Dimensions of Forensic Linguistics

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Volume 5

Dimensions of Forensic Linguistics
Edited by John Gibbons and M. Teresa Turell

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Introduction

John Gibbons and M. Teresa Turell

The purpose of this volume is to provide a guide to the multidisciplinary nature of Forensic Linguistics – understood in its broadest sense as the interface between language and the law – that could be of interest for scholars, graduate students and professionals working in Applied Linguistics. This book seeks to address the links in Forensic Linguistics between theory, method and data, without neglecting the need for new research questions in the field.

As the title of this collection implies, Forensic Linguistics, in its now widely accepted broader definition, has many aspects. Major areas of study include: the written language of the law, particularly the language of legislation; spoken legal discourse, particularly the language of court proceedings and police questioning; the social justice issues that emerge from the written and spoken language of the law; the provision of linguistic evidence, which can be divided into evidence on identity/authorship, and evidence on communication; the teaching and learning of spoken and written legal language; and legal translation and interpreting.

The papers here explore some of these dimensions, revealing their often complex nature, and in many cases attempt to encourage debate on them. The book is divided into three parts: Part I: The language of the law; Part II: The language of the court, and Part III: Forensic linguistic evidence.

The collection begins with the study of the language of the law (Part I), which is interesting both descriptively (its nature), and in terms of explanation (why it is so very different from everyday language). This difference is linked to applied dimensions: how this unusual register can be taught and learned, and what can be done to make it more accessible to the people it affects – that is, everybody.

The first paper, an elegantly clear presentation by Peter Tiersma, examines the language of regulation and legislation, giving a broad brush description of the development and nature of legal languages, underpinning many of the following papers. He shows how the history of England shaped its legal language, with influences from Latin and Norman French on the language adopted by the previous wave of invaders from Saxony and Scandinavia. He then discusses what

happened to legal English when it was transplanted to what is now the United States. Tiersma then gives an account of the peculiarities of various legal languages, particularly the tendency to complexity and archaism, whether English or other European languages.

Northcott's paper discusses the enormously challenging task of teaching this complex language, particularly to those for whom the language of the law is a second language. It is possible to argue that, for Common Law at least, the majority of legal practitioners speak English as a Second Language, given the huge populations where English is used in the legal system in the sub-continent, not to mention Asia, Africa and Pacific nations. Northcott shows that traditional variables such as the learner's purpose make a major difference to what is taught. For instance relatively few legal practitioners will have to examine witnesses in court, so only a passive knowledge or even no knowledge of the language of examination will need to be taught. Again, legal education my impose language demands on law students that differ markedly from those placed on legal practitioners. Many lawyers are also concerned with a legal language other than their own, not in order to practice in other jurisdictions, but to cope with the impact of international law on their own jurisdiction. These considerations interact with traditional language teaching issues such as learner preferences for learning style, the context of teaching, teacher expertise, and inevitably, resources.

Heffer's paper examines the language of jury instructions – the words that the judge directs to the jury at the end of the trial and before their deliberations. This is a tendentious topic, which has been the object of extensive research by both linguists and psycholinguists, in particular this issue of whether juries can understand judges' instructions. In a carefully researched and provocative paper, Heffer suggests that the legal profession has been negligent in failing to do more to address jury incomprehension of judges' instructions.

Hall's paper engages with another relatively poorly developed dimension of Forensic Linguistics – the language of police. He uses careful transcriptions of police questioning in New South Wales to show how the functions of various elements of police interviews are realised in language, and also the considerable degree to which these functions are performed in a formulaic way, using set phrases and expressions.

Alcaraz Varó gives wide ranging review of the practical issues surrounding legal translation. He discusses the language traps waiting for legal translators, as well as the issues arising from translation across legal systems. He discusses the particular challenges posed by the complexity and abstraction of legal languages, then goes on to discuss the various methodologies uses by translators engaged in legal translation.

The next group of papers in Part II, The language of the court, examines the interactive area of spoken legal discourse from different perspectives. Gibbons' paper looks at courtroom examination, discussing the highly atypical nature of courtroom questions and how these questions differ linguistically from everyday discourse at the overall text level, at the exchange level and also at the level of question structure. Gibbons suggests that the reason for these different linguistic choices has to do with the specific functions that courtroom discourse fulfils in court communication processes.

Richard Powell's paper addresses an issue that is still seriously under-researched – the choices made between two or more languages in courtrooms in multilingual societies. This wide ranging paper uses examples from many languages and countries, discussing the many variables that affect code choice such as official policy and the proficiencies of the participants, and ends with a discussion of the justice issues surrounding code choice in courtrooms. This paper establishes firmly an emerging dimension of Forensic Linguistics.

Kurzon's paper looks at decisions made about a tendentious and fascinating area of language use in courtroom contexts – silence. Silence is not nothing – it can be highly meaningful. It is also explicitly regulated in many legal systems, which vary in the degree and nature of the interpretation that can be placed upon it. Australia for example uses the traditional Common Law tradition that no interpretation can be placed on the silence of an accused. In England and Wales however silence of an accused may be negatively interpreted. Kurzon examines particular cases in the (predominantly Common Law) legal system of Israel, showing debate and decisions concerning the interpretation of silence among witnesses.

Eades is well known for her seminal work in revealing the disadvantage suffered by Australian Aboriginal witnesses. In this paper she additionally surveys other groups that may be linguistically disadvantaged before the law – children, the intellectually impaired, second language speakers, the deaf, and second dialect speakers. She makes the case that the legal disadvantage associated with such groups can be fully understood if only in the context of power imbalances within society. Eades then goes on to present alternatives to the processes that produce such disturbing disadvantage.

