11 Legal English

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Introduction

The growth in English for specific purposes (ESP) practice and research has waxed and waned with the growth and decline of global industries and their related professions. Legal English is no exception. Because English is currently acknowledged to be the lingua franca of international commercial and legal transactions, globalization has ensured an ongoing interest in this area of ESP practice. As ESP practitioners "a commitment to revealing the workings of other communicative worlds to our students by grounding pedagogical decisions in our understanding of target texts and practices" (Hyland 2002: 393) requires us to undertake and reflect upon relevant research. This focus underpins the following examination of Legal English research.

As ever, terminology can cause problems. The term Legal English (LE) has a variable meaning, understood by some to refer to legalese and by others as a shortcut for Anglo-American law, hence ESP practitioners have often eschewed the term in favor of English for legal purposes (ELP). Other acronyms have been developed to account for different subsets and so we have EALP (English for academic legal purposes), EOLP (English for occupational legal purposes) and EGLP (English for general legal purposes). In related fields other definitions prevail. However, in the discussion that follows, my understanding and use of the term Legal English equates with "English language education to enable L2 law professionals to operate in academic and professional contexts requiring the use of English" (Northcott 2009: 166). It follows from this that Legal English research is research undertaken primarily to promote this aim and thus support pedagogy. This, whilst concurring with the most applied of definitions of applied

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linguistics, encompasses a wider body of research than might at first be apparent. ESP is an essentially eclectic discipline and remains open to insights from many different fields.

My aim in this chapter, at least in part, concurs with the obligation, incumbent on all ESP teachers, "to engage in a degree of reflection that attempts to sort out the extent to which learners' purposes are actually served when the language practices of any target discourse community are actually taught" (Belcher 2009: 2). After an overview of research developments in the areas of forensic linguistics, language and the law, and translation studies, I consider the impact of the common law origins of Legal English before describing some specific Legal English research developments of particular interest to the ESP discourse community.

Language and the Law

The nature and properties of legal language provide material for a substantial part of the Legal English research agenda because a large part of ESP has focussed and continues to focus on the description and analysis of the target language and language practices of the particular discourse community to which the learners belong or aspire to belong. Research in this area can be found in a number of related applied linguistic sub-disciplines in addition to ESP. These are referred to variously as legal linguistics, language and the law, and forensic linguistics. Understandably, in what is essentially a multidisciplinary area, there is no common agreement on the demarcation points. It is in effect a contested area. Definitions would appear to depend on the definer's affiliation and academic background. For example, forensic linguistics is viewed, broadly, as a branch of applied linguistics including the study of the written language of the law and spoken legal discourse, with their related social justice issues, legal translation and interpreting as well as Legal English teaching and learning (Gibbons and Turell 2008). The narrower definition (Grant nd) characterizes it as "taking linguistic knowledge, methods and insight and applying these to the forensic context of law, investigation, trial, punishment and rehabilitation." Tiersma (2008b: 11) speaks of the "relatively fractured" language and law field and the lack of a common forum for all interested parties. He laments the fact that language and the law appears to be "an unappreciated discipline" (2008b: 9) with the emphasis on language, in US law schools, at least, typically limited to legal writing courses.

That lawyers view language as a tool not an object of study has not traditionally been seen as such a problem, however, for the ESP practitioner. ESP is, to quote Harding (2007: 6), "the language for getting things done." In other words, it begins from "a functional account of learner needs" rather than a structural approach to language. (Richards and Rodgers 2001: 21).

> In ESP the practical application and use of language overrides other aspects of language learning. The vocation can be anything from A to Z, from architects to zoologists, by way of bricklayers, lawyers and tour guides (Harding 2007: 6).

