

**NATIONALISING ENGLISH LEGAL LANGUAGE
PEDAGOGY IN L2 GENRE-BASED WRITING: LEGAL
PROBLEM QUESTION IN THE UK LOCI OF LAW.
IMPLICATIONS AND CHALLENGES FOR THE
PLURICENTRICITY OF A LEGAL ENGLISH
PEDAGOGY**

DI GIROLAMO TESSUTO

Linguistics essay

1. Different labels to describe English worldwide spread

It is widely recognised that the prominent role of English as a global language affects the nature and form of English used in cross-cultural settings. Over the last decades, this role has formed the subject of a wider and interesting debate among researchers from different theoretical perspectives - most notably in the analyses of Crystal (1997, 2003a/b), House (1999), Jenkins (2000, 2003, 2006), Maley (1985) Mc Kay (2002), and Seidlhofer (2001, 2002, 2004).

As a result of this pluricentric approach to describing English language worldwide expansion, terms such as English as a Global Language (Crystal 2003a), English as an International Language (Jenkins 2000; Mc Kay 2002), and English as a Lingua Franca (Seidlhofer 2001, 2004; House 1999), have been increasingly applied in research. Among these, Seidlhofer's (2001: 141) pedagogical view of English to serve as lingua franca is concerned with:

the largest group of users of "English": those to whom "English" serves on a daily basis as a lingua franca for conducting their affairs, more often than not entirely among so-called "non-native" speakers of the language, with no native speakers present at all.

In Jenkins' (2000) work, linguistic descriptions and analyses of English lingua franca groupings have focused on "how speakers of English as an International Language (EIL) behave phonologically, by means of data drawn from lingua franca contexts" (2000: 2). Her approach to pronunciation teaching is based on mutual intelligibility among non-native speakers, rather than imitating native speakers. However, in a more recent analysis by Jenkins (2006), the scholar aptly focuses on the issues revolving around the implications for TESOL of "English as a Lingua Franca" associated with the phenomena of "WEs" research.

All of the above linguistic discussions, which affect the teaching practices in mainstream English Language Teaching, variously point to the use and functions of English as a universally accepted language in the Inner-Outer Circle, or NS-NNS, perspective.

2. The legacy of the English Common Law language and the spread of legal English "types" in ENL localities

As a result of the ubiquity of the English language in the above perspective, legal English is certainly not exempt from the same labels as a *global*, *international*, *world language*, or *lingua franca*, and reflects today's socio-economic globalisation of legal communication and practices. Although these labels account for legal English to be no longer territorially bound, they are by no



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means divested of a historical and cultural heritage in home territories - i.e. the native settings of the Quirk *et al's* (1972, 1997) users of English as a Native Language (ENL), and Kachru's (1989, 1992) English settings in Inner Circles. Among ENL settings, for instance, England and Wales are the sociolinguistic profiles of one distinguishable, codified legal language tradition, the English Common Law language, originating in ancient times from England's shared body of law - the *common law* of the realm. By mixing the diverse linguistic traditions succeeding one to another in transitional periods¹, therefore, England's language and the inherent legal system spread over the centuries to provide the basis of *common law* legal systems (as opposed to *civil law* or *pluralist* system circles such as Scots law, discussed below) to other Inner Circle countries, such as the USA and Australia, as well as other English-speaking countries under the British and American colonial influence.

The effect of all this was that England's language and legal system have left their stamp on the development of English legal language we know today; their persistence in all other common law jurisdictions has meant that the legal traditions and policies have nonetheless evolved in their own ways. The classic examples of the USA and Australia, which are subject to statutory rules as opposed to the primacy of judge-made law in England and Wales, illustrate the distinctive development of the legal traditions and policies in ENL settings. While it is true that these examples embody a powerful socio-cultural dynamic of the law to suit locale-specific conditions, they support, most importantly, the idea that the rules expressed formally and functionally in a "shared" medium - i.e. the English language - are marked by national identities in geographically and multiculturally diverse ENL localities.

Given this dynamic and conditions, it comes as no surprise that the law turns out to be culture-bound in ENL localities. Consider, for example, the variety of linguistic (lexical) markers identified by concepts of substantive and procedural law and those relating to institutional and staff roles, such as:

(BrE) *chamber/set* (of barristers) v (ScotE) *stable* with no (AmE) equivalent

(BrE) *barrister* v (ScotE) *advocate* and (AmE) *trial lawyer/appellate lawyer*

(BrE) *contributory negligence* v (AmE) *comparative negligence*

(BrE) *on the balance of probabilities* v (AmE) *preponderance of evidence*

(BrE) *representative action / group action* v (AmE) *class action*.

Although, as seen above, these terms are confined within national traditions and policies through a set of similar legal institutions, they show how their associated concepts have evolved distinctively in such localities. How slowly these markers might disappear in such localities in favour of one single, globalised legal English standard and usage for lexis, is not easy to perceive. However, it is almost likely that the epistemologically-driven nature of law and its associated language will variously result in "power relations"□ (Fairclough 1989) of national social groupings in multicultural ENL localities, where social practices are shaped and enacted in the inherent properties of legal discourse.

