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程 微◎著

A Study on Attitudinal Prosody  
in Criminal Courtroom Discourse

# 刑事庭审语篇中的 态度韵律研究



上海交通大学出版社  
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## 内容提要

本书以系统功能语言学为理论框架,以语料库研究为基础,利用评价理论及语类理论探究了刑事庭审语篇中态度韵律的结构及其应用。书中采用定性研究方法,辅以相应的数据统计和分析来支持和验证理论假设。本书从宏观的角度出发,通过利用多维度、多层次的整体语言理论模型,探寻刑事庭审语言系统网络间的层级关系和并协关系,自上而下展示刑事庭审语篇中态度的实例化和个体化的实现过程。本研究从互动角度细察刑事庭审语篇中各参与者态度资源的分布,发现了态度资源的分布特点与动态生成模式,描绘出态度韵律结构图,揭示了刑事庭审中的权力关系和意识形态。本书适合对功能语言学、语篇分析、法律语言学感兴趣的大学高年级学生、研究生、教师和学者阅读。

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# 前 言

本书旨在融合系统功能语言学(SFL)与法律语言学相关理论,对刑事庭审语篇中的态度资源进行分析和探讨。

SFL 历经五十多年的发展,形成了多维度、多层次的整体语言理论模型。该模型假设语言是由多个系统构成的系统网络。各个系统互相交织,系统之间和系统内部呈现不同的组织关系,其中最为重要的组织关系是层级关系(hierarchies)和并协关系(complementarities)。层级关系包括实现化关系、实例化关系和个体化关系。目前对于实例化的研究落后于实现化的研究,而个体化研究则刚刚起步。本书运用 SFL 在实现化和元功能方面研究的相关成果,以实例化层面的法律语篇为研究对象,充实和丰富个体化理论。

自 David Mellinkoff 最早提出法律语言的概念开始,法律语言学研究逐步兴起。20 世纪 70 年代以来,法律语言研究进入了一个新阶段,涉及的学科逐步扩大,研究焦点由以法律文本和语言为客体的研究转向法庭话语与法律活动的互动、法律话语的生成和理解。到了 20 世纪 90 年代,法律语言学以定期学术会议(International Conference on Forensic Linguistics)、专门学术机构(International Association of Forensic Linguists)和专业学术刊物(*International Journal of Speech, Language and the Law*)为标志向世界宣布,它已从其他学科中剥离出来,自立门户,成为独立学科。作为一个独立的科学,法律语言学又可分为理论研究和应用研究。近年来应用研究已经成为法律语言研究的重要趋势,庭审语言属于应用研究,本书亦是在此背景下产生的。

我们认为庭审语篇属于机构语篇,因受法庭规则的制约,本应力求客观。但通过语料观察研究发现,相关法律人在庭审过程中由于立场的不同,会在语言中融入各自的态度,从而使语言成为主观性的表达。

基于此,本书主要利用马丁提出的评价理论和语类理论,建构了一个多维度和多层次的态度韵律分析模型,探究刑事庭审语篇中态度韵律的结构和走势。通过“自下而上”的研究路径,我们对 50 例刑事庭审的转录语料(共 33 000 字)进行定性分析,并利用 WordSmith 4.0 辅以相应的数据支持。

本书的态度韵律分析模型主要涉及词汇语法、语篇语义、语域以及语类四个层面。词汇语法层关注相应态度资源的表达方式;语篇语义层借用评价理论考察刑事庭审语篇中态度资源的分布特点;语域层关涉“权力”和“结盟”两个维度;语类层探讨态度韵律的结构。本书认为态度韵律结构是一个具有层级性和突现特质的整体结构。层级性指态度韵律结构分为态度韵律阶段、态度韵律相、态度韵律模式三个层级;突现特质指下层的元素通过突现构成上一个层级,突现而成的层级出现了其组成部分或组成的前身所不具有的性质、结构和规律性,态度韵律的三个层级通过上/下向因果力构成一个相对稳定的整体结构。

本书提到在刑事庭审语篇中,特定的动词、名词、形容词、副词以及情态动词都具有特定的态度意义;重复、否定、名物化、自我态度标记都是有效表达态度的方式;不同态度资源的叠加可以增强态度的力度。讨论发现,审判长话语中的不同用词是其权力和地位的体现,对被告人 and 公诉人的不同称呼又表现出他们之间的亲疏关系,庭审中问答的不平等也同样体现出权力与地位。

本书指出,法律事实的建构需首先经历诉讼主体对客观事实的主观建构形成主观事实,再由相应的法律程序确立的两个过程。在前一过程中,态度韵律的高潮部分将态度的“冲突”和“一致”综合在一起,为法律事实的确立起到了决定性的作用。本书还提出了对态度韵律的分析在揭示中国刑事庭审现状方面的意义。通过对态度韵律的分析我们发现,刑事庭审中仍存在审判不中立、控审不分、控辩不平等的现象。

SFL 和法律语言学各成体系,本研究试图开辟一条将两者融合的探究语篇分析的新路径。尝试之初,错误与疏漏之处在所难免,恳切希望各方专家、同行、读者批评指正,不吝赐教。

本研究得到导师上海交通大学王振华教授的悉心指导,在此表示

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## Chapter One Introduction

Forensic Linguistics has grown up to become a mature discipline. This is demonstrated by the following evidence: its own professional association—The International Association of Forensic Linguists founded in 1993; its own expert journal—*International Journal of Speech, Language and the Law* founded in 1994; and a biennial international conference—International Conference on Forensic Linguistics (Coulthard & Johnson, 2010: 1). Under the umbrella of its widely accepted broad definition, forensic linguistics subsumes the following major research areas:

- 1) the study of the written language of the law;
- 2) the study of interaction in the legal process, which in criminal cases includes everything from an initial call to the emergency services to the sentencing of someone who has been found guilty;
- 3) the description of the work of the forensic linguist when acting as an expert witness. (*ibid.* : 7)

The object of the present research—criminal courtroom discourse (hereafter CCD) falls into the second category in the list which has been arousing many forensic linguists' interests because the criminal trial is one of the most important legal activities in modern society, and its general involvement of the freedom and the life of the accused is of great importance. Thus researches of CCD have both theoretical and practical significance.

