
Legal English and Plain Language: an introduction

Christopher Williams

Abstract

In this paper I first describe some of the main characteristics of written legal English such as sentence length and the complexity of its sentence structures, repetitiveness, the high concentration of Latinisms and archaic or rarely used lexical items etc. (Bhatia 1993). Such features have been widely held for centuries as having an exclusionary function, entrenching the privileges of the legal profession. With the growth of the Plain Language movement in recent decades in all major English-speaking countries, however, calls for radical changes in legal English have become increasingly widespread, and cases of enacted legislative texts following the principles of Plain Language can already be found in several countries, e.g. South Africa, Australia and Canada. I analyse some of the proposals of the Plain Language movement and the feasibility of making legal texts more comprehensible to the layperson without running the risk of ‘dumbing down’ such texts and creating new problems of ambiguity in interpretation that could end up by being detrimental to the public at large.

1. Introduction

Legal language is made up of several genres, each with its own specific, if often related, characteristics. It ranges from the spoken exchanges in a court between, say, lawyers and witnesses in a cross-examination, to the relatively standardized instructions given to jury members who are required to express a verdict in a court case, to the jargon employed by members of the legal profession in interpersonal communication¹, to the written language in case law, law reports and prescriptive legal texts.

¹ Mellinkoff (1963: 17) defines this specialized lexis as ‘argot’.

The latter may include anything from international treaties to municipal regulations, insurance policies, contracts of sale or wills. Some of the genres constituting legal language are more formal than others. For example, even if there are various formal restrictions in how spoken exchanges in the courtroom may be allowed to develop, some of the actual language used, for example by witnesses, may not differ radically from other genres of spoken discourse. On the other hand, certain types of written legal language may contain features that mark it as being so highly idiosyncratic as to be at times incomprehensible to anyone except legal experts. In this article we shall focus our attention on written legal discourse, particularly prescriptive legal documents², a genre Crystal & Davy describe as not only one of the least communicative of all uses of language but also about as far removed as possible from informal spontaneous conversation (1969: 193-194). The texts taken into consideration are all authentic and come from a wide range of English-speaking countries.

2. The main features of written legal texts

The principal characteristics of such texts in legal English are generally well-known, the most commonly mentioned being:

a) *the inclusion of archaic or rarely used words or expressions*. These may be adverbial expressions such as *hereinafter*; verbs such as *to arraigh* (to clear a legal account or settle an accusation or controversy); nouns such as *surrejoinder* (the answer by the plaintiff to a rejoinder by the defendant); adjectives such as *afore-said*, and so on. Texts may also include multiword expressions in which at least one of the terms is archaic such as *malice aforethought* or *residuary devisee*.

b) *the inclusion of foreign words and expressions, especially from Latin*. English legal language is heavily imbued with lexical items deriving in particular from French and Latin, largely the result of centuries of Norman domination of England in the sphere of law and government. Besides the vast number of terms of Norman origin still used daily in legal English (e.g. *court*, *judge*, *appeal*), many are now practically unknown outside legal circles, e.g. *attainder* (the loss of civil rights through conviction for high treason), but such terms have nonetheless become ‘naturalized’ as English words. Other expressions have preserved all of their Frenchness, such as *profits à prendre*, also known as the right of common, where one has the right to take the fruits of the property of another. A French expression used in contemporary legal English is *acquis communautaire*, which refers to the entire body of EU law. A large number of foreign lexical items or expressions in legal texts come from Latin, such as *ex parte* (on behalf of) or *ratio legis* (the reason for, or principle behind, a law). It should be borne in mind that the Latin used by the legal profession was adapted to the needs of English law and that it eventually

² Parts of this paper can be found in a modified form in my forthcoming volume entitled *Tradition and Change in Legal English: Verbal Constructions in Prescriptive Texts* (Bern: Peter Lang).

developed into something called Law Latin (Tiersma 1999: 25).