Faced with the resulting challenges posed by the spread of English Common Law language and system, therefore, we may say that legal English lexis now accounts for "types" of the English language usage in ENL localities, and which Williams (2008: 10) refers to as a "plurality of legal Englishes today".

3. Responding to global scenarios for legal English use (NS-NNS): European Lawyer Directive

The widespread use of the legal English variety beyond ENL countries and the close bond of this variety with human identity and attitudes across the globe inevitably raise issues concerning the need to provide a response to the range of functions of legal English in today's complex but no less predictable mix of globalised legal practices. By involving the increasing diversity of interactants

in identifiable speech communities, these practices become visible by the European Directive (98/5/EC), which provides possible scenarios for the use and teaching of legal English in the wider international community of lawyers (NS-NNS).

The Directive spells out the need "to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (consolidated version, May 2004)". As well as specifying the meaning of *lawyer* (Article 2), such as *Avvocato* (Italy), *Barrister/Solicitor* (Ireland), *Advocate/Barrister/Solicitor* (United Kingdom), *Dikegòros* (Greece), *Advokatas* (Lithuania), the Directive goes on by stating the area of a European lawyer activity as follows:

Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts (Article 5 (1), italics in the original).

As can be seen, the wide scope of the Directive provides a co-extensive context for the use of legal English, by raising a critical question concerning the person to whom a non-native speaker of English (a lawyer who is presumably proficient in English) wants to interact. From a global perspective of legal communication, in fact, the Directive implies an *intra*-European approach to the use of English where, for instance, an Italian lawyer's advice ties British, German, Swedish and other EU speech communities on matters of the law of his home (Italy) member state, Community law (e.g. Germany, Sweden), or host (e.g. UK and Ireland) member state. In a similar vein, the Directive implies an *outer*-European approach to English where an Italian lawyer's advice is given on matters of international law, which involves geographical areas such as the USA, South Africa, and Russia, as part of the three concentric circles in Crystal's (2003a: 60-61) estimates of English speakers.

As a result of the identifiable functions of legal English around the world, the Directive therefore provides a "regulatory" site which confirms the use of this language variety among the largest multilingual/multicultural groupings of prospective lawyers advising in the medium of legal English. And it is no coincidence that these groupings share, as legitimate participants in intercultural communication, the popular argument raised by researchers (Graddol 1997; House 2002, among others) whereby non-native speakers of English greatly outnumber native speakers, and this disparity is likely to grow.

Viewed this way then, the co-extensive context of the Directive will therefore include the enthusiastic notion of lingua franca communication proposed in Seidlhofer's (2001) analysis of English among non-native speakers which, in the current analysis, involves *intra*-European communication between lawyers. Similarly, the Directive context will cover Jenkins' (2006) notion of speakers of European Englishes, who "are typically also speakers of ELF, to the extent that they learn and use English more for interlinguacultural communication than to communicate with speakers who share their first linguaculture" (Jenkins 2006: 164). Equally, the co-extensive context will involve speakers of English in Inner-Outer Circles participating in intercultural (*outer*-European) legal communication, as it is to be expected of ELF communication. In this discussion, the (monocentric) pedagogic platform for an Italian lawyer giving advice under the Directive is provided solely by the UK and Ireland localities, which are as much a traditional base as other Inner countries such as the USA and South Africa.

4. Nationalising legal English pedagogy in L2 writing classroom: the UK loci of law

In view of the scope and purposes of the Directive, the pedagogic challenge in this analysis goes beyond interactions among solely NN tongue speakers (ELF). It seeks to accommodate NN speakers of English to write an effective advice specific to the UK *loci* of law (the law of the host Member State) and make it intelligible for N interlocutors from this home locality.

In a context where the debate over codification of ELF forms is still open and native language norms (British or American English varieties) have long been argued among researchers dealing with standards of English (Strevens 1992, among others) and among us as teachers in non-native settings, a nationalised legal English pedagogy will therefore be adopted in mainstream ELT. The aim behind the nativised pedagogy is to provide L2 English speakers with the necessary linguistic standards to interact in a situated and local practice of the law.

As a socially recognised discourse type in specific contexts, the genre writing is therefore defined by a set of recognisable social or communicative events, and suggests that the communicative purpose shapes the genre and provides it with an internal structure, as well as other elements such as content, form, and intended audience.

4.2 Nativised model texts

As a result of the genre approach, the focus will be on learning writing through the exploration of different prototypical models of the same genre written for a particular purpose. Learning by prototypes bears legitimacy to authentic model texts, as has been advocated by different genre theorists (Paltridge 2001; Hyland 2005, among others):

Using authentic samples of language means that students are exposed to the most useful, productive and frequent items so that their functions become apparent. [...] The texts they work with should therefore be both *relevant* to the students, representing the genres they will have to write in their target contexts, and *authentic*, created to be used in real-world contexts [...] (Hyland 2005: 183-184; italics in the original).

