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Facing Legal English – A Dichronic Perspective from the Common Law Terminology to EU Legal English

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Abstract: Under the Common Law umbrella, Legal English has grown and changed since its first instalment in the 14th century, adopting its institutions and giving them authority by adorning them with formal language. Beginning in the 19th century legal English was freed from the confines of the Common Law system and expanded internationally, embracing the Civil Law system in multilateral agreements. This paper focuses on EU Legal English, presented as an evolving language incorporating and developing its own terminology and specificity, thus, creating a new particular terminological space.

Keywords: EU Terminology, Legal English, Linguistics, Translation Studies.

1. Introduction

This paper aims to analyse from a diachronic perspective, the evolution of Legal English from a register of English in the 14th century to International Legal English in the 19th century and to EU Legal English in the 20th century. Legal English is perceived as an elitist register available only to legal specialists, characterized by technicality, archaic terminology, Latin and French influences, impersonal and passive voice, nominalization, technical terminology and its aim of a clear text, void of ambiguity in this scope, repetition is often preferable in place of pronoun usage, but as any other language it is characterized by synonym and polysemy.

EU Legal English represents a specialized register developed within the European Union from British and International Legal English. English become an official language of the organization alongside the United Kingdom accession, later becoming one of the procedural languages of the EU in addition to being the most

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spoken language globally. EU Legal English is characterized by translation, neutral position after Brexit and an acultural feature evolving alongside culture in a multicultural space, supporting and honouring each unique culture and spawning new legal principles. It also borrows most of the features of British legal language without limiting itself to them.

2. Setting the Case: Definition and History of Legal English

The history of Legal English is implicitly associated with the Common Law system, within its cocoon it has developed its technical features and characteristics, but alongside the British territorial conquests, Legal English has transcendent its traditional space becoming the language of international conventions and the most spoken language worldwide. The European Union has acquired English has official language in the 1970s alongside the United Kingdom accession to the organization, from this position it has emerged as a procedural language, finally being recognized as the lingua franca of the multicultural space advancing into a new particular register specific to the organization and known as EU Legal English.

2.1. Defining Legal English

Starting with the definitions given by the Oxford English Dictionary to law as "the whole system of rules that everyone in a country or society must obey" (Oxford English Dictionary, https://www.oed.com/), and the one given to language concerning "the system of communication in speech and writing that is used by people of a particular country or area" (Oxford English Dictionary, https://www.oed.com/), we can conclude that language represents the bridge employed by law in order to make it accessible in the communication process. Both language and law are associated with a specific geographical space, in this situation, on the other hand, the focus is bought to a language and a technical register that has surpassed country's borders gaining a neutral, acultural feature. Law could not be limited to a system of values and equity appliable to a limited area, it is an expression of liberty and constraint, equally divided and better summarized by Oliver Wendell Holmes Jr.'s maximum "your rights end where my rights begin", for this reason law holds a universal character, with technical specificity, but generally relevant. As law could not be constraint to a specific area, influencing all legal conventions available in a generic space without borders constraint, its specialized register has outgrown it starting point gaining an international character. Thus, we could define Legal English or legalese as a register of English denoting specialized terminology employed in the law field in order to contour and enliven legislation and to bring it to its citizens.

2.2 A Diachronic perspective of Legal English

Within the British Islands and Common Law space, Latin represented the first lingua franca of the law bought into the land by Christian missionaries, its influence begun with the Justinian's Digest in the Roman Empire. The influence of Latin is still visible today in both Common and Civil Law systems, words like *in personam, in rem, ab*

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priori are still employed within the law filed nowadays. The Norman Conquest in 1066 bought French into the Britain, thus, French translations replaced in the 13th century Latin as the lingua franca of written proceedings. Latin was relegated to a supporting language in the legal system, particularly though borrowing, a practice that is still in used today. French holds its position as the most employed language in administration for over a century, when in 1392 an Act of the Parliament established that all oral proceedings should be carried in English, while written ones should rely on Latin. In 1483, English become the official language of all state institutions (Di Carlo, 2015). Therefore, in the 14th century English gained a placed within the legal system and in the 15th, century becomes its official language. Legal English is hence born seven centuries ago, bringing into nowadays its archaic feature, the legal institution established then are still employed today and the influence of Latin and French is still present in the court rooms and specialized literature today. Thus, Legal English is presented as an elitist language available to only a few, full of archaisms, borrowing, technicality, polysemy, characterized by long sentences with complicated syntactic structures, impersonal style and passive construction, with an affinity for nominalization.