c) *the frequent repetition of particular words, expressions and syntactic structures* instead of using, for example, pronoun references or other types of anaphora. This may take the form of an almost obsessive repetition of lexical items, as in the example below where the noun *chair* occurs nine times and *vice-chair* four times out of a total of 120 words:

- (1) Powers of *vice-chair* 11. Where - (a) a member of a Board is appointed to be *vice-chair* either by the Assembly or under regulation 10, and (b) the *chair* of the Board has died or has ceased to hold office, or is unable to perform the duties of *chair* owing to illness, absence from England and Wales or any other cause, the *vice-chair* shall act as *chair* until a new *chair* is appointed or the existing *chair* resumes the duties of *chair*, as the case may be; and references to the *chair* in Schedule 3 shall, so long as there is no *chair* able to perform the duties of *chair*, be taken to include references to the *vice-chair*³.

The reason for such repetition is to ensure there can be no ambiguity whatsoever as to what is being referred to. Outside legal discourse such repetition would be deemed as odd, even comic. Besides this repetition of certain lexical items, the ‘flavour of the law’ is enhanced by the frequent use of multiword prepositional structures such as *in respect of*, *in accordance with*, *pursuant to* etc.

d) *long, complex sentences, with intricate patterns of coordination and subordination*. Even today prescriptive legal documents in English tend to use punctuation sparingly. Some earlier statutes were formulated as one sentence without any punctuation except for a final full stop, though Crystal & Davy (1969: 200-201) observe that “It is not true that legal English was always entirely punctuationless, and in fact the occasional specimens which were intended for oral presentation – proclamations, for instance – were quite fully punctuated. The idea of totally unpunctuated legal English is a later development [...]” Although reforms in punctuation have been slowly introduced through the centuries, even today sentences may run to hundreds of words, especially in preambles, with complex patterns of coordination and subordination.

Bhatia remarks that “most legislative provisions are extremely rich in qualificational insertions within their syntactic boundaries [...]” (1993: 111). These qualifications often create so-called *syntactic discontinuities* whereby “legal draftsmen try to insert qualifications right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant, awkward or tortuous but never ambiguous, if they can help it” (*ibid.*: 112). The following sentence contains four cases of syntactic discontinuity, coming respectively after *If*, *are*, *may* and *including*:

³ Part II of the *Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2003*.

- (2) *If, after informing the supervisory authority concerned under subsection (3), any measures taken by the supervisory authority against the insurance undertaking concerned are, in the opinion of the regulatory authority, not adequate and the undertaking continues to contravene this Act, the regulatory authority may, after informing the supervisory authority of its intention, apply to the High Court for such order as the Court may seem fit, in order to prevent further infringements of this Act, including, insofar as is necessary and in accordance with the Insurance Acts 1909 to 2000, regulations made under those Acts and regulations relating to insurance made under the European Communities Act 1972, the prevention of that insurance undertaking from continuing to conclude new insurance contracts within the State*⁴.

Long, convoluted sentences also result from adopting the principle of all-inclusiveness, which is often essential in a legal document if every possible circumstance and eventuality is to be envisaged (Maley 1987: 35; Bhatia 1994: 138).

e) *the frequent use of passive constructions*. Another aspect characterizing written legal English is the frequent use of passive constructions (Jackson 1995: 119-120). This, of course, is not just a feature of legal discourse but applies to other written registers such as scientific discourse and the language of journalism. Approximately one quarter of all finite verbal constructions in prescriptive legal English take the passive form (Williams 2004: 228). In the following passage we find four consecutive verbal constructions in the passive:

- (3) The acronym EURES *shall be used* exclusively for activities within EURES. It *shall be illustrated* by a standard logo, defined by a graphic design scheme. The logo *shall be registered* as a Community trade mark at the Office for Harmonization in the Internal Market (OHIM). It *may be used* by the EURES members and partners⁵.

