Dixon: ① A Judgment TO construction is unlikely to be used to describe something permanent, or objective; ② Most often the subject of the Judgment TO clause is human; ③ A Judgment TO construction is frequently found with the main clause passivized; ④ The predicate of a Judgment TO clause most often begins with *be*.

Based on these features, taking some commonly used verbs as examples, with noticed/found/declared/believed* to be a [J*] *as search items, we have conducted an investigation through BNC. Having analyzed the data, we found that there is something different from what Dixon described above, especially for the first, second and third features; at least there is some room for discussion. See the following examples from BNC:

1. Once again, Joyce had *declared himself to be a British citizen* by birth. (BNC EDA)
2. I found a little bit of string choking on the upper three frets and on inspection, *found there to be a slight bow* to the neck. (BNC.C9J)
3. When they reached the stream they *found it to be a rushing torrent* that swept in mad haste along a narrow bed. (BNC, HHB)
4. She said she *found modeling to be a good business* to be in. (BNC, HJ4)

We hold that the features of Judgment TO provided by Dixon are quite important, especially for those who are not native speakers. However, what Dixon described seems to be a little bit too absolute. We have quite a few counter examples from BNC. There is room for improvement as far as the explanation is concerned. For the sake of convenience, we will describe the data in detail later on.

TO Versus THAT

Many times, people who are not English native speakers will face an exacting challenge when there are two structures to be selected. Bolinger (1968, p. 127) said “A difference in syntactic form always spells a difference in intension.” Relating to Dixon’s own definition of THAT complement clauses, verbs that can take THAT complements must have the ability to refer to a certain state, activity or event as a whole. Here, the state is the focus. When referring to an activity or an event, a THAT complement is emphasizing the

general whole, but not the specific aspects or details of the event or activity. It focuses on the state, event or activity that someone has been experiencing (Wu, 2010, p. 63).

The semantic contrast between the two constructions depends on many factors, especially on the semantic meaning of the verbs themselves. Compare the following sentences:

- a. Jane pretended to be an acrobat.
- b. Jane pretended that she was an acrobat.

Riddle (1975, p. 467) commented that Sentence (a) expresses some notion of activity in the complement while Sentence (b) refers to a mental or physical state.

When describing the use of *believe*, Evans, B. and Evans, C. (1955) pointed out, The word may be followed by a clause, as in *I believe they are ripe*, or by an infinitive, as in *I believe them to be ripe*. The clause construction is preferred when the verb *believe* is active, as in the example just given. When *believe* is passive, only the infinitive construction can be used, as in *they are believed to be ripe*. We hold what Evans, B. & Evans, C. explain is reasonable to some extent. However, it is, by far, not an exact answer (p. 58).

Verspoor (1990) claims that the distinction between *to* and *that* complements lies in the notion of ‘directness’ versus ‘indirectness’, as in the sentence *I believe him to be honest*. *To* is used when there is some direct evidence for the belief, and therefore, expresses a stronger degree of commitment to the truth of the proposition expressed in the complement than *I believe that he is honest* (Vesper 1990, p. 43).

The difference in meaning between the two structures can also be explained by the Principle of Clause Integration to the effect that the degree to which the dependent clause is integrated into its superordinate clause correlates (inversely) with the degree of its semantic independence (Givon 1990, pp. 565-561, 973-975; Haiman 1983, pp. 799-800; Gramley, 1987).

Let’s introduce the sentence comparison given by Rohdenburg (1995, pp. 367-388):

- (1). a. John persuaded Susan that she should go.
b. John persuaded Susan to go.
- (2). a. John reminded Susan that she should go.
b. John reminded Susan to go.

Rohdenburg, (1995, p. 367) points out, “Quite obviously, the principle also accounts for the relationship holding between the corresponding sentences in (1) and (2). In (1a), the finite dependent clause exhibits a relatively high degree of syntactic autonomy reflecting a correspondingly high degree of semantic independence. In contrast to (1b), the influence exerted by John on Susan in (1a) is comparatively weak.” Huddleston (1971, p. 157) once characterized the situation in the following terms: ‘*to persuade someone to do something* is to get him to agree to do it, whereas *to persuade him that he should do something* is only to get him to accept that he ought to...’ Or to put it more simply (1b) entails that Susan had an intention to go;(1a), however, is not committed to this interpretation (Kirkpatrick, 1983, p. 217).

