**Going beyond the obvious in English for Legal Purposes: a few remarks on International Legal English as a Lingua Franca in Europe**

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## 1. English as a legal lingua franca: the present situation in Europe

In order to understand the requirements placed upon English as a legal lingua franca,[1] it is in our opinion necessary to describe the setting, the field, where such lingua franca is to operate. In addition to the traditional spaces that immediately spring to mind, such as international bodies like the United Nations, the World Trade Organization or the International Criminal Court, one of the most recent examples of this is the so-called "European Judicial Space".

In the past, even between democratic countries judges were wary of granting extradition, especially in terrorism cases, because it was felt that some jurisdictions did not offer enough legal safeguards. After some controversial cases, including cases of British citizens being released after spending some time in prison due to false allegations (see Verkaik, 1999), the situation became ripe for a number of European-wide measures towards the mutual recognition of judgments, as recognized in the conclusions from the Tampere European Council (1999):

> VI. Mutual recognition of judicial decisions:
> 33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and thejudicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.

Within this need for intercultural tolerance favouring real intercultural communication, it is acknowledged that multilingualism contributes to the values of democracy, equality, transparency and competitiveness. More specifically, the idea is that improving linguistic skills of members of the judiciary in European countries is essential in order to reinforce (or create, in some cases) mutual trust, towards a common aim: the mutual recognition of judgments and legal systems.

However, the European Commission was well aware of the problems involved. In the

[1] In our opinion, the best framework in order to understand the implications of English for communication between non-native speakers is that of English as a Lingua Franca (ELF). On this topic in general, see the concentric circle model (Kachru 1986), or more recently, Jenkins (2007). For critical views on the role of English as a Lingua Franca, see, amongst others, Phillipson (2007), or Phillipson/Skutnabb-Kangas (1997).

Communication from the Commission to the European Parliament and the Council of 29 June 2006 on judicial training in the European Union, it was recognized that direct communication between judicial authorities encountered problems due to what it called "practitioners' inadequate language skills", and listed, among the specific judicial training needs:

> • improving familiarity with Union and Community legal instruments, in particular in areas where specific powers are entrusted to the national judges;
> • improving language skills so that judicial authorities can communicate with each other directly, as provided for in most instruments;
> • developing familiarity with the legal and judicial systems of the Member States so that their respective needs can be assessed in the context of judicial cooperation. (COM (2006) 356)

Although EU documents (in our opinion, quite rightly) do not mention any specific language as the tool for communication, there is little doubt that in most international bodies having any legal content, English has been, and probably will continue to be for many years, the lingua franca. However, as with all languages belonging to a specific nation (or nations) used for international communication, they are hardly an "empty" instrument which merely transmits referential meaning. In the case of English, its connotation may be seen in two ways, one negative and one positive: on the one hand, it can be perceived as the symbol and the vehicle of Anglo-American law and culture, but also attempts to represent the mixture of culture and ideologies of other countries.[2] This is what Frade (2007) calls "legal globalization", a situation that, as this author has pointed out and we shall see here, does have some consequences regarding the power dynamics within legal English.

## 2. The problems of common law English as a universal reference: lexical choices and conceptual difficulties

In our opinion, the problem with most materials and courses in legal English is that they tend to assume that, English being the lingua franca for international communication, legal English is the obvious instrument for international *legal* communication. While this may certainly be the case, the assumption should not be expanded to include an uncritical acceptance of British legal English, i. e. English (or US) legal vocabulary and genres.

In this respect, a very careful position should be taken towards the concept of lingua franca as a "neutral" one, especially if this includes those who hold, rather naively from our point of view, that unlike the media or science, the country-specific nature of the law protects it from linguistic colonialism (see, for instance, Swales 1997: 378).While it is certainly the case that the legal domain in most countries remains protected from the pervasive influence of English (although this could be very much doubted, for instance, in the way company law has changed in many European countries, or in the way the jury

[2] Others have pointed out that such role might better be played by other languages, such as Latin (see, for instance, Ristikivi (2005) and, more realistically, Mattila (2006)).

system has been considered the ideal one because of its reputation), legal relationships between people, companies and countries across borders still happen in English. Beveridge (2003) in a paper aptly entitled "Legal English: how it developed and why it is not appropriate for international contracts", comments on some of the difficulties in interpretation which arise from what she calls "verbiage" used in international contracts whose venue, in case of disputes, would not be a common law court. Apparently, in many cases the parties to a contract believe that English is such an accurate (and neutral language) that its written genres are perfectly apt for any international transaction as they are non-dependent on a specific legal system, but rather cover all of them. She quotes unclear expressions such as "conditions precedent", "representations and warranties", and, first and foremost, "equity", as extremely confusing terms referring to completely different things outside the common law system and which should not be used at all in contracts where both parties are located in civil law countries.

