

9 One case, two verdicts

The vertical interplay of authoritative discourses in China

Hailong Tian

Discourse is primarily understood as language in use, as a social practice involving communities of participants who are institutionally affiliated and politically, ideologically, or professionally committed to its use. Discourse makes use of natural language but is not confined by it. In this chapter, I investigate how various Chinese discourses interact—Chinese in the sense of being practiced in contemporary China and undeniably influenced by its underlying culture. To this end, I focus on three types of discourse. The first is political and represented by Chinese leaders' speeches, the second is legal and practiced by the legal community, and the third is public and manifests in how the news media comments on both the political and legal contexts via print.

A legal case that surfaced between the periods of 1995–1996 and 2013–2014 exemplifies how these three types of discourse played surprisingly different roles. During both periods, all three covered two discursive themes but differently: that of *yanda* (severe strike) and of *gongping-zhengyi* (equality and justice). One reason for their unequal treatment of these themes is that they operated on different discursive levels. The political discourse can be said to be vertically related to what it seeks to control—in this case, the use of the legal discourse. One aim of this study is to show how the two discursive themes are contextualized and recontextualized in the three types of discourse. The discourse of Chinese leaders can be interpreted as a meta-discourse, in the sense of being about other discourses, which, when articulated by the governing authority and accepted by the legal community, constitutes its authority and power over the recontextualized judicial practices.

I will show the vertical relationship of authority and power via a widely publicized legal case, the so-called “Huugjilt case,” characterized by the quick sentencing of Huugjilt for murder in 1996 and its complete reversal in 2014: one case, two verdicts.

The lawsuits and research questions

The lawsuits I examine in this chapter date back to April 9, 1996, when a woman was found killed in a public men's restroom in the city of Huhhot, the capital of the Inner Mongolia Autonomous Region in the northern part

of China. A young man, named Huugjilt, happened to enter the restroom and encountered the dead woman. He then reported his findings to the local police. Soon thereafter, Huugjilt was found guilty of the crime and, over the following three months, his case passed through all the judicial processes available. On June 30 of the same year, this 18-year-old man was convicted of raping and killing the woman, sentenced to death, and executed.

Besides the speed at which the original verdict was reached, what makes the case unusual and worthy of examination is that, following Huugjilt's execution, a murder suspect was arrested in 2005 for other crimes. He admitted to having murdered the woman in the Huugjilt case of 1996 and revealed more details surrounding the murder than what Huugjilt had offered. This caused Huugjilt's conviction to be overturned. However, it was not until 2014, 18 years after Huugjilt's execution, that the truth would be uncovered. On November 20, 2014, the High Court of Inner Mongolia started the process of redressing the Huugjilt case, announcing on December 15 that Huugjilt had been erroneously executed.

The exoneration of Huugjilt initiated academic discussions of various legal issues. Some scholars took this reversal as an example of belatedly achieving justice under the law.¹ Others focused on who or what was responsible for the initial wrongful conviction of an innocent man, calling for severe punishment of those responsible for this miscarriage of justice.² I contend that these scholarly studies failed to take into consideration the discursive nature of the judicial practices in general and of this case in particular. Inasmuch as discourse is inherent in every social practice,³ including judicial practices, the present study, while attempting to complement the legal interpretation of this case, will take another look at this case from a discourse perspective. It will ask such questions as: What are the discursive mechanisms responsible for the quick sentencing in 1996 and its reversal in 2014? What is the role of the sociopolitical context in the interplay of discourses leading to the two contradictory judicial judgements? Additionally, it asks: Why did the reversal of the erroneous legal judgement not happen in 2005 when the actual killer revealed the details of the killing, but instead in 2014, nine years after the real murderer became known?

By answering these questions, this study attempts to uncover how the interaction between the three types of discourse—political, legal, and public—affects Huugjilt's conviction in 1996 and his exoneration in 2014, and, consequently, to discover any Chinese cultural contingencies that may be relevantly unique to its judicial practice. To this end, I draw on the theories and methods developed in Critical Discourse Analysis (CDA), relevant tenets of which are highlighted in the following section.

The approach taken

I begin this analysis by articulating the roles that the three types of discourse played in the judicial practice and public discussion of this case. To be clear, discourses are social practices that participate in virtually all social phenomena.

