

Discourse and judicial thinking: a corpus-based study of court judgments in Hong Kong, Taiwan and Mainland China

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This corpus-based study focuses on Chinese court judgments as a specific form of judicial discourse. Specifically, it examines the discursive representation of judicial thinking. 'Discourse' is understood in a general sense as 'language use in institutional, professional or more general social contexts' (Bhatia 2004: 3). 'Judicial thinking', as opposed to 'legislative thinking', can be understood as a chain of thoughts in judicial writing in a broad sense, representing how judges

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think, in particular, how they apply the principles and methods in judicial proceedings by way of adjudication, including case entertaining, trial and decision making. To show the special features of judicial thinking understood in this sense requires an analysis of court judgments as written discourse.

For the purposes of this study only written judgments, rather than transcribed judgments, are examined. The corpora contain three sets of Chinese appellate judgments of approximately one million words in each set, from Hong Kong, Taiwan and Mainland China respectively (see Table 1). These appellate judgments are randomly selected from three official sites, that is, the Hong Kong Judiciary Network at www.judiciary.gov.hk, the Taiwan Law and Regulations Retrieving System at jirs.judicial.gov.tw, and the China Court Network at www.chinacourt.org.

Table 1: Composition of the corpora

	Hong Kong	Taiwan	Mainland
Number of judgment	272	160	187
Word count	1,001,703	1,010,925	1,007,229

The main approach for this study is a semiotic one as described by Cheng and Sin (2008), who look upon discourse as a sign in Saussure's (1959) sense. In the present study, the semiotic approach takes court judgments as complex signs, and sets out to describe and analyze how such complex signs are understood in different discourse sub-communities. In this view, discourse analysis is essentially a semiotic analysis of signs.

In this study, we attempt to approach genre analysis from the different perspectives of various frameworks, an eclectic approach which draws on the respective merits of their theories and methodologies. Each of the frameworks is utilized for a particular purpose, and altogether they allow us to see the various generic features of court judgments. Bhatia's (2004) multidimensional approach provides insights for the integration of the different frameworks on the one hand and for the conduct of social-critical investigation of genre on the other. It therefore gives us a synoptic view of court judgments across different dimensions. Sinclair and Coulthard's (1975) Discourse Analysis is an analytical framework particularly adapted for the preliminary description of actual generic structures. Hasan's (1984) concept of GSP (Generic Structure Potential) is useful for the analysis of the optional and obligatory elements of court judgments as a genre. So these two frameworks can provide a descriptive account of the generic structure of court judgments. The concept of dynamics

of generic integrity (Bhatia 2004), together with Halliday and Hasan's (Hasan 1984, Halliday and Hasan 1989) notion of Generic Structure Potential, further enables us to understand genre within the framework of semiotics (e.g. Martin 1984). So far as textual features are concerned, this study confines itself to the analysis of attribution, which serves to show a salient difference between the legal systems under which the court judgments in question are produced, which can in turn be explained in the context of professional practice and social practice. Since various discursive dimensions of court judgments are the realizations of judicial thinking, they should be preserved when court judgments are translated from one language into another (e.g., from English to Chinese in the context of Hong Kong). Adopting the same approach to the translation of court judgments, this study also attempts to explore how discourse analysis can inform judgment translation in Hong Kong.

The findings from the analyses are threefold. First, court judgments in Taiwan and Mainland China display regularity not only in terms of generic structure but also at the level of generic structure potential. In contrast, Hong Kong judgments are more diverse in their actual generic structure and more complicated in their generic structure potential, a contrast between generic diversification and integration which is a reflection of power and control in judicial discourse of the three jurisdictions. Secondly, a study of the variations of a particular genre within a jurisdiction (culture) and across jurisdictions (cultures) can set out in relief the semiotic nature of a genre, that is, the characteristics of temporality and spatiality. Thirdly, the courts in Mainland China and Taiwan speak with one monolithic institutional voice without dissents or concurrences, whereas the courts in Hong Kong speak both with a joint voice and with individual voices as represented in concurring opinions and dissenting opinions. As the translation of court judgments can serve as a clue to the understanding of how judicial thinking is transferred and reflected in another language, this study also looks into some of the fundamental problems of legal translation in general and translation of court judgments in particular, showing how the semiotic approach can shed light on those problems.

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