On the other hand, EU Legal English knows a shorter history, starting with the 19th century, alongside the British conquests, Legal English crosses the boundaries of the Common Law system and English territories, becoming the language of international conventions and emerging into the Civil Law system. From the new register of International Legal English, the language has evolved welcoming new institutions and practices and becoming the lingua franca of international or multinational organizations.

2.3 A European History of Legal English

The European Union is defined as "an economic and political organization, based in Brussels, that many European countries belong to" (Oxford English Dictionary, https://www.oed.com/), with roots in the European Coal and Steel Community, the EU began as an economic organization. Today, it has evolved into a geopolitical organization with interests in a prosperous and shared economy, justice, peace and quality of life, respect for individual languages and cultures, and the creation of a new, shared one. It shares borders, laws, and even citizenship. With 27 member states and 24 official languages, the EU as grown from its six founding members. Because of the multiculturalism that underpins the European Union, each unique culture is acknowledged, valued and supported while also fostering the development of a new, shared European culture founded on common values, customs, and future goals. According to Mańko (2017), the European Union recognizes three categories of languages, the first category is represented by the 24 authentic languages of EU legislation, regarding this category article 55 of the Treaty of the European Union, to which the Treaty of the Functioning of the European Union makes references states:

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> "This Treaty, drawn up in a single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States" (article 55 (1)).

Making, thus, 24 authentic versions of the founding treaties of the EU, concerning this category of languages.

Article 1 of the Regulation no 1/1958 determining the languages to be used by the European Economic Community refers to the languages holding the official character representing the second category of languages:

> "The official languages and the working languages of the institutions of the Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish" (Regulation no 1/1958 determining the languages to be used by the European Economic Community, consolidated version, Article 1).

Thus, in 1973 alongside the United Kingdom accession to the European Union, English and its registers, in this case, Legal English gained its place as an authentic and official language of the European Union. While British Legal English represents a register of English, EU Legal English has been recognized under the names Eurospeak (Bellier, 1997; McCluskey, 2002; McArthur 2003; Phillipson 2003), "Euro- English" (Crystal 1999; McArthur 2003, Balič 2016), "EU sociolect" (Dollerup, 2001), Bruxellish (Chaudenson, 2001), EU officialese (Creech, 2005), Eurorhetoric (Koskinen, 2008) and EU language (Robinson, 2014), concerning the status of EU Legal English in relation to Legal English and English, there is not a consensus in the specialized literature, one the one hand, it could represent a form of British Legal English from which it has borrowed institutions, technical terms and features, on the other hand it may also be regarded as another register of English because EU Legal English enriches language and law with its multicultural background, adding new meanings and legal institutions, legal precedent, and court institutions. It takes Legal English and expands it to new heights by integrating Legal English traditions with the large conceptual structure of general English, embracing both the British Legal English culture as its attached to the Common Law and the International Legal English used on an international level to govern the external relation between states, in addition to its own cultural amalgam of the 27 distinct cultures mixed and developed under the motto "united in diversity" (Bugarski, 2009; Pozzo, 2012; Robinson, 2014). On the other hand, is EU Legal English a new register of English, or a specialized form of legal English covering a legal jargon more than a different register (Balič, 2016).

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Article 1 of Regulation no 1/1958 determining the languages to be used by the European Economic Community, a consolidated version mentions, as well, the languages found under the third category, meaning procedural or working languages of the organization. that nominated all official languages as working languages. In theory, all official languages of the organizations are considered authentic and procedural languages. The distinction between official and procedural languages is settled in the specialized literature, while official languages concern the external relations between the EU and outside factors, another states, institutions or citizens, the procedural languages are employed in the internal communications between EU institutions (Ammon, 2012; Somssich, 2016; Skorupa-Wulczyńska, 2022). Both the categories of languages used in external and internal EU communications are determined by the Council:

> "The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations" (Treaty on the Functioning of the European Union, consolidated version, article 342).

