SSL Scandinavian Studies in Language, 11(1), 2020 – https://tidsskrift.dk/sss

A question of control? Forms and functions of courtroom questioning in two different adversarial trial systems

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Abstract
This paper compares the questioning of witnesses and defendants in American and Danish courtroom interaction on the basis of one American and three Danish criminal trials. A total of 780 questions are analysed in terms of their morphosyntactic properties as well as speech act functions. Following a general discussion of courtroom questioning and the notions of coercion and control, as well as an outline of legal cultural differences and similarities between American and Danish courtroom interaction, a coding system is developed for the linguistic comparison, and initial quantitative results of the comparison are discussed. Particular attention is given to declarative questions and the 'communicative' speech act function, as the linguistic and interactional features of these are shown to be explored in quite different ways in accordance with the legal and cultural contexts in which the courtroom questioning takes place.[1]

Keywords: Questioning, Morphosyntax, Courtroom interaction, Pragmatics, Legal cultures, Coercion, Control

1. Introduction

> Nearly all literature relating to a court context, whether real or fictional, recognizes the importance of questions as the primary means of obtaining information from defendants, witnesses, and in fact all those who take the stand in a courtroom. (Harris 1984:5-6)

When studying questions as a linguistic and interactional phenomenon, it is almost as hard to ignore trial examinations as a prototypical site of questioning, as it is to ignore questioning when studying what goes on in a trial. This paper investigates formal and functional aspects of the questions asked by the lawyers and prosecutors in one American and three Danish criminal trials. While courtroom questioning has been extensively treated from, amongst others, conversation analytical (e.g. Atkinson and Drew 1979), critical discourse analytical (e.g. Erhlich 2001) and forensic linguistic (e.g. Gibbons 2003) perspectives, only few studies offer direct comparisons of courtroom questioning in different countries and legal cultures. Such comparative approaches – e.g. Bednarek (2014) – typically contrast the (in)famous adversarial practices of Anglo-Saxon common law courts with the less flamboyant, and less studied, inquisitorial trial practices of European civil law courts. However, Danish (and other Scandinavian) courts seem to diffuse this basic dichotomy as they resemble Anglo-Saxon adversarial courts in terms of formal organisation and participation structures, but lean closer to – and even surpass – European inquisitorialism in terms of relaxed interactional atmosphere.

The direct comparison offered here of these two different approaches to adversarial legal practice is thus an attempt to shed light not only on particular linguistic and interactional features of American and Danish courtroom questioning, but also on their strategic and legal cultural underpinnings. As linguistic investigations of Danish courtroom questioning are so far virtually non-existent, the case study has a general explorative aim, yet also a particular interest in one of the salient traits commonly attributed to adversarial courtroom questioning: lawyers' tactical use of specific question types as means to control the interaction with their witnesses and, in effect, the testimony they can offer and the inferences that can be drawn from it by the judge and jurors listening. As the initial quantitative analysis points to intriguing differences concerning especially one particular question type, viz: declarative questions – a question type commonly regarded as highly controlling – particular attention is given to declarative questions and their uses and functions in the trials.

2. Understanding courtroom questioning

2.1. Control and coercion through questioning

Ever since the peculiarities of witness examinations became a focus of interactional analysis (Danet et al. 1976, Atkinson 1979, Atkinson and Drew 1979, Dunstan 1980), the constraining and potentially coercive force of questions has been a key area of research in courtroom language. While (typically) emphasising the importance of contextual and interactional factors, many such studies explore the constraining force of questions as partial reflections of their morphosyntactic properties (e.g. Danet and Bogoch 1980, Harris 1984, Woodbury 1984, Adelswärd et al. 1987, Gibbons 2003, Archer

2005, Mortensen 2018, Seuren 2019). From this perspective, several authors have proposed clines representing the degrees of control said to be exerted by different types of questions asked by lawyers to witnesses and defendants during trial, e.g.:

> Four basic question forms predominate in American courtrooms, as reflected in our data: (1) *declaratives* (with or without what linguists call a tag at the end; e.g., "You did it, didn't you?"); (2) *interrogative yes/no* questions ("Did you do it?") or choice questions ("Did you arrive at nine or at ten o'clock?"); (3) *interrogative-wh* questions (who-what-where-when-why questions, as in "What did you do that night?"); and (4) "*requestions*", which may be interpreted as literal questions about the condition or ability of the hearer, or, more conventionally, as indirect requests for information (e.g., "Could you tell us what happened that night?" One can either answer "Yes, I could", or go ahead and tell.). In the order just presented, these four question forms range from those which most constrain and control the witness (or at least aspire to do so), to those which least constrain him/her. We view declaratives as the most coercive, and, on cross-examination, as combative, since they assert more than they ask. (Danet and Bogoch 1980:43)

Some early studies, such as the work by Danet and Bogoch, were criticised for not looking beyond morphosyntax and taking the interactional nature of questioning into account, e.g.:

> … they attempt to assert a simple relationship between linguistic form and coercion, declaratives being stipulated as the most coercive questions, interrogatives as slightly less so, etcetera. This claim does not survive a preliminary and cursory consideration of how recipients do treat the differing question forms for their alleged coerciveness. (Dunstan 1980:65)

While scholars continue discussing how to account for contextual, pragmatic, interactional and extra-linguistic factors in courtroom questioning (and questioning in general, see e.g. Stivers 2010, Heinemann 2010), they share the basic assumption that the morphosyntax of questions somehow correlates with the degree or nature of interactional control exerted through the questions (Harris 1984, Schegloff 1984, Woodbury 1984, Adelswärd et al. 1987, Bülow-Moller 1992, Luchjenbroers 1997, Gibbons 2003, Archer 2005, Gibbons 2008, Harris 2011, Mortensen 2018, Seuren 2019). A notable outcome of this approach is Archer's (2005) scalar model of courtroom question types, adapted from Woodbury (1984):

Type of question	Amount of control	Conducivity	Type of response question-type typically expects
	Least	Low	
1. Broad wh-	▲	▲	– Open range
2. Narrow wh-			– Naming of specific variable
3. Alternative			– Choice of answers restricted to 1 of 2 provided by questioner
4. Grammatical yes/no			– Yes/no
5. Negative gram yes/no			– Anticipated response, whether affirmative or negative
6. Declarative			
7. Tagged declarative	▼	▼	– Confirmation of proposition
	Most	High	

Figure 1: Continuum of control in question types (Archer 2005:79)

The examples below, taken mainly from the American data set (which is introduced in section 3.), briefly illustrate each of the question types mentioned in the model:

(1) Broad *wh*-question
DFL[2]: Okay. So, let's talk about what happened on August 19, 2015. What were you doing that night?[3]
DFW: I was at home actually, and I received a call – had to be around 11:00 o'clock or so at night. And… [Narrative follows]

(2) Narrow *wh*-question
DFL: Roughly, what time of day was it?
DFW: Midnight-ish, or what have you

(3) Alternative question
DFL: Do you consider yourself a "fight" person or a "flight" person?
DFW: I beg your pardon?

(4) Grammatical *yes*/*no*-question
DFL: Did you tell them to get away from your property?
PRW: I did

(5) Negative grammatical *yes*/*no*-question[4]
PRC: kunne du ikke mærke modstand i dine bevægelser
'couldn't you feel resistance in your movements'
DEF: jeg kan ikke mærke øh jeg kan ikke mærke det fordi det gør rigtig ondt her
'I can't feel uh I can't feel it cause it hurts a lot here'

(6) Declarative question
DFL: And, to your knowledge, he had no weapons with him?
PRW: None that I saw

(7) Tagged declarative question
DFL: But, he was leaning out of the truck, correct?
DFW: Leaning out of the window

At a glance, Archer's (and Woodbury's) model resembles the kind of scalar account proposed by Danet and Bogoch (1980), as quoted above. However, in addition to offering a more fine-grained classification of questions, one of its merits is the adoption of 'control', rather than 'coercion', as its central semantic variable. Many other authors prefer 'control' as well (see e.g. Eades 2000:168), while the reasons for this are never clearly addressed. 'Coercion', in most senses, implies a degree of unwillingness on the part of the coerced (e.g. www.dictionary.cambridge.org, www.collinsdictionary.com), which is not inherent in 'control'. Whether or not the respondent's unwillingness is actually assumed or suggested in studies of 'coercive' questioning is often less than clear, since 'coercion' and 'control' (and other related terms) tend to be used "more or less synonymously" (Eades 2000:168). In any case, the potential 'unwillingness' reading muddles the distinction between describing the controlling force of particular question types and describing how the exerted control may, in particular contexts, undermine or support the stance and agenda of the respondent. Further, as Bülow-Moller (1992) and Aldridge and Luchjenbroers (2007) illustrate, questions may be coercive, in the sense of undermining or framing the witness against their will, through the sheer inferences they compel the judge and jury to make regarding the witness and their testimony, rather than through the controlling force of the question types themselves. Thus, the notion of 'coercion' may entail locating the analytical attention closer to the respondent, while 'control' arguably emphasises the semantic, pragmatic and interactional features of the questioning itself. That is, Archer's model "… *helps us to highlight the amount of control an examiner may be attempting to exercise over the discourse…*" (Archer 2005:78)

Following Archer, what is being impacted by means of a particular question type is the discourse, including the repertoire of appropriate responses made available to the respondent. By centring the notion of question control at the level of discourse, Archer deviates from Woodbury (1984), who refers to control less strictly as "… *the degree to which the questioner can impose his own interpretations on the evidence.*" (Woodbury 1984:199). This definition, reminiscent of the understanding of 'coercion' discussed above, potentially conflates the controlling force of questions with the possible tactical benefits the exerted control may lead to in the courtroom, contrary to Woodbury's explicit interest in "… *keeping separate the illocutionary force and the intended*

or actual perlocutionary force of a given question." (Woodbury 1984:199). Discursive control, as realised through questioning, may be rightly conceived as a – to some extent scalable – semantic feature reflected in the morphosyntax of various question forms. The possible interactional, social and strategic effects realised through such controlling questions, which may in some cases be seen as coercive, are complex, context-bound features dependent not only on the discursive constraints exerted by the question type itself, but also on e.g. the topic discussed and the sequential position of the question (e.g. Adelswärd et al. 1987, Archer 2005), the lexical framing devices employed (e.g. Gibbons 2003, Aldridge and Luchjenbroers 2007), the social and institutional relationship between questioner and respondent, the nature of the case and, ultimately, the wider legal cultural (Damaška 1997, Rosen 2008) and (langua)cultural (Agar 1996, Risager 2005, Levisen 2012) context in which the trial takes place.