Therefore, it would appear that, if legal English is to be used as a lingua franca, a conscious effort must be made to eliminate some of the culturally distinct elements which are contained in some of its genres. For instance, the same author mentions the case of the English expression "legal privilege", referring to a very specific feature of the common law system, which had to be "neutralized" into "the protection against disclosure afforded to written communications between lawyer and client", for the term to make sense in English as a lingua franca and therefore not lead to confusion in an international setting (the Court of Justice of the European Community). There are also other terms that may illustrate our point. For example, the term for the different units into which a court is divided in English is *division,* whereas the word used in the European Court of Justice is *chamber,* as influenced by French; in British legal English *chamber* refers to a judge's office.[3] A more extreme example is that of *magistrate*, which textbooks based on the English system describe as a "part-time, unpaid […] often known as justices of the peace […] not legally qualified although they do receive some basic training" (Russell/Locke 1992: 98). However, it is interesting to point out that, in international settings, *magistrate* may refer to senior judges from civil law countries, as can be seen in these two fragments from the Interpol or United Nations websites:

> Justice emanates from the people and is administered on behalf of the King by judges and magistrates members of the Judicial Power who are independent, have fixity of tenure, are accountable for their acts and subject only to the Constitution and the rule of law. (http://www.interpol.int/public/Region/ Europe/pjsystems/Spain.asp)

> Despite being examined before a Swiss Magistrate and being interviewed by police officers on several occasions before October 1993, it was only then that Mr Bollier admitted that MEBO had supplied any MST-13 timers to the Stasi (the East German intelligence service).
> (http://www.un.org/Docs/sc/commit-tees/LibyanArabJamahiriya/94e-1.pdf, although technically from a Scottish court sitting in the Netherlands)

In fact, given the text of the English translation of a 1928 agreement between Spain, France, Great Britain and Italy, the English version seems to suggest that a Magistrate need not be a lay judge when the term refers to other countries:

> *Article* 48 *(First paragraph).* – An international tribunal, called the Mixed Court of Tangier shall be responsible for the administration of justice over nationals of foreign Powers. It shall be composed of magistrates of Belgian,

[3] There are more problematic and controversial terms in "Eurospeak" which either do not exist in, or greatly differ from, general or legal English. On this topic, see Caliendo (2004) and Tosi (2005).

British, Spanish, French and Italian nationality.[4]

## 3. Implications for language teaching: A look at some of the courses and materials available

In order to gauge the degree of commitment of present-day ELT to the usage of English as a legal lingua franca, two different areas have been observed: the learning materials available and some of the courses organized.

In present times it is almost a given that ESP teaching may be (or indeed, should be) content-based (following Hutchinson/Waters 1987 and Brinton *et al*. 1989), that is, what is taught is not always Business English, or Medical English (especially in EAP) but Business through English, or Medicine through English, etc. In cases where the subject matter is an integral part of the language teaching process, two situations may occur:

- The subject matter is the same in the students' native language and in English: in these cases, there is no problem in teaching content through language or language through content (in fact, the content is relevant even from the point of view of the students' native language, or in other words, it may well happen that English is the vehicle through which the students first receive information relevant to their subject area).
- The subject matter is not the same, due to cultural or institutional reasons, and in such cases the need is felt to teach the content in order to favour intercultural communication.

As can be observed, content is sometimes taught in order to favour intercultural communication, but it remains to be seen with whom. For instance, Business English books do not restrict themselves to intercultural communication with Britons or Americans (Kachru's "Inner Circle") and comment on other cultural models, such as Chinese or Arab cultures. Although, of course, there is a great danger of overgeneralization and of an excessive use of clichés, it seems that there is no problem in assuming that the learner of Business English (by definition and judging by the textbooks, a non-native speaker) will use the language in order to negotiate with Chinese people.