Concerning the distinction between official and procedural languages, the two categories employed in EU communication, their usage represents the achievement of multilinguist principle and EU's motto, but in practice, encounters difficulties in terms of time and costs, as reported to this situation Article 6 of Regulation no. 1/1958, which specifies the languages that the European Economic Community must employ, provides a solution by stating that: "The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases", the legal provision states a possible limitation of the multilinguist principles in certain situations.

Regarding the distinctions between the two categories of commonly employed languages associated, while the official languages are necessary in terms of multilinguist principle and in respect with EU's motto, the employment in both internal external communication of all official languages achievable in terms of costs and time, however, Article 6 of Regulation no. 1/1958, which specifies the languages that the European Economic Community must employ, provides a solution by stating that: "The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases", implying that the EU institutions have the possibility of restricting the languages utilized at different levels of communication. Consistent with the Union's linguistic nature, all institutions have ruled out the proposal of using the procedural languages directly in their rules of procedure. Though it is known that not all internal communications are translated into 24 languages, this is still an implied aspect in theory. However, even though procedural languages are recognized as a category in terms of legislation, no written regulation formally mentions them. In 2007, the Commotion directly stated that English, French, and German are the institution's working languages in a meeting

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with the European Ombudsman. Similarly, the three languages are inferred to be the procedural languages of EU's legislative and judicial branches without any formal established (Herbert, 2023).

The choice of the three languages is based on political and historical considerations. French was selected as the lingua franca of the European Economic Community in 1957 due to being the official language of three of the six founding nations – Belgium, France, and Luxembourg. The majority of civil coding used on the European continent was influenced by the Napoleonic codes, including the influence of French heritage of EU's legal system. The most widely spoken language within EU institutions is still French, even though English became an official language in 1973 when the UK joined the EU (Schlossmacher, 1994). English's dominance at the global level since the end of the 20th century is a result of its widespread use, particularly as a second language in Member States, which has made it language of choice for internal communication alongside French (Ringe, 2022). Germany's political pressure on the EU following its unification let to German being added as a procedural language; the request was supported by the country's largest economy, largest number of native speakers (roughly 90 million), and largest budget contributor (Schloßmacher, 1997, Hoheisel, 2004). Thus, English gained a position as a procedural language, as well as its established status as authentic and official language, becoming one of the languages employed in both internal and external communication within the European Union.

While legally there in no hierarchy between procedural languages and concerning the level of usage in the drafting processes resulting in source texts available for translations in the remaining official languages, in practice, not all procedural language know the same level of employment. For example, the Translation for a multilingual community guide state that in 2008, 805689 pages were translated by the Directorate-General for Translation, of which "72.5 % of original texts (including those originating outside the Commission) were drafted in English, 11.8 % in French, 2.7 % in German and 13 % in other languages" (European Commission, 2009, https://commission.europa.eu/). Furthermore, the majority of DGT-drafted guides including the 2024 edition of the DGT's Guide to Document Translation (European Commission, 2024, https://commission.europa.eu/) are only available in English, indicating that English is a working language with additional privileges. Form this perspective, English could be considered the lingua franca of the EU. Regarding various viewpoints of impact, legal status, popular use, and economy, the three languages' distinctive statuses represent three distinct views, Germany's political pressure for its language to be recognized as a working language given that it is the largest economy, English's status as the language of international law and its prevalence as a second language among EU citizens, and French's historical influence as the language of law (Philippson, 1992: 6). After Brexit, English maintained its status as an official language of the European Union even though it was no longer the official declared language of a Member State, this decision could be reasoned in accordance with its status as the official language of both Ireland and Malta, even

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though in relation to the EU, both countries have declared wither Irish or Maltese as their official languages. On the other hand, as previously discussed, English represents the language of international conventions, thereby necessary in external communications between the EU and other organizations or states. From this perspective, English become a neutral language, not being directly associated with any of the Member States.

