A Critical Analysis of Chinese Courtroom Discourse

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This thesis analyzes the formal features of Chinese courtroom discourse and
their interaction with the ideologies of, and power relations between, the
subjects in the courtroom. Based on Fairclough’s (1992, 1995, 2001) three-
dimensional approach to discourse and Liao’s (2003) schema of the court trial,¹

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the author developed a three-dimensional framework of Chinese courtroom discourse and employed it to analyze the audio recording transcripts of eight court trials (four criminal, three civil, and one administrative), which amounted to more than 200,000 words. The conventions used in the data transcription were based on Liao (2003). The first dimension, ‘discourse as text’ describes features and underlying meanings of the following aspects: classification, transitivitiy, modality and interactional control. The key findings arising from the analyses were:

1) In the courtroom, due to different purposes and ideologies of the subjects, words and expressions with different and even opposite meanings are used to describe or refer to same things or incidents.

2) Material and verbal processes (Halliday and Matthiessen 2004: 179–252) appear by far most frequently, while the number of existential processes is the smallest.

3) Generally speaking, markers of modality, when used by judges, help to clarify rights and duties and realize the functions of regulation, permission, authorization and prohibition. When modality markers are employed by other subjects however, they have a negative effect on the reliability of subjects’ statements and the accuracy of meanings they intent to express.

4) Courtroom interaction is generally controlled by the powerful (judges in all trials, judges and public prosecutors in criminal ones). Occasionally, the non-powerful (plaintiffs, defendants, appellants, appellees, witnesses, etc.) attempt to challenge the authority of the powerful. In such cases, the powerful will seek to reassert their control in various ways.

The second dimension, ‘discursive practice’ interprets courtroom discourse in relation to its production and distribution through the analysis of force, coherence and intertextuality. Under the rubric of force, ‘speech acts’ and ‘politeness’ were analyzed. Among Searle’s (1965) five-part classification of speech acts, representative and directive speech acts are most frequently used. With regard to politeness, generally speaking, less politeness strategies are adopted by the subjects in the courtroom than in daily conversations (Yang 2007). The more powerful a person is, the more ‘impolite’ s/he tends to be, that is, s/he tends to employ more Face-Threatening Acts (FTAs) (Brown & Levinson 1987: 60). As the most powerful subjects in the courtroom, judges use FTAs most frequently. The second aspect is coherence. The analysis of two cases shows that courtroom discourse is coherent semantically, topically, and contextually. Following Xin
(2000, 2005), ‘intertextuality’ was classified into two types: specific and generic. When analyzing the former the following findings emerged:

1) Among the three ways of showing news source: specific and exact news source, implicit news source, and seemingly real news source (Xin 2000: 167–69, Xin 2005: 111–12), only the first two are used by the subjects in the court trials, while the third is not found.

2) Among the four major modes of speech reporting: Direct Reporting (DR), Indirect Reporting (IR), Free Indirect Reporting (FIR), and Narrative Report of Speech Act (NRSA) (Fairclough 2003: 49), only DR, IR, NRSA appear in the eight cases.

It should be pointed out that the choice of ways of showing news source and modes of speech reporting is in accordance with the purposes and interests of the subjects in the courtroom. The analysis of generic intertextuality shows that courtroom discourse, especially the sub-genre of ‘evidence-producing’, contains not only a mixture of different genres but also of different modes, which may be the result of the judicial reform being carried out in China (see Liao 2003: 2) and a manifestation of the trend of ‘conversationalization’ (Fairclough 1992: 204) in contemporary society.

The third dimension, ‘social practice’ explains the ideologies of, and power relations between, the subjects in the courtroom as reflected by their discourses. The ideologies of the subjects have two major tendencies: convergence and conflict. Convergence mainly exists between judges and public prosecutors because both are the embodiment of certain institutions: judges embody the court (the judicial organ), while public prosecutors embody the procuratorate (the organ for legal supervision). Another tendency is the conflict of ideologies. The major conflicts are those between public prosecutors and defendants in criminal trials, and those between opposing parties (plaintiffs and defendants, appellants and appellees, etc.) in civil and administrative ones. Generally speaking, opposing parties in the courtroom tend to have different ideologies due to their differing purposes and interests. In the courtroom, power relations have the following three main characteristics:

1) Power relations of the subjects in the courtroom are hierarchical and asymmetrical.

2) Power relations are largely determined by the institutional nature of the court.

3) Power relations are reflected by, and in turn affect, the linguistic features used by subjects during discourse.
Through the analysis of formal features such as classification, transitivity, modality, interactional control, force, coherence and intertextuality, and their interaction with the ideologies of, and power relations between, the subjects in the courtroom, this study not only shed light on our understanding of the nature and characteristics of courtroom discourse, but also provided implications for judges and prosecutors as well as other courtroom subjects to reflect on and, thus, improve their language performance in court trials.

Notes

1 Schema of the court trial: an activity usually involves a macro schema and several micro schemata. The former is the synthesis of the latter and they are organically linked to each other. The macro schema of the court trial is composed of the following five micro schemata: physical schema of the courtroom; schema of court rules; schema of trial procedures; schema of oral interactions; schema of trial principles (Liao 2003: 50–54).

2 News source: this term was originally used in the context of newspaper discourse, but it was borrowed in this paper to analyze courtroom discourse. It refers to the utterer (a person) or the source (a text) of a discourse that is quoted or alluded to in the process of court trial (adapted from Xin 2000: 167, Xin 2005: 111).

References