By bringing into focus the cognitive strategies that are central to genre writing and the rhetoric of legal discipline, nativised model texts may therefore provide students with linguistic and rhetorical conventions as perceived by the legal discourse community in locale-specific loci, and progressively engage in a process of task-based legal writing skills by manipulating model texts through "variability in the use of generic strategies" (Bhatia 2004: 207).

4.3 Legal Problem Question genre responding to QLTT under the Directive

Against this theoretical background, Legal Problem Question comes as a useful tool for raising awareness of, and acquire the necessary writing skills and tasks according to the linguistic norms and standards of a native discourse community. As a highly specialised legal genre based on clearly defined macro and micro-structures of problem solving, the LPQ genre allows NN students to simulate a written advice given to a client by a professional lawyer, and is key to students' exam performance. By combining law and language skills and tasks, LPQ thus enables students to acquire what Bhatia calls "*discursive competence* as a general concept to cover various levels of competence we all need in order to expertly operate within well-defined professional as well as socio-cultural contexts" (Bhatia 2004: 144; italics in the original).

In the present analysis, acquiring discursive competence is perceived as being closely associated with the "need to resolve the tension between the classroom and the workplace, the academy

and the profession, and language teaching and communication training" (Bhatia 2004: 205). Therefore, as a result of the focus of the proposed pedagogy, which is to allow Italian law graduates proficient in English to be in control of the legal genre and succeed in particular nativised settings, LPQ may be conceived as a precursor to postgraduate study-abroad writing programmes at British or American Law Schools for graduate students preparing for the conversion test - i.e. the Qualified Lawyers Transfer Test. In fact, under the European Lawyers Directive 98/5/EC, Italian qualified lawyers may convert their home title and transfer to the roll of solicitors of England and Wales by passing the QLTT determined by the Solicitors Regulation Authority of the Law Society. Among the four legal subject areas covered by the test, linguistic competence in English is expected of candidates in both written and oral examinations².

4.4 Nativised corpus-based model answers to LPQ: an analysis

We begin the descriptive analysis of Legal Problem Question by identifying the allowable textual structure and lexical resources available for genre users (novice students as prospective lawyers) to achieve the advisory purpose for their intended audience (prospective clients) in the appropriate form and content. The qualitative analysis relies on a mini specialised corpus of model answer texts in a set of clearly defined criteria, i.e. model answers to LPQ appearing in the textbook *Exams Skills for Law Students* (2006) and written by UK law lecturers for exam questions in L1 contexts.

Given the specificity and exclusive reference to native-speaker norms in the corpus, the important purpose will follow on for non-native writers to maintain, and therefore to appropriate, the "generic integrity" (Bhatia 2004: 112-142) of legal discourse, and similarly make their socio-rhetorical action effective in a situated context of law.

4.4.1 Macro-(legalistic) textual structure

In writing an *Answer* to a hypothetical problem scenario, academic legal writers adopt a macrostructure that provides a pattern appropriate to its advisory purpose to help NN writers understand how sentences are connected in a coherent manner.

The macrostructure is a (genre) Move-based rhetorical sequence which accounts for a highly codified cognitive structuring. The sequence is structured around the **IRAC** method, which stands for **I**ssue - **R**ule - **A**pplication - **C**onclusion:

- I Issue Move 1
- R Rule Move 2
- A Application Move 3
- C Conclusion Move 4

Table 1. IRAC method

As a traditional method to assess the deductive legal reasoning of law students in a step-by-step template, IRAC is widely used in UK and US academic contexts to prepare students for examination techniques in a variety of law subjects. As such, the method is illustrative of LPQ writing in testing the students' ability to form an opinion on the facts in highly legalistic structure - i.e. identifying the legal rules and principles in relation to specific facts, developing arguments and counter-arguments and applying the rules to the key facts so as to present a "possible" conclusion. By signalling the ways in which advice should be controlled when right or wrong procedures are involved, the four-move analytic structure of LPQ, as taught in many native legal writing textbooks, therefore allows for a heavy focus on the rhetorical conventions, as recognised by discursual expertise of the legal community (law lecturers).

The following text on negligence, shown in Table 2 in Appendix, is shorter than most of the texts found in the corpus. It provides practical guidance on the skills and knowledge needed so that

students can reach their full potential when producing an Answer based on a problem scenario (Question). As can be seen, the sentences, written in ordinary English, are kept short and use a simple S+V+O structure, with a relatively low degree of clausal embedding (such as: adjectival, adverbial, and the use of participles replacing the use of "which + S"), which does not disturb the simple pattern, as well as a very restricted use of phrasal verbs (fool around). Underlined examples include: *causing it to collapse* (instead of *which causes it ...*), *Flustered* (instead of *she was flustered*), as well as a restrictive use of the passive voice. All these features would indicate the extent to which native model texts tend towards the apparent development of global English in NN learning contexts.

4.4.2 Micro-structure: lexis

Apart from teaching students how to explore and evaluate the strengths and weaknesses of the case being advised upon, using epistemic modality patterns, model answers expose students to the multifaceted nature of English legal lexis, according to the writing techniques of the modern day.

