

On the Information Structure and Its
Linguistic Realization in Legal
Discourse: A Chinese-English Contrastive
Discourse Analysis

法律语篇信息结构及语言
实现研究

——汉英语篇对比分析

赵军峰 著



科学出版社

广东省普通高校人文社科基地重大项目

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北京

图书在版编目(CIP)数据

法律语篇信息结构及语言实现研究：汉英语篇对比分析 / 赵军峰著. —北京：科学出版社，2011.9

书名原文：On the Information Structure and Its Linguistic Realizations in Legal Discourse: A Chinese-English Contrastive Discourse Analysis

ISBN 978-7-03-032095-7

I. ①法… II. ①赵… III. ①法律语言学—研究 IV. ①D90-055

中国版本图书馆 CIP 数据核字(2011)第 167068 号

责任编辑：张 迪 / 责任校对：宋玲玲

责任印制：赵德静 / 封面设计：无极书装

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科学出版社 出版

北京东黄城根北街 16 号

邮政编码：100717

<http://www.sciencep.com>

双青印刷厂印刷

科学出版社编务公司排版制作

科学出版社发行 各地新华书店经销

*

2011 年 10 月第 一 版 开本：A5 (890×1240)

2011 年 10 月第一次印刷 印张：10 1/4

印数：1—2 000 字数：425 000

定价：48.00 元

(如有印装质量问题，我社负责调换)

序

赵军峰教授的著作《法律语篇信息结构及语言实现研究——汉英语篇对比分析》即将出版，受其委托代为写序。作为他的博士生导师，我对作者整个写作过程付出的诸多辛劳十分了解，对其潜心学术，勇于开拓的精神印象深刻。法律语言学是一个崭新的研究领域，近年来翻译学的发展也方兴未艾，该著作是将法律语言学、语篇分析、对比语言学与翻译学有机结合进行跨学科研究的一篇力作。作者于2009年荣获广东外语外贸大学年度优秀博士论文奖。

在法律语言学领域，法律翻译及法律语篇对比分析是一个不可或缺的研究分支。法律跨文化交际从本质上讲是不同法律体制、法律文化之间的信息传递，因此从某种程度上讲，法律翻译的过程就是法律语篇对比、信息处理和语言实现的结果，法律翻译实践离不开对法律语言本体的对比分析以及语言表征规律的探讨。与此同时，法律翻译的质量评估需要克服主观性，需要客观、科学的语言学理论作指导。

该研究旨在通过汉英语篇对比的方法探讨法律语篇信息结构及其语言实现的规律。作者在研究中既有自上而下的纵观性分析，也有自下而上的微观考量。作者的创新之处在于创造性地构建了一个“四桥”分析框架来观察和分析法律语篇，并进行汉英对比研究。广东外语外贸大学“法律信息处理系统语料库”(CLIPS)为该研究提供了丰富翔实的语料，奠定了对法律语篇进行定性分析和定量分析的基础。

迄今为止，国内的汉英对比研究主要集中探讨两种语言的普遍性异同，鲜有专门针对法律语言的对比，更少有学者依据丰富的语料库对法律语篇信息结构及其语言实现进行研究。该研究在“四桥”模型的分析框架下设置了明确有效的考量参数，使得研究更为全面、深入，克服了前人研究的一些重要局限。该研究的结果和结论将对立法文书的起草和修订，司法领域内诉讼当事人的庭审辩论和语言运用提供了借鉴。鉴于英汉法律语篇宏微观对比性质，尤其是在不同语言、文化和法律体制下更加细微的信息单位和信息成分的对比分析，该研究对法律翻译实践，尤其是法律翻译质量评估，具有重要参考价值。

此书的出版，是他本人的收获，也是法律语言学界和翻译学界的幸事，值得祝贺。欣然命笔，聊发数语，是为序。

杜金榜

2011年5月于广州白云山

Acknowledgements

I wish to express my greatest indebtedness to my respected and beloved supervisor, Prof. DU Jinbang, who helped me embark on a safari into the wonderful realm of forensic linguistics, and guided me throughout the whole process of the present research. Without his brother-like care and encouragement, intellectual insights, invaluable guidance and suggestions, I would not be able to break out of this tormenting yet pleasant “academic bondage” of PhD pursuit at the Foreign Linguistics and Applied Linguistics Research Centre, Guangdong University of Foreign Studies (GDUFS). The completion of this book is only the ending of a start of the academic research in the realm of forensic linguistics and legal translation. During the four years of part-time study under his guidance, not only have his wonderful lectures benefited me immensely, but his personality and tireless spirit of wholeheartedly devoting himself to his work have also set a good example for me. I can never owe too much to him for leading me onto the road of forensic linguistics.

