

A REVIEW OF THE LEGAL LANGUAGE DEVELOPMENT WITH THE FOCUS ON ITS LEXICOGRAMMATICAL FEATURES

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Abstract

The article attempts to define legal language and shed light on the historical development of legal English. The article proceeds to provide a classification of legal language based on different approaches. This is followed by introducing some of the salient features of the legal writing. It is known that each occupation has developed its own type of language which we is known as genre. For example, areas of journalism, medicine have their own specific linguistic features which were developed to achieve certain communicative functions. Such features can be highlighted among others, at the phonological, semantic, syntactic, lexical and graphological levels. Similarly, the legal field is no exception to these specific features. However, the present study will be limited to the lexical and syntactic features of the legal language.

Keyword: style, discourse, archaisms, nominalisation, lexicogrammar

1. INTRODUCTION

Legal language refers to different language genres which have different communicative functions to achieve. Such genres include: contracts, pleadings, statutes, wills, constitutions, legal judgments, etc. Tiersma (2010) explains this by stating:

Each genre of legal texts tends to have its own stereotypical format [...] and usually contains one or more legal speech acts that are meant to carry out its intended functions. Thus, a contract almost always contains one or more promises, a will contains verbs that transfer property at

death, and a deed transfers property during the life time of its maker.

In other words, having laws that are able to govern our social and economic life requires a language that has to be precise, consistent and clear because a misunderstanding of the legal text may lead to serious consequences. Thus, in order to fulfil the demands of the law, the legal language has developed its special linguistic features at the lexical, syntactic and pragmatic levels.

A research into the English legal language shows a mixture of languages but mainly two languages had a great impact on legal English, namely; French and Latin. The invasion of England by William the conqueror in 1066 set the stage for new English. William and his supporters spoke French Normandy and legal documentary were written in Latin. Around 1275, the French became the official language of England "with the result that many words in current legal use have their roots in this period. These include *property, estate, chattel, lease, executor* and *tenant*" (Haigh 2015: 4). French used as the language of legal proceedings for 300 years, however, Latin remained the language of formal records and students (Ibid:5). By the fourteenth century, as Maley (1994: 12) points out, "French as a language for communication was dying out and the English language was rapidly replacing it". English became the official language of the law around 1650. Maley adds:

It was not until 1650, by an Act for Turning the Books of Law, and all Processes and Proceedings in Courts of Justice into English [...] that English became the official language of the law. (Maley 1994: 13)

2. CLASSIFICATION OF LEGAL LANGUAGE

Many scholars have attempted to provide a description of legal language and its classifications. In this section, a brief presentation of the most salient attempts will be presented (e.g. Bhatia 1983a, Kurzon 1989, Maley 1994, Trosborg 1995, Šarčević 2000, Williams 2007 and Cao 2007).

Starting with Kurzon (1989 and 1997) who distinguishes between *language of the law* and *legal language*. The former, as he points out, include "the language or the style used in documents that lay down the law". On the other hand, the term legal language refers to "the language that is used when people talk about the law, e.g. judges' opinions, legal textbooks, lawyers' speeches in court" Kurzon (1997:120). He concludes his distinction by stating that "legal language is in fact a metalanguage used to talk about the law in a broad sense, and the language of the law is literally just that -the language in which the law is written" (Ibid: 121).

Trosborg (1997) uses the terms *legal language* and *the language of the law* in a way different from Kurzon. For her, *legal language* is a superordinate term used to refer to legal discourse in general which include five sub-elements. *The language of the law* is one of them along with *the language of the courtroom*, *language in textbooks*, *lawyers' speech* and *people thinking about law* (Trosborg 1997:20).

Maley (1994) takes another way of classifying legal language based on the discourse situation. She notes that there is no single legal discourse but a set of related legal discourses. She (1994: 13) goes further by enumerating four distinct discourses:

- Judicial discourse, i.e., the language of judicial decisions that can be written or spoken.
- Courtroom discourse, which refers to the language used by judges, counsel, court officials and witnesses in the court.
- The language of legal documents which include contracts, regulations, deeds, wills, etc.
- The discourse of legal consultation, i.e. the discourse between two lawyers or between a lawyer and a client.