Thus, we can determine that all official languages are employed in official meetings of the Commission, Council, and Parliament, recognized before the Court, and all legislation is available to all EU citizens in their mother tongue. The first step in lawmaking is drafting the legislative proposal in one of the procedural languages, a step attracting the employment of both borrowed words and the rise of neologism necessary in order to better render and stipulated the new contexts of the evolving word in which their implementation is required. Secondly, translators and lawyer-linguistics are implicated in the translation of legal texts into the remaining 23 official languages. In this context, we can say that the creation of EU terminology represents a step-by-step process (Temmerman, 2018).

EU legislation knows three levels separately creating and combining new meanings, the first holds an internal feature and concerns the supranational EU law, the second is domestic and refers to the national legal systems and the last concerns the international relationship between the EU and other states or organizations (Robertson & Aodha, 2023).

2.3. Case study: Meanings and EU Legal English

In the European space legal English has evolved, thus, specialized terminology gains new EU specific meanings either through interpretation, as a conseqence of translation or directly from the legislation. A few instances of the specialist terminology gaining new meanings in line with EU culture and the legal system will be the main emphasis of the our next inquire. According to this view, EU legal system is hybrid in nature, recognizing national laws while also creating, implementing and interpreting supranational law.

Citizenship is defined as “the legal right to belong to a particular country” (Oxford English Dictionary, https://www.oed.com/) and as “legal relationship between an individual and a political community, usually a state or a territory, as a result of which the individual is entitled to certain protection, rights (e.g. political rights) and privileges, and subject to certain obligations (e.g. taxation) and allegiance” (Interactive Terminology for Europe, https://iate.europa.eu/), the legal institution is connected with the concept of *nationality* defined as “the legal status of belonging to a particular nation” (Oxford English Dictionary, https://www.oed.com/) or “legal relationship which places an individual under the sovereign jurisdiction of a state and which is the basis for the state's right to exercise diplomatic and consular protection over the individual abroad” (Interactive Terminology for Europe, https://iate.europa.eu/), giving rise even to the notion of *national citizenship* meaning

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"legal relationship between an individual and a state or territory, as a result of which the individual is entitled to certain protection, rights (e.g. political rights) and privileges, and subject to certain obligations (e.g. taxation) and allegiance" (Interactive Terminology for Europe, https://iate.europa.eu/). The Treaty establishing the European Union in article 17 (1), the Treaty of the European Union in article 8, and the Treaty of Lisbon in article 1 (12) establish the *citizenship of the Union* "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship". In this instance, national citizenship is doubled by EU citenship, which can be acquired by using the former as a substitute for common nationality. Since only nations have the authority to recognized and grant citizenship, the EU has in this instance transcended its role as an international organization by establishing EU citizenship, so assuming the characteristics of a nation independently of Member States. Three components bind citizens to states:civil, political, and social (Marshall, 1950). Through citizenship the European Union pushed the boundaries of tis power, claiming the allegiance of the people to its own, in theory without replacing the one obligated to the state, but in practice ranting the EU enormous rights to its citizens. This can be explained because *citizenship* encompasses not only the rights that the state grants its citizens, but also the duty that its citizens owe to the state, overcoming the implications of Member States in relation to their citzens and establishing a direct connection with them.

Additionally, in its interpreation, the CJEU has expanded the concept, giving it new meanings and applying the principle of primacy, so interfering in national provisions to bring them into compliance with EU law:

> "(…) that the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is, in particular, the case of a decision withdrawing naturalization such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law" (Case C-135/08).

Due to the precedence of EU law, the established meaning of the term citizenship has also gained priority over national and international meanings. As a result, the term *citizenship* has changed from its established meaning in EU Legal English as both national and internationa levels and has become a part of EU culture and EU law. As a result, a shift in terminology and interpresation has resulted in legal ramifications, evelating the field of lingustics to a legal level.

