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ILLOCUTIONARY AND PERLOCUTIONARY ACTS IN CHINESE JUDGE'S ATTACHED DISCOURSE

Abstract

After 2002, courts in China have increasingly been introducing certain judicial reforms, one of them being the improvement of trial language. In these courts, the judges append their comments to the case at the end of their verdicts in writing. The Chinese judge's attached discourses resemble the *obiter dicta* of judges in Western courts, but there are differences. Since the new element was introduced in some courts in 1998, some doubts have been voiced in strong opposition to the new practice, giving rise to a heated academic debate on the issue. This paper investigates and analyses Chinese judge's attached discourse in terms of discourse analysis categories, such as their usage of illocutionary and perlocutionary acts.

Keywords

Illocutionary act, perlocutionary act, judge, discourse, litigant.

1. Introduction

One of the significant judicial reforms implemented in China during the past few years is a language reform that becomes manifest through an improvement in the diction of judicial documents. Many courts now avoid previously common derogatory terms such as *frenzied*, *unscrupulous*, *severe penalty*, *crack down on*, etc., or traditional pejorative phrases like *despair gives courage to a coward*. Instead, they uphold the litigants' rights and interests by restricting themselves to a matter-of-fact legal language with neutral terms, which embodies both justice and civility. At the core of this reform of judicial documents is the court verdict, which includes the judge's attached discourse.

This discourse is a written comment of the judge appended to the end of a court verdict. It is not a judicial document in the strict sense, but rather a supplemental commentary without binding power, and often contains moral and ethical

exhortations. It serves to mitigate the solemn nature of the verdict by relating to the underlying social value system, and further adds some warmth and compassion to the bleakness of a legal decision. For example, according to the Chinese view only as a last resort should opponents in civil cases involving family values and responsibilities, such as support of parents and grandparents or spouse and child support in divorce situations, enter into litigation. If they still do, this means they fail to voluntarily fulfill their moral responsibilities and obligations, ignore the ethical framework and over-emphasize their own interests. In such cases, the judge's attached discourse is to make the litigants aware of those case-relevant ethical and moral values that lie beyond the mere legal reasoning. It is to add the human touch to a legal decision, stress the interdependence of law and morality in society, and inspire the litigants to understand the human concerns underlying the verdict.

From what has been mentioned above, we can see that this kind of discourse emphasizes the human touch, reason and morals, so it can play an active role in condemning and admonishing immorality and promoting excellent social morals in such cases, especially in those concerning the party who win a case in the legal sense, but lose an action in the moral sense. Some legal experts even think that the judge's attached discourse is a "declaration of morals" to a certain extent.¹

The judge's attached discourse is quite similar to obiter dictum, which is widely used in the Anglo-American law system. Firstly, both of them are attached to the end of court verdicts to express the judge's opinions or comments *ex parte*. Secondly, both have no binding force and effect on the final decision. However, the judge's attached discourse and obiter dictum are not exactly the same. There exist some differences between the two. On the one hand, obiter dictum expresses more of the judge's social and economic values, even love and hatred. On the other hand, although obiter dictum has no binding force, it is more like a final decision than the judge's attached discourse. Besides, it merges into an organic whole with *ratio decidendi*. On the contrary, the judge's attached discourse emphasizes more reason or sense, human concern and human touch than obiter dictum. As a result, its content is full of instructive and inspirational significance, conviction, affinity and public trust. From these differences, we can see that obiter dictum embodies more of the judge's wisdom and character while the attached discourse shows more of the judge's welling emotions.² Here, the judge's attached discourse uses the form of obiter dictum as a reference, but as far as the content is concerned, the two are different from each other.

¹ See "The judge's attached discourse: declaration of morals."
http://www.szrbs.net/news_content.asp?ns_id=234&nc_id=184430&newstype=1.

² See Li Jiangping, "Discrimination and analysis of attached opinions."
<http://www.dffy.com/faxuejieti/ss/200311/20031118153825.htm>.

Since the judge's attached discourse was first used in a civil case in Shanghai No.2 Intermediate People's Court in 1998, more and more courts in China have taken this measure. From 2002 to 2003, more and more courts in many places, such as Nanjing, Kunming, Changsha, Luoyang, Yancheng, Yuzhao, Qinghai, Shanxi and Zhouning County, were employing this method. All these courts have achieved good results and social effects. However, though it has received high praise, the attached discourse is faced with some doubts and strong oppositions and has thus aroused a heated academic debate. Summing up these ideas, the doubts or oppositions mainly include the following points: 1. Court verdicts, in fact, contain morals. Judges should be sure of this, but the attached discourse neglects this point. 2. The attached discourse should not go beyond law. 3. Judges should merge reason or sense into court verdicts, so as to blend the human touch with law (Zhang 2002). 4. The attached discourse blurs the difference between law and morals and causes the disruption of judge's role and the procedure (Mi 2003; Wu 2003). 5. The attached discourse is out of harmony with the form and content of court verdicts.³ Here, the debate is going on all from the legal point of view. However, the present paper will deal with this problem linguistically, which means an attempt to investigate and analyse such a discourse according to the theory of illocutionary and perlocutionary acts, to prove its feasibility as well as its limitations.