Conclusion

We have described briefly the features and functions of the three main complement constructions – infinitives, ING and THAT clauses, focusing on the TO and Potential tendency toward action, Judgment TO complement, and TO versus THAT. Taking speech act verbs as the main examples, based on some data from BNC, we found that each complement clause has its own characteristic and functions, and the verbs that can be used with those complement clauses also have something to do with their potential semantic meaning. Some verbs can have two or even more complement clauses. However, they are quite different in

terms of semantics and pragmatics. Only when we make a thorough study of the features and functions of each complement clause can we select the right one to express our ideas and understand why other people use one form instead of others!

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Analysis of the Legal Discourse of the Contract Law of the People's Republic of China-Systemic Functional Perspective

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[Abstract] Systemic functional grammar has always been an important paradigm for scholars to analyze different discourses, including legal discourse. This paper takes the *Contract Law of the People's Republic of China* as an example of Chinese legal discourse, and applies systemic functional perspectives to probe into this specific legal discourse's linguistic components and structures. In this paper, statistical data are calculated and examples are cited to manifest that there are some regular rules of systemic functional grammar guiding Chinese legislation, which may help unveil the mystery of legislative principles and contribute to legislation. In addition, theories of language systems and functions are used as tools to achieve this objective.

[Keywords] systemic functional grammar; Chinese legal discourse; systems; functions

Introduction

This paper is based on the theories of Systemic-Functional Grammar (SFG) which was mainly proposed by M. A. K. Halliday (2004), and a small corpus has been compiled for analysis; in the corpus, there is only the transcript of the *Contract Law of the People's Republic of China*. In order to facilitate data processing and analysis, an authoritative English translation version of the *Contract Law of the People's Republic of China* is used instead of the original Chinese version, and there are about 23,500 English words in this corpus. This corpus was processed by UCREL Semantic Analysis System (USAS, 2016) and AntConc (software), and some statistical results have been extracted from the data, and some tables made accordingly for analysis.

Concerning legal discourse, there are many implicit or explicit binding principles, and as we all know, legal discourses feature some specific characteristics in word choice, tense, modality, person, case, and transitivity, etc. All of these factors will inevitably influence legislation and then will further influence judicial practices. Under the grand backdrop of China's national policy – Rule of Law, it's becoming increasingly important to explore and take advantage of using linguistic science to promote legal practices. In light of these facts, the systemic functional perspective analysis of this paper will be very helpful.

Literature Review

Systemic-Functional Grammar has been a great contribution made by M. A. K. Halliday and the Hallidayan school to modern linguistics, and one important thing that needs to be pointed out is that systemic grammar and functional grammar are two related, yet different, concepts. Halliday points out that the difference between a systemic description and one in terms of traditional school grammar is that in school grammar, the compromise is random and unprincipled, whereas in systemic grammar it is systematic and theoretically motivated (Halliday, 2004). Being a 'functional grammar' means that priority is given to the view 'from above'; that is, grammar is seen as a resource for making meaning – it is a 'semanticky' kind of grammar. But the focus of attention is still on the grammar itself (Halliday, 2004). Based on a comprehensive study, a fact has been unveiled that scholars have applied systemic functional grammar to interdisciplinary research. For example, systemic functional theories have been combined with translation, pedagogy, legal

matters, discourse analysis, and philosophy, etc. “System”, although introduced in *Grammatical Categories in Modern Chinese* in 1956, was highlighted in 1961 in *Categories of the Theory of Grammar*, in the Scale and Category Grammar. “System” is a major grammatical category which is regarded as the “single sets” in particular positions, and afterwards, the notion of “system” is developed that “system network” is derived from the combination of systems with the help of “delicacy”. Since 1967, the study of syntagmatic and paradigmatic relations is closely related to the functional components of grammar, and in 1985, *An Introduction to Functional Grammar* was published as a symbol of the maturity of Functional Grammar (Zhang, J., 2014).

