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TEACHING LEGAL ENGLISH WITH “MODIFIED CLIL”

Abstract. This paper will describe the methodology for teaching legal English used at the Fordham University School of Law’s *Legal English Institute* (LEI), a one-semester program for law students and attorneys. Reasonable minds may disagree about the most effective methodology for teaching legal English, or for that matter any other form of academic English, but we have developed an approach that is informed by both theory and practice. At LEI, we use a “modified CLIL” format, with four substantive classes on topics in U.S. law that run in parallel with a core class on legal English. All four substantive classes use authentic reading materials that are similar to those used in an LL.M. program, and these materials are recycled in the legal English class and form the basis of discussions about language issues. Our use of content classes (as opposed to explicit language classes) to elicit language issues has proven to be effective and it also helps keep students motivated, as students tend to have more intrinsic interest in legal topics than in language study per se.

Keywords: legal English, CLIL, law school preparation, curriculum design, international legal education.

Introduction

This summary describes a program model for teaching “legal English” to law students and lawyers who are non-native speakers of English. This model has been implemented at the Fordham University School of Law’s *Legal English Institute* (LEI) in New York City. The summary describes the institutional context of the program, its theoretical and practical underpinnings, details of its implementation, as well as an informal assessment of student outcomes. Because the journal in which this paper appears

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is published in Poland, the summary that follows will contain certain information and explanations that are specifically intended to make it useful for legal English professionals who teach in European and other non-U.S. law faculties.

In the United States, legal English education is best understood by comparing it with two other teaching contexts to which it is adjacent. The first such context is the ordinary law school experience of a domestic, native English-speaking student. For such a student, the first weeks and months of law school involve sudden immersion in the specialized form of English communication that is sometimes referred to as “legalese”. This label for legal English can be taken to imply that legal practice is so deliberately arcane that its practitioners go so far as to use their own secret language; as such, the term “legalese” is sometimes used in jest or even pejoratively. But the use of this moniker illustrates a very legitimate point about legal communication in English – it is often obtuse and confusing to the lay public, it involves a great deal of specialized (or even fossilized) terminology and grammatical idiosyncrasies, and the difficulties about which non-specialists complain have sometimes been placed there deliberately (*see* Gibbons, 1999, pp. 160–161; Haigh, 2012, pp. 8–10; Ramsfield, 1997, pp. 178–179, 190).

Learning to become comfortable in legalese is a key element of legal education in the United States, requiring even native English speakers to work on the *language* of law at the same time that they are learning about its substance. Many domains of course have their own specialized language, but what makes legalese unique is the central role that it plays in the practice of law. Whereas specialized forms of English such as scientific jargon or medical terminology may be important tools of their respective professions, the proper use of legal English *is itself* the central activity of the legal field. Very few tasks of an attorney do not somehow involve the careful explanation of the law in a research memorandum or legal brief, the precise delineation of the terms of a business agreement in a contract, or some other use of language to articulate, defend, or attack the legal stance of a client or counterparty. It is only with an excellent command of language that someone can perform the role of an attorney at all.

The second context that is adjacent to legal English is the experience of non-native English speakers hoping to enroll in a university degree program in the United States (or in any other English-speaking country). Admission to such a program typically requires evidence of English proficiency from a standardized test such as the TOEFL or IELTS, in addition to the same evidence of academic merit that is required of a native English-speaking applicant. Occasionally, students who show a proficiency level below what

is required will be encouraged to enroll in an English for Academic Purposes (EAP) program before retaking a proficiency exam, or they will be conditionally admitted to their degree program, subject to the satisfactory completion of a particular EAP course at the university. As distinguished from a generic advanced English class, EAP programs differ primarily in that the target use of English is *success in an academic program*, with the attendant differences in discourse conventions, formality, and vocabulary that this entails (Brown & Lee, 2015, p. 61).

The kind of legal English program that will be described in this paper is one that seeks to address both of these subject areas at once – legalese and academic English – for students who need them. It is, in other words, intended to meet the same language teaching goals as the first semester of law school and also a one-semester EAP course. For a variety of reasons, and as explained in more detail below, there is much to be gained for law students, and also for law schools, by addressing these two objectives through a single program.

One final introductory point that bears emphasis is that this summary concerns *general program design* only. There is much more that could be written about admissions, details of classroom interactions, assessment, and the evaluation of student outcomes, among other matters, but these topics will have to wait for another paper. More information about our specific teaching context follows, in order to help the reader better understand the reasons why the LEI program looks exactly the way that it does.