Legal interpreting and translation is another important dimension of Forensic Linguistics. Leung picks up Eades' political theme, discussing the unusual situation in Hong Kong superior courts, where in many cases the 93% Cantonese speaking majority must work through interpreters because the main medium is English. She makes the case that this colonial hangover has a range of negative consequences for those who testify through interpreters. This paper adds a new dimension to the debate surrounding legal interpreting.

The last four papers in Part III all discuss linguistic evidence (in the USA sometimes referred to as Forensic Linguistics). This can in turn be divided into two main subfields, author identification and communication. Grant gives a broad survey of the area of authorship, dividing the authorship process into four stages, and showing that no one technique of identification, whether computerised or human based, can satisfactorily address all four stages. He deals primarily with the authorship of written texts.

Butters, an acknowledged expert, discusses the linguistic criteria that define trademarks. He shows what trademarks are, what linguistic features may distinguish or confound them, the strength of such distinguishing features, and, adding an interesting element, the possible impropriety of certain tradenames – those that may be deemed offensive. The paper is marked by Butters' typical clarity and concision, as well as extensive exemplification from his own experience as an expert witness.

Eggington extends the boundaries of Forensic Linguistics in addressing deception and fraud. He suggests that linguistic semantics can help in the definition of deception and fraud. He then goes on to discuss some of the possible semantic, pragmatic and discourse features that might be used by a forensic linguist to identify deceptive or fraudulent texts. He also however warns of the danger of overstating the significance of linguistic evidence in such cases.

Turell's paper explores the complex area of plagiarism. To distinguish between the influence and outright appropriation of others' ideas is a challenging linguistic task. This paper painstakingly explores these difficult boundaries, beginning with a description of plagiarism, including its legal definition, then going on to explore plagiarism of ideas and plagiarism involving direct copying, and the methodologies that can be used to detect and provide evidence of plagiarism. This is probably the first article to broadly define and discuss these issues.

Perhaps the most striking feature of the papers that comprise this collection is their range. The multi-dimensionality of Forensic Linguistics is strikingly illustrated. At the same time they also share a preoccupation with the painstaking linguistic work involved, using and interpreting data in a restrained and reasoned way. Each of these papers could be, and indeed in many cases has been, the subject of entire books. The volume of work already done in this relatively young field is remarkable: the volume of work that yet remains is a serious challenge.

PART I

The language of the law

The nature of legal language

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Legal languages are inevitably products of the history of the nation or state in which they are used, as well as the peculiar developments of the legal system in question. In terms of features, they tend to be characterized by minor differences in spelling, pronunciation, and orthography; long and complex sentences, often containing conjoined phrases or lists, as well as passive and nominal constructions; and a large and distinct lexicon. The profession has developed distinct traditions on how its language should be interpreted. In terms of style, the language of the law is often archaic, formal, impersonal, and wordy or redundant. And it can be relatively precise, or quite general or vague, depending on the strategic objectives of the drafter.

1. Introduction

Anyone who studies forensic linguistics, or language and the law more generally, is inevitably going to come into contact with legal language. By "legal language," I mean the distinct manner of speaking and writing that has been developed by just about any legal system throughout the world. A primary concern of many forensic linguists is legal discourse, particularly courtroom proceedings. In this setting, the professional players (judges and lawyers) typically use some kind of legal language to communicate with each other. Even when members of the lay public are involved as parties, experts, or jurors, they will inevitably be confronted with legal language, which in many cases will create a need for some kind of explanation or translation (as when jury instructions try to explain legal concepts in ordinary language). Even greater problems arise when lay persons who do not speak the official language of the courtroom become intertwined with the legal system. Obviously, this calls for translation or interpretation, but it is usually not just a matter of converting, let us say, English into Chinese, but of converting legal English into ordinary Chinese. Thus, any court interpreter must have a solid understanding of at least one legal language, and perhaps more than one. Finally,

those forensic linguists who concern themselves mainly with the use of linguistic expertise to solve legal issues (such as the identification of a speaker or writer, or a person's nationality, by using linguistic criteria) will also need to have a working knowledge not just of the legal system in question, but also its language, in order to competently carry out their function.

In this chapter I will be discussing primarily English legal language, which is my primary specialty. Most of the observations that I will be making apply to other legal languages as well, and from time to time this point will be made explicit by means of specific examples. We will begin our discussion by examining the background or history of legal language, and then proceed to discuss its most prominent features.

2. History

Every language is a product of its history, and more specifically, a product of the history of the people who speak it. Legal language is not just a product of the society or jurisdiction in which it is used, but also of the legal profession that speaks and writes it. Legal English is a good example. Its story involves Anglo-Saxon mercenaries, Latin-speaking missionaries, Scandinavian raiders, and Norman invaders, all of whom left their mark not only on England, but on its language. English legal language was therefore heavily influenced the forces that shaped the English nation in general. But, in addition, it was formed by the distinct experiences of the profession. The discussion that follows is based on Baker (1990), Mellinkoff (1963), and Tiersma (1999).

2.1 The Anglo-Saxon period

The English language can be said to have begun around 450 A.D., when boatloads of Angles, Jutes, Saxons and Frisians arrived from the Continent. These Germanic invaders spoke closely related languages, which came to form what we call Anglo-Saxon or Old English. Although the Anglo-Saxons seem to have had no distinct legal profession, they did develop a type of legal language, remnants of which have survived until today. Examples include words like *bequeath, goods, guilt, manslaughter, murder, oath, right, sheriff, steal, swear, theft, thief, ward, witness* and *writ*.