2. Illocutionary acts in Chinese judge's attached discourse

Shuy (2001) says, "One of the defining characteristics of discourse analysis is that it is capable of application in a wide variety of settings and contexts. Wherever there is a continuous text, written or spoken, there is a potential analysis of such a text" (: 444). According to Shuy, although the attached discourse is the unilateral and written form or monologue by the judge, it looks forward to the litigants' positive responses most eagerly. Besides, it can be analysed in the context of a court trial. In this kind of context, the speech acts of the judge and litigants are not genuine face-to-face interactions, unlike ordinary conversations, but the judge and litigants play different roles. They can interact with each other easily, thus bringing about consequential effects on the litigants. From this point of view, the judge's attached discourse has more interactions than ordinary written discourses. It can be said that this kind of discourse is a kind of a special conversation. Therefore, it is necessary to analyse the illocutionary and perlocutionary acts in this discourse in

³ See Zhang Peng, "Should court verdicts have human touch—debate aroused by the judge's attached discourse?" *Beijing Evening*, June 27, 2001.

order to find in the context of a court trial how the intention of the discourse is produced by the judge, and how the consequences are brought on the litigants.

According to Austin (1962: 103), the application of any discourse can perform three kinds of act—the locutionary, the illocutionary, and the perlocutionary. A locutionary act is just to utter a certain sentence with the meaning in the traditional sense. It is the act performed in saying something and does not show any design, intention, or purpose, but its force is identical with the speaker's intention. An illocutionary act, however, is a conventional act, which is done with design, intention, or purpose. It is performed by or resulting from saying something, so it is the consequence of the discourse. Therefore, an illocutionary act gives a discourse illocutionary force which then has an effect on others, accomplishing the intention. The attached discourse is the words "from the bottom of the judge's heart," based on the details of a case at the end of a court trial. It has clear design or intention, strong influence and illocutionary force. Besides, a court trial is a kind of a highly stylized context where there is a set of conventional rules to follow. These rules restrict the content and expressions of the attached discourse. There is no choice in this matter for the judge and just for this reason, the judge's attached discourse is feasible in a court trial. For example:

Case 1

This was a civil case of dispute over money obligation. Zhou (wife) received compensation in the amount of 8,100 Yuan (RMB) from her husband's unit after his death in a traffic accident. However, her mother-in-law claimed some of the payment from her. As a result, they came into conflict with each other and engaged in a lawsuit. In accordance with specific conditions, the judge decided Zhou should give 1,000 Yuan (RMB) to her mother-in-law. Though it was a fair result, their emotional attachment had been damaged. With a view to repairing it, the judge attached the following discourse to the case at the end of the court verdict:

Money cannot substitute for emotional attachment. Get rid of old grievances to renew past cordial family relations. This is not only a question for the litigants and other sons and daughters to ponder deeply over, but also a mutual goal for you to achieve.

Case 2

This was a civil case of divorce. Since they began to do some self-supported business, Peng (husband) has been dissatisfied with Liu (wife) arrogating all family economic powers to herself. Consequently, they often quarrelled with each other and then decided to live apart. Afterwards, Liu resorted to proceedings to claim a divorce from Peng. The judge did not grant the divorce, and then wrote down what he would like to say at the end of the court verdict:

Any happy family will have conflicts between husband and wife. Now that the conflict has arisen, the two parties should keep a clear head with a view to solving the existing problem through active communication. Congenial love between husband and wife should rely on complete confidence in each other.

Case 3

This was a civil case of a succession dispute. Mu (plaintiff) and Dong (defendant) had had many complaints against each other before they engaged in this lawsuit. However, they have got rid of old grievances and become reconciled with each other again just after the lawsuit. The reason for this was that they were deeply moved by the following attached discourse:

His father died when the plaintiff was very young and the defendant's spouse died when she was middle aged. Such things are really tragedies in the world. The two parties of the case ought to sympathize with one another because of their misfortunes, but it is a great pity that they had instead a dispute for the heritage of the dead and caused a more serious damage to their own hearts. The law can handle this succession dispute between the two parties fairly, but money cannot substitute for emotional attachment at all. The departed is gone; his kinsfolk are still alive. How can the departed close his eyes in his grave when his kinsfolk are disputing about his heritage? I wish the two parties to get rid of old grievances, to respect and love each other, and to renew their emotional attachment. It will really be a great joy to see everything happy and prosperous in your family!