f) *a highly impersonal style of writing* (Maley 1985: 25). Using passive forms is one of the most common methods of emphasizing the impersonal in a language (Šarčević 2000: 177). The generalized use of the third person (singular and plural) in legislative texts helps to reinforce the idea of impartiality and authoritativeness. Where, for example, a provision applies to everybody, the sentence either begins with *every person, everyone* etc. when expressing an obligation or authorization, or *no person, no one* etc. when expressing a prohibition, as in these sections, respectively 13 and 32, from the South African *Constitution* of 1997:

- (4a) Slavery, servitude and forced labour
No one may be subjected to slavery, servitude or forced labour.
- (4b) Access to information

⁴ Section 21(4) of Ireland's *Unclaimed Life Assurance Policies Act* 2003.

⁵ Article 5 of the *EU Commission Decision of 23 December 2002 implementing Council Regulation (EEC) No 1612/68 as regards the clearance of vacancies and applications for employment*.

- (1) *Everyone* has the right of access to – (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights.

Naturally, in certain types of binding documents in private law such as wills the first person singular is used abundantly. One of the few exceptions to the general rule of ‘impersonalization’ in legislative texts can be found at the beginning of constitutional documents, such as the Preamble to the South African *Constitution* where the first-person plural pronoun and possessive adjective are used:

- (5) *We*, the people of South Africa, Recognise the injustices of *our* past; Honour those who suffered for justice and freedom in *our* land; Respect those who have worked to build and develop *our* country; and Believe that South Africa belongs to all who live in it, united in *our* diversity.
We therefore, through *our* freely elected representatives, adopt this Constitution as the supreme law of the Republic [...].

g) *the tendency towards nominalization*. Drafters frequently resort to *nominalization* (Tiersma 1999: 77-79; Jackson 1995: 120-121), i.e. where verbs are transformed into nouns, such as when the verb *to amend* is nominalized into *to make an amendment*. For example, the following sentence from article 38 of Canada’s 1982 *Constitutional Charter*

- (6) *An amendment to the Constitution of Canada may be made* by proclamation issued by the Governor General under the Great Seal of Canada where so authorized [...]

could be reformulated more concisely (using seven words instead of ten) as

- (7) *The Constitution of Canada may be amended* by proclamation issued by the Governor General under the Great Seal of Canada where so authorized [...].

Written legal texts do not necessarily contain all the features outlined, though many of them do, and the compound effect often makes them extremely difficult to decipher without specific training. Small wonder, then, that there have been widespread calls to bring them closer to the average citizen.

3. The Plain Language movement

Legal English has often been criticized for its abstruseness: Jonathan Swift, Thomas Jefferson, Jeremy Bentham and Charles Dickens are just some of history’s more illustrious names that have lampooned the legal profession on this score. For example, in *Bleak House* Dickens describes members of the High Court of Chancery “mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running

their goat-hair and horsehair warded heads against walls of words and making a pretence of equity with serious faces, as players might” (1964: 18). Moreover, 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 convoluted. But it was not until the 1970s that a concerted effort was made to take the matter in hand.

An important catalyst in sparking off the need to overhaul legal English was the publication in 1963 of Mellinkoff’s *The Language and the Law* where he highlighted the defects of legal language. The 1960s also saw the proliferation in the West of consumer movements which were concerned with empowering ordinary citizens so they could defend their rights against companies and government bodies. Hence the rise of grassroots organizations devoted to the abolition of bureaucratese, officialese and legalese to enable people of average intelligence to understand what they were doing when they had to, say, fill in a tax form, or apply for housing benefit, or sign an insurance policy. In the legal sphere, the first concrete application of this drive towards ‘plain language’ came in 1973 from Citibank (as it is known today), a private company based in New York, which drafted a ‘promissory note’ in terms shorn of the usual legalistic terminology that traditionally abounds in contracts⁶. The initiative was so successful with both the public and the media that several states began urging the drafting of federal legislation along the same lines of clarity. Across the Atlantic, in Liverpool, the Plain English Campaign was born in 1979 and, via various publicity-seeking stunts, such as shredding reams of government documents outside Westminster, its influence in stigmatizing ‘gobbledygook’ soon spread. By the mid-1980s it was already possible to speak of a ‘Plain Language movement’, with a capital P and a capital L⁷, operating in all major English-speaking countries, including Canada, Australia, New Zealand and, by the early 1990s, South Africa. Furthermore, the movement has not been wholly confined to English, and analogous initiatives have gathered momentum in various countries including Sweden with the Plain Swedish Group (*Klarspråksgruppen*) and (more recently) Italy with its *Progetto Chiaro!*, as well as in organizations such as the European Union with its ‘Fight the Fog’ campaign undertaken by members of the Translators’ Service.