Teaching Context

Our program was designed primarily to provide a course of English-language study for international students who were interested in studying or practicing law in the United States, and in particular those who hoped to obtain a master of laws (LL.M.) degree from a U.S. law school. The position of the LL.M. degree in the United States is slightly different than it is in other countries, including countries with similar legal systems such as the United Kingdom. Therefore, a brief digression is needed in order to explain the place of this degree within U.S. legal education and law practice.

In the United States, domestic students who hope to practice law enroll in a juris doctor (J.D.) program, which is a three-year course of study that requires applicants to have first obtained an undergraduate university degree. Many law schools also offer an LL.M. degree, which is typically

a one-year program, and it can be taken following a J.D. However, enrolling in an LL.M. program is relatively rare for domestic law students, since the J.D. degree is viewed as a sufficiently robust background for a career in law, and because no legal education beyond a J.D. is required to sit for the bar exam in any U.S. jurisdiction. Students from outside of the U.S. who already hold a law degree from their home country may also enroll in most LL.M. programs. The benefit for these international students is that graduation with an LL.M. can qualify them to sit for the bar exam in some U.S. jurisdictions, notably in New York State.

As a further incentive, international students who complete a professional degree such as an LL.M. while on a student visa are typically granted one year of employment authorization in the United States, known as “optional practical training”, or “OPT”, following their graduation. After the termination of the OPT period, it is theoretically possible for an LL.M. graduate to continue to work in the United States through sponsorship by their employer. Thus, in addition to bar admission in a U.S. jurisdiction (which could prove useful either in the U.S. or back home), international graduates of an LL.M. program can also become eligible to begin a potentially lucrative career in the U.S. legal field. At the time of writing, starting salaries at the top law firms in New York begin at \$190,000, with this amount increasing with each year of seniority at the firm (Vault, 2019).

It is therefore unsurprising that enrollment in an LL.M. program at a U.S. law school is very appealing to many international students. As noted above, academic qualifications and English language proficiency are the primary admissions criteria for such a program. Students who lack the requisite level of language proficiency may be denied admission, may be conditionally admitted pending the submission of a higher score on a proficiency test, or they may be conditionally admitted pending the satisfactory completion of an EAP program (usually one that is offered by the university to which they applied).

The students in this last category form the majority of the students in the LEI program. When asked, these students might identify their primary language needs as admission to, and future performance in, an English-medium law school program. However, whether or not they are aware of it, this admission and enrollment are just part of their future language needs. Students in fact need language preparation for three *very* different kinds of communication: (1) success in an LL.M. program; (2) sitting for a bar exam in a U.S. jurisdiction; and (3) eventual law practice involving the use of English, either in the U.S. or back in their home countries. A Venn diagram of the degree of overlap between these domains appears below.

Content and language overlap in these three domains:

This depiction is the author’s personal estimate and is admittedly quite unscientific, but it is informed by his experience as a law student, as a member of the bar in three U.S. jurisdictions, as an attorney for nearly a decade in New York City and the District of Columbia, and as a legal English instructor.

The kind of English that is needed for success in an U.S. law school classroom is quite different from ordinary academic English. In addition to the fact that legal language uses unique terminology and grammar, the contexts in which it is used by students are also likely to be unfamiliar to many non-native English speakers. As distinguished from the lecture-only teaching style in many countries, U.S. law school classrooms involve the use of the Socratic method. In this method of teaching, professors select students from the class and subject them to extended lines of questioning about individual cases, their holdings, and the analysis used by the judges (Abrams, 2015, pp. 563–565). This requires students to remain at attention for the duration of the class, as they may be required to use their spoken English in a public setting at almost any moment. Students are usually assessed in U.S. law school classes with an essay exam that counts for most of their grade, with responses being graded anonymously.

The bar exam requires legal language that is similar to that used in law school, but in a very unique format. Depending on the state, the bar exam is a two-day or three-day exam involving questions about the law that must be answered in both multiple-choice and essay format. The length of the exam is grueling, and the time pressure of planning, composing, and revising essay answers is difficult even for applicants who are writing in their

native language. It is therefore unsurprising that for the July 2018 New York State bar exam, 74% of students with a primary law degree from the U.S. passed the exam, versus 41% for international candidates, a figure which includes applicants from English-speaking countries (Ward, 2018). Discrepancies in the passage rate for domestic and international students are similar for other years and in other states, and the bar exam is therefore a very serious hurdle in the career plans of most foreign attorneys who hope to qualify in the U.S.

