Realisation of persuasion in Chinese court conciliation: a discourse information perspective

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Date of Award: 2011

KEYWORDS COURT CONCILIATION, PERSUASION, DISCOURSE INFORMATION, ATTITUDE CHANGE, DISPUTE RESOLUTION

Court conciliation (CC),¹ a form of mediation in China, refers to civil dispute resolution in which a single judge or a collegial panel presides over the conciliation between parties to help them reach a settlement agreement voluntarily (Jiang 2000: 195). In the twenty-first century, CC has embraced a revival (Wu 2007) and played an increasingly important role in resolving civil disputes, repairing interpersonal relationships and maintaining social stability. However, most of the relevant studies (e.g. Fu and Cullen 2011) are centred on the reforms and developments of CC as a legal system. Few have been carried out...
to reveal how ‘disputes are talked about’ (Conley and O’Barr 2005: 46) in conciliation. In particular, little has been done to unveil how judges guide and facilitate information exchange between parties and persuade them to change attitudes.

This dissertation aims to investigate judges’ persuasion in CC from the perspective of discourse information. In doing so, it addresses questions such as how judges convey their persuasion intention to parties through information, why they communicate in certain ways, and to what extent their persuasion is successful. To guide the analysis, a theoretical framework, ‘the Discourse-Information-Centric Model of Persuasion’ (DICMP), is constructed by incorporating the findings of Discourse Information Theory (DIT; Du 2007, 2011, 2012) and the context model (van Dijk 2008).

DIT is a new approach to linguistic analysis, focusing on the contents, structures and relationships of information in discourse. It regards information as being composed of propositions which are minimal communication units with a relatively independent and complete structure. Each proposition is an information unit. Each discourse whose primary function is information exchange is viewed as a hierarchical network centred on the kernel proposition that can be further developed and expanded by detailed information units at various lower levels. The relationship between an information unit and its next higher level unit is called an ‘information knot’. DIT also differentiates other properties of discourse information, including information levels, information sharing categories and information elements. In DICMP, discourse information is regarded as the major medium of persuasion in CC.

The data in this dissertation consist of transcripts of 35 CC sessions from the Corpus for the Legal Information Processing System (CLIPS). These are conciliations of civil cases conducted by judges in court and include tort, contract, family and neighbourhood relationship disputes from 2004 to 2010 in the basic or intermediary people’s courts in eight provinces.

Data analysis shows that judges’ persuasion intention is conveyed through discourse information in a number of ways: a) factual discourse information is the objective basis for judges’ persuasion, on which parties’ liabilities are determined and the court’s attitudes or suggestions are rendered; b) attitudinal discourse information offers a direct way to solicit the parties’ attitudes and convey judges’ intention of persuasion; and c) procedural discourse information provides a legal basis for judges’ persuasion, regulates the court order to cultivate a good persuasion atmosphere, and announces the results of CC.

The ways in which discourse information is employed by judges to convey their persuasion intention are subject to the influence of the dynamically constructed persuasion context. Following the context model (van Dijk 2008),
six major factors in the persuasion context that may influence persuasion are examined and categorised into two broad types: a) objective social situations (settings, social roles, and social relations) which may not influence persuasion unless they are activated and made relevant through discourse information; and b) subjective communicative situations (communicative roles, intentions and goals and knowledge) that are salient cognitive properties of participants and influence persuasion constantly.

Since parties are the primary target of judges’ persuasion, their responses are taken as indicators to assess whether judges need to resort to using persuasion or not. Parties’ responses may allow judges to uncover their underlying goals and intentions, identify conflicting agendas, and employ different means to persuade them to reconcile, including the value-/impression-/outcome-relevant involvement of discourse information, the overt/covert presentation of intention through discourse information, and the use of uni-/multidirectional exchange structures of discourse information. If successful, judges’ persuasion will result in a change in parties’ cognition, attitudes and behaviours. However, if parties’ attitudes stay unchanged, more attempts of persuasive effort may be needed.