Because at this time the Anglo-Saxons were illiterate (except for the very limited use of a runic alphabet), they needed mnemonic devices to help them remember the law. The most common of such devices were rhyme and alliteration,

and we find remnants of each in today's legal language. One alliterative phrase that has survived is *to have and to hold*, which is still found in many deeds and also in wedding vows. Numerous modern wills contain the phrase *rest, residue and remainder*, and contracts often have a *hold harmless* clause. An example of rhyme is the maxim, *finders keeper, losers weepers,* which is a well-known albeit not always correct statement of the law.

The Anglo-Saxons used not only Old English as a legal language, but also Latin. Although Latin was originally introduced to England during the Roman occupation of Britain, it became a major force only after the arrival of Christian missionaries in 597. Before long, Latin was the language not only of the church, but of education and learning. The association between literacy and the church became so strong that the two were almost synonymous. The terms *clerk* (someone who can write) and *cleric* or *clergy* (priest) derive from the same Latin root. For centuries, English courts recognized a type of immunity for members of the clergy, who were identified by their ability to read.

The introduction of literacy resulted in many legal transactions being memorialized, or performed, in writing. Several of the early Anglo-Saxon kings created written codes of law, for example. In addition, although writing was seldom essential in this period, dozens of early English written wills and deeds survive. Some of these documents are in Latin, but a substantial number are in Old English.

Not too terribly long after they had themselves invaded England, the Anglo-Saxons found themselves under attack from another group of Germanic warriors: the Vikings. Eventually, a large group of Vikings settled in England and gradually assimilated to the existing population. They ended up speaking English, but in the process they influenced the language by giving it a fair amount of Scandinavian vocabulary. In the legal sphere, their legacy includes the most important legal word in the English language: the word *law* itself. Law derives from the Norse word for "lay" and thus means "that which is laid down."

2.2 The Norman Conquest and the introduction of French

The next foreign invasion, the Norman Conquest, had a far more profound and lasting impact on the language of English lawyers. The Normans were originally Vikings who conquered the region of Normandy during the ninth and tenth centuries. In the course of a few generations, these Vikings became French both culturally and linguistically; the Northmen had become Normans. William, Duke of Normandy, claimed the English throne and conquered England in 1066. Before long, the English-speaking ruling class was largely supplanted by one that spoke Norman French.

The Normans were accustomed to writing legal documents in Latin, not French. So, the role of Latin expanded. At the same time, English was regarded as the language of a conquered people, and for several hundred years largely faded away as a legal language.

Latin remained important for legal purposes until the early part of the eighteenth century. It was used almost exclusively as the language of court records. The practice of using Latin *versus* in case names harks back to these times. English lawyers and judges were also prone to express sayings or maxims about the law in Latin. At one time, there were many hundreds of maxims about the law, virtually all of them in Latin. Just about all that has survived of Latin in the legal sphere is a small number of these maxims, such as *caveat emptor,* which has infiltrated into general knowledge, and a few sayings regarding general principles of law and legal interpretation, including *de minimis non curat lex* and *expressio unius est exclusio alterius.*

The first century or two following the Norman Conquest saw very little written legislative activity, and to the extent there was any, it was done in Latin. But starting with the thirteenth century, the volume of legislation (as well as other legal documentation) started to increase dramatically (Clanchy 1993). Latin was still widely used for legal purposes, of course. But around 1275, statutes in French began to appear. By 1310 almost all acts of Parliament were in that language. During this same time, royal courts were established and judges were appointed who began to dispense justice. Clerics, who had previously done most legal work, were forbidden by the church to do so, and thereafter a distinct profession of lawyers arose. The professional language of these legal professionals was Anglo-French.

Oddly, the use of French in the English legal system grew at the very time that its decline as a living language in England was well under way. Baker (1998) has observed that outside the legal sphere, Anglo-French was in steady decline after 1300. Even the royal household, the last bastion of French, switched to English by the early 1400s. Yet lawyers clung to French as their professional language for another century or two.

Unhappiness about this state of affairs led to what might be considered the first plain English law. In 1362 Parliament enacted the Statute of Pleading, condemning French as "unknown in the said Realm" and lamenting that parties in a lawsuit "have no Knowledge nor Understanding of that which is said for them or against them by their Serjeants and other Pleaders." The statute required that henceforth all pleas be "pleaded, shewed, defended, answered, debated, and judged in the English Tongue." Ironically, the statute itself was in French!

The legal profession seems to have largely ignored this statute. Acts of Parliament did finally switch to English around 1480, but legal treatises and reports of courts cases remained mostly in French throughout the sixteenth century and the

first half of the seventeenth. Complaints continued to mount. When the Puritans took over Parliament and abolished the monarchy, they passed a law in 1650 that required all case reports and books of law to be "in the English Tongue only." But when the monarchy was restored, lawyers were once again free to use French, although by then their French was severely degraded.

French had a strong impact on many aspects of modern English, especially in terms of vocabulary. But because it was the main language of the profession for so many centuries, and especially during its formative period, its influence on legal language has been that much greater. For example, just about all the basic terminology for courts and court proceedings is French in origin, including *appeal, attorney, bailiff, bar, claim, complaint, counsel, court, defendant, demurrer, evidence, indictment, judge, judgment, jury, justice, party, plaintiff, plea, plead, sentence, sue, suit, summon, verdict* and *voir dire*.

French influence can also be seen in the substantial number of legal phrases consisting of adjectives following the noun that they modify, which is the usual French word order. Several such combinations are still common in legal English, including *attorney general, court martial, fee simple absolute, letters testamentary, malice aforethought*, and *solicitor general*. Also, Law French allowed the creation of worlds ending in *-ee* to indicate the person who was the recipient or object of an action (*lessee*: "the person leased to"). Lawyers, even today, are coining new words on this pattern, including *asylee, condemnee, detainee, expellee,* and *tippee*.

Parliament finally ended the use of Latin and French in legal proceedings in 1731. By then, however, it was delivering merely a coup de grâce.