Such is, however, not the case with legal English, in which often the assumption is that the learner will be using it only in Inner Circle (common law) countries. Perhaps the reason could be the difference between the civil and the common law systems: metaphorically speaking, one could imagine a disease which is clearly visible (e. g. red spots on one's face), which doctors can easily detect, research into and eventually cure, while the same patients suffer from another disease, perhaps more deadly, but not visible at first sight. In other words, it is our belief that the asymmetry between the civil law and the continental law systems, or rather, the awareness of such asymmetry, is part of the problem. The topic being so important, most of the materials tend to concentrate on such difference, or rather, on explaining to users from the civil law systems (usually lawyers or prospective

4 Agreement revising the Convention of December 18, 1923, relating to the Organisation of the Statute of the Tangier Zone and Agreement, Special Provisions, Notes and Final Protocol relating thereto. Signed at Paris, July 25, 1928. (http://untreaty.un.org/unts/60001_120000/16/14/00030694.pdf)

lawyers) the intricacies of the common law system through legal vocabulary. In this respect, the materials are clearly suitable for those who desire to learn English law (or, in some cases, American law), but not necessarily legal English.[5] Evidence of such focus can be found in book reviews; for instance, Lee *et al*.'s *American Legal English* (1999) is praised by saying that it "strikes a happy compromise between an English for Special Purposes textbook and an introduction to the American legal system" (Siepmann 2000). In fact, this textbook is a good example of how the common law country (America) is taken for granted as the reference: in spite of the very explicit title, and of the almost exclusive focus on the American legal system (which is, of course, a perfectly acceptable choice by the authors), the foreword proclaims that it will improve the student's ability "to understand and communicate with your legal counterparts around the world" (Lee *et al*. 1999: xiii). The vehicle for such communication will certainly be legal English, but the content will be exclusively US-centred (for instance, the European Union is only mentioned once in the whole book, and only as a passing remark).[6]

Over the past decade, two of the most popular textbooks on legal English have been Riley's *English for Law* (1991) and Russell and Locke's *English Law and Language* (1992). In the former, the first nine lessons are devoted to English law, and if there is any mention of the EU, it is only insofar as it affects the English legal system; only the last two last lessons deal with international law, and even one of them focuses on alleged violations of human rights law *in Britain*. For its part, *English Law and Language* lives up to its name, and almost exclusively deals with the English legal system, while the "European dimension" is only considered with regard to the English system. However, the difference is that one of these textbooks allegedly had set out to teach general legal English; Russell and Locke explicitly mention the English legal system as its main focus, and therefore one would not argue against their choice of topics, whereas Riley mentions "choose, read and use original materials of any kind in English" or "understand and use the language of the law in English", which makes the neglect of international contexts less justifiable.

Of course, there are notable exceptions; for instance, Krois-Lindner and Translegal's *International Legal English* (2006) does live up to its name, and offers a reasonable combination of common law vs civil law systems, the focus being on commercial law and the preparation for the ILEC examination (see below). Thus, the very first lesson explains the difference between common and civil law, and there are plenty of examples from EU contexts and international environments; a very illustrative lesson is that on property law, in which there are definitions of fee simple, fee tail or other UK-specific terms, but also a

[5] A similar situation occurs in legal translation courses, where it has now been accepted that translation will always exist between two languages, but also between two legal systems; see, for example, an interview with the leading legal translation scholar Roberto Mayoral (http://www.jostrans.org/issue03/ art_mayoral.php). When asked about the requirements of such a course, Mayoral answers "Knowledge of both legal systems and concepts should be a prerequisite. If lacking, it should be provided within the course", which presupposes that translation must occur between two legal cultures, thus effectively excluding, for example, bilingual territories where the system is the same in the two languages, and also, of course, lingua franca situations in which the legal systems may be very similar (e. g. between two civil law countries like Spain and Italy), but the languages may not.

[6] In order to avoid misunderstandings, it must be emphasized that there is nothing wrong about choosing American (or English) law as the focus of an English for Legal Purposes textbook. What one finds most dubious is the assumption that such exclusive focus will help towards international communication, as mentioned in the foreword, or in other remarks such as one of the authors confessing that the need for such book sprang from the fact that she was teaching legal English in *Finland* and could not find any appropriate materials (p. 1).

listening comprehension exercise about buying a house in Spain (although, of course, the customer is an English-speak-ing one; it might have been too much to expect a German or a Russian purchaser).

*3.2. Courses*

In this section we shall comment on two types of courses, each exemplifying one of the two options for language training: those organized by an academic institution, The Institute for Applied Language Studies at the University of Edinburgh, and those by a professional body, the Spanish General Council of the Judiciary, which will serve as our case study.