2.2. Comparative approaches to courtroom questioning

Many studies of courtroom questioning are concerned with how the uses of question types and questioning styles differ in particular kinds of contexts and trial activities. For example, discussions often involve differences between the questioning styles employed in direct examination and cross-examination (Atkinson and Drew 1979, Danet and Bogoch 1980, Woodbury 1984, Archer 2005, Gibbons 2008, Bednarek 2014, cf. section 2.3. below), or between courtroom questioning and other kinds of questioning or casual conversation (Atkinson and Drew 1979, Atkinson 1992, Gibbons 2003, Heritage and Clayman 2010). Differences relating to various categories of cases have also received attention, e.g. in Danet and Bogoch (1980) and Adelswärd et al. (1987), who investigate how questioning styles reflect the seriousness of the accusation. Bednarek (2014), as one of the only studies, compares the use of question types in witness examinations across two different legal systems and languages, i.e. the adversarial system of trial, represented by an American case, and the European inquisitorial system of trial, represented by a Polish case. No linguistic studies of Danish courtroom questioning exist, although questioning in a Danish courtroom context has been discussed from e.g. legal sociological, psychological and rhetorical perspectives (Smith 1986, Staffe 2008, Beyer 2013). Other aspects of Danish courtroom interaction have been treated in Jacobsen (2002), Mortensen and Mortensen (2017) and Mortensen (2019), the latter comparing the use of interjections in American and Danish trial examinations, as reflections of legal cultural differences. The present paper pursues this perspective further in another direction, comparing aspects of the questioning styles employed in American and Danish courtroom interaction.

2.3. Adversarial courtroom questioning in the United States and Denmark

The legal tradition followed in the United States and other English-speaking

countries is the common law tradition, where the adversarial system of trial is practiced, as opposed to the inquisitorial system of trial practiced in most of Continental Europe:

> Adversarial and inquisitorial procedures are structured around different normative views of the trial. Under the adversarial ideal the law is a game, courts are where the contest takes place, and the goal of criminal procedure is to make sure the outcome is fair, even if the prosecution does not uncover the truth […] Under the inquisitorial ideal, the goal of the law is fact finding, and the criminal trial is a search for truth. (Kahn 2004:13)

As discussed in Anderson (1992), Doak, Mcgourlay and Thomas (2018) and Mortensen (2019), the Danish legal system may be characterised as a hybrid between the two major systems, though adversarial in essence due to its structural organisation. Danish courtrooms adopt an adversarial participation structure similar to Anglo-Saxon trial settings. This involves, among other features, opposing advocates, i.e. prosecutors and defence lawyers actively representing their side of the case, and the recursive dialectic interplay between two modes of questioning known as direct examination or examination-in-chief (Danish: 'afhøring') and cross-examination (Danish: 'modafhøring'). The two modes of questioning are characterised as follows by Danet and Bogoch, based on the American courtroom context:

> Direct examination is the rehearsed questioning by attorneys of their witnesses, while cross-examination is the unrehearsed questioning of the other side's witnesses. The purpose of cross-examination is to test the credibility of the other side's witnesses and, if possible, to destroy or reveal inconsistencies and gaps in their testimony presented during direct examination. (Danet and Bogoch 1980:37)[5]

American adversarial courtroom interaction is infamously harsh, formal and impersonal, especially during cross-examination, but even 'friendly' direct examination in the adversarial context is known to be formal and impersonal compared to most other kinds of conversation or interviewing.

> The whole point of the exchange is to solicit a response that will inform the jury, who are watching and listening and will eventually pass judgment on the case. This state of affairs is confirmed and reinforced by the attorney's practice of not responding to the answers with "oh", or indeed with any kind of receipt object (*yeah*, *uh huh*, etc.). (Heritage and Clayman 2010:175)

The Danish courtroom, on the other hand, while essentially adversarial, is characterised interactionally by an unaggressive, casual and even communal

approach to fact-finding, reminiscent of inquisitorial ideals (Kæraa 2011, Doak, McGourlay and Thomas 2018, Mortensen 2019), further enforced, it would appear, by more general languacultural traits of 'Danishness' (Fredsted 2005, Levisen 2012). Mortensen (2019) illustrates how these different legal traditions and languacultural norms manifest themselves linguistically in trial examinations through the ways in which Danish and American lawyers provide listener feedback in response to their witnesses' testimony:

> … the Danish lawyer frames the defendant's contributions as generally new and informative, although he – and the rest of the court – is likely to know most of the details in advance. In the American examination, on the other hand, the testimony is treated not so much as actual information being exchanged but […] rather as artefacts, as it were, i.e. pieces of a story being recited and put to display. (Mortensen 2019:168)

In the following sections, I present the data and method for examining how the two different adversarial systems manage aspects of the questioning itself.

3. Data and method

3.1. American and Danish courtroom data

The data studied are gathered from one American criminal trial and three Danish criminal trials, reflecting the fact that American courtroom questioning is already well-treated in the literature. Thus, the American data set may be seen as a control corpus to allow comparison with the more extensive Danish data set.

The American criminal trial – also referred to as US1 – took place at the Seattle Municipal Court, Washington in 2016, and concerns harassment, i.e. a misdemeanour-level offense. The official court transcript constitutes the data from this trial. It was kindly provided to me by The Defender Association in Seattle.

The Danish criminal trials – individually referred to as DK1, DK2 and DK3 – took place at the Court of Frederiksberg, Copenhagen in 2014 (DK1 and DK2) and 2018 (DK3). They all concern physical assault and are comparable to the American trial in terms of severity of the potential punishment. DK1 concerns the alleged assault on a parking officer, DK2 concerns fighting between neighbours, DK3 concerns the alleged assault on a security officer in a shopping mall. Audio recordings of the trials were automatically conducted by the court and, following the explicit consent of all individuals featured, kindly made available for linguistic research purposes.[6] These audio recordings, manually transcribed using CLAN transcription software, constitute the Danish data.

For both the American and the Danish data set, only witness examinations by prosecutors and defence lawyers have been included, meaning that all interactions between prosecutors, lawyers and judges, and between judges and

witnesses, have been left out of the analysis. On this basis the total number of questions treated from the American data is 157, spread over 4,437 words spoken, while the larger Danish data set features 623 questions, spread over 35,097 words in total.

Furthermore, both data sets have been subcategorised into direct examinations and cross-examinations, as this distinction is known to be a potential explanatory factor for some of the variation in courtroom questioning styles (cf. section 2.2. above). Thus, 95 of the 157 questions in the American trial were asked during direct examinations and 62 were asked during cross-examinations. Correspondingly, the Danish data features 343 questions asked during direct examinations and 280 asked during cross-examinations (cf. appendix 4).

3.2. Coding and analytical procedure

In order to systematically compare the questioning styles employed in the American and the Danish trials, I combine quantitative and qualitative analyses of the forms and functions of the questions occurring in the two data sets. For the quantitative analysis I employ a general question coding framework developed and discussed in sections 3.2.1., 3.2.2. and 3.2.3. below. The classification features an adapted version of Archer's model of morphosyntactic question types (cf. Figure 1 above) as well as a model of speech act functions applying to questions. In sections 4.1., 4.2. and 4.3., overall quantitative findings are presented and discussed, comparing salient questioning patterns of the American and Danish data. The quantitative findings have not been tested for significance but are used heuristically to inspire the qualitative analysis and discussion of particular aspects of the data following in section 4.4. I generally refer to appendices 1, 2, 3 and 4 for complete quantitative overviews of the questions treated, including all classifications and cross-classifications of question types and speech act functions in direct and cross-examinations. Data from each of the three Danish trials, DK1, DK2 and DK3, are presented in appendices 1, 2 and 3, respectively, while appendix 4 presents the data from US1 juxtaposed with the aggregated data from DK1, DK2 and DK3.

3.2.1. What counts as a question?

A first step in the coding process was to mark up all questions occurring in the two data sets. I generally agree with Adelswärd et al.'s (1987) fairly encompassing notion of a 'courtroom question':

> Note that in this analysis we use a comprehensive, *contextual* overall definition of 'question'; in effect, *all* professionals' turns (in the dialogue phases of trials) were interpreted as questions to the defendant, unless such an interpretation was virtually excluded. Deferring questions […] are, however, *not* included. (Adelswärd et al. 1987:338)

However, treating questions simply as 'turns' in their entirety would not allow for manageable morphosyntactic classification of the questions, seeing that a questioning turn may feature several prefatory statements (e.g. Clayman and Heritage 2002) introducing the 'actual' question, e.g.:

(8) Prefatory statements preceding question, DK2
DFL: øh [NAME] øh jeg vil godt lige spørge lidt lige for at få øh øh lidt mere omkring baggrunden xxx det er også noget vi kommer tilbage til xxx personlige forhold med med men øh: øh hvor længe er det du har kendt øh [NAME]
'uh [NAME] uh I'd just like to ask a bit to get uh uh a little more regarding the background xxx it's also something we'll return to xxx personal conditions with with but uh: uh how long is it you've known uh [NAME]'

In order to single out the questions within the turns, I follow Archer's (2005) general approach, based on Stenström (1988), among others, and take a number of features into account in what is essentially a hermeneutic process of delimiting "elicitation acts":

> I will make use of the three levels that form the basis of [Stenström's, ed.] approach when identifying my own questions. That is to say, (i) the lexical, grammatical and prosodic aspect (i.e. form), (ii) the speech act aspect (i.e. force), and (iii) the discoursal aspect (i.e. discourse structure) (Archer 2005:52)

Stenström (1988) defines an elicitation act broadly as "… *an utterance that may elicit an R* [i.e. a response, ed.]…", covering "… *not only requests for information but also requests for confirmation and acknowledgment. My criteria for R function are placement and appropriateness…*" (Stenström 1988:308). Adopting this functionally broad, yet structurally constrained, understanding of questions, I include – unlike Adelswärd et al. – "deferring questions", i.e. "… *repair questions asking for repetition, confirmation or simple clarification of something contained in the interlocutor's preceding turn.*" (Adelswärd et al. 1987:328, repeated from the above quote), as these are indeed also elicitation functions. In fact, as will become clear, questions of this kind play an important role in explaining some of the central differences between the questioning styles observed in the data.