According to John R. Searle (1969: 48), the sentence provides a conventional means of achieving the intention to produce a certain illocutionary effect in the hearer. If the hearer understands the sentence, the intention will be achieved. In the cases mentioned above, the sentences in the attached discourse stress "affection," "morals" and "human touch" and reveal judge's intention explicitly. Besides, in Cases 1 and 3, the sentences like "*Get rid of old grievances to renew past cordial family relations,*" and "*I wish the two parties to get rid of old grievances, to respect and love each other, and to renew their emotional attachment,*" in fact, produce a moral call to the litigants and request them to respond to the attached discourse in a positive way, to perform certain conventional acts and to carry out their obligations. Although there are no such sentences in Case 2 and there are only two sentences like this in Cases 1 and 3, the entire attached discourse expresses the identical meaning and produces the identical illocutionary acts. These acts have strong illocutionary forces. The context can be divided into "linguistic context" and "nonlinguistic context" (Huang 1988: 44; He 1989). The linguistic context depends on cohesion and coherence while the nonlinguistic context goes beyond sentence meaning. Nonlinguistic context can tell us how illocutionary force expresses the discourse. In a court trial, the hearers are in fact the litigants of the case. They show a great deal of concern for the case and are most eager to know the judge's

decision and opinion. In this sense, they have strong motivations. Therefore, in these two contexts, they can understand the meaning and intention of the judge's attached discourse completely. In this way, the discourse takes its expected effect.

3. Perlocutionary acts in Chinese judge's attached discourse

A successful performance of an illocutionary act in interactions can bring about the expected consequences and produce the act that tallies with the speaker's intention, a perlocutionary act. From the examples in the previous section, we may have felt the effects brought about by the judge's attached discourse. Normally, the litigants will produce certain actions in the context or will be much moved by what the judge says. However, saying something will also produce certain consequential effects upon the feelings, thoughts or actions of the audience and the speaker (Austin 1962: 101; Searle 1969: 25). Based on this, the discourses with the same meaning may produce different consequential effects while the same consequential effects may be achieved by different discourses with different meanings because different hearers may have different knowledge, ideology and character which will produce different feelings, thoughts or actions. Therefore, it seems true that a perlocutionary act does not necessarily have any connection with an illocutionary act. From this point of view, the litigants of a case may respond to the judge's attached discourse positively or negatively. If the litigants respond positively, the attached discourse will achieve its intention. If they respond negatively, such a discourse will not be "reasonable." This is the most important point—we should notice that the context of the attached discourse is a highly stylized court trial where what the judge says and the expressions he uses is carefully devised. Since most of the cases involve an emotional attachment, the judge's attached discourse will produce consequential effects on the feelings, thoughts and actions of the litigants. A lot of examples can show that the litigants responded to the attached discourse in a very positive way. In Case 1, the daughter-in-law and mother-in-law were deeply moved by the discourse and soon afterwards they became reconciled; in Case 2, the husband was inspired greatly by the attached discourse and said that he would not seek divorce any longer; in Case 3, the two parties said that they would submit themselves to the fair court decision, and that it was the attached discourse that put them right on how to understand the rule of law and morality. There are of course still more examples in which positive consequential effects are achieved. All these cases show that the judge's attached discourse really works. It is really convincing. Just because of this, it can be called a "tender court decision" (Mi 2003).

4. Conclusion

Although the Chinese judge's attached discourse conforms to the conditions of illocutionary and perlocutionary acts and achieves excellent effects, it is not omnipotent. Of course, it has its own limitations and some of its problems should be discussed.

Firstly, as has been discussed in the previous section, a perlocutionary act does not necessarily have any connection with an illocutionary act because many factors have an effect on the consequences. Based on this point, the speaker and listener's interaction determines the effects. The effects are determined by the listener's responses or acts. In judicial practice, the litigants' feelings, thoughts and actions are not at all stable. Though the judge's attached discourse has a highly stylized context, explicit convention and strong illocutionary force, it can only be used in civil cases which involve "emotional touch." This means that it cannot be widely used in other cases, especially criminal cases because the complexity of these cases determines the complexity of the litigants' feelings, thoughts and actions and we are not sure whether they would respond positively or negatively. Secondly, this problem triggers a second one—the expressions in the attached discourse. The expressions should be deeply devised, based on the details of the cases. Proper expressions can bring in strong illocutionary force, so as to affect the litigants. Without proper expressions or an appropriate choice of words, the judge's attached discourse will not achieve the expected perlocutionary act. Thirdly, the judge's attached discourse is mainly applicable to such cases as support for parents and grandparents, bringing up children, succession disputes, divorce and the like. These cases often involve emotional attachment, and so the litigants tend to respond positively. However, in other cases, especially in criminal cases, the litigants are usually more emotionally unstable. Thus, the illocutionary and perlocutionary acts of the attached discourse are most likely to be limited. This is the reason why such a discourse is not widely used in other cases.

At present, some courts are trying to apply this kind of discourse to criminal cases concerning minors as well as civil cases concerning the disputes of damage compensation and reputation. The effects are encouraging, and show that the judge's attached discourse still has room for further development. Provided that its expressions are well-designed according to the nature of different cases, it will certainly produce strong impact and achieve excellent long-lasting effects.

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