Clearly the objectives of these groups are not confined to modifying legal language alone. The aims are generally much broader, and may include a desire to democratize government, extend legal rights, and encourage efficiency, also by providing courses which train people in the skills of text revision and in drafting handbooks and guidelines so as to bring the language of officialdom in its various guises (which may even include taking into account design and layout as well as language) closer to the ordinary citizen. Moreover, the success of Plain Language

⁶ Examples of Citibank’s promissory note before and after its redrafting in plain English can be found in Tiersma (1999: 257-262).

⁷ Some scholars of legal English, such as Jackson (1995), prefer to speak of the ‘Plain English’ Movement.

campaigners in the legal field has been mixed so far, and it is claimed that “the legal profession and finance industries cause the most concern” even today in terms of their capacity for producing ‘gobbledygook’ (Plain English Campaign 2004). Although the movement first took root in the US, and several states in the US require insurance contracts to be written in plain English, there has in fact been relatively little innovation in the drafting of legislation in the US. The same is also true of the UK which introduced the *Unfair Terms in Consumer Contracts Regulations* 1999 stating that contracts must be in “plain and intelligible language”, but where laws are still drafted along traditional lines. In Canada, Australia, New Zealand and South Africa, on the other hand, Plain Language principles have penetrated legal culture more deeply, and many new laws are drafted in plain English these days. Nevertheless, there still remain areas within the genre of written legal documents where Plain Language has made little headway so far, such as the drafting of wills.

We shall now examine some of the major proposals of the Plain Language movement with regard to legal language.

4. Proposals for reforming legal English

In Section 2 we outlined some of the main characteristics of legal documents, several of which have been stigmatized by the Plain Language movement as tending to make such texts obscure and beyond the comprehension of the average layperson. So we shall begin by returning to some of the points mentioned above, seeing what innovations have been suggested, and what some of the objections to them may be.

4.1. *Technical vocabulary: replacing archaic, rarely used and foreign terms with words closer to everyday use*

Clearly, one aspect preventing a full understanding of a legal text is the inclusion of technical terms and expressions that may often be either archaic and/or rarely used or foreign, or which may be commonly used in everyday discourse but which have an unusual meaning in the legal context. Examples of each type are provided below, respectively in *chattels*, *surplusage*, *mandamus* and *factor*:

- (8a) The legal relationships generated by a mortgage of *chattels* do not differ in any respects material to this Report from the more commonly known mortgage of land⁸.

⁸ Section I of Chapter III The Present Law – *Chattel Mortgages* – of the Law Reform Commission of British Columbia (Report on Debtor-Creditor Relationships) 1972, at <http://www.bcli.org/pages/publications/lrcreports/>.

- (8b) The material sought to be stricken as *surplusage* is relevant and material to the charges alleged in the indictment⁹.
- (8c) The district courts have no jurisdiction of a suit seeking *mandamus* against the United States¹⁰.
- (8d) There was no suggestion that the person who sold the respondent the vehicle was some kind of *factor* or mercantile agent¹¹.

In such cases the average citizen would probably be unaware that, for example, a *chattel mortgage* is a mortgage on personal property rather than on real property; *surplusage* is a useless statement that is wholly irrelevant to the cause; *mandamus* is a writ issued by a court ordering a public body or agency to perform a specific act; and a *factor* is someone who is authorized to buy and sell goods for others.

