Modals and Modality in Legal Discourse: A Corpus-Based Sociosemiotic Interpretation

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ABSTRACT

In this study, parallel corpora of the Civil and Commercial Laws and the English translation of the People’s Republic of China (hereinafter P. R. C.) are built. Modal verbs in the legal texts are examined from the perspective of genre analysis and semantics. Moreover, a comparative study on different variations of legal genre is adopted. This study further explores the findings from a sociosemiotic perspective in terms of the distinctions on modal verbs and modality between different variations of legal genre. The authors have noticed the disparity of modal verbs in different situations depends on distinct functions of situations. Although linguistic and textual analyses are significant in exploring issues of legal texts, it is not enough to linger within these domains.

KEYWORDS

Genre/Register, Modal Verbs, Modality, Sociosemiotics

INTRODUCTION

Legal texts serve as a vehicle carrying the concepts of laws, and they are difficult to be understood by laypersons (Orts, 2015). Legal texts, within the umbrella of legal genre, consist of various registers: laws and regulations, cases, judgments, reports, etc. Each of them bears different contexts of texts, of situations and of cultures (Martin & Rose, 2014, pp. 9-10). As Swales has stated as early as 1990, genre should not be regarded as “a formulaic way of constructing” (Swales, 2001, p. 33). Scholars have attempted to define genre. From the perspective of Biber and Conrad, register, genre and style are three different aspects on varieties of texts (Biber & Conrad, 2009, p. 14), and the relationship between the three is not stratified. Furthermore, register is defined as “the combination of linguistic analysis with analysis of the situation of use of the variety” while genre shares similarity with register except linguistic analysis in genre focuses on “the conventional structures used to construct a complete text in the variety” (Biber & Conrad, 2009, p. 14). On the contrary, Martin and Rose argue that genre is “staged, goal oriented social processes” (Martin & Rose, 2014, p. 6). The idea of Martin and Rose is approximate to the view held by Halliday, who does not take “genre” into account; instead, he considers “a text is an event whose meanings are exchanged in social systems” (Halliday, 1978, 2001, 2007), and he uses the term “generic structure” (Halliday, 1978, p.134) instead of genre. Moreover, he considers that generic structure is beyond the linguistic system and it projects a high-level semiotic structure (Halliday, 1978, p. 134). From this stance, register and genre are stratified, and the former is entailed by the latter. Besides, Bhatia states that genre analysis can be viewed from the real world perspective, the socio-cognitive perspective, the analytical perspective (Swales adopts this perspective) and the pedagogical perspective (Bhatia, 2002). Later on, he proposes that genre

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studies of texts from professional domains should be of interdiscursivity and involve text-internal and text-external analyses (Bhatia, 2007, 2010).

Modal verbs are frequently discussed with modality, which is a semantic-grammatical feature (Palmer, 1990, 1997, 2013). In terms of the types of modality, von Wright proposes alethic (modes of truth), epistemic (modes of knowing), deontic (modes of obligation) and existential (modes of existence) modalities (von Wright, 1951, pp. 1-2): alethic modality is expressing the contingent or necessary truth of a proposition (von Wright, 1951, p. Lyons, 1977, p. 791), epistemic modality correlates to the knowledge or judgment of an entity or an event (von Wright, 1951, pp. 29-35; Lyons, 1977, pp. 793-794; Palmer, 1990, 1997, 2013), deontic modality is expressing permission, obligation and its negation is presenting prohibition (von Wright, 1951, pp. 36-37; Lyons, 1977, pp. 823; Palmer, 1990, 1997, 2013), and existential modality is usually not regarded as a modal logic (von Wright, 1951: p.2). Later on, Lyons categorizes modality as alethic, epistemic and deontic modalities (Lyons, 1977: p.787-840). Then, Palmer suggests that there are epistemic, deontic and dynamic modalities (Palmer, 1990, 1997, 2013). According to Palmer, dynamic modality can be either neutral or subject oriented (Palmer, 1990, p. 83). However, Palmer is changing his ideas towards modality: he casts out the concept of propositional modality and event modality (Palmer, 1986, 2001): epistemic (evidential) modality belongs to the propositional modality while deontic and dynamic modalities are entailed by event modality. According to Palmer, deontic modality and dynamic modality are difficult to divide: deontic modality is performative, directive, commissive (giving permission, laying obligation, prohibition or command), and its modifications can weaken the modality; on the contrary, dynamic modality is expressing ability and willingness (Palmer, 2001, pp. 70-79). Halliday and Matthiessen categorize modality as modalization (indicative type) and modulation (imperative type): the former entails probability and usuality and the latter includes obligation and inclination (Halliday & Matthiessen, 2008, pp. 618).

The linguistic features of legal texts have long been discussed by various scholars: The Language of the Law by Mellinkoff comprehensively reviews the history of the language (English) of the law, discusses its features (the use of Latin words, of terminologies, of rare connotations of common words, etc.) and defines its usage (Mellinkoff & Liao, 2013). Consecutively, researches have explored legal language/the language of the law from various standpoints. First, there are two standpoints on the concept of legal language/the language of the law: there are researchers, who argue that it is a technical language (Pan, 2004) or a language with high precision, with information (over) load, with universality and aloofness, with systemic character, with specific form and structure, etc. (Mattila & Goddard, 2013, pp. 106-154). On the contrary, in a study focusing on legal discourse (the Patriot Act and Article 23 of the Basic Law of Hong Kong SAR), Bhatia and Bhatia uses two theoretical frameworks (Critical Discourse Analysis and Genre Analysis) to prove that the vagueness and precision in legal texts are out of legislative intentions instead of the language itself, and they should be interpreted socio-pragmatically (Bhatia & Bhatia, 2011). Second, there are studies that concentrate on specific linguistic features in legal texts either from different perspectives, e.g. modal verbs and modality. Li (2007) analyzes functions of main modal verbs in English legal texts and discusses their Chinese translation. Cheng and Sin (2011) comprehensively study modality (both in verbal and adverbial forms) in Chinese court judgments of Hong Kong from formal, semantic, functional and semiotic perspectives. Garzone (2013) sketches the history of evolution, progression and trend of shall in legal documents in the United Kingdom, and concludes that shall is disappearing as time passes by. Cheng & Cheng (2014) conduct a corpus-driven study (the framework of SFL is also utilized) on epistemic modality in court judgments of Hong Kong and Scotland. Li (2015) studies modality in the Criminal Law of the P. R. C. and its English translation and the scholar concludes that the translation from Chinese modal verbs and their English counterparts should pay attention to the equivalence of values. Li, Cheng and Cheng (2016) framed their study on modal verbs and their negation in the legislative context of Hong Kong. This study introduced a new hexagon model to interpret modal verbs and modality.