"If I lie, I tell you, may heaven and earth destroy me." Language and Legal Consciousness in Hong Kong Bilingual Common Law

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Based on an ethnographic study of courtroom interactions in the bilingual (Chinese/English) common law system in Hong Kong, this article investigates how language plays a constitutive role in shaping the ways people use, argue, and think about law. While the use of English in Hong Kong prescribes by default the supposedly universal speech act of statement-making, the presence of Cantonese allows local speech acts to be brought into the courtrooms. Two local speech acts, "catching fleas in words" and "speaking bitterness," are discussed. The findings of this study suggest that by studying the local practices and beliefs in postcolonial settings, researchers can gain insights into the complex ways in which Anglo American–style legal institutions are reconstituted.

It is a paradoxical fact that the Anglo American common law as a global institution is at once culturally specific and universal. Its central procedure, the adversarial trial process, is perhaps as identifiably American and British as apple pies and fish 'n chips. Indeed, the courtroom drama is a genre of its own in American and British film, television, and literature. In the United States, a 24-hour cable network (Court TV) routinely broadcasts the day-to-day operations of the courts, and the trials of some defendants are turned into major media events. Yet seldom do we pay attention to the fact that this very same institution of adversarial trial, so iconic of Anglo American culture and so captivating in the popular cultural imagination, is quietly adopted in common law jurisdic-

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tions throughout the world, from India to Kenya, from Jamaica to Hong Kong.

For many reasons, unlike its rival civil law system, the common law remains a legal tradition that is predominantly uttered in the language of English (compare Merryman 1985). That superficial sameness obscures the fact that English is spoken globally in a multitude of accents, both phonologically and socially (compare Kachru 1990; Schneider 2007; Trudgill & Hannah 2002). Legal scholars seldom question whether or not the nature and character of the adversarial trial process is challenged, let alone transformed, when it is transplanted to societies with strikingly different cultural traditions than those of the Anglo American world. A belief in the fixed, universal character of the adversarial trial across different sociocultural contexts turns on a particular view of courtroom language, one that sees language as a neutral, transparent medium within which brute facts and abstract concepts are enunciated. It is this explicitly formal and highly invariant nature of courtroom language that justifies the adoption of the adversarial trial in different common law jurisdictions throughout the world as a universal truth-finding institution. So understood, the presumptive feasibility of using the adversarial trial as a common procedure to "find out the truth" in different societies rests on a most paradoxical fact: the language used in an adversarial trial is so distinct and separated from everyday English in Britain or the United States that it is *universal* enough to be lifted from its original Anglo American cultural context and replanted into other common law societies.

This orthodox ideal of courtroom language is iconic of the formal, conceptual, and rule-governed features of modern Western law. Through the highly regulated use of a special language, meanings can be systematized to conform to the rule-governed character that modern law aspires to achieve. The orderly nature of courtroom language is manifested not just in the expression of abstract legal concepts, but also in the making and remaking of facts in courts. As legal scholars Roberts and Zuckerman (2004:140) have pointed out, juridical procedures for the finding of "legal fact" often involve the entanglement of factual inference *and* juridical classification—such as, for example, when an English judge or jury has to decide whether the accused has inflicted grievous bodily harm or has committed an act that is sufficiently proximate to the commission of an offense for it to constitute a criminal attempt. Whether grievous bodily harm was inflicted or not is a "factual finding," but what qualifies as "grievous," "bodily," and "harm" is legally constructed. The use of language in adversarial trials is thus governed by a set of definite rules, and the legitimacy of legal adjudication rests on the controlled deployment of language to determine what happened and what did not. Courtroom language, from the standpoint of legal professionals, must therefore

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be highly structured and regulated. Careful rules are derived to stipulate how things should be said as well as what things can be said (for example, the famous rule against hearsay in criminal trials).

The Bilingual Common Law System of Hong Kong

The bilingual common law system in postcolonial Hong Kong presents an interesting case to test the supposed universality of linguistic transactions in adversarial trials in a highly "controlled" setting. The case is unique in the sense that Hong Kong adopts English and Chinese as its two official languages of "equal status." Under the bilingual common law system, court trials in either Chinese or English are said to be governed by the same legal principles, rules, and procedures.[1] Established in 1997, the bilingual common law system of Hong Kong is the negotiated outcome of two seemingly conflicting goals pursued by Britain and China: to maintain legal continuity in Hong Kong on the one hand (hence the continuation of the common law) and to create a system that could reflect Chinese sovereignty after 1997 on the other (hence the incorporation of Chinese—in oral context that often means Cantonese—as an official language). Article 8 of the Basic Law, which became the constitution of Hong Kong on July 1, 1997, provides that "[the] laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." The bilingual nature of the postcolonial legal system is expounded by Article 9, which states that "[in] addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region."

For its unique history, Hong Kong is described as an "extraordinary place" by comparative legal scholars (Örücü 2003). Today, the bilingual legal system in Hong Kong is the only existing common law jurisdiction where Chinese is used to articulate common law concepts such as mens rea and actus reus, equity and equitable interest, recklessness and negligence, among others. In fact, it is not just the only common law system within the so-called Greater China, but it is also the only common law system in the world where Chinese is used as a legal language.

In this article, I study how adversarial court trials are conducted in the bilingual environment of Hong Kong. By comparing

[1] This is specified in Hong Kong's Official Languages Ordinance (1997). In practice, being an official language means that all parties, including judges, counsel, and litigants, can all speak the language directly (without the use of court interpretation). Judgments can also be delivered and recorded in that particular language. Legal statutes must also be written in both the official languages in Hong Kong.

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and examining interaction episodes that take place in Cantonese and in English, I explain how the machinery of adversarial trial is influenced by the language environment in which courtroom interactions proceed. Through detailed analyses of episodes selected from trials that I attended, I show how the dominance of formalistic rules governing the common law–style adversarial trial is both facilitated and undermined by the respective usage of English and Cantonese in Hong Kong. The study therefore challenges the very assumption that the adversarial trial as a linguistic institution is uninfluenced by external social factors. It urges scholars to acknowledge the constitutive role of language in the day-to-day operation of a common law system. Attention to how language is used and deployed in an institutional activity such as cross-examination, to echo the view of Richland, makes possible the extension of interaction-based analyses into (post)colonial sociolegal institutions. By focusing on the details of Anglo American–style juridical practice employed in different societal contexts, this study also compels researchers to recognize and attend to the question of how such practices are refigured through local ideologies and practices (Richland 2005:242).

My argument here is sociological. I am not arguing that the palpable differences between English and Cantonese are caused by inherent linguistic differences between the two. Instead, I see the English-Cantonese differences manifested in the courts as the accumulated consequences of the ways the two languages were differently practiced in Hong Kong during its colonial era and, to an important extent, continue to be practiced in the present postcolonial era. While formalist institutions (such as legal institutions) are often supposed to operate in isolation from the wider social environment in which they are situated, the findings of this study suggest that actually existing formalistic institutions, such as Hong Kong's common law system, invariably turn on a wider social matrix of power of which the legal realm is a part.

The Role of Language in the Constitution of Legal Power

Studies of law and language in the past three decades have sought a deeper understanding of the role of language in the constitution of legal order (see, for example, Atkinson & Drew 1979; Conley & O'Barr 1990, 2005; Felstiner et al. 1980; Hirsch 1998; Matoesian 2001; Mertz 1994a, 1994b, 2007; Philips 1998; Richland 2008; Trinch 2003). A common theme is a renewed emphasis on the pivotal role of language in structuring the interplay between the legal and the social (see Mertz 1994a). These works shift the focus of studying legal language from the analysis of conceptual content

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(questions such as "How did the meaning of mens rea change over time?") to the analysis of how language is used to question and to answer, to plead and to mitigate, to judge and to denounce; in other words, how language constitutes what a legal institution *does* in its everyday practices. Together these studies challenge the assumed belief in the autonomy of legal institutions and the concomitant belief that there is a bright-line boundary, fixed and impermeable, separating law from non-law. They go beyond the obvious fact that law is a special language, or in the famous phrase of Mellinkoff, that the law is "a profession of words" (Mellinkoff 1963:vii; Stone 1981; Maley 1994), but they further see language as the concretized form through which legal power is manifested (Conley & O'Barr 2005). In their pioneering studies of so-called powerless speech among women and ethnic/racial minorities, Conley and O'Barr demonstrated how actual law talk is a pivotal site through which social inequalities are reproduced inside the four walls of the courtroom. Another example is Matoesian's meticulous study of the much-publicized William Kennedy Smith rape trial. Matoesian's careful analysis of the courtroom interactions in that trial showed how legal knowledge has to be "performed" to give itself "a legitimating aura of objectivity, rationality, and autonomy" (Matoesian 2001:4). In addition, Hirsch (1998), in her study of Islamic courts in coastal Kenya, showed how linguistic practices play a central role in constituting gender in Swahili courts. Through detailed study of divorce cases in Kenyan Islamic courts, Hirsch showed how dominant cultural images of gender are negotiated and enacted through linguistic performances. Most recently, Mertz, in her comprehensive study of legal education in the United States, demonstrated how law students are socialized into a new ideology of language through which nascent attorneys learn to wield the special power of legal advocates (Mertz 2007:214 and following). Focusing on the interactions of first-year law school classes at eight different law schools, Mertz showed that the acquisition of a legal epistemology, i.e., the ability to "think like a lawyer," rests on various specific linguistic abilities such as the appropriate use of analogies and concomitant legal-linguistic frames, as well as the ability to easily shift between different stances in the course of argumentation. Taken together, these studies bring forth a linguistic perspective to address the law-and-society literature's central concern about the everyday operation of "law in action."