An example of terminological acquisition reflecting a cultural change due to EU influence is the borrowing into EU Legal English of the French *acquis communautaire* meaning "objectives, principles, rights, and obligations contained in the Treaties and all laws and decisions adopted under them since the Communities were established, prior to the entry into force of the Lisbon Treaty" (Interactive

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Terminology for Europe, https://iate.europa.eu/) and “socle commun de droits et d'obligations qui lie l'ensemble des États membres au titer de l'Union européenne” (Interactive Terminology for Europe, https://iate.europa.eu/), there is a clear distinction between the two definitions given by the same EU database, in English there is a temporal reference “prior to the entry into force of the Lisbon Treaty”, referring to EU documents into force prior to December 2007, while the French defining refers to all legislation concerning the European Union without distinction. The two difinitions provided by the same database, maintanied up to date by the EU institutions, allows us to differentiate between the function of translation and its consequences with regard to legal documents. Since language in this context has legal implications, translation does not only pursue lingustic goals but also legislative ones.

Other than the specialized terminology, there is the problem of polysemy, in some cases the related meanings belong to different registers, for example, the word *equity* has the following meanings: “ownership interest in a company, represented by the shares issued to investors” (Interactive Terminology for Europe, https://iate.europa.eu/) in Finance, “field of jurisdiction that enables the judiciary to apply principles or morals in cases where strict adherence to the law would result in unjust sentencing” (Interactive Terminology for Europe, https://iate.europa.eu/) in Common Law and “impartial and just treatment or behavior without favoritism or discrimination” (Interactive Terminology for Europe, https://iate.europa.eu/) in Law. In the given examples, *equity* connects three different definitions, under distinct registers and available in the same database, IATE, thus, senses are a matter of contexts, and law texts are characterized by clarity, but in finance, they do not, there is no definite border between meanings especially when all of them belong to specialized terminology unavailable to lay people, the question remains, it is a solution for the inaccessibility to technical terms? For example, *equity* is a polysemous word, and we have prvided three definitions that are accepted by the European Union’s Terminology database used by all EU institutions and citizens with the goal of facilitating the acces and undersanding of laypeople and legal experts alike to legislations. The European Unions established an EU terminology database in 1999 with the porpuse of “enhancing the availability and standardisation of the information” (European Parliament, ttps://www.europarl.europa.eu/), it is used by all institution functioning under European Union, from its legislative, to its executive, judicial, economic, political and translational “for the collection, dissemination and management of EU-specific terminology” (European Parliament, ttps://www.europarl.europa.eu/).

Another example of a terminological change in light of EU law and polysemous meaning is represented by the word *transpose*, understood as “to change the order of two or more things” (Oxford English Dictionary, https://www.oed.com/), the phrase, however, refers to the situations in which a Directive – legally bindig document passed by the EU’s legislative bodies – needs to be translated and incorporated or transposed into national law. Directives typically include objectives that national laws must pursue while ensuring that they are consisten with existing

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laws, even though they do no require Member States to adopt them in the form communicated by the EU. Instead, their substantive provisions are binding. In order to achieve clarity in legal texts, directives are adopted into EU legislation using, EU terminology that must be applied in the same form in national legislation, empty terms that would embrace the national specific terminology (Robertson, 2011), and common law definition more frequently than civil law definitions (Taylor, 2011).

> " (…) it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labor have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision" (The Treaty on the Functionating of the European Union, consolidated version, art. 153(3)).

4. Conclusion

Under the English and Common Law umbrella, British Legal English has arisen as a bridge connecting language and law. Characterized by its elitist and archaic features, Legal English is associated with Latin and French influences, reflecting the cultural and political development of the British Empire and Common Law legal system. From the British Islands and Common Law influence, Legal English has transcended borders and travelled to international waters gaining a global character, thus, International Legal English has risen. The European Union has emerged as an economical organization evolving into a geopolitical power with supranational prerogatives. In this space, Legal English has acceded as one of the official languages together with UK's accession to the organizations. The multilingualism principle and multicultural features have eased the development of a specific register, EU Legal English. The new register has appropriated Legal English's established institutions and specialized terminology, adapting it to its own specific necessities, creating, thus, a specialized language characterized by aculturality and translation, combining common law and civil law traditions and utilized predominantly by no native speakers. Giving its multilinguistic principle, translations represented a need for the organization, but within the EU's space, translation are not views as a mere transfer from the source to the target languages resulting from a negotiation of equivalents, but trough translation legal texts become authentic versions, giving rise to legal consequences.

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