

Discursive practice of Chinese criminal adjudication: A genre perspective

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Abstract. Different from ordinary discourse, the institutional nature of courtroom discourse has attracted much scholarly attention in the field of applied linguistics and professional discourse studies. Previous studies have examined the lexico-grammatical features and asymmetric power relations inherent in courtroom communication. However, little research has investigated the hybridizing construction of judges' discourse and the contextual clues that may shape such discursive construction. Under the framework of Critical Genre Analysis (Bhatia, 2017), this study examines 25 video recordings of criminal court trials in the Chinese mainland. The findings indicate a reciprocal relationship between the interdiscursive mechanism of judges' discourse in criminal trials and the relevant social, cultural, and institutional background. The study also discusses the constituents of the overall courtroom discourse against the background of the social and political realities of the Chinese mainland.

Keywords: judge's discourse, Chinese criminal trials, Critical Genre Analysis, interdiscursivity

[ch] 体裁视域下中国刑事审判的话语实践

摘要: 与日常话语不同, 法庭话语的机构性特征引起了应用语言学和专业话语研究领域的广泛关注。以往的研究考察了法庭交际中的词汇语法特征和不对称的权力关系; 然而, 探究法官话语的混合性建构和可能形成这种结构的语境背景的研究却不多。在批判性体裁分析的框架下 (Bhatia, 2017), 本研究对中国大陆25个刑事法庭审判视频记录进行了研究。研究表明, 法官刑事审判话语的互文性特征与相关的社会、文化和制度背景存在交互关系。研究还讨论了整个法庭话语的组成部分, 以及中国大陆社会和政治现状的幕后构建。

关键词: 法官话语, 中国刑事庭审, 批判性体裁分析, 互文性

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Contents. 1. Introduction. 2. The social conditions of Chinese criminal trials. 3. Methodology and data. 4. Findings. 5. Discussion. 6. Conclusion. References.

1. Introduction

In the past four decades, the genre of courtroom discourse has been intensively investigated from the perspectives of questions and responses in courtrooms (Du, 2009; Janney, 2002; Liao, 2003; Woodbury, 1984), presupposition (Hickey, 1993; Xiang & Li, 2016), narratives of the trial (Brooks & Gewirtz, 1998; Heffer, 2010; Timothy, 1999), and critical linguistic analysis (de Carvalho Figueiredo, 2002; Han, 2011). These studies have revealed not only how dynamic social factors influence the style of courtroom trials, but also how the underlying power relations and ideologies dominate the interactive actions of the courtroom participants.

Most of the studies cited above are interested in the exploration of the adjudicating behaviors of judges, observing that judges play different roles in two law systems, namely the common law system and the civil law system (Hazard Jr., 1998). Various discourse activities carried out by judges, such as summing-up, jury instruction, and judgment,

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display different structures and serve multiple legal purposes (Balcha, 2014; Heffer, 2008). It is reasonable to attribute these phenomena to the diversity of cultural, moral, and political ideologies (Philips, 1998).

As the rule of law is acquiring paramount importance in China⁵, a large amount of research has been conducted to investigate the professional behavior of Chinese judges from the perspective of the construction of an advanced judicial system (X. Chen, 2016; Tan & Wang, 2001; Tao & He, 2017) and judges' roles in courtroom trials (H. Ge, 2003; G. Jiang & Han, 2015). Among various studies of Chinese judges' discourse, some focus on pragmatic functions and lexico-grammatical features (H. Chen & Liu, 2019; Cheng, 2007; Yang, 2011), while others pay attention to the discursive power relations and identity construction of judges (L. Jiang, 2014; Lv, 2006; Zhou, 2012). However, one problem is that these studies mainly explore the static lexical, syntactic, rhetorical, and other related linguistic characteristics of judges' discourse, but they neither examine the sociocultural contexts nor investigate the interrelated and conflicting ideological features underlying the different types of discourse.

Ge and Wang (2019) conducted a study to examine the generic features of the discourse of Chinese civil trials. Their findings show that judges deploy some interdiscursive devices in criminal trials, and draw on different sentence types to meet different requirements of trials. In order to understand the variable nature of the interdiscursive features of Chinese criminal trials, it is necessary to adopt a dynamic conception of text and context (Maryns, 2014). In addition, social and cultural backgrounds may also influence the construction of judges' courtroom discourse.

Therefore, this study aims to investigate Chinese criminal trials to uncover the discursive features of Chinese judges' discourse, and provide a contextually reliable interpretation for Chinese judges' adjudicating practice against a background of judicial reform.

2. The social conditions of Chinese criminal trials

Chinese judicial theories of criminal procedure have developed into a pattern of adversary mode (Hu, 2016), which is characterized by antagonism between the prosecution and the accused, and the judge's neutrality (W. Chen & Zhang, 2009). However, this does not mean that the judges' initiative in the trial is weakened. In order to realize the purpose of the trial, and ensure justice, efficiency, and trial order, judges are generally endowed with command of the trial procedure (Cai & Feng, 2006).