Linguistic Diglossia in Hong Kong

The current bilingual common law in Hong Kong operates within a sociolinguistic context whose roots can be traced back to how historically English and Cantonese were used in colonial Hong

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Kong. During the colonial period, English and Cantonese constituted a situation of diglossia (Ferguson 1959; Fishman 1965, 1972), in which Cantonese and English performed different and compartmentalized functions in society. Cantonese assumed (and continues to assume) the role of the vernacular language for the overwhelming majority of the population. It is the language used among most of the locals in their daily lives. In Hong Kong, the proportion of Cantonese native speakers has consistently outweighed by far that of English native speakers (90.8 percent versus 2.8 percent, according to the latest 2006 by-census; Hong Kong Special Administrative Region Government, Census and Statistics Department 2007). Yet throughout the colonial era, Cantonese was rarely seen or used as a "power language." For example, it was not until the beginning of the 1990s that members of the Legislative Council (the legislature of Hong Kong) began to use Cantonese in their official speeches and debates, even though English clearly remained the dominant language throughout the colonial period (Yau 1997). Despite its popular usage among local residents, Cantonese was rendered an auxiliary language in the "power domains" of politics, education, and corporate businesses, and above all, in the legal system.

English, on the other hand, has long been perceived by the public as the language of power and success (Cheung 1984; Pierson 1987, 1998), bringing tremendous social and instrumental advantages to its users (Pennington & Yue 1994; Axler et al. 1998). Unlike the situation in other former British colonies such as Nigeria, Kenya, Singapore, and India, where English is a lingua franca, English in Hong Kong is (and was) more a functionally specific language used mainly in work and business settings (Luke & Richards 1982; Bolton & Kwok 1990; Evans & Green 2001). For most of the colonial period, it was the de jure language of government, law, and education and the main language of finance, commerce, international trade, and the professional and technological sectors (Bolton 1992; Luke & Richards 1982; Pennycook 1998; Tsou 1997). And despite the much-debated "mother-tongue" language policy in education implemented by the Hong Kong government after 1997 (Evans 2001), English remains in practice the dominant medium of instruction in tertiary and secondary educational institutions.

Such a diglossic pattern of usage between English and Cantonese has led to the formation of two contrasting linguistic habituses (Bourdieu 1991), or habitual structures, in Hong Kong. In other words, two linguistic environments, one English and one Cantonese, each with its own standards and limits of pragmatic effectiveness, coexist in Hong Kong. They each define the rules that have come to be taken for granted, the "sense" and "sensibilities" that a speaker knows without explicit reasoning, as

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reflected in the "natural" contexts within which the two languages are at home. As Pennington points out, research on language attitudes in Hong Kong has shown that English is associated with "outer" values (success, stylishness, academic achievement), while Cantonese is associated with "inner" values (tradition, home, and solidarity) (1998:13; see also Gibbons 1987; Pierson 1987). Shifting from English to Cantonese, or vice versa, sets off a different default interaction context through which linguistic practices achieve pragmatic effectiveness. This remains so in postcolonial Hong Kong despite the increasing use of Cantonese in the public arena after 1997.

Methodology

The episodes analyzed in this article are taken from trials that I attended during one year of fieldwork in Hong Kong, between October 2001 and September 2002. I observed civil trials that took place in the Court of First Instance as well as the District Court of Hong Kong.[2] Both courts enjoy original jurisdiction in civil actions. I observed a total of 30 trials during the period. The length of the trials varied. I saw trials that were quickly wrapped up in a single morning, when parties decided to settle rather than pressing on, and I also saw trials in which parties decided to pursue their cases to the bitter end. In the latter case, a trial could extend for months or, in the most extreme cases, for years.

On the eve of the day that I planned to start attending a new trial, I would go over the daily cause list issued by the Hong Kong judiciary to identify cases that fell within my selected categories of general (noncommercial) civil cases, i.e., torts (such as personal injuries action and libel action); claims in equity, probate, and trust; and employment and labor claims. When more than one case on the list fell within these categories, I would give preference to cases based on the following two criteria. First was legal diversity: I would pick a case that was different in legal nature or party makeup from the cases I had already heard. For example, in the early months of my fieldwork, I attended a number of personal injury cases that involved individuals suing their employers for compensation. I later made it a priority to attend other cases out-

[2] The court system in Hong Kong is a simple four-tier system. At the lowest level are the magistracies that handle mostly minor violations of the criminal codes. The next two levels, in ascending order, are the District Court and the Court of First Instance. At the top of the judicial system are the two appellate courts, i.e., the Court of Appeal and the Court of Final Appeal. The local Court of Final Appeal was set up in 1997 as a result of the change in sovereignty. Before 1997, the Privy Council of the English House of Lords was the court of final adjudication of the system.

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side the category of personal injury, such as probate action. Second was judicial diversity: I gave preference to new cases presided over by judges whom I had not previously observed. My purpose was to observe trials presided over by as many different judges (and lawyers, though this was not as much of a challenge) as possible. This, I hoped, would reduce the possibility of basing my analysis on the idiosyncrasies of an individual judge. In the end, I observed more than 15 judges and 50 lawyers in action. In addition, I conducted interviews with many of the litigants, lawyers, and presiding judges who participated in the trials that I attended.

Tape recording of proceedings is not allowed in the courtrooms of Hong Kong. During my fieldwork, I relied mostly on written notes. Toward the end of my fieldwork, the judiciary of Hong Kong kindly agreed to make available to me copies of official tape recordings of a number of trial sessions I had attended.[3] The transcripts cited below are based on transcripts I made from the official tapes. Names and other identifiers have been changed to protect the identities of the litigants and counsel involved.

Adversarial Cross-Examination in Hong Kong

In comparing Cantonese and English courtrooms in Hong Kong, I focus on cross-examination, arguably the most important aspect of the machinery of adversarial trial. In a typical common-law trial in Hong Kong, the process of eliciting evidence from a witness goes through three separate stages: "examination-in-chief" (also called direct examination in the United States), "cross-examination," and finally, "re-examination" (also called re-direct examination in the United States), of which cross-examination is the most crucial stage. Cross-examination is undoubtedly the central procedure of a common law trial. Owing to the constant dramatization of it in American and British television and movies, it is arguably the most well-known form of institutionalized verbal combat. Wigmore famously described it as "beyond any doubt the greatest legal engine ever invented for the discovery of truth" (1923: Vol. 3:27; §1367). Cross-examination is also frequently compared to games (Garfinkel 1956; Blumberg 1967; Danet & Bogoch 1980) or contests (Woodbury 1984; Goodpaster 1987), as all these processes are role-specific, rule-governed, and above all, competitive. In terms of interaction structure, cross-examination in a common law trial displays the kind of rigidity seldom seen in casual conversation. In fact, it is the very process that gives the

[3] The tape recordings are on file with the author.

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common law trial (as different from a civil law trial) its adversarial name. As a popular textbook on the English law of evidence puts it, "[c]ross-examination operates on the assumption that the witness does not favor the cause of the party on whose behalf it is conducted" (Allen 2004:83).