2.3 Legal language in the New World

The English colonies in the Americas, which later became the United States, were largely populated by people from Britain who were familiar with English law and its idiom. Nor surprisingly, perhaps, when the colonies became independent, they retained not only the common law, but its language as well. It should be pointed out that by the time of the American revolution, Latin and French were no longer used as legal languages in England, although they both left behind vestiges (mostly words and maxims) testifying to their earlier dominance. Thus, neither Latin nor French was ever used by the profession in the New World. What the early Americans inherited, or adopted, was legal English, which in the words of Thomas Jefferson was characterized by verbosity, endless tautologies, and "multiplied efforts at certainty by saids and aforesaids." Jefferson and the other founders of the United States might have taken the opportunity to revolutionize not just the judicial system of their young country, but its

language as well. But although the revolutionaries had a negative view of much British legislation, they viewed the common law in a more positive light. And because the common law was expressed in traditional legalese, the adoption of common-law principles almost inevitably entailed the adoption of the language used to express them.

2.4 The history of other legal languages

Time and space constraints prevent us from discussing the development of other legal languages in any detail, but we can make some very general observations. In much of Europe, especially in the west, Latin has had a pervasive influence on most legal languages. To some extent this results from the use of Latin in education and religion, but the primary cause is the great influence that Roman law (especially Justinian's Corpus Juris Civilis) had on European law. Justinian was a Byzantine emperor in the sixth century. He brought together experts who were charged with compiling all of Roman law into a code and also a digest. The language of these works, which became essential to the teaching of law during much of the late middle ages and beyond, was Latin (Buckland 1966: 39). Much later a similar project was undertaken by the French emperor Napoleon, whose civil code was also highly influential in much of Europe and promoted the use of French in European legal languages.

In much of the rest of the world, colonialism was a critical factor in the development of legal languages. Most of the nations that became independent during the past century adopted certain aspects of the legal system – and also the legal languages – of their former rulers. Thus, a judge in India or Malaysia is likely to either use English legal language for professional purposes, or to use some English terminology when writing legal Hindi or Malay. Judges in parts of Africa will sometimes use French or Portuguese terms. Religion can also have an impact, especially in areas traditionally governed by religious law, as is common with family law. Thus, in Muslim countries many legal terms derive from Arabic, even if the local legal language is Indonesian or Persian.

In the remainder of this chapter we will discuss some of the primary features of legal language. Once again, we will concentrate on English, with occasional references to similarities or differences in other languages. Given the history that we just reviewed, one would expect that the language of the law tends to be archaic and conservative. To some extent, this is true. But legal language also has several other features that distinguish it from ordinary speech and writing.

3. Features of legal language

There have been a number of examples historically of cases where the language of lawyers and judges is almost completely different from that spoken by the population of the jurisdiction in question. This was the case in England after French had died out as a vernacular during the fourteenth century. For two or three centuries afterward, English lawyers and judges continued to make use of Law French as a legal language.

For the most part, however, legal languages are registers or dialects or, perhaps better, sublanguages of ordinary speech and writing. Thus, legal English is simply a variety of English. The issue that occupies our attention for the remainder of this chapter is how legal and ordinary languages differ.

3.1 Pronunciation and spelling

In terms of spelling and pronunciation, legal English has some minor but interesting distinctive features. Many members of the legal profession pronounce *defendant* as [difɛndænt], where in ordinary speech the final vowel would be a schwa (as in *appellant*). There also is a tendency to pronounce *juror* with two full vowels ([ǰu:ror]), rather than the more usual [ǰʊrər].

Orthographic differences are even more subtle, consisting mainly of a very strong tendency to favor *judgment* (without an *e)* over *judgement.* In ordinary writing both forms occur, but to find *judgement* in a legal text is rare indeed. I distinctly remember being told in law school – despite my protestations that both spellings were valid – that the *only* correct legal option was *judgment.*

The most likely reason for these relatively minor spelling and pronunciation differences is that they are used, probably subconsciously, to express solidarity or to mark that the speaker is a member of the legal fraternity. It is interesting to observe that radio and television commentators, who may have limited training in the law, tend to begin imitating these features when reporting on legal affairs.

Another oddity of English legal language is the pronunciation of Latin and Law French. Traditionally, the legal profession in England has articulated these words with English vowels. In other words, *amicus* rhymes with *ficus* and the first word in *res judicata* rhymes with *peace.* The French word *oyez* ("hear ye"), sometimes used in triplicate to announce the beginning of a court session, is traditionally pronounced as "o yes!" In modern French, of course, it would be [waye:]. Most educated speakers of English have at least a passing familiarity with French and Latin as those languages are taught in schools, with the result that lawyers

increasingly use modern French and classical Latin vowels when pronouncing Law French or Latin. Presumably, they do so because the use of English vowels in these words sounds too bizarre or unsophisticated to the modern ear.

Although it is hard to determine how widespread the phenomenon is, the use of linguistic features for no purpose other than to mark oneself as a member of a particular social or professional group is not uncommon. In legal Dutch, the profession has maintained an archaic pronunciation of words of French origin that end in *-oir*. In modern Dutch these words are pronounced in the modern French manner ([war]). But in the case of legal terms like *peremptoir*, Dutch lawyers pronounce the final vowel as [o:r]. According to Van den Bergh and Broekman (1979: 46), the aberrant articulation of these terms – as in the case of the English examples above – reinforces group solidarity and excludes outsiders.