They are manifest in text, talk, and action, and they are disseminated through formal channels such as mass media, and informal networks of interpersonal communication. Discourses establish social relations, produce artifacts, define individual identities, support cultural values, and aid us in everyday life. They account for making habitual and “conscious decisions.”⁴ This conception of discourse can also be found in the research of the Wu Ying lawsuit.⁵ Its use of language constitutes its users and how they relate to each other. While discourse, so conceived, includes ideological orientations and political motivations, particularly when institutional pronouncements enter the public sphere, like the lawsuit in question, here I am more interested in the ways in which the Chinese language serves as a platform on which discourses of different social participants interact with one another in the process of exercising justice. Of particular interest is how the aforementioned political, legal, and public discourses, which operate on different levels of authority, influence each other. I want to examine the vertical interplay of discourse: between the legal and public discourse and the political discourse, conceived as a meta-discourse; and the horizontal interplay of discourse: among legal professionals—the networked contingencies within the judicial system that define the unique features of legal practices.

To this end, I will start by examining the speeches of political leaders to the extent they appeared in newspaper articles and became a matter of public record concerning the Huugjilt case.

The use of Chinese language also invokes a number of cultural contingencies that are unique to China, cutting across the various discourses involved in this case. One concerns written Chinese. Themes appear in sequences of character strings like in all writing systems. However, unlike their propositional appearances in Indo-European languages, in written Chinese, themes are more indexical, figurative, and less abstract. They are easily copied whole or with only minor variations from one document to another and talked of accordingly. Writing affects also speech although spoken Chinese allows more degrees of freedom. Another contingency derives from the fact that in China, top leaders from the Communist Party of China (CPC) do not speak as individuals. The guidelines and policies for the development of the state are issued in the name of the Party and are influential as such. The Party’s top leaders’ speeches set policies for judicial practices with the expectation that legal practitioners carry them out. Thus, judicial practices are conducted not only within the legal discourse, but they are also regulated by the political discourse of the government as articulated by its leaders. All horizontal contingencies among discourses are thereby subject to the political meta-discourse. I maintain that it is these contingencies that render the Chinese judicial system unlike that of the Western world, particularly in the United States. This makes it worthwhile to investigate how the directives in the form of policies articulated by top leaders are communicated through the discourses of hierarchically intermediary participants and end up being carried out by leaders with less authority.

Social practice, recontextualization, and meta-discourse

Earlier in this chapter, I defined discourse as a social practice that involves the use of text, talk, action, and social relations. Its vertical transmission is a more or less “stabilizing social activity”⁶ which establishes “regulated ways of doing things.”⁷ Any social practice involves a number of elements, of which discourse is the most important one, to which Fairclough has added the elements enumerated above.⁸ Van Leeuwen identifies entirely compatible elements, such as participants, actions, performance modes, presentation styles, times, locations, resources, and eligibility conditions.⁹ Among all of these elements, I take talk, text, action, and interaction as primary and indispensable to social practices. This applies also to the discursive regulation of social practices. While easily observable in its generality, the dependence of legal practice on discourse is even more obvious. Laws are written (i.e., text). Accusations of having violated a law, witness accounts, prosecutions and defenses by attorneys, are all conducted in language, and all verdicts announced by a judge, pronounced and/or recorded, have real-life consequences. Discourses are relevant largely because of the actions they entail.

In CDA, social practices are investigated by examining the interaction of discourse with other elements, elements that may be different but cannot be understood as independent of each other and certainly not without reference to language. In essence, these elements are dialectically related, and they may embrace others without being reducible to them. Discourse, too, may embrace other elements—say, social relations, social identities, and policies—and be embraced by becoming a part of other activities such as doing a job (e.g., a judge who uses language in a particular way). In these capacities, discourse plays constitutive roles in the sense of realizing something that would not exist without naming it. This constitutive ability of discourse may “sustain and reproduce the social *status quo*” as well as “contribute to transforming it.”¹⁰ Thus, discourse is socially influential by constituting not only other discursive but also nondiscursive practices. In its ability to variously name, characterize or represent things and positioning people, discourse helps to produce and reproduce unequal power relations between social classes, which amounts to doing ideological work.

When investigating social practices, the embrace of discourse by other elements can be further conceptualized in terms of “entextualization,” which, according to Bauman, links two processes: decontextualization and recontextualization. The former can be understood as “extracting preexisting components from one context” and the latter as “fitting them into another.”¹¹ Recently, the concept of entextualization—of recontextualization in particular—has been applied in CDA to explain how social practices are discursively conducted and how new meaning and social relations come to be when parts of one discourse are decontextualized from its origin and recontextualized and reproduced in another. For example, regarding the process of recontextualization, van Leeuwen observes in his analysis of