As a form of interaction, cross-examination is highly asymmetric. Procedural rules prescribe that it is counsel, not the witness, who takes the lead in cross-examination. The questioning attorney is in full control of the flow of interactions. He or she decides not just what to ask, but also when to dwell, when to move quickly, and when to interrupt. Lawyers take it as their duty to expose the inconsistencies in a witness's account, to tear apart its narrative unity, and hopefully to put a big dent in the credibility of the witness.

"Statement-Making" in English-Language Trials

Courtroom English in Hong Kong features a style of speech that is markedly different from everyday English. Much like their counterparts in England, lawyers in Hong Kong have developed distinct vocabularies and mannerisms. Courtroom English displays a style that outside observers often describe as "formal" and "bookish." When interacting with witnesses, lawyers and judges, conscious of the fact that English is not an everyday language in Hong Kong, adhere to a form of English that aims to be straightforward to English speakers in Hong Kong, which often means a form of English that is formal and semantically explicit (in the sense that meaning can be understood without taking context into account) by design. In fact, most witnesses testifying in English trials in Hong Kong choose to speak through an interpreter, and lawyers know they have to speak in a form of English that is easily interpretable. Judges and barristers I interviewed, be they expatriate or ethnic Chinese, were generally conscious of ridding their language of any possible semantic confusion. Hence, for example, when I asked a number of expatriate lawyers and judges to describe the English they used to communicate with witnesses, they immediately mentioned that they avoid metaphors and idioms. An expatriate District Court judge, who started his legal career in England and then worked in Hong Kong for many years, made the following observation in my interview with him: "You wouldn't say two defendants are like 'peas in a pod,' for instance, to a Chinese jury because that's an expression that native speakers would understand but one might fear that nonnative speakers might not understand." It is part of a conscious attempt to manage language in a manner that judges or counsel believe to be most straightforward and direct, and to be stripped of any coded or implied meaning.

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From the standpoint of judges and lawyers, idioms, conventional metaphors, or colloquial expressions are all linguistic features that complicate understanding, for meaning conveyed by these devices cannot be easily glossed from so-called literal meanings of their component words.

What is particularly important for my purpose is how lawyers and judges see this particular genre of English as conducive to the supposedly universal speech act of statement-making. From the perspective of speech act theory, statement-making is an act that negates its own performative element. It purports to describe and *only* to describe (Lyons 1995). It is interesting to note that the term *statement* is well-defined in Anglo American evidence law. For example, the U.S. Federal Rules of Evidence, in the section under "hearsay," gives a pithy definition of *statement* as "an oral or written assertion" (Rule 801(a)). In Hong Kong, a statement made in a civil trial is defined as "representation of fact or opinion" made by a person (Evidence Ordinance 1999: Sec. 46). A statement in the legal context is thus defined explicitly in terms of its assertive or propositional quality. The nature of a statement is judged by the bivalence (i.e., truth or falsity) of the facts stated in it (Philips 1992, 1998). Hence, according to the official view of legal professionals in Hong Kong (and in many common law jurisdictions elsewhere), the main function of calling a witness is not to ask the witness to *interact* performatively with counsel before the judge, but to *describe* things that happened in the past, in unambiguous statements whose truth value (either it is true or it is false) can be determined. This is how "what happened" is determined *linguistically* within the four walls of a courtroom (particularly in cases where physical evidence is unavailable).

This single-minded focus on referential bivalence is starkly different from the way we usually conduct our everyday conversations, where people often also take into account the surrounding context within which an utterance is made in order to work out a person's communicative intent and affect. So understood, cross-examination in Hong Kong thrives on a form of language that is explicitly referential. English, precisely because of its status as a formal, elite, and task-specific medium in Hong Kong, brings about a certain standard of semantic specificity that satisfies the common law's concern for the capacity of adversarial trial to function as truth-discerning machinery—the meaning of what one says is equated and often reduced to what "words refer to" and what propositions they putatively express (Haviland 2003:767). The semantic specificity entailed in Hong Kong's English renders statement-making "natural," despite the fact that it is, when one thinks about it, a highly institutionalized form of speech act.

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In the actual practice of cross-examination, lawyers often engage in the breaking down of a witness's story into what Matoesian called "tightly segmented episodes of verbal action" (2001:71). These segments then become the building blocks for the legal retelling of "what happened." And as I show, the mechanism to facilitate such a breakdown and recomposition is a highly structured question-and-answer sequence. It is for this reason that witnesses testifying in court are restricted to only answering counsel's questions; they are discouraged from, for example, offering comments, or asking questions in return. A witness in an English courtroom in Hong Kong veering off from the activity of statement-making is liable to be sanctioned by counsel and judges. The following example conveys the controlled nature of the English cross-examination in Hong Kong. In a case that I later discuss in further detail, a witness named Chi Keung tried to playfully dodge a question from the defense counsel.[4] When asked what the defendant had told him, the witness replied: "What do you think?" His act of answering a question with another question, rhetorical no less, was greeted icily by the judge, who reminded him, with a poker face, of his duty as a witness:

Transcript 1.1 English Cross-Examination in Hong Kong I

001	Counsel:	Why did you never think of asking Chi Lok earlier before 1994?
002	Witness:	Of course there's numerous request.
003	Counsel:	Numerous request?
004	Witness:	Of course. I just asked verbal . . . (inaudible)
005	Counsel:	And what did Chi Lok say?
006	Witness:	What do you think?
007	Judge:	We are not here to think.
008		You tell us.
009	Witness:	Fair enough.
010		OK, most of the time he just dragged us around.
011		You know, he didn't say no.
012		He tells other stories. You know, how hardworking he is.
013		All the old stuff. You have to sit down and listen
014		and then in the end we were talking about other topics.
015		He jumped from A to B. We never get a straight answer.

In English trials in Hong Kong, any non-reply, or more precisely, any reply that does not address directly the question in statement form, is often readily sanctioned by judges and lawyers —or sometimes by court interpreters who translate the evidence from Chinese to English. The flow follows an interaction structure that is different from that of commonplace conversations; it is a structure characterized by a chain of questions and answers that sustains a highly role-explicit format—the counsel asks questions, and the witnesses reply with direct answers. To illustrate this in-

[4] Pseudonyms are used to protect the identities of the individuals who appeared in the trial transcripts used in this article.

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herent order, I refer to another episode in the cross-examination of Chi Keung. The witness was cross-examined by Jonathan Yeung, the lawyer for his eldest brother. The case here involved a family dispute that is not uncommon among Chinese families. The key defendant, Chi Lok, the eldest son of the family, was sued by his two younger brothers, Chi Hung and Chi Keung. Their father had established and directed one of the oldest undertaking businesses in Hong Kong for half a century. The patriarch of the family died in the early 1970s. The dispute could be traced back to a meeting right after the father's death. According to the account offered by the two younger brothers, Chi Lok begged other family members at the meeting, with tears in his eyes, to let him carry on the family business. The family agreed, on the condition that Chi Lok would operate the undertaking business as "a trustee" for other family members. Not surprisingly, Chi Lok's account about what happened in that meeting was different. He told the court that there was no agreement about him being the trustee of his father's estate. He simply inherited the entire family business as the eldest son of the family. It was, according to Chi Lok, a straightforward case of primogeniture. The content of the agreement made at the meeting was central to the question of how the family estate should be distributed among the sons. According to the two plaintiffs, Chi Lok was not entitled to inherit the family estate. They further suggested that it was the wish of their mother to give the four younger sons, according to Chinese tradition, an equal share of half of the family property left by their late father. They told the court their oldest brother was a spendthrift. They accused him of squandering the money without giving the rest of the family their fair share.

Below is an excerpt taken from the cross-examination of Chi Keung by Yeung. The lawyer used his questions not simply to raise doubts about the story told by Chi Keung, but also to paint a different picture of Chi Lok. Above all, Yeung tried to show that Chi Keung expected Chi Lok to give money to the family and that, in fact, it was likely that the younger brother knew his brother had contributed to the family:

Transcript 1.2 English Cross-Examination in Hong Kong II

001	Counsel:	Let's concentrate on the situation in May 1972, all right? May?
002	Witness:	May 1972.
003	Counsel:	You were in Hong Kong.
004	Witness:	Yeah.
005	Counsel:	Do you know if any of your elder brothers and sisters were making contributions,
006		giving money, meaning, to your father and mother?
007	Witness:	No I don't.
		[pause]
008	Counsel:	But you would not be surprised if they did.