3.2.2. Morphosyntactic classification

Each question occurring in the data was classified in terms of morphosyntactic form as well as speech act function. The morphosyntactic coding scheme employed for both the American and the Danish data is adapted from Archer's model (cf. Figure 1 above). While the model is explicitly developed

to account for questioning in English, it can be applied to Danish data as well, since the question types available in Danish are more or less equivalent, morphosyntactically, to those of English (see Heinemann 2010, Stivers 2010, Hjulmand and Schwarz 2017).[7] While the classification, as illustrated in the following sections, is rooted in formal properties of the questions, most of the categories involve some degree of semantic and contextual judgement as well.

Broad and narrow wh-*questions*
Although the Danish equivalent to *wh*-questions feature an *hv*-element instead of *wh*-, I use *wh*-questions as a general term for the English as well as the Danish occurrences. I moreover adopt the rough distinction between those asking broadly for e.g. descriptions, narratives, explanations, etc. – often introduced by e.g. *how*, *why*, *what* etc. (and Danish equivalents such as *hvordan*, *hvorfor*, *hvad*) – and those asking for specific pieces of information, often introduced by e.g. *when*, *where*, *which*, *what* (in Danish e.g., *hvornår*, *hvor*, *hvilke*, *hvad*). Note that *what*/*hvad* is mentioned in both categories to illustrate that the classification of some *wh*-questions as broad or narrow does not rely on their form alone, but involves lexical and contextual interpretation, e.g.:

(9) *hvad*-question classified as broad, DK1
PRC: øh men hvad er det der sker om eftermiddagen den [DATE] (0.5) hvor du er på job
'uh but what is it that happens in the afternoon on [DATE] (0.5) when you're at work'

(10) *hvad*-question classified as narrow, DK2
PRC: og hvad hvad hedder de to naboer til fornavn
'and what what are the first names of the two neighbours'

Alternative questions
Alternative questions are questions through which the respondent is offered a "*choice of answers restricted to 1 of 2 provided by questioner*" (Archer 2005:79, cf. Figure 1), e.g.:

(11) Alternative question, US1
DFL: Is it like a SUV, or is it a truck?
PRW: It's an SUV.

Alternative questions consist of two (or more) *yes*/*no*-questions coordinated by disjunction, and do not licence a confirmation or disconfirmation but "… *a response consisting of one of the alternatives mentioned in the question*…" (Archer 2005:49, see also Sadock 2012:107). A similar kind of alternative may be offered through declarative questions, e.g.:

(12) Alternative declarative question, DK1
PRC: ja jeg skal bare lige høre (.) parkeringsvagten tager fat (.) med sin højre hånd (.) eller med sin venstre hånd
'yes I'd just like to know (.) the parking officer grabs hold (.) with his right hand (.) or with his left hand'
(1.3)
DFW: det er hans højre hånd
'it's his right hand'

However, only the prototypical alternative question, featuring subject-verb inversion, is treated as a category in this study, while the marginal declarative variant is assigned to the 'other/indeterminable' category (described below).

Yes/no-*questions*
Rather than Archer's term "grammatical yes/no-question" (which may lead to the misconception that some question types are not grammatical, or that this question type has a default status), I use the term '*yes*/*no*-question' for inversion questions that license *yes* or *no* as default answers. I will not discuss this question type at length, but refer to example (4) above for illustration.

I will disregard Archers' variant "negative grammatical yes/no-questions" (cf. example (5) above) as an individual category, as it is virtually non-existent in the data, and in principle hard to distinguish from regular *yes*/*no*-questions featuring e.g. "inner negation" (Buring and Gunlogson 2000) or "propositional negation" (Hansen and Heltoft 2011).

Declarative questions
Like Archer, I distinguish between plain declarative questions and declarative questions with a final tag, cf. examples (6) and (7) above. While a questioning tag usually marks a declarative sentence unmistakably as a question, untagged declarative questions do not have morphosyntactic features that clearly identify them as questions. Some studies (e.g. Quirk et al. 1985, Huddleston and Pullum 2002) assume or argue that declarative questions can be identified prosodically, e.g.:

> The declarative question is a type of question which is identical in form to a declarative, except for the final rising question intonation. It is rather casual in tone:
> You've got the explosive? ... (Quirk et al. 1985:814)

However, systematic investigations indicate that rising intonation is not a consistent feature of declarative questions and cannot be the sole criterion for identifying them (Geluykens 1988, Grønnum 2005, Heinemann 2010, Stivers 2010). In fact, according to Grønnum (2005), Danish declarative questions feature a flat intonation contour, at the most, while other question

types display various degrees of falling intonation. Thus, since there are no obvious formal features to distinguish declarative questions from other kinds of declaratives, my classification is partly based on semantic and contextual interpretation, including the interactional behaviour of the respondents. As mentioned, I generally align with Adelswärd et al.'s notion that all contributions by prosecutors and lawyers can be understood as (parts of) questions, because questions are the only contributions allowed for them during examinations.

Moreover, it should be noted that declarative clauses, like many other kinds of sentential and non-sentential expressions, can also occur in backchanneling functions that do not constitute turns nor elicit answers, but encourage the respondent to continue talking (Deng 2009:114); I do not interpret such occurrences as questions, and they are excluded from the analysis, e.g.:

(13) Declaratives not included as questions, DK3

PRC: okay så bare sådan at vi lige får det sådan helt øh i skåret ud i øh så der ikke er tvivl om hvad det er der sker øh ud fra fra dit synspunkt så så det der sker det er at I I I er på rulletrappen på vej op er det korrekt forstået
'okay so you know just so we get it completely uh nailed down uh so there's no doubt about what it is that happens uh from from your point of view so so what happens is that you you you're on the escalator going up is that correctly understood'

DEF: på hen på vej hen til rulletrappen
'on to on our way to the escalator'

PRC: I er på vej hen til rulletrappen
'you're on your way to the escalator'

DEF: idet jeg stiller stolen fra mig lige det der jeg stiller den fra mig så tager han fat i mig
'as I put the chair down right there when I put it down then he grabs hold of me'

PRC: så tager han fat i dig
'then he grabs hold of you'

DEF: og jeg ser ingen grund til at han tager fat i mig fordi jeg har stillet stolen fra mig og jeg er jo ikke på vej væk
'and I don't see any reason why he grabs hold of me because I've put down the chair and I'm obviously not going away'

PRC: okay
'okay'

On the other hand, declaratives that repeat the respondent's statement may in other contexts function as questions, also known as echo questions, as they "*… echo the stimulus, what has just been said, with a view to questioning some aspect of it …*" (Huddleston and Pullum 2002:855, cf. also Quirk et al. 1985, Noh 1998). Such echo questions are included as declarative questions and are recognised through the presence of an answer by the respondent, e.g.:

(14) Declarative as echo question, DK1
DFW: fordi der sker hele tiden noget nyt derude
'because there's something new going on all the time out there'
(1.2)
PRC: der sker hele tiden noget nyt derude
'there's something new going on all the time out there'
DFW: hele tiden noget nyt derude ja
'something new all the time yes'
PRC: ja
'yes'

Tag questions
A questioning tag following a declarative clause marks the clause as a tag question. Tags may vary in form between single words, fragments and full clauses, e.g.:

(15) Tag question, single-word tag, DK1
DFL: det er den dag ikke
'it's that day right'

(16) Tag question, fragment tag, DK3
DFL: og du kommer altså ned ad en rulletrappe eller hvad
'and so you're heading down an escalator or what'
PRW: øh øh rullebånd ja f- ja
'um um travelator yes f- yes'

(17) Tag question, full-clause tag, DK3
DFL: okay som jeg forstår dig så er det sådan at at han er ikke alene om at få dig ned på jorden er det rigtigt
'okay the way I understand you it is so that that he's not alone in getting you down to the ground is that right'

Especially in the case of full clauses, determining whether they are to be treated as tags or as separate utterances is an assessment hinging on semantic and contextual interpretation. While prosody would appear to be a relevant criterion, the fact that the American data merely consist of a court transcript,

void of prosodic evidence, rules out such an approach. Punctuation and orthography do appear to represent, to some extent, the transcriber's interpretations regarding potential tags, as the choices vary, even within single turns and sequences, e.g.:

(18) Transcription of potential tag questions, US1
PRC: So, there were, by my count, four people in this car, correct?
You, [NAME], your sister and your daughter. Correct?

(19) Transcription of potential tag questions, US1
PRC: Okay. And, that you knew that the defendant and your son's current girlfriend have two children, right?
PRW: Yes.
PRC: Okay. And, your son's current girlfriend is [NAME]. Is that correct?
PRW: Yes.
PRC: And, on [DATE] 2015 when this incident occurred, you were aware that your son and the defendant didn't have a particularly good relationship, correct?

Ultimately, however, my classification does not rely on these transcription features as decisive criteria, as it is impossible to know whether this kind of variation is due to conscious interpretation or inconsistency. Thus, I have classified all of the highlighted questioning elements in examples (18) and (19) above as tags attached to the preceding sentences, even though "Correct?" and "Is that correct?" are both represented by the transcriber as if they were separate utterances. This classification is based on the observation that the questioning elements refer indisputably to the accuracy of their preceding statements and, thereby, effectively override their assertive potential despite possible prosodic pauses before the tags.