a short Sydney tabloid newspaper article from the “family pages” that a number of transformations may take place simultaneously: substituting elements of the actual social practice with semiotic elements, like deleting, rearranging, adding, and repeating elements of social practices.¹² Such recontextualizations modify the meanings of the resulting discourse and redirect its practitioners’ social practices. Moreover, depending on the authority of the source of the recontextualized elements, the resulting transformations construct purposes for, add legitimacy and evaluative criteria of the social practice as articulated. Following the recontextualization of elements from one discourse to another offers significant insights about how recontextualization works. It not only brings hybridity to the receiving discourses, with new and old meanings mixed together, but also transmits power relations from the originating discourse to the receiving discourse, which one can interpret as the former colonizing the latter. This is especially the case when the former is practiced in systematically and hierarchically principled structures. This is the case of vertical recontextualization, and the original discourse can then be called a “vertical discourse.”¹³ I will elaborate this point when further discussing the Huugjilt case by asking what is being recontextualized, who does the recontextualization, and how this recontextualization creates power relations.

In an article observing the discursive construction of the social stratification order in reforming China, Zhang analyzes the interplay of the discourses of China’s top leaders.¹⁴ She identifies three former CPC top leaders, namely, Deng Xiaoping, Jiang Zeming, and Hu Jintao, with four meta-discourses; that is, Deng’s meta-discourses of “bringing order out of chaos” and “building socialism with Chinese characteristics,” Jiang’s “three represents,” and Hu’s “harmonious society.” As she observes,¹⁵ these meta-discursive themes were intended to direct a discursive evolution and assert hegemony at various points of the economic-reform trajectory. The interplay of these discourses was informed by the hierarchical structure in which these themes emerged, with Deng’s “bringing order out of chaos” paving the way for ensuring a meta-discursive ideological shift towards Deng’s overarching meta-discourse of “building socialism with Chinese characteristics.” The other two meta-discourses, namely, Jiang’s “three represents” and Hu’s “harmonious society,” are, according to Zhang,¹⁶ entextualized discourses which simultaneously recontextualize Deng’s two meta-discourses. In other words, Hu’s meta-discourse of “harmonious society” recontextualizes Jiang’s meta-discourse of “three represents,” which in turn recontextualizes the previous Deng’s meta-discourses.

Zhang’s research offers an answer to the question of what is recontextualized when new power relations are reproduced. As her research indicates, each of the four meta-discourses has become entextualized, which is recontextualized by subsequent leaders as they develop their own meta-discourse to serve as ideological guidelines for the CPC and the state. To make her point clearer, one can say that it is the *topics* of the meta-discourse that are recontextualized. For example, in examining the discursive production of a teaching quality assessment report, Tian observed eight topics that are

decontextualized from the university's self-assessment report and then recontextualized to the report made by the authoritative assessing group.¹⁷ These topics represent the themes of the meta-discourse. As Zhang states, decontextualizing the topics from the meta-discourse and recontextualizing them in the later leaders' discourse grants the later leaders' discourse power and authority while simultaneously reproducing the authoritative and canonical status of the earlier leaders.¹⁸ This phenomenon was also investigated by Silverstein who called it "a meta-pragmatics that stipulates law-like regularities."¹⁹ The power and authority reproduced by the recontextualization of both earlier and later leaders is of interest to the present research. As will be seen in the following section about the Huugjilt case, the top leaders' discursive themes, once recontextualized, not only add new meaning but also reproduce power relations and shed light on the consequent social practices. I will revisit this point in the discussion section following the presentation of the two cases.

Discourses two decades apart

I suggest that the theories of discourse outlined in the preceding section will help us understand the unequal outcomes of the same recontextualization practices two decades apart. In both cases, the power and authority of the recontextualized discourse (i.e., the earlier leaders' discourse) is reproduced after entering the new (i.e., the later leaders') discourse. This is evident in the recontextualization of two different meta-discourses at two distinct periods of time, namely, in the years 1995–1996 when the Huugjilt case occurred and in the years 2013–2014 when the case was reversed. The texts of these discourses are mostly taken as form of speeches which bear the ideological features of, for example, the *yanda* theme in 1995–1996 and the *gongping-zhengyi* theme in 2013–2014.