However, even successful graduation from law school and passage of the bar exam merely mark the end of the beginning – an attorney of course goes through all of this in order to engage in the actual practice of law. The language needs of a practicing attorney are, to state the obvious, utterly different from those of a law student or bar applicant. They will also vary tremendously, depending on the type of employer (law firm, private company, governmental agency, etc.), the types of clients (individuals, corporations, non-profits, etc.), the nature of practice (litigation, transactional, regulatory, etc.), the area of law (tax, real estate, criminal, etc.), and the geographic location (in the U.S. or in another country), among other factors. It is quite impossible to even begin to summarize the different types of language needs that the practice of law might entail for any particular attorney, but these needs will include a diverse array of spoken and written communication, usually under time pressure and always under circumstances where it is *critical* that the language be precise.

No legal English program, no matter how long or intense, could hope to prepare students for all of these language needs. But students are well-served by being made aware of the challenges that await them, even if they cannot hope to address all of them in the short-term. As the author can attest from work as a legal English consultant for law firms in New York City, if an attorney is identified (whether fairly or unfairly) as having communication issues resulting from being a non-native English speaker, it can be very difficult for his or her career to recover. Even for native English speakers, mistakes with respect to language can have deeply career-limiting effects. Attorneys have even faced court sanctions and disciplinary proceedings for poor grammar, spelling and punctuation errors, and inappropriate writing style in court submissions (Fischer, 1997, pp. 20–34).

The program that is described herein was therefore designed with the primary goal of preparing students for their most immediate challenge – thriving in an LL.M. program – while at the same time making them aware of the future language challenges that they would face as their education and career progressed. We would give the students as much structure as

we thought appropriate in order to allow them to meet their short-term goals, and we would rely on students’ own self-regulation and autonomy (see Brown & Lee, 2015, pp. 74–75) to plan for their long-term goals. We would attempt, at the very least, to make the language needs of these long-term goals more clear to students by the time they completed our program.

Theoretical Background

Our prospective students therefore have multifaceted language needs, and to these are added the further challenge of being able to understand the U.S. legal system. Though students would receive plenty of substantive legal instruction once they enrolled in an LL.M. program, a threshold amount of legal knowledge is required to understand the language; this is because of the deep connection between language use and the practice of law already described herein. Non-native English speaking students must make two leaps at once as they navigate law school – from their native language to English, and from their home legal system to U.S. legal system. It could be argued that the latter is actually the larger barrier to successful communication in legal English (Hoffman, 2011, p. 2), and this is an additional reason to include a content component in what is essentially a pre-LL.M. preparatory program.

The teaching objectives of an ideal program for this student population therefore would pertain to both language and content, but a type of language and a type of content that are very interrelated. In searching for the best way to balance these two kinds of instruction, we can posit a continuum with content-only instruction on one end, language-only instruction on the other, and many combinations of the two in between the extremes. In designing our program, we endeavored to find the appropriate place on this content-language continuum at which to situate our instruction.

Several pedagogical models informed our thinking. With the caveat that each of these models (and the terms that they use) are subject to multiple, competing definitions by applied linguists and other education researchers, the following paradigms illustrate several possible combinations of language and content:

Language Immersion. This is a form of content instruction that happens to take place in a non-native language. Under some models, part of the value of language immersion is its positive effects on language learning (see e.g., Brown & Lee, 2015, p. 58). Under other models, im-

provements in language are not an explicit goal of immersion at all, though they may be a hoped-for side-effect (*see e.g.*, Pecorari and Malmström, 2018, p. 499); in this latter case, “English medium instruction” may be a more appropriate label when the non-native language happens to be English. Depending on the exact definition, this kind of pedagogy is at, or near to, the extreme content-only end of the language-content spectrum. In the context of legal English, this would be equivalent to conducting a class about U.S. law in the same manner that it would be taught to native English speakers, with the hope that students would pick up language points even without explicit focus on them.

Content-based Instruction. This is language teaching that uses a particular subject matter as a vehicle for instruction; the primary goal is language-focused, but students develop expertise in the content, either incidentally or deliberately (Brown & Lee, 2015, pp. 57–58). In the United States, this kind of teaching is often seen in the foreign language departments of universities, in which most classes involve reading and writing about literature, but where the true purpose of the classes is mastery of the foreign language in which the literature is written. In the legal English context, this might take the form of a language class that used legal topics as the subject of writing and discussion, but with the underlying focus remaining on language.