Considering that words and senses in model answers are in normal and standard use in English around the world at different levels of formality (in both speech and writing)³, a variety of lexical items, such as adjectives and nouns, occur in nominal phrases in Move sections. Examples include: *aggravated arson, diminished responsibility, insanity, nervous shock, self-induced/voluntary intoxication, specific/basic intent, strict liability, threatened injury*. Given the ways in which English lexis is able to respond to different meanings, NN writers will note that, apart from terms used only in the ordinary language (OL) and expressions used in legal language only (LL), there are terms borrowed from ordinary language but acquire specialized meanings in legal contexts (O+L). Corpus terms in the O+L category, such as *diminished responsibility, intoxication, recklessness, nervous shock*, thus involve that their designated concepts are kept concise on account of the shortest form in which they are expressed and used by "expert" members of the disciplinary discourse community (Swales 1990: 27).

In this context, euphemisms are not saved from genre-specific language. The term *intoxicated defendant*, described as *the defendant's intoxicated state* in text shown in Table 3 (Appendix), is used euphemistically instead of *drunk defendant* to soften the impact of what is being said. In fact, the German root word of *drunk* - "getrunken" - would carry a more vulgar effect on the reader, referring only to an excess of alcohol, whereas the Greek root word of *intoxicated* "tox" refers to an excess of any poisonous substance, and therefore in contrast would have a more neutral effect. As a result, the term *intoxicated* allows NN expert writers to deal with delicate matters in neutral and tactful language.

In addition, oxymorons (contradictory word pairs) are observed. They are used deliberately for rhetorical effect by the apparently contradictory terms, such as: *absolute liability, friendly suit, involuntary conduct, justifiable/lawful homicide, lawful violence, unexpressed promise*. Again, with regionally variant lexis in focus, as noted before, it is reasonable not to lose sight of the different nuances conveyed by such conceptual items when treated epistemologically in English regional variation of the law and beyond.

To reflect the new (international) tendencies for change in legal communication, model answers encourage students to use plain English vocabulary, based on the meaning which springs instantly from the words, which do not need to be pondered or re-analysed. Thus, Latin terms are used only sparingly, such as *prima facie* - literally: "accepted as correct until proved otherwise" (Feinman 2005: ad vocem), as in:

- It would appear that Laurie is prima facie liable for damages ...
B has a prima facie claim ...

The virtue of legal expressions is to have pleasing resonances in conservative English legal language, thereby meeting the requirement of writing in the educated native speaker register, as with the use of *intoxicated* as opposed to *drunk*, as seen above.

On account of the tendency for clarity of expression achieved through conciseness and precision, including grammar, model answers also raise writers' awareness to select a particular (legal) register from Standard English norms (Stevens). Writers may therefore appreciate that synonymic (ordinary) expressions, such as *injury*, *loss*, or *harm* (caused to someone), used in civil law language, generally occur as *damage*, and the *compensation* (sum of money) will generally occur as *damages* where, of course, *compensation* can be *claimed* (by the injured party) or *awarded* (by the court); *representing clients* (both *in and out of court*) is often described as *acting for a client*; the *skill of arguing a case in court* (known as *advocacy*) is described as *pleading a case*; *starting a claim* (in the civil court) is described as issuing a claim or filing a claim; and the reasons for going to court are called the grounds.

To expand further on the range of lexical strategies developed by native models in the corpus, emphasis is also placed on competing principles that arise from collective nouns in ENL norms, as described by Quirk et al. (1997: 758)⁴. Thus, there are cases where a collective legal noun can be either used with a singular verb form (*the jury was made up of...*) or a plural verb form (*the jury are made up of...*). Other instances of collective nouns apply to the expressions *a number of* and *a group of* which are used with plural nouns and pronouns, and plural verb, as in:

- A number of case statements were entered among the rolls of the court.

Here, it is clear that the emphasis is on the modified noun phrase *case statements*, expressing different material facts of the claim of which there are several for the claimant to establish his cause of action - known as *Particulars of Claim*. Similarly, in:

- A group of lawyers have decided to settle the dispute out of court.

The emphasis is on *lawyers*, of whom there are several.

Outside the realm of Subject-Verb agreement, awareness of the differences between BrE and AmE is raised by frequently cited words in various parts of speech, as in our corpus. These words can take only the *-ise* or *-se / -ce* forms, such as: *advise* [v.] and *advice* [n.], and noun agents in which the use of *-or / -er* endings and *-ee* endings indicates the reciprocal and opposite character of the relationship, such as: *donee* as opposed to *donor*, *(mis-)representee* as opposed to *(mis-) representor*, etc. Outside the current corpus, and to the best of my knowledge, today's legal language shows a slight tendency to adopt or accept the US spelling, although in EU documentation preference is given to UK spelling, for obvious reasons connected with the dominant voice of the UK variety of English within the EU dimension.

The analysis above therefore provides evidence of a tendency to use a Standard English driven by simplified, plain legal English standards, which makes it more available to educated NS and NNS alike.