Later, systemic functional grammar was applied to various studies. Guo Ning explored systemic functional grammar and its pedagogical implications; that paper focused on the application of systemic functional grammar (SFG) to language study, by providing a sample of text analysis from the systemic functional point of view, and illustrated how this approach could be helpful to language teaching (2008). Elaine Yin Ling explored ideational and interpersonal metafunctional profiles of Chinese grammar, and aimed to test the applicability of systemic functional linguistics to the study of Chinese translated texts with regard to the transitivity and modality systems, and suggested aspects of the lexico grammatical features of the SFG model that need to be adjusted to make it more serviceable for the analysis of Chinese translated texts (Ling, 2013). Heather Meyer explored systemic functional grammar from a pedagogical perspective, and it intended to supplement teachers’ insights into the linguistic characteristics of academic writing considered ‘Excellent’, and to offer strategies for empowering students with a clearer idea of what is expected of them in academic writing (2008).

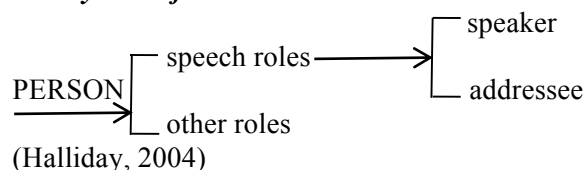
In light of legal discourse, scholars have done a great deal of work from different perspectives. Cheng Le explored linguistic modality in legal settings, and aimed to unravel the complexity of modality as exemplified in its usage in the legal domain, and it examined formal, semantic, and functional approaches to modality, showing their weaknesses in identifying and explaining modality in legal discourse (2011). Vijay K. Bhatia and Aditi Bhatia dealt with legal discourse from across cultures and socio-pragmatic contexts perspectives, and attempted to illustrate that interpretations of legal discourse invariably depend on the context of socio-pragmatic realities to which a particular instance of legal discourse applies, and hence, socio-political, as well as cross-cultural, factors have a crucial role to play in its interpretation (Bhatia & Bhatia, 2011). To some extent, legal discourse is mysterious and complicated because it has many specific characteristics, among which is to avoid ambiguities, because ambiguous constructions can pose a problem for the interpretation and application of a legislative text (Bünzli & Höfler, 2012). Despite the fact that scholars have done plenty of research into legal discourse, very little research has been done on Chinese legal discourse from a systemic functional approach, and this paper takes the *Contract Law of the People’s Republic of China* as an example of Chinese legal discourse and fills in the blanks in this research field.

Theoretical Framework

With regard to theoretical framework, this paper adopts systemic functional grammar and related theories, which is a new approach to explore Chinese legal discourse. According to Hu Zhuanglin, systemic grammar aims to explain the internal relations in language as a system network, or meaning potential, and this network consists of subsystems from which language users make choices. Functional grammar aims to reveal that language is a means of social interaction, based on the position that language system and the forms that make it up are inescapably determined by the uses or functions which they serve (Hu, 2011).

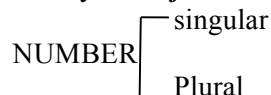
In systemic grammar, the notion of a system is made a central explanatory principle, the entirety of a language is conceived as a “system of systems”, and systemic grammar is concerned with establishing a network of systems of relationships, which accounts for all the semantically relevant choices in the language as a whole (Hu, 2011). From a systemic perspective, language consists of systems of a person, and a number, etc. These two systems are typical systems in systemic grammar, are further elaborated below.

The System of PERSON



(Halliday, 2004)

The System of NUMBER



(Halliday, 2004)

As English learners, we all know person and number are overlapped grammatical categories; in other words, systems of PERSON and NUMBER are intersected, and examples of these two systems will be given in the result analysis and discussion sections.