It has long been held that it is precisely by adopting such lexical items that the legal profession has managed to preserve its exclusionary hold over legal language. Indeed, there are critics past and present, including Jeremy Bentham, who tend towards the ‘conspiracy theory’, i.e. who believe that legal experts deliberately choose abstruse terms because if documents were written in plain language people would cease to resort to lawyers to have such texts ‘translated’ for them. It is indisputable that a knowledge of specialized lexis enhances one’s power status in a specific field. This is as true of medicine or engineering or information technology as it is of law. It is equally indisputable that many in the legal profession feel comfortable with centuries-old habits that have stood the test of time, and they fear that any change would only lead to greater confusion and uncertainty. Moreover, an important aspect of legal drafting is precisely that of making fine distinctions and categorizations over matters ranging from mortgages to murder which must withstand the scrutiny of lawyers intent on exposing flaws and inconsistencies in the law. Indeed, it has frequently been observed (e.g. Jackson 1995: 131-132) that the drafting of legal language flouts the Gricean ‘cooperative principle’ by assuming the text will be analysed by an ‘uncooperative’ reader wishing to capitalize on any possible ambiguities or loopholes. A drafter’s loyalties are thus divided between making the text comprehensible to the layperson while attempting to ensure that it will not invite litigation (Bhatia 1994: 137). And when push comes to shove, most drafters will feel obliged to put consistency before ease of comprehension.

⁹ US Civil Resource Manual 127: *Response to Motion to Strike Surplusage*, November 1998, at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title4/civ00127.htm

¹⁰ US Civil Resource Manual 215: *Mandamus*, November 1998, at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title4/civ00127.htm.

¹¹ *Fiji Islands – Credit Corporation (Fiji) Ltd v. Kennedy Hotel Ltd.* – Pacific Law Materials, Civil Appeal no. ABU0009 of 1997, at http://www.vanuatu.usp.ac.fj/paclawmat/Fiji_cases/Volume_A-C/Credit_Corp_v_Kennedy_Hotel.html.

There would appear to be no ready solution as to how to deal with technical terms. Clearly in cases where an equivalent word or expression from everyday discourse can replace more abstruse terms without any loss or shift of meaning there can be no justification for clinging to tradition. However, the doctrine of precedent still looms large, and in citing authoritative opinions and decisions made generations or even centuries ago, “lawyers and judges often repeat – and thus keep on life support – ancient verbiage that should long since have died out” (Tiersma 1999: 40). But any change in lexis must be counterbalanced by the certainty that ambiguity will not ensue, for one advantage of rarely used words is precisely the fact that they generally cannot be confused in meaning, whereas commonly used words may often have several different meanings attached to them. In the end a pragmatic, functionalist approach would seem to be the most rational, based on an analysis of the specific function of a particular lexical item or expression within a given context. For example, in the following assertion:

- (9) To kill with malice aforethought means to kill either deliberately and intentionally or recklessly with extreme disregard for human life¹²

the expression ‘malice aforethought’ might not be fully understood by the average layperson, and outside the realm of legal language it is highly unlikely that the archaic adverbial ‘aforethought’ would be actively used even once during a person’s lifetime. On the other hand, how much would be gained by adopting some more frequently used expression such as ‘planned in advance’?

One well-established drafting policy in prescriptive texts is to include so-called ‘definition provisions’ or ‘interpretation provisions’ where many of the terms of reference used in a given text are defined, as in, for example:

- (10) “squat trading” means a trade or business consisting of the selling, offering for sale, display or exposing for sale of any article by any person on any premises if that person occupies the premises without the consent of the owner or lawful occupier of the premises¹³.

This has been done to date largely for the benefit of legal experts. But such a policy could be extended through an explicit commitment by the legislating body in question to provide definitions that would not only clarify the terms of reference to legal experts but also to the general public. This would entail a widening of focus in drafting such provisions, but it would probably be beneficial in terms of instilling in legal drafters the need for clarity and comprehensibility when drafting a text, and of eschewing technical terms except where necessary.

