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Changing with the Times: The Evolution of Plain Language in the Legal Sphere

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ABSTRACT

As is well known, the Plain language movement has been influential in a number