

تطور الخطاب القانوني الإنجليزي: منظور تاريخي

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The Evolution of English Legal Discourse: A Historical Perspective

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Abstract:

Language, as a fundamental medium of communication, plays a crucial role in shaping the legal system and its development over time. By examining the transformation of legal discourse in English from its earliest beginnings to the present day, this research paper seeks to shed light on the intricate relationship between language and law. It delves into the transformation of English legal language over time. Furthermore, it examines the origins of legal language, tracing its roots from Anglo-Saxon and Norman influences. It explores the significant milestones in the development of legal discourse, including the dominance of Latin and French and then their eventual replacement by English. The role of legal institutions and influential figures is investigated in shaping the coherence and structure of legal language. It also discusses the impact of the plain English movement on legal discourse as it sought to promote clarity, accessibility, transparency, and efficiency in legal communication, making the law more understandable and inclusive for a broader range of individuals. By comprehending the historical evolution of English legal discourse, this paper provides insights into the intricate relationship between language, law, and society, in forming legal practice, education, and the understanding of legal systems.

Keywords: English legal discourse, historical perspective, language, law, origins, Latin, French, English, plain English movement, clarity, communication, legal documents, legislation.

الملخص:

تلعب اللغة، كوسيلة أساسية للتواصل، دوراً حاسماً في تشكيل النظام القانوني وتطوره مع مرور الوقت. يسعى هذا البحث من خلال دراسة تطور الخطاب القانوني الإنجليزي من بداياته الأولى حتى اليوم لإلقاء الضوء على العلاقة المعقدة بين اللغة والقانون حيث يتتبع التغييرات الحاصلة في لغة الخطاب القانوني الإنجليزي عبر الزمن. وبالإضافة إلى ذلك، يتطلع البحث لاستكشاف أصول الخطاب القانوني، ويتتبع جذورها في التأثيرات الأنجلوسكسونية والنورماندية. كما يتناول المراحل الهامة في تطور الخطاب القانوني الإنجليزي، بما في ذلك هيمنة اللاتينية والفرنسية ومن ثم استبدالها بالإنجليزية. بالإضافة لذلك، يستكشف البحث دور المؤسسات القانونية والشخصيات المؤثرة في تشكيل اتساق وهيكल الخطاب القانوني. ويناقش أيضاً تأثير حركة الإنجليزية البسيطة على الخطاب القانوني حيث سعت لتعزيز الوضوح والوصولية والشفافية والكفاءة في التواصل القانوني، مما يجعل القانون أكثر فهماً وشمولية لفئة أوسع من الأفراد. من خلال فهم التطور التاريخي للخطاب القانوني الإنجليزي، يوفر هذا البحث نظرة مفصلة إلى العلاقة المعقدة بين اللغة والقانون والمجتمع، ويسهم في تشكيل الممارسة القانونية والتعليم وفهم الأنظمة القانونية.

الكلمات المفتاحية: الخطاب القانوني الإنجليزي، منظور تاريخي، لغة، قانون، أصول، لاتينية، فرنسية، إنجليزية، حركة الإنجليزية البسيطة، وضوح، تواصل، وثائق قانونية، تشريعات.

Introduction

Essentially, the terms "language of the law" and "legal discourse" encompass several aspects. Firstly, it includes the language used in statutory laws themselves. Secondly, it encompasses the interpretation of statutory laws in judicial opinions. Thirdly, it encompasses the diverse forms of language used in courtrooms, such as opening statements, closing arguments, witness examinations, and jury instructions. Lastly, it encompasses the written contracts that establish legal obligations, including rental agreements, insurance policies, wills, and liability waivers. Less central perhaps, but crucially important in people's lives and a frequent topic of analysis by forensic linguists, is the wide array of registers representing interaction between institutional operatives and ordinary citizens, including police interviews of persons of interest and criminal suspects; ordinary electronic and other correspondence examined in connection with possibly illegal communication; and face-to-face and telephone conversations (for example, surreptitiously recorded interaction

between persons suspected of conspiring to commit a crime) (Finegan, 2013: 483).

Legal language has a great deal in common with languages of science and of religion. It shares a concern for cohesion and precision with the first and a respect for ritual and historical tradition with the latter. It also shares the criticism which these two other varieties attract: like science, it is cautioned for its impenetrability; like religion, it is thought willful in its mystique (Crystal, 2003: 374).