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009		Is that correct?
010	Witness:	No comment about that.
011	Judge:	What did you just say?
012	Witness:	I said no comment.
013		He asked whether I would be surprised.
014	Counsel:	Is it not the Chinese tradition or is it in your family tradition that
015		you give money to father and mother whenever you come out and earn money?
016	Witness:	Yes, occasionally, yes.
017		Should be.
018	Counsel:	Right.
019	Witness:	But not necessarily the case.
020	Counsel:	Right, should be.
021		Therefore you would not be surprised
022		if your elder brothers and sisters did the same.
023	Witness:	I really hope so.
024	Counsel:	All right. Thank you.

There are reasons why, from a witness standpoint, statement-making can be a precarious exercise. Statements are made in the context of cross-examination. While a witness is confined to making statements, an opposing lawyer is not subject to the same restriction. During cross-examination, counsel is allowed to ask questions—in fact, to ask "leading questions" to interrogate. A leading question is a question framed in such a way that it suggests to the witness the desired answer. It communicates what conversation analysts would call a distinct preference organization to the addressee (Atkinson & Drew 1979; Pomerantz 1984). Some leading questions lead by encompassing the preferred response in the question itself. A statement followed by a tag question is an obvious example. The question "You were drunk on that night, weren't you?" favors a yes answer as the preferred or the unmarked response. A witness who answers the dispreferred or marked response of no puts him- or herself in a suspicious position that requires further justification. Less explicit but still leading is a negative question (a form often used by political talk show hosts and commentators in the United States), such as "Don't you think he's an idiot?" The negative question itself presupposes an unmarked response of yes that implicitly puts down a no as problematic.

In the example above, Yeung first tried to see if Chi Keung would confirm in his reply that Chi Lok gave money to the family back in 1972 (Line 001). He asked Chi Keung if he knew his elder siblings gave money to the family (Line 005). Chi Keung said he did not know (Line 007). Yeung then used leading questions to convey to the court the thesis that it should not be surprising at all for Chi Keung to expect Chi Lok to contribute to the family. (The implicit message was that it was very *surprising* that Chi Keung only made the complaint after all these years.) However, Yeung did this in a circumspect way. Instead of asking whether Chi Keung would be surprised to know that his client gave money to their parents or not, his leading question (notice its negative form) appealed instead

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to traditional Chinese filial virtue. "Is it not the Chinese tradition or is it in your family tradition that you give money to father and mother whenever you come out and earn money?" (Lines 014–015) This, coupled with the fact that 30 years had elapsed between the disputed meeting and the time of the trial, implied that Chi Lok had likely given money to the family back in those days, or else he would long ago have been criticized by his younger brothers. The question "led" by marking no as an unnatural response. Chi Keung was apparently caught in between the tension created by the preference structure of the leading question. He replied a cautious "Occasionally" (Line 016; which is not much of a direct answer) then added, "Should be" (Line 017), before finally qualifying his answer with "But not necessarily the case" (Line 018). But that was enough of a concession from Chi Keung for Yeung to follow up with a comment framed in the form of a "natural" conclusion ("Therefore you would not be surprised if your elder brothers and sisters did the same"; Lines 021–22). This broached the one issue that the defense wanted to establish: that no one raised any complaints at the time, even though it was expected that Chi Lok, the eldest son, would give money to the family. It implied that the likely explanation of the absence of complaints was of course that Chi Lok *did* give money to the family. By deploying the embedded evaluative structure of a leading question, Yeung successfully coaxed an opposing witness to admit that he would not be surprised to see his client giving money to the family; that admission in turn undermined the plaintiff's portrayal of the defendant as a selfish spendthrift. Chi Keung managed to add "I really hope so" (Line 023) at the end, expressing his doubt about the conclusion that Yeung just drew. But Yeung already got the answer he wanted and was expressly eager to quickly move on to another topic ("All right. Thank you"; Line 024).

The example demonstrates that statement-making is never as simple as the official theory of evidence suggests. A witness makes "statements" within the context of the opposing counsel's performative act of interrogating. Specifically, the witness's statements are interpreted as a reply to the leading questions put forward by the opposing counsel. The witness's motives or intentions as the author of these statements are irrelevant because the asymmetric rules of interaction in cross-examination prescribe that the meanings of the statements are to be judged within the context woven by a string of leading questions. A lawyer is entitled—in fact, expected—to implicate and to challenge, to intimidate and to attack an opposing witness, through the deft deployment of leading questions—through the sliding from one leading question into another, the lumping of one layer of implied meaning upon another, an opposing lawyer can weave together a contrapuntal narrative

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between the "statements" offered by the witness—without stating that other story him- or herself.

Performances in Cantonese Trials

If witnesses' passive statement-making in the English trials in Hong Kong is more of an accompanying act to counsel's performative cross-examining, witnesses in Cantonese trials often assume a more active role in the process. The same procedural rules that I just described are ostensibly followed in Cantonese trials in Hong Kong. But while the Cantonese court trials at times proceed in ways similar to those of the English-language courtrooms, there are moments when the procedural rules of cross-examination are overturned so completely that counsel I talked to would comment: "Never in English. Only in Cantonese." Together, these moments reveal a relationship between Cantonese and formalistic statement-making that is fundamentally different from the tight affinity displayed between English and the format of adversarial trial in Hong Kong. These moments are often considered as aberrations to be ignored for the purpose of adjudication by counsel and judges. Furthermore, lawyers often account for the outbursts of witnesses testifying in Cantonese by appealing to the "vulgar" and "unruly" nature of Cantonese as a language. In other words, they tend to make an explicit metapragmatic linkage between the "unruly" *performances* of Cantonese courtrooms and the supposedly "unruly" *nature* of Cantonese.[5] The term *metapragmatics* highlights the reflexive nature of language use. Specifically, I refer to how actors consciously use language to self-describe what they do with language, or to self-refer to the nature of the language they use, in the form of explicit statements (Silverstein 1993, 1998, 2003).[6] Lawyers in Hong Kong and, to a lesser extent, judges often evaluate legal Cantonese and English in contrasting terms. Courtroom English is, in their words, "solemn," "respectful," and "precise." By contrast, courtroom Cantonese is, again in their words, "vulgar," "unruly," and "flippant." This article is not the place to address in detail the role of metapragmatics in reinforcing the contrasting

[5] As Silverstein (2003) pointed out, the metapragmatic function of language "is frequently aided by the way interactants make use of denotationally explicit metapragmatic discourse that renders potentially presupposable context more transparent" (2003:196). Here, the explicit metapragmatic discourse comes in the form of language ideology, i.e., explicit comments on the nature of the language (Cantonese) itself (Gal & Irvine 1995, Irvine & Gal 1999).

[6] I thank particularly one of the anonymous reviewers of an earlier draft of this article whose comments helped me clarify the place of metapragmatics in the overall argument of the article.

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performances of English and Cantonese in the bilingual common law of Hong Kong (for an extensive discussion, see Ng in press). Suffice it to point out that they serve to justify for legal professionals in Hong Kong how courtroom interactions should be played out, interpreted, and made effectual in each of the two languages, despite the official prescription of "one (common) law, two languages."

To explain why the use of Cantonese is considered less conducive, even threatening, to the working of an adversarial trial, I examine examples drawn from Cantonese trials that show how the new Cantonese-language environment facilitates a form of departure from the rules that challenge the standard operational procedures of cross-examination. These examples are not meant to indicate what a "typical" Cantonese trial looks like in Hong Kong (even though from what I gathered in my fieldwork, episodes of this type occur far more often in Cantonese than in English trials). Nor are these examples selected to prove the prevalence of problems triggered by the use of Cantonese (obviously, analyses of a few examples are not set up to address the question of prevalence). My aim here is instead to demonstrate ways in which the use of Cantonese upsets the truth-discerning machinery of cross-examination. The examples that follow are therefore selected to demonstrate the distinctiveness of a Cantonese challenge, i.e., how local speech acts, commonly found among the working class in contemporary Hong Kong but also to some extent shared by the educated middle class, are brought about in court. It is this bringing about of local speech acts that directly disrupts and undermines the institutional act of statement-making.