With the deepening of Chinese reform and opening-up, especially the development of the socialist market economy, the comprehensive implementation of law-based governance, and the growing demand of the people for justice, the Chinese judicial system urgently needs to be reformed (Sun, Collins, & Yu, 2014). With the increasing promotion of the reform of Chinese criminal justice, there has been a gradual recognition of features of Chinese criminal trials resulting from special conditions in China. First, Chinese criminal trials are characterized by a distinct political system. Courts in China all follow the ideas of constructing a socialist judicial system with Chinese characteristics (L. Li, 2009) and emphasizing the absolute authority and leadership of the Communist Party of China. In addition, due to the high reliability and authority of state organs and judicial officials, criminal trials in China have an element of public education (C. Li, 2011). The dual functions of criminal trials in China are to punish criminals and enlighten the other citizens, instead of just discovering the case facts. In such a trial mode, the accused, as well as other citizens present, are instilled with legal values, rules, and morality by judicial officials. This has an obvious deterrent effect, realizes the emotional recovery of the victim, and hopefully rehabilitates the accused to return to a normal social life. Thus, the stability of society is maintained.

It is worth mentioning that the concepts of "judicial justice", "human rights", and "the rule of law" from the Anglo-Saxon judiciary coexist with Chinese traditional values of "harmony" and "modesty" (Ge & Wang, 2019). Moreover, according to Linell (1998), three levels of discourse and knowledge may be identified in communicative events involving various types of "professional", namely intraprofessional discourse (interaction within specific professions), interprofessional discourse (interaction between individuals representing different professions), and professional-lay discourse (interaction between professionals and lay people). The work of criminal courtroom trials can be usefully considered along these axes of knowledge and power, with all three of these dyad types present at various stages of the trial. Therefore, judges may perform differently in their choices of words and sentence structures. All these factors lead to heterogeneous features of complexity and contradiction in Chinese criminal trials.

Social and cultural ideologies and the ongoing background of judicial reform are all crucial elements in investigating Chinese judges' discourse in criminal trials. In the current Chinese judicial context, judges play many roles. Thus, their discourse is expected to present complicated features. In an attempt to reveal the complexity of Chinese judicial discourse, this study investigates the following questions:

- (1) What are the general discourse structures used by judges in Chinese criminal trials?
- (2) What factors may influence judges' discursive practice in Chinese criminal trials?

⁵ For brevity, "China" or "Chinese" in this paper only refers to/is only related to the Chinese mainland.

3. Methodology and data

3.1. Critical Genre Analysis (CGA)

This study employs Bhatia's (2017) CGA to analyze Chinese judges' discourse in criminal trials within their social and cultural context. Genres are fixed text types with highly visible structural conventions and formats (Han, Bhatia, & Ge, 2018). Over the past three decades, genre approaches have shown significant utility for understanding the ways in which we understand institutional discourse in diverse socio-cultural contexts. Bhatia (1997) points out that although a genre is defined by typical communicative purposes, many professional genres serve a variety of purposes related to changing contexts. He finds that texts such as news editorials, academic books, legal documents, and official reports are all involved in the category of genre analysis. Professional genres are characteristic not only of communicative purposes but also of private intentions (Bhatia, 1997).

Genre analysis is often used to explore the lexical-grammatical and discursive patterns of specific discourse to identify structural features. In addition, the traditional viewpoint regards genre as a basic type of rhetorical mode, including narration, description, persuasion, explanation, instruction, etc. (Paltridge, 2002). The utility of this model is widely applied in institutional discourse analysis. The concept of genre study offers institutional discourse a socially informed theory of language (Hyland, 2002).

In Bhatia's CGA model (2017), the concept of the interdiscursivity of institutional discourse involves creating texts by borrowing existing conventions associated with other genres and practices (Bhatia, 2010). It helps explore genre types of institutional discourse in specific contexts. Another indispensable notion in CGA is contextualization, originally developed by Gumperz (1982) to examine how people index certain aspects of context as salient for the interpretation of discourse meaning. This aspect works by exploring the institutionalized goals realized through the various genres used by Chinese judges in criminal trials.

The CGA model adopted in this study produces useful knowledge of "why and how professionals create, disseminate and consume specialized knowledge and exploit available semiotic resources and modes of communication to achieve their professional goals" (Bhatia, 2017, p. 27). The theoretical concerns of Critical Discourse Analysis (CDA) are the power and inequality underlying a particular discourse. On the contrary, CGA advocates a comprehensive and context-sensitive examination (Harwood & Hadley, 2004) of professional discursive strategies in order to interpret professionals' motivations in institutional contexts.

