CITY UNIVERSITY OF HONG KONG

Discourse and Judicial Thinking
--- A Corpus-based Study of Court Judgments in Hong Kong, Taiwan and Mainland China

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Abstract

This research adopts a semiotic approach in a corpus-based study of Chinese court judgments in Hong Kong, Taiwan and Mainland China as a specific form of judicial discourse, namely, the discursive representation of judicial thinking, particularly the manifestation and control of judicial voices in adjudication. Taking court judgments as complex signs, it conducts genre analysis and textual analysis of the corpus and provides legal, social and cultural explanations of how such complex signs are understood in different discourse communities, showing that the discursive presentation in court judgments has its root in social construction.

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.