

The Performative Functions of Interrogative Sentences in American Criminal Case Cross-examination

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Abstract—Speech Act Theory, proposed by J. L. Austin, establishes the opinion that people are performing actions while speaking. According to this theory, the following three acts are generated simultaneously when a speech is uttered: locutionary act, illocutionary act and perlocutionary act. Cross-examination plays a key role in American criminal case hearing, during which many kinds of interrogative sentences will be involved, for example, tag question, declarative question, general question and special question. From the perspective of performative function, the speeches in cross-examination are dialogues rather than conversations, which answer the question “what to ask”, namely the prosecutors and counsels should only ask the questions to which they have already had the answers. Furthermore, the performative functions of each interrogative sentence vary in the degree of closure, doubt, dominant power, de-contextualisation power, leading power and presupposition power. The exploration of performative functions about various interrogative sentences will help prosecutors and counsels to choose the appropriate way to ask.

Keywords—performative function; Speech Act Theory; interrogative sentence; cross-examination; American criminal case

I. INTRODUCTION

People perform actions while speaking, which means that people speeches not only express their minds but also have performative functions, and this is the same case with interrogative sentences. For the same question, there are various interrogative sentences to choose. Rather than arguing which one is correct, it would be better to consider which one is more appropriate. The performative functions of an interrogative sentence may be the best approach of evaluating its appropriateness. In American legal system, cross-examination in criminal case hearing plays a key role in convincing the jury and the judges. Therefore, the performative functions of interrogative sentences in criminal case cross-examination are worth whatsoever painstaking researches. Moreover, achievement of this research will benefit people by promoting their rhetoric skills because a speech, triggered by an appropriate interrogative sentence, will be more likely to lead to a successful communication.

II. SPEECH ACT THEORY AND PERFORMATIVE FUNCTION

J. L. Austin (1911-1960), the British philosopher of language, first proposed in his famous masterpiece *How to do Things with Words* that people were performing actions while speaking, thus this theory is named Speech Act Theory, which is regarded as an important contribution to pragmatic study of language.

According to Speech Act Theory, three acts are generated simultaneously when a speech is uttered. The three acts are defined as follows: locutionary act, illocutionary act, and perlocutionary act.

A. Locutionary Act

A locutionary act is the physical existence of a speech: the words, phrases and clauses uttered by the speaker. It is by this physical existence of a speech that the speaker is able to convey literal meaning by means of syntax, morphology and phonology.

B. Illocutionary Act

Physical existence of a speech itself is definitely not the goal of the very speech. The purpose of every speech is to deliver the intention of the speaker. The act of expressing the speaker’s intention is illocutionary act.

C. Perlocutionary Act

A perlocutionary act is the act triggered by or resulting from the speech; it is the consequence, effectiveness or the change brought about by the utterance.

To sum up, locutionary act means saying something; illocutionary act means, when saying something, the speaker conveys his intention; perlocutionary act means the effectiveness triggered by saying something.

Here is an example. A says “It is so cold here.”[1] The 5 words’ syntax, morphology and phonology constitute a locutionary act. By making such a speech, A actually may want somebody to close the window. This intention of the utterance is an illocutionary act. B gets the illocutionary act

and immediately closes the window, which is the effectiveness or result of the speech, namely a perlocutionary act.

What confuses the followers is that, while J. L. Austin said that we were performing actions while speaking, namely every speech had the power of performative function, he divided language into two groups: performative language and constative language (for example, the speech "The earth is round" is constative language); Correspondingly, language should have two different functions: performative function and constative function. [2] Seemingly, constative function may be independent of performative function. To solve this dilemma or contradiction, J. L. Austin compromised his ideas by saying that, in spite of the classification of constative language and performative language, language is indeed performative, therefore, rather than discussing whether a speech burdens performative function or constative function, it would be more sensible to discuss the appropriateness of the speech.

It is true that, for the same question, there may be a diversity of interrogative sentences which are all correct in syntax, morphology and phonology. However, among others, not all the interrogative sentences are appropriate for the context of the speech, which gives birth to the question of speech appropriateness. According to J. Hillis Miller, the American deconstructionist theorist, for Austin, an ideal performative sentence must be uttered by the right person in the right context with the appropriate words and form of discourse conforming to the preexisting institutions.[2] In spite of the above ideas, Austin failed to present a way of judging appropriateness. Actually, a solution to the judgment of a speech's appropriateness may be found via the very Speech Act Theory by means of considering its performative functions.