The yanda speeches in 1995–1996

Around the years of 1995–1996, people holding top positions of the hierarchical social network made several speeches which served as instructions and directions in the fields of the police, procuratorate, and court. For example, on March 14, 1995, Ren Jianxin, then Head of the Supreme Court, stated in his report to the annual People's Congress that the People's Courts should deliver a "severe strike," the equivalent of which in the Chinese language is 严打 (*yanda*), on all kinds of crimes. In the same year, on December 19, Ren Jianxin as Secretary of the Political and Judiciary Commission under the CPC's Central Committee, then the top leader in the law field in China,²⁰ highlighted this *yanda* principle yet again in the national working meeting of politics and law. To ensure an effective delivery of this severe strike, he put up eight guidelines that needed to be carried out in the coming 5 to 15 years. The first four of the eight guidelines were:

Maintaining stability always at the primary position so as to serve the open-door practice and economic construction; launching on a lawful basis a severe and quick strike on the criminals who seriously endanger the society; launching on a lawful basis a severe and strict inspect[ion] on various crimes that destroy the socialist market economy, including bribery and corruption; sticking to the combination of specialized work and mass line, mobilizing all social forces, and utilizing all means to maintain a comprehensive public security; ... (始终把维护稳定放在政法工作的首位, 更好地为改革开放和经济建设服务; 依法从重从快惩处严重危害治安的刑事犯罪分子; 依法从重从严查处贪污、贿赂犯罪和各种严重破坏社会注意市场经济秩序的犯罪活动; 坚持专门工作和群众路线相结合, 动员全社会力量, 运用多种手段, 对社会治安进行综合治理...) ²¹

These guidelines, when followed, demanded severe and quick actions on salient criminals and avoidance of slow procedures involving the police and legal practitioners. In the same speech, Ren Jianxin emphasized that all political and legal departments needed to firmly stick to the *yanda* principle, strengthening the force of a strike, preventing an ineffective strike from occurring, and, should one have occurred, allowing for it to be immediately redressed. The guidelines demonstrated that severe strikes were preferred to light blows—quick actions to slow resolutions.

The *yanda* principle struck a response in the procuratorial authority when Zhang Siqing, then Procurator General of the Supreme People's Procuratorate, made a speech on April 18, 1996, as he was conducting a local investigation in Beijing. Zhang called on the different levels of procuratorate to act in accordance with the court in terms of speed and severity when dealing with lawsuits, delivering severe verdicts, and even penalties on batches of criminals. ²²

The *yanda* principle initiated at the top turned to practice and became a movement on April 28, 1996, when a working meeting was held by the Ministry of Public Security (MPS). Xinhua News Agency began its report on this meeting with the following words, which explained the reason and background of this *yanda* struggle while indicating its "top-down" directional nature.

In response to the unstable public order in areas where severe crimes were constantly endangering the public security, the CPC's Central Committee made a series of important directions, demanding a nationwide *yanda* struggle to soon be put into action in order to further maintain public security and increase the sense of safety on the people's part. (针对部分地方治安状况不好, 严重危害社会治安的犯罪活动猖獗的情况, 党中央最近作出一系列重要指示, 要求迅速组织开展全国范围的“严打”斗争, 以进一步维护社会治安, 切实增强人民群众的安全感。) ²³

At this same meeting, Ren Jianxin formulated specific requirements for carrying out this *yanda* struggle, and Tao Siju, then minister of the MPS, reminded the police department of the various levels of the severe situation of public security, demanding that the *yanda* struggle be efficiently organized and effectively put into action. Bai Jingfu, then Vice Minister of the MPS, emphasized once again that through the struggle a large number of criminals could be punished in a severe and quick way according to the law.

The next day, April 29, Zhang Siqing chaired a procuratorial meeting, and, while learning the important directions of “the leading comrades from the Central Committee,” he demanded that the procuratorates at different levels cooperate closely with the police department and the court to firmly carry out the guidelines of severe and quick punishment: being resolute and quick in action, quick in arrest and prosecution, and severe in punishment, ensuring no delay in the procuratorate process. (要与公安、法院等有关部门密切配合, 通力协作, 坚决贯彻依法从重从快方针, 做到狠抓、快办、严惩, 坚持快捕、快诉, 保证在检察环节上不贻误战机).²⁴

From the above reproduced speeches of top leaders from the CPC’s Central Committee (Ren Jianxin), the Supreme People’s Court (Ren Jianxin as well), the Supreme People’s Procuratorate (Zhang Siqing), and the police (Tao Siju, the minister of MPS), we see the theme of *yanda* discursively reproduced.

Two decades later, the dominant theme of discourse produced by the top CPC leader in 2013–2014 was different. We can recognize a theme of *gongping-zhengyi* in the following section of this chapter.

The gongping-zhengyi speech in 2013–2014

As President Xi Jinping came into office in October 2012, desirous of establishing new governance of the country, he called for the creation of a law-based administration and for the people to follow the law. On February 23, 2013, he made a speech at a Political Bureau study meeting emphasizing the equality and justice in the legal cases. He urged the country to make a breakthrough in scientific legislation, to strictly carry out the laws, and to perform justice in all political-judiciary practices.