Cao 2007 classifies legal language on the basis of the nature of its use. His classification is related to the translation of the legal language. For him, a legal text

may have normative purposes, informative purposes or judicial purposes. Therefore, in the translation process, a translator needs first to know the nature of the legal text he deals with. He also states that any text that is produced or used for legal purposes in legal settings is called legal text (Cao 2007: 9). He identifies four varieties of written legal texts:

1. Legislative texts: these texts have collective addresses, including the general public, for example, domestic statutes, international treaties, and traffic regulations.
2. Judicial texts: they are produced in a court by judicial officers to resolve a controversy between parties. A judicial text (judgment) is the final part of a court case, which determines the rights, and obligations of the parties.
3. Legal scholarly texts: they are "produced by academic lawyers or legal scholars in scholarly works and commentaries whose legal status depends on the legal systems in different jurisdiction." (Ibid: 79).
4. Private legal texts: they are drafted by lawyers on the behalf of their clients. These include contracts, leases, and wills. Private legal documents also refer to texts written by non-lawyers; some of these texts are "private agreements, witness statements and other documents, which are used in litigation and other legal situations." (Ibid).

Bhatia (1983a) and Williams (2007) follow another approach in classifying legal texts on the basis of their communicative purposes. Bhatia (1983a:2) classifies legal texts into three types:

1. Legislative or statutory writing;
2. Academic writing which include research journals and legal textbooks;
3. Juridical writing which includes court judgments, case-books and law reports.

In the same fashion, Williams (2007: 28) distinguishes between two primary communicative functions of legal texts, namely the prescriptive and descriptive functions. Williams also follows Susan Šarčević's identification of prescriptive and descriptive legal texts. Prescriptive legal texts, as defined by her, "include laws and regulations,

codes contrasts, treaties and conventions" (Šarčević 2000, as cited in Williams 2007: 29). Prescriptive legal texts are normative texts because they contain rules or norms. Descriptive texts, on the other hand, are of informative nature. They include legal opinions, law reports, law text, etc. descriptive legal texts thus come under the generic heading of academic discourse, an area that has attracted the attention of a growing number of linguists and discourse analysts in recent years.

A third type of legal texts, as Williams states, come in between prescriptive and descriptive legal texts. He calls this type as a hybrid text, i.e. it contains both prescriptive and descriptive features. Hybrid texts include "judicial decisions and instruments that are used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions, etc." (Ibid: 29).

3.CHARACTERISTIC FEATURES OF LEGAL LANGUAGE

As mentioned above, legal English does not refer to only one legal discourse but a variety of legal discourses (genres). Each legal genre developed particular distinguishing features. The basic features of these different genres are mostly common across the English-speaking nationalities. This is well explained by Williams (2007: 30-31):

Through colonization, Britain [...] spread its idiosyncratic legal system and legal language to other countries around the world, notably to the United States, Canada, Australia, New Zealand and South Africa [...] as well as to countries such as India where English is recognized as one of the official languages. Naturally, over the years, each community has adapted the language and legal institutions to its own particular needs, but the basic characteristics of legal language are similar throughout the English-speaking world.

Most of the common features of legal English at the lexical level are: the use of highly technical vocabulary; the use of archaic or rarely used words of expressions; and the frequent repetitions of particular words. At the syntactic level, legal English also shows: nominalization and long sentences with multiple embedded clauses

within the nominal groups. These features have been topics of research for many scholars (e.g. Mellinkoff 1963, Crystal & Devy 1969, Charrow & Charrow 1979, Danet 1980, Tiersma 1999, etc.) Most of these studies will be presented in the next section of this article. Here we will look at some of the linguistic features of legal language in brief.

3.1. Lexical features of legal language

3.1.1. Archaisms

One of the linguistic features of legal English is the use of archaic words. Some of these include *hereafter*, *hence*, *arraign*, *surrejoinder*, *expiration*, and *termination*. There are also archaic multiword expressions such as *malice aforethought* or *residuary devisee* or *concurrent tortfeasors* (Williams 2007: 32).