Bhatia (2006: 1-6) distinguishes three types of legal genres: academic, consisting of textbooks, research journals, legal problems, moots, examination essays, legal memoranda, critical essays, problem-solving essays, pleadings, and so forth; juridical, covering court judgements, case-books, law reports, courtroom interactions (direct and cross-examination); and legislative or statutory writing, which includes acts of parliament, statutory instruments, contracts, agreements, treaties, etc., where the primary function of the language of the law and legal discourse is to enact legislation by establishing a framework of obligations, permissions, and prohibitions.

Skoczen (2013) argues that there seems to be four main types of legal contexts of communication to be distinguished:

- Engaging in communication with a religious legislative body with the intention of asserting one's desired outcome in a regulated matter. This falls under the category of political communication and aligns with A. Marmor's concept of strategic speech.
- Communicating between the legislature, the legislator, and the court responsible for adjudicating a particular case by applying the established regulations. This context presents significant challenges and complexities, making it difficult to adequately describe using Grecian or neo-Grecian terms.
- Engaging in communication within the courtroom during the process of deliberating and deciding on a specific case, involving interactions between judges or a jury and the parties involved in the litigation.
- Facilitating communication between the legislator and the target agents of the legal act.

History of English Legal Discourse

The English language comprises components derived from numerous European languages and has assimilated vocabulary from a diverse range of other linguistic sources.

Mellinkoff (2014: 34) states that is impossible to specify the date for the beginning of the language of the law. The term itself is of a Scandinavian origin. Around the year 1000 A.D., the term entered the Old English language, having originated from prehistoric Old Norse. This prehistoric Old Norse word, in turn, can be traced back to the ancient Icelandic term that conveyed the meaning of something being *laid* or *fixed*.

Numerous historical events have had a profound impact on the society of the British Isles, leading to cultural transformations and even influencing the style of the "English" language during each period. Over time, the spoken and written language of the Britons underwent gradual changes, both in its structure and vocabulary. As a result, a significant portion of the English lexicon is derived from Latin and French origins (Damova, 2007: 25).

Because legal terminology always reflects the conceptual system of the law, it is impossible to avoid entirely dealing with the history of legal systems (Mattila, 2006: 8).

1. The Anglo-Saxon Period (450-1066 A.D.)

Despite that the Celts and the Romans are the first inhabitants of the British Isles to leave historical traces, including linguistic ones, the oldest English legal texts date back to the Anglo-Saxon period (450-1066 A.D.). The Romans linguistic legacy consists mostly of place names and a few words of Latin origin, none of them particularly legal (Tiersma, 2012: 19; and Mellinkoff, 2014: 36).

Anglo-Saxon laws showed some complex features like topicalization, comment-like clauses, and disconnected sentences, and thus "Anglo-Saxon laws must be regarded as magnificent achievements at such an early date and may in an indirect way be seen as predecessors of modern English laws" (Hiltunen, 1990: 46).

However, the link between Anglo-Saxon and modern English is not a direct one. Many other historical and social events have influenced the development of legal English. A significant amount of legal terms was introduced after the Norman Conquest.

2. The Norman Period (1066-1362)

Significant changes took place in Old English during this period as a result of increased mixing and trade between Normans and the Anglo-Saxon population (Durant and Leung, 2017: 7). Most of legal English terminology derives from this historical period, when all the law books were translated from Latin into French. It should be noted that

although English was no longer used in the legal field for about four hundred years, it is still used by the population and informally by administration officers (di Carlo, 2015: 21).

3. Law Latin

At first, Latin was raised to a completely dominant position in legal matters. Anglo-Saxon, formerly used in these matters to some extent, fell into complete disuse because the Normans were accustomed to using Latin in important contexts. During the period immediately following the Norman Conquest (in the 11th and 12th centuries), Latin was the language of legal documents in England – in line with practices across Europe. This is the period in which England's original legal system was created. That explains why many essential common law terms were originally formulated in Latin: *breve* (writ) is just one example (Mattila, 2006: 226). Mellinkoff (2014: 73) defines Law Latin as “the kind of law Latin, containing Latinized English and Old French words, used in English law” (Matilla, 2006: 10).

4. The Rise of Law French

Latin was later ousted by French in English court circles. This occurred at the end of the 13th century. The first law in French was promulgated in 1275, over two centuries after the Norman Conquest (Mattila, 2006: 226). By the early 14th century almost all acts of parliament were in French (Durant and Leung, 2017: 9).

In short, it can be said that French became the legal language in England from the late 13th century, both for legislation and the law courts. This state of affairs followed its course for 100-200 years, whether or not taking spoken language into account (Mattila, 2006: 226).