As shown in the examples of English-language trials in Hong Kong, the institutional setup of cross-examination in a common law trial is designed to rein in the exchange of live utterances through an orderly process of question-and-answer and with a clear demarcation of roles between a witness and the opposing counsel. These rules, in the official interpretation, are derived to allow the extraction of statements, whose referential meanings can be easily glossed from the "literal" meanings of the words used. It is therefore important, from the standpoint of counsel and judges, that these interactional rules should not be seriously undermined or violated in the course of cross-examination. The example below shows how the use of Cantonese endorses other speech acts that disrupt the institutional goal of statement-making. The unfolding of the speech act, known to Cantonese speakers as "catching fleas in words," ostensibly follows the sequence of a standard question-and-answer sequence in cross-examination. Yet participants engage in a certain play within the rules, a kind of Goffmanian "keying" (1974:40–82), so to speak, of the original act.

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The following example is taken from a libel trial. The plaintiff, Fung Sze Ming, was suing the defendant, Yip Man Sang, for libel, alleging that he distributed defamatory letters to residents of the same building they lived in. The excerpt is taken from the cross-examination of Yip by Fung's counsel, Kit Li. In earlier exchanges, Yip accused Fung of perjuring herself before the court by describing herself as a teacher; Yip argued that she was not a "teacher," but only a "private tutor." In Cantonese, the terms for *teacher* 教師 [gaau3 si1] and for *private tutor* 補習教師 [bou5 zaap6 gaau3 si1] both contain the same component words 教師 [gaau3 si1].[7] Yip alleged that his opponent lied about her real occupation when she talked herself up as a "teacher." In defense of his client, Li tried to show that Yip was splitting hairs. Yip, however, rebuked him by insisting on the lexical differences between the terms *teacher* and *private tutor* in Cantonese:

Transcript 2.1 Catching Fleas in Words in Cantonese[8]

001	Counsel:	咁就…你 話 發 假 誓 嘅意思呢， So . . . You say swear false oath meaning, *So, what did you mean when you said she made a false oath?*
002		就 應該 佢人唔係 一個 點樣嘅 人 話? That should be s/he not a kind of person say? *Who did you think she could not be?*
003	Witness:	'Teacher' 就係 教師， 註冊 教師， 喺 我嘅心目中。 'Teacher' is teacher, registered teacher, in my mind. *'Teacher' means teacher. Registered teacher, in my mind.*
004	Counsel:	喺 你 心目中 係嘅。 In you mind that is. *In your mind.*
005	Witness:	係， 註冊 教師。 Yes, registered teacher. *Yes, registered teacher.*
006	Counsel:	註冊 教師。 Registered teacher. *Registered teacher.*

[7] I romanize key Cantonese terms for easy reference, adopting the Cantonese Romanization Scheme, or Jyutping system, developed by the Linguistic Society of Hong Kong. Like Putonghua, Cantonese is tonal. The number at the end (from 1 to 6) represents the tone of a word.

[8] The Cantonese transcripts in this article follow conventions common in discourse studies and anthropological studies (Duranti 1997; Richland 2005). Names of speakers occur in the left column. Line numbers are used to divide the cross-examination episodes to allow for interlinear transcriptions. The first row presents an utterance in Cantonese characters. The utterance is then translated twice; the first time is a morpheme-by-morpheme translation, followed by a looser English gloss, which appears in italics.

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007 Witness: 喺 普通 人 心目中 都 應該 係 咁樣。
In ordinary people mind also should be so.
It should also be so in ordinary people's minds.

008 Counsel: 你 點 知㗎? 可能 剩係 你 心目中 係咁。
You how know? Perhaps only you mind is so.
How do you know? Perhaps it is only in your mind.

009 Witness: 唔係喎。律師, 一般 都 係指 註冊嘅 律師,
No. Lawyer in general too refer to registered lawyer,
No. Lawyers generally mean registered lawyers.

010 工業 總會 會員 一定係 喺 工業 總會 註咗冊,
Industry Federation member must be in Industry Federation registered,
If you say you are a member of the Federation of Hong Kong Industries,

011 功能 團體, 先 可以 做稱 為會員。
Functional organization, then can be called member.
You must be a registered functional organization, then you can call yourself a member.

012 如果 我話 工業 總會 會員, 但 乜又無 註冊,
If I say Industry Federation member, but I not registered
If I say I'm a member of the Industry Association but I'm not registered

013 你 話 係咪 發 假 誓呢?
You tell yes or not make false oath?
don't you think I'm making a false oath?

014 Counsel: 律師 同 大 律師 係咪 都 係 律師呀?
Lawyer and big lawyer yes or no all is lawyer?
Are solicitors and barristers both lawyers?

[Note: in Cantonese, "律師" [leot6 si1] is the term for solicitor and the term for barrister is "大律師" [daai6 leot6 si1], literally meaning "big lawyer."]

015 Witness: 律師 大 律師 同樣 都係… 係 … 呀 律師 公會 註冊 嘅律師。
Lawyer big lawyer same all . . . is . . . ahh lawyer society registered lawyer.
Solicitors and barristers are . . . are both registered lawyers of Law Society.

016 當然 係 … 係唔同, 性質 唔同,
Of course is . . . is different, nature different
Of course they are . . . are different

017 但係 都 係 註咗冊嘅,
But both is registered.
but both are registered.

018 分別 係 註冊 與 唔 註冊。
Difference is registered and not registered.
The difference is registered and non-registered.

019 Counsel: 律師 同 大 律師 咁 係咪 都 係 律師吖?
Lawyer and big lawyer so yes or no both is lawyer?
Are solicitors and barristers both lawyers?

020 Witness: 係 律師吖。
Is lawyer.
Yes, they are both lawyers.

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021 Counsel: 土地 審裁處 同埋 高等 法院 原 訟 庭
Land tribunal and High Court Court of First Instance
係咪 都 係 法庭吖？
yes/no both is court?
Are the Land Tribunal and the Court of First Instance both law courts?

022 Witness: 係。
Yes.
Yes.

023 Counsel: 你 唔 覺得 補習 教師、 鋼琴 教師、 學校 教師，
You don't think tutor teacher, piano teacher, school teacher,
Don't you think that a tutoring teacher and a school teacher

024 都 係嘅責任 就係 向 學生 灌輸 知識咩？
All is responsibility is to student instill knowledge?
are both responsible for instilling knowledge to their students?

[Note: The Cantonese words for teacher and tutor are both 教師 (gaau3 si1). The term 補習教師 (bou5 zaap6 gaau3 si1) is used for private tutor, literally meaning "tutoring teacher"]

025 Witness: 我 唔 同意， 係 灌輸 知識。
I not agree, is instill knowledge.
I disagree. Yes, they both instill knowledge.

026 但係 有 個 分別， 最大嘅 分別。
But has a difference, the biggest difference.
but there is a big difference.

027 註冊 與 唔 註冊。
Registered and not registered.
Registered and not registered.

' ' = English words in original.

What is interesting about this episode is how the referential meaning of an utterance can be contested with the same intensity, yet in such a different way. The exchange between Li and Yip turned into a tricky cat-and-mouse chase known in Cantonese as "catching fleas in words" (捉字虱 [zuk1 zi6 sat1]), a mischievous version of parsing words. Here, both Li the counsel and Yip the witness showed off a form of "cunning intelligence" reminiscent of the style of the litigation masters in Imperial China (Macauley 1998). Old Chinese novels and operas often describe how litigation masters used their cunning intelligence to subvert the Imperial court system. In Hong Kong, the stories of famous litigation masters have been made into movies and television dramas numerous times. In fact, in a Chinese society such as Hong Kong, when people think of lawyerspeak they do not think of the obscure legalese of the common law, but of the kind of shrewd but playful language those famous litigation masters deployed. This is why litigation masters are known as "tricky," or 扭計 [nau2 gai5] in Cantonese. The game takes the form of verbal sparring that is superficially logical but profoundly silly when participants deliberately turn a

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blind eye to the context of words and playfully focus on their literal meanings, often in the ruthless advancement of their own small arguments. The sequence came close to a parody of a proper cross-examination, as it displayed an unsettling twist on the obsession with semantic specificity we saw earlier in the English trials. As one can see in the excerpt above, Yip accused Fung of lying because Fung was a private tutor, not a registered teacher. For Yip, a teacher must be a "registered teacher." To counter that, Li insisted that his client was a teacher, because the words for *private tutor* in Cantonese, literally translated, are "tutoring *teacher*," and since *tutoring teacher* contains the word component *teacher*, a tutoring teacher *is* a teacher—even though unlike school teachers, they are not registered or certified. Li then referred to similar examples, e.g., solicitors and barristers (in Cantonese, literally meaning "big lawyers") are both lawyers; the Land Tribunal and the High Court are both law courts. The purpose was to justify that Fung could be rightly called a teacher.

