

**Between Legal and Cultural Colonialism:
The Politics of Legitimation of
Cultural Production in Hong Kong**

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ABSTRACT

Recent cultural studies have gone into different issues like processes of legitimation, institutionalization and professionalization of culture. However, the relationship between legal and cultural studies in a post-colonial discursive context is seldom discussed. The legal system, potentially regulating all social and personal actions, must be regarded as the most powerful cultural institution—and thus the most potent instrument of cultural control—in contemporary society. This paper will use Hong Kong, a British colony, as an example to see how the legal system may selectively legitimate the cultural production of Hong Kong, making it seem hybridized, but actually not free from the gaze of “Englishness.” The common law system of Hong Kong upholds different legal procedures that marginalize indigenous moral values, shape local class relation and thus significantly limit the space of cultural production. To conceive the problem of post/colonialism from between legal and cultural discourse can contribute to a better understanding of the field of Hong Kong cultural production. By going into the complicity between legal and cultural colonialism, this paper tries to let the (im)possibility of the articulation of the discourse of the cultural Other present itself, and hence establish new discursive space to point towards cultural/legal justice *otherwise*.

KEY WORDS

Autonomous/heteronomous principle

Cultural legitimacy

Critical legal studies

Englishness

Hong Kong cultural studies

Interpretive authority

Procedural justice

Reasonableness

Cultural field

Delegitimation

Grand narrative

Hybridity

non est factum

Paralogical legitimation

Violent hierarchies

Introduction

Hong Kong, a British colony situated on the margin of her motherland, is widely believed to prosper since she has established a sound legal system that her mother lacks. Debates about the post-colonial Basic Law system are still under way, and it is often deemed as the crucial factor concerning the future of this brightest jewel on the British crown. But does a legal system spontaneously bring prosperity? Even if the answer is yes, one still has to ask if the legal system will simultaneously secure a certain kind of domination when it brings prosperity. While post-colonial discourse incessantly argues on the undesirable domination of the colonial culture over "independent" post-colony, one must also go into the legal system, often established by the former colonizer, in order to have a clearer view of the overall situation. This is not to say law is not important, of course; it is exactly due to its crucial significance that one cannot afford to see it inadvertently as a neutral, colorblind, class-conflicts-free system.

The history of the conflict between law and justice is almost as long as that of every civilization. The problem posed in *Antigone* has yet to be answered. Whether law points toward justice no one can surely tell, but one must definitely refuse to believe that law is justice. This paper aims at showing how the legal system in Hong Kong may secure different types of cultural colonialism. Legal discourse is a

grand narrative that can effectively disseminate dominant ideologies under its "fair and just" cover. Among other factors, Englishness and the problem of interpretive authority will be examined at length. Legal discourse will be interpreted to demonstrate how it, on the one hand, secures Englishness, and, on the other, disguises the domination of one language/culture over another.

The legal system in Hong Kong is often claimed to be able to do everyone justice; in other words, it often "depoliticizes" disputes. However, if legal discourse can disseminate oppressive ideologies, indigenous cultural production will be severely influenced by the inequalities disguised by a "fair" legal system. The either/or dialectic—high/low art, academic/popular culture, official/unofficial—will silently encroach onto the field of cultural production. This paper will use Hong Kong, a cultural semi-periphery, to see how the legal system may selectively legitimate the cultural production of Hong Kong, making it seem "hybridized," but actually never quite free from the gaze of Englishness. This paper is not designed as a comprehensive account of the relationship of law and culture, nor will it discuss their relationship in great details.¹ It can only be seen as a pilot study of a larger project going into the possibilities of establishing new discursive space in the cultural studies of Hong Kong—pioneering into the field of law and the humanities. We strongly believe that without an overview of the subtle interaction among legal, social and cultural discourses, one can hardly orient oneself in the locus of intervention into post/neo-colonial issues.

Englishness, Violent Hierarchies and Incommensurabilities

Michel Foucault, the most often quoted critic in recent legal studies, points out elsewhere in his career that discourse cannot be detached from power, and, in "Power and Strategies," he clearly notes how law is related to power: law is "an

instrument of power which is at once complex and partial.”²² In Hong Kong, the way law functions as an instrument of power must be most conspicuously revealed in the use of English – the language of the colonizer – as *the* official language. English had been the language of the Hong Kong legal system ever since the colonizers established the courts of Hong Kong in 1843, when Hong Kong was ceded by the Qing empire to Britain. The monopoly of the English language as the language of the court not only alienates Chinese people from the law, it also operates to reinforce/indoctrinate the supremacy of English as the language of the colonizers. Such is made possible by the fact that the law demarcates what the people can do and the ways things are to be done. Given its monopoly of force, legal discourse is accorded the supremacy over all other discourses. As legal discourse is carried out in English, English as the medium of the supreme discourse acquires a status unmatched by the indigenous language of the majority of Hong Kong – Chinese.

As a colony, Hong Kong has “naturally” adopted the common law system of the colonizer. While many believe, and the law itself would like it to be believed, that the legal system is impartial, we set out to deconstruct this myth of impartiality in this section. We will look at how the prioritization of the English language in the legal system has caused what we see as discrimination against those who do not identify themselves with the culture represented by the Englishness of legal discourse. As the editors of the *Post-colonial Studies Reader* state, “the control over language by the imperial centre... remains the most potent instrument of cultural control.”²³ It will be argued that through the monopoly of legal discourse in defining what is fair and just, it in turn dominates the conception of fairness, justice, and even morality. This will subsequently displace the concept of justice in indigenous culture. The domination of the ideologies of the colonized will continuously shape and reshape the social

formation, which will definitely influence the field of cultural production. While we do not intend to conclude whether the present legal system achieves what it claims itself to be, we do not hesitate in pointing out that such colonizing values permeated in the legal system are in turn legitimated by the supreme role of law in our society. These values easily become the dominant values which, in turn, operate to disqualify other conceptions of fairness and justice held by the colonized. We would first use a case of contract law in Hong Kong to illustrate our point.

In the contract law of Hong Kong, as that of Britain, there have long been established a rule known as *non est factum* (not my deed). When this rule is applied, a signatory of a contract will be excused of liability. Generally speaking, this rule can only be pleaded in very stringent circumstances, namely, the signatory being illiterate, weak, etc. What interests us here is the requirement that the signatory is "illiterate." In an English case, for instance, an Englishman signing a German contract, a language of which he had no knowledge, was excused of liability on the ground of *non est factum*. In other words, an English translation of a contract written in foreign language should be supplied, or else the Englishman who did not understand the contract would not be liable. This seems reasonable enough, but a Hong Kong case which was appealed to the Privy Council would illustrate how the internal logic of the legal system (in this case, since the Privy Council, a judicial branch of the House of Lord sitting in Britain, is, legally speaking, Hong Kong's Final Court of Appeal when it is hearing a Hong Kong case, it can be regarded as part of the legal system of Hong Kong) operates to discriminate against people who have no knowledge of the English language.