Content and Language Integrated Learning (CLIL). This is simultaneous instruction in both content and language, though programs using the “CLIL” label can have very different degrees of relative emphasis on these two goals (Long, Al Thowaini, A., Al Thowaini, B., Lee & Vafae, 2018, p. 7). For purposes of the present discussion, we will define CLIL as a program that gives approximately equal weight to these two learning goals, regardless of the exact allocation of instructional time in the classroom or the precise subject matter expertise of the instructor. In the context of legal English, this would take the form of a program which deliberately taught legal English and law together.

As noted above, relevant literature from the applied linguistics field does not give us clear dividing lines between these various models. However, the exact contours of the definitions do not matter for our purposes – I describe these three paradigms only to illustrate the point that instruction in content and language are frequently combined, and that there are many paradigms for doing so.

Investigating these models is also worth doing because the literature describing them raises other points that are useful to consider in designing a program. Sometimes, such as under a language immersion framework, the instructor may have expertise in content only; likewise, in a general EAP course, the teacher may be an expert in only language teaching. But any form of instruction that involves language as well as content requires teachers who have expertise in both areas (Brown & Lee, 2015, pp. 57–58). This can be accomplished through the use of a language teacher and a content teacher who teach together (called “team teaching” or “co-teaching” in the U.S.) or the use of two teachers in separate, but related, class sessions. Better still, teaching in two content areas simultaneously can be accomplished with a single instructor who has expertise in both subjects. In the context of legal English, we had to consider the right combination of legal expertise and knowledge of second language pedagogy, and the extent to which there would be instructors available who could teach both at the same time.

Another issue to consider is the degree to which students should be expected to learn language points *incidentally*, i.e., without explicit classroom focus on language forms (Long et al., 2018, p. 8). This is another topic about which an incredible amount has been written in the applied linguistics field, with researchers examining how well learners at different ages, with varying proficiencies in the target language, and using different forms of classroom instruction, are able to learn language even in the absence of an explicit language focus. For purposes of the present discussion, it is sufficient to note that forms of instruction that are closer to the content-end of the continuum rely much more on the ability of students to learn incidentally. Research in second language acquisition, while not at all settled, suggests that implicit learning of language forms can occur (Gass, Behney & Plonksy, 2013, pp. 283–284), but that there are many contexts, particularly for students at the beginner level, where explicit learning tends to be more effective (Brown & Larson-Hall, 2012, pp. 102–104). This was an important consideration when matching our pedagogical model to the needs and capabilities of our target student population.

A final distinction between the various models, and one that appears less frequently in the literature, is the effect of the content-language balance on students’ enthusiasm for the course. Certainly, student motivation is widely recognized as an important determinant of student success in language learning. Researchers in fact go so far as to distinguish two types: “intrinsic” motivation, which is the internal reward students feel from the simple fact that they are interested in the material, and “extrinsic” motiva-

tion, which is the satisfaction derived from external sources such as praise or public affirmation as they learn (Brown & Lee, 2015, pp. 72–73). We were interested in the ways that intrinsic motivation might differ for aspiring students as between language study and law study. Based on our experience working with students who needed additional language classes before beginning their chosen program, we posited that students would be much more motivated in a program that combined language and content than they would be in one that was exclusively language-focused. We also suspected that students would receive more extrinsic motivation from a program that was legally-focused and labeled accordingly (and housed in a law school), as distinguished from yet another general or academic English class that the students or their peers might perceive as remedial.

Taking all of these factors into consideration, we determined that something like CLIL would provide the ideal balance between language and content. Part of this preference is due to the fact that there is no clear divide between language and content, particularly language as it is used in the very language-driven domain of law. We decided that a language immersion program would not offer sufficient language support, and would in any event be far too similar to just allowing students without adequate language proficiency to jump right into a law program. It was important however that the program have an apparent focus on *content*, in addition to language – this would help encourage our target students to enroll in the program in the first place. Finally, it was important that the program be taught inside of a law school, so that each participant would feel like a law student instead of someone merely waiting at the door to enter the university.

Because of the various definitions of CLIL and the vast amount of disagreement over exactly how to circumscribe this teaching methodology, we have chosen to refer to our program with term “modified” CLIL. We have also decided to use this label because, for the most part, the dual language-law expertise that a CLIL program would need is not easy to find at the level of individual instructors. We would use instructors with dual law and language expertise for some courses in the program, but not all. As described in the following section, we decided to utilize several content classes, in which language difficulties would arise by design, along with a rigorous language class in which students would receive language support and instruction. The content courses would be taught by instructors with legal expertise and experience teaching non-native speakers of English, and the language class would be taught by an instructor who could teach both law and language.