I have also profited greatly from the professional generosity of Prof. Qian Guanlian, Prof. Liu Jianda, and Prof. Feng Yiqian, whose inspiring lectures broadened my perspectives and enriched my knowledge. Great appreciation also goes to my good friends and colleagues in the School of English for International Business, Dr. Zhang Xinhong, Dr. Xu Zhanghong, and Dr. Yuan Chuanyou, who generously offered me a lot of research materials and insightful suggestions on my writing of this book. Thanks are due too, to my friendly colleagues Prof. Zhong Weihe, Prof. Mu Lei, Prof. Mo Aiping and Prof. Li Ming at the School of Interpreting and Translation Studies, who showed much concern for my writing the book and from

whom I have drawn great encouragement.

I greatly appreciate the kind help from Prof. Hao Jianhua and editor Ms. Zhang Di at the Science Press, who constantly offered me a lot of encouragements and suggestions in the publishing of this book.

Next, I am sincerely much obliged to all the authors from whom I have cited adequate sources.

Last but not least, I owe my successful completion of studies at GDUFS to the persistent support from my beloved wife Liu Hui, and my lovely son Zhao An, who was born almost simultaneously with the finishing of my MA thesis at Wuhan University 17 years ago, when I shifted my career objective from being a scientist onto the academic journey leading to the current professor of translation at GDUFS. I am glad to present this book to them again this time.

Abstract

So far contrastive analyses in China have been mainly focused on the general rules concerning differences and similarities between Chinese and English while few scholars concentrated on legal discourse of these two languages. Even fewer academics conducted contrastive analyses of legal discourse information structure and its linguistic choices on the basis of adequate corpora. The accelerated intercultural legal communication and exchanges between China and other countries call for more in-depth research into the nature of legal discourse. The linguistic communication of both English and Chinese legal discourse falls on the very transmission of information governed by the functioning of some general and specific determining factors.

With emphasis on the functional perspectives on language, legal discourse is typically of an institutional nature. Information processing and linguistic realizations in legal communication and exchanges are conducted in a rule-governed and goal-oriented legal context. The objective of this research is to explore the general rules governing the configuration of information structure and its linguistic representations or realizations of legal discourse from the perspective of Chinese-English contrastive analysis. Through theoretic deduction and data analysis, the author endeavors to seek answers to the following three research questions.

Q1: Within the relatively stable given generic system and register, and with basically similar discourse functions, what determining factors affect the configuration of information structure of legal discourse?

Q2: In order to achieve its optimal information transmission, in what ways can linguistic choices be made at the micro level

of legal discourse?

Q3: What are the differences and similarities of information structure and its linguistic realizations between Chinese and English legal discourse?

The present research employs both a holistic top-down perspective and detailed bottom-up observations. This functionalist approach incorporates into the observational research of contrastive nature many a relevant theoretical underpinning of prior advocates. The theoretical foundations cover communication studies, SFL linguistics and CDA approaches. Accordingly, a “four-bridged” theoretical framework is constructed for contrastive analysis of legal discourse between Chinese and English. Besides, this research is based on the CLIPS corpus which provides abundant resources for qualitative exploration and relatively quantitative analysis of legal discourse. To overcome the previous limitations of contrastive researches, the operational parameters as found in the framework contributes to a relatively comprehensive yet delimited analysis. The institutionality and functionality of legal discourse serve as both the orientation and objective of legal communication and exchange, which reflect their very essence.

This research concludes that the very nature of institutionality of legal discourse makes it possible to confine the research within a relatively given scope of observation. All legal discourse, whatever its sub-varieties, is rule-governed and goal-oriented, and involves the participants’ orientation of linguistic resources to their institutional identities. The discourse users including legal drafters, judges, lawyers and other litigants all resort to different yet somewhat similar strategies in employing relevant linguistic resources to apply, interpret and utilize the legal documents to achieve their respective goals in the institutional setting.