In the Hong Kong case *Chan Woon-hung v. Associated Bankers Insurance Co. Ltd.*, a proprietor (the appellant) entered into insurance policy with an insurance company (the

respondent).⁴ The terms of the policy were provided in English only. While there were some Chinese translations (a language which the appellant read), they were incomplete and were only about the procedures of what to do when the insurance were to be claimed. One of the ten terms, which was the one in issue, was not translated into Chinese in the contract. The appellant, thus, pleaded *non est factum* for the reason that he did not understand English, and there being no Chinese translation of the term in issue, he should not be held bound by the term in issue. In its first appearance in a lower court (unfortunately it was not mentioned in the Privy Council's judgment which court this was, and a search of the law reports was of no avail) the deputy judge found in favor of the appellant, which meant it was recognized that ignorance of the English language was a ground to raise the plea of *non est factum*. However, this decision was reversed by the Hong Kong Court of Appeal which was sat by the Chief Justice, a local Chinese who speaks both Cantonese and English, and the decision of the Court of Appeal was further affirmed by the Privy Council. We will base our analysis of what we see as grave unfairness to the colonized on the judgment handed down by the Privy Council.

The appeal to the Privy Council was heard in 1992 before five Lords and the judgment was handed down by the Lord Jauncey of Tullichettle. Details of the backgrounds of these five Lords cannot be obtained, but it is believed that none of these five lords had any deep knowledge of the special circumstance of Hong Kong where the language spoken by the majority of the population is Cantonese. The judgment of Lord Jauncey of Tullichettle resolved around the issue of whether it was reasonable to expect the appellant, who was ignorant of the English language, to obtain a Chinese translation of the terms of the insurance policy as he had been in possession of the policy for three years.⁵ The Lords decided that it was reasonable to expect the appellant to obtain a translation of

the policy, and since he failed to do so in three years, the plea of *non est factum* should not be available to him and thus he should be liable for the terms of the insurance policy. Though we do not agree with the decision, we are more interested in deconstructing the way the Privy Council construed the concept of reasonableness in relation to the languages of the colonizer and the colonized.

In this judgment, Lord Jauncey of Tullichettle first decided that a Chinese translation contained in a note attached to the policy written in English was sufficient to discharge the respondent's duty to do "what was reasonably necessary to bring to his attention the continued operation of condition 5," which was the term in issue in this case. The Chinese translation spelt out the following meaning:

For your own protection you are requested to read the Policy and its conditions in order to ascertain that it is in accordance with your intentions, and if it is incorrect, return it immediately for alteration.⁶

Then the Lord continued to decide that:

The respondents had given him (the appellant) the contract, they had drawn his attention in Chinese to the need to read the policy and conditions, they were entitled to assume that if he could not read English, he could *reasonably* obtain a translation.⁷

And thus the respondent lost the case.

It is obvious from this brief description of the case that the concept of reasonableness, a favorite standard of determining things in the common law system, was interpreted in favor of the one who understands English. First, the standard in favor of reasonableness on the side of the respondent was satisfied by merely stating in Chinese that the conditions

should be read. One would definitely question why the standard of reasonableness should not go further to require the respondent to provide a Chinese translation of the whole contract. The only answer we could derive from this line of reasoning of the Lords is that English is *the* superior language and *the* superior language would satisfy the requirement of reasonableness once it has reminded the inferior language users that it is their responsibility to acquaint themselves with *the* superior language. Thus, in this case, the appellant, the user of the inferior language, was found to be unreasonable (marginalized in the scope of "reason") in failing to obtain a Chinese translation. Chinese is "othered," and English is constructed as the subject of legal discourse. Since the Privy Council's decision was an affirmation of the decision of the Court of Appeal in Hong Kong, the composition of which, arguably, was not as "foreign" as that of the Privy Council, it is submitted that the reasons for construing reasonableness in favor of an English speaker is due to internal logic of the legal system itself, rather than the external reasons such as the nationality of the judges adjudicating the case: the internal logic being all the business of the courts is conducted in English, and that no translation from English to Chinese will be provided except in cases where either of the parties to the case does not understand English. As legal discourse is accorded the status of being *the* supreme discourse, this emphasis in the English language, and the way of construing reasonableness around the English language undoubtedly affects the field of class relations (speaking good English is a symbolic cultural capital) which will in turn shape the field of cultural production in Hong Kong.

The above-mentioned internal logic of the legal system in Hong Kong is further elucidated in an English case⁸ concerning whether a businessman who speaks only English was entitled to expect a contract written in German to be fully translated into English. Very similar to the Hong Kong case

discussed above, in this English case only part of the German contract was translated into English, and the crucial term in issue was left out in the translation. Also resolving its decision around reasonableness, the English court found that it was not reasonable to suppose that the Englishman was expected to summon an interpreter and a German lawyer and work through these provisions to find out what they mean.⁹ Therefore, it was held that the Englishman was entitled to plead *non est factum* for it was *unreasonable* to expect him to seek a translation of the German contract. Putting these two cases side by side, we at once find it obvious that there is an internal logic in treating the English language as the superior language in the sense that it is always *reasonable* for an English language user to expect the inferior language user to provide a translation of the inferior's language, but *not vice versa*. This can well be seen as a legitimation of the suppression of articulation of the linguistic Other: let us remember Gayatri Spivak's famous saying "The subaltern cannot speak."¹⁰ Chinese cannot speak and English *is* reason.

Another instance in which the concept of reasonableness comes into play and being affected by the prioritization of Englishness is in jury trials in criminal cases. In all criminal cases the standard of proof is "proof beyond reasonable doubt." All criminal cases dealt with by the High Court will be jury trials. The jury being disposed with the duty of finding the facts of the case has thus to determine whether there exists any reasonable doubt.¹¹ According to S4 of the Jury Ordinance, jurors must have "a knowledge of the English language sufficient to enable him [or her] to understand the evidence of the witnesses, the address of the counsel and the Judge's summing up."¹² Thus, if one speaks English, then, regardless of one's educational background, one is presumed to be able to reasonably determine a complicated case—extremely unreasonable though it sounds. This requirement of knowledge of the English language renders the majority of the Chinese

population not qualified for jury service. This is reflected in the finding of a research on Hong Kong juries.¹³ In the 1987 Common Juror List, Australasian, European and North American expatriates, who accounted for only 2-3% of the population, made up an exceedingly high proportion—one third—of the listed jurors.¹⁴ And, all together, only 143,798 people qualified as jurors, which made up only 2.3% of the whole population.

In a jury trial, after passively listening to the evidence of the witness, the counsel's address and the judge's summing up, the jury will retire in the jury room for deliberation. The main issue for them to decide at that time would be whether they can be satisfied that the prosecution has proved their case beyond reasonable doubt. As one third of potential jurors were Europeans, North Americans and Australasians, who were likely to be conversant only in English, the jury would have to use the English language as the medium to discuss whether there is reasonable doubt in the case. This in turn, we argue, gives the English language the role of being the means to construe reasonableness in criminal cases. (Another problem is that some jurors may be able to comprehend the case, but they may not be able to discuss the case with other jurors in English.)