Program Design

We settled on a full-time program that would last one academic semester, in part because general EAP programs, which students might consider taking in lieu of LEI, tend to also be one semester, full-time. This would also give maximum flexibility to prospective students who would have differing preferences about matriculation in the fall or spring semester (both for the LEI program, and for the LL.M. degree program that would usually follow). In terms of academic structure, we organized LEI with four classes about legal content that run concurrently with a language class; classes last either 3 or 3.5 hours and are held once per week. The language class is divided into four units, with each unit corresponding to the subject matter of one of the content classes. These four content classes are the following:

Introduction to the U.S. Legal System and Law Study. This course primarily pertains to the structure of the U.S. legal system, with an emphasis on the U.S. constitution and common law. As described in more detail below, this course is taken in an intensive format at the beginning of the program, and it therefore only partially overlaps with the others. It gives students a very basic introduction to reading case law, note-taking, and important background information about the ways in which U.S. legal education differs from its equivalents in other countries. These skills-based topics are intended to help students succeed in the rest of their classes in the program, all of which involve the use of these competencies.

Working with Contracts. This is a class about contract drafting and negotiation, in which students learn the function of different types of contractual provisions and build them gradually into a complete agreement. As provisions are added over the course of the semester, students are taught the most common points of disagreement in contract negotiation, as well as variations to the relevant contractual language that sometimes resolve them. The contractual agreement that is used for this class comes from a corporate merger transaction, which allows for the inclusion of provisions covering a wide range of business and legal considerations.

Becoming a Lawyer. This class addresses many of the rules of professionalism in U.S. law practice, in an effort to help students consciously shape their own “professional legal persona”. Topics include the habits of successful lawyers, the business of law and the place of a junior lawyer

in it, the cultivation of a professional disposition, time management, the importance of interpersonal skills, and professional development, among others.

Private Law. This class gives students an introduction to the U.S. law of torts, contracts, and real estate, which are fundamental building blocks for subjects that students will encounter in law school, on the bar exam, and in U.S. legal practice. This course involves a heavy component of case law reading and synthesis, as well as use of the Socratic method in class. The name “private law” is a deliberate misnomer – this is not a label that exists in U.S. law, but it is intended to help students situate these areas of law within their home legal systems (many of which make use of a basic distinction between “public” law and “private” law).

Once again, *Introduction to the U.S. Legal System and Law Study* is taken by itself in the beginning of the program, as it would not be possible for students to succeed in the other classes without first understanding certain fundamental attributes of the U.S. legal system such as judicial review, case law synthesis, and the principle of *stare decisis*. As this introductory class draws to a close, students begin the primary segment of their program, in which they take the other three classes together, along with a language class that is described in the following section. A fifth content class, called *Fundamental Lawyering Skills*, is then taken by itself at the end of the semester. The program also involves other activities, such as informal legal English tutorials in which students take turns giving presentations about legal topics to their classmates, seminars on discrete topics in U.S. law, and talks from practicing attorneys about their careers. Taken together, these activities result in 15–20 contact hours per week, with students spending at least that amount out of class on readings, written assignments, and preparations for class.

Much more could be written about the program components and how their syllabi were designed, but the primary topic of this paper is the interaction of the content classes with the language class that is taught concurrently with them. The particular content classes were chosen because their subject matter forms core elements of the LL.M. program at Fordham Law, which predates the LEI program by decades, is an order of magnitude larger, and has been designed over the years with a wider (and very different) range of considerations. Keeping in mind that most graduates of LEI intend to go on to complete an LL.M. degree, these classes are intended to give students a head-start on understanding issues of substantive law, skills for success in a U.S. law school, and a clear view of what language challenges

await them in a possible English-based legal career. At the same time, these classes also serve as an excellent point of departure for the study of the numerous language difficulties that they are intended to elicit.

Design of Legal English Course

The legal English class at LEI is called *Communication Pragmatics for Lawyers*. We used this title to underline two key points about legal English as it is taught at LEI. For one, our intent is to teach legal English beyond decontextualized lexicogrammar. Language pragmatics, such as what to say and what to leave unsaid, appropriate signals of listenership in professional contexts, balancing directness and indirectness in law, degrees of formulaicity of legal language, and decoding politeness and impoliteness (Tannen, 1984), all form very important parts of our language curriculum.

We also use the modifier “for lawyers” rather than the adjective “legal” to emphasize the practical nature of our program, and of U.S. legal education generally. A law degree in the United States is primarily a form of *professional* education, rather than an *academic* discipline as it is in many other countries. This means that professors tend to be practicing attorneys rather than PhDs (indeed, doctorates in law are almost unheard of in the U.S.), law school programs involve heavy amounts of clinical and other forms of practical training, and law school is generally aimed much more at practicing lawyers than it is at perpetuating legal scholarship (Merriam, 1975, pp. 865–869). The word “communication” in the course title, rather than “legal English” or something similar, is also intended to convey this emphasis on practical use.