3.2 Morphology

There is probably nothing particularly noteworthy or distinct about the morphology of legal English, besides the remarkable persistence of a few archaic suffixes. Although *thou* seems to have died out in legal usage, the pronoun *ye* is still sometimes encountered, especially in the phrases *hear ye* and *know ye*. And long after *-s* had become the standard third-person suffix on verbs (as in *comes*), the legal profession continued to use *-th*. In fact, although it is quite rare, I still sometimes encounter it in modern legal texts, particularly in pleadings (*cometh now plaintiff* or *this indenture witnesseth*).

In the related area of word formation, legal language makes prolific use of the suffix *-ee* to create deverbal nouns that refer to the object of an action. Some of these words have entered ordinary English, such as *employee*. Legal examples include *assignee, bailee, donee, lessee,* and *mortgagee*.

3.3 Syntax

One of the most obvious syntactic features of legal language is the use of extremely long sentences. For example, Blackstone's *Commentaries* contains an appendix with a typical English indenture (specifically, a deed of release) dating from 1744. One sentence in this document carries on for over 1400 words. This is an extreme example, of course, and sentences in modern legal texts are decidedly shorter. Nonetheless, even current legal documents tend to have long sentences, as illustrated by Risto Hiltunen's analysis of the British Road Traffic Act of 1972. The average sentence in that act has 79 words, and one sentence has no fewer than 740 (Hiltunen 1984: 108–9). A similar situation holds in other languages.

Finnish judgments traditionally consisted of a few sentences of extreme length, sometimes taking up an entire printed page, although – as in English-speaking countries – the recent trend is to favor shorter sentences (Matilla 2006: 90).

Legal language also tends to be syntactically complex. Thus, the average sentence in the British Road Traffic Act has over six clauses, and the level of embedding is significantly deeper than in nonlegal texts (Hiltunen 1984: 109, 119).

Another feature of the language of law is the very high number of conjoined phrases and lists. Thus, California trial courts are organized by county, but they are not officially designated as courts *of* a county, or *for* a county, each of which would be acceptable English, but as courts *of and for* the county in question. A typical American will *gives, devises and bequeaths* the *rest, residue and remainder* of the testator's estate, rather than merely *giving the remainder* of the estate.

In addition to conjoining two or three similar words, legislators and lawyers seem extremely fond of long lists of synonyms or near-synonyms. Typically, the motivation is to cover every base and anticipate every contingency. When making document requests, American lawyers usually do not simply ask for all *documents* relating to a specific matter, but instead demand *any and all letters, correspondence, memoranda, notes, working papers, diaries, invoices, computations, graphs, charts, drafts,* and so forth, enumerating any conceivable form of document. The concern seems to be that if they do not specify every possibility, the party subject to the request will try to wiggle out of it by claiming that, for instance, a chart is not a *document* and need not be produced. Another advantage to a list is that it can expand (or limit) the ordinary definition of a word. It has recently become common for document requests to include tape recordings and computer-readable media, which might not normally be considered *documents*. Once again, lists are common in many other legal systems as well (Matilla 2006: 71).

Finally, legal drafters tend to make great use of verbs in the passive voice, in part because passive constructions allow the writer to omit the actor ("mistakes were made"). Lawyers seem to also prefer nouns or nominalized forms of verbs over more straightforward verbal constructions (to *make a decision* rather than simply *decide.*) Although perhaps not universal, passive and nominal constructions seem to be widespread in the legal languages of the world (see also Van den Bergh and Broekman 1979: 49).

3.4 Lexicon

The most obvious way in which legal language differs from ordinary speech and writing is its tremendous amount of technical vocabulary. The introduction to the seventh edition of Black's Law Dictionary states that it contains approximately

25,000 entries. A fair number of these are purely historical or come from foreign jurisdictions, but there is no doubt that the English legal lexicon is vast.

Other legal languages likewise have a great deal of technical vocabulary. What can be frustrating for those doing comparative analysis, as well as translators and interpreters, is that legal terminology is extremely parochial. In many other specialized fields, such as chemistry, linguistics, and physics, most technical terms have a relatively close equivalent in other languages. The reason is that the fields themselves are international, and often the critical concepts are also international. Law, on the other hand, differs in many details from one jurisdiction to the other. The technical terminology of each jurisdiction is different, and therefore words and phrases are not easily rendered into another language (see also Mattila 2006). Even within a single language, such as English, there are some significant differences between English and American usage, and sometimes even in the usage of various American states.

Much of the vocabulary is quite distinctively legal, but there are also many words that have both an ordinary as well as a legal meaning. The most common meaning of *instrument* is a device for making music, but lawyers use it to refer to a document (usually one that is operative or performative). I have referred to such terms *legal homonyms* (Tiersma 1999: 111–12). This can sometimes be confusing for nonspecialists, who might think that they understand a word or phrase when they do not. When a lawyer tells someone that she is going to *file a complaint* against her, it does not mean that she plans merely to make a complaint, but that she plans to initiate a lawsuit against him. Sometimes it can produce humorous effects, as is the case with a California statute that makes it illegal to "publish...a fictitious...instrument in writing." You would think that it was illegal to publish a novel (in fact, it prohibits forgery). Van den Bergh and Broekman (1979: 33) report that this phenomenon also exists in Dutch, and it seems safe to assume that it is a feature of legal languages in general.

Despite the reputation that legal language has for being conservative and highly precise, it can also contain a surprising amount of informal jargon and slang (Tiersma 1999: 137–38). While all areas of law have their own examples, such vocabulary is probably most common among criminal lawyers (see Murray and Muldoon 2006 for examples). Similar slang expressions abound in police usage and in prisons (Gibbons 2003: 50–4).