3.1.2. Foreign words, especially from French and Latin origin

A large number of legal English words come from French, such as *assault*, *battery*, *counsel*, *felony*, *effect*, *plaintiff*, *subject*, *suit*, *proposal*, etc. Foreign words of Latin origin include *adjacent*, *frustrate*, *inferior*, *legal*, *quiet*, *subscribe*, etc. There are also a large number of Latin expressions in legal English, for example, *ex parte* (on behalf of), *in situ* (in its original or natural position) or *ratio legis* (the reason for, or principle behind, a law).

3.1.3. The use of modifiers

Legal English makes an interesting use of certain type of pro-forms, such as *the said*, *the aforementioned*, *the same*, etc. These forms are used as adjectives to determine the specificity of the following nouns. For example, *the said person*, that means this particular person and no other one. Other examples like: *the aforementioned property*, *the said John Smith*.

3.1.4. The use of -er/-or and -ee

Legal English was also influenced by the French language in the use of names and titles ending by *er/or* and *ee* which indicate a reciprocal and opposite nature of relations. For example, *employer/ employee*, *lessor/lessee*, *assignor/ assignee*, *donor/ donee*, etc.

3.1.5. Use of doublets and triplets

One of the peculiar features of legal English is the use of doublets (two synonyms used together) and triplets (three synonyms used together). The historical tendency for such constructions is justified as

[T]he habit in early Medieval English to use a French or Latin word side by side with its native synonym, for the benefit of those who were not yet familiar with the other languages. Some of them developed into technical terms, and have now become a stylistic standard expressing a single legal concept. Carlo (2015: 37)

Here are some examples of the doublets and triplets respectively:

- *Able and willing; deem and consider; fit and proper; full and complete, etc.*
- *communicate; indicate or suggest; hold, possess and enjoy; repair, uphold and maintain, etc.*

3.1.6. The use of foreign phrases

Legal English has an abundant number of phrases, which came from Latin and French. For example, *inter alia, mutatis mutandis, ad hoc, force majeure, etc.*

3.2. Syntactic feature of legal language

3.2.1. Long and complex sentences

The syntactic structure of legal English exhibits more unique features than that of the lexical features. The sentences tend to be long and complex due to the complexity of the subject matters and the nature of legislative law. Carlo (2015: 40) notes, "The main syntactic characteristic feature of legal English is subordination, which involves an unequal relationship between the main clause and its subordinated clauses". Subordination is referred to in SFG as a hypotactic relation in which clauses of unequal status linked together by one of the logico-semantic relations (either Expansion or projection: see chapter one). Crystal and Davy (1969: 203) attribute the wide use of subordinate

clauses to the underlying structure of legal sentence. They comment:

Reduced to a minimal formula, the great majority of legal sentences have an underlying logical structure which says something like 'if X, then Z shall be Y' or, alternatively 'if X, then Z shall do Y'. There are of course many possible variations on this basic theme, but in nearly all of them the 'if X' component is an essential: every action or requirement, from a legal point of view, is hedged around with, and even depends upon, a set of conditions which must be satisfied before anything can happen.

The phenomenon of subordination is also referred to by Bhatia (1983: 251) as 'qualification'. He argues that qualification is used by law drafters to make their writings clear and precise but such practices have their own consequences that they can promote ambiguity if they are not placed judiciously".

3.2.2. Nominalization

Legal English shows also extensive use of nominalization, where noun phrases are preferred instead of verbal phrases. In Bhatia's words (1983: 142), nominalizations "help the writer bring in a greater degree of precision and all-inclusiveness in his legislative statements". Examples of noun phrases derived from verbal phrases are: *to consider* is nominalized into *to give consideration*, *to oppose* is nominalized into *to be in opposition*, *to amend* is nominalized into *to make an amendment*. The use of nominalization, however, contributes to the length of the sentences which in turn cause some difficulties to non-specialists (Charrow and Charrow 1979: 1321). Williams (2007: 38) also summarizes the advantages and disadvantages of the use of nominalization in legal texts:

Nominalization is seen as one of the devices that accounts for the excessive 'wordiness' of many legal documents, and most legal drafting manuals suggest reducing the amount of nominalization by preferring, where possible, the equivalent verb phrases as a means of making legal texts shorter and less turgid. On the other hand, nominalization has the

advantage of allowing for the juxtaposition of adjectives next to the noun, whereas verbs may be preceded by adverbs which are less numerous than adjectives.