Later on that day, Li orchestrated a verbal comeback by questioning Yip's own professional qualifications. Yip said he was an engineer; Li asked the same question Yip asked him minutes ago about his client—whether he was a registered engineer. Yip then said he was an engineer of "Lung Ceong Engineering" (a pseudonym), his own company. Once again, the act of cross-examination turned into a bouncy, impish sequence of "catching word fleas," nested in a pattern of one-upmanship that should sound familiar to most people accustomed to the masculine discourse culture of the United States (Tannen 1994). The verbal ping-pong proceeded at a crisp tempo that is rarely seen in English-language trials in Hong Kong. The development of the conversation hinged very much on the flow of the moment. From a judicial standpoint, the exchange can be said to be absolutely trivial. But for both Yip and Li, the focus here was on the battle (one-upmanship) rather than on the war (the trial), a sentiment nicely captured by Yip's statement at the end (Line 027): "But I'm a boss." (但係我係老細 [daan6 hai6 ngo5 hai6 lou5 sai3]), (Translation: "I'm even better than an engineer"). It is a comment that was apparently innocuous, but truly vicious in context:

Transcript 2.2 Catching Fleas in Words in Cantonese

001	Counsel:	你　第一 就　話 You first then say *First of all, you said that*
002		好喇 一個 電梯 呢，就嘅價錢 就唔會　八十　萬　咁高嘅， OK one elevator its price couldn't be eighty ten thousand so high *the cost of an elevator wouldn't be as high as $800,000*

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003
係 咪呀?
yes or not?
right?

004 Witness:
肯定 唔會啦。
Definitely couldn't be.
It definitely couldn't be the case.

005 Counsel:
但 會 唔會 每間 大廈 嘅 情況 唔同呀?
But can or cannot each building 's circumstance different?
But could it or could it not be the case that the cost varies from building to building?

006
有啲 大廈 平啲, 有啲 大廈 貴啲呀?
Some building cheaper, some building more expensive?
For some buildings, it costs less. For some buildings, it costs more?

007 Witness:
相差 唔會 好 大嘅。
Difference not very big.
There shouldn't be a big difference.

008 Counsel:
係咪吖?
Is so?
Is that right?

009 Counsel:
你 係咪 呢 方面 嘅 專家呢 請 問?
You are this aspect 's expert please ask?
Are you an expert on this area? May I ask?

010 Witness:
我 做 廿 年 工程。
I work twenty year engineering
I've been working in the engineering business for 20 years.

011 Counsel:
吖。
Ahh
I see.

012 Witness:
大大 話話 所有 電梯 睇咗 唔 少。
Roughly speaking all elevator saw not few
I've seen more than a few of all different elevators.

013 Counsel:
你 係咪 工程師呀?
You is or isn't engineer?
Are you an engineer?

014 Witness:
吓?
Huh?
What?

015 Counsel:
你 係咪 工程師呀?
You is engineer?
Are you an engineer?

016 Witness:
可以 講 龍翔 工程 … 工程 工程師。
Can say Lung Coeng engine . . . engine engineer
You can say I am an engin . . . engineer of Lung Coeng Engineering.

017 Counsel:
你 係 工程師?
You is engineer?
You're an engineer?

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018	Witness:	係 工程師。 Is engineer. *Yes, an engineer.*
019	Counsel:	有 冇 註冊呀， 專業 資格 嗰啲呀？ Yes no register, professional credential those? *Are you registered? With professional qualification?*
020	Witness:	呃， 我 係 龍翔 工程 嘅 工程師。 Ugh, I is Lung Coeng Engineering 's Engineer. *I am an engineer of Lung Coeng Engineering.*
021	Counsel:	哦。我 唔 問 你 呢樣。 O. I not ask you this. *I see. I'm not asking you this.*
022		第一， 你 係咪 工程師先？ 註冊 嗰啲？ First, you is or isn't engineer? Register those? *First thing first, are you an engineer? Those who are registered?*
023	Witness:	我 唔係 註冊 工程師。 I isn't register engineer. *I'm not a registered engineer.*
024	Counsel:	唔係嘅。 Not. *You're not.*
025	Witness:	嗯。 Hmm. *Hmm.*
026	Counsel:	吓。 Ha. *Yes.*
027	Witness:	但係 我 係 老細。 But I is boss. *But I'm a boss.*
028	Counsel:	咁 就 第二 件事。 Which then second thing. *That's a different matter.*
029	Witness:	我 可以 請 好多 工程師。 I can hire many engineer. *I can hire many engineers.*
030	Counsel:	咁 就 第二 件事喎。 Which then second thing. *But that's a different matter.*
031	Witness:	嗯。 Hmm. *Hmm.*

There are also other moments in Cantonese trials when challenges to the rules of cross-examination come in more emotionally intense and unsettling forms. The following excerpt is taken from a

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District Court trial. It involved a dispute about the severance payment owed to eight female workers who worked for the same knitting factory. A crucial question in the trial was whether the factory or the former leader of the mending department who supervised the eight workers, a woman named Tam Wan Sheung, should have been held responsible for the unpaid salaries. Tam was a key witness (but was also a defendant in a multiparty matrix). She was questioned by opposing counsel about her relationship with the company at that time: was she a subcontractor who maintained a business relationship with the knitting factory, or was she an actual employee of the factory? If Tam was a subcontractor, she would have been an employer herself and would be responsible for the severance payment to her own workers; but if she was an employee of the factory, the factory would then be solely responsible for the payment. The episode below shows Tam being cross-examined by a lawyer for the other factory workers, a young barrister named Eddie Tong.

During the course of cross-examination, Tong more than once indicated to Tam that she had been evasive in her answers. Right before the following episode, Tong had pressed Tam for a yes or no answer to some of the questions he raised. But the cross-examination was moving very slowly. The episode begins when Tong asked Tam why she chose to fill out the profit tax forms, and not the salary tax forms, during the time she worked for the factory; the choosing of the former was evidence indicating that Tam was aware of her status as a subcontractor. Tam responded by saying she was merely following the instructions of Ms. Yu, the factory's accountant. Finally, Tam erupted:

Transcript 3.1 Speaking Bitterness in Cantonese

001	Counsel:	即係 話 你個 大 女 寫 嗰份 報告書， Which say your big daughter write that report, *That is to say, your eldest daughter wrote the report,*
002		報稅表 其實 係你 叫 佢 填， Tax form actually is you ask her fill out, *In fact, it was you who asked her to fill out the tax form,*
003		即係 照 你嘅 意思 去 做嘅，係咪? Which follow your meaning to do, yes? *according to your instructions, right?*
004	Witness:	照… 照… 照 余 小姐 嘅 意思 去 做嘅。 Follow . . . follow . . . follow Yu Ms. 's meaning to do. *According to the instructions of Ms. Yu.*
[Note: Yu was the factory accountant]		
005	Counsel:	(咁吖 你個 大 女) (So your big daughter) *(So did your eldest daughter)*

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006 Witness: 唔係 照 我 去 做)
(Not follow me to do)
(Not according to my instructions)

007 Counsel: 黎 思 琪 塡 報稅表 之前 有冇 同 余 小姐 接觸過呀？
Lai Sze Ki fill out tax form before do or do not with Yu Ms. contact?
Did Lai Sze Ki contact Ms. Yu before she filled out the tax form?

[Note: Lai is Tam's daughter. Like many working-class women in Hong Kong, Tam keeps her maiden name.]

008 Witness: 梗係 無啦，佢 都 話 同 你 講咗 好 耐。
Of course not, s/he too say, with you tell already very long.
Of course not. She too said, I've been telling you for so long.

009 佢 都 話 呢啲 嘢 唔係 你 做嘅 阿媽 咁囉。
S/he too say this thing not you do mom like that.
She too said this was not something that mom you were supposed to do.

010 Counsel: 咁 如果 無， 咁 即係…
Well, if not, well that is . . .. . .
If no, then . . .

011 Witness: 佢 話 唔係 你 做嘅，阿媽。
S/he say not you do, mom.
She said this was not something you were supposed to do, mom.

012 呢啲 嘢 唔係 你 做㗎，咁。
This thing not you do, like that.
not something you were supposed to do.

013 咁 我 話呢，你 賺 人 二千二 蚊 津貼，
So I say, you earn people two thousand two dollar allowance,
So I said, you earned twenty-two hundred dollar allowance from them,

014 就要 做 呢啲 嘢啦， 女， 幫下 我啦咁。
Then do these thing, daughter, help I so.
you had to do this, my dear, please help me.