It is not our contention that a construction of reasonableness dominated by Englishness will necessarily cause unfairness or injustice. We, however, see it as problematic in that it displays the hypocrisy of the claim that the common law system is impartial. As argued in the analysis of the above cases, Englishness often constructs fairness in a way to silence the linguistic other.¹⁵ Chinese is being excluded from legal discourse. At the same time, language is constructed as a means of communication, and, thus it carries no violence towards the linguistic other. This kind of dismissal of reason to legitimate in the name of reason is a kind of Lyotardian "paralogical legitimation."

Meanwhile, it has also been argued that women are being "othered" in legal discourse which legitimates male as the subject.¹⁶ It can be said that there exists a kind of "incommensurability" between the subject and the Other. (The Englishness and Chineseness in our case.) Beside the discrimination of gender, there is also a famous saying that "The peasants do not talk in the courtrooms."¹⁷ Peter Fitzpatrick has accounted for why peasants cannot speak in legal discourse.¹⁸ Likewise, Chinese do not talk in courtrooms. These three different cases can be seen as a mere difference of incommensurabilities of gender, class and race. We deliberately highlight Englishness in the above case since it is particularly acute in a society like Hong Kong—a Chinese community using English as the *official* language and even language of instruction in different levels of education. (The other two factors are almost universal.)

(Un)Fortunately, law is designed to depoliticize this kind of cultural politics. As Thomas Mathiesen well points out, "when conflicts are inescapable in the most public forum, and when this concerns a conflict between interests in which power is applied, *the conflict of interest, and the application of power, is transformed to a conflict of norms.*"¹⁹ The conflict of interest caused by different language backgrounds, will easily be transformed to a conflict of norms: "reasonableness." Moreover, the right to interpret whether a case is reasonable or not cannot but be operated within the medium of English (the application of power). The more unreasonably Englishness applies its power, the harder it tries to narrativize the case with "reason" constructed by it.

The Interpretive Authority

Another line of argument that can be drawn from the above case concerns interpretive authority. It is always a matter of interpretation when we talk about text. Legal text is definitely no exception. As shown in the above-mentioned legal

concept of "reasonable doubt," we can deduce that it leaves generous room for the "strong" interpreter to interpret in favor of the dominant language/culture/ideologies.²⁰ So on top of the problematic Englishness that prevails in the common law system of Hong Kong, we also have to probe into the problem of interpretive authority in order to highlight the operational logic of the grand legal discourse in Hong Kong.

Whether it is "reasonable" or not only the one in power can decide, and at times the powerful interpreter needs no justification to determine something as "reasonable." The dismissal of reason to construct the "reasonableness," as we conceive it, is a way to grant the authority of interpretation to the dominant. However, we must not oversimplify the case and say that a strong interpreter can do whatever he likes. Owen Fiss believes that rules will tell us what to do, and he even calls law a kind of "masked power."²¹ The rules that authorize the strong interpreter will also tell him what to do, so to speak. (Perhaps it is exactly the spirit of law to make it impossible for one to become a dictatorial interpreter—at least on the face of it.) That however does not mean there involves no dominative appropriation. Rules cannot guarantee absolute objectivity of interpretation that Fiss desires. We have already taken pains to show there do involve incommensurabilities constructed by *the* superior language. Concerning this issue, Stanley Fish has a convincing critique of Fiss's point: "no set of rules could be made explicit enough to cover all the possible situations that might emerge in a field of practice."²² In other words, we can say that the rules of interpretation leave generous enough room for the interpreter to interpret the rules (such as the Judge in the contract case mentioned above).

We can further elaborate on interpretive authority by using the debate between Fiss and Fish on the notion of "institutional virtue." On the one hand, Fiss holds a notion that authority is a "mere" exercise of official ideologies. It seems reasonable enough in our discursive context. On the

other, Fish collapses the distinctions of "institutional virtue" and "institutional power" that Fiss uses to secure his arguments.²³ Fiss notes that "... a claim that an individual has a moral duty to obey a judicial interpretation, not because of its particular intellectual authority (i.e., because it is a correct interpretation), but because the judge is part of an authority structure that is good to preserve. This version of the claim of authoritativeness speaks to the individual's conscience and derived from institutional virtue, rather than institutional power."²⁴ Fish believes that the two factors cannot be dichotomized as such. Power is in fact an extension of the standards and norms of "theory of virtue."²⁵ In other words, we cannot tell whether one abides by law due to threat of brute force (like imprisonment or fine) or virtue. Fish holds that immediate compliance and compliance under threat cannot simply be characterized as "the difference between obedience to a principle and obedience to brute force."²⁶ Fish's point is worthwhile citing here:

To put the matter starkly, interpretation is a form of authority, since it is an extension of the prestige and power of an institution; and authority is a form of interpretation, since it is in its operations an application or "reading" of the principles embodied in that *same* institution."

Above all, "interpretive authority" cannot be seen as a mere power "wielded by those who happen to occupy dominant positions in certain political or bureaucratic structures,"²⁸ to borrow Fish's words. Power can be used to construct or define a virtue.

We cite the debate between Fiss and Fish somewhat extensively here as an illustration of our own view towards the case of interpretive authority. The legal system does not crudely exert its power and interpret as it likes, indeed. A

colonizer cannot always point a gun at the head of the colonized to keep them under control. "Grand narrative," in comparison, is a far more effective means to manipulate the colonized. So the legal discourse constructs a kind of rules to depoliticize the hold of interpretive authority by the "strong," and, at the same time, the colonizer will exert its power on the colonized to educate them and make them believe that they must have "virtue" – this virtue and power are in fact two sides of the same coin. Fiss is right in saying that the obedience to law is not a mere obedience to brute force, but an obedience to a so-called "civilized" system of justice. But he misses the point that this obedience is shaped by the dominant as a kind of moral capital since it is used to guarantee a "fair" society. Englishness is rationalized by the interpretive authority as "reason," and the colonized are educated to de-emphasize the prioritization of Englishness in the legal system. The interpretive authority can construct "virtue," and in turn define "reason," "fairness" and "justice" in a depoliticized way.

This kind of operational logic – depoliticizing prioritization of Englishness, – is spontaneously extended to the culture of a society. For instance, playing golf, listening to classical are deemed as cultural capital, in Hong Kong in particular. In fact, it is a grand narrative used to legitimate the colonizer's *high* culture. As a result, in "high" art we can often see the "elegance" of *high* culture as legitimated by Englishness. This is almost self-evident in many cases in Hong Kong Arts Festival or Hong Kong International Film Festival (in which indigenous or Asian programmes are mere decorations at the margins; the main selling points are almost always Western programmes). *Unofficial* views against legal discourse will be subordinated as informal, vulgar, and unreasonable. This violent hierarchy is disguised while the authorization of power is rationalized and depoliticized. Below is an analysis of the field of Hong Kong cultural production to account for this ideology.