These same considerations, incidentally, also help show why an ordinary EAP program may be inappropriate for aspiring law students. Rather than prepare students to use English in a general academic setting, it is arguably more beneficial for students to gain exposure to the same kinds of materials and settings that they will use in their LL.M. program and eventual legal practice. This is why the content courses in LEI are modeled on actual law school classes, and it is why the materials from these classes are reused for the secondary purpose of language instruction.

The fact that classes are physically located in a law school confers a similar advantage over a conventional EAP course. While in the building, students are able to pick up on sociocultural information that is specific to law schools, through their daily interactions with professors and law students. Such exposure allows for a form of language socialization that is specific

to the U.S. law school experience (Baffy, 2016, pp. 13–14). It also provides additional opportunities for students to use their legal English skills in meaningful ways, as they go about their day in the building and are exposed to on-campus announcements, presentations that are open to the law school community, and even legally-themed advertisements for things such as bar exam study programs.

As stated above, *Communication Pragmatics for Lawyers* is divided into four units which correspond to the four content classes with which it is taken in parallel. Assignments in each unit attempt to elicit language points that are germane to the substantive topics of the relevant content course. Through these assignments, students are given the opportunity to test their knowledge of the new content that they have learned, and also wade into the relevant language and ask any questions that they have. The type of assignments for each unit are best illustrated through an example.

Introduction to the U.S. Legal System and Law Study is taken first and winds down as the language course is beginning. Content from the *Intro* class therefore comprises the first unit of *Communication Pragmatics*. Below are two examples of two assignments from this unit:

Assignment 1. Submit an essay (3–5 pages) in which you describe one or more of the principal differences between your home legal system and the U.S. legal system. This can include anything from legal culture, legal structures, and specific legal actors and processes, to the operation or social underpinnings of the legal system itself. Write as if your audience were a generic U.S. attorney or client who had no familiarity with your home legal system.

Assignment 2. Write an essay (3–5 pages) in which you describe one of the following attributes of the U.S. legal system for someone who is only familiar with your home legal system: the constitution, federalism, sources of law, or dispute resolution. Do not write about the differences with your home legal system; instead, give a broad overview that would help a generic non-U.S. attorney or client understand the basics of the topic that you have chosen.

The goal of these assignments is to put the students in a position in which they must translate between their native legal language and U.S. legal English. The types of errors that these kinds of assignments elicit can include the mistranslation of lexically similar words, grammatical errors instigated by unusual language forms that are specific to law, confusion of high-frequency words with similar-sounding legal words, and, most compli-

cated of all, word-for-word translation from students’ native languages that fail to take into account radical differences in the underlying legal systems. Just a few brief examples of teaching points from the pair of assignments above might include the following:

- the difference between individual “cases” (with respect to which judicial opinions are written), and the abstract, non-countable noun “case law” (which refers to a particular rule of law, as articulated by iterative judicial opinions from individual cases);
- the difference between the “election” of judges (which we do not have, at least in the federal judiciary) and the “nomination,” “appointment” and “confirmation” of judges (which we do), and the central importance of this distinction for the concept of countermajoritarianism;
- why the proper noun “Congress” never appears with an article, unless it is followed by a modifier, as in “the Congress of the United States of America”;
- why the term “civil law” means something utterly different in U.S. law than it does in most legal systems that do not use English as their medium, and why lexically similar words such as *civility*, *civilian*, *civilization* and *civil war* have meanings that are unrelated;
- why we capitalize the “c” in “U.S. Constitution” but not in the phrase “constitutional amendments”;
- the differences between commonly confused word pairs such as procedure-proceeding, law-regulation, regulation-rule, judicial-juridical, prosecutor-prosecutor, counsel-council, or verdict-sentence.

Our program is in its fifth term, and each time these assignments have been given, the lists of student errors have been very long, but also surprisingly similar from semester-to-semester.

These examples of student errors are illustrative for purposes of the present discussion because they all involve elements of law and language. A typical English-language instructor without a legal background would be unable to fully explain these points, and likewise, an attorney without a background in language pedagogy would have trouble justifying why some grammatical constructions are correct and others incorrect. In these examples, therefore, law and language are inextricably intertwined, and only an instructor with expertise in both domains can help students untie the knot. This why we think it is vital for the language component of LEI to be taught by someone with a legal background as well as experience in language pedagogy.