3.2. Data collection

According to the Chinese national judicial regulations, any forms of recording, videotaping, photographing, or note-taking are not allowed in criminal proceedings. Therefore, the authors collected 25 videos of real Chinese criminal trials from the legal website *Chinese Open Court Trials* (中国庭审公开网) (<http://tingshen.court.gov.cn/>). The fidelity and authenticity of the cases is assured by the authority of the website. These criminal cases took place in various regions of China between 2016 and 2018, and some attracted public attention. There was no deliberate preference guiding the types of cases involved in this study, which included crimes such as intentional homicide, swindling and robbery, gathering people to fight, trafficking and transporting drugs, counterfeiting registered trademarks and bribery, etc.

The video recordings were first played and then transcribed. There was a total of approximately 39 hours of videos transcribed into a corpus. The examples displayed in this paper were translated into English by the authors.

3.3. Data analysis

Based on the transcribed recordings of the first 15 criminal cases (according to the time of disclosure of the cases to the public), the authors read and analyzed the detailed texts. As aforementioned, the traditional genre modes identified included narratives, recounts, anecdotes, arguments, explanations, descriptions, instructions, etc. (Duke, Caughlan, Juzwik, & Martin, 2012). The authors examined these 15 transcribed adjudication texts, sorting and recording repeated genre modes. Any unclear modes were examined against an additional 10 texts. To further verify the results of this bottom-up coding, the results were examined by two Chinese judges who had been working in Chinese courts for more than 30 years. These two legal experts were encouraged to add their own perceptions to the genre modes in the 25 texts.

The combination of the bottom-up textual analysis and the reexamination by legal experts revealed Chinese judges' trial discourse is not a monolithic discursive type, but rather a complicated legal genre involving multiple modes, including procedural discourse, explanatory discourse, interrogative discourse, evaluative discourse, and sentencing discourse. The following example demonstrates discursive types.

Example 1:

[审判长]: 没说判你三年我让你明白法条是怎么规定的明白吗? 你对这个量刑意见有什么意见? A1

[Judge]: I didn't sentence you to three years in prison. I let you know what the law says, do you understand? What do you think of the sentencing opinion? A1

[被告人]: 你说得判我三年是吧

[The accused]: You said three years, didn't you?

[审判长]: 没判你呢还, 现在让你说你自己的意见 B1

[Judge]: I have not sentenced you yet. Now I am asking for your opinion. B1

[被告人]: 说啥...我也不知道, 说不上来

[The accused]: Say what... I don't know. I can't tell.

[审判长]: 法律规定有一个量刑的幅度, 明白吧? 最后判你多少, 法院来判, 听清楚了吗? 法庭辩论结束, 现在由被告人做最后陈述。被告人站起来。庞某, 通过刚才法庭开庭审理, 那么最后你有权利做最后陈述。C1

[Judge]: The law says there is a range for measurement of penalty, okay? How many years you will be sentenced is decided by the court. Do you hear me? Court debate is over, now the accused will make the final statement. Please stand up. Pang, you have the right to make the final statement after the court hearing just now. C1

[被告人]: 我说不上来...说不上来

[The accused]: I don't know... I don't know.

[审判长]: 自己犯下的错, 要知错就改。D1

[Judge]: You should correct it when you make a mistake. D1

This example is at the stage of court debate. Chunk A1 is interrogative discourse, B1 is explanatory discourse, C1 is procedural discourse, and D1 is evaluative discourse. The authors contextualized the judge's professional practice to investigate the communicative purposes underlying the recorded genre types. In this example, the judge first asks the accused to express his opinion on the measurement of his own penalty, which caters to the regulations protecting the human rights of the accused. Then, the judge explains the intention of a certain court step to the accused. The procedural discourse of the judge is intended to conduct trials in an orderly fashion, and finally the judge's evaluation of the crime aims to educate the public. Moreover, the broader sociocultural background of Chinese criminal trials may be invoked to generate additional interpretations of the judge's discourse. The judge comments on the crime to punish the criminals and teach the public about legal values, rules, and morality, so as to safeguard the stability of society.

In the next section the general structure of Chinese criminal trials and the various types of discourse produced by the judges will be discussed under the principles of genre analysis proposed by Bhatia (1993) and the concepts of interdiscursivity within CGA (Bhatia, 2017). In addition, we will illustrate systematically how judicial principles are carried out through judges' discourse in Chinese criminal trials.

4. Findings

4.1. The general structures of Chinese criminal trials

Chinese criminal trials are activities of the People's Court that deal with criminal cases in accordance with the provisions of criminal law and criminal procedure law. According to the criminal procedure law of the People's Republic of China, a criminal trial usually has the following procedures:

Stage 1: Court Opening

At this stage judges check the parties' attendance, read out the regulations of court trials, introduce the accused, the main dispute, and the collegiate panel. In addition, they give a detailed account of the legal rights the accused is invested with.

Stage 2: Court Investigation

Court investigation is one of the most crucial stages, aimed at ascertaining the legal facts. At this stage, judges organize the entire investigation in an orderly fashion, confirm the case after allowing all parties to make representation, ask questions, or question the accused and the victim in person. Moreover, judges must ensure the lawful presentation of evidence from both parties. Judges may disallow parties' questions if they are irrelevant to the case.