To begin with, within the relatively stable given generic system and register, and with basically similar discourse functions, the

determining factors that affect information processing of legal discourse are socio-cultural systems, linguistic conventions, legal systems as well as the stance or attitude of the discourse users. These “four categories” and their respective sub-parameters can contribute to bridging the gap of legal communication and exchanges between different human languages.

Besides, in order to achieve the optimal information of legal discourse, it is of vital importance for the legal drafters or translators to take into account not only the macro determining factors comprising the socio-cultural and legal system “archways” of the information bridge, but also the micro determining factors making up the “archways” of linguistic conventions and the discourse users’ attitude. The actual ways of linguistic realizations are built upon the sensitivity to and knowledge of the similarities and differences in these determining factors.

Moreover, taking advantage of such a functionalist perspective, similarities and differences of information structure and realizations between Chinese and English legal discourse are detected both in a holistic way and with attention to more detailed bottom-up analyses. The general rules in this regard may enhance the acute awareness of legal discourse writers and translators towards the determining factors of legal communication, and the possible alternatives to achieve optimal legal discourse information transmission, and thus contribute more effectively to their legal practice and legal exchanges in the long run.

The findings and conclusions may shed some light on the legal practice of legislative drafting and judiciary interactions of litigants in specific judiciary proceedings and courtroom argumentative presentations. As it is started from a contrastive analysis of information structure and its linguistic realizations in legal discourse, this study will also shed some significant light on the practice of legal translations, particularly with regard to the assessment of legal

translation quality.

This study is not without limitations. The proposed analytical framework may unavoidably neglect some other factors, particularly when more detailed categories of information bridges are concerned. Besides, as such a framework is constructed by incorporating into considerations of functionalist underpinnings and communication studies, there might be subjective or even biased configurations of theoretical concepts. Secondly, there are mainly qualitative analyses and theoretical examinations conducted in this study, whereas detailed quantitative investigations are still lacking. Additionally, there is still the subjectivity of the author in conducting the contrastive analysis.

In a nutshell, the present study is hoped to serve as a pioneering work for future researchers who are interested in legal discourse analysis or contrastive studies of Chinese and English, or for legal translators and interpreters, both amateur and professional.

Keywords: Chinese-English Contrastive Studies; Legal Discourse; Information Structure; Linguistic Realizations

Contents

序	i
Acknowledgements	iii
Abstract	v
Chapter 1 Introduction	1
1.1 Introduction.....	1
1.2 Exploring the Nature of Legal Discourse Information Processing	2
1.3 A Corpus-Based Contrastive Study.....	6
1.4 Organization of the Book	8
Chapter 2 Information Bridges in Contrastive Legal Discourse Analysis	10
2.1 Introduction.....	10
2.2 Legal Discourse.....	11
2.3 Contrastive Discourse Analysis.....	16
2.4 Communication, Information and Discourse Analysis.....	19
2.4.1 Models of Communication.....	21
2.4.2 The Hallidayan Model of Discourse Analysis and Information Structure	26
2.4.3 Critical Discourse Analysis (CDA).....	33
2.4.4 Appraisal Theory as an Approach to Tackle Interpersonal Meaning	35
2.4.5 Legal Discourse Information Structure	40
2.5 The Information Bridges in Contrastive Legal Discourse Analysis.....	47
2.5.1 Theoretical Foundings of Information Bridges Model	48
2.5.2 Description of the Analytical Framework	50

2.6	A Pilot Study	58
2.6.1	Introduction.....	58
2.6.2	Analysis Based on the Proposed Analytical Framework.....	60
2.6.3	A Tentative Conclusion.....	69
2.7	Summary	69
Chapter 3	The Socio-cultural System.....	71
3.1	Introduction.....	71
3.2	Overview: the Socio-cultural System.....	72
3.3	Social Measures	74
3.4	Ideologies.....	82
3.5	Power Relations	104
3.6	Summary	117
Chapter 4	The Linguistic Conventions.....	119
4.1	Introduction.....	119
4.2	General Contrasts Between Chinese and English.....	120
4.3	Lexical Choices.....	124
4.3.1	Verb-orientation vs. Nominalizations.....	125
4.3.2	Personal vs. Impersonal.....	131
4.3.3	Stative vs. Dynamic	135
4.4	Syntactic Structure	137
4.4.1	Topic-prominent vs. Subject-prominent.....	138
4.4.2	Active vs. Passive.....	141
4.4.3	Diffusive vs. Compact.....	143
4.4.4	Reiterative vs. Substitutive.....	146
4.5	Rhetorical Structure	151
4.5.1	Paratactic vs. Hypotactic	152
4.5.2	Direct vs. Indirect.....	156
4.5.3	Simplex vs. Complex	159
4.6	Summary	161