Systems of PERSON and NUMBER Intersected

| Person Number: | speaker (+) ('first person') | addressee (+) (second person) | other (+) (third person) |
|-----------------------|-------------------------------------|--------------------------------------|---------------------------------|
| Singular | I/me | you | He/him, she/her, it |
| Plural | We/us | | They/them |

(Halliday, 2004)

In functional grammar, Halliday believes that language is what it is because it has to serve certain functions (Hu, 2011). A combination of three different structures deriving from distinct functional components; these components (called ‘metafunctions’ in systemic theory) are the ideational (clause as representation), the interpersonal (clause as exchange), and the textual (clause as message) (Halliday, 2004). In the following part, the three functions are listed in detail according to established academic research.

The Ideational Function

The Ideational Function (“Experiential” and “Logical”) is to convey new information, to communicate content that is unknown to the hearer. Present in all language uses, the ideational function is a meaning potential, because whatever specific use one is making of language, he has to refer to categories of his experience of the world. The ideational function mainly consists of “transitivity” and “voice” (Hu, 2011).

The Interpersonal Function

The Interpersonal Function embodies all uses of language to express social and personal relations. This includes the various ways the speaker enters a speech situation and performs a speech act. Interpersonal function is realized by mood and modality, in which mood shows what role the speaker selects in the speech situation and what role he assigns to the addressee, and modality specifies if the speaker is expressing his judgement or making a prediction (Hu, 2011).

The Textual Function

The Textual Function refers to the fact that language has mechanisms to make any stretch of spoken or written discourse into a coherent and unified text and make a living passage different from a random list of sentences (Hu, 2011).

Methodology

In this paper, in order to facilitate data analysis, a small corpus was compiled, and it only includes one legal text – the full transcript of the *Contract Law of the People’s Republic of China*. As mentioned above, an authoritative English translation version of the legal text was used instead of the original Chinese version. Then, the corpus was semantically tagged by the USAS online English tagger, which was developed by scholars from Lancaster University and other places around the world. This USAS tagger can tag every component in a text transcript into different semantic categories, and the semantic tags show semantic fields which group together word senses that are related by virtue of their being connected at some level of generality with the same mental concept. The groups include not only synonyms and antonyms, but also hypernyms and hyponyms. Currently, the lexicon contains nearly 37,000 words and the template list contains over 16,000 multi-word units (Archer, Wilson, & Rayson, 2002). After the transcript of the *Contract Law of the People’s Republic of China* were processed by USAS, all of the data were further processed by AntConc for other statistical results.

Result Analysis and Discussion

In this section of the paper, examples are given and data further elaborated upon. Concerning the two systems of person and number from a systemic perspective, there are many examples.

Example 1

Where the gifted property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

(Contract Law of the People’s Republic of China, 1999)

The above sentence is from Article 189 of the *Contract Law of the People’s Republic of China* (1999 effective), and it is cited here for the analysis of number and person. In this sentence, in light of person, it is third person “he”, and concerning number, it is singular.

Example 2

Where the passenger is unable to board the means of transportation at the time stated on the passenger ticket due to any reason attributable to himself, he shall undergo the formalities for ticket cancellation and refund or for ticket modification within the agreed period.

(Contract Law of the People’s Republic of China, 1999)

The above sentence is from Article 295 of the *Contract Law of the People’s Republic of China* (1999 effective). This sentence is also cited here for the analysis of number and person. In this sentence, “he” appears, and in light of person, it is third person, and concerning number, it is singular.

In order to get some overall insights into the person and number system of the entire corpus of the *Contract Law of the People’s Republic of China*, a table shows the number of hits of different persons and numbers. First, the corpus was tagged by USAS, without taking minor grammatical categories into consideration, and the results show that there is no “first person” or “second person”, but there are some

“third person” words. Concerning number, there are more singular numbers than plural numbers. The two tables below are made for clear manifestation.

