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Review

Common Law in an Uncommon Courtroom

Eva N. S. Ng (2018)

John Benjamins pp 373

Reviewed by Kwai Hang Ng

Court interpreters are the unsung heroes of the judicial system of Hong Kong. Back in the colonial days, court interpreters were ever-present. I once described Hong Kong as one of the most 'interpreted' systems in the world (Ng 2009). For many jurisdictions, court interpreters fulfil the needs of the linguistic minorities. They appear occasionally in courts. Hong Kong was different. English was the trusted legal language. When the court chose to conduct business in English, most of the parties relied on an interpreter to communicate.

Over two decades since the eclipse of British rule, what is the status of English in the courts of Hong Kong? Do court interpreters remain a fixture in the Hong Kong court? How has the work of court interpreters changed over time? Eva Ng's new book offers an in-depth update of the linguistic landscape of the Hong Kong court that is empirically rich and theoretically wide ranging. Cantonese is now predominantly used in the Magistrates' Court and the District Court. But English retains a strong presence in the Court of First Instance, where the most serious criminal cases are tried. In 2017, over 70 per cent of the criminal trials there were conducted in English. Court interpreters remain highly visible, interpreting Cantonese to English and vice versa.

The book begins by first describing the history of court interpreting in Hong Kong. Court interpreters have been an integral component of the colonial legal

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system since the beginning. In fact, the system could not have functioned without them. But the professionalisation of court interpreters has been hampered by low pay and dim career prospects. The best and brightest in the field aspire to become simultaneous interpreters.

The bulk of the book then analyses the unique challenges presented by the 'uncommon' linguistic situation of Hong Kong. It addresses the intriguing dynamics of interpreted trials in Hong Kong, as parties traverse between Cantonese and English (and in one example, Mandarin). It is a complicated linguistic landscape that defies any simple characterisation. Admittedly, there are still judges and counsel who speak and understand English alone, but more local counsel and judges are native Cantonese speakers who use English professionally. Younger locals learned English in primary and secondary schools, though most feel more comfortable speaking in Cantonese. The presence of the bilingual and partially bilingual individuals in the court, Ng argues, subjects court interpreters to a level of scrutiny that their colonial predecessors had not experienced. In some cases, interpreters were singled out for inaccuracies. In other cases, their performances were criticised. One might say that heightened scrutiny, though hard for struggling interpreters, should promote better standards. Ng suggests that this is not necessarily the case. Interpreting in a courtroom in which many speak both languages risks treading on particular linguistic landmines. As Ng also candidly points out, some local counsel, while professionally bilingual, suffer from pronunciation problems and poor word choices. Their own struggles with English make court interpretation in Hong Kong often fraught with peril.

Ng bases her analyses on over 111 hours of transcripts produced from the official audio recordings. She unlocks a treasure trove of examples of live courtroom interactions. The episodes she analysed are selected from nine criminal trials. The examples are at once interesting and disconcerting. Some of the problems Ng discusses are well known among scholars in interpreting studies. One example is related to polysemy – the association of one word with multiple meanings. In a rape case, the defendant mentioned the Cantonese word *saam1* 衫 in his testimony. Opposing parties jockey for their preferred meaning by taking advantage of the ambiguity of the word, as it could mean 'garment' in general or specifically 'upper garment', and the credibility of the defendant's testimony turned on which was meant.

Other examples give an unflattering portrait of the state of court interpreting and, more broadly, the level of spoken English in Hong Kong. In one case, a court interpreter translated 'aggrieved' as *san1fu2* 辛苦, meaning 'hard' or 'tired'. In another case, 'wet eyes' in English was interpreted as 'red eyes' in Cantonese (Ng believes that this might have to do with the English pronunciation of the local counsel). There are other grammatical glitches that Ng, as a teacher of court interpreting, identifies and picks apart.

Ng also reveals the struggles of some local expert witnesses testifying in English. In a chapter that centres on the testimonies given by a group of medical doctors, Ng exposes the problems of communication created by a lack of command in the language. Two doctors apologised profusely as they did not understand the questions raised by counsel when cross-examined. Ng attributes the ill-advised decision to testify in English to personal vanity. Local professionals such as doctors testify in English because of face, she argues. It is tempting to see professionals testifying in English to save face. But face is just the surface psychology of the deep-rooted power asymmetry between English and Cantonese. I interviewed solicitors and barristers in the 2000s. Back then, some told me that they preferred expert witnesses such as doctors and handwriting experts who felt comfortable to testify in English. They believed English testimonies conferred more authority. These society-wide beliefs about the relative prestige of English over Cantonese run deep and cannot be entirely explained as a matter of face.

The plight of poor English is once again front and centre in the chapter on Chinese jurors. Ng refers to the case *Lai She Hung v. HKSAR 2005* in which a conviction was overturned on the basis of the jury's apparent lack of understanding of the English proceedings. It was a startling example. The foreman of the jury, as the transcript indicates, did not seem to understand the questions asked by the judge in English. It was because of the jury foreman's inability to understand the judge that the conviction was later overturned on appeal.