The example below illustrates the analysis of a judges’ persuasion through discourse information in a medical dispute case. During the conciliation, the plaintiff asks for an unreasonably high amount of mental distress damages, which hinders the progress of CC.³

The judge’s choices of information are shaped by and, in return, shape the persuasion context, which is ‘on-goingly updated in interaction by participants’ (van Dijk 2008: x). In the example above, the judge gradually discovers the intentions and goals of the plaintiff (to get compensation) and his knowledge...
state (wildly optimistic about winning the case) from previous conciliation. As a result, he intends to introduce information which can persuade the plaintiff to change his mind.

Instead of abruptly presenting the court’s subjective attitude, which might seem to favour the defendant, the judge resorts to a combination of factual (WT, WF) and attitudinal information (WA). The adverb 在这里 (‘here’) in the WT information unit draws the parties’ attention and highlights the temporal and spacial settings of the CC. It activates the social factors of the time (in the middle of conciliation) and the ‘social place’ (van Dijk 2009: 49) of conciliation (norms, rules and constraints that are associated with the courtroom), drawing the parties’ attention to the impartiality and authority of the court. The WF information unit concerning the 8% national success rate in medical disputes is new information of outcome-relevant involvement with a credible source (the Supreme People’s Court). It attends to the plaintiff’s material-oriented goal, aiming to mobilise him to think about the adverse outcome and change his attitude. Moreover, the choice of the noun 法庭 (‘this court’) instead of pronouns 我 (‘I’) or 我们 (‘we’) as the entity of WA information units further emphasise the formal social role of the court as an impartial and authoritative institution. It intends to persuade the plaintiff to take the court’s advice.

From the plaintiff’s responses it can be inferred that he intends to counter-persuade the judge with another combination of factual (WF) and attitudinal (WA) information. However, the self-repair, from 他们应该 (‘they should’), which merely focuses on the other party’s obligation, to 双方可以 (‘both can’), which seems to acknowledge the cooperation between both parties, used in the WG information indicates that the judge’s persuasion is effective. It shows that it has changed the plaintiff’s attitude to a more cooperative one.

Based on what has been found in the analysis, the following conclusions can be drawn. The process of CC is a process of persuasion in which judges have to, in light of parties’ cognitive responses, activate relevant factors in the persuasion context and rely on an effective presentation of discourse information to convey their persuasion intention, to bridge the information gap between parties and to change parties’ cognition, attitudes or behaviours. Furthermore, data analysis shows the applicability and usefulness of the DICMP model for the description and analysis of judges’ persuasion in CC. It is hoped that this dissertation may provide useful forensic linguistic insight into the ongoing judicial reform in China.
Acknowledgments

This paper is a part of the Philosophy and Social Science Research Program (GD11XWW09, 11ZGXM74001). I am deeply indebted to my supervisor Professor Du Jinbang for his guidance and support in the process of writing and to Dr Krzysztof Kredens for his advice in revising this abstract. My sincere thanks also go to the reviewers for their valuable comments and suggestions.

Notes

1 In this dissertation, the term ‘conciliation’ is chosen because it can reveal the uniqueness of what actually happens in Chinese courts. Compared with the term ‘mediation’ which denotes a passive role of mediators, conciliation vividly reveals Chinese judges’ active participation and involvement in the whole process of dispute resolution. It captures the uniqueness of court conciliation.

2 CLIPS is a corpus for the analysis of discourse information in legal discourse. In this corpus, the data is tagged according to the conventions of DIT, including different properties of discourse information, such as information knots, information units, information levels and information sharing categories.

3 In this example, letters within angle brackets represent part of the tagging details. The two capitalized letters on the left side represent the information knots (WT standing for what thing, WF for what fact, WA for what attitude and WG for what change). The single lower case letter represents the information-sharing categories. Quite similar to Labov (1977), the DIT distinguishes five types of information sharing types in conversation. Here, ‘a’ means the information is only known to speaker A, ‘b’ to speaker B, and ‘c’ known to both speakers.

References