Other/indeterminable
The final morphosyntactic category contains a range of constructions that are for various reasons not covered by the previous categories. They include elliptical, embedded, combined and otherwise syntactically ambiguous questions, as well as imperative constructions, e.g.:

(20) Elliptical question, DK1
DFL: er det en der fast passer (0.2) det område der
'is he someone who regularly manages (0.2) that area'
DFW: det var han ja
'he was yes'

DFL: det var han
'he was'
DFW: ja
'yes'
DFL: dagligt (0.3) ligefrem
'on a daily basis (0.3) even'
DFW: han var der meget tit han var der flere gange om dagen
'he was there very often he was there several times a day'

(21) Embedded question, DK1
DFL: kan du: er du så tæt på at du kan høre om (0.1) der (0.6) udveksles bemærkninger ord mellem de to
'can you: are you close enough to hear (0.1) whether (0.6) comments words are exchanged between the two'

(22) Combination of syntactic forms interpreted as one question[8], DK1
DFL: hvorfor siger han det siger han det ind i en telefon
'why is he saying it is he saying it into a phone'

(23) Imperative[9], US1
DFL: Go ahead and talk about what happened, just don't say anything about what [NAME] said.

3.2.3. Speech act classification

While questions are in many speech act frameworks, including Searle's own (e.g. Searle 1976), treated as a special kind of directive speech act, this classification has been shown to be simplistic and even inaccurate (see e.g. Levinson 1983:275, Archer 2005:41ff, Borchmann 2020, this issue, Nielsen 2020, this issue, for discussions). Instead, as suggested in Mortensen (2018), I consider questioning not as a particular kind of speech act but rather as a partly grammaticalised interactional mode through which a range of speech act functions may be realised (see related discussion in Heim and Wiltschko 2020, this issue). This understanding of questions builds on the adaptation of Habermas' (1984) speech act theory proposed in Hansen and Heltoft (2011):

> Corresponding to the four speech act dimensions, four basic speech act types can be distinguished: COMMUNICATIVES, CONSTATIVES, REPRESENTATIVES and REGULATIVES. They pair with each other in a way that will be elaborated below.
>
> | | | | |
> |---|---|---|---|
> | understanding | truth | truthfulness | appropriateness |
> | communicatives | constatives | representatives | regulatives |
>
> (Hansen and Heltoft 2011:53, my translation)

Some of the speech act types correspond roughly to Searle's speech act categories, in that constatives canonically correspond to assertives, representatives (roughly) to expressives, and regulatives comprise directives and commissives, thus dealing with obligations and permissions applying to hearer or speaker (Hansen and Heltoft 2011:64). Yet, Hansen and Heltoft diverge from Searle as they treat truth-oriented questions as constative speech acts, since they can be said to express uncertainty about the truth of a proposition (Hansen and Heltoft 2011:56, a view in line with e.g. Lyons 1977, Schrott 2000). Moreover, the category of communicatives has no apparent equivalent in Searle's taxonomy; communicative speech acts are metacommunicative acts that help the speaker and hearer to reach understanding, concerning e.g. the correct expression and perception of the linguistic code, the meaning of words or utterances, or the relevant inferences to be drawn (Hansen and Heltoft 2011:54ff).

On this basis, the questions in the data were classified according to their speech act functions, employing the categories *constative* questions, *regulative* questions, *communicative* questions and *other/indeterminable* speech act functions, to be illustrated below. *Representative* questions were not included as a category, as no apparent examples were found in the data, unsurprisingly. While judgments, evaluations and accusations may be implicitly conveyed through courtroom questioning (Atkinson and Drew 1979, Bülow-Moller 1992, Komter 1994, Heritage and Clayman 2010), overt expressions of personal opinions and feelings do not count as allowable contributions.

Constative questions

Constative questions are elicitations concerning the truth of a proposition – expressed by e.g. *yes*/*no*-questions or tag questions – or elicitations of a particular piece of information that renders a proposition true – expressed by e.g. *wh*-questions:

(24) Constative *yes*/*no*-question, US1
PRC: And, Ms. [NAME], are you currently married?

(25) Constative tag question, US1
PRC: But, he was leaning out of the truck, correct?

(26) Constative *wh*-question, US1
PRC: And, Ms. [NAME], what do you do for a living?

Regulative questions

Regulative questions are questions that impose an obligation or permission on the respondent (or the questioner) to carry out some action, for example to talk. While they may in principle involve ordering – e.g. *Answer the question!* – they are typically requests of various kinds, expressed by e.g. *yes*/*no*-questions – also known as 'requestions' (Danet and Kermish 1978) – or declaratives or imperatives, e.g.:

(27) Regulative *yes*/*no*-question, US1
PRC: Would you please introduce yourself to the jury and spell your last name for the record?

(28) Regulative declarative question, US1
DFL: So, if you don't remember, I could provide this to you, and you can have a look at it

(29) Regulative imperative question, US1
PRC: Mr. [NAME], please state your name and spell your last name for the jury

Communicative questions
Communicative questions are metacommunicative elicitation acts related to the understanding or clarification of other utterances, or possible inferences from other utterances. The object utterances addressed in such metacommunicative questions may have been produced either by the questioner – in which case I refer to the questions as *self-clarifications* – or by the respondent – in which case I refer to them as *other-clarifications*. They may be expressed through (partial) repetition, including echo questions (cf. 3.2.2), or other question types, with or without lexical items specifying the clarifying function:

(30) Communicative question, other-clarification, DK3
DEF: det kan jeg ikke det det det kan jeg ikke
'I can't I I I can't'
DFL: det kan du ikke huske
'you don't remember'
DEF: overhovedet ikke
'not at all'

(31) Communicative questions, other-clarification followed by self-clarification, DK3
PRC: okay øh jeg skulle jeg forstå det sådan at den første spytklat rammer dig
'okay uh I should I understand it so that the first spit hits you'
PRW: hvad for noget
'what'
PRC: skulle jeg forstå det således at den første spytklat rammer dig
'should I understand it so that the first spit hits you'

Communicative questions as a category may be said to comprise both what is known in the conversation analytical tradition as repair activities (Sacks,

Schegloff and Jefferson 1977, Dingemanse, Blythe and Dirksmeyer 2014) and formulations (Heritage and Watson 1979, Van der Houwen and Sliedrecht 2016, see also section 4.4.). Hence, simple clarification may or may not be the questioner's actual or main purpose of communicative questions, as they can also be used to highlight, summarise, dispute or evaluate their object utterances for various purposes. Still, clarification is taken here to be their shared default function, even if only ostensive or staged.

Since communicative questions may be given a regulative speech act frame, double classification is possible for this particular speech act combination, e.g.:

(32) Communicative + regulative question[10], DK3
DFL: ja og det han siger til dig øh hvad er det
'yes and what he says to you uh what is that'
PRW: det har jeg jo lige sagt derovre
'I just told you over there'
DFL: ja men prøv lige prøv lige at gentage det
'yes but just try just try and repeat it'

Other/indeterminable

In some cases, assessing whether a question is to be classified as constative or communicative is fairly straightforward, as lexical, grammatical or sequential features narrow down the possible interpretations, whereas other questions are hard to classify, e.g.:

(33) Question with clearly communicative speech act function, DK2
PRC: og du siger at at at at tiltalte [NAME] han øh han han står ligesom (0.8) over dig og har fat i dig
'and you say that that that that the defendant [NAME] he's um he's he's like (0.8) standing over you and holding on to you'

(34) Question with other/indeterminable speech act function, DK2
PRC: og så falder [NAME] ligesom ned på jorden
'and then [NAME] sort of falls down on the ground'
DEF: ja og da der er de andre kommet
'yes and at that time the others have arrived'
PRC: og så kommer der nogle naboer til
'and then some neighbours arrive'
DEF: ja (0.9)
'yes'

PRC: øhm: (1.0) vil det sige at at han bliver liggende da du bliver overfaldet af de andre
'uhm: (1.0) does this mean that that he remains on the ground when you're being attacked by the others'
DEF: ja (0.6)
'yes'

Examples (33) and (34) both feature metacommunicative verbs, but only the question in (33) is classified as a communicative question, as it clearly addresses – and asks for clarification of – the meaning of some previous utterance. In (34), *vil det sige* 'does this mean' may refer either to the meaning of the defendant's utterances or to the logical implications of the unfolding events. Only in the former reading would the question qualify as communicative, and for this reason the question is classified as 'other/indeterminable'.

4. Analysis and discussion

Based on the general coding of questions occurring in the data, and the specific classification of the questions into subtypes in terms of morphosyntax and speech act functions, I now go on to present and discuss some of the overall findings in sections 4.1., 4.2. and 4.3. below. These findings lead to a more specific discussion of declarative questions and their uses, following in section 4.4.

4.1. Question-talk ratio

As mentioned in section 3., the American data feature 157 questions out of a total of 4,437 words (cf. Table 1 below), which corresponds approximately to one question for every 28 words spoken. In the Danish data 623 questions occur out of 35,097 words spoken, corresponding approximately to one question for every 56 words. Thus, from an overall perspective, the Danish trials appear to be twice as 'talkative' as the American trial, in relation to the purpose of eliciting evidence, which seems to reflect in a very basic way the characterisation of Danish courtroom interaction as quite informal (cf. section 2.3.).

	Words spoken	**Questions asked**	**Words per question**
American data	4,437	157	28.3
Counsel[11]	2,453 (55.3%)		15.6
Witnesses	1,984 (44.7%)		12.6
Danish data	35,097	623	56.3
Counsel	15,131 (43.1%)		24.3
Witnesses	19,966 (56.9%)		32.0

Table 1: Question-talk ratios in the American and the Danish data

Table 1 moreover shows that both counsel and witnesses contribute to the higher amount of talk per question in the Danish data. However, the most salient difference is found in the contributions by witnesses, as the Danish witnesses speak close to three times as many words for each question (32.0) as the American witnesses (12.6). More generally, witnesses dominate the 'interactional floor' in the Danish examinations (56.9%), unlike the American examinations, where counsel speak the most (55.3%). These differences in response behaviour and distribution of talk are reflections of how the lawyers and prosecutors approach their questioning, and of the kinds of constraints their questioning imposes on the witnesses. In the following sections, I discuss the types and functions of questions occurring in the two data sets.