¹² 18 U.S.C. § 1111. 8.90 Murder – Second Degree at <http://www.ce9.uscourts.gov/web/sdocuments.nsf/>.

¹³ Section 2 of *Nottingham City Council Act 2003*.

Such a commitment already exists, at least on paper, in several English-speaking countries (Tiersma 1999: 213-214). In the UK the Renton Committee was appointed to investigate on the process of formulating statutes, and a report was published in 1975. Besides highlighting examples of convoluted drafting in British statutes, it recommended improving the explanatory materials which accompany statutes (Asprey 2003: 34-35). Similar recommendations have been made in the US: for example, Article 16, Section 13 (entitled ‘Plain Language’) of the Hawaii Constitution states that

- (10) Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms¹⁴.

The expression ‘governmental writing’ is clearly not restricted to legislative texts alone, but it undoubtedly includes such texts. And in Australia the Victoria Law Reform Commission issued its second report on legal drafting in 1990 which included proposals such as introducing a ‘boxed’ explanation of the effect and intent of each provision, and clearly marking each defined word with a cross each time it appears so the reader can look up the definition (Asprey 2003: 37). Such proposals would undoubtedly help in making legal documents more ‘user-friendly’ than they currently tend to be.

Nevertheless, it is worth reiterating the *caveat* that drafters must be careful in choosing which ‘plain’ lexical items should be introduced. For example, the Legislative Commissioners’ Office of the Connecticut General Assembly (2000: 8) views the issue from a historical perspective:

Although the goal is plain language, the drafter is hobbled by certain facts: one is that some statutes, although being amended today, have been around for fifty or one hundred years. If the drafter suddenly uses modern, plain language in the middle of an older statute, the reader (and often a court) is left to guess whether the change was merely an attempt to ‘clean up’ the language or whether the legislature intended some substantive change. Another fact is that some bills may become new statutes that will be around fifty or a hundred years in the future and what is plain language today may not be plain language in the future. Because of these two facts, drafters should not abandon style and usage conventions too readily.

4.2. Removing unnecessary words and expressions

Besides avoiding abstruse technical terms where possible, another Plain Language proposal is to eliminate all unnecessary words and expressions within the text. Even today many texts suffer from excess wordiness which makes the style turgid and difficult to follow. This is partly a legacy from the ancient custom when clerks were paid by the page and hence, besides adopting large hand-writing and wide

¹⁴ <http://www.hawaii.gov/lrb/con/>.

margins, they deliberately made legal documents as verbose as possible (Tiersma 1999: 41). The following is an excellent example of the excesses of modern legal English where verbs, modal auxiliaries, nouns, determiners, adverbials, and even prepositions, come in the form of ‘binomials’ or ‘multinomials’, i.e. sequences of two or more words which are syntactically co-ordinated (generally by *and* or *or*) and semantically related and which tend to be regarded as style-markers of legal English (Jackson 1995: 121):

- (11) I, for myself, my heirs, legal representatives and assigns, hereby release, discharge and agree to hold harmless the ASPCA, its past, present and future representatives, officers, directors, agents, employees, successors and assigns, from and against any and all liability related to the loan of the trap(s), including, but not limited to, all actions, causes of action, suits, covenants, claims, and demands whatsoever for any thing and for any reason, in law or equity, which against the ASPCA, its past, present and future officers, directors, agents, employees, successors and assigns, I, my heirs, executors, successors and assigns ever had, now have, or hereinafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever in connection with and/or arising from my use or the loan of the trap(s)¹⁵.