Xi’s idea of *gongping* (equality) and *zhengyi* (justice) was further developed to form a part of his governance principles. At the political and legal meeting held by the CPC’s Central Committee on January 7, 2014, he emphasized this point again by saying:

We should take as basic task the maintenance of general social stability, as key value the furthering of the social equality and justice, as utmost goal the guarantee of people’s happiness in working and living. We should strictly act by law and stick to justice in registration. By actively deepening reform, we want to enforce and improve the political-legal work, to maintain people’s concerns and interests. Only by doing this can we guarantee the

fulfillment of the task we set to realize the Chinese dream of reverberating the Chinese nationality by the years of 2021 and 2049. (要把维护社会大局稳定作为基本任务，把促进社会公平正义作为核心价值追求，把保障人民安居乐业作为根本目标，坚持严格执法公正司法，积极深化改革，加强和改进政法工作，维护人民群众切身利益，为实现“两个一百年”奋斗目标、实现中华民族伟大复兴的中国梦提供有力保障.)²⁵

On February 27, 2014, *People's Daily*, a newspaper run by CPC's Central Committee, published a review article entitled "Creating a new situation of law-based state governance," reviewing the progress in the political and judiciary fields made in the last year. In the same article, a new round of reform legislation is said to begin in six aspects, including reforming the appeals system and redressing erroneous verdicts.²⁶ This new reform is closely related to the Huugjilt case, for what follows is that it was brought to court again in 2014, both on November 20 and on December 25, when the Inner Mongolia Supreme Court announced that Huugjilt was innocent.

Political power and influence in judicial practices

The top leaders' speeches concerning the examined judicial practice can be taken as the discursive aspect of judicial practice. In the years 1995–1996, CPC leader Ren Jianxin made several speeches advocating a *yanda* principle nationwide, and leaders in charge of the court, procuratorate, and police answered the call and put *yanda* into action across their respective fields. Two decades later, Xi Jinping, CPC's top leader, made a series of speeches calling for *gongping-zhengyi* in judiciary cases against the background of the reversal of the Huugjilt case. The two discourses, though different in theme and almost two decades apart in time, were both authoritative and recontextualized in a lower level of discourse. In this sense, they served as meta-discourses, linking the discursive to the social and regulating the social via the discursive. But how are the two meta-discourses linked to the quick sentence of Huugjilt in 1996 and to the reversal of his sentence in 2014? To address the mechanism in these two judicial practices, I examine the vertical recontextualization of meta-discourse.

Vertical recontextualization

Vertical recontextualization is a concept that I derive from Bernstein's idea of vertical discourse and make use of in explaining the top-down recontextualization of meta-discourse in the judicial practice of the Huugjilt case. Bernstein defines vertical discourse as the kind of specialized discourse practiced in the natural or social sciences and humanities, in contrast to horizontal discourse which takes the form of everyday uses of language involving common-sense. For Bernstein, vertical discourse is coherent, explicitly structured, systematically principled, and hierarchically organized, much as in the natural sciences, and

for the social sciences and humanities. It takes the form of a series of specialized languages with specialized modes of interrogation and specialized criteria for the production and circulation of texts.²⁷ Whereas the circulation of horizontal discourse occurs between sites and segments/contexts, vertical discourse circulates in an ongoing process in which procedures are hierarchically linked to other procedures to bring about integration at the level of meaning. For this, Bernstein acknowledges official and institutional controls with systematic recontextualization as its distributive principle.²⁸

Through Bernstein's lens, we can see a number of characteristics of vertical discourse in our two examples. First, its practice bears an institutional and official character. Second, its circulation is hierarchical rather than heterarchical. And third, vertical discourse is articulated in terms of general and abstract theories that acquire an integrating function. In discussing the processes of recontextualization of the discursive themes in the Huugjilt case, I recognize the features of Bernstein's conception of vertical discourse, his integrative function in particular.