015 滿意 未呀？
Satisfied not?
Are you satisfied?

016 真㗎， 呢啲 事實㗎。
True, these facts.
This is true, these are all facts.

017 手揮宣誓卡 若果 我 有講， 有 講 大話呀，
[Waiving the oath card] If I do tell, do tell, big words,
[*Waiving the oath card*] *If I tell, tell lies,*

018 我 話俾 你 聽 吖，吖，天 誅 地 滅 呀。
I tell you hear, ah, ah, heaven kill earth destroy, ah.
I tell you, may heaven and earth destroy me.

019 吖 死 無 葬 身 之地 呀。
Ah, die no bury body place, ah.
May I die without a place to bury my body.

020 若果 我 有 講 大話 呀，我 話俾 你 聽啱
If I do tell lies, ah, I tell you hear,
If I lie, I tell you,

021 吖， 你 可以 叫 佢 出嚟 問下 佢 係咪 咁樣先。
Ah, you can ask her/him out ask her/him yes or not like this.
You can ask her to come out and ask her if this is the case.

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022 我 揸住 塡 啲啲 咁嘅咩 咩 咩 表吖。
I hold fill those what what what form.
I filled out that, that, that form.

023 報稅表， 咁 鬼 多 字，
Tax form, so darn many words,
that tax form myself? It has so many darn words,

024 細細隻 矇查查。
Small blurred.
the words are so small and blurred.

025 我 讀 三 年 書咋， 兩 三 年 書咋。
I study three years school, two three years school.
I went to school for only three years, two or three years only.

026 專 叫 我 做埋晒我 唔 識 做嘅嘢嘅。
Always ask I do I don't know do things.
They always asked me to do things I didn't know how to do.

027 明 唔 明吖？ 我 要 搵食 呀。
Understand don't understand? I need earn living, ah.
Do you understand? I had to earn my living.

028 我 要 為咗 養 仔女， 所以 我 就同 佢 做。
I need for support children, therefore I with her/him do.
I wanted to support my children, that's why I did that for her.

029 滿意 未呀？
Satisfied not?
Satisfied?

030 Counsel: 譚 女士， 你 攪 清楚 一 樣嘢 先。
Tam Madam, you make clear one thing first.
Madam Tam, you've got to get this clear.

031 即係 你 你 要 明白， 你 唔 需要 咁 敵 視 我嘅。
Which you you need understand, you don't need so hostile view I.
you've got to understand, there's no need for you to view me with such hostility.

032 我 只係 盡緊 我嘅 責任。
I just fulfill my responsibility.
I'm just carrying out my responsibility.

033 Witness: 我 唔係 歧視 你，
(I not discriminate you.)
(I am not discriminating against you.)

[Note: Tam apparently misheard the Cantonese term 敵視 [dik6 si6] (meaning "view with hostility") as 歧視 [kei4 si6] (meaning "discrimination")]

034 Counsel （唔係 ）
(No . . .. . .)
(No. . .)

035 Witness: 你 事實 問啲 問題 我 都 唔 明 你 究竟 講 乜嘢嘅。
You in fact ask questions I not understand you really say thing.
I really don't understand what really you are asking.

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036 你 要 問 你 要 令到 我 明 你 講 乜 嘢 先得㗎。
You need ask . . . you need make I understand you speak things then okay.
You need to ask . . . , You need to make me understand.

037 填 嗰張 報稅表 乜嘢 咁 大 件事 先得㗎?
Fill that tax form what so big deal why?
Why was filling out the tax form such a big deal?

038 佢 叫 我 妏 嘢 咁 我 幫 佢 做 唔係 有罪啫 係咪嘛?
He/She ask I do thing so I help her/him do isn't offence? Is it?
She asked me to do some work for her and I helped her to do the work. Was that an offence?

039 佢 有 二千二 蚊 津貼 俾 我過嚟。
He/She do two thousand two dollar allowance to I.
She gave me an allowance of twenty two hundred dollar.

040 連…… 連 張 姑娘 嗰份 都 俾埋 我過嚟。
Even . . . even Cheung Ms 's share too give to I.
She even gave the share of Ms. Cheung to me.

041 以前 我 得 一半 咋嚟。
Before I get one half only.
Before that I only got half of the allowance.

042 咁 幫 佢 做 多 啲嘢 咁 又 又 又 點樣 唔 啱呢?
So help him/her do extra thing so then then then why not right?
What's wrong when I helped her to do some extra work?

043 我 又 唔 明。 我 唔 明喎。
I too not understand. I not understand.
I don't understand. I don't understand.

044 我 都 直到 依家 我 都 唔 明 你 究竟係 問 乜嘢, 做 乜嘢。
I even till now I even not understand you really ask what, do what.
Even now, I don't understand what really you are asking, what you are doing.

045 喺 我 讀咗 三 年 書 啫。
Well I study three year book only.
OK, I went to school for three years only.

046 最…… 升咗 三 年級 我 已經 無得 讀喇 係 大陸。
The most . . . promote to third grade I already not able study in Mainland.
I quit school at Grade 3 in the Mainland.

047 落 嚟 捱 世界 吖。
Down come suffer world, ah.
I came down here to work my butt off to earn my living.

048 我 係 香港 捱到 今時 今日。 拍枱
I in Hong Kong suffer till this time this day. [hand slapping the table]
I've worked my butt off in Hong Kong until this very day. [hand slapping the table]

049 係咪 要 咁樣嚟 對 我 先?
Is that need so treat I first?
Is that your way of treating me?

050 Judge: 嗯。
Hmm.
Hmm.

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051 Witness: 哭 我 做咗 幾 十年嘢， 你 想 問 乜先?
[sobbing] I worked few decades, you want to ask what?
[sobbing] I've worked for several decades. What do you want to ask?

052 Counsel: 法官 閣下， 我 唔 知 係咪 需要 俾 呢個 時間 俾 證人…
(Judge your honor, I not know if need to this time to witness. . .. . .)
(Your Honor, I wonder if we should give some time to the witness to . . .)

053 Witness: （我 同 你 講， 我 俾 呢個 社會呢， 我 話俾 你 聽…）
(I with you tell, I give this society, I tell you hear . . .. . .)
(I tell you, I have given this society; I tell you. . .)

054 Counsel: 法官 閣下， 我哋 或者 稍為小休， 小休 一兩個字吖。 係。
Judge Your honor, we perhaps little rest, little rest five ten minutes. Okay.
Your Honor, perhaps we should take a short break of five, ten minutes. Yeah.

055 Witness: 我 係 香 港 做咗 四十 幾 年 嘢。
I in Hong Kong did forty some years work.
I've worked in Hong Kong for forty-odd years.

056 我 係咪 要有 咁嘅 懲罰?
I do or don't need such punishment?
Do I deserve this kind of punishment?

057 哭 咁 問， 咁 問， 講 極 都係 咁 問。
[sobbing] keep ask, keep ask, say whatever still keep ask.
[sobbing] You keep asking me this, you keep asking me this, whatever I said you keep asking me this.

058 你 問 乜嘢 先得咯。
You ask what? Really.
What are you really asking?

( ) = people are speaking simultaneously

The episode provides an example of how Cantonese language practices, from the standpoint of formalism, at times present a serious problem when the rules that give shape to the role differentiation required for cross-examination completely break down. Interactionally speaking, what goes without saying in English-language trials—the settling down of interactional turns into an ongoing question-and-answer sequence, the domination of counsel in the topics cross-examined, the peeling apart of gaps and holes in a witness's testimony—become practices that are highly contested by the witness involved. In the beginning of the exchange, Tam said she did what the factory accountant told her to do and that as an uneducated factory worker, she did not know whether it was legal or not. Tam then related her experience in the courtroom to her 40 years of experience as a factory worker in Hong Kong. Tam's outburst, intense and disruptive, was however at once familiar and formulaic. It resembled a well-known speech act in China known as "speaking bitterness" (訴苦 [sou3 fu2]). "Speaking bitterness" as an oral performance has its roots in traditional

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Chinese village culture; it was radically reworked in China during Mao's era to adapt the Marxist theory of revolution to the essentially agrarian context of China (Anagnost 1997:30; Hinton 1966). In Hong Kong, stripped of the Maoist lexicon of class antagonism, it is politically less mobilizing but remains culturally potent. It is very much a weapon of the weak; it is often used by members of the working class, especially the elder generations, in a bittersweet way to refer to the hardships they have suffered in their lives.