Stage 3: Court Debate

The task of this stage is to clarify the facts of the case through direct/cross examination. The debate is organized around the validity of evidence, the provisions of the law, and other key issues proposed by both parties. Ongoing procedures are chaired by judges from the beginning to the end. Finally, judges adjourn the trial to prepare their judgment and the sentence (if applicable).

Stage 4: Court Sentence

At this stage, a judgment of guilt or innocence is made based on the facts, the evidence presented, and the relevant law. The prepared judicial opinions convey the judges' final comments on the value of the litigants' viewpoints in this final procedure of the adjudicating activities (Han et al., 2018).

The main function of Chinese criminal trials is to punish guilty parties and enlighten other citizens through attitude expression, demonstration, education, and penitence (C. Li, 2011). This model helps to realize the objective of crime prevention, and offers the accused a route back to the resumption of normal social activities.

4.2. Linguistic construction of genre types in Chinese judges' discourse

Judges conduct at least three basic judicial tasks in criminal trials, namely organizing trial proceedings, ascertaining facts and giving verdicts according to the law, and educating the public. The present findings indicate that judges' discourse is characterized by its usage of diversified genres at different stages of the stages. Together with the various linguistic features used at different times, the discourse reflects divergent judicial goals and the sociocultural purposes behind them. Through a bottom-up observation of the data, the authors summarize five types of genres in judges' discourse.

Procedural discourse is the most frequently used type of discourse among all the different genres throughout the whole process of criminal trials. In courtroom investigation and courtroom debate, in addition to procedural discourse, interrogative discourse and explanatory discourse are also important genres. Interrogative discourse is used to question the accused or witnesses in order to confirm evidence and case facts, while explanatory discourse aims to help litigants understand relevant provisions and clarify their own opinions.

Evaluative discourse is employed at the court sentencing stage, in which judges make comments on the behaviors of the accused and the consequences of those behaviors. At this stage, judges are also supposed to make judgments. Sentencing discourse is mainly used here since case facts are summarized in detail according to relevant laws, and the results of the measurement of penalty are given in the end.

It is reasonable to propose that the interdiscursivity of judges' discourse is caused by the professional and institutional heterogeneity of Chinese criminal trials. The distinct linguistic features of judges' discourse at different trial stages reflect various judicial aims and social and political values rooted in judicial activities. Furthermore, a consideration of the sociocultural and political background is important in achieving a better understanding of the rationales underlining the situational construction of judges' discourse. The following examples demonstrate the interdiscursivity of judges' discourse by combining the complex environment of Chinese criminal trials.

4.2.1. Procedural discourse

Criminal trials in China are mainly completed through interaction, or speech acts, between judges and other participants in order to obtain a truthful representation of the crime, and to allow both parties to submit and argue their contradictory versions of reality (Liao, 2003). The whole procedure of court trials may be seen as an illocutionary act, with the natural perlocutionary force of nailing down realities (Kurzon, 1986).

Characterized by a higher degree of institutionalization and the importance of textual and socio-pragmatic etiquette (Ren, Bhatia, & Han, 2020), procedural discourse is employed at almost every stage of a criminal trial to carry out institutional procedures and demonstrate institutional power. This is because participants in criminal trials are subject to asymmetric discourse powers (Lv, 2006). Judges are obliged to accomplish a timely completion of courtroom trials, and their discourse plays a crucial role in administration of social justice and the restoration of social equilibrium. In China, judges frequently employ procedural discourse to offer an equal opportunity of engagement.

Example 2:

[法官]: 依照《中华人民共和国刑事诉讼法》第183条的规定,北京市房山区人民法院依法公开审理北京市房山区人民检察院提起公诉的被告人xxx涉嫌虐待被看护人罪一案。A2

[Judge]: In accordance with the provisions of article 183 of the *Criminal Procedure Law of the People's Republic of China*, the People's Court of Fangshan district, Beijing is trying the case of the accused xxx who was accused of maltreating a patient in public. A2

Example 2 is a procedural instruction text given by the judge during the opening of a criminal trial. The structural components are strictly regulated, delivering basic information about the case, court name, the national public prosecution, and litigants using authoritative declarative speech. In Chinese criminal trials, judges' procedural discourse is lengthy, and can be compelling in content due to the confusion of litigants who lack basic knowledge of the law, as shown in Example 3.

Example 3:

[法官]: 根据《中华人民共和国刑事诉讼法》第28条,第29条,第30条,当事人及代理人有权要求…… A3

[Judge]: In accordance with the provisions of articles 28, 29 and 30 of the *Criminal Procedure Law of the People's Republic of China*, litigants and their attorney have the right to ask for... A3

[被告人]: 30条啥意思,30条。

[The accused]: What does the article 30 mean? The article 30.