The speeches of top leaders in the periods of 1995–1996 and 2013–2014 are made from an obvious hierarchically superior position, recognition of which makes it likely that their speeches are recontextualized into the speeches of lower-ranking officials. We can see that in the speeches quoted under the previous section, “The *yanda* speeches in 1995–1996,” in which the word *yanda*, initiated by CPC leader Ren Jianxin as a topic and theme of the meta-discourse, is repeated in subsequent speeches by leaders in the court, procuratorates, and police. This vertical recontextualization of meta-discourse in 1995–1996 happens again in 2013–2014, but this time it is Xi Jinping's *gongping-zhengyi* meta-discourse that is recontextualized in the newspaper articles and Party documents (e.g., see the review article of *People's Daily* on February 27, 2014). Here, in the vertical recontextualization of meta-discourse (*yanda* and *gongping-zhengyi*, in their respective historical periods) is a type of hierarchical relationship in administration and governance and a regulating function of vertical recontextualization at work, a function that mediates recontextualization of the discourse with action caused by reality. Thus, vertical recontextualization does not only visibly go top-down, but it also regulates social practices and carries practical effect.

This regulating function of the vertical recontextualization can be illustrated in Figure 9.1 in which the upper left oval indicates the *yanda* meta-discourse in 1995–1996 and the upper right oval represents the *gongping-zhengyi* meta-discourse in 2013–2014. The *yanda* meta-discourse is recontextualized into what I call regulated discourse in the form of, for example, speeches of lower-ranking leaders and, ultimately, in the text form of verdicts as indicated in the lower left oval. Similarly, the *gongping-zhengyi* meta-discourse is recontextualized into regulated discourse as well, but in the form of newspaper articles and, ultimately, in the text form of rehabilitation as indicated in the lower right oval. The top-down vertical arrow indicates the function of this recontextualization practice; that is, by this vertical recontextualization, a regulating practice

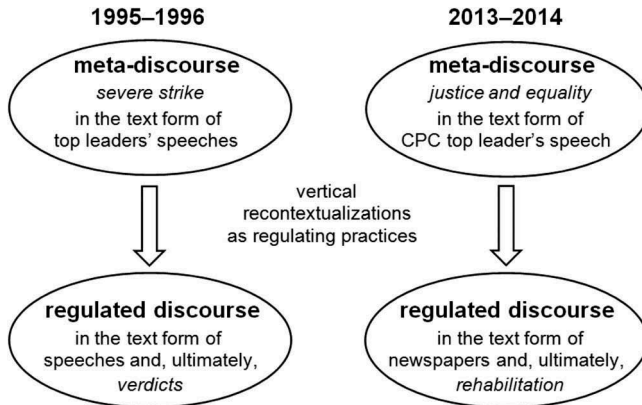


Figure 9.1 Vertical recontextualizations as regulating practices

is activated in which a policy made by a top leader is carried out and put into action. It might be safe to say, then, that the death sentence of Huugjilt and the redressing of Huugjilt's case are both outcomes of a regulating practice which is embodied in the recontextualization practice in the form of vertical recontextualization of the meta-discourse of, for instance, a severe strike in the period of 1995–1996 and equality and justice in the period of 2013–2014.

Meta-discourse as colonizing context

As indicated in the above discussion, the meta-discursive themes of *yanda* and *gongping-zhengyi*, once vertically recontextualized by the legal practitioners, acquire new meaning in discourse, but it is in the act of compliance with the perceived authority that the recontextualized themes reproduce power relations and exert influence over the consequent social practice. This is in line with Zhang's observation about the recontextualization of China's four top leaders' meta-discourses. Thus, the question raised is: What is the mechanism for this power reproduction? This question is easily lost in the abstractions of discourse analysts, who simply, and I would say naively, talk of the reproduction of power as if this process is unquestionably determined by the higher-ranking officials over those in lower-ranking positions. This illusion prevails particularly with regard to Chinese contexts wherein a one-party system allots more power to those in higher positions. However, when seen from a sociocognitive approach, as developed in van Dijk's critical discourse studies,²⁹ the social influence of top leaders cannot take place without compliance. Colonization is not a deterministic process and power cannot be separated from those who seek to exert influence as well as from those who willingly recontextualize the discourse of leaders and enact that recontextualized discourse accordingly.

To account for these phenomena, van Dijk develops a “context model” of discursive practices to explain how social contexts influence text and talk. According to this theory, context is not an objective situation or a social fact that embraces, for example, time, place, setting, participants’ gender, identity, and even social position, but a subjective construct of individual participants, defining relevant aspects of their communicative situation.³⁰ This way of modeling context, termed “context model,” mediates the social structure and discourse structure. Thus, with the Huugjilt case, it is not that the top leaders’ authority inherently exerts influence but that it operates via the individually constructed authority of the top leaders by leaders who see themselves as occupying inferior positions. In other words, the way leaders of lower-ranking positions speak (as seen in the regulated/recontextualized discourse) and act (as seen in the legal decisions they make—the *yanda* movement) are not causally generated by the top leaders but are complemented by the individual constructions of leaders of lower-ranking positions; that is, by the way they understand and agree with the *yanda* meta-discourse of top leaders.