The courses organized by the Institute for Applied Language Studies[7] offer three options, labelled "English for Legal Studies", "English for Lawyers" and "Legal English", respectively. All these courses are very explicitly content-based ("Legal English vocabulary is introduced through the exploration of legal topics"), and explicitly cater for present or future professionals (i.e. they mention "law students" or "lawyers").[8] In these courses, the degree of attention towards legal systems varies, but the common premise seems to be that they must to some extent start from the common law system.

The first one, "English for Legal Studies", appears to have been designed for those studying Law as a degree; although clearly aimed at foreign students ("A good intermediate level of English is required (Cambridge First Certificate and above)"), the focus is solely on the English (or British, since visits to courts in Scotland are included) legal system, and there is no mention whatsoever of any other legal system. The purpose, therefore, seems to be to prepare non-native speakers to pursue graduate or postgraduate courses in Britain, or, at the very best, to acquaint them with the English system with a view to carrying out dealings with the UK in the future. The second one, "English for Lawyers", has a similar content, although it is explicitly intended for practicing lawyers, and does contain some mention of the "continental" legal system (the choice of term itself, rather than "civil law", indicates the British-centred point of view). There appears to be no specific module on the topic, however, which leads us to believe that it may be mentioned in passing when dealing with UK topics.

The third course starts with an overview of the UK legal systems (which, for a start, is good news, since Scottish Law is also covered). The good news is that a suitable lingua franca atmosphere is attempted, as in "Participants are encouraged to develop their ability to speak through explanations and discussions of *aspects of their own legal systems*" (our italics), and there is the possibility (although not guaranteed) that other issues "may be covered", including EU Law.

The other set of courses, which we shall use as our case study because it evidences a realization by professional bodies of the need for language competence, is that organized by the Spanish General Council for the Judiciary *(Consejo General del Poder Judicial, CGPJ).* This body has been organizing a number of training activities, within the European Judicial

[7] All data and descriptions according to website for 2009 (http://www.ials.ed.ac.uk/EL/EnglishBLM/Englishlaw.htm).

[8] One may wonder… and who else? The answer is that many other ESP courses, as in Business English, also cater for translators or for language students aiming to expand their language skills by acquiring the foundations of Business and/or Legal English. This results in increased employability, as many language graduates have had the occasion to learn in Spain.

Training network, in order to increase the knowledge of judges and prosecutors in the European Union in the following domains: general linguistic training and legal linguistic training; methodologies for linguistic training; and comparative study of legal systems and institutions through legal terminology.

In addition to an online course with joint sessions once a week, the Spanish Judicial School organizes three types of courses: one dealing with general English (a five-day immersion course) and two with legal English: one, entitled the "Permanent Seminar on the Comparative Study of Judicial Systems through Legal Language", which has an extension one year later at an advanced level. In this review, we shall concentrate on the second one, the first one being a general English course meant as a preparation for specialized courses, and the third one having been scrapped from the training programme as of this year.

These courses, taught by a legal expert and a linguist, respond to what Harding (2007: 17) labels "immediate needs", as opposed to "delayed needs" (i.e. those of Law students, for instance), which may be catered for by other courses (like the ones we saw earlier). The general objective of the course in principle agrees with the general spirit of the training activities, that is, to move towards what is called "a real European judicial meeting point"; however, the "European" spirit is lost in the specific objectives, for the point is to "introduce or improve knowledge of the specific legal codes and judicial systems in Spain, France, Germany and the United Kingdom", depending on whether the course is in legal Spanish, French, German or English. As one can realize, the initial European intentions are lost, and again the English course is based on the direct comparison between the Spanish and the English common law system, or in other words, the meeting ground for a Croatian judge and an Italian one, even if they communicate in English, is the English legal system. This is reinforced by the fact that the legal expert is an English judge, and the course is followed by a one-week stay at English court which, besides, is not offered to other European judges also taking the course (for budgetary reasons). This, in principle, is the *coup de grace* to the whole idea: at the end of the training, the Spanish judges might come back from Britain concluding that they have learnt English … which they can use to communicate with English judges. If anything, if there is any common space, the impression would be given that in order to understand one another, a Hungarian judge and a Spanish one need to use as a mediator not only the English language, but also the English system.