5. Pluricentricity of a legal English pedagogy: implications and challenges

The teaching perspective in the genre-based view of language examined above has been shown to depend, most importantly, on the concept of a target discourse community and practice pragmatically situated in monocentric (Western-inspired) UK *loci* of law. Indeed, in a context where the global nature of the English language (Crystal) allows for our focus on legal communication practices and styles in English to become part of the theoretical debate on *English as an International Language* (EIL) or *English as*

a *Lingua Franca* (ELF), legal English will become yet a wider pedagogic tool of communication.

Thus, the issue is raised as to whether the terms EIL and EFL, incorporating into a research and pedagogic perspective of English legal language, may provide a shift away from the native speaker norms and linguistic identities owned by either BrE or AmE influential variant. With the notion of linguistic ownership as a criterion for our discussion⁵, questions arise from the pluricentric use and functions of legal English in Inner-Outer Circle, or NS-NNS, perspective, and from the resulting questions of globalised standards of legal English affecting the ELT industry.

5.1 The ownership of legal English

In discussing the above related issues and questions, we take up Widdowson's (1994) widely quoted *ownership of English*, to refer to norms and standards that are no longer only created by native but also by non-native-speaker communities. We have seen the non-native argument to lie with the scope and purposes of the Directive, which allows NNS of legal English to increasingly appropriate the register at the lexical, grammatical and phonological levels for their own contexts and purposes of law. However, the argument seems to provide few opportunities for the legal interactants from the Outer and Expanding Circles to believe de facto that they own the language.

Far from stating the obvious, this point can be explained by reference to the Italian speech community of ESL/EFL speakers who appropriate inner circle legal lexicon for their own use, by adjusting BrE or AmE lexical range of *injunction*, *compensatory injunction*, or *injunctive remedy* to Italian *azione inibitoria*. Although these native items imply an extended or restricted meaning of Italian *azione inibitoria* in appropriate contexts, they undoubtedly raise the challenge of creating, maintaining, or developing globalised common standards and mutual intelligibility in lexis in ESL/EFL varieties of legal English.

In the absence of such standards - that are not so easy to define by reason of the strong link between the ideological weight and the cultural identities in ENL-ESL/EFL discourse practices of the legal communities - the function of these lexical items will only be to mediate between linguistic forms and content in a "shared" medium of legal English, as a *globally accepted international language* or a *lingua franca*. And it is not surprising that, under similar circumstances, NNS of legal English, such as Italian speech communities, are simply driven by perceptions of the predominantly BrE or AmE linguistic and cultural variants in their interactional strategies. As a result, the concept of ownership of legal English so examined can be said to equate approximation towards native varieties and identities, insofar as lexis is concerned.

5.2 Mixed legal traditions and systems: mediating through a shared medium of English

The above limitations arising from the potential for ownership are even more visible if we consider the pluricentricity of legal communication in mixed legal systems and traditions. Here, it is telling that the increasing diversity of native and non-native interactants, participating in the possible scenario of legal communication, as shown under the Directive, will have to come to grips with the usual debate about legal concepts to mismatch, whether in narrowly or widely defined contexts.

This scenario will have to consider the three influential Romano-Germanic, Common Law, and Socialist Law families in the contemporary world, as argued by legal writers (David / Brierley 1985: 19-23), which means that the use and teaching of legal English will have to acknowledge certain blended legal systems and traditions. Where the legal English pedagogy still focuses on writing a legal advice in non-native European Englishes localities, the role of the pedagogy will be to raise learners' awareness of

their own legal English varieties as they result from mixed jurisdictions. Thus, awareness raising will focus on the essential legal traditions which have become blended by the cultural-legal affinity, such as Dutch law, mixing elements of German, French, and Roman law, or by the colonial power, such as Turkey, mixing elements of French, Swiss, German and Italian law (Orucu 1996: 343-345).

By the same token, awareness raising will focus on other (Inner) mixed jurisdictions, such as Scotland and South Africa, which combine elements of civilian and English common law traditions, as argued by legal writers. With regard to Scotland, where legal language differences with the law of English and Wales have been identified in Crystal's (2003b: 328) *Cambridge Encyclopedia of the English Language*, there will still be other important linguistic consequences arising from such differences to affect lawyer's advice. These differences owe much to the civilian heritage fitting into the structure of Scots private law, which includes its content of law and terminology (e.g. *corporeal and incorporeal moveables, delict, obligations, quasi-contract, prescription, servitudes*).

Similarly, a legal advice on *restitutionary remedies* in such mixed systems, will require speakers of European Englishes, such as the Italian speech community, we are concerned with here, to acknowledge uncodified civilian tradition (private law) in Scottish law, or codified civilian tradition in North American law. Or, a legal advice on a tort action will require them to recognise that some things that may be criminal in their substantive law are a tort in the monocentric view of legal English (England /USA)⁶.