A common theme in the language and law literature is the lack of transparency and obscurity found in legal discourse, with its frequent use of formal words, deliberate use of expressions with flexible meanings, attempts at extreme precision, and complex syntactic constructions (e.g. Danet 1980; Maley 1987; Melinkoff 1963). This is attributed to both the historical development of the language and the desire for power. Mattila (2006: 10) takes the view that "the legal language, especially legal terminology, sometimes is almost a language museum. This is clearly demonstrated by Legal English." Developments in the history of the English language account in part for this. Anglo-Saxon, French, and Latin have all left their marks on the language of the law in English. Medieval French influence has left us with long, complicated sentences; Anglo-Saxon has given us alliterative phrases, the product of an oral tradition. Some of these have persisted (cf *to have and to hold* in the marriage service). Legal pairs (e.g. *null and void; peace and quiet; breaking and entering*; *cease and desist*) are the fossilized result of the legal language changing from French to English in the late medieval period. The question as to why these anachronisms have persisted in the legal language can be answered partly by the lawyer's need for certainty and precision. Moreover, using a language not well-known to the general populace, with obscurities and ambiguities combined with excessive use of ritualistic language, maintains the image of the law as something inaccessible, mysterious and frightening, enabling the state to maintain its authority and lawyers to hold on to power. Mattila shows how the development of the common law (the system in the United Kingdom, the United States and former colonial countries) further contributed to the process. A system originally developed to ensure a common system of justice throughout the country became increasingly conceptually complex. Subtle distinctions between cases required a complex terminology as each term needed to be interpreted, narrowly resulting in verbose statutes and contracts in contrast to civilian law (the system in continental Europe and its former colonies). Williams (2005) gives a detailed account of verbal constructions in legislative text, giving careful consideration to Plain Language (the movement to encourage simplification of legal and other public discourse) suggestions for change. He concludes that there are good reasons for keeping many of the constructions that at first sight appear archaic and obtuse.

The legal language dilemma is compounded by the system-bound nature of legal language. Brand (2009: 22) states the problem lucidly:

> The anatomist will have few difficulties in finding a term for 'spinal column' in a foreign language that precisely describes the body part [s]he means. The jurist is in a less comfortable position. Each national legal system uses terminology that does not necessarily correspond with the legal languages of other countries . . . concepts vary to such an extent in different legal systems that a literal translation is misleading at best.

There are those who maintain that the problems may have been overstated. Tiersma (2008a) gives his own account of the historical development of English

legal language. Whilst conceding that claims of archaism, redundancy, and attention to precision, leading to difficulties for comprehension, are true, he also claims that the differences between legal language, both spoken and written, and ordinary language, are not so great. In fact, legal language can also be "innovative, casual and purposely vague" (2008a: 24). As evidence for the innovative nature of legal language, he cites the growth of different names for contracts resulting from the growth of internet sales. New legal terms have been coined, for example, for the different licenses that can be created online. "Shrinkwrap," "clickwrap," and "browsewrap" are terms used to show how a purchaser can agree to the terms of a license by, respectively, opening the box containing software, clicking on an icon on a website to show agreement with the terms and clicking on a notice taking the purchaser to a separate web page containing the full text of the license agreement. Moreover, Kryk-Kastovsky (2006: 13) defends the hypothesis that "the language of the law shares most of the pragmatic properties of colloquial language." She frames her analysis around selected pragmatic concepts, adpated primarily from a Gricean perspective as interpreted by Levinson (e.g. Levinson 1983), within the language of law. These concepts are presupposition, deixis, implicature, speech acts and power versus solidarity.

Spoken legal genres have received less attention than the more easily accessed written genres. Apart from courtroom discourse, which has been extensively analyzed and reported in the forensic linguistics literature (see Gibbons 1999), work has been done on the lawyer-client interview. This research is, however, confined to first language speakers of English interacting in common law jurisdictions. Maley et al. (1995) draw on audio-taped interviews in the Australian context to analyze the ways in which "clients and lawyers co-construct through their discourse, or discourses, the definition, exploration and sometimes the resolution, of the matter before them" (p.43).

Recent forensic linguistics research claims go beyond the fact that the difficulties in understanding the language of the law are one factor causing misunderstandings to show how the very nature of legal language can lead to social disadvantage for vulnerable groups. Eades (2008), for example, examines the central role of language in the failure of the law in cases involving children, intellectually disabled people, deaf people, dialect speakers and other minority group members. Mertz (2007) demonstrates how law students are trained to "think like a lawyer" through socialization into various specific language abilities, providing further empirical evidence for the inseparability of law and language and contributing to a firmer research base from which to understand the effects this has on society.

Translation Studies

Within translation studies there is an ongoing debate about the nature of legal translation. Some (e.g. Harvey 2002) claim that legal language is just one instance of specialized language and can threfore be approached in the same way. Others