

"Legislative Drafting: New Trends in Plain Language"
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At the Sir William Dale Centre, Prof. Helen Xanthaki and I have come to explore the crossroads between legislative drafting and language/linguistics. In particular, we have opened a new agenda: the use of teachings from the discipline of linguistics in applications useful and relevant to legislative drafting. An example of this work so far have been two workshop on “Legislative Drafting and Language” that took place at the IALS on 27 June 2013 and 27 June 2014. These events witnessed the participation of eminent scholars and experts in the fields of law and language. Among the important themes discussed in the workshop, two points have been particularly stressed: first, the quality of legislation and the intrinsic drafting difficulties.

Historically speaking, legal English evolved over the three-century period between the 1470s (the setting up of the first printing press in England) and the 1770s (American Declaration of Independence). Inevitably, its terminology and style are still in the form they had reached by the early years of the 19th century. In modern times, important changes have been brought in the length and layout of legal documents. Despite these important transformations, language has remained largely frozen. Traditional legal language has been increasingly challenged and this questioning has been increasingly stimulated by the consumer movement of the latter decades of the 20th century. Particular relevant was the rise in the 1960s of western consumer movements which were concerned with empowering laymen so they could defend their rights against private companies and government bodies. Isolated attempts had been made during the first half of the 20th century, for example in the United States, to introduce measures to make legal English less convoluted¹. Across the Atlantic, in Liverpool, the plain English campaign was born in 1979 and by the mid-1980s it was already possible to speak of a ‘Plain Language Movement’ operating in all major English-speaking countries, including Canada, Australia, New Zealand and, by the early 1990s, South Africa².

Proposals for reforming legal English have been coral and among the specific causes generally mentioned there are sentences of undue length, overuse of archaic and Latin expressions, unnecessary and repeated of definitions and expressions, partiality of nominalizations, a labyrinth of

¹ D. Mellinkoff, *The Language of the Law*, 1963, Little, Brown and Company, Boston & Toronto.

² C. Williams, “Legal English and Plain Language: An Introduction”, 2004, *ESP Across Cultures 1*, at 116.

sentences and clauses “several commentators have cited similar problems. Others have expressed more muted versions of the problem, saying simply that there is a ‘need to improve understanding and access to the law’³. Much of the criticism by plain language advocates of legal language is clearly reasonable in that much of it is objectively difficult for the average layperson understanding. As Christopher Williams observes, “drafters should attempt to use expressions and a phraseology that can bring legal texts closer to ordinary citizens, but not at the expense of creating uncertainty or ambiguity, as this would ultimately be even more detrimental to those citizens in whose defence the text may have been written to start with”⁴. There are inherent factors that make it difficult for the drafter to convey the intentions of the legislator and ensure there are no ambiguities and misunderstandings in the words and expressions that have been chosen⁵. Not only increasingly complex societies imply ever more complex legislation, but increasing political demands to produce legislation quickly and efficiently on the one hand, and the lack of effective consultations between policy makers and legislative drafters on the other hand, certainly affect the language used and the underlying function of the text.

Scholars and researchers working in the field of law and language have been asked to share their knowledge and expertise and a forthcoming special issue of *European Journal of Law Reform* represents one of the first important outcomes of this collaboration in the field of Plain Language movement and Law Reform.

Today we will analyse plain language applied to various documents constructed, interpreted and used in different legal contexts. The purpose of this seminar is to provide a better insight of legal language from an international perspective, and to favour a more detailed understanding of linguistic and textual phenomena that are closely linked to cross-cultural aspects.

³ J. Barnes, “The Continuing Debate About ‘Plain Language’ Legislation: A Law Reform Conundrum”, *Statute Law Review*, Vol. 27, No. 2, 2006, at 97.

⁴ William 2004, at 123.

⁵ Moran Q.C., ‘Legislative Drafting, Plain English and the Courts’, *43 Clarity* 52 (1999), at 54.