III. THE PERFORMATIVE FUNCTIONS OF INTERROGATIVE SENTENCES IN AMERICAN CRIMINAL CASE CROSS-EXAMINATION

It is out of the question for this paper to analyze the performative functions of all kinds of diverse speeches. This paper has to confine its tentacles to the performative functions of interrogative sentences in American criminal case cross-examination.

A. The Reasons for the Above Selection

1) *The research of cross-examination in American criminal case procedure system will benefit those countries of Romano-Germanic legal system:* Cross-examination in American criminal case hearing is the cornerstone of its criminal procedure system and some countries of Romano-Germanic legal system have incorporated or are incorporating this system into their own legal systems. For example, China, a country belonging to Romano-Germanic legal system, contemporarily is keen on borrowing the cross-examination systems in criminal case hearing. Therefore, this research will help them get better prepared what to ask and how to ask in the perspective of linguistics.

2) *American cross-examination in criminal case hearing involves tremendous quantity of dialogues and the corpus is comparatively accessible:* This paper will take the cross-examination questions in the famous case *The People vs. O. J. Simpson* as corpus for this case is not only well-known for its racial factors, historic influence, legendary litigation details but also the superb cross-examination process. The performative functions of those interrogative sentences contribute in a large degree to the eventual success or failure of the case.

3) *The interrogative sentences in American cross-examination can reflect at the best their performative functions:* The appropriate choosing of interrogative sentences in cross-examination is the stepping-stone to the desired answer. In *The People vs. O. J. Simpson*, it is partly owing to the well-applied performative functions of those interrogative sentences, whether those prosecutors and defendant counsels were fully aware of that or not, that makes this case a historic one. Therefore, it is safe to say the very corpus for the research on the performative functions of interrogative sentences lies nowhere but in cross-examination questions.

B. The Interrogative Sentence Patterns in American Criminal Case Cross-examination

The documentary *O.J. Simpson: Made in America* [3] recorded 68 cross-examination dialogues from the processes of examination-in-chief, cross-examination, re-examination and recross-examination.

Among the 68 cross-examination questions, the following interrogative sentences are applied:

- 16 *special questions*, among which there is 1 "whose", 3 "how" (or "how about"), 5 "what", 3 "where", 2 "how many", 1 "why" and 1 "who".
- 26 *general questions*, among others, there are 3 in negative forms.
- 16 *tag questions*, among which 10 are affirmative in the main clause and negative in the tag question while 6 are negative in the main clause and affirmative in the tag question.
- 10 *declarative questions*, among which 10 are in affirmative form while 2 in negative form.

C. The Performative Functions of Interrogative Sentences in Criminal Case Cross-examination

1) *Dialogue rather than conversation:* P. Chappell issued a paper entitled *Engaging Learners: Conversation or Dialogic-driven Pedagogy?* in the international linguistic academic journal *English Language Teaching*, in which he more specifically classified classroom talk into two groups: conversation-driven talk and dialogic-driven talk. According to Chappell, the purpose of dialogue in classroom talk is to transact information and opinion so that little virtual communication is involved, on the contrary, the purpose of

conversation intends to encourage the learner to explore issues and possibilities by enhancing the virtual communication between the teacher and the learner. To put in other words, dialogue, by serving as a tool, allows learners to “talk to learn”, but conversation, by serving as both a tool and a purpose, stimulates learners to “learn to talk and walk”. The going from dialogue to conversation in classroom talk is the “going from talk to walk”.[4] It is understandable that, in order to achieve a successful communication, conversation has to be carried out on the basis of equality,[5] namely, those speech adjacency pairs happening between the parties without equal discourse power are not conversations but dialogues.

Robin Tolmach Lakoff, a professor of linguistics at the University of California, Berkeley, concluded in her book *The Language War* that the struggle between power and status at the end of the 20th century was the struggle for the power of discourse, and the control of language was actually the core foundation of all power. [6]

In criminal case cross-examination, the plaintiff, defendant and witness do not have the right to present questions, on the contrary, they are supposed to answer all the questions proposed. Namely, they do not enjoy the power of discourse initiative. So there is no virtual and equal communication between the questioner and questionee. Therefore those questions leading by whatsoever interrogative sentences will only produce dialogues rather than conversations.