4.2. Distribution of morphosyntactic question types

For both data sets, the number of occurrences of each of the morphosyntactic question types was calculated as percentages of the total number of questions in the data. Thus, Figure 2 below represents the relative distribution of morphosyntactic question types used in the American and the Danish trials.

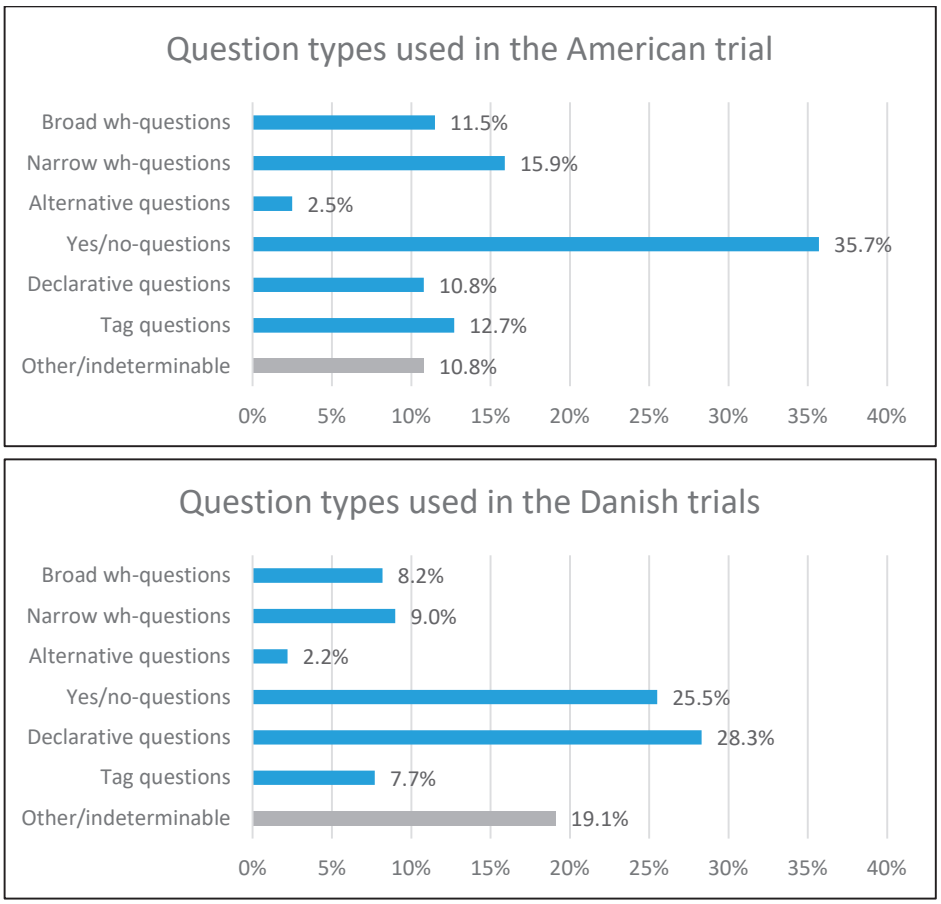

Figure 2: Frequency distribution of morphosyntactic question types in the two data sets

A striking difference between the American and the Danish data is the much higher frequency of declarative questions used in the Danish examinations. Moreover, the 'other/indeterminable' category is more extensively represented in the Danish data than in the American data (as briefly discussed in section 4.4. below). Apart from these observations, the question type distributions seem fairly similar across the two data sets.

However, a more complex pattern emerges when we draw a distinction between question types used during direct and cross-examinations, as illustrated in Figure 3 below.

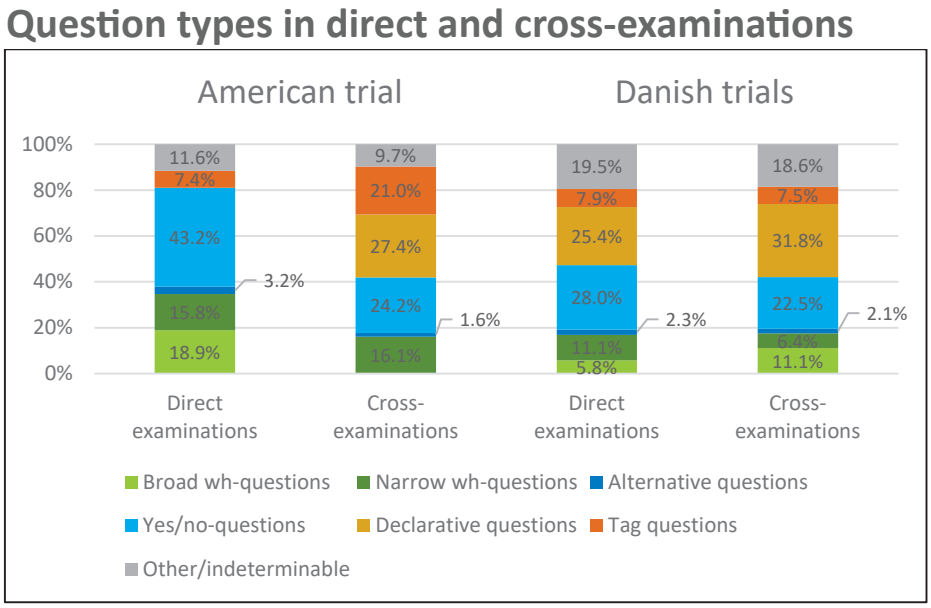

Figure 3: Frequency distributions of question types in direct and cross-examinations

Firstly, no declarative questions are used during direct examinations in the American trial, as opposed to the Danish trials, where declarative questions abound in both modes of examination. Secondly, the American direct examinations are dominated by *yes*/*no*-questions and *wh*-questions, while the cross-examinations, in addition to the extensive use of declarative questions and *yes*/*no*-questions, feature significantly more tag questions, but no broad *wh*-questions. These distributional facts are not surprising, as they reflect well-known interactional differences recognised in studies of Anglo-Saxon direct and cross-examination, e.g.:

> The rules of evidence which apply to the different types of examination (examination-in-chief, cross-examination, and re-examination) clearly have implications for the kinds of questions which may be asked, and for the distribution of certain sequences: for example, the rules applying to

> examination-in-chief not only affect the format in which questions may be put, but also result in the infrequency of sequences in which counsel challenge witnesses' evidence. (Atkinson and Drew 1979:35)

Indeed, a higher frequency of question types from the most controlling end of the continuum, i.e. tag questions and declarative questions, as well as a lower frequency of the least controlling question type, i.e. broad *wh*-questions, are expected in cross-examination, where witnesses (including defendants) will likely attempt to resist the questioner's agenda and to (re)assert their story:

> In the adversarial Anglo-American criminal-judicial system, cross-examination is essentially hostile. Attorneys test the veracity or credibility of the evidence being given by witnesses with questions which are designed to discredit the other side's version of events, and instead to support his or her own side's case. (Drew 1992:470)

The Danish examinations, on the other hand, clearly stand out from the typical Anglo-Saxon adversarial picture, given the extensive *similarity* between the questioning styles adopted during the direct and the cross-examinations. This similarity to some degree echoes a characterisation of Swedish courtroom interaction offered by Adelswärd et al. (1987):

> The whole procedure is less accusatorial than in the Anglo-Saxon system, and the difference between examination and cross-examination, e.g. concerning types of questions, is not very salient, at least not in petty offence trials. (Adelswärd et al. 1987:316)

However, while the data concur in showing similarity between the Danish direct and cross-examinations, they do not clearly indicate that the Danish trials are "less accusatorial" than the American trial. In fact, the Danish and the American cross-examinations seem fairly alike in terms of controlling question types, with the exception of tag questions, as *yes*/*no*-questions and declarative questions are highly frequent in both.

The high frequency of declarative questions across the Danish data is surprising, both in light of their total absence from the American direct examinations,[11] and in light of the relaxed and non-confrontational interactional style typically associated with Danish trial examinations. We can elaborate on these distributional facts by considering the speech act functions realised in the two data sets.

4.3. Distribution of speech act functions

When juxtaposing the speech act functions in the American and the Danish data, still distinguishing between direct and cross-examinations, we get a pattern as illustrated in Figure 4 below:

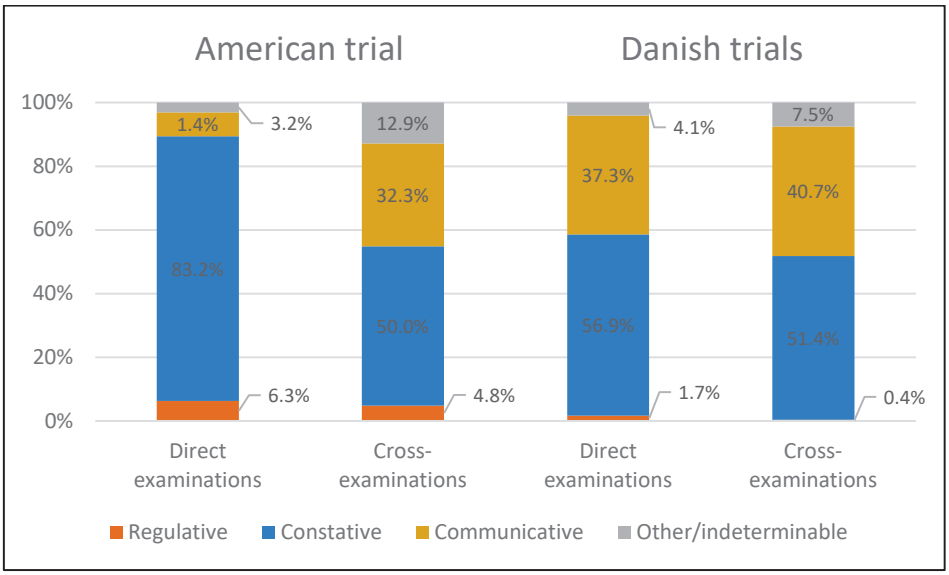

Figure 4: Frequency distributions of speech act functions in direct and cross-examinations[13]

Figure 4 generally shows that the Danish lawyers and prosecutors employ metacommunication more extensively than their American colleagues, especially when comparing direct examinations. It should be noted that the communicative questions are mainly other-clarifications across the data, while this is more salient in the Danish data (91%), compared to the American data (63%), cf. Appendix 4. Other-clarifications are nearly absent from the American direct examinations.[14] In other words, Danish counsel spend significantly more questions on clarifying (for various potential purposes, cf. section 3.2.3.) what their witnesses say, mean or (might be taken to) imply than American counsel. Constative questions are the most frequent speech act type across the data, but while they massively dominate the American direct examinations, their frequencies are significantly lower in the remaining data, where communicative questions take over to various degrees.