[法官]: 本庭在交代《刑事诉讼法》里赋予你的诉讼权利。B3

[Judge]: The court is confessing your rights in the Criminal Procedure Law. B3

The dialogue in Example 3 takes place between the judge and the accused. When the accused expresses his puzzlement about the legal provisions, the judge provides more procedural discourse to offer the necessary explanation.

Different from exploratory discourse, the judge's use of legal discourse does not offer much freedom of performance. This predominance of institution over person is perfectly illustrated in chunk B3; the judge refers to himself with an impersonal functional label “本庭” (“the court”) instead of the common personal pronoun “I”, because the judge is not speaking in his personal capacity, but rather in the name of the court. This directly maps the judge's authority and the institutional requirements. Additionally, using the third person relates to the general applicability of legal documents to address several audiences (Tiersma, 1999).

Due to the gravity and authority of judicial activities, judges are given institutional identity and great power, and thus the appellation provides other parties with psychological shock (Liu, 2019). Hence, the interpretation of the judge is highly authoritative.

4.2.2. Explanatory discourse

Explanation refers to the activity of disseminating knowledge based on “generalizing about things and processes” (Martin & Rose, 2008, p. 141). It has become a consensus in the Chinese legal profession that the law must be interpreted before the appropriate application. Explanatory discourse is generally expressed by people with expertise and is aimed at those who lack such knowledge, manifesting an inequality between them. To make the sentence understandable to all parties, judges must give a full explanation to justify the reasons for the adjudication results. Therefore, it is the judge's institutional power and duty to interpret the law when handling criminal cases. For judges, direct declarations of specific provisions and recapitulation of litigants' statements are both common patterns of explanatory discourse.

As mentioned above, strengthening the protection of the rights of the accused is not only an inevitable requirement of the modern judicial system in China; it is also the goal of criminal procedure law (Zhang, 2003). Chinese Judges usually explain the procedural rights of all litigants during the trial process.

Example 4:

[法官]: 根据《中华人民共和国刑事诉讼法》的规定, 被告人有权对合议庭人员及公诉人申请回避, 你是否申请? A4

[Judge]: In accordance with the provisions of the *Criminal Procedure Law of the People's Republic of China*, the accused has the right to apply for withdrawal from the collegial panel and the public prosecutor. Do you apply? A4

[被告]: 是。

[The accused]: Yes.

[法官]: 被告人xxx, 你知不知道什么叫申请回避? B4

[Judge]: Accused xxx, do you know what the application for withdrawal is? B4

[被告]: 不懂。

[The accused]: No.

[法官]: 本庭给你解释一下, 申请回避就是你如果认为合议庭成员或公诉人跟本案当事人有利害关系可能影响本案的公正审理...C4

[Judge]: The court will explain it for you. If you believe that members of the collegial panel or the public prosecutors are parties having a stake in the case, which may affect the fairness of the case... C4

Articles 28 and 31 of the Chinese Criminal Law (“Criminal Procedure Law of the People's Republic of China,” 1996) state that the accused has the inalienable right to ask members of the collegial panel and prosecutors to withdraw from the trial if they have an interest or other relationship with the case, or if their presence may affect the hearing. Other rights of the accused are the presentation of evidence, self-defending, appealing, and so on. Judges' interpretations of the law may be relatively flexible, in that the contents may be selected and constructed to satisfy the specific purpose of the legal process (Ge & Wang, 2019). In this example, the judge makes an interpretation of the content of relevant provisions instead of just reading the content of the articles. In many cases, Chinese judges extract the meaning of the legal provisions and interpret them in accordance with different contexts.

The following example demonstrates how judges may summarize the opinions of the accused to complete the exchange of evidence.

Example 5:

[辩护人]: 所以呢, 辩护人认为当时xxx的罪行并没有发觉, 也并没有最终被公安机关确定为犯罪嫌疑人, 随后呢, xxx在到达办案场所以后如实供述了罪行。

[Defense]: Therefore, I believe that xxx's crime at that time was not detected and he was not finally identified as a criminal suspect by the public security organ. Then xxx truthfully confessed the crime after arriving at the scene of the case.

[法官]: 所以你认为被告有明显自首情节, 应该减轻刑罚对吧? A5

[Judge]: So you think the accused has a clear case for surrendering and the penalty should be reduced, right? A5

[辩护人]: 对。

[Defense]: Yes.

As shown in Example 5, the explanatory discourse summarizes the statement of the defense lawyer that the accused has surrendered herself to the law. Such a statement will play a pivotal role in conviction and sentencing. The move “所以你认为...” (“So you think...”) by the judge signifies the extraction of the most valuable information from the previous turn, which makes the clarification more concise. This is characterized by the interactive feature of explanatory discourse.