Here, Tam was enmeshing her challenge to Tong's questions with the telling of her bitter life story. In fact, her challenge acquired legitimacy precisely because of its enmeshment within her life story. By deictically shifting from the here-and-now of the cross-examination to the then-and-there of her life as a factory worker, Tam moved the narrative focus from the present to the past.[9] The shift is easy to identify in Cantonese and can be picked up quite easily from the English translation of the excerpt, since in Cantonese the way a speaker facilitates a deictic shift is done not through grammatical indexes (for example, by changing tense) but through explicit lexicalization. Tam told her young questioner and the judge that she only received three years of formal education and came to Hong Kong to 捱世界 [ngaai4 sai3 gaai3], i.e., to labor to make a living, or more literally, to "suffer the world." By "speaking bitterness" to the judge and the opposing counsel, Tam displayed to everyone in the courtroom, including the women workers in the audience, the social power conferred to her as a hardworking, albeit uneducated, elderly person in a Chinese society, who pulled herself up by her bootstraps and contributed to society along the way. This social power enabled her to reflexively question what was going on during the cross-examination. It was a form of metapragmatic commentary on her role in the cross-examination process.

The moral message that undermined the institutional legitimacy of cross-examination was loud and clear—that she was doubted and cross-examined by two young lawyers was already a punishment she did not deserve, after 40 years of hard work in Hong Kong (Lines 048–49)! This was a powerful speech act, partly because it was made in a society where the Confucian virtue of

[9] Deictic or indexical expressions are expressions that depend on the context of an utterance for their meanings. For example, the deictic *tomorrow* refers to the next day after the day when the utterance is made. By the same token, words such as *this* and *that* are deictic where the contrast between them is measured in terms of nearness to or distance from the speaker. Indeed, tense and demonstratives are both deictic categories that allow the speaker to locate events described in times and places remote from the here and now of the utterance itself (Lyons 1995; Kearns 2000).

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reverence for the elderly still commands symbolic power, partly because it was made in a society where being tagged as a defendant in a lawsuit is enough to be considered a "bitter" and "shameful" experience, but also because, for many working-class people who are familiar with how Cantonese is used in the society, it harked back to many memorable instances of "speaking bitterness" in the society of Hong Kong. Tam's performance gave her a poetic license to momentarily ignore the rules of the court, even though the rules here are purportedly the same as the rules in the English courtroom we saw earlier. The judge could have demanded that Tam restrict herself to answering the question, but for some reason he decided to allow Tam to let it all out, so to speak.

Like their counterparts in Western common law jurisdictions (Greenhouse et al. 1994:140), court regulars and legal professionals in Hong Kong view rants such as Tam's as "silly," "irrelevant," and "hollow" posing. Tong, for example, rolled his eyes in disbelief during Tam's outburst. It is no surprise that Tong and other counsel reacted in such a way. To them, the proper function of testifying was to make statements; in other words, to describe, but not to perform. But such a simple distinction between description and performance, fact and opinion, relevancy and irrelevancy, does not adequately capture what someone like Tam actually did. Tam did, after all, say that she filled out the tax form herself (Lines 037–038), in ways that might indicate she was an employer of the workers. That "statement," however, was so deeply embedded in the act of "speaking bitterness" that it did not come across as a "statement" to the court at all. It is also clear that Tam did not see herself as merely "commenting" ("These are all facts"; Line 16). The emotional climax was capped by the performance of a formulaic "poisonous oath," to swear, in the most solemn and deadliest way that she knew, to the truth of what she said. ("If I lie, I tell you, may heaven and earth destroy me, may I die without a place to bury my body"; Lines 017–019). This kind of performative colloquialism draws its authority from recognizable linguistic practices from outside the legal system (needless to say, there is no "poisonous oath" in the common law of Hong Kong). Hence, Tam's utterance of the "poisonous oath" while she was *already* under legal oath inevitably undercut the authority of an adversarial trial. From her perspective, she was telling the truth *in her own way*, not the way prescribed by the formal rules of the court. I interviewed Tam right after that day. She said she felt mistreated by the legal system, and she said that she was an elderly woman who should be better treated by the society of Hong Kong. Even though she did not use the term *speaking bitterness* in Chinese, she said she wanted to tell the court her life to show why she deserved to be treated much better.

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The "Universality" of Statement-Making

In a posthumously published article comparing Ilongot speech acts and speech act theory in philosophy, the late anthropologist Michelle Z. Rosaldo (1982) lamented how famed linguistic philosopher John L. Austin (1962), in accounting for the conventional nature of speech acts, relied too narrowly on institutional rules and constraints. Subsequent speech act theorists (Rosaldo named Searle in particular), when examining linguistic actions outside of specific institutional contexts, have tended to view familiar acts of speech not primarily as social facts, but as "the embodiments of universal goals, beliefs, and needs possessed by individuated speakers" (Rosaldo 1982:211). Consequently, more recent developments in speech act theory may have failed to stress the connections between forms of social life and forms of meaning. Searle, for example, in a later book, explained institutional rules and constraints solely on the basis of collective intentionality (1995:79 and following). What the present study shows is that, even in an institutional setting with clearly intended rules and constraints, social agents do, as Rosaldo suggested, through their use of language "implicate their understanding of the world in which they live" (1982:227). It is not that Cantonese-speaking litigants in Hong Kong do not know how to make legal statements; in fact, they routinely do so when appearing in English-language trials. Rather, "statements" in Cantonese trials are often inseparable from other speech acts that litigants perform when cross-examined in Cantonese. The use of Cantonese allows litigants—and sometimes counsel and judges as well—to react metapragmatically to adversarial trials in complex ways. Litigants invest their language practices with a sense of playfulness or indignation not found in English-language trials. In this way, local cultural practices enter the supposedly formalistic legal space through the back door of language usage. When litigants resist the rigid format of cross-examination, they do so through the familiar tropes found in local Cantonese conversation. The findings of the present study therefore suggest that the adversarial trial, despite its putative universality, should better be approached as a culturally specific form of practical intelligence derived to achieve certain practical goals (Burns 2007).

To anyone interested in legal language, the irony of the bilingual common law in Hong Kong is too rich to be overlooked. In colonial times, it was precisely the *outsiderhood* of English in relation to the local society upon which the guarded space of formality of common law had rested. As I have shown, courtroom interactions subscribe to a different set of pragmatic norms and rules—practices that would be considered pragmatic violations in ordinary conversation are allowed and tolerated in cross-examination (for

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example, counsel can resort to various forms of discrediting devices). English in Hong Kong, as a functionally specific language, precisely because of its relative absence in local daily life, becomes the ideal medium to create the sense of aloofness and authority required by the common law. Yet today, it is in turn the *outsider* status of Cantonese in relation to the legal space that brings the clamoring voice of the local into the courtroom. Cantonese courtrooms bristle with moral narratives and performative word plays, all playing a part to undermine the formalistic structure of the old rules. This study therefore echoes the call that Richland (2005, 2008) made in his work on Hopi tribal courts; by studying the ethno-practices and ideologies that inform people about *what* to do and *how* to do it in postcolonial Anglo American–style institutions, researchers can gain unique insights into the complex ways in which these supposedly global legal practices are locally reconstituted. Attending to the dialectics between metapragmatics and pragmatics therefore opens up a new way of understanding the role of language in the legal process, one that is promising in its suggestions of how linguistic practices define relationships between the legal and the social.

Finally, the present study also contributes to an emerging literature on legal consciousness that seeks to "de-center" the law. While this article is, on the face of it, a study of the "center" (i.e., traditional courtrooms), it challenges the popular assumption, shared even sometimes among law and society scholars, that the law is relatively "safe" at the center. If the discourse of legality is a culture practice that relies on or invokes "commonplace schemas of everyday life" (Ewick & Silbey 1998:17), then the present study offers a unique vantage point to examine the social underpinnings of a seemingly self-enclosed, autonomous institution. My study of Hong Kong's common law system, arguably the most formalistic legal system in East Asia, suggests that the maintenance of a "center" is an effortful exercise, a process whose workings should not escape attention. It suggests that even the so-called center of a formalist legal system, that seemingly unquestionable coherence of legal formalism, in fact rests on a foundation that is socially and historically specific—in the case of Hong Kong, that sociolinguistic foundation can be rendered visible through a grounded comparison of the courtrooms where English and Cantonese are respectively used.

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