When cross-analysing speech act functions and morphosyntactic question types, we find that communicative questions, across the data, are primarily realised by declarative questions (59%), allegedly one of the most controlling question types. In order to understand and explain this correlation, I now focus the discussion on declarative questions, to illustrate how this controlling question type contributes to communicative and other speech act functions in the witness examinations.

4.4. The uses of declarative questions

Declarative questions, whether discussed separately from or together with tag questions, are located at the far most controlling end of most question type clines (e.g. those of Danet and Bogoch 1980, Harris 1984, Woodbury 1984, Gibbons 2003, Archer 2005). Since they "… *assert more than they ask…*" (Danet and Bogoch 1980, cf. section 2.1.), declarative questions, like tag questions, can be of great value to prosecutors and defence lawyers in their attempt to "… *supply a particular prepared account of events to the judge (and jury).*" (Gibbons 2003:96). For this reason, most studies find that declarative questions, tagged and untagged, are best suited for, and occur most frequently in, cross-examination rather than direct examination (e.g. Danet and Bogoch 1980, Harris 1984, Woodbury 1984, Gibbons 2008, Seuren 2019). However, Adelswärd et al. (1987), based on Swedish data, give a different characterisation of declarative questions (referring to them, tagged and untagged, as Q-DECL):

> Danet and Bogoch […] and Woodbury […] have both argued that […] Q-DECL is the most constraining type. Unlike these authors, we would argue that the status of the declarative question is actually ambiguous. While a Q-DECL may communicate that the questioner assumes the proposition expressed in the question to be true and that, therefore, the question can be responded to in a minimal manner (simple confirmation), it can also be interpreted as a rather conversation-like way of inviting more substantial responses from one's interlocutor. (Adelswärd et al. 1987:339)

Part of the reason for the "ambiguous" status of declarative questions is hinted at by Woodbury, who observes that untagged declarative questions tend to address *given* information (Woodbury 1984:222), i.e. they are used, as Seuren (2019) has it, "… *to request confirmation on information that is already in evidence*." (Seuren 2019:355). Similarly, Mortensen (2018), from a functional grammatical perspective, argues that untagged, unmodified declarative questions in Danish – but not in English – are inherently metacommunicative, i.e. they express communicative speech act functions (cf. section 3.2.2.). This is illustrated in example (35), where the prosecutor first asks the defendant for new information (i.e. a constative question), using a narrow *wh*-question, then restates the defendant's testimony for clarification, by means of a declarative question:

(35) Declarative question expressing (other-clarifying) communicative speech act, DK2
PRC: og hvor øh:: (0.3) hvis det var det var lykkedes [NAME] at at ramme dig med den der hånd (0.5) hvor havde han ramt dig henne

'and where uh:: (0.3) if [NAME] had succeeded in striking you with that hand (0.5) where would he had struck you'

DEF: så ville han have ramt mig her på brystet
'then he would have struck me here in my chest'

PRC: okay så det er et skub mod brystet vi taler om han forsøgte på
'okay so it's a push to the chest we're talking about him trying to do'

DEF: ja ja ja
'yes yes yes'

In the excerpt, the word *skub* 'push' – a fairly mild representation of a physical aggression against the defendant – appears to be introduced by the prosecutor, perhaps to undermine the defendant's 'self-defence' narrative, but it has in fact been introduced by the defendant himself in earlier statements. Thus, the prosecutor's summary of the defendant's testimony is accurate, but the excerpt illustrates that declarative questions can be used for both manipulative and more neutral metacommunicative purposes, depending on the context. Seuren (2019), focusing on direct examinations, describes a prototypical use of declarative questions as follows:

> … the prosecutor designs his question as an upshot of the witness' answer by (a) repeating part of that answer, (b) articulating that these were her words, (c) asking his question using declarative word order and (d) prefacing it with *so* […] The prosecutor goes to great lengths to show that he is asking the witness to confirm something she said; these are not his words. (Seuren 2019:346)

As mentioned, in the present case study, no declarative questions are featured in the American direct examinations, but Seuren's description help us understand how declarative questions are often used in the Danish direct examinations, e.g.:

(36) Declarative question in direct examination, DK3

PRC: okay øhm er det din opfattelse at at at det var et øh bevidst øh valg at spytte [NAME] i hovedet
'okay uhm is it your belief that that that it was a uh deliberate uh choice to spit [NAME] in his head'

PRW: helt klart helt klart meget provokerende han råbte og skreg og trusler og spyttede så det det var fordi han var aggressiv og ja
'definitely definitely very provocative he was yelling and screaming and threats and spitting so it was because he was aggressive and yes'

PRC: godt så han havde en aggr- aggressiv fremtoning
'right so he had an aggr- aggressive appearance'
PRW: ja det havde han
'yes he did'

Thus, in the Danish direct examinations declarative questions typically realise fairly neutral and supportive communicative speech acts, as their main purposes are clarification, emphasis and elaboration.

In cross-examinations, on the other hand, declarative questions may be used for more manipulative purposes that are not in the interest of the witnesses or the side they represent. Adelswärd et al. (1987) discuss this feature, associating declarative questions with the notion of (re)formulations coined by Heritage and Watson (1979):

> What a dominant party characteristically does in a reformulation is to summarize aspects of what the interlocutor has just said, reformulate it in other words, draw conclusions from it and very often assign an interpretation that has not been expressed by the interlocutor himself. […] In the trials, they are often given the form of declarative questions. (Adelswärd et al. 1987:323)

The Danish cross-examinations feature several examples of this, e.g.:

(37) Declarative questions in cross-examination, DK1
DFL: [reading aloud from police report quoting the witness]
(1.0) har du forklaret sådan
'(1.0) have you said this'
PRW: det tror jeg ikke jeg har forklaret
'I don't believe I've said that'
(1.0)
DFL: det tror du ikke på
'you don't believe in that'
PRW: nej (0.3) jeg har formentlig forklaret (0.6) at jeg...
'no I've probably said (0.6) that I...'
[witness' alternative wording]
(0.7)
DFL: så det jeg kan udlede det er politimanden der må have skrevet forkert
'so what I can deduce it is the policeman who must have written wrong'

PRW: øh det må være min opfattelse (0.7) som jeg husker det nu
'uh that must be my perception (0.7) as I recall it now'
DFL: okay
'okay'

In this excerpt, the witness dissociates himself from statements attributed to him by the police. When repeating the witness' negative response, the lawyer adds the preposition *på* 'in', and thereby misrepresents the stance taken by the witness, changing it from moderate (negative) assessment into stubborn disbelief. The witness, apparently not alert to this subtle reformulation, confirms without hesitation and offers his own alternative account of what he said to the police. This prompts the lawyer to make another reformulation, accentuating the implication that the police officer in that case must be wrong. This implication is attributed to the witness, even though the lawyer is the one drawing it – "these are not his words", as Seuren has it (cf. the above quote). The reformulation moreover includes the slightly infantile and condescending lexemes *politimanden* 'the policeman' (rather than e.g. *politibetjenten* 'the police officer') and *skrevet forkert* 'written wrong', thereby ridiculing the witness. The witness once again confirms the reformulation, assumingly without realising that he has now accepted being framed – ostensibly by his own words – as stubborn, irrational and infantile/simple-minded as well as disrespectful towards the police.

In each of the three examples above, the declarative questions – as morphosyntactic question types – convey the same core meaning, i.e. the request for confirmation of a particular understanding of something the respondent, allegedly, said before. Like most declarative questions they constitute communicative questions, as they elicit clarification, or at least pretend to. They illustrate how pragmatically versatile declarative questions are, which explains their omnipresence in the Danish witness examinations, both direct and cross-examinations.

The puzzling question is, then, why are they not seen as a valuable communicative resource in the American direct examinations? Since no examples are offered in the data, we can turn to the American cross-examinations instead, where declarative questions are amply represented, e.g.:

(38) Declarative questions in American cross-examination, US1
DFL: Did you tell them to get away from your property?
PRW: I did.
DFL: Did they get away from your property?
PRW: After shouting the threats at me.
DFL: And, did you walk towards the vehicle?
PRW: I walked towards the trunk of my car once -- yeah, I did walk towards the trunk of my car.

DFL: Did you walk towards the Yukon?
PRW: No.
DFL: Did you ever walk towards the Yukon?
PRW: You know what? I would have to be walking towards the Yukon to go to my trunk.
DFL: Okay. So, you did walk towards the Yukon?
[...]
DFL: And, to your knowledge [NAME] never set foot on your property?
PRW: No. He remained in the -- in the truck.
DFL: And, to your knowledge, he had no weapons with him?
PRW: None that I saw.
DFL: And also, there's a gun in your household.
PRC: Objection, Your Honor, relevance.