The above suggests that discourse and its communicative situation overlap. In fact, van Dijk goes so far as to question the distinction between discourse and its communicative practice.³¹ Van Dijk points to a conceptualization of meta-discourse as providing a colonizing context. As I discussed earlier in this chapter, meta-discourses work as regulating social practices. I now wish to go further in arguing that the regulating function of meta-discourse works only because the leaders of lower-ranking positions accept this function and recognize its hegemony. In this sense, it might be useful to reconceptualize meta-discourse in terms of the dual requirement of offering meaningful regulations that its practitioners are willing to enact or pass on as obedient participants.

In a colonizing context, meta-discourse makes salient the connection between discourse and social structure, which is a key issue in the critical dimension of discourse analysis. In our examination of the Huugjilt case, speeches made by the top leaders are constructed in a *yanda* context in the years 1995–1996 and in a *gongping-zhengyi* context in 2013–2014. These contexts are further perceived as prevailing and overwhelming, discouraging the leaders in lower-ranking positions from seeing alternatives and obeying and carrying out their directives. These subjective constructions are to a great extent responsible for the quick sentence of Huugjilt in 1996 and the reversal of his case in 2014.

In investigating these two cases, we gained considerable insights by not only tracing the meta-discursive themes from one recontextualization to another but also by examining their communicative context which turns out to be “a crucial methodological and theoretical issue in the development of a critical study of language.”³²

Concluding remarks

The aim of this chapter is to show the interaction between three Chinese discourses in the Huugjilt case—the official political discourse made by the speeches of Chinese leaders, the legal discourse of judicial practitioners, and

the public discourse of printed opinions—and the resulting miscarriage of justice in the execution of an innocent young man. In following this case through its texts, this chapter examines some of the abovementioned contingencies unique to Chinese language, culture and politics which are helpful in understanding the interplay of the discourses involved. I draw my inspiration from the theoretical conceptions of Fairclough's social practice, Silverstein's meta-discourse, Bernstein's entextualization and vertical discourse, van Leeuwen's recontextualization, and van Dijk's idea of recognizing the social context of discursive practices. Finally, I discuss judicial practices in terms of vertical recontextualization of the legal discourse using official and political meta-discourses, in effect colonizing the discourse of legal practitioners. I believe that vertical submissions of discourse exist elsewhere, but that the horizontal interplay between various discourses and their vertical submissions to the official discourse of political leaders are uniquely Chinese.

I summarize and reflect on my findings as follows.

First, speeches made by top leaders during the two historical periods (i.e., 1995–1996 and 2013–2014) relied heavily on the *yanda* and *gongping-zhengyi* themes in their meta-discourse. They have no effect unless they are read, understood, discursively constructed, and adopted by the community of legal practitioners. They could be seen as prevailing and overwhelming forces, regulating the legal discourse and subsequent legal actions by legal practitioners in China but not without consent.

Second, the regulating function of meta-discourse is realized in the process of recontextualization of particular themes. When these themes (e.g., severe strike and equality and justice) are used repeatedly in speeches made by top leaders and then mindlessly reproduced by leaders in lower-ranking positions, they acquire new meanings and grant authorities to legal professionals. The power thus obtained by reproducing these concepts becomes a regulating force in the practice of recontextualization. This is especially true of vertical recontextualizations, which are more easily visible than horizontal ones.³³

These findings, while answering the first two research questions of this study, readily address the third as well: Why did it take nine years (from 2005 when the actual murderer confessed to the crime until 2014) to correct the injustice perpetrated on Huugjilt in 1996? My findings suggest that this delay might have been due to the fact that the *gongping-zhengyi* theme appeared only after 2005 in the colonizing meta-discourse and migrated only slowly into the legal discourse.

While my findings are solidly grounded in the texts I examined, they most likely are not generalizable to countries that practice different political-judicial discourses. I believe the prime grounds for the lack of generalizability are the often difficult-to-articulate cultural contingencies that underlie all discourses. The cultural contingencies of China are seemingly compatible with its one-party system where the CPC has the absolute and highest power over the governance of the state. This power is often exercised via the discourse initiated by its leaders, as was the case in convicting Huugjilt and then reversing that conviction 18 years later. What can be

generalized from this research is that discourse cannot be limited to text, talk, and actions, but must be considered in the cultural context in which it is practiced.