Contract, agreement, covenant, obligation, debt, condition, guarantee, etc. are some common examples of French names (Pollock and Maitland, 1968: 59). Furthermore, the French influence was not restricted to vocabulary items. A great number of prefixes and suffixes came with the borrowed words too, such as the prefixes: en-/em-; mal-, sur-; and the suffixes: -able, -ability, -age, -al, -ance, -ant, -ee, -fy, -fication, -ment, -ous, and -(e)ry (Hiltunen, 1990: 53).

6. The Rise of the English

The persistent use of French, even after it ceased to be a spoken language in England, was not always met with favor by the general public. Critics argued that lawyers intended to obscure the law, thereby maintaining their exclusive control over legal services. In response, lawyers contended that Law French (the specialized dialect of French used in the English legal

profession) offered greater precision compared to English (Tiersma, 2012: 22).

The first attempt to change the language of law in the country was the Statute of Pleading (1362), which condemned the fact that parties in most legal actions could not understand the proceedings and required pleas to be made in English (Durant and Leung, 2016:9). di Carlo (2015: 24) offers the following excerpt from the Statute, ironically written in French,

All pleas which shall be pleaded in any courts whatsoever, before any of his justices whatsoever, or in his other Places, or before any of His other Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English tongue, and that they be entered and enrolled in Latin.

However, it was to take another century until the content of the statute became reality. The legal profession had become so accustomed to the use of French that implementing a statutory change in a short period of time proved to be challenging.

The first Act of Parliament written in English dates back to 1483; however, English became the language of legal institutions only after two centuries, with the Act for Turning the Books of Law and All Processes and Proceedings in Court of Justice in English (1650). The form of English used after the Norman Conquest until 1475 was Middle English. It is the period where words such as *notwithstanding*, *aforsaid*, *whereas*, *whereby*, *whereupon*, *hereby*, *therefore*, and *alike*, flourished (di Carlo, 2015: 24).

Documents that were previously written in French or Latin were now required to be composed in English. However, instead of translating them into idiomatic English, lawyers and clerks often opted for a literal, word-for-word translation. As a result, phrases like "sciant omnes," which meant "know all men," were copied verbatim in countless medieval deeds and have continued to be used in the same manner ever since (Ibid).

Moreover, many terms were not translated into English at all. These words and phrases were almost all technical terms that had acquired a specific legal meaning, making it difficult to find an exact English equivalent. Unlike those who developed the German legal system, which took great pains to "Germanize" foreign terms (Mattila

2006 :169), English lawyers mostly incorporated French terms without change.

The Plain English Movement

The language used in the legal system in particular, as well as public language in general, has been a target of criticism for a significant amount of time. Even as far back as the seventeenth century in Europe, there have been scattered efforts to write laws in plain language, using phrases that everyone might comprehend. These attempts have, for the most part, been disregarded (Mattila, 2016 and Adler, 2012; as cited in Martinez, Mollica, and Gibson 2022: 297).

Mellinkoff's *The Language and the Law* was a major trigger in igniting the need to reform legal English (Williams, 2004: 116). Mellinkoff's critique, in which legal language was marked by pomposity and wordiness, was subsequently extended on several times, and its relevance lay in the fact that it served as the first indictment of Legal English style (Stanojevic, 2011: 68).

According to Adler (2012: 68), Plain language is to be defined as "language and design that presents information to its intended readers in a way that allows them, with as little effort as the complexity of the subject permits, to understand the writer's meaning and to use the document".

In legal sphere, the first concrete application of this push toward "plain language" arose in 1973 from Citibank (as it is known today), a private company based in New York. In that year, they drafted a "promissory note" in terms that were devoid of the typical legalistic terminology that is typically abundant in contracts. The proposal was met with such enthusiasm from the common public as well as the media, and as a result, a number of states started advocating for the writing of federal law along the same lines of clarity (Williams, 2004: 116).

The Plain English movement ultimately resulted in the creation of Plain English law, which was implemented in a number of different nations. Companies that are registering securities in the United States are one kind of organization that has used it. In 1978, the state of New York became the first state in the United States to pass a comprehensive plain language statute, and American legislative writing guides urged for the adoption of simple language concepts at the time (Tiersma, 2000: 220-227).