In this excerpt, the witness is questioned about core events of the case, i.e. the defendant harassing and threatening her on her property. The defence lawyer draws attention to the fact that the defendant eventually left without hurting anyone, and tries to develop and sustain a narrative where the witness was never in real danger. He does this by construing her as powerful and agentive. When she finally admits to have walked in the direction of the defendant's car ('the Yukon') – rather than e.g. backing away from the danger – the defence lawyer uses a declarative question to (partially) repeat and thereby highlight her statement, as much as highlight the fact that she just changed her testimony, a point accentuated though the contrastive use of *did* (cf. Raymond 2017). This is a communicative question, as it clearly addresses her previous statement, to secure that the jury understands, takes due notice and draws the right inferences. The three ensuing declarative questions are, on the other hand, constative questions, as they do not signal any relation to previous utterances. Rather they present assumptions or knowledge, e.g. based on background investigation, which the lawyer will not allow the witness an opportunity to challenge. As discussed in Mortensen (2018), such constative use of (untagged, unmodified) declarative questions is hard, if not impossible, to realise in Danish, but appears to be a semantic possibility in English (like in other European languages, with French as a canonical example). This different meaning potential may be part of the reason why declarative questions come across as highly controlling and confrontational in the Anglo-Saxon courtroom context, and hence not immediately suitable for direct examinations. In the Danish courtroom context, even though declarative questions have the potential to be used for manipulative and perhaps coercive purposes like in (37), classifying them as highly controlling questions on a scale does not adequately capture what they do interactionally.

They are indeed hard to resist – but this is not primarily due to the discursive constraints imposed by their morphosyntax on the answer type, like in the case of e.g. tag questions and *yes*/*no*-questions. Indeed, depending on the context it can be fairly unproblematic to answer a declarative question with elaboration or clarification rather than *yes*/*no*, while answering a tag question without explicitly confirming or disconfirming appears discursively incongruous, as illustrated in (39) below:

(39) Declarative question and answer, followed by tag question and answer, DK2

PRC: jeg skal først og fremmest (0.7) høre (0.3) om: øh: du kender tiltalte i forvejen
'I firstly (0.7) want to hear (0.3) if: uh: you know the defendant beforehand'
(1.0)

DFW: hvem er tiltalte
'who is the defendant'
[Assumingly defendant is visually pointed out in court]

DFW: nå (.) nej jeg kender ham ikke
'oh (.) no I don't know him'
(0.5)

PRC: du kender ham ikke
'you don't know him'

DFW: han har været inde og reparere hans bil en gang jeg tror nok det er e- en eller to gange (0.2) fået lavet service på den men det er ikke (0.5) for nyligt
'he's been in to fix his car once I think it's once or twice (0.2) had service done on it but it's not (0.5) recently'
(0.3)

PRC: men du ku- (0.2) men så kender du ham jo også lidt kan man sige ikke (.) det er en kunde
'but you cou- (0.2) but then you do know him a bit one might say right (.) he's a customer'
(0.2)

DFW: jeg ka- jeg ka- ved ikke engang hvad han hedder
'I ca- I ca- don't even know his name'
(0.8)

PRC: nej (0.7) men det er en (.) som har været kunde ved dig
'no (0.7) but it's someone (.) who has been a customer of yours'

DFW: ja
'yes'

The defence witness, an auto mechanic, attempts to counter the prosecutor's notion that he knows the defendant beforehand, and the implied accusation that he might therefore be biased in the defendant's favour. After simply disconfirming the prosecutor's initial question, the witness answers her follow-up declarative question by explaining his relation to the defendant. While his explanation may certainly be questionable, it is not inappropriate as an answer to the question, as it clearly responds to the prosecutor's incredulity (see related discussion of echo questions expressing incredulity in Archer 2020, this issue). His response to the ensuing tag question, on the other hand, attacks the argument rather than answering the question, succumbing, as it were, to the tag question's constraining force.

The exchange illustrates that both declarative questions and tag questions are powerful resources for steering the interaction in particular directions – but that they differ not only in degrees of control but also in the manner of control. What appears to be declarative questions' secret weapon is that they, for particular strategic uses, offer the ability to lure untrained or off-guard witnesses into confirming, by disguising whatever new and controversial information they may carry. As declarative questions invariably convey the sense of addressing information already in evidence, they invite respondents, rather than force them, to treat everything contained in the question as something the respondent already said or implied anyway. In this respect, to briefly regress to the discussion in section 2.1. above, their coercive potential may be a more significant trait than their controlling force, at least in Danish.

Another, and possibly stronger, reason for the different status of declarative questions in American and Danish witness examinations is rooted more deeply in the legal cultures of the two countries. As discussed, the American adversarial courtroom culture entails, according to some commentators, treating law as a kind of game, where truth is a question of the most convincing narrative. Direct examinations are meticulously planned and rehearsed to win the audience (i.e. the jury), and the witnesses' testimony is therefore rarely treated by counsel as new information in the ways new information is managed in everyday conversation. In a context like this, repeatedly asking for *clarification* – by means of e.g. declarative questions – is unnecessary, at best, and might even come across as a sign of poor preparation or insecurity concerning the legitimacy or quality of the testimony. The Danish legal culture, on the other hand, influenced by the inquisitorial ideals of a sincere and communal search for the truth, perhaps combined with what has been described as highly egalitarian values and "strong cultural aversion towards violence and aggressive behaviour" (see discussion in Levisen 2012:3), is more inclined towards an informal, conversation- or interview-like questioning style. This difference in formality even seems manifest in the 'other/indeterminable' question category, where syntactically ambiguous questions are twice as common in the Danish trials as in the more composed American trial (cf. appendix 4 and section

4.4.). In this fairly loose interactional environment, metacommunication of all kinds, including asking for clarification, is embraced as natural, even if the underlying goals of the metacommunication, and the communication as such, are often strategic and manipulative rather than idealistic.

5. Conclusion

I have compared all the witness examinations in one American and three Danish criminal trials, by means of quantitative as well as qualitative analyses. The quantitative analyses are based on an extensive coding scheme, introduced, developed and discussed in relation to the actual data treated. The coding scheme features the major morphosyntactic question types as well as the overall speech act functions potentially realised by a question. The most striking result of the quantitative analysis is the fact that the Danish defence lawyers and prosecutors use declarative questions significantly more than their American colleagues, especially when direct examinations are compared. In stark contrast to the Danish direct examinations, which abound with declarative questions, the American direct examinations feature no occurrences of declarative questions at all; and although their complete absence may constitute an extreme case, the marked difference between the American and Danish direct examinations clearly calls for linguistic, legal and cultural explanations. The difference correlates to some extent with the distribution of speech act functions, as the study moreover finds that communicative speech acts are prevalent across the Danish data and in the American cross-examinations, but virtually absent in the American direct examinations.

Analysing contextualised examples from the Danish as well as the American trials illustrates that declarative questions, typically realising communicative speech acts, are interactionally versatile and a valuable communicative resource, at least when discussed in relation to the Danish data. This may explain their extensive use in the Danish examinations. However, their underrepresentation in the American data, I argue, may be linked to the observation that declarative questions appear to be used (also) for other, more directly confrontational purposes in the American data, perhaps partly due to a seemingly different meaning potential. In this connection, I suggest that declarative questions, in a Danish courtroom context, may not be a highly controlling question type as such.

Finally, I argue that legal – in addition to more general – cultural differences between the United States and Denmark can also help explain the different distributions of declarative questions, as the Danish hybridised adversarial system of trial can more naturally incorporate metacommunication than the American prototype adversarial trial system.

Generally, the comparison contributes to a better understanding of the interactional mechanisms of courtroom questioning – from a Danish perspective by merely opening a topic that has been more or less neglected so far, and from a broader forensic linguistics perspective by shedding new light on one of the most dreaded question types in the adversarial courtroom.

Appendix 1: Quantitative overview, DK1

DK1		Direct examinations							Cross-examinations							All	
Speech act functions (SAF) / Question types (QT)		Constative	Communicative: Other-clarif.	Communicative: Self-clarif.	Regulative	Other/ indeterminable	Totals, QT (direct exam.) #	Totals, QT (direct exam.) %	Constative	Communicative: Other-clarif.	Communicative: Self-clarif.	Regulative	Other/ indeterminable	Totals, QT (cross-exam.) #	Totals, QT (cross-exam.) %	Totals, QT (direct plus cross-exam.) #	Totals, QT (direct plus cross-exam.) %
Broad *wh*-questions		7	0	0	0	0	7	5.1	14	0	0	0	0	14	15.7	21	9.3
Narrow *wh*-questions		11	0	1	0	0	12	8.8	3	0	0	0	0	3	3.4	15	6.7
Alternative questions		4	0	0	0	0	4	2.9	1	0	0	0	0	1	1.1	5	2.2
Yes/*no*-questions		36	0	3(1)	1	0	40	29.4	20	0	0	0	0	20	22.5	60	26.7
Declarative questions		1	35	1(1)	0	2	39	28.7	3	25	0	0	1	29	32.6	68	30.2
Tag questions		2	6(1)	0	0	0	8	5.9	1	4	0	0	0	5	5.6	13	5.8
Other/indeterminable	Imperatives	0	1(1)	1	1	0	26	19.1	0	0	0	0	0	17	19.1	43	19.1
	Ambiguous	12	5	3	0	3			10	4	2	0	1				
Totals, SAF (direct vs. cross-exam.)	#	73	56		2	5	136		52	35		0	2	89			
	%	53.7	41.2		4.4	3.7		100	58.4	39.3		0	2.2		100		
Totals. SAF (direct plus cross-examinations)	#								125	91		2	7			225	
	%								55.6	40.4		0.9	3.1				100

Appendix 2: Quantitative overview, DK2

DK2		Direct examinations							Cross-examinations							All	
Speech act functions (SAF) / Question types (QT)		Constative	Communicative: Other-clarif.	Communicative: Self-clarif.	Regulative	Other/ indeterminable	Totals, QT (direct exam.) #	Totals, QT (direct exam.) %	Constative	Communicative: Other-clarif.	Communicative: Self-clarif.	Regulative	Other/ indeterminable	Totals, QT (cross-exam.) #	Totals, QT (cross-exam.) %	Totals, QT (direct plus cross-exam.) #	Totals, QT (direct plus cross-exam.) %
Broad *wh*-questions		6	0	0	0	0	6	5.5	4	2	0	0	0	6	7.4	12	6.3
Narrow *wh*-questions		9	0	0	0	0	9	8.3	7	0	0	0	0	7	8.6	16	8.4
Alternative questions		2	0	0	0	0	2	1.8	1	0	0	0	0	1	1.2	3	1.6
Yes/*no*-questions		24	2	1	0	0	27	24.8	10	2	0	0	3	15	18.5	42	22.1
Declarative questions		1	29(1)	0	0	1	31	28.4	3	21	2	0	1	27	33.3	58	30.5
Tag questions		10	2	0	0	3	15	13.8	4	2	0	0	1	7	8.6	22	11.6
Other/indeterminable	Imperatives	0	0	0	0	0	19	17.4	0	0	0	0	0	18	22.2	37	19.5
	Ambiguous	9	7	1	2	0			7	9	0	0	2				
Totals, SAF (direct vs. cross-exam.)	#	61	42		2	4	109		36	38		0	7	81			
	%	56.0	38.5		1.8	3.7		100	44.4	46.9		0	8.6		100		
Totals, SAF (direct plus cross-examinations)	#								97	80		2	11			190	
	%								51.1	42.1		1.1	5.8				100