Although, as noted earlier, such differences owe much to England's language and law evolving in their own ways over the centuries, they will constantly bring into focus the essential question of mediating between form (language) and substance (law) in a "shared" medium of legal English. And it is worth noting that the notion of "accommodation skills"□, proposed by Jenkins (2006: 161, 174), may provide a useful site for a descriptively lexical inquiry of intercultural legal communication. In our case of Italian (NNS) speakers of legal English, who share matters of common concern in legal communication with other NS or NNS, any such notion would allow them to be aware of, and put into practice, differences between civilian and common law traditions (e.g. *arbitration, economic loss, lex mercatoria, forum conveniens*), as well as some civilian legal principles embedded in the common law (e.g. *delict, negligence, contributory negligence*). In approaching justice, it becomes clear that linguistic transculturation posed by the above issues will similarly need to take into account cultural differences in terms of ethnicity, race, and socioeconomic status arising from *intranational* (legal English used in Scotland versus England) and *international* (BrE versus AmE) regional variation of the English language.

5.3 Ownership as native standards in teaching and research applications

Despite the potential degree of ownership and the issues arising from mediation in a shared medium of legal language, we may still view the concept of linguistic ownership in NS-NNS interactions as providing good reasons for claiming native standards in teaching and learning practices. Here, we refer to Jenkins' (2006: 171) argument that "the belief in native speaker ownership persists among both native and non-native speakers - teachers, teacher educators and linguists alike".

However, claiming ownership in this way is not only concerned with the selection of content and methodology in task-based language learning skills, specified and constructed around generic discourse in the codified Inner Circle, as has so enthusiastically been put forward. The claim is also concerned with the point whereby, in regard to legal English speakers, (standard) Inner circle varieties can be said to remain the only legitimate target varieties for use by speakers in Outer or Expanding Circles. In particular, the use of idealised BrE or AmE native norms, which predominate in a vast

volume of works of legal reference, have a considerable impact on legal language textbooks, dictionaries, and drafting style manuals. Where drafting styles are concerned, the Plain English Movement does indeed speak for itself. Under globalisation and discursive practices in legal English, the quest for conformity to uniform standards can be seen by the cutting edge of plain English legal language. Based on the assumption of a democratic access to justice for all in a variety of legal documents, plain legal English relies on a more effective approach to drafting, which equally affects the editing systems designed to recast "foreign" elements in a text. One example of recasting documents would be for "Italian" contracts drafted in English to be removed for surplus wording, as in *per nome e per conto di X* rendered into *on behalf of and by X*, which proves to be unnecessarily redundant by plain English campaigners, who would therefore opt for one single item *on behalf of X or by X* to perform the same semantic function. Although the merit of such editing system can be seen in the attempt to avoid a natural prolixity inherent in Italian legal reasoning, the same does not apply when complex contracts are taken into account.

Without therefore digressing on the nasties and the niceties of plain legal English, the latter - especially when applied with a critical eye to textual and lexico-grammatical patterns - can be seen as contributing towards common standard usage and mutual intelligibility of legal language as a *global, international* language or a *lingua franca*, without necessarily inventing another legal "code". As a result of this, plain legal English can be seen to provide the response to a notion of "literacy" at various levels for Native, Second, and Foreign Language communities of legal English speakers, and similarly to accommodate any variety of legal English as far as it is comprehensible to native or non-native users who have to fulfil their legal tasks at different degrees of difficulty. Considering that, as argued, BrE/AmE influential norms stand out in a variety of English legal language reference materials, the suggestion therefore arises that competence in legal English needs to be considered at these regional levels. Thus, for example, most legal English textbooks present vocabulary arising from thematic sections of the practice and the theory of law in the Inner legal contexts (UK/US), and assume that EFL/ESL learners will need to speak and write about their own legal system. As a consequence, tasks are meant to develop learners' confidence in, and ability to use, their own legal English varieties by deciding how far their legal system "share" the same legal concepts, procedures and reasoning, and use legal terms in English as equivalent or partial concepts to those used in their own system. It is this context which provides our enthusiastic view for codified Inner norms in legal English, these norms however being also driven by a goal for stability - or, at least, an accepted norm - in NN teaching and learning contexts. And the author would throw the argument about other convincing norms open to the reader, as far as English legal grammar, lexis, and pronunciation are concerned.

In view of their legitimate status, therefore, Inner works of legal English reference can only provide reliable descriptions of linguistic knowledge for adaptive use in locale-specific contexts of the law, by allowing NN speakers to be in control of, and gain mastery over, English legal language, defined widely in terms of register, discourse, and genre, as research-grounded issues for a pluricentric teaching methodology. And it is worth noting that the basis for this methodology in NN contexts has been the focus of a project study by the authors Candlin, Bhatia et al. (2002), highlighting the need to develop legal writing materials for English second language learners⁷. By vetting teaching materials for their jurisdiction neutrality because of the cultural specificity of the law across languages, the resulting curricula in the ESL/EFL regions of legal English would therefore gain a distinctive pedagogical tradition of their own, in terms of features of legal language and legal genres, and similarly help learners to develop skills in their own distinctive ways as NNS.

