

The CALA 2019 Proceedings Paper 16 - 5

General Sociolinguistics, Paper 5

**Accusation, Defence and Morality in Japanese
Trials: A Hybrid Orientation to Criminal Justice**

Ikuko Nakane

University of Melbourne, Australia

Accusation, defence and morality in Japanese trials: A Hybrid Orientation to Criminal Justice

Ikuko Nakane^a

^aUniversity of Melbourne, Australia

Abstract

The Japanese criminal justice system has gone through transformations in its modern history, adopting the models of European Continental Law systems in the 19th century as part of Japan's modernisation process, and then the Anglo-American Common Law orientation after WWII. More recently, citizen judges have been introduced to the criminal justice process, a further move towards an adversarial orientation with increased focus on orality and courtroom discourse strategies. Yet, the actual legal process does not necessarily represent the adversarial orientation found in Common Law jurisdictions. While previous research from cultural and socio-historical perspectives has offered valuable insights into the Japanese criminal court procedures, there is hardly any research examining how adversarial (or non-adversarial) orientation is realised through language in Japanese trials.

Drawing on an ethnographic study of communication in Japanese trials, this paper discusses a 'hybrid' orientation to the legal process realised through courtroom discourse. Based on courtroom observation notes, interaction data, lawyer interviews and other relevant materials collected in Japan, trial participants' discourse strategies contributing to both adversarial and inquisitorial orientations are identified. In particular, the paper highlights how accusation, defence and morality are performed and interwoven in the trial as a genre. The overall genre structure scaffolds competing narratives, with prosecution and defence counsel utilising a range of discourse strategies for highlighting culpability and mitigating factors. However, the communicative practice at the micro genre level shows an orientation to finding the 'truth,' rehabilitation of offenders and maintaining social order.

The analysis of courtroom communication, contextualised in the socio-historical development of the Japanese justice system and in the ideologies about courtroom communicative practice, suggests a gap between the practice and official/public discourses of the justice process in Japan. At the same time, the findings raise some questions regarding the powerful role that language plays in different ways in varying approaches to delivery of justice.

Keywords: World War II, Ethnography, common law, Linguistic Anthropology, Japan

Main paper

The Japanese criminal justice system has gone through transformations in its modern history, adopting the models of European continental law systems in the 19th century as part of Japan's modernisation, and then the models of Anglo-American common law after WWII.

More recently, citizen judges have been introduced to the criminal justice process, a further move towards an adversarial orientation with increased focus on orality and courtroom discourse strategies. Yet, the actual legal process does not necessarily represent the adversarial orientation found in common law jurisdictions. While previous research from cultural and socio-historical perspectives has offered valuable insights into Japanese criminal court procedures, there is hardly any research examining how adversarial (or non-adversarial) orientation is realised through language in Japanese trials.

Drawing on an ethnographic study of communication in Japanese trials, this paper discusses a 'hybrid' orientation to the legal process, realised through courtroom discourse. On the basis of courtroom observation notes in district courts, interviews with lawyers and other relevant materials collected in Japan, this paper identifies trial participants' discourse strategies contributing to both adversarial and inquisitorial orientations. In particular, it highlights how accusation, defence and morality are performed and interwoven into the trial as a genre. The overall genre structure scaffolds competing narratives, with prosecution and defence counsel utilising a range of discourse strategies for highlighting mitigating factors and culpability. The lawyers orient themselves consciously to constructing a narrative through stages that evoke Labov and Waletzky's (1967) narrative model, while ensuring the story is presented in a manner that is accessible and convincing to its audience, in particular citizen judges. For example, lawyers attempt to make the theme of each upcoming round of questioning explicit, then set the context before proceeding to the what and how of the events concerned.

Discourse strategies utilised by counsel in court included coercive questions, interruptions and contrasting to bring out inconsistency in testimony. Furthermore, questions were also asked to indirectly attack witnesses and defendants in order to construct negative impressions (e.g. unreliable, violent, immoral, cheating) of the person being questioned. These strategies have been found in existing courtroom discourse in common law jurisdictions (e.g. Atkinson and Drew 1979; Eades 2008; Gibbons 2003; Heffer 2005).

While the defence and prosecution attempt to construct different versions of events and contrasting images of the defendant and witnesses, judges go beyond the role of the 'impartial referee' as in common law trials, and actively participate in the truth-finding process by asking questions, a move which does not align with the adversarial stance taken by the defence and prosecution counsel. Furthermore, some aspects of courtroom communication at the micro genre level show an orientation not only to finding the 'truth,' but to the rehabilitation of offenders, to establishing Confucian moral code and to maintaining social order. Shaming of the defendant and their family members is not an uncommon practice, but the defence also participates in this process as part of impression management to highlight the defendant's acceptance of blame and demonstration of remorse as mitigating factors. Although evaluation of possible reform, blame and moral preaching are likely to occur in trials in adversarial justice systems to a certain extent, the fact that such practices regularly occur in a single trial without a separate sentencing hearing in Japan requires further critical inquiry.

The analysis of courtroom communication, contextualised in the socio-historical development of the Japanese justice system and in the ideologies of courtroom communicative practice, suggests a gap between the practice and official/public discourses of the justice process in Japan. At the same time, the findings raise some questions regarding the powerful and multifaceted role that language plays in various approaches to the delivery of justice. Further research on communicative practice in trials in other jurisdictions from a comparative perspective is needed

to address the issue of language and orientation in the justice process.

References:

- Atkinson, M. J. and Drew, P. (1979) *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. London: Macmillan.
- Eades, D. (2008) *Courtroom Talk and Neocolonial Control*. Berlin: Mouton de Gruyter.
- Gibbons, J. (2003) *Forensic Linguistics: An Introduction to Language in the Justice System*. Oxford, Blackwell.
- Heffer, C. (2005) *The Language of Jury Trial*. Basingstoke and New York, Palgrave Macmillan.
- Labov, W. and Waletzky, J. (1967) Narrative analysis. In. J. Helm (ed.), *Essays on the Verbal and Visual Arts*. Seattle, WA: University of Washington Press.