Like other courses we have mentioned, the course responds to the traditional definition of English for Specific Purposes, that is, courses on legal topics in legal English between highly specialized professionals. However, in spite of the original scheduled content of the course, the instructors allow discussions to drift into cultural matters not merely within the domain of English or national law, since this is felt to knock down barriers: through instances of socialization between a Spanish and a Latvian or Hungarian judge, it is felt that the whole of the Spanish and Latvian or Hungarian judiciary may begin to feel comfortable with one another. This, however, though quite beneficial, is far removed from the goals of the course itself, or in other words, the course does succeed, but not exactly in the way it was meant to (if anything, the opposite), as we shall see later.

The courses are taught in an intensive five-day programme in a residential course, followed by a one-week stay at an English court, in three groups: one for criminal matters, one for civil matters, and one dealing with a combination of both. The groups of students

always include approximately ten Spanish judges and four non-Eng-lish-speaking judges from other European countries. Although the initial aim of this student selection is to prevent participants from using Spanish with the teachers and with one another (in fact, translations exercises are explicitly discouraged), one of the bonuses attained is that there is a suitable balance in terms of phonology, but also in terms of grammar and lexis. Thus, a real lingua franca situation is reached because excessively deviant L2 forms, which might work with Spaniards talking to one another, do not survive the test of mutual intelligibility, whereas groups may signal their belonging to a national group successfully through the use of their national varieties. In this respect, and in many others, it is felt that the real bonus of the course is *students talking to one another*, and not to the teachers. The benefits, in our opinion, go far beyond the receptive and the productive level, and reach what is really intended: that of attitudes towards English in general and of legal English in particular.

Something the instructors are glad to see is that students, although still suffering from some of the preconceptions confusing general English with English for Specific Purposes, become fully aware that, since their purpose is mainly to *communicate*, formal grammar and pronunciation concepts are only important insofar as they might affect mutual intelligibility. This is indeed a breath of fresh air, since Spanish students have traditionally been repressed into silence by their lack of confidence in their grammatical and phonetic proficiency, or rather, by the fact that they do not conform to the Inner Circle models (and indeed, such is the case with Spanish university students), but the judges in the courses are extremely enthusiastic about communicating, both in legal topics and otherwise.[9]

However, it must be emphasized that if the course indeed does respond to the needs of judges, it is because the course is a misnomer; in other words, one thing is the name of the course, and quite another is what the students themselves expect from the course (not "English law", but "legal English", and not necessarily British), or what the course attains in itself. Although initially it is labelled *Seminario Permanente de Estudio Comparado de Sistemas Judiciales a través del Lenguaje Jurídico* ("Permanent Seminar on Comparative Law through Legal Language", the focus is on legal English for International Communication, the English system being an excuse, because, in fact, the discussions are allowed to focus on the differences between the legal systems of the participants in each group, none of them British. In fact, the course is commonly referred to among Spanish judges as "the Murcia English course", that is, it is perceived as a course in Legal English, and not in Comparative Law.

Of course, this will inevitably lead to the dilemma: which legal English must be taught? If the purpose of the course were to study English law, it would be clearly a standard variety, focusing on the terminology of the law of England and Wales. However, in spite of the "scheduled" intentions of the course, this would be pointless, at least if seen in an exclusive way, because learners actually need the vocabulary to operate in international law contexts, where, for example, the new English Rules of Civil Procedure

[9] Of course, we must be aware that these judges are an exception, and in no way represent the average Spanish language learner, and not even the average judge in Spain. When the Spanish Council of the Judiciary conducted a survey in 2006 regarding the level of knowledge of English among Judges, out of the 97 respondents, only 16 defined their level as "advanced", whereas 27 rated themselves as "intermediate", another 27 as "beginner", and 27 confessed their knowledge of the language was non-existent.

may not apply. Therefore, exercises clearly focusing on the English system are combined with these which, although using England as a reference, do point towards the existence of other models (although technically belonging almost exclusively to the Inner and to the Expanding Circle):

> Replace the underlined words with the new terminology introduced after the Civil Procedure Act 1999.
>
> *Child, claim form, disclosure, freezing injunction, give permission, in private, plaintiff, search order, pending litigation, statement of case.*
>
> We proceed to examine the case as presented in the pleadings (USA)
> The plaintiff seeks damages for wrongful dismissal. (Canada)
> In 1989 he was sentenced for unlawful sexual intercourse with a minor. (Australia)
> XXX received a writ from YYY's solicitor demanding a large sum in damages. (New Zealand)
> Proceedings shall take place in camera if requested by one quarter of the members. (European Parliament)
> Discovery: (1) After the close of pleadings, but not later than 15 days before the date of trial … (South Africa)
> As part of an "Anton Piller Order", a court may, in an action against an infringer, order that… (Hong Kong)
> The Court shall, upon application by the defendant, give leave to appear and to defend the suit… (India)
> The plaintiffs then applied to the Supreme Court of the Bahamas for a Mareva injunction against the trustees. (Bahamas)
> The issue of the subpoena against sovereign states is subjudice. (United Nations)