The Field of Cultural Production in Hong Kong

The legitimation of different oppressive ideologies by legal discourse as outlined above will significantly determine the field of cultural production in Hong Kong, and the production of Hong Kong culture in turn authorizes the authority of law. Pierre Bourdieu writes, "The struggle in the field of cultural production over the imposition of the legitimate mode of cultural production is inseparable from the struggle within the dominant class to impose the dominant principle of domination."²⁹ The dominant principle of domination is in turn inseparable from the legitimation from the grand legal discourse. We will first go into the field of cultural production in Hong Kong to show how this production authorizes the authority which in turn authorizes the cultural products. The concept of "field" used here is basically derived from Bourdieu. In short, a "field" can be defined as "structured space with its own laws of functioning," and "each field is relatively autonomous but structurally homologous with the others."³⁰ (But we will later show that the "own" laws may not be truly one's own.)

First of all, the influence of the dominant ideologies secured by legal discourse on the cultural field can be seen conspicuously in the shaping of class relations. The legal system provides a generous shelter for the capitalist machine which directly shapes the class relations in society. The upper class, however, often finds it necessary to have sort of cultural capital to "refine" themselves. It goes without saying that in a colony like Hong Kong, Englishness is a guarantee of one's prestigious cultural identity. As Englishness is one of the most important factors in determining social status, a common strategy to climb up the social/class ladder is to refine oneself with the culture of the colonizer. English/Western culture is definitely a very good cultural capital for one to upgrade one's own class. In short, Englishness is a kind of cultural legitimacy that the colonized compete for. The culture of the

colonizer will hence be seen as a symbol of taste and quality. In Hong Kong, time was once when "English" or "foreign" was put on a par with good taste and quality. As time goes by, the fetishization of commodities dominates the local consumers, and, as expounded by Jean Baudrillard, people are enthralled by signs, and thus lose themselves in the consumption of commodities.³¹ The fetishization of commodities can still be seen as a very potent instrument to further stabilize the incommensurabilities secured by Englishness.

This myth of high culture is also secured by the education system of Hong Kong. "Education is perhaps the most insidious and in some ways the most cryptic of colonialist survivals, older systems now passing, sometimes imperceptibly, into neo-colonialist configurations."³² The former elitist education of the Colony has successfully established an upper class of Chinese who speaks good English: English is thus paralleled with the upper class in the Colony. (Not too long ago, you had to be good at English, or else you would surely fail in the competition for the very limited number of spaces in universities.) The Colony also establishes a system using English as the medium of instruction, and thus hinders the free expression of one's thoughts. The supremacy of English as the official language will make the students believe that they are inferior since they cannot express themselves in English – and this is often narrated as an inability to think independently. The student as a free and active articulating agent is seriously paralyzed, making them either refuse to speak English to express themselves or eagerly expose themselves to English culture in order to equip themselves with better English. This in turn gives English culture a "high" look (for instance, popular movies like *Ghost* and best sellers like *Forrest Gump* are received as high culture in Hong Kong). On the other hand, "the educational system contributes to the maintenance of a disjunction between culture produced by the field of production (involving categories of perception related

to new cultural products) and scholastic culture; the latter is 'routinized' and rationalized by – and in view of – its being inculcated."³⁸ This further creates in the mass audience a fear toward scholastic culture (due to self-subalternization), and ironically, at the same time, the inveterate consumers of indigenous popular culture will look down upon their own culture.

One may argue that although the heteronomous field of Hong Kong cultural production is dominated by the factors of economic success and social status, an operational logic homologous with the field of economy and class relations, the "autonomous" principle of hierarchization may not be so.³⁹ Bourdieu considers the field of cultural production as an "economic world reversed" – as denoted by the subtitle of his essay. In other words, economic success in the literary field is a hindrance to winning prestige since the cultural field can operate with its own logic. At a certain discursive level, this situation seems applicable to the situation of Hong Kong. In the film industry of Hong Kong, Wong Kar Wai's works are widely known as "artistic" films, but in economic terms, most of his films are box office failures. *The Days of Being Wild* must be a painful experience for the investor. The cast is almost unprecedentedly big in Hong Kong films, but the way Wong hits such a box office with such a cast is itself legendary. In contrast, Wong Jing is a director with a sure card in terms of box office. He however is commonly believed as a "cheap" (implying low taste in indigenous Cantonese) director, the dominated pole in class relation in terms of taste. The two Wongs in Hong Kong film industry is a perfect example of Bourdieu's "winner-loses logic" of the field of cultural production, and they are often compared to represent the two poles of artistic and commercial films in Hong Kong. Academic/artistic and popular/commercial cultures are polarized, and the latter is shaped as "cheap" in order to highlight the "autonomous" aspect of the consecrated works.

It also gives us the illusion that "popular/commercial" works are dominated by economic and other social factors, while academic/artistic works operate with the "autonomous" principle of hierarchization and are thus free from other dominations like class relations. On the face of it, the "autonomous" cultural production seems to fulfill its "own" logic as a field. Actually it is *not* the case. Such a dangerous dichotomization will shield us from the actual relationship between cultural production and the field of power.³⁵ We cannot afford to stop at the point of seeing the "autonomous" and the "heteronomous" principles of hierarchizations as opposite to each other. In the special situation of Hong Kong, the two may be existing in complicity with each other. (In fact, the problem brought forth by Bourdieu's formulation of the field of cultural production, and the immanent problematic dichotomized situation in Hong Kong film industry must be further examined.³⁶)

Meanwhile, it almost goes without saying that the "academy" and the so-called "high" art give the illusion that Hong Kong culture can be and have been autonomous. We are not saying that Hong Kong culture cannot be autonomous, but autonomy will never be a free gift, granted to you simply due to your naivete. We can say the so-called "autonomous" side of the field of cultural production is being dominated by other factors. "Theory" – the other side of the same coin of Englishness – is almost beyond doubt the first and foremost one. This superiority, however, is disguised by the interpretive authority as "reasonable" procedures. Back to the example just mentioned above, we can see the discussion centered on Wong Kar Wai a very good topic for the academia. The simple reason is that while his works mask themselves with grand Theory, they, albeit not having a box office record as promising as Wong Jing, still attract lots of "popular" audience. The grand Theory can exercise its mastery power over popular culture and the hierarchy of Theory over popular culture is successfully disseminated. The myth of articulation is being con-

structed: the closer to Theory the better you speak. Meanwhile, the underlying hostility toward the academia and Theory can be erased since the seeming subject is popular culture. While the "heteronomous" aspect being dominated by class relations or/and economic principles, the "autonomous" aspect has to rely upon the grand Theory to be autonomous. Above all, both the heteronomous and autonomous aspects of the cultural field will be determined by the dominant narrative. (The legitimation of both aspects – if we still adopt a dichotomy as such – legitimates the interpretive authority of Theory, and this operational logic is in fact backed up by the power field.) Thus the cultural field is dichotomized, the use of Theory is depoliticized as "natural" and "reasonable," and such a discursive situation severely hinders the cultural production in Hong Kong.