4.2.3. Interrogative discourse

The Q-R (question and response) structure is the most common in court trials (Liao, 2004). Judges use questions to identify legal facts at the court investigation stage. The interrogative discourse of judges is generally divided into procedural and substantive stages. The former was mentioned in the context of procedural discourse, while the latter is largely studied within the field of forensic linguistics, including Wh-questions, yes-no questions, alternative questions, etc. The interrogative discourse of Chinese judges is more dynamic compared with other types of genres.

Example 6:

[法官]: 分别是谁和谁拿了一千块? A6

就是说在孩子候车这个期间, 孩子们是不是在像你刚才所说的要在警务室里候车? B6

倒了半瓶还是倒了少半瓶啊? C6

[Judge]: Who and who took a thousand Yuan? A6

So, were the children in the police station or not, as you said, while the children were waiting? B6

Half a bottle or less? C6

Chunks A6, B6 and C6 are examples of interrogative discourse used by judges in three criminal cases. Ge and Du (2005) examine the relationship between topic control and information solicitation in court questioning. They believe that the questioner controls the topic, using various language means to obtain the desired information. As shown in A6, the judge asks for information about the person involved in dividing illicit money. Wh-questions, which mainly aim to elicit detailed information and ascertain case facts, are used most frequently in judges' interrogative discourse.

Sperber and Wilson (1986) argue that speakers always manage to lead hearers to seek associations in the context of the speaker's discourse, in order to help them understand it. Therefore, the speaker will increase the contextual clues as much as possible in order to reduce information processing efforts. Yes-no questions are also called “closed questions”, limiting the possible answers to “yes” or “no”. However, from observation of our dataset, the proportion of yes-no questions asked by judges is not large. It is possible that in recent years the reform of China's judicial system has highlighted human rights in relation to litigation, and therefore the accused is now able to provide more information beneficial to themselves instead of just answering “yes” or “no”.

C6 demonstrates an alternative question, which are used to confirm the facts of the case, condemn the crime, and enlighten the accused. This is also shown in the following example.

Example 7:

[法官]: 你觉得你认为救一条人命重要还是你回家换衣服重要? A7

[Judge]: Which one do you think is more important? Saving a life or going home and changing your clothes? A7

[被告人]: 不是的。我救小孩救到南面了, 小孩救到南面路里了.....

[The accused]: No. I saved the child to the south... The child was saved to the south road...

In Example 7 the alternative questions asked by the judge aim to express condemnation and convey the right values without expecting an answer. This is in line with the educational goal of criminal trials.

4.2.4. Evaluative discourse

Evaluation, based on a definition given by Hunston and Thompson (2000), is “the expression of a speaker or writer's attitude or stance towards, a viewpoint on, or feelings about an entity or a proposition” (p. 5). Stotesbury (2003) makes a broad disciplinary division in her analysis of evaluation. She concludes that disciplinary variation is so wide that people ought to capitalize on a specific discipline rather than seeking general rules. Therefore, evaluative discourse in criminal trials is not concerned with assessing personal goodness, humility, or social relationships. In an approved judgment of a Chinese criminal trial, the judge usually summarizes the facts of the whole case and evaluates the criminal behavior of the accused, so as to pave the way for the final sentence. To highlight the forms and structures that signal these concepts, examples are given under the headings of lexis, grammar, and texts. Examples of evaluative lexical units are adjectives, adverbs, nouns, verbs, etc.

Example 8:

[法官]: 被告人聂某...直接持榔头连续猛击二被害人头部, 最终导致了一死一重伤的严重后果, 其行为符合间接故意杀人的特征, 构成故意杀人罪。A8

[Judge]: The accused Nie ... SWIPED the two victims on the head with a hammer continuously and violently, which resulted in the SERIOUS CONSEQUENCES of the death of one victim and serious injury to another. His behavior conformed to the characteristics of indirect intentional homicide and he committed a crime of intentional homicide. A8

In a criminal trial a firm tone is used to evaluate criminal behavior, aiming to crack down on criminal behaviors, preserve social fairness, and convey the right values to the parties and the citizens present. As shown in Example 8, the judge uses the term “猛击” (“swipe”) to describe the behavior of the accused, which is interpreted as “沉重而通常是迅速地向前击” (“heavily and quickly swipe forward”) in the *Modern Chinese Dictionary*. The judge intends to emphasize the subjective malignancy of the behavior and the severity of the harm to the victims. Moreover, the phrase “严重后果” (“serious consequences”) is derogatory, consisting of an adjective, “严重” (“serious”), and a noun, “后果” (“harmful or unfortunate results”). Although the judge frames his discourse as a straightforward implementation of the law, he is clearly doing much more than simply reproducing and applying the legal standard that is handed to him. By means of all sorts of metalinguistic mechanisms, such as prosodic shifts (increased pitch) and linguistic devices (wording that is crucial to his evaluative strategy), the judge succeeds in highlighting those elements from the original that he wants stressed.