The linguistic English-centeredness also affects the level of legal genres, as can be seen from the tasks in which students are taught to recognize different stylistic and layout requirements. In this case, most go against the very principle of legal English as a lingua franca or intercultural communication, for they deal with very specific English components, such as the jury summation (presupposing a jury, and indirectly favouring the image that a jury is a better system for criminal procedure) or the sentencing remarks (which are non-existent in many European contexts).

One of the problems with these courses and, in general, with any content-based instruction is that, rather than comparing and weighing the pros and the cons (which actually improves language skills, the primary aim), an excessive simplification may cause students to view legal systems not as a result of their social and historical context, but as options where one may be superior to the other. In such cases, an almost confrontational situation may arise, with the European (Spanish, especially) judges being scandalized at some of the features of the English system, and the English judge taking a defensive position, which if anything, does not favour the use of English as a tool for intercultural communication (if anything, for intercultural battle). Paradoxically, in these cases there is the perception of a "European common judicial space"… but not including England and Wales, i. e. it is "Europe" versus the common law system. In other cases, a widespread admiration arises, for instance, at the existence of punitive/ exemplary damages in the United States. These situations, neither of them desirable because they are intolerant towards differences and presuppose superiority of A vs B (or of B vs A?), suggest that something else than learning English is at stake, and hint that we have to distrust innocent views of English as a culturally empty element.

Some courses already moving in what we believe is the right direction are those organized in Italy by the *Consiglio Generale della Magistratura*, which include simulations of the judicial trial system in partner states and participating countries; comparison, (in English) of the best practices for judicial cooperation reports, among participants; and the analysis, study and exchange of the main trial documents that characterise procedures in the

participating countries (accusation, committal for trial, sentence, precautionary measures, contestations). As can be seen, the lingua franca here affects not only the music, but the words of the song: English is really being used in order to foster a European judicial culture. Also, another of the benefits is that a combination of native vs. non-native teachers (both regarding linguists and legal experts) is sought, thus creating the impression that, for instance, there is nothing wrong with a Spaniard teaching legal English to an Italian or a Bulgarian. In this case, the European tradition already features the recognition that a native teacher of English is not necessarily a good thing (as noted, for instance, by Phillipson 2007), but such recognition is based on familiarity with the linguistic/cultural background of the learners.

In our opinion, it is not only that these courses should show the status of English as lingua franca, and that their methodology is planned accordingly; our point would be that it is only the methodological framework of ELF that allows these courses to exist, although, as we shall see immediately, some of these courses should be conceptually reconsidered. A more traditional approach, in which a proficiency -or accuracy- based point of view was adopted, would not only disagree with the purpose of the course, but would doom ninety per cent of the attendees to disappointment and failure. This has clearly not been the case, since the Spanish courses, for instance, have been taught for 12 years now, and certainly the high level of acceptance is set to continue: in a recent survey in Spain, 68 per cent of judges expressed their desire to take part in foreign language training, English being the majority option, and many other European countries have expressed their desire to transpose the Spanish courses to the European Judicial Training network level.

### *3.3. Examinations*

Concerning legal English examinations, the two main competitors in this area appear to be the ILEC (International Legal English Certificate), organized by the University of Cambridge, and TOLES (Test of Legal English), organized by Global Legal English Ltd. (though sponsored and recognized by the Law Society of England and Wales).

It has to be said that the International Legal English Certificate (ILEC) does pay attention to both common law and civil law systems, especially focusing on commercial law; a random look at its sample papers shows that the content deals with common law systems, but also with the WTO, Latin America, training stages in Italy, etc. TOLES, however, does suffer from a certain English bias. A glance at some of the papers in its three levels shows that most of the content deals with English law, with the occasional mention of EU contexts. Thus, there is a clear conflict between the purpose stated, for instance, in the foreword to one of the published sets of papers (Global Legal English, 2004), declaring that "the language and terminology tested by TOLES reflect international commercial transactions in today's global market" (p. 1), and what is said in the very same paragraph two lines earlier ("the tests allow lawyers and law students to cope with everyday, practical tasks in English when working in a legal office or studying in the law faculty of a UK or US University"). Indeed, the picture on the first page, with a barrister wearing a wig, and the subtitle "A course in Legal English *for Overseas Lawyers and Law students*" (our italics) leave very little room for doubt: the language belongs to the British (or, rather, to the English), and if one learns it, it is to practice in the UK.