3.2.3. Passive voice

Legal drafters have a tendency to use passive voice because this adds a degree of formality and impartiality to the text. Passive constructions, however, may promote ambiguity because the identity of the agent is unknown. Therefore, legal drafters are encouraged to use active voice more than passive voice. Passive constructions can be used only when the actor is unknown or the emphasis is put on the action rather than the doer. Haigh (2009: 51) comments on the use of active and passive voice in legal texts:

[...] overuse of the passive can lead to lack of clarity. It also leads to less effective and less forceful communication with the reader. Sentences using the active voice are shorter and more direct. In most cases the active voice is preferable.

3.2.4. Multiple negatives

Another prominent feature of legal language is the use of multiple negatives. Multi negative constructions can be achieved by i) using *not* and *never*; ii) adding terms such as *unless*, *except*, *etc.*; or iii) adding prefixes such as *un-*, *in-*, *il-*, *im-*, *ir-*, *non-* and *anti-*. The example below, which is part of statute dealing with pension plans, is taken from Elwell & Smith (1996: 58):

A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made)[...] unless the participant and his spouse have been married.

They call this example as horrible because of the difficulty to understand it. Due to the multi negatives used, they claim that they could not even translate it. Another example is given by them to show the difficulty of understanding shorter sentences with multi negatives:

- *The book is not understandable unless one is not Hungarian by birth.*

Therefore it is advised to avoid multiple negatives they may result in impaired communication (Garner 2001: 30).

3.2.5. Syntactic discontinuities

Legal texts are saturated with syntactic discontinuities. Legal drafters often use qualifications (i.e. inserted information) which result in interrupting the natural flow of the sentences, e.g., Developed country Members shall, *if requested by other Members*, provide copies of the documents. The added information “[...] are inserted at various points where they create syntactic discontinuities rarely encountered in any other genre” Bhatia (2014: 112). He further provides some of the syntactic units that are discontinued by the inserted qualifications:

3.2.5.1. Discontinuous verb phrase. For example,

A person who on the qualifying date is a member of a board of directors or other governing body of a qualifying body shall, *for the purposes of this section*, be treated as having his principal or only place of work on that date...

In this example, we have a discontinuous verbal phrase where the modal *shall* is separated from the main verb by the adverbial phrase ‘*for the purposes of this section*’.

3.2.5.2. Discontinuous noun phrases. For example,

- A secure tenant has *the right*, if the dwelling-house is a house, *to acquire the freehold of the dwelling-house*.

- A rumor circulated widely *that he was promoted by the Vice president*.

3.2.5.3. Discontinuous binominal phrase. For example,

- Where a secure tenant serves on the landlord a written notice claiming to exercise the right to buy, the landlord shall (unless the notice is withdrawn) serve on the tenant *within four*

weeks, or, in case falling within subsection (2) below, eight weeks, either.

Bhatia points out that long qualifications embedded in discontinuous constituents contribute to the complexity and length of the sentences in legal texts. That is in turn "causes serious psycholinguistic problems" in the understanding of such sentences" (Bhatia 2014: 113).

4.CONCLUSION

The aim of this article was to provide a brief account of the historical development of legal language. This has demonstrated that English legal language was highly influenced by French and Latin. As it was highlighted, French was used as the language of legal proceedings for 300 years. However, by the fifteenth century, English language started replacing French and became recognized as the official language of law in 1650. This was followed by providing a classification of the legal language based on some views highlighted by some scholars in the second section. To show the legal language as a particular discourse having its own linguistic features, the third section presented some of the salient lexicogrammatical features. This has a fundamental role in the contexts of ESP/ESL, where learners are exposed to these features in order to have effective communication skills. Further analysis can be conducted on figuring out the stylistic and linguistic features of different legal genres which will have a great benefit of showing how a particular legal genre is different from other genres.

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