In a general sense, CCD is often seen as purely impersonal, objective and informative, merely a faceless depictions of reality in which words deal directly with facts. However, language can never be ideologically neutral; it serves to organize and express experience and so it always codes for the orientation and perspectives of the language

user. These overt expressions of a range of personal feelings and dispositions, often referred to as “the speaker’s” attitude, are under the consideration of this research. As the focus of the present research, attitudes in CCD will be dealt with from a discourse analysis perspective. This book starts with a general introduction including its rationale, research questions, research methods, a description of data collection and the organization of the book.

**1.1 Rationale of the Present Research**

Along with the improvement of Criminal Law and Criminal Procedural Law, criminal trials in China tend to be more transparent and fair, but still many defendants feel that they are undergoing unfair treatments in the courtroom. Why do they have the feeling of injustice in a supposedly impartial trial? The reasons may lie in many factors which are researched in fields such as sociology, law, psychology and forensic linguistics (cf. Atkinson & Drew, 1979; Conley & O’Barr, 1998; Gibbons, 2003b; Eades, 2008; *etc.*). The present research intends to explore the causes within the forensic linguistics field from the perspective of Systemic Functional Linguistics (hereafter SFL). As we know, the ultimate goals of criminal trials are justice and objectivity (蒋晓伟, 1999; 张文显, 2007), yet courtroom trials appear subjective in reality partially due to the attitudes of participants in it, such as judges, prosecutors, lawyers<sup>①</sup>

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① “Lawyer” is a covering term referring to “a person, who advises people about laws, writes formal agreements, or represents people in court”. It is reified as an attorney, a counsel or a solicitor in specific legal procedures. “Counsel” means either “a single person who pleads a cause”, or “collectively, the body of barristers engaged in a case”. In this book, they are used interchangeably to refer to “the participant who defends for the accused in the court”.

and defendants<sup>①</sup>. To reconcile this tension between objectivity and subjectivity, this book is engaged in dealing with the attitudes of different participants involved in the courtroom process. The motivation of this research lies in the following aspects.

First, attitude is one of the most significant elements in our daily lives—a device pertaining to the expression of our emotions and feelings towards the cultural and material world around us. Our short-term attitudes may then turn into long-term values, which are as important to our lives as our beliefs. Our values arguably determine to a large extent the personality we bear, the path of life that we choose to take, and the kind of friendship that we form. Furthermore, attitude is extremely important in actual discourse in that it is impossible for human beings to speak with a completely “objective” voice. The importance of attitude also derives from its multifunctionality; it can simultaneously be used to express the speaker’s opinion, and to construct relations between the speaker and the listener. For example, in the courtroom, judges, prosecutors and lawyers always display their attitudes intentionally or unintentionally to distance or align the accused.

Second, there is still much research scope regarding the phenomena of attitude and its structure in discourse. It is acknowledged that many recent researches in linguistics concern attitude, some of which investigate under the headings of evaluation, stance and hedging or metadiscourse (cf. Thompson & Hunston, 2000; Biber, *et al.* 1999;

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① “Defendant” refers to “the person in a court of law who has been accused of doing something illegal”; “the accused” refers to “the person or group of people who have been officially accused of a crime or offence in a court of law”. They are used interchangeably in this research to refer to “participant (s) who is/are accused in the court”.



Hyland, 1998; 2005). It is noted that Martin models attitude into his Appraisal framework in the 1980s' under a project named *Write It Right*. As the core system in Appraisal Theory, attitudes involve various feelings which could be categorized into three semantic regions covering what is traditionally referred to as emotion, ethics and aesthetics. Since Appraisal Theory is a development of SFL, and is one of the aspects of interpersonal metafunction, attitudinal meaning is part of the interpersonal meaning. In Martin's term, ideational meaning is associated with particulate structure, interpersonal meaning with prosodic structure and textual meaning with periodic structure. He proposes three types of prosodic realization—saturation, intensification and domination (Martin & White, 2005: 18-20). However, there are sparse researches studying attitude and its structure in discourse. All in all, there still remains research sphere for the study of attitude and its structure in discourse within the field of linguistics.

Third, it must be pointed out that although we find a wealth of research on the discipline of trials in a general sense, much of it is either non-linguistic (in a strict sense) or of limited scope (focusing on a few aspects, such as court debate language, courtroom questioning-answering, revictimization of rape victims, *etc.*). In this research, the attitudinal prosody in CCD is investigated from the linguistic perspective in consideration of the implications on the law and society.

Fourth, we choose criminal trials as our data for the reason that they involve issues related to life and freedom whereas civil trials concern things or material benefits. Mistakes in civil trials can be rectified by the way of compensation however misjudgements in criminal trials are usually hard to redeem. In this sense, judicial justice is mainly represented in just criminal trial. On the other hand, the status between the prosecution and the defense in a criminal trial