## 4. Conclusions and some suggestions for improvement

One might always suspect that the invisibility of non-British or American varieties of English is part of a wider strategy, and it is only the prevalent cultural colonialism that prevents us from conceiving any comparison in terms of legal culture in which the common law is not a reference. However, this is not necessarily the case: comparative law (i. e. non-linguistic studies) does establish comparisons which do not include common law, e.g. between civil law and Islamic law. It is only in legal English teaching contexts that the comparisons always tend to include common law.

Of course, some might argue "well, of course, it is English, and it is only natural that English legal culture should be featured in these texts." However, an exclusive focus on the country-specific legal system would be perfectly acceptable in the case of Italian, or Dutch for legal purposes, but English being a lingua franca, it does not (or at least, should not) *belong* to native speakers. Statistically at least, perhaps 80% of the English spoken in the world is speakers of English as either a foreign or a second language. However, the actual situation is that there is a sort of social apartheid in the language, in which English is governed by a minority of its inhabitants, due to their greater economic power; in fact, one feels that the best intentions by any publisher or course organizer are hampered by the fact that too much attention to non-Inner-Circle varieties, vocabulary and content would make the product less attractive. In this respect, perhaps it might be international bodies, who are less restricted by profitmaking considerations, who should support English as a legal lingua franca through examinations or courses where English is used to discuss all legal systems, instead of simply sending their candidates the already existing courses in the UK or examinations (which seems to be the case now, according to the course website).

If courses like the one we have analyzed in depth do succeed (and not only financially: all the other learning devices listed herein are of great success, but some succeed in that they really obtain what they set out to obtain) it is, as we said earlier, in spite of their alleged intentions. In the course organized by the Spanish Council of the Judiciary, the approach is, in our opinion, excessively based on the England and Wales legal system, but the purpose being mutual cooperation between *all* member states, both the language model and the legal content should shift slightly away from the English-centered system and focus on specifically European-wide issues (such as, for example, the international arrest warrant or judicial cooperation). In other words, the *needs* of the learner must be clarified, for they certainly have a repercussion on both the legal and the language component of the course. If the purpose is to encourage European trust and cooperation, the content should feature legal systems from all member states, and increase the number of participants from European countries. Also, and perhaps as a declaration of intent, the teaching staff in these courses should include non-native speakers of English, which would clearly prove to the student that English is really a *lingua franca*. As many authors have pointed out, and is generally agreed in ELF theory (see, for instance, Berns 2008), if English is to be used for international communication, Inner Circle users should not be given the primary role. This could be difficult, as one of the obstacles mentioned in a recent European meeting on "Language training for members of the judiciary" was the lack of trainers who were experts on linguistic or legal matters, as well as the lack of training

material. As things stand now, most of the legal language teachers, at least in some countries, lack any specific training on "how to train", and the materials available in the market are not addressed to the European Union, and are seldom addressed at judges or prosecutors (advocates being a much more numerous market).

As a conclusion, we believe that some areas of English for Legal Purposes, despite all good intentions, still conform to the description by Jenkins (2002: 84): "the native speaker is still a given, and the native speaker standard measure still reigns supreme", which does not only affect phonology, but also all communication codes and contents. It is our belief that an excessive component of Anglo-American law and language may convey the wrong message to learners of English as an international language, namely, that they are learning a language *belonging to Britons and Americans*, and only in order to communicate with them. This recreates an asymmetrical relationship in which one of the parties imposes the codes for interaction ("my pitch, my game"), and if anything, does not provide the "neutral ground", which should be felt as common property, with no gatekeepers, where people from different languages and cultures may come together.

**Websites**

http://www.legalenglishtest.org/ (International Legal English Certificate)
http://www.toles.co.uk/ (TOLES Examinations)
http://www.ials.ed.ac.uk/EL/EnglishBLM/Englishlaw.htm (Institute for Applied English Studies, University of Edinburgh)

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