Notes

- 1 Qianqian Wang and Yuanyuan Hao, "The realization of law justice and the Huugjilt case," *Law and Society* 2 (2016): 62–63.
- 2 Yichou Fan, "Claiming the responsibility for wrong trials: Comparison of and reflection on the Present Huugjilt case and the ancient Yang Naiwu case," *Journal of Law* 9 (2016): 3–16.
- 3 See, for example, Lillie Chouliarakis and Norman Fairclough, *Discourse in Late Modernity: Rethinking Critical Discourse Analysis* (Edinburgh: Edinburgh University Press, 1999): 19–35.
- 4 Norman Fairclough, "The discourse of new labor: Critical discourse analysis," in *Critical Discourse Analysis: Essential Readings*, eds. Hailong Tian and Peng Zhao (Tianjin: Nankai University Press, 2012): 181–225.
- 5 See, for example, Hailong Tian, "Discourse and public sphere in China: A study of Wu Ying lawsuit case," in *Contemporary Chinese Discourse and Social Practice in China*, eds. Linda Tsung and Wei Wang (Amsterdam: John Benjamins, 2015): 27–44.
See also, Hailong Tian, and Paul Chilton, "Issues in discourse approach to social transformations in China: A synopsis," in *Discourse, Politics, and Media in Contemporary China*, eds. Qing Cao, Hailong Tian, and Paul Chilton (Amsterdam: John Benjamins, 2014): 195–207.
- 6 Fairclough, "The discourse of new labor: Critical discourse analysis." Op. cit.,⁴ 187.
- 7 Theo van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008): 6.
- 8 Fairclough, "The discourse of new labor: Critical discourse analysis." Op. cit.,⁴ 187–189.
- 9 van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis*. Op. cit.,⁷ 7–12.
- 10 Norman Fairclough and Ruth Wodak, "Critical discourse analysis," in *Critical Discourse Analysis: Essential Readings*, eds. Hailong Tian and Peng Zhao (Tianjin: Nankai University Press, 2012): 16–47.
- 11 Richard Bauman, "Transformation of the word in the production of Mexican festival drama," in *Natural Histories of Discourse*, eds. Michael Silverstein and Greg Urban (Chicago, IL, and London: The University of Chicago Press, 1996): 301–327.
- 12 van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis*. Op. cit.,⁷ 17–19.
- 13 Basil Bernstein, *Pedagogy, Symbolic Control and Identity: Theory, Research, Critique* (revised edition) (London and New York, NY: Rowman and Littlefield Publishers, 2000): 155–174.
- 14 Qing Zhang, "The discursive construction of the social stratification order in reforming China," in *Discourse and Socio-political Transformations in Contemporary China*, eds. Paul Chilton, Hailong Tian, and Ruth Wodak (Amsterdam: John Benjamins, 2012): 19–37.
- 15 Ibid., 24–25.
- 16 Ibid., 25.
- 17 Hailong Tian, "Discursive production of a teaching quality assessment report: A critical discourse analysis," *Journal of Language and Politics* 9, no. 4 (2010): 574–592.
- 18 Zhang, "The discursive construction of the social stratification order in reforming China." Op. cit.,¹⁴ 34.

- 19 Michael Silverstein, "The uses and utility of ideology: A commentary," in *Language Ideologies: Practice and Theory*, eds. Bambi B. Schieffelin, Kathryn A. Woolard, and Paul V. Kroskrity (Oxford: Oxford University Press, 1998): 123–145.
- 20 In the political system of China where the Communist Party of China (CPC) holds power, the Secretary of the Political and Judiciary Commission under the Central Committee of CPC is the highest post responsible for the court, procuratorate, and police.
- 21 *People's Daily* (December 19, 1995): 3.
- 22 *People's Daily* (April 19, 1996): 3.
- 23 *People's Daily* (April 29, 1996): 1.
- 24 *People's Daily* (April 30, 1996): 3.
- 25 *People's Net*, politics.people.com.cn_n_2014_0109_c1024-24064154.
- 26 *People's Daily* (February 27, 2014): 3.
- 27 Bernstein, *Pedagogy, Symbolic Control and Identity: Theory, Research, Critique*. Op. cit.,¹ 160.
- 28 Ibid.
- 29 Teun A. van Dijk, *Discourse and Context: A Sociocognitive Approach* (Cambridge: Cambridge University Press, 2008): 1–27.
- 30 Ibid., 119.
- 31 Ibid., 117.
- 32 Jan Blommaert, *Discourse: A Critical Introduction* (Cambridge: Cambridge University Press, 2005): 39.
- 33 In terms of features of social practice, vertical recontextualization may differ from horizontal recontextualization, but this needs further exploration in other research.