

Ng Kwai Hang, *Common Law in Two Voices: Language, Law & the Post-Colonial Predicament in Hong Kong*, Stanford University Press, Stanford, 2009, xxiii, 328 pp.

## Roderick O'Brien

Shortly before 1997, I was teaching legal English in Wuhan. My students decided to prepare a common law mock trial, using a criminal law setting. Some days into their scripting and preparation, they abandoned the use of English, as their level did not permit them the sophistication of legal argument. From an English-language activity, their mock trial turned into a cultural activity, and they continued enthusiastically in Chinese. They prepared a courtroom where the judge sat high above the cockpit of argument (precariously perched on a pyramid of desks) and wore gowns and even wigs carefully made from loops of cloth, which from a distance looked the real thing. Their script puzzled me. Knowing that common law trials are long and often tedious, I had offered the students a real transcript from a section of a trial. But they did not want this. Instead of the painstaking detail of examination and cross examination from behind the bar table, my students chose to be dramatic, confrontational, and highly expressive. Their knowledge of the common law was of Hong Kong law, filtered through the prism of the Cantonese "police action" movies, which often include a courtroom scene, and which are enormously though unofficially popular in the mainland. For the students, the English language was not essential.

From Professor Ng's perspective on the common law in Hong Kong, English is still essential as the older "voice". This is not every-day English, but a colourless, technical, elitist version of English used by barristers and judges. It serves to reinforce the distance of the courts from ordinary life, and to sustain a juridical formalism which marks the traditional operation of the common law in Hong Kong. And, for Professor Ng, the new post-colonial "voice" is Cantonese. This is not ordinary Chinese. It is a popular, noisy, street-smart, rapidly changing version of Chinese which confuses even overseas-speakers of Cantonese. This new voice lacks courtesy and formality. The new voice carries with it more clearly the popular morality of the user, as compared to the formal technicality of legal English.

This new voice is changing the courts. The clearest example of this change is in the appearance of litigants without lawyers, who work their way through the court system using only Cantonese. This puts additional pressure on those judges, especially at superior court levels, who have sufficient language skills to conduct a case in Cantonese. A special feature of the new voice is the increasing number of vexatious litigants, whose cases have no legal merit, but who want their day in court. The courts have responded by changing their rules to allow judges more power to control or exclude these litigants. Interestingly, they have done this in a traditional way: by adopting the rules of court currently in use in England.

The change in the courts is gradual: Professor Ng identifies a kind of hierarchy of language, where Cantonese is used for the entire conduct of cases in the lower courts, while in the middle levels bi-lingual judges and barristers directly use Cantonese for examination of witnesses and switch to English for legal argument. Then English alone dominates the appellate courts. In this asymmetry, Cantonese becomes the voice of "facts" while English is the voice of "law" – and Professor Ng rightly warns us to be wary of this simplistic distinction, because in the courts fact and law so easily intertwine.

Each of Professor Ng's chapters is worth reading in itself, but not all add much to his core argument. For example, chapter 5, which relates to the use of interpreters, is an entertaining chapter. But it adds nothing to the author's core arguments relating to the post-colonialism and legal formalism in Hong Kong. The chapter could have been written about any jurisdiction where interpreters are used. Hong Kong does not face problems as complex as those in South Africa, where sometimes translation must be into four languages.

Professor Ng sometimes likes to write in a lively manner, departing from the usual academic voice with its own formalism and elitism. Occasionally his usage grates on the reader: for example, he twice uses the expression 'gavel to gavel' to describe the complete court process, yet admits in a footnote that Hong Kong judges do not use a gavel. Perhaps Professor Ng has watched too many police action movies.

There are occasional oddities which might lead the reader to doubt his generalisations. For example, in the text, Professor Ng notes the “absence of grammar books on Cantonese” but tells the reader in a footnote that Stephen Matthews and Virginia Yip published a Cantonese grammar fifteen years ago. And such a modern grammar builds on the work of writers such as Fr Thomas O’Melia who were preparing texts for serious foreign students of Cantonese decades ago.

In recent decades the common law has survived into a variety of post-colonial settings where English is not the dominant language. Geographically close to Hong Kong, similar predicaments are experienced in Malaysia, where Bahasa Malaysia is given superior legal status, but English continues to be widely used, especially in superior courts. Professor Ng’s work will give us insights for other jurisdictions, and perhaps serve as a component in comparative studies.

And the future? That can only dimly be seen, and power to shape that future lies in Beijing, not in Hong Kong. But, to return to Wuhan before 1997, I can recall a conversation with a taxi driver who brought me back to my institute. He assured me that he would rather be on trial before a Hong Kong court than a mainland court. No matter that the proceedings were (then) conducted by an alien judge in a foreign language, he felt more confident that he would be justly treated. Perhaps if the common law can gradually find its Cantonese voice, then it will be more accessible for the development of justice in the whole of the People’s Republic of China.