We wish to further elaborate on the cultural field by relating Englishness to the advent of post-colonial theory in recent critical discourse as an example. In post-colonial discourse, it is widely discussed that "hybridity" can be a kind of Bhabhaean "mimicry" – an intervention strategy of the colonized to spectacularly resist the colonizer.³⁷ Quentin Lee even claims that the hybridity of literate subculture is the only hope for Hong Kong culture to find its own articulation.³⁸ On the face of it, "hybridity" can also problematize the two poles of "heteronomous" and "autonomous" principles of the cultural field, but, as shown in the above analysis of the legal discourse, one must refuse to hold that a simple "hybridity" can question "Englishness." When legal discourse depoliticizes the use of language as a means of the application of power, we have already seen how it grants Englishness a "neutral" role of communicating procedural justice. In Hong Kong, any "hybridity" can merely operate in the seemingly neutral medium of Englishness. Harmless "hybridity" can of course find its articulation. For instance, speaking Mandarin with a typical Cantonese accent can be a kind of "mimicry." This can

only be seen, however, as possible only since it operates with the cultural capital legitimated by the colonizing Western culture: Hong Kong being the cultural center, and the Mainland is merely something that can be laughed at (when it is isolated from the political field of power). In the case of English, however, one cannot but agree that speaking English with a typical Cantonese accent is a symbol of inferiority and even indecency. "Hybridity" cannot be isolated from the class relations that shape the cultural field. In other words, when we mention "hybridity" in Hong Kong discourse, we cannot forget our discourse is operating in the "transparent" and "legitimate" medium of Englishness.

Besides, the use of Theory in popular culture is also a case of how *the grand academy* enters popular discourse. It must be penetratingly political and ideological. As reflected by the above legal case about reasonableness, it is absolutely a matter of interpretation, but the struggle for interpretive authority (that is to say, using different Theories to legitimate one's own interpretation) often operates under the mask of Theory, Englishness and other grand narratives in the manner as warned of by Lyotard.

Cultural Legitimacy

Lyotard writes, "the authorization authorizes the authority."³⁹ The legitimation of Englishness/Theory grants it the interpretive authority to set up the rules of academic studies, and can thus shape the field of cultural production by influencing the position-takings in the field. The competition for cultural legitimacy legitimates the dominant's legitimation. According to Bourdieu, the consecration of culturally legitimate works (like Wong Kar Wai's works) involves different agents of legitimation: "specific institutions such as academics, museums, learned societies and the educational system" and not-fully-institutionalized organizations such as "literary

circles, critical circles, salons, and small groups surrounding a famous author or associating with a publisher, review or a literary or artistic magazine.⁴⁰ To win cultural legitimacy there are lots of procedures you must go through. If you do not follow the "legitimate" procedures, you will be silenced. (You have to take the right position, or else you cannot articulate.) In this special context, the recent rise of Hong Kong cultural studies can be seen in a different light.

Recently there have been numerous works done on Hong Kong culture, and some would see it as the bloom of Hong Kong cultural studies.⁴¹ The rise of post-colonial discourse in the discursive center must be the most important factor contributing to this rise, and Hong Kong culture is often considered as an "Other," or even doubly othered (between two colonizers).⁴² Therefore, Hong Kong culture is a very good topic authorized by the dominant critical discourse. Anyhow, we should not forget the study of Hong Kong culture is at once consecrated by different agents: the education system, the cultural policy of the government, literacy circles, research groups and so on. The recent Hong Kong cultural studies, however, have tried hard to disguise their own position-taking in the field and their competition for cultural legitimacy. The grand narratives surfaced in these narratives merely signal the need to reconsider our culture in a post-colonial context. The spirit of legal discourse—pointing towards justice—is reproduced here in a Hong Kong culture studies narrative: we have to do justice to "other" cultures. (Unfortunately, we simply must follow the legitimate procedures to do justice to the Other; that is to say, to use grand Theory to analyze the Other.) However, as reflected by the analysis of the legal discourse above, we think we have to be aware of privileging ourselves as the Other in the post-colonial debate. Being an "other," a hybrid or a dominated may only be a means to possess "a dominated weak power" which authorizes someone to be "charged with preaching and praying, with saying the

true and the good, with consecrating or condemning by speech.⁴³ To privilege oneself as the Other may be a good strategy to compete for cultural legitimacy conferred upon by the dominant, although it will restabilize the violent hierarchy between the master and the slave. We ought to go into the position-taking in the field to examine the legitimation of the Hong Kong cultural studies: the different legitimating agents, the discursive center, the political centers (China and Britain/the West), the economical center, and the actual struggling for cultural legitimacy in the field.⁴⁴ This cultural legitimacy is closely related to the struggling for *the* authority of interpretation. In light of the above example on legal discourse, we are afraid that we cannot but argue on very secondary issue, since we do not go deep enough into the interpretive authority which is reserved for the grand Theory of the discursive center. The audience is simply trained to believe in the myth of procedural justice secured by legal discourse: by sticking to the legitimate procedures we can point toward justice. To go into the operation of the field can perhaps highlight the way the grand Hong Kong cultural studies narrative disguises the true relationship between the field of cultural production and the field of power. Without such a critique Hong Kong culture will only become another discursive commodity prepared for the consumption of the discursive center and the legitimation of the power.

Let us end this section with Bourdieu's words,

If the relations which make the cultural field into a field of (intellectual, artistic or scientific) position-takings only reveal their meaning and function in the light of the relations among cultural subjects who are holding specific positions in this field, it is because intellectual or artistic position-taking are also always semi-conscious strategies in a game in which the conquest of cultural legitimacy and of the concomitant power of legitimate

symbolic violence is at stake. To claim to be able to discover the entire truth of the cultural field within that field is to transfer the objective relations between different positions in the field of cultural production into the heaven of logical and semiological relations of opposition and homology. Moreover, it is to do away with the question of the relationship between this "positional" field and the cultural field; in other words, it is to ignore the question of the dependence of the different systems of cultural position-takings constituting a given state of the cultural field on the specifically cultural interests of different groups competing for cultural legitimacy. It is also to deprive oneself of the possibility of determining what particular cultural position-takings owe to the social functions they fulfill in these groups' strategies.⁴⁶

De/Legitimation of the Grand Legal Narrative: A Conclusion ?

We have to admit that a paper like this one is undeniably another product of the *same* cultural field. Bourdieu has reminded us of the necessity of reading our own position in our field.⁴⁶ This paper is a product in complicity with the cultural field legitimated by the grand narratives. We are simply using dominant theories in recent cultural critical discourse to delegitimize legal theory (this is in fact a common strategy of recent critical legal studies), and, in return, using the delegitimation of the grand legal discourse to show how cultural discourse reinforces the domination. Yet, if at the time we deconstruct the grand legal narrative, our critique begs to deconstruct itself, we have already done our due job of foregrounding the necessity of deconstructing *all* narratives. (All narrativizing can be a kind of legitimation of the position-takings in the field of cultural production.) It is perhaps in this sense that Derrida's saying of "Deconstruction is justice"⁴⁷ can be meaningful.