Evaluation that both organizes the discourse and indicates its significance might be said to tell the audience the point of the discourse (Hunston & Thompson, 2000). When the judge mentions the victim’s severe injury, the legal liability of the accused is also strengthened. Through all these devices, this evaluative discourse conveys his judgment on the severity of criminal behavior and its social impact, so as to punish the accused and realize the judicial process.

4.2.5. Sentencing discourse

Sentencing discourse is used by judges at the court sentencing stage, the final stage in Chinese criminal trials. Sentencing discourse involves performative utterances. In criminal trials, judges always make an official declaration of the result of each case, using phrases such as “appeal allowed”, “judgment affirmed”, or “so ordered”. Equally, legal documents (also known as “instruments”, precisely because of the legal acts they are used to represent) also have a performative function (Charnock, 2009).

When making judgments, judges usually use a professional repertoire to ascertain case facts, interpret relevant law, solve problems, and consider humanist and social factors. Sentencing discourse is therefore characterized by more professional legal aspects when compared with other discourse genres.

Example 9:

[法官]: 根据被告人xxx犯罪的事实、性质、情节及对社会的危害程度, 依照《中华人民共和国刑法》...判决如下:

被告人xxx犯危险驾驶罪, 判处拘役二个月, 并处罚金人民币二千元 A9

[Judge]: Considering the fact, nature, circumstances and harm to society of the accused xxx’s crime, the verdict is as follows according to the Criminal Law of the People’s Republic of China...

The accused, xxx, was sentenced to two months of criminal detention and fined RMB 2,000 for the crime of dangerous driving. A9

Importantly, the judicial reform requires that judges should retain the principal power of making decisions in court trials. As presented in Example 9, the accused was convicted of the crime of dangerous driving by the judge. In addition, judges’ sentencing discourse are professional and formal in style. The measurement of the penalty to be handed down to the accused is realized by obligatory expressions in this example. In addition, the use of the full names of the litigants emphasizes the institutional and authoritative tone of the sentencing discourse (the real names in the criminal cases involved in this study are anonymized because of privacy concerns).

5. Discussion

Employing a CGA model, this study investigated the different genres displayed in judges’ discourse in Chinese criminal trials, the interaction between the underlying Chinese sociocultural ideology and legal contexts, as well as their influence on the interdiscursivity of judges’ discourse at different trial stages. Discourse is dynamic, meaning that it can be broken up and then recombined, and it may overlap and mix in different professional legal activities. A courtroom trial is an activity in which different goals, ideologies, identities, and relations all interrelate. Therefore, understanding judge’s courtroom discourse involves an analysis of the complexity and dynamics of the social context within which the discourse is generated (Ge & Wang, 2019).

In the present study, the interdiscursivity of judges’ discourse in Chinese criminal trials is embodied in different genres, namely procedural, explanatory, interrogative, evaluative, and sentencing discourse. This diversified discourse practice by Chinese judges may result from their need to achieve specific goals at different times, which mir-

rors Verschueren's (1999) suggestion that language in use is a dynamic process of reasonable management as well as a conscious or unconscious choice of current language resources, and only when language choice is proper can speakers achieve their intended purpose.

Among the five types of discourse used by judges in Chinese criminal trials, procedural discourse was used most frequently and widely (it appears at almost every stage of a trial). Procedural discourse is closely related to the judge's identity, roles, power and duty in the trial process. It imposes strict control over the behaviors of trial participants, and defines an unbalanced power relation between the judges and other trial participants. This is in line with Fairclough's (1992) concern with the theorizing of interdiscursivity, wherein the overall agenda of CDA is the critique of "dominance and inequality" (Van Dijk, 1993, p. 251) between elite professionals and the public, as manifested in the many examples of institutional discourse. Syntactically, judges' procedural discourse is mainly realized through declarative sentences, or sometimes via interrogatives with a declarative tone in the end (e.g. Judge: Your name. The accused: XXX). Functionally, procedural discourse helps to maintain control over the behaviors of parties in criminal trials, since it guarantees that litigant parties follow judges' orders strictly and properly (J. Chen, 2011), which is an important means of safeguarding successful criminal justice.

The explanatory discourse used by judges in Chinese criminal trials plays a crucial role in the notification of judicial orders and rights, the interpretation of relevant provisions, and the reiteration of each party's opinions. As the expositors of judicial procedures and provisions in criminal trials, judges usually use formulaic professional expressions that are technical and complex in structure and wording. Such characteristics make the explanatory discourse of judges more accurate and reflect the authority of the institutional discourse, which may be explained as an outcome of the professionalization of Chinese judges. As a part of the judicial reform, it guarantees that judges base their adjudicating practice on their legal expertise (Ma, 2004). It is worth noting that in fact the recapitulation of litigants' statements and summaries of cross-examination results are characterized by concise language patterns which are easy to understand. This is possibly caused by the reform of criminal trials in China, which emphasizes that the initiative of the prosecution and the defense parties should be fully mobilized under the guidance of the judge, in order to interrogate, provide evidence, cross-examine, and debate. However, problems may arise if litigants are at a disadvantage because they do not have adequate competence in the language of legal activities and the law to make full use of their rights (Gonzalez, 1996). Recently, judges have been required to enhance the transparency of Chinese legal practice and put processes and outcomes under public supervision (Han, 2011). For this reason, this practice of summarizing litigants' opinions has been increased.