Yet indeed, the need to teach non-native speakers of legal English

to orient towards native standards in order to gain control and mastery over legal language may pose other important implications, affecting intelligibility and acceptability standards for descriptive research and teaching. In mainstream ELT, these implications bring into focus the range of approaches to linguistic items, such as modal language and generic structures in academic legal writing. These are often summarily dealt with without systematised comment, as is practised in typical ESL/EFL "exercise" formats in today's variety of legal English textbooks. The view in this paper is that these items are part of a general pedagogical framework of negotiating the delicate balance between knowledge of language and content of law, and serve the pragmatic aim of teaching users to function in English in the affairs of the international legal community and its cultural, rhetorical-discoursal practices.

Similarly, pronunciation approaches to legal English bring into focus the need for NNS to achieve some degree of standardness of the type shown by NS, so that the phonological and phonetic forms exhibited by the former can be rated for intelligibility by the latter. This framework cannot escape from research-led linguistic studies dealing, for example, with the simplification of legal documents, as is in Bhatia's (1983) notion of "easification devices" in legal genres, and the use of English in various legal discourses and genres (in oral and written forms) in both native and non-native Common Law English-speaking countries. In the latter applications, ELT practices may benefit from a variety of linguistic (descriptive) insights, such as those covering textual (generic) and lexico-grammatical analyses of arbitration in multilingual contexts (Bhatia / Candlin / Gotti 2003; Bhatia / Candlin / Engberg 2008), vagueness in normative texts (Bhatia / Engberg / Gotti / Heller 2005), and professional legal genres (Bhatia / Gotti 2006), to mention only a few. These and other linguistic insights may provide the fine nuances of legal language required in regard of pragmatic and textual competence. Any such competence would be needed in order to maintain the argument for "integrity" (Bhatia) in most legal genres before any informed decision in teaching language can be made.

6. Concluding remarks

The theoretical background for the analysis in this chapter has been provided by reference to scholarly studies, focusing on the global spread of the English language in an Inner-Outer, NS-NNS, perspective. This perspective conflates into the use and functions of its socially defined category, legal English, serving as a world, international language, or a lingua franca for interaction between speakers (academic, professional, and institutional) with different first languages, cultural backgrounds and legal traditions. As part of a distinctive historical development of the English Common Law language and system across ENL localities, the analysis has noted the resulting different lexical markers that are still confined to national traditions, policies and indeed ideologies in such localities. In view of the undisputed ubiquity of legal English in contemporary globalisation, the European Lawyer Directive therefore provides a useful site for the range of functions and use of legal English in the larger EIL/ELF framework of communication. Here, the analytical focus has been on the need to accommodate (Italian) NNS of English to write legal advice for NS interactants in the ENL (UK) *loci* of law, by relying on genre-based theory of writing literacy in academic and professional contexts. The Legal Problem Question writing genre, identified as a "situated linguistic behaviour" (Bhatia 1997: 181) which leads to assumptions of role in such contexts, has been examined at a macro level as a conventionally recognised instance of language in the social practices of a native discourse community. As a result, adherence to native linguistic norms and standards by NN student writers plays a central role in ensuring effective socio-rhetorical action in their advisory writing. At a micro level, linguistic data identified by grammar and lexis have shown a tendency for standard English usage driven by plain legal English principles. These principles encourage the goal of a universally uniform, and therefore intelligible usage, of educating

among the regionally different legal English varieties.

With a focus on the pluricentric use and functions of legal English under the Directive, implications and challenges are posed by the potential for linguistic ownership, insofar as the diversity of interactants is such as to invariably account for blended legal traditions and systems in which today's legal communication takes place. Where the argument for a weak notion of ownership, as approximation towards inner circle varieties, derives from content-variable lexical items, an inherent strength in such notion can be argued in the alternative. The latter therefore justifies the claim for native models and standards for research and teaching purposes on a variety of legal English items.

It is this alternative notion of claiming ownership which opens up the way for a monocentric/pluricentric approach to a legal English pedagogy. With a considerable effort of imagination, it is not impossible for educated NNS from Outer/Expanding Circle varieties of English to own one (UK) or the other (US) influential legal English variants, in such a way as to adjust, modify or redefine them for their own use in local contexts and practices of the law and local identities. By reflecting pragmatically the "circumstances needed for a global language to grow" (Crystal 2003a: 13), any such pedagogy may be facilitated and informed by a critical access to genre pedagogic materials and resources designed to provide accommodative processes to situated *loci* of law, and therefore to do itself "justice" in the globalised legal community. Even when ownership only equates approximation beyond Inner *loci* of law, the requirement set by native standards to allow NN (such as Italian) users of legal English to achieve mastery of, and hence to become effective and competent speakers of, legal English in their own right, will lead the notion of ownership "to always keep to unity in diversity" and respect for individual rights, attitudes and identities, in the wider framework of intercultural social practice of the law. And this unity, if applied to a generalist context of language use, would not be very far from the argument for tolerance of English, as discussed so enthusiastically by Brutt-Griffler (1998: 389), for whom Inner Circle speakers of English "appear willing to meet on a common linguistic plane, accept the diversity of their Englishes [...]"□.