To borrow from Spivak once again, our involvement with the legal system in Hong Kong is *not* "an unquestioned teleological good but a negotiation with enabling violence."⁴⁸ As convincingly argued by Gayatri Spivak, "a constitution can operate only when the person has been coded onto rational abstractions manipulable according to the principle of reason."⁴⁹ Spivak also borrows Lyotard "paralogical legitimation" to describe the discourse of US constitutions. We think Lyotard's concept can equally be applied to the legal situation of Hong Kong. According to Lyotard, legitimation involves the grand narratives of truth and freedom.⁵⁰ Legal discourse also begs the questions of truth, freedom and above all, justice. Its operation, unfortunately, merely narrativizes these grand labels and uses them to depoliticize the colonizing factors inherent in such a system. This further gives the hallucination that law secures a fair and independent environment in which the education system, the capitalist machine, and even the field of cultural production is operated in a "depoliticized" and "neutral" medium. In fact, the incommensurabilities secured by it continuously shape the class relations, education system and different strata of culture in society. For instance, it legitimates the education system which foregrounds Englishness to prepare the growing generation of the colonized to have the false view that English is essential and superior (of course, "superior" is a wrong word in such a system, it should well be "international"). It was not long ago that a Chinese who spoke good English would be considered as a decent citizen. Besides, it also over-shapes the field of cultural production by a series of cultural policy and dissemination of the old metaphysics of *official* vs. *unofficial* ideology. This will further reinforce the violent hierarchies between high/academic/formal and low/popular/informal art. (Whether things are high/low culture is still up to the interpretive authority to decide; the operational logic of the legal system is extended to the field of cultural studies, so to speak.) To

delegitimate complicitous grand narratives, post-colonial legal and cultural studies have to resist all these myths.

Postscript: Justice Otherwise

The delegitimation of knowledge and other grand narratives may, and ought to, point *otherwise*. In the "complex" procedures that seem to lead us to justice, at best procedural justice, legal discourse dismisses the utmost importance of human values. The greatest lesson Lyotard teaches us in his *The Postmodern Condition, The Differend and The Inhuman* is the importance of rewriting incessantly, opening different possibilities, and above all, recollecting the mind of a child.⁵¹ The problem seems to be that people deliberately complicate matters in order to struggle for, keep or apply power. As what Lyotard laments in his *The Inhuman*, "The interest of humans is subordinate ... to that of the survival of complexity."⁵² In this discursive context, we would like to use examples from Hong Kong subculture to illustrate how "justice" points otherwise.

In Hong Kong, the TV series *Judge Bao* has been very popular recently. The dominant narrative has it that its recent rise is a sign of the significance of a fair legal system. One may then easily narrativize this with relation to the anxiety of 1997, indeed, However, we must not neglect how the ideologies about law in *Judge Bao* differs from that prevails in the common law system practiced in Hong Kong. Viewing the issue from another angle, one may also interpret the series as a resistance against dominant legal system that does not guarantee justice. If law does not guarantee justice, the issue of breaking the law will subsequently come on the scene. However, this breaking the law is no anarchic or nihilistic action as reflected in *Judge Bao*, but always related to *conscientious* disobedience. Hong Kong subculture has spoken good volumes for this kind of "conscientious disobedience," to a certain extent similar to the notion of civil disobedience and

spectacular resistance in post-colonial discourse.⁵³ To illustrate this, the film series: *Conscience without law*, *Conscience within law*, and *Conscience in Law* can all be analyzed as an "unofficial" objection to the mechanical nature of the prevailing common law system. In the first two popular (unofficial/informal?) movies, the judge, the lawyer and the audience all know that the accused is not guilty although the evidence is against him/her. In the third one, the accused is guilty but there is not enough evidence to condemn him. In the former case, a sister, who supposedly never tells lies, lies about the biographical background of the accused so as to save her from conviction. In the latter case, the lawyer of the accused deliberately misleads the accused to trap him (in so doing the lawyer breaks the law), in order to entice him to reveal his guilt by himself. Breaking the law, in these cases, is a clear manifestation of "conscientious" disobedience: "understanding right and wrong was not a matter of dry calculation, but was anchored in our feelings," to borrow Charles Taylor's words.⁵⁴ Indigenous Chinese culture still inherits the priority of conscience, reason and law, which the common law system cannot completely marginalize. The important factor here is that beyond "law" there is a kind of conscience, or a kind of "moral intuition"⁵⁵ which may better safeguard justice. Unfortunately, if what we describe in the preceding section about the field of cultural production in Hong Kong stands, the spectacular resistance will only be territorialized in the field of (unofficial) subculture; in other words, to abide by law is public while the discontents towards law can only be private, unofficial and even deviant. Subculture can merely become a means of anesthetics for the popular audience who cannot find any consolation in reality (indifferently obedient to dominant discourse in public), and can thus only walk into a theater to have a cathartic release of their discontents (in private). The official/formal/public vs. unofficial/informal/private dichotomy must be deconstructed, or else an active transdisciplinary

radical critique of legal and cultural studies cannot be in order. Art and literature will then only embody the function as denounced by the Frankfurt School: to provide a means for the indifferent and obedient audience to realize in images the things they no longer dare think they can achieve in reality.⁵⁶ In this line of argument, Hong Kong cultural studies should be centered at the politics of legitimation of Western Theory, and, through the radical questioning of the depoliticization of Theory by academic studies, we can highlight the "other" elements in indigenous Hong Kong culture.

Ernst Schumacher warns, "The modern economy is propelled by a frenzy of greed and envy, and these are not accidental features but the very causes of its expansionist success."⁵⁷ The legal system is narrativized as a sure card to a prosperous society, and in this instance, we can see it as a mere means to disguise the expansion of greed and envy. Moreover, "the cultivation and expansion of needs is the antithesis of wisdom."⁵⁸ The superficial justice—at best procedural justice—seems to be able to bring economic success, but it turns us away from other higher things such as morality and ethics. While this paper intervenes into the locus of complicity between legal and cultural colonialism, it also wishes to raise the problem of justice from *another* angle. Let us conclude with Alasdair MacIntyre's words in his monumental *After Virtue*:

What matters at this stage is the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us. And if the tradition of the virtues was able to survive the horrors of the last dark ages, we are not entirely without grounds for hope. This time however the barbarians are not waiting beyond the frontiers; they have already been governing us for quite some time. And it is our lack of

consciousness of this that constitutes part of our predicament.⁵⁹

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Notes

¹ With respect to the situation of Hong Kong, the relationship between these two fields still remains rather fuzzy at this moment. This paper aims at establishing the possibility of linking the two in the special context of Hong Kong. The relationship between legal and cultural studies as spelt out by Jerry Leonard is too high-sounding (and even somewhat violent) for us, "Thus *Legal Studies as Cultural Studies* is put forward here as an advocacy of the integrative, globally inclusive commitments of Critical Legal Studies and Contemporary Cultural Studies toward the development in theory and/as practice of an economically and politically fair, just and publicly accountable organization of social space, relations and resources." We are not to impose our concept of fairness and justice onto others; but rather, we are trying to deal with the way one system marginalizes another, and hence opt for an open critique of "justice." Refer to Jerry D. Leonard ed. *Legal Studies as Cultural Studies: A Reader in (Post)modern Critical Theory* (Albany: State University of New York Press, 1995), 2.

² Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, Colin Gordon ed. (New York: Pantheon, 1980), 141. Concerning the use of Foucault in legal studies, refer, among others, to Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law and Governance* (London and Boulder: Pluto Press, 1994).

³ Bill Ashcroft, Gareth Griffiths and Helen Tiffin eds., *The Post-colonial Reader* (London and New York: Routledge, 1995), 283.

⁴ [1993] 2 HKLR 127 (Privy Council on appeal from Hong Kong).

⁵ Ibid, 133.

⁶ Ibid, 131.

⁷ Ibid, 133; our emphasis.

⁸ *H Glynn (Covent Garden) Ltd. v Wittleder* [1959] 2 Lloyd's Rep 409.

⁹ Ibid, 420.

¹⁰ Gayatri Spivak, "Can the Subaltern Speak?" in Cary Nelson and Lawrence Grossberg eds., *Marxism and the Interpretation of Culture* (Urbana: University of Illinois Press, 1988), 308.

¹¹ The jury is only responsible for the finding of facts while decisions on points of law are rested solely in the hands of the presiding judge.

¹² Cap 3, *Laws of Hong Kong*.

¹³ Duff, Findlay, Howarth & Chan, *Juries: A Hong Kong Perspective* (Hong Kong; HKU Press, 1992).

¹⁴ Ibid, 57.

¹⁵ We would like to point out that it is not as simple as English versus Chinese. Some "other" English speakers may be marginalized. For instance, Diana Eades has analyzed how the Aboriginal English speakers in Australia are seriously disadvantaged by the legal system. See Diana Eades, "A Case of Communicative Clash: Aboriginal English and the Legal System," in John Gibbons ed., *Language and the Law* (London and New York: Longman, 1994), 234-264.

¹⁶ See for instance, Sheila Duncan, "Law as Literature: Deconstructing The Legal Text," *Law and Critique* Vol. V, no.1, (1994): 3-29. In this article Duncan deconstructs a legal text of rape to show how the female is being "othered" in legal discourse.

¹⁷ I.Rev: "The Advantages of Being Atomized," *Dissent* 34/3 (1987): 349.

¹⁸ Peter Fitzpatrick, "Passions out of Place: Law, Incommensurability and Resistance," *Law and Critique* Vol. VI, no.1 (1995): 95-112.

¹⁹ Thomas Mathiesen, *Law, Society and Political Action: Towards A Strategy under Late Capitalism* (London, New York, Toronto, Sydney, San Francisco: Academic Press, 1980), 103; original emphasis.

Mathiesen uses a case of appointment of special committees for the examination of specific questions in the Law Faculty in Oslo as an example. He writes, "Whole debates concerning such appointments may take place on a normative basis even though most of the participants know that it concerns a conflict of interests and power; allusions to conflicts of interests, and to the question of the application of power to carry out one's interest, are regarded as a crude way of throwing suspicion to colleagues... In this way the participants in the legal superstructure are disciplined to refrain from 'going down' to the (base)level of interest, and to stay systematically 'up there' on the normative level." (104) What Mathiesen means by "conflicts on interests" and "conflict of norms" are borrowed from Vilhelm Aubert. A conflict of interests emanates from "a situation of scarcity. Two or more persons desire the same good, and this good does not exist in unlimited quantity. What the one receives, has an effect on what the other may receive." Conflict of norms as well as disagreements concerning matters of fact "are not tied to problems of scarcity. In a way there are standpoints enough for everyone, both with regard to normative and descriptive questions." See Vilhelm Aubert, *Rettsens social funksjon (The Social Function of Law)* (Oslo: Norwegian Universities Press, 1976), 172.

²⁰ We are using "strong" with a Jamesonian overtone; Jameson writes, "only another, stronger interpretation can overthrow and practically refute an interpretation already in place." Fredric Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (Ithaca: Cornell University Press, 1981), 13. In other words, the strong interpreter will have a strangle hold of the right to interpret the legal text.

²¹ Owen Fiss, "Objectivity and Interpretation," 34 *Stanford Law Review* 739 (1982): 741.

²² Stanley Fish, "Fiss v. Fiss," in Sanford Levinson and Steven Mailloux eds., *Interpreting Law and Literature: A Hermeneutic Reader* (Evanston: Northwestern University Press, 1988), 255.

²³ *Ibid.*, see in particular 262-265.

²⁴ Fiss, 750.

²⁶ Fish, 263.

²⁶ Ibid, 263.

²⁷ Ibid, 264; our emphasis.

²⁸ Ibid, 262.

²⁹ Pierre Bourdieu, "The Field of Cultural Production, or: The Economic World Reversed," in his *The Field of Cultural Production: Essays on Art and Literature* (New York: Columbia University Press, 1993), 41.

³⁰ Quoted from Randal Johnson, "Editor's Introduction," *The Field of Cultural Production*, 6.

³¹ See for instance, Jean Baudrillard, *For a Critique of the Political Economy of the Sign*, Charles Levin trans. (St. Louis: Telos Press, 1981) and *The Ecstasy of Communication*, Bernard and Caroline Schutze trans. (New York: Semiotext(e), 1988).

³² Ashcroft et al eds., *The Post-colonial Studies Reader*, 425.

³³ Bourdieu, "The Market of Symbolic Goods," 123.

³⁴ As Bourdieu states, "the specificity of the literary and artistic field is defined by the fact that the more autonomous it is, i.e. the more completely it fulfills its own logic as a field, the more it tends to suspend or reverse the dominant principle of hierarchization." Meanwhile, "the literary or artistic field is at all times the site of a struggle between the two principles of hierarchization: the heteronomous principle, favorable to those who dominate the field economically and politically and the autonomous principle, which those of its advocates who are least endowed with specific capital; tend to identify with degree of independence from the economy, seeing temporal failure as a sign of election and success as a sign of compromise." Bourdieu, "The Field of Cultural Production," 39-40.

³⁵ In a similar case, Bourdieu has reminded us about the dangerous dichotomy of avant-garde and bourgeois arts, "The eschatological vision structuring the opposition between avant-garde and 'bourgeois' art, between the material ascesis which guarantees spiritual consecration and worldly success (which is marked, *inter alia*, by institutional recognition – prizes, academics, etc. – and by financial rewards), helps to disguise the true relationship between

the field of cultural production and the field of power..." Bourdieu, "The Production of Belief," in *The Field of Cultural Production*, 101.

* For instance, one may raise the case of Tsui Hark to question the so-called "dichotomy." Tsui Hark is not only a director with remarkable box office record, but also well received by film critics as one of the most important directors in Hong Kong. In fact, Tsui is the most productive "New-Wave" generation director. "New-Wave" directors emerged in Hong Kong in late 70's and early 80's. Most of them are considered to be *academia* directors. Only very few of them are still active in directing films, some become producers (like Stephen Shin), some disappear (like Patrick Tam), some have had very few works recently, (like Alex Cheung, Yim Ho and Ann Hui). Tsui Hark is the most influential figure in the film industry rising from the new-wave. Tsui cannot be easily categorized as the "autonomous" or the "heteronomous" principle of hierarchization, yet we cannot say that Tsui Hark's films are free from domination of the field. Although they may not be completely governed by the "winner loses" logic as outlined by Bourdieu, these films are dominated by other field relationships (such as the institutionalization or professionalization of the film industry: e.g., his martial art series), but this extends beyond the scope of this paper and thus we will not dwell upon a discussion of it here.