Another type of judge's discourse that is frequently used in Chinese criminal trials is interrogative discourse, which is a typical discourse genre in trials, used for questioning litigants to identify legal facts at the stage of court investigation. Interrogative discourse involves turn-taking exchanges between at least two participants for the acquisition and exchange of information (Ge & Du, 2005). As a result, judges' interrogative discourse possesses more interactive features compared with other types of genre. Except for procedural interrogatives, used for obtaining basic information and ensuring that litigants have been well informed about courtroom regulations, other interrogative discourse pertains to substantial interrogatives. In addition, judges tend to clarify specialized terminology into more colloquial and comprehensible words to help contribute to the final evidence collection and sentencing of cases, which resonates with the findings in the previous study by Ge and Wang (2019).

At the sentencing stage, evaluative discourse is used by judges to make comments on the moral and social effects of criminal behaviors. As noted by Conley and O'Barr (1990), evaluative discourse is normally utilized by judges to fulfill their professional responsibilities to participants who have a limited level of legal knowledge. This genre of discourse is realized mainly by declarative sentences, used to convey correct information to the accused and educate them, since it is regarded as a duty of judges to help the accused make an accurate confession. In some cases, due to the public's trust in state institutions such as the courts, the judges' evaluative discourse helps to spread ideas such as morality and relevant legal knowledge to the public. Apart from this educative function, evaluative acts may also help to reduce the rate of appeal in some cases, since fact-finding evolves during court trials. As Long (2010) notes, this fact-finding in the first instance instead of during higher level trials is required to improve the efficiency of case handling.

In Chinese criminal trials, the stage of judges' sentencing is regarded as the last and most gripping part of the whole procedure. The sentencing discourse is applied by judges to pronounce the final judgment. Through formulaic syntactic structures and legal terminology, the sentencing discourse manifests the state power of courts and the coercive power of their judgments. In China's political system, reliance on state authorities like courts is pervasive; thus, the results of final judgments contribute significantly to reassuring people and maintaining social stability. Therefore, the judge's sentencing discourse must be convincing.

Further consideration of judges' discourse in Chinese criminal trials demonstrates that the interdiscursivity of discourse is largely influenced by Chinese sociocultural factors and even the nation's political system. Fairclough (1992) utilizes the notion of interdiscursivity in an exploration of social change. This analysis of interdiscursivity focuses more on language users' initiatives during their discursive practice, rather than stylistic borrowing from other texts in order to accommodate social change (Ren et al., 2020). On the one hand, as a state authority the court is endowed with extremely high power characterized by coerciveness. After each fair trial, public order is stabilized and social harmony is maintained. On the other hand, with a full consideration of the litigants in the trial who lack legal

expertise, judges' discourse also reflect humanistic care, embodied in colloquialism and understandable discourse construction (e.g. explanatory discourse).

6. Conclusion

Through the CGA, this study has explored the genre features of judges' discourse in Chinese criminal trials and the interaction between the ongoing Chinese sociocultural ideology and legal contexts, together with their influence on the interdiscursivity of judges' discourse at different stages of trial proceedings. The findings have demonstrated that Chinese criminal trials consist of four stages, namely Court Opening, Court Investigation, Court Debate, and Court Sentencing. The genres showed a discursive hybridity (Sarangi, 2000) that incorporated numerous discursive types, i.e. procedural, explanatory, interrogative, evaluative, and sentencing discourse.

Further analysis found that sociocultural and ideological factors had a profound impact on the interdiscursivity of judges' discourse in the collected dataset. Due to the ongoing judicial reform, judges are required to maintain neutrality and impartiality in their adjudicating practice, and particular attention should be paid to safeguarding the human rights of the accused in criminal trials. This is in line with values of fairness and justice, as well as the proper practice of human rights protection. Furthermore, the discourse of judges also reflects their absolute institutional power, which can be explained as an outcome of the professionalization of judges. Most importantly, judges are responsible for helping to spread good morality and relevant legal knowledge to the public. In summary, the discourse practice of Chinese judges is consistent with the ongoing judicial reform, demonstrating the growing effects of judicial reform in China.

The present study has illustrated the construction of Chinese judges' discourse in criminal trials and provided an inductive analysis of its genre features by combining ideological and social contexts. It is hoped that through this unique research perspective, the present study has shed some light on the practice of judicial reform in China. Given that the study only explored the discourse practices of judges, future research may focus on the discourse constructs of other parties in the courtroom, and on the analysis of dynamic features of courtroom discourse through a multimodal perspective.

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