2) *The intention of the interrogative sentences:* Different from the general interrogative sentences, those questions presenting by the interrogative sentences do not intend to ask for information because, before the questionee answers, the questioner already knows the answer. The actual answer-receiver is not the questioner but the jury and the judges. In fact, the following rules in cross-examination are widely accepted: don't ask questions you don't know the answers; cross-examination is to tell the jury the facts of a case that you already know; the process of cross-examination is not an occasion for obtaining new facts from opposing witnesses [7].

3) *Closure, doubt and dominant power:* As discussed above, in American criminal case hearing, the prosecutors and the counsels of the defendants enjoy the unarguable power of discourse initiative, which may also serve as a burden for them because the failure of presenting appropriate questions may lead to the failure of a case. Therefore, what question to ask and how to ask the question are of the same importance. In order to dominate the cross-examination, the questioner has to carefully choose the interrogative sentences to ensure the appropriateness in dominant power.

In *The People vs. O.J. Simpson*, a witness was called by the prosecutors to prove that O. J. Simpson abused his wife, the victim, quite often. In order to throw over the testimony, the counsel of the defendant intended to show the jury that the witness was actually an alcoholic. For the same question,

the counsel may have the following interrogative sentences to choose:

- Tag question: You have a drinking problem, haven't you?
- Negative declarative question: You do not have a drinking problem?
- Affirmative declarative question: You have a drinking problem?
- General question: Do you have a drinking problem?
- Special question: What problem do you have?

Obviously, the questioner wanted to impose strong pressure on the witness to force him to admit that he was an alcoholic and therefore his testimony should not be taken. In order to achieve the above purpose, the performative functions of each interrogative sentence need detailed comparison.

- When the tag question is used, it seemed that the counsel is actually quite sure of the fact that the witness has drinking problem. So the tag question is the closest, suggests least doubt, and thus has a strongest dominant power.
- The declarative question weakens the dominant power because it seems that the questioner is not so sure about the fact concerned with the questionee in drinking problem, therefore it is less close than tag question, suggests more doubt and, correspondingly, enjoys less dominant power.
- Compared the negative declarative question with the affirmative one, it may be found out that the negative form sound weird more or less for it is a marked question with a negative marked component. On the contrary, the affirmative form is an unmarked question for it sounds smooth. According to Shengheng Xu, the marked component adds some features that the corresponding unmarked component does not have. It is because of this negative marked component that the negative declarative question indicates stronger dominant power compared to its affirmative form.[8]
- For general question, it sounds like that the questioner doesn't know the fact of drinking, so it is much less close, and it suggests much more doubt, therefore, it has much less dominant power.
- For the special question, it seems that this question, apparently, indicates nothing about drinking problem. If such an interrogative sentence is used, the questionee may not catch the intention of the questioner and, of course, the questioner will fail in this adjacent pair. So special question has the least dominating power for the lack of closure and doubtless. Special question, according to Meizhen Liao, is a kind of open question, which allows the questionee much flexibility. Special question, based on flexibility, can be more specifically divided into

two branches: narrowly open and widely open.[9] The former consists of the questions leading by “who”, “where”, “which”, “when”, “how many” etc., while the latter includes the questions about “why”, “how” etc. Compared the narrowly open special questions with the widely open special questions, it is easily found that the flexibility allowed by narrowly open special questions is less than that of widely open special questions. Therefore, comparatively, the narrowly open special questions are closer, less doubtful and more dominant.

4) *De-contextualisation power*: Context is the verbal environment including all the factors which may influence the cognition of the utterance. Since Saussure founded modern linguistics, there have been two branches: formalist linguistics with Chomsky as the leader, and functional linguistics with Halliday as its representative.

Formalist linguistics completely excludes context, believing that language is independent of any context and emphasizing language internal syntax structure. According to Chomsky, language is an infinite set of sentences generated by grammar, and grammar is the internal rule system of human language. Therefore, he especially emphasizes the syntactic independence, regarding language as an independent and self-contained formal system even independent of the semantic factors. On the contrary, functional linguistics attaches great importance to the role of context believing that language can only be interpreted by taking its context into consideration. [10]

John Gibbons puts more emphasis on the clarity of legal language. He points out that de-contextualisation is the very approach to convey the intended meaning no more or no less [11]. This is necessarily true that, in order to get a clear fact and definite judgment, some context has to be ignored and some facts have to be isolated from their context.[12] In addition to that, in American criminal hearing, a plaintiff, a defendant or a counsel is more likely to tell the jury the facts favorable for him and even not to mention the adverse facts. De-contextualisation will be a good way to achieve the above purposes. Meizhen Liao gave a very impressive example of de-contextualisation in a case hearing. [13] The dialogue between the counsel and the witness goes as follows:

Counsel: You recognize the driver, didn't you?