³⁷ Refer to Homi Bhabha, *The Location of Culture* (New York and London: Routledge, 1994), 85-92

³⁸ Quentin Lee, "Delineating Asian(Hong Kong) Intellectuals: Speculations on Intellectual Problematics and Post/Coloniality," *Third Text* 26 (Spring 1994): 11-23.

³⁹ Jean Francois Lyotard, "Memorandum on Legitimation," *The Postmodern Explained* (Minneapolis and London: University of Minnesota Press, 1992), 41. Here is the whole case illustrated by Lyotard, "... A phrase is termed normative when it gives the force of law to its object, a prescriptive phrase. For the prescription it is obligatory for x to perform action a, the normative phrase would be it is a norm decredited by y that it is obligatory for x to perform action a. In this formulation the normative phrase designates, here in the

name of y, the instance that legitimates the prescription addressed to x. The legislative power is held by y ... If we now ask who y could be to command such legislative authority, we soon find ourselves slipping into the usual aporias. We encounter the vicious circle: y has authority over x because x authorizes y to have it; the *petito principii*: the authorization authorizes the authority (i.e., it is the normative phrase that authorizes y to set the norm)...."

⁴⁰ Bourdieu, "The Market of Symbolic Goods," 121.

⁴¹ A brief list of the recent works on Hong Kong culture include the following: journals like *Hong Kong Cultural Studies Bulletin*, *Transition*, *Cultural Criticism*; special issues on Hong Kong culture in *Today* (no.1, 1995), *The City Magazine* (July 1995), *Reader's Choice Monthly* (June 1995); books like Leung Ping Kwan, *Hong Kong Culture and Cultural Criticism* (Hong Kong: The Arts Center, 1995), Leung Ping Kwan ed. *Hong Kong Popular Culture* (Hong Kong: Joint Publishing Co., 1993), Stephen Sze and Ng Chun-hung eds., *A Study of Hong Kong Popular Culture* (Hong Kong: Joint Publishing Co., 1993), Lok Fung, *Fin de Siecle City: Hong Kong Popular Culture* (Hong Kong: Oxford, 1995), Rey Chow, *Writing Diaspora* (Hong Kong: Oxford, 1995); all in Chinese.

⁴² See for instance, Rey Chow, "Between Two Colonizers: Hong Kong's Postcolonial Self-writing in the 1990s," *Diaspora* 2.2 (Fall 1992); 151-170.

⁴³ Bourdieu, "Field of Power, Literary Field and Habitus," in *The Field of Cultural Production*, 165. Note also Charles Taylor's words: "...the act of declaring another culture's creation to be of worth and the act of declaring oneself on their side, even if their creations aren't all that impressive, become indistinguishable. The difference is only in the packaging. Yet the first is normally understood as a genuine expression of respect, the second often as unsufferable patronizing. The supposed beneficiaries of the politics of recognition, the people who might actually benefit from acknowledgment, make a crucial distinction between the two acts. They know that they want respect, not condescension. Any theory that wipes out the distinction seems at least prima facie to be distorting crucial facets of the reality

it purports to deal with." Charles Taylor, *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1992), 69-70.

⁴ To cite a recent example of the tension between the two camps of cultural studies in Hong Kong: *The Hong Kong Cultural Studies Bulletin* recently published two book reviews (reviewers with CUHK background) critiquing Rey Chow's (HKU background) *Writing Diaspora: Tactics of Intervention in Contemporary Cultural Studies* (Indianapolis and Bloomington: Indiana University Press, 1993), and a recent review of Hong Kong cultural studies published in *The City Magazine* (the writer with HKU background) openly denounces the two journals related to CUHK, *Transition* and *Hong Kong Cultural Studies Bulletin*, albeit without concrete arguments. See *Hong Kong Cultural Studies Bulletin* Vol. 1 and Special Issue on Hong Kong Culture, *The City Magazine* (July 1995).

⁵ Bourdieu, "The Market of Symbolic Goods,," in *The Field of Cultural Production*, 137

⁶ See for instance, Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste*, trans. Richard Nice (Cambridge: Harvard University Press, 1984), see in particular 494-495.

⁷ Refer to Jacques Derrida, "Force of Law: The Mystical Foundation of Authority," in D. Cornell et al. eds., *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992).

⁸ Gayatri Spivak, "Constitutions and Culture Studies," in *Legal Studies as Cultural Studies*, 168. The original reads, "Woman's involvement with the Constitution is thus not an unquestioned teleological good but a negotiation with enabling violence. Perhaps this will make clear the structural import of the post-colonial negotiation with the originally discourse of consituationality."

⁹ Gayatri Spivak, "Constitutions and Culture Studies," 157.

¹⁰ See Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis: University of Minnesota Press, 1984); see in particular Fredric Jameson's "Introduction," xxiv.

¹¹ For instance, Lyotard believes that we have to rewrite "postmodernity" as "rewriting modernity" in order to highlight the

lively and open process of rewriting. Refer, among others, to "Rewriting Modernity," in *The Inhuman*, 24-35. Moreover, refer to *The Postmodern Explained* for his advocating of having a child's mind of possibilities (as implied in the French title of the book *Le Postmoderne explique aux enfants*).

⁵² Jean Francois Lyotard, *The Inhuman*, trans. Geoffrey Bennigton and Rachel Bowlby (Stanford: Stanford University Press, 1991), 7.

⁵³ About the relationship between breaking the law and conscientious disobedience, refer, among others, to Michael Perry, *Morality, Politics and Law* (New York and Oxford: Oxford University Press, 1988), 105-120. See also Homi Bhabha, *The Location of Cultures*, for spectacular resistance, 121.

⁵⁴ Charles Taylor, *Multiculturalism and "The Politics of Recognition"*, 28. Concerning Taylor's point of view towards this issue, refer to Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1989), Chap.15.

⁵⁵ Mencius states that "The heart of compassion is possessed by all men alike; likewise the heart of shame, the heart of respect, and the heart of right and wrong." (*Mencius*, Book VI, Part A) Although the belief in innate human virtue reflected in the citation is too extreme, the belief can be said to be rooted in Chinese culture, and has exerted significant influence on Chinese people. Quoted from D.C. Lau trans. *Mencius* Vol. 2 (Hong Kong: The Chinese University Press, 1984), 229.

⁵⁶ See for instance Max Horkheimer and Theodor Adorno, *Dialectics of Enlightenment*, trans. John Cummings (New York: Continuum, 1972). See also Adorno, "The Culture Industry Reconsidered," *New German Critique* 6 (Fall 1975): 12-19.

⁵⁷ E. F. Schumacher, *Small is Beautiful: A Study of Economics as if People Mattered* (New York: Harper & Row, 1973), 24-25.

⁵⁸ *Ibid*, 26.

⁵⁹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984), 263.