A former court interpreter, Ng advocates for clarity and accuracy in interpreting. It is evident that she subscribes to the belief that court interpreters should serve as conduits and nothing more. She identifies the intervention created by interpreters as they seek confirmation, clarification and further information from witnesses, and for the most part regards these as slipups that are to be avoided. Hence, interventions from interpreters, whether they are to seek clarification from a witness or to provide unsolicited information, are unprofessional. Extrapolating from Berk-Seligson's (2002) findings in her experiment with mock jurors, Ng argues that interpreter interruptions of witnesses could undermine their credibility for jurors. She prescribes the same caution against interventions by judges and counsel.

Ng also cautions against the shift from first person interpreting to third person interpreting that court interpreters sometimes undertake. She explains that interpreters feel unease to assume the voice of powerful participants such as judges and counsel in court. They shift to reported speech (e.g., Interpreter: 'The judge just said …') to distance themselves from the voice of power. Ng conducted an online questionnaire with 25 court interpreters, and the responses, as far as I can make out, seem to offer mixed and limited support for her thesis that court interpreters do not want to associate with the powerful in the courtroom. In my book (Ng 2009) I also addressed the topic of deictic shifts by Hong Kong inter-

preters. I came to a different conclusion. Court interpreters are one of the regulars in the courtroom. They participate in the adversarial trial with a definite role to play. Above all, they share the same goal with judges and counsel in an important regard – to get witnesses to testify within the format that defines an adversarial trial. My institutionalist analysis suggests that the shift to third person interpreting is a performative act to carry out the 'good cop, bad cop' routine.

Ng displays a willingness to incorporate the work of other disciplines, including linguistic philosophy, sociolinguistics and sociology to broaden her intellectual horizons. She presents concepts and ideas in clear, accessible language. Much as I applaud the effort, her eclectic appropriation is not without its problems. Some of the work she draws on is less enamoured of the prescriptive model of language she upholds. In some places Ng's writing betrays a lack of understanding of the concepts she borrows. A case in point is her use of Paul Grice's concept of *flouting*. Ng uses the Gricean term *flouting* to mean 'deviating'. She writes that counsel may inadvertently 'flout' some of the maxims identified by Grice's Cooperative Principle (e.g., the maxim of manner) and confuse witnesses. But 'flouting a maxim' is a far cry from inadvertently violating a maxim. Flouting is a communicative act that is done openly and intentionally. The whole point is to let the hearer in on the trick, so to speak. It was not the goal of Grice to promote a vision of linguistic puritanism. His goal was to make sense of the pragmatic constraints in daily conversations. Flouting is the crucial mechanism that Grice identifies for speakers to generate conversational implicature. Ng however equates flouting with obfuscating.

Ng presents her transcripts by using Conversation Analysis (CA) transcription symbols. She adopts a system of simplified symbols that I believe most CA scholars would find wanting. It is also difficult to tell if the CA notational symbols are applied consistently to the Cantonese transcripts. In any case, Ng is less concerned with the turn organisations in the talk she analyses. Even when she discusses interpreter-initiated turns in one chapter, she focuses mainly on the different types of reasons for interruptions rather than the sequential ordering structures from which interruptions come into being.

There is a methodological question that I would like to raise as a sociologist. Ng's study is based on her analyses of the official audio recordings of nine criminal trials that took place between 2005 and 2007. The cases came from all three levels of trial courts, including the Magistrates' Court, the District Court and the Court of First Instance in the High Court. How did Ng select the nine trials? Were they randomly picked? Or did Ng select them based on certain knowledge of the trials? I raise the question not so much to impose my disciplinary standards on Ng – that would be unfair – but to probe the nature of her analysis. Is the book an analysis of 'problem cases' that came to her attention as a scholar of

court interpreting? Or is the book a discussion of 'typical cases' that offer a snapshot of interpreted trials in Hong Kong? In my book, I observed civil trials that took place in the Court of First Instance and in the District Court for one year (2001–2002). I observed about 30 trials. I tried to listen to cases presided over by as many judges as possible. Towards the end of my fieldwork, I was kindly given access by the Hong Kong Judiciary to audio recordings of some of the trial sessions I attended. My examples were selected from the trials I observed that year. There were revealing moments that I picked out from my yearlong fieldwork. But they also carried a certain degree of representativeness, at least representative of the trials I was able to observe in person.

In the final chapter of the book, Ng points out that many of the problems she identifies can be addressed if judges, counsel and interpreters are more self-reflective of their language. Plain language goes a long way. She also pleads the case for court interpreters to be duly recognised as team members. They should be given access to case materials and should be rewarded more handsomely to reflect the expertise required of their work. All these are of course sound suggestions. And I hope the powers that be in Hong Kong would take Ng's recommendations seriously. Her recommendations, however, pose a larger question. If the examples she selected are indicative of the everyday reality of the courts, then the status quo is indeed dire – errors and misunderstandings abound, and people play the system to gain an edge in this slow-paced but high-drama format. There are many reasons why English should retain a role in this unique and proud common law system. But as an official trial language? Is it time for English to take a back seat in the trial courts of Hong Kong? At the very least, in serious criminal cases, if the majority of the witnesses testify in Cantonese, shouldn't the defendant be given the choice to pick the language of the trial? This is not just a language issue. When the general standard of English is broadly inadequate for communicative purposes, this becomes a question of due process.

The book seems to carry reprinted materials that appeared in previously published papers. It would have been helpful to other scholars if the author had identified where those materials were originally published.

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