Here there would seem to be several cases of redundancy, e.g. in the accumulation of verbs (‘release, discharge and agree’), modal auxiliaries (‘can, shall or may’) and prepositions (‘for, upon, or by reason of’), all of which ‘thicken’ the language and weigh it down (Jackson 1995: 122). However, one should not conclude that all binomials and multinomials ought to be avoided for, as Bhatia has remarked, they may also be “an extremely effective linguistic device to make the legal document precise as well as all-inclusive” (1993: 110). Moreover, their formulaic quality sometimes contributes to what Danet (1984) has defined as the ‘poetization’ of legal language, as in “the truth, the whole truth, and nothing but the truth”.

4.3. Reducing sentence length

While there would appear to be general agreement by both Plain Language exponents and by legal practitioners that prescriptive texts could be profitably shorn of excess verbiage, the question of sentence length is more controversial. From the perspective of the Plain Language movement and most writers of manuals on legal writing (e.g. Garner 2001), many of the sentences in statutes are excessively long and should be reduced to a more ‘manageable’ size. However, the preoccupation with sentence length, especially on the part of Plain Language exponents, is partly an extension, as it were, of their interest in tackling bureaucratese or officialese by producing documents that can be more readily understood by the population at large. But while long and complex sentences in, say, a government leaflet on entitlement to

¹⁵ *Loan Agreement* of the American Society for the Prevention of Cruelty to Animals (ASPCA), at http://www.aspc.org/site/DocServer/Trap_Bank_Agreement.pdf.

unemployment benefit may find little reason for justification, legal drafting obeys a rather different type of logic. As has already been observed, the overriding priority of a prescriptive legal text is that of establishing the rules regulating a given matter in such a way as to ensure that there is no room for misinterpretation. And this may frequently entail adopting linguistic features such as subordination and coordination and embedded clauses which may result in extremely long sentences. For example, many resolutions, such as those of the UN, are made up of a single sentence, often stretching to hundreds – occasionally thousands – of words. Yet the structure of resolutions follows well-established drafting rules, beginning with the name of the authorizing body (e.g. ‘The Security Council’) usually followed by a preamble which generally contains a number of non-finite clauses (e.g. ‘Reaffirming its previous resolutions ...’ or ‘Deeply concerned by the increase in acts of terrorism ...’) where each recital ends with a comma, followed by the main body of the text which often contains performative verbs (e.g. ‘Calls upon all States ...’ or ‘Expresses its determination ...’) where each section or subsection ends with a semi-colon. Despite the inordinate sentence length of many resolutions, their underlying structure is in fact relatively straightforward to follow, even for the layperson, and it is difficult to see how anything would be usefully gained by breaking down the text into a series of shorter sentences. As was observed in the Renton Report on the Preparation of Legislation: “Shorter sentences are easier in themselves, and it would probably help overall to have them shorter, but of course you are faced with having to find the relationship between that sentence and another sentence two sentences away which, if you have it all in one sentence, is really done for you by the draftsman” (Renton 1975: 64).

That said, it is equally clear that well-ingrained habits of drafting legal texts can often lead to the production of unnecessarily long and complex sentences, and one of the chief concerns of legal drafting manuals is that of taking actual examples from texts and exploring ways of how they can be restructured by being broken down into shorter sentences with fewer cases of subordination, coordination and embedded clauses.

4.4. *Reducing the use of the passive*

Another complaint frequently reiterated by Plain Language exponents (e.g. Asprey 2003: 102-103) is the excessive use of passive constructions. In this regard, many critics cite George Orwell’s well-known maxim of never using the passive when you can use the active form. But once again we must bear in mind the specific context in which legal texts are drafted, for very often passive constructions are adopted to avoid specifying the actor, as in:

(12) Wool International *is hereby authorised* to make the application¹⁶.

¹⁶ Section 8(2) of the *Australian Wool International Privatisation Act 1999*.

Moreover, according to empirical research, passives, when viewed as a class, would not seem to constitute a major source of confusion when processed by readers (Charrow & Charrow 1979: 1325).