Another indication that the language of the law is not nearly as archaic as scholars sometimes suggest (see Mellinkoff 1963), is that it can actually be quite innovative at times. Of course, lawyers and judges are unlikely to adopt a new term when the concept to which an existing term refers is still part of current law. But as our society and material culture change, legal language invariably adapts. For

example, the development of electronic commerce on the Internet has resulted in the coinage of many new legal terms, including terminology for types of licenses that can currently be created online:

- *shrinkwrap licenses* (where the purchaser assents to terms contained in boxed software or in a user's manual by opening the box);
- *clickwrap licenses* (where a purchaser clicks on a box or icon on a website, thereby manifesting assent to the terms of the license); and
- *browsewrap licenses* (where a purchaser on the Internet clicks on a notice that takes him to a separate web page containing the full text of the license agreement).

Consider also the many words that have been coined for electronic transactions by prefixing an *e-* (on the analogy of *email)*, such as *e-commerce*, *e-contracts*, *e-discovery*, and *e-signature*.

3.5 Semantics

The interpretation of legal documents, especially statutes, is the subject of a huge literature. Both scholars and judges have written extensively on the topic, making it impossible to do justice to it in the limited space of this article. Basically, in the common-law world there have been two competing traditions. Although these approaches have been applied to all the major types of legal texts, including contracts, deeds, and wills, most of the discussion has focused on statutes.

During medieval times in England, there was no dominant theory of statutory interpretation, in part because it was then either impossible or very difficult to obtain a copy of the text of statutes that contained the exact words that Parliament had enacted. But during the eighteenth century, reliable copies became available. Before long, courts began to focus ever more closely on the words of the text, leading to what is now called the *plain meaning rule.* It required not just that judges determine the meaning of statute from the text itself, but that they determine the meaning *only* from the text. Unless the words were ambiguous, they were not to consider "extrinsic evidence." Lord Chief Justice Nicolas Tindal expressed it thus in 1843:

> The general rule I take to be, that where the words of any written instrument are free from ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application of those words to claimants under the instrument, or the subject-matter to which the instrument relates, such instrument is always to be construed according to the strict, plain,

> common meaning of the words themselves; and that, in such case, evidence "dehors" [outside] the instrument, for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument, is utterly inadmissible. (Attorney-General v. Shore, 59 Eng. Rep. 1002, 1021 (1843))

The plain meaning rule prevailed in England until fairly recently. It also migrated to the United States, but was never applied as vigorously as in the mother country. Throughout the twentieth century, American courts increasingly considered extrinsic evidence, such as the drafting history of a statute or reports of legislative committees, in deciding what a statute meant (Solan 1993).

It appeared that the plain meaning rule had gasped its last breath, at least in the new world. But during the 1990s, new life was injected into the rule by Justice Antonin Scalia of the United States Supreme Court. Scalia has forcefully and often eloquently argued for what linguists would call a very acontextual mode of interpretation, in which judges would determine the meaning of a statute primarily from its text. He particularly scorns references to legislative history (a type of extrinsic evidence) and advocates the use of dictionaries as a neutral source of information on the plain or ordinary meaning of words (Scalia 1997). His approach has been criticized by many scholars (among them Solan 1993, 1997) and failed to instigate the revolution that he anticipated. It did, however, cause judges to pay somewhat more attention to the text than they might have done in the past.

American judges today therefore tend to take a fairly pragmatic approach to interpretation. Most have a great deal of respect for the legislature and acknowledge its power to make law. They will not easily override the clear meaning of the words of a statute. But most also will not refuse to consider legislative history and other types of extrinsic evidence if they believe that it would be helpful in determining what the legislature sought to accomplish (Eskridge 1990).

These two approaches to interpretation in Anglo-American law can also be found in the civil law system of continental Europe. The great codes that were adopted in the late eighteenth and early nineteenth centuries (especially the Prussian *Allgemeines Landrecht* and the French *Code Napoléon*) aimed to state the law as clearly as possible, not only so that it could be understood by ordinary citizens, but also to reduce the interpretive discretion of judges. The notion was that judges were to merely apply the law, without interpretation (Merryman 1985: 43). This, of course, is very similar to the plain meaning rule that was developed in England.

The notion that European codes would not need interpretation turned out to be a fallacy. In reality, continental judges had to fill gaps and resolve ambiguities, just as they do in England and the United States. The methods they use today include textual or grammatical analysis, structural or contextual interpretation, historical interpretation, and teleological approaches that concentrate on

the apparent goal or purpose of the legislation (Brugger 1994). This is not all that different from the pragmatic approach taken by most modern American judges.

3.6 Style

Many of the features of legal language involve questions of style. We have already discussed the archaic nature of much legal language, especially its lexicon. To the extent that old words and phrases express concepts that are still current, of course, there is nothing particularly objectionable to retaining the existing terminology. But there are also archaic words and phrases that serve no function at all, or serve a function that could easily be fulfilled by a more modern term. Examples include *said* and *aforesaid* (used as adjectives), *such* in the meaning of "this" or "that," and *to wit*. Sometimes these words are used to add an air of solemnity (or perhaps pompousness) to a document, or the drafter is mindlessly copying form language that has been recycled for centuries. Equally questionable is archaic word order, sometimes the result of word-for-word translation from Latin, such as language in a will that revokes any previous wills "heretofore by me made," or the text of many subpoenas directing the recipient to appear at a proceeding and warning him that "hereof" he should "fail not." An archaic style seems to be common in many of the world's legal languages (Mattila 2006: 61–62, 206–207).

The style of lawyers and judges also tends to be relatively formal, especially in written legal texts. American lawyers almost always speak of *advising* a client, when they are merely telling her something. Judges write of trials *commencing* and *terminating,* rather than simply *beginning* and *ending.* Clearly, the purpose is to impress the lay public and to inspire respect for the law. Yet a formal style can present comprehension problems when the audience consists of nonspecialists. Much of the resistance by judges to the movement to create more understandable jury instruction stems, in my opinion, from judges' desire to make an erudite impression. Maintaining the dignity of trial proceedings is a legitimate goal, but it should not interfere with the rule of law, which is undermined if the jury does not understand basic legal principles applicable in the case. There must be happy medium, but it's not always easy to find.