Table 1. Number of Hits for Singular Number

| Person | Number | Words | No. of Hits |
|---------------|----------|---------------------|-------------|
| First Person | Singular | I/me | 0 |
| Second Person | | you | 0 |
| Third Person | | He/him, she/her, it | 203 |

Table 2. Number of Hits for Plural Number

| Person | Number | Words | No. of Hits |
|---------------|--------|-----------|-------------|
| First Person | Plural | We/us | 0 |
| Second Person | | you | 0 |
| Third Person | | They/them | 11 |

In Table 1, no “first person” or “second person” words were found, but 203 “third person” words were found, among which there were 9 “he’s”, 2 “hims”, 1 “she”, 2 “hers”, and 189 “its”. In Table 2, neither “first person” words, nor “second person” words were found, but altogether 11 “third person” words were found, among which there were 7 “theys” and 4 “thems”. From the two tables, it is obvious to see, in the legal text-of the *Contract Law of the People’s Republic of China*, there were only “third person” words, but no “first person” or “second person” words, and there were more singular words than plural words.

Concerning ideational function, interpersonal function and textual function, examples are also shown to elaborate on the three functions. Ideational function includes “transitivity” and “voice”, according to Juan Li. As a key analytical component of the ideational function of language in Halliday’s systemic-functional view of language, “transitivity” is a semantic concept that looks at how meaning is represented in the clause (Juan Li, 2010). In light of “voice”, there are two voices – an active voice and a passive voice.

Example 3 (Transitivity)

Upon the consent of the other party, one party may transfer its rights together with its obligations under contract to a third party.

(Contract Law of the People’s Republic of China, 1999)

The above sentence is from Article 88 of the *Contract Law of the People’s Republic of China* (1999 effective), “one party may transfer its rights” shows it’s a kind of material process with regard to “transitivity”.

Example 4 (Voice)

Where a party is merged after the contract has been concluded, the legal person or other organization established after the merger shall exercise the rights and obligations thereunder.

(Contract Law of the People’s Republic of China, 1999)

The above sentence is from Article 90 of the *Contract Law of the People’s Republic of China* (1999 effective), which is an example of passive voice, and “has been” is the grammatical marker of passive voice, and “been” is tagged by USAS with a marker of “VBN”. Below, a table of the No. of hits of different voices is shown.

Table 3. Number of Hits of Different Voices

| Voice | No. of Hits |
|---------------|---------------------------------|
| Passive voice | 24 |
| Active voice | the rest of all other sentences |

Interpersonal function is realized by means of “mood” and “modality”. Concerning mood, the most widely accepted system in traditional grammar, which we come across in school grammar and textbooks, is the system of three moods: Indicative, Imperative and Subjunctive (Khomutova, 2014). In this corpus, all three moods are discovered, among which indicative and imperative moods are the most frequent, and subjunctive mood is not as frequent as the other two. Below is an example of subjunctive mood, and it’s from Article 158 of the *Contract Law of the People’s Republic of China* (1999 effective), “*should have + past participle*” is the subjunctive marker. There are also many examples of modality, which functions to express permission, and prohibition, etc. Since there are too many examples, they will not be listed

Example 5 (Subjunctive Mood)

Commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance.

(Contract Law of the People’s Republic of China, 1999)

Textual function is realized by grammatical devices. Below is an example to illustrate textual function, from Article 168. Words like “*and*” and “*as well as*” make the text coherent and unified.

Example 6 (Textual Function)

In a sale by sample, the parties shall place the sample under seal, and may specify the quality of the sample.

The subject matter delivered by the seller shall comply with the sample *as well as* the quality specifications.

Conclusion

Based on the data and analysis, some conclusions can be drawn. From a systemic perspective, some principles of the use of “person” and “number” have been unveiled in Chinese legal discourse. “First person” singular, “first person” plural, “second person” singular, “second person” plural are not used, but “third person” singular and “third person” plural are used, and there are more “third person” singular words than “third person” plural words, which manifests that legal discourse prefers “third person” singular words.

From a functional perspective, ideational function, interpersonal function and textual function contribute a great deal to perfecting legal discourse. These functions impose their force and influence on legal discourse through “transitivity”, “voice”, “mood”, “modality”, and other grammatical mechanisms. It is obvious that these grammatical components help legal texts to achieve conciseness, accuracy, and disambiguation, etc. Systemic functional grammar is of great significance in making legal discourse better, and in a sense, legislation can be enhanced through the application of systemic functional grammar.

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