The two essay assignments described above are given in consecutive weeks. The instructor for the class reviews student submissions, and gives

individual, written feedback primarily on language points, but also on purely substantive matters when serious errors are made. In the following week's class, students are able to ask questions about the corrections they have received, and the instructor gives explanations about some of the most common errors to the class as a whole. The nature and extent of errors sometimes varies widely across the class members, due to the students' different proficiency levels, native languages, and degrees of understanding of their own legal systems and the U.S. system, among other factors. But there tend to be enough commonalities to make group discussion helpful, and the explanation of errors that individual students did not make can still help to reinforce what they already know.

Though this paper does not address our assessment practices, this is a good point at which to at least explain that the potentially vast differences between students' relative starting points does require a degree of *individualized* assessment. As students receive feedback over the course of the semester, their instructor keeps a log of language issues that are specific to each student; students are required to do the same for themselves. At the end of the semester, students' final exams are graded, in part, against an individualized rubric that has been informed by each student's prior work. The degree of a student's preparation for the rigors of an LL.M. program is determined on a neutral, non-individualized basis, whereas the student's degree of language progress over the course of the semester (and hence his or her grade) is assessed on an individualized basis.

There is of course only so much that can be accomplished in a single language class in a single semester, and the use of the personalized error log brings up a related point that is important to emphasize. As we make very clear to students at the beginning of the semester, they each bear ultimate responsibility for their own learning. We strongly encourage students to form habits such as checking their own work, remaining metacognitively aware of the types of mistakes that they tend to make, and looking for answers on their own when they are outside of an instructional forum. This helps the students extend their learning of language to include times when they are doing other things, and it also underlines the fact that the LEI program can only partially address their future language needs.

Returning to the structure of the syllabus for the legal English class, the specific assignments vary each semester, but they always involve writing assignments that are intended to elicit relevant legal concepts and terminology in each content area. General descriptions of these assignments are as follows:

Introduction to the U.S. Legal System and Law Study – comparing common law and civil law systems, legal cultures, legal education, the roles of the lawyer, and constitutional structures.

Working with Contracts – describing elements of contracts and the function of specific contractual provisions in U.S. contracts and in similar agreements in the students’ home legal systems.

Becoming a Lawyer – writing emails and other forms of interpersonal communication with different functions, such as responding to clients, making difficult requests, and managing conflicting demands.

Private Law – describing and situating the different areas of law in the legal system and law firm practice areas in the U.S. and in students’ home systems.

A segment of each class session involves discussion of problem areas and teaching points from the previous week’s assignment. The latter portion of each class entails paired, group, or class discussions about the assignment for the coming week. These discussions are intended to elicit concepts, vocabulary and grammatical structures that are likely to arise in student essays. Issues that the instructor or individual students anticipate can be clarified in advance. In effect, students are exposed to the target language for the applicable assignment three times: in the discussion that precedes the assignment; during the composition of the assignment itself; and during the discussion about corrections and language issues in the class that follows their completion of the assignment. This allows reinforcement of the language points from the lesson.

At the same time that they are having the opportunity for explicit focus on language forms in *Communication Pragmatics for Lawyers*, students are reading authentic legal materials, hearing lectures on legal topics with unmodified spoken English, and they are writing and speaking about topics of interest in their content classes. The content classes are taught by instructors with legal expertise and, while they all have experience teaching non-native English speakers, for the time being these instructors are not experts in language pedagogy. We think that, taken as a whole, the LEI program uses an acceptable balance of explicit and implicit language learning, particularly since most of our students enter the program with relatively high proficiency.

Another benefit of the structure of the assignments in the language class is that they simulate a core competency of real-world attorneys who are licensed in two different countries – translating between their home legal

system and native legal language on the one hand, and their equivalents in the United States on the other. This competency is where the students may one day have the highest value to add to their future clients, who may be involved in business or litigation that causes them to reach from one jurisdiction into the other.

A final detail about the language class, and one that may already be apparent from the discussion so far, is that we avoid using textbooks about legal English. There are many of examples of such books, and some of them are very well-written. However, it is difficult to create a useful textbook for legal English for the same reasons that it is difficult to design a program for legal English – there are simply too many different kinds of language needs to fit into a single book or single program. Some textbooks focus exclusively on U.S. constitutional law, or drafting contracts under U.K. law, or some other narrow subject matter. Others try to address too many topics in a single volume, and manage to treat each area of legal language use only superficially. In exploring various options prior to launching our program, we also found that many textbooks rely on activities with an overly explicit language focus, at least for advanced learners, such as fill-in-the-blank exercises, “cloze” readings, underlining parts of speech, etc. As a matter of student affect and motivation, our strong preference was to allow the students to work with authentic legal materials.