Witness: Yes.

Counsel: The driver was Franklin Johns, wasn't he?

Witness: Yes. He drove in a roundabout way and looked drunk.

Counsel: Object, Your Honor. We demand that the words after “Yes” to be omitted and the jury should ignore that.

Judge: Approved. Those words should be ignored.

The questions proposed by corresponding interrogative sentences can be divided into open questions and close questions. The former allows the questionee more room to answer than the latter. Therefore, tag question, general

question and declarative question are close questions for the questionee could only say “Yes” or “No” to the questions and on many occasions he will not be allowed to further explain the context of his answer, otherwise, he may even be reprimanded. Among the interrogative sentences, the de-contextualisation power decreases in the following sequence correspondingly with the increase of openness and doubt, but the decrease of dominant power: tag question, negative declarative question, affirmative declarative question, general question, narrowly open special question and widely open special question.

5) *Leading power and presupposition power*: Leading question, one of the most striking characteristics in American criminal procedure law,[14] refers to the one that already contains the answer in the question and is likely to lead the questionee to give an answer consistent with interrogative statement. Presupposition is the premise of conversational inference that is implied in the dialogue. From the perspective of pragmatics, the leading function of the leading question is constructed on the basis of presupposition. That is to say, according to the three characteristics of pragmatic presupposition, namely, unidirection, subjectivity and concealment, an inquiring counsel, by presupposition, puts his own subjective and unilateral favorable statements to the case in the form of concealment in the inquiry so as to guide the witness to give answers to his presupposition premise.[15]

For example, the counsel of O.J. Simpson asked the witness Mr. Fuhrman, a police officer, the following questions in sequence in order to prove that his testimony was illogic and the evidence was likely to be implanted:

- Didn't it seem strange to you that after 7 and half hours that glove still showed moist, sticky blood, detective Fuhrman?
- That's 7 and half hours. That's enough for blood to dry, isn't it?
- Unless it's encased in plastic or rubber, and evaporation is stopped, wouldn't you agree?

The three questions are all leading questions with the presuppositions that “after 7 and half hours the glove could not show moist, sticky blood”, “7 and half hours is enough for blood to get dry unless it is encased in plastic or rubber and evaporation is stopped”.

According to American criminal case cross-examination rules, leading questions should not be used in examination-in-chief and re-examination unless they are necessary for the opening of a witness's testimony. On the contrary, leading questions are very much allowed in cross-examination and recross-examination. [16]

Among the interrogative sentences involved in *The People vs. O. J. Simpson* 25 questions come from examination-in-chief and re-examination, among which there are 10 special questions (including 3 widely open special questions and 7 narrowly open special questions) and 15 Yes/No questions including tag questions, declarative

questions and general questions. 43 questions come from cross-examination and recross-examination, and among others, there is only 1 narrowly open special question.

Based on the above statistics together with the consideration of the degree of closure, doubt and dominant power of an interrogative sentence, it is safe to draw the following conclusions about the leading power and presupposition power of interrogative sentence. The leading power and presupposition power of interrogative sentence decrease in the following sequence: tag questions, negative declarative question, affirmative declarative question, general question, narrowly open special question and widely open special question.

IV. CONCLUSION

In American criminal case hearing, cross-examination plays a crucial role. What to ask and how to ask both matters. Performative function of Speech Act Theory helps to decide which interrogative sentence pattern should be applied.

Usually when presenting a question in American criminal case cross-examination, there are 4 kinds of interrogative sentences to choose: tag question, declarative question, general question and special question. Before making the decision, it is strongly suggested that performative functions of each interrogative sentence should be explored. For what to ask, since the cross-examination in American criminal case hearing is dialogue rather than conversation and the target of the question is the judge and jury, as a counsel, he should only ask the question to which he already has had the answer. For how to ask, the counsel should consider the following interrogative sentence performative functions: the degree of closure, the degree of doubt, dominant power, de-contextualisation power, leading power and presupposition power. It is believed that, the performative functions of interrogative sentences in American criminal case hearing will benefit prosecutors and counsels to perform their duty better.

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