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Appendix

Table 2. Negligence (2006: 40, bold type in the original)

Question

Alice, an elderly lady with poor eyesight, goes shopping one day in her local supermarket, Safeco. As she enters the store she is thinking about what to buy for her evening meal. Just inside the entrance there is a display of jam arranged in a pyramid. As Alice walks into the store she bumps into the pyramid, causing it to collapse. Many of the jam jars are smashed and broken glass ends up everywhere. Flustered, but unhurt, Alice continues with her shopping. Safeco lose jam valued at £400. Dirk, who is at the other end of the store, is choosing a frozen turkey at the time of the accident. He thinks that the noise is a bomb explosion and suffers severe shock. Dirk refuses to shop in Safeco since the accident, as the memories are too traumatic for him.

Bill, a 16-year-old petty criminal, has recently been sentenced to do 100 hours community service in Safeco, but receives a small amount of pocket money and his meals while on duty. While collecting abandoned shopping trolleys, Bill begins to fool around. Suddenly he loses control and pushes the line of trolleys into Alice's path. Alice suffers from a fragile bone condition and as a result of the accident sustains multiple fractures.

Discuss.

[Parties]

Dirk v Alice

[Issue]

The tort of negligence allows claims to be made for mental as well as physical or pecuniary harms (*McLoughlin v O' Brian* (1983, HL); *Alcock* (1992, HL)). Accordingly, Dirk (D) may wish to sue A for the

nervous shock he sustains as a result of the breaking of the jam jars.

[Rules]

It is a requirement that the shock induces some form of psychiatric illness. Broadly, the same "hurdles" that are discussed in the above section of the answer apply (i.e. duty, breach, damage). Traditionally, the courts have construed the duty of care narrowly in the context of nervous shock. According to *White v Chief Constable of South Yorkshire* (1998, HL), a person who negligently exposes another to a risk of injury can be held liable for any psychological damage this may cause irrespective of whether the threatened physical injury fails to occur (see also *Dulieu v White* (1901), and *Page v Smith* (1995)). The claimant's fear of injury must, however, be reasonable given the nature of the risk and the claimant's position: *McFarlane v Wilkinson* (1997, CA).

[Application and Conclusion]

It is unlikely, therefore, that D will be able to bring a successful claim. D is, after all, very far away at the time of the incident in question ("at the other end of the store"), and it would seem unreasonable, in view of the nature of the risk created, for A to owe D a duty of care. Moreover, D merely suffers "traumatic memories" which may not be sufficient to constitute a recognized psychiatric illness. (Compare *Walters v North Glamorgan NHS Trust*, 2002, where a woman who watched her child die over a 36-hour period was entitled to damages for nervous shock.)

Table 3:

Suggested Answer

Alan (A) will be charged with s 1(2) and (3), Criminal Damage Act 1971 (aggravated arson) for setting fire to the exam scripts **[briefly discuss this crime, following the rules identified earlier]**. He may seek to rely on the defence of intoxication (through alcohol or drugs). Self-induced (or voluntary) intoxication is available as a defence if the defendant's intoxicated state amounts legally to insanity (*Beard* (1920, HL), *per* Lord Birkenhead). It is also a defence to specific intent crimes (*Beard*), but not to basic intent crimes (*Majewski*, 1977, HL). (Mc Vea / Cumper, 2006: 13, bold type in the original)

1. Mellinkoff (1963), Crystal and Davy (1969), and Tiersma (1999) are early attempts at analysing English legal language usage through a methodically historical description.[\[↔\]](#)
2. See the Registered European Lawyers information pack and the Qualified Lawyers Transfer Test on the Law Society website.[\[↔\]](#)
3. Reference is to Strevens' (1983: 88) notion of Standard English defined as "[...] the only non-localized dialect, of global currency without significant variation, universally accepted as the appropriate educational target teaching in English [...]".[\[↔\]](#)
4. According to Quirk *et al.* (1997: 758), in BrE the verb combined with a singular collective noun may either be used with a singular or plural form if "the group is considered as a single undivided body, or as a collection of individuals", whereas AmE "generally treats singular collective nouns as singular".[\[↔\]](#)
5. In this paper, reference is to linguistic ownership of English which remains a rather complex issue among English language researchers (e.g. Davies 1991; Pennycook 2001; Wee 2002; Widdowson 1994).[\[↔\]](#)
6. I am grateful to Virginia Zambrano, Professor of Comparative Legal Systems (Law Faculty, University of Salerno), for her invaluable comments (personal communication) on comparative aspects of law.[\[↔\]](#)
7. Considering the variety of English legal genres and sub-genres and, in particular, those written primarily with a Native Language socio-cultural context in mind, the authors argue in favour of customised legal writing materials for L2 learners studying law in the medium of English, so as to meet the "level of detail and variation posed by the various written legal genres" (Candlin, Bhatia *et al.* 2002: 311).[\[↔\]](#)

16 Luglio 2011

« [L'AFRICAN AMERICAN ENGLISH DI ZORA NEALE HURSTON](#)
[MURDER IN HENRY JAMES' THE OTHER HOUSE \(1896\)](#) »