Appendix 3: Quantitative overview, DK3

DK3		Direct examinations							Cross-examinations							All	
Speech act functions (SAF) / Question types (QT)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (direct exam.)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (cross-exam.)		Totals, QT (direct plus cross-exam.)	
			Other-clarif.	Self-clarif.			#	%		Other-clarif.	Self-clarif.			#	%	#	%
Broad *wh*-questions		7	0	0	0	0	7	7.1	8	1	0	0	2	11	10.0	18	8.7
Narrow *wh*-questions		16	0	1	0	0	17	17.3	8	0	0	0	0	8	7.3	25	12.0
Alternative questions		2	0	0	0	0	2	2.0	4	0	0	0	0	4	3.6	6	2.9
Yes/no-questions		25	2	2	0	0	29	29.6	24	2	0	1	1	28	25.5	57	27.4
Declarative questions		1	14	0	0	2	17	17.3	4	25[2]	1	0	3	33	30.0	50	24.0
Tag questions		0	4	0	0	0	4	4.1	2	6	0	0	1	9	8.2	13	6.3
Other/inde-terminable	Imperatives	0	0	0	0	0	22	22.4	0	1[1]	0	0	0	17	15.5	39	18.8
	Ambiguous	10	6	1	2	3			6	3	2	0	5				
Totals, SAF (direct vs. cross-exam.)	#	61	30		2	5	98		56	41		1	12	110			
	%	62.2	30.6		2.0	5.1		100	50.9	37.3		0.9	10.9		100		
Totals, SAF (direct plus cross-examinations)								#	117	71		3	17			208	
								%	56.3	34.1		1.4	8.2				100

Appendix 4: Quantitative overview, US and DK data

US1		Direct examinations							Cross-examinations							All	
Speech act functions (SAF) / Question types (QT)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (direct exam.)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (cross-exam.)		Totals, QT (direct plus cross-exam.)	
			Other-clarif.	Self-clarif.			#	%		Other-clarif.	Self-clarif.			#	%	#	%
Broad *wh*-questions		18	0	0	0	0	18	18.9	0	0	0	0	0	0	0	18	11.5
Narrow *wh*-questions		14	0	1	0	0	15	15.8	9	0	1	0	0	10	16.1	25	15.9
Alternative questions		2	0	1	0	0	3	3.2	1	0	0	0	0	1	1.6	4	2.5
Yes/no-questions		33	0	4	3	1	41	43.2	9	4	1	1	0	15	24.2	56	35.7
Declarative questions		0	0	0	0	0	0	0	6	6	0	1	4	17	27.4	17	10.8
Tag questions		7	0	0	0	0	7	7.4	4	4	1	0	4	13	21.0	20	12.7
Other/inde-terminable	Imperatives	0	0	0	2	0	11	11.6	0	0	0	1	0	6	9.7	17	10.8
	Ambiguous	5	1[1]	0	1	2			2	2	1	0	0				
Totals, SAF (direct vs. cross-exam.)	#	79	7		6	3	95		31	20		3	8	62			
	%	83.2	7.4		6.3	3.2		100	50.0	32.3		4.8	12.9		100		
Totals, SAF (direct plus cross-examinations)								#	110	27		9[1]	11			157	
								%	70.0	17.2		5.7	7.0				100

DK1 + DK2 + DK3		Direct examinations							Cross-examinations							All	
Speech act functions (SAF) / Question types (QT)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (direct exam.)		Constative	Communicative		Regulative	Other/ indeterminable	Totals, QT (cross-exam.)		Totals, QT (direct plus cross-exam.)	
			Other-clarif.	Self-clarif.			#	%		Other-clarif.	Self-clarif.			#	%	#	%
Broad *wh*-questions		20	0	0	0	0	20	5.8	26	3	0	0	2	31	11.1	51	8.2
Narrow *wh*-questions		36	0	2	0	0	38	11.1	18	0	0	0	0	18	6.4	56	9.0
Alternative questions		8	0	0	0	0	8	2.3	6	0	0	0	0	6	2.1	14	2.2
Yes/no-questions		85	4	6[1]	1	0	96	28.0	54	4	0	1	4	63	22.5	159	25.5
Declarative questions		3	78[1]	1[1]	0	5	87	25.4	10	71[2]	3	0	5	89	31.8	176	28.3
Tag questions		12	12[1]	0	0	3	27	7.9	7	12	0	0	2	21	7.5	48	7.7
Other/inde-terminable	Imperatives	0	1[1]	1	1	0	67	19.5	0	1[1]	0	0	0	52	18.6	119	19.1
	Ambiguous	31	18	5	4	6			23	16	4	0	8				
Totals, SAF (direct vs. cross-exam.)	#	195	128		6	14	343		144	114		1	21	280			
	%	56.9	37.3		1.7	4.1		100	51.4	40.7		0.4	7.5		100		
Totals, SAF (direct plus cross-examinations)								#	339	242		7	35			623	
								%	54.4	38.8		1.1	5.6				100

Appendix 5: Transcription conventions

Identifier	DFL:
Pause, measured in seconds	(0.2) (.) indicates pause shorter than 0.1 seconds
Pause, US1 transcript	--
Prolonged vowel or consonant	uh: (more colons indicate greater prolongation)
Unfinished word	an aggr- aggressive appearance
Inaudible	xxx
Anonymised item	[NAME]
Contextual information	[Assumingly defendant is visually pointed out in court]

Notes

[1] I am grateful for the financial support given to this work by The Danish Council for Independent Research: project ID DFF – 1321-00180. Also, I would like to thank the anonymous reviewer for insightful comments to a previous version of the paper.

[2] In the example excerpts, defence lawyers are abbreviated DFL, defence witnesses DFW, prosecutors PRC, prosecution witnesses PRW and defendants DEF. Note that defendants are featured only in the Danish data. (In American trials it is quite common for defendants not to give live testimony.) For general transcription conventions, cf. appendix 5.

[3] In the example excerpts, red colour indicates utterances or words intended for particular analytical attention.

[4] This example is taken from the Danish data as no occurrences of this question type were found in the American data. Throughout the paper, English translations of Danish examples are displayed in grey colour.

[5] More specifically, direct examination/examination-in-chief – is the 'friendly', constructive questioning of same-side witnesses, i.e. the questioning of the defendant by the defence lawyer, the questioning of the complainant by the prosecutor, or of any other witnesses called by the side conducting the questioning. Cross-examination is the 'hostile', de(con)structive questioning of opposing witnesses, i.e. the questioning of the defendant by the prosecutor, the questioning of the complainant by the defence lawyer, or of any other witnesses called by the opposing side. Typically, cross-examination follows direct examination, except for the defendant's examination, which is initiated by the prosecutor (see Cotterill 2003:128ff for an extensive introduction and discussion).

[6] DK1 has previously been treated, from a different perspective, in Mortensen and Mortensen (2017). DK3 was collected, transcribed and studied, also from other perspectives, by a student project group under my supervision, cf. Crone et al. (2018).

[7] Bednarek (2014:184ff) straightforwardly compares the question types employed in her American and Polish data, on the basis of an English question typology offered by Quirk et al. (1985).

[8] Combinations of syntactic forms are not invariantly classified as 'other/indeterminable', as parts of these are in some cases clearly the result of e.g. false starts, or belong to prefatory statements, not included in the actual question.

[9] While imperative questions are not accounted for in Archer's model, they are discussed or mentioned in several other studies of courtroom questioning, including Danet and Bogoch (1980), Bülow-Moller (1992), Seuren (2019), yet mostly in anecdotal terms and without clear relation to the more central question types. Since the data analysed here contain very few examples of imperatives, I do not treat them individually as a question type, but include them in the 'other/indeterminable' category, cf. appendices 1, 2, 3 and 4.

[10] The possibility of double classification does not apply to constative questions, as they are mutually exclusive from communicative questions, which are metacommunicative as opposed to constatives, as well as from regulative questions, which impose obligations or permissions to act, as opposed to constatives.

[11] 'Counsel' refers collectively to prosecutors and defence lawyers.

[12] It should be noted that a total absence of declarative questions is hardly representative of typical American direct examinations. Seuren (2019), studying direct examinations in the George Zimmerman trial (featuring a total of 649 questions), finds a frequency of 11.4% declarative questions (Seuren 2019:344). Bednarek (2014), studying the O.J. Simpson criminal trial (featuring a total of 5,106 questions), finds a frequency of 9.5% declarative questions in direct examinations (Bednarek 2014:94ff). Still, even a 10-11% frequency of declarative questions would be very low compared to the Danish data.

[13] The minor group of questions classified as communicative and regulative are counted and treated as communicative questions. In the data overviews offered in the appendices, occurrences of 'secondary' regulative functions are presented in superscript parentheses following the figures for the communicative questions.

[14] The Danish data feature 220 other-clarifications out of 242 communicative questions, i.e. 91%. The American data feature 17 other-clarifications out of 27 communicative questions, i.e. 63%. The Danish direct examinations feature 113 other-clarifications out of 128 communicative questions, i.e. 88%, whereas the American direct examinations feature just 1 other-clarification out of 7 communicative questions, i.e. 14%, cf. appendix 4.

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