4.5. Reducing the use of nominalization

It is also claimed by certain Plain Language exponents that legal texts suffer from an excessive use of nominalization which has the effect of making them overly abstract and impersonal, besides adding to the sheer volume of words. In the following example, nominalization occurs with *makes a contribution* (instead of *contributes*), and *the provision of services or of contributions* (instead of *providing services or contributions*):

- (13) A sponsorship agreement is an agreement under which, in the course of a business, a party to it *makes a contribution* towards something, whether the contribution is in money or takes any other form (for example, *the provision of services or of contributions* in kind)¹⁷.

On the other hand, it has been pointed out that

An advantage of this reification of processes and actions is that it makes them much easier to organise into an argument. It also means that they can be qualified and modified more easily – adjectives are more productive and plentiful than adverbs, verb particles such as ‘intended’ and ‘referred to’ can be used, and nouns can modify other nouns (e.g. ‘service payments’) much more freely in English than one lexical verb can modify another lexical verb (Gibbons 1994: 6f, cited in Jackson 1995: 120).

5. Conclusions

Through this brief survey of written legal English and the Plain Language movement, I have attempted to highlight not only some of the features that it is claimed are in need of reform, but above all the complexity of many of the issues involved. While much of the criticism by Plain Language exponents of legal language is clearly justified in that much of it is objectively extremely hard for the average layperson to grasp, the reservations of many legal experts cannot simply be put down to a self-interested desire to prevent non-experts from understanding legal texts. If it is possible to identify an overriding criterion for drafters to follow, it would appear to be that of the underlying *function* of the text. Where it is feasibly possible, then, 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.

¹⁷ Section 10(2) of the UK’s *Tobacco Advertising and Promotion Act* 2002.

References

- Asprey M. 2003 (1991). *Plain Language for Lawyers*. Annandale, NSW: The Federation Press.
- Bhatia V. K. 1993. *Analyzing Genre: Language Use in Professional Settings*. London: Longman.
- Bhatia V. K. 1994. Cognitive structuring in legislative provisions. In J.B. Gibbons (ed.): 136-155.
- Charrow R. & V.R. Charrow 1979. Making legal language understandable: a psycholinguistic study of jury instructions. *Columbia Law Review*: 1306-1374.
- Connecticut General Assembly, Legislative Commissioners' Office 2000. Guide to drafting legislation, at http://www.cga.state.ct.us/lco/Publications/Drafting_Manual_Public.doc.
- Crystal D. & D. Davy. 1969. *Investigating English Style*. London: Longman.
- Danet B. 1984. The Magic Flute. A prosodic analysis of binomial expressions in legal Hebrew, in B. Danet (ed.), *Studies of Legal Discourse: Special Issue. Text: An Interdisciplinary Journal for the Study of Discourse* 4 (1-3): 143-172.
- Dickens C. 1853 (1964). *Bleak House*. New York & Toronto: The New American Library.
- Garner B. A. 2001. *Legal Writing in Plain English*. Chicago: University of Chicago Press.
- Gibbons J. B. (ed.) 1994. *Language and the Law*. London: Longman.
- Jackson B. S. 1995. *Making Sense in Law*. Liverpool: Deborah Charles Publications.
- Maley Y. 1985. Judicial discourse: the case of the legal judgment. *Festschrift in honour of Arthur Delbridge. Beitrage zur Phonetik und Linguistik* 48: 159-173.
- Maley Y. 1987. The language of legislation. *Language and Society* 16: 25-48.
- Mellinkoff D. 1963. *The Language of the Law*. Boston & Toronto: Little, Brown and Company.
- Plain English Campaign 2004. At <http://www.plainenglish.co.uk>.
- Renton D. 1975. *The Preparation of Legislation: Report of a Committee Appointed by the Lord President of the Council*. London: Her Majesty's Stationery Office.
- Šarčević S. 2000. *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Tiersma P. M. 1999. *Legal Language*. Chicago: University of Chicago Press.
- Williams C. 2004. Pragmatic and cross-cultural considerations in translating verbal constructions in prescriptive legal texts in English and Italian. *Textus* XVII: 217-245.