As noted at the outset, this summary is primarily concerned with the design of the LEI program and how we have mixed content and language instruction. Though a discussion of our methods of assessing both students and the program will have to wait for a future paper, I should mention here that student success has been our primary criterion for evaluating the program from its inception. For the time being, the only conclusions I have to share are anecdotal rather than the result of empirical research, but they point the way towards studies that we could perform in the future to quantify the effects of our program. Based on feedback from students and the data that we have available about their activities after completing LEI, our program appears to have been tremendously successful in its primary aim of preparing students for an LL.M. program. The overwhelming majority of our graduates who choose to apply to LL.M. programs are admitted to one, and likewise most of our students who were conditionally admitted to an LL.M. program are permitted to matriculate following LEI. In both cases, the students who keep in touch with us report feeling well-prepared and they perform as well as, if not better than, their peers. Pending the completion of a more quantitative evaluation of student outcomes, these results have informed

our conclusions about the design of the program, and they have also ensured its reputational success program and the continued enrollment of students.

Conclusion

The number of considerations that are relevant to designing a program like LEI are vast. Some of the factors discussed in this summary are very specific to the context of U.S. legal education, but others are hopefully generalizable to other settings. For professions like the law, where precise language use is absolutely critical, it is arguably much more efficient for students and for educational institutions to combine language instruction and content instruction under the roof of a single program. This idea is based on the premise that there is no clear dividing line between legal content and language as it is used in legal domains. Though there are many ways to divide students’ time, we think that the format of the LEI program strikes an appropriate balance on the continuum between language and content. This format has the added benefit of keeping students motivated in their studies, since they feel like law students rather than someone in a remedial English class who has not yet formally entered the university. Though a quantitative analysis of our results will have to wait for a future study, we feel that the program has a solid theoretical and practical foundation, and to date it appears to be performing its job of preparing students for the long road ahead.

R E F E R E N C E S

- Abrams, J. 2015. ‘Reframing the Socratic method.’ *Journal of Legal Education*, 64: 562–585.
- Baffy, M. 2016. *The Academic Discourse Socialization of International Lawyers at a U.S. Law School*. Unpublished Doctoral Thesis, Washington, DC: Georgetown University.
- Brown, H. D. and Lee, H. 2015. *Teaching by Principles: An Interactive Approach to Language Pedagogy* (4th Ed.). White Plains, NY: Pearson Education Inc.
- Brown, S. and Larson-Hall, J. 2012. *Second Language Acquisition Myths: Applying Second Language Research to Classroom Teaching*. Ann Arbor, MI: University of Michigan Press.
- Fischer, J. D. 1997. ‘Bareheaded and barefaced counsel: Courts react to unprofessionalism in lawyers’ papers.’ *Suffolk University Law Review*, 31 (1): 1–38.

- Gass, S. M., Benley, J., and Plonsky, L. 2013. *Second Language Acquisition: An Introductory Course*. New York, NY: Routledge.
- Gibbons, J. 1999. 'Language and the law.' *Annual Review of Applied Linguistics*, 19, 156–173.
- Haigh, R. 2012. *Legal English*. New York, NY: Routledge.
- Hoffman, C. 2011. 'Using discourse analysis methodology to teach "Legal English."' *International Journal of Law, Language & Discourse*, 1 (2): 1–19.
- Long, M. H., Al Thowaini, A., Al Thowaini, B., Lee, J. and Vafaei, P. 2018. 'A micro process-product study of a CLIL lesson: linguistic modifications, content dilution and vocabulary knowledge.' *Instructed Second Language Acquisition*, 2 (1): 3–38.
- Pecorari, D. and Malmström, H. 2018. 'At the crossroads of TESOL and English-medium instruction.' *TESOL Quarterly*, 52: 497–515.
- Ramsfield, J. J. 1997. 'Is "logic" culturally biased? A contrastive, international approach to the U.S. law school classroom.' *Journal of Legal Education*, 47: 157–204.
- Tannen, D. 1984. 'The pragmatics of cross-cultural communication.' *Applied Linguistics*, 5 (3): 189–195.
- Vault Law 100 – Top Law Firm Rankings. 2019. Retrieved from: <https://www.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings>
- Ward, S. F. 2018, October 23. New York state bar exam results released, pass rate has dropped. *American Bar Association Journal*. Retrieved from: <http://www.abajournal.com/news/>