Chapter 5 The Legal System	163
5.1 Introduction.....	163
5.2 Overview: the Chinese Law vs. the Common Law	163
5.3 Legal Assumptions.....	168
5.3.1 Guilty Presumption vs. Innocent Presumption	169
5.3.2 Stare Decisis vs. Statutory Decisis	175
5.4 Institutional Features	182
5.4.1 Adversarial vs. Inquisitorial	183
5.4.2 Collegiate Panels vs. Jury System	188
5.5 Procedural Formalities	193
5.5.1 Interrogation vs. Interview	194
5.5.2 Mediation vs. Plea Bargaining	200
5.5.3 Judge Dominance vs. Lawyer Dominance	207
5.6 Summary	214
Chapter 6 The Discourse Users' Stance	216
6.1 Introduction.....	216
6.2 Affect	217
6.2.1 Basic vs. Complex.....	218
6.2.2 Authorial vs. Non-authorial.....	224
6.2.3 Behavioral Surge vs. Mental State	228
6.3 Judgment	232
6.3.1 Implicit vs. Explicit.....	233
6.3.2 Social Esteem vs. Social Sanction.....	237
6.4 Appreciation.....	243
6.4.1 Reaction: Impact vs. Quality	244
6.4.2 Composition: Balance vs. Complexity	249
6.4.3 Valuation.....	252
6.5 A Comprehensive Analysis of Attitude.....	256
6.6 Summary	259

Chapter 7	Implications and Prospects for Chinese-English Contrastive Studies and Legal Translations.....	261
7.1	Introduction	261
7.2	Summary of Major Findings	262
7.2.1	Determining Factors.....	262
7.2.2	For Optimal Legal Information Transmission.....	265
7.2.3	Similarities and Differences	266
7.3	Conclusion	270
7.4	Implications for Chinese-English Legal Translations	272
7.5	Limitations of the Research.....	274
7.6	Prospects for Further Research	275
References		277
Appendices		293
Appendix I	A Tagged Sample of an English Judgment.....	293
Appendix II	Tagged Sample of a Chinese Court Judgment.....	299
Appendix III	Tagging Symbols for the CLIPS	307
Appendix IV	Tagging Symbols for Information Elements	310

List of Tables

2.4.5.1	In-clause Information Elements and Value	45
3.4.1	Distribution of Information Knots in a Courtroom Debate	91
3.4.2	An overview of the Identical Rhetorical Segments of Judicial Judgment	98
3.5.1	Distribution of Information Knots in Chinese Patent Law	113
4.2	Major Contrasts of Linguistic Conventions between English and Chinese	123
6.2.1	Common Ways of Expressing Primary, Secondary and Tertiary Emotions	218
6.3.2	Main Categories of Judgment System (after Liu (Shizhu) 2006)	238
6.4.1	Types of Appreciation: reaction	245
6.4.2	Types of Appreciation: composition	249
6.4.3	Types of Appreciation: valuation	253

List of Figures

2.4.1.1	The Shannon/Weaver Model.....	21
2.4.1.2	Schramm's Model of Communication (1955).....	22
2.4.1.3	David Berlo's S-M-C-R Model of Communication	23
2.4.2.1	Relation of Genre and Register to Language (after Munday 2001:90; Eggins,1994: 78).....	28
2.4.2.2	Scheme for Analyzing and Comparing STs and TTs (House 1997: 108).....	31
2.4.3.1	Fairclough's Discourse Analysis Model (Fairclough 1995: 98).....	34
2.4.4.1	An Overview of Appraisal Resources (after Martin & White 2005: 38).....	38
2.4.4.2	Judgment and Appreciation as Institutionalized Affect.....	39
2.4.5.1	Legal Discourse Information Tree Model (after Du, 2007).....	43
2.5.2.1	Information Processing of Legal Discourse	51
2.5.2.2	Structures of Information Bridges.....	54
3.4.1	Martin's Model of Context of Situation	83
3.4.2	Analytical Model of Ideology as Socio-cultural System in Courtroom Discourse	86
3.4.3	Information Structure of a Chinese Courtroom Debate.....	90