As such, the rules and articles created in support of the Plain English movement are helpful since they provide suggestions on how to enhance legal writing and drafting in accordance with this approach. In

general, the Plain English movement was only applicable to certain transactions controlling the rights and duties of customers, both of which should obviously be described in a straightforward manner. Although there is a huge need for it to be accessible to regular residents, it is not altering legislation or some sections of the law, such as the criminal code. The following are some examples of terminology that ought to be replaced with forms that are more common, and they are presented using contrastive pairs: Pleading – statement of case Plaintiff – claimant Minor/infant – child Writ – claim form- in camera hearing – in private hearing Ex parte – without notice Inter partes – with notices Subpoena – witness summons (Stanojevic, 2011: 67-68).

Conclusions

In conclusion, this research paper sheds light on the transformative journey of English legal language throughout history. By examining key periods such as the Anglo-Saxon and Norman eras, it becomes evident how the language of the law evolved alongside societal changes and cultural influences.

The influence of Latin and French on English legal discourse during specific periods is notable, reflecting the broader historical and political contexts of those times. The dominance of Latin and French and their subsequent replacement by English demonstrate the dynamic nature of legal language and its adaptability to societal needs.

Moreover, the paper explores the contemporary impact of the plain English movement, which sought to promote clarity and accessibility in legal communication. The movement's emphasis on simplicity and readability in legal documents is a response to the growing need for inclusivity and transparency within the legal system.

By understanding the historical evolution of English legal discourse, we gain valuable insights into the complex relationship between language, law, and society. This knowledge informs legal practice, education, and the ongoing efforts to enhance comprehension, efficiency, and equity within the legal domain.

As legal discourse continues to evolve, it is crucial to recognize and embrace the changing needs of a diverse audience. The historical perspective provided in this paper serves as a foundation for continued exploration and improvement in legal communication, ensuring that the law remains accessible, comprehensible, and just for all.

Works Cited

- I. Adler, M. (2012). The Plain Language Movement. In L. M. Solan & P. M. Tiersma (Eds.), *The Oxford Handbook of Language and Law* (pp. 67-68). Oxford Academic.
- II. Bhatia, V. K., Candlin, C. N., & Engberg, J. (2008). Concepts, contexts and procedures in arbitration discourse. In *Legal discourse across cultures and systems* (Vol. 1, pp. 3).
- III. Crystal, D. (2003). *The Cambridge Encyclopedia of the English Language*. CUP.
- IV. Dămovă, P. (2007). *The Language of Law: A Stylistic Analysis with a Focus on Lexical (Binomial) Expressions*. MA Thesis.
- V. di Carlo, G. S. (2015). *Diachronic and Synchronic Aspects of Legal English: Past, Present, and Possible Future of Legal English*. Cambridge Scholars Publishing.
- VI. Durant, A., & Leung, J. H. C. (2017). *Language and Law: A resource book for students*. Routledge.
- VII. Finegan, E. (2013). Discourses in the language of the law. In *The Routledge handbook of discourse analysis* (pp. 482-493). Routledge.
- VIII. Hiltunen, Risto. (1990). *Chapters on Legal English: Aspects Past and Present of the Language of the Law*.
- IX. Martinez, E., Mollica, F., & Gibson, E. (2022). So much for plain language: An analysis of the accessibility of United States federal laws (1951-2009). In *Proceedings of the Annual Meeting of the Cognitive Science Society* (Vol. 44, No. 44).
- X. Mattila, H. E. S. (2006). *Comparative legal linguistics*: Tran. Christopher Goddard. Ashgate Publishing Limited. Hampshire.
- XI. Mattila, H. E. S. *Legal Vocabulary* (2012). P.M Tiersma and L.M. Solan (ed.). *The Oxford handbook of language and law*. (27-38). OUP Oxford.
- XII. Mellinkoff, D. (2004). *The language of the law*. Wipf and Stock Publishers.
- XIII. Pollock, F., & Maitland, F. W. (1968). *The history of English law: before the time of Edward I*. 2 (Vol. 1). CUP Archive.
- XIV. Skoczeń, Izabela. (2013). "Why do pragmatics matter in the legal framework." *International Conference on Alternative Methods of Argumentation in Law*.
- XV. Stanojević, M. (2011). Legal English: Changing perspective. *Facta universitatis-series: Linguistics and Literature*, 9(1), 65-75.

- XVI. Tiersma, P. M. (2015). *Why is Legal Language So Conservative?*. Speaking of Language and Law: Conversations on the Work of Peter Tiersma, 11.
 - XVII. Tiersma, P. M., *A History of the Languages of Law* (2012). P.M Tiersma and L.M. Solan (ed.). The Oxford handbook of language and law. (13-26). OUP Oxford.
 - XVIII. Williams, C. (2004). Legal English and plain language: An introduction. ESP across Cultures, 1(1), 111-124.
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