Legal style sometimes also includes literary and poetic features. At first reading this claim may seem almost perverse, given how excruciatingly boring some legal documents and statutes can be. Historically, however, the language of law often included rhyme and alliteration, generally a remnant of preliterary times when these devices served a mnemonic function. Even today, the use of conjoined phrases and lists of synonyms can on occasion have a poetic effect. Consider the United States citizenship oath, which I have divided into verse:

> I hereby declare
> on oath
> that I absolutely and entirely
> renounce and abjure
> all allegiance and fidelity
> to any foreign prince, potentate
> state, or sovereignty
> of whom or which
> I have theretofore been
> a subject or citizen. (8 U.S.C. §1448).

Flowery and literary language may also be encountered in judicial opinions, especially dissents, which traditionally allow somewhat greater stylistic freedom. But judges should resist the temptation to wax overly eloquent. A Pennsylvania judge was recently chastised by a higher court for issuing an opinion in rhyme. The underlying lawsuit involved a claim by a disappointed fiancée that the ring her husband-to-be had given her did not contain a diamond, as he had claimed. The judge responded, in part:

> A groom must expect matrimonial pandemonium
> When his spouse finds he's given her a cubic zirconium.

The appellate court was not impressed, observing that the rhyming opinion "reflects poorly on the Supreme Court of Pennsylvania" because "[n]o matter addressed by this court is frivolous" (Los Angeles Times 2002).

Less likely to make a poetic or literary impression is the penchant of lawyers to draft excessively wordy and redundant documents. Perhaps the best American example is the humble will. It usually contains a provision directing the executor of the estate to pay the decedent's lawful debts, even though this is a legal obligation that cannot be avoided, making the provision absolutely vacuous. Of course, most provisions in a will do have a function, but the language expressing that function tends to be quite redundant. A typical residuary clause reads as follows (Tiersma 1999: 249):

> I give, devise and bequeath all of said rest, residue and remainder of my property which I may own at the time of my death, real, personal and mixed, of whatsoever kind and nature and wheresoever situate, including all property which I may acquire or to which I may become entitled after the execution of this will, in equal shares, absolutely and forever, to A and B.

All that really need be said is "I give the rest of my estate to A and B."

Interestingly, wordiness and redundancy seem to be more prevalent in Anglo-American law than in the civil law system. As a general matter, European

statutes and documents are substantially shorter than those in England and the United States. The obsession with covering all the bases and anticipating ever more remote contingencies seems to be far more of a concern in Anglo-American law, perhaps due to its more adversarial nature, than it is in continental Europe (Hill and King 2004).

Stylistically, legal language also tends to be relatively impersonal. We have already seen that lawyers tend to prefer passive and nominal constructions, both of which can promote an impersonal style. Similarly, judges and legislators tend to speak in the third person, as when a judge writes, "This court sentences the defendant to ten years in state prison," in place of "I sentence the defendant..." Probably the principal reason is that impersonal expressions create the impression (and to some extent, the reality) that law is objective and not a respecter of persons. It also is related to abstractness, which is essential for the expression of general and broad legal principles (Matilla 2006: 51, 73–4).

Precision is another stylistic feature of the language of law. Language can never be as precise as some lawyers seem to think possible (Mellinkoff 1963: 290). At the same time, it is more precise than many skeptics suggest. There are a number of features that do, in fact, have the capacity to increase the precision of legal documents. One is the use of lists of near-synonyms. Although sometimes such lists are completely redundant, as we have seen, on other occasions they can be helpful in specifying exactly what is meant. Thus, an enumeration of types of vehicles ("automobiles, buses, trucks, bicycles, skateboards") is almost always more precise than a general superordinate term ("vehicles"), since use of the general term can lead to debate about whether specific items are members of that category.

Definitions can also enhance exact expression. A word might in context have a number of possible meanings; defining can specify which is meant. It can also circumscribe an otherwise nebulous term.

A final example is that the careful repetition of words can sometimes be useful. If a statute refers to a *city,* it should use that term consistently, rather than using *town* or *municipality* in the same meaning. If it does employ *municipality*, a reader should be able to assume that this was a deliberate choice and that the word means something different from *city*.

Yet lawyers are not always so precise. To some extent this results from the inability of people to foresee every possible future contingency. For this reason, a lawmaker might decide that the single word *vehicle* is more appropriate than a list because it is flexible enough to cover future vehicular developments. Somewhat more vague and general language may also give greater discretion to those charged with implementing a law.

It would thus be wrong to say that legal language is inherently precise, or not. The choice between one option or the other is usually a strategic one. When

lawyers involved in a lawsuit request documents from the opposing party (which they have a right to do under American law), they stipulate in exact detail what they mean by the term *document*, either by defining it or by using a list. On the other hand, a publishing contract often requires an author to produce a *satisfactory* manuscript, which gives the publisher a great deal of freedom to later reject it. Likewise, because of rule of law considerations, criminal codes must specify in relatively exact terms what types of conduct are prohibited. A constitution, in contrast, is generally meant to last indefinitely and therefore typically contains very broad and general principles.

3.7 Speech vs. writing

An important point about legal language, something that is not always sufficiently acknowledged in the literature, is that most of the features attributed to it are, in reality, characteristics of *written* legal language. David Mellinkoff's classic study of the language of the law (1963) focused almost exclusively on written legal texts. Only in the past few decades has this situation begun to change. Thus, while legal language is indeed sometimes archaic, redundant, wordy, formal, full of passives and nominalisations, and so forth, we need to qualify this statement by specifying that we are referring to written legal texts. Lawyerly speech (office banter, or even a closing argument at trial) has far fewer of these features.

Once we identify most of the features of legalese with the written language of lawyers and judges, we can return to the question posed earlier in this article: how different is legal language from ordinary speech and writing? Because we need to compare apples with apples, a more appropriate question is, how different is written legal language from other relatively formal types of prose? Clearly, the law's technical terminology is quite distinct, but just about every trade and profession has a large technical vocabulary. What about the other posited features of legalese?

A study by Chafe and Danielewicz (1987) of academic writing found that it generally contains a more literate (i.e., formal) vocabulary than speech. They also discovered that writers use more nominal and passive constructions than speakers do. Finally, Chafe and Danielewicz noted that there are few first person pronouns in academic prose, and that generally such writing is more detached (i.e., impersonal) than speech.

An overview of linguistic research into the difference between speech and writing by Akinnaso (1982) confirms most of Chafe and Danielewicz's conclusions. Although the research is sometimes inconclusive, most studies have found that writing (compared to speech) has higher levels of abstraction, more difficult and

more Latinate vocabulary, fewer personal pronouns, and more elaborate syntax (including more subordination, as well as greater use of passive and nominal constructions).

Thus, it turns out that legal and other types of text are more similar than one might initially think. Most of the features traditionally attributed to legalese are not exclusive to the language of the law, but are rather associated with writing more generally.

As to spoken legal language, it is likewise not as different from ordinary speech as one might think. It is true that the speech of the profession employs a great deal of technical vocabulary, and that lawyers and judges tend to speak in a relatively formal style. But in other respects their speech from a purely linguistic perspective does not diverge significantly from ordinary speech.

Nonetheless, as recent work by linguists has shown, the discursive practices of judges, lawyers, and witnesses involved in legal proceedings can be very interesting. There is a growing literature on this topic in the Anglo-American sphere (see Atkinson and Drew 1979; Cotterill 2003; Ehrlich 2001; O'Barr 1982; Stygall 1994). Similar studies exist of the very different types of trials in the civil law world (Jacquemet 1996; Komter 1998). This research illustrates the various discursive strategies used by lawyers to control the legal process and attempt to shape the outcome. At the same time, the studies also reveal how witnesses and defendants (and the lawyers representing them) can sometimes resist such efforts at verbal domination. It is, predictably, the more vulnerable and less educated members of society who are most likely to be manipulated by the communicative practices of lawyers (Gibbons 2003: 200). Of course, the discursive strategies that lawyers use to obtain information from witnesses or persuade jurors are not unique to the trial context, but there are few other arenas in which those strategies are used as frequently or intensely.

Although there are few absolute distinctions between written and oral language, there are in general some important differences between two modes of communication. Certainly in the case of legal language, the written texts produced by the profession have a number of characteristics that are rare in the profession's speech, and vice versa. We are fortunate that during the past two decades or so, the oral communication of lawyers and judges is finally being placed under the linguistic microscope.

4. Conclusion

Legal language is anything but monolithic. Despite claims that it is archaic, highly formal, redundant, precise, and so forth, we have observed that it can also be

innovative, casual, and purposely vague. As is true of speech and writing more generally, the nature of legal language is highly dependent on the communicative goals of its users.

Nor does the language of lawyers deviate as much from ordinary speech and writing as is sometimes thought. Of course, a written legal text would never be confused with a casual conversation about the weather. But it is not that terribly different from similar types of formal written prose. Academic writing, particularly in the sciences, is also quite formal, impersonal, and precise, and it is full of technical terminology.

Perhaps the most interesting question is why legal language sometimes differs from ordinary formal writing in ways that are not explainable by the likely strategic aims of the author. Many archaic features of legalese seem to have no legitimate function, except perhaps to make a document seem more impressive to clients as a means of justifying the lawyer's fee. Or the language may be intentionally complex in order to suggest to clients that they should not try to draft such documents themselves, thus helping lawyers preserve their monopoly on legal services.

Thus, a close examination of the language of the legal profession allows us to determine which of its features serve a legitimate function and which are more questionable. This, of course, is the first step towards developing a language that not only facilitates communication among the professionals working within the legal system in question, but also between those professionals and the members of the public whose lives and fortunes are governed by it.

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Language education for law professionals

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Increasing globalisation has led to English becoming the lingua franca of international legal practice requiring L2 legal professionals to develop high level skills in English thus creating significant challenges for language educators who may not have a background in law. This article provides an overview of language education for L2 legal professionals. Developments and practice in English for Legal Purposes (ELP) viewed within English for Specific Purposes (ESP) are presented to provide a model focusing on the interrelated dimensions of learner context, methodology and teacher background. I acknowledge the contribution of genre studies in providing pedagogical descriptions of written legal language and stress the need for further ethnographic investigation to identify and describe relevant oral legal genres.

1. Introduction

English has for some time been the dominant language in the field of public international law and is the language of preference for international legal journal publications. It is rapidly moving towards the same position in the private commercial sector as a result of the growing influence of Anglo-American law. This greater use of English in legal contexts poses challenges for language educators. For this reason the chapter focuses on issues related to the teaching of English, rather than other languages, addressing some key issues for the development of L2 legal professionals' ability to communicate effectively. Lawyers, law students, legislative translators and legal interpreters are all users of English for Legal Purposes (ELP) but their language learning needs will differ depending upon their communicative purposes and learning contexts. Moreover, these factors influence decisions about the professional background and knowledge base required by language educators in this field.

ELP is part of the English for Specific Purposes branch of Applied Linguistics. Current research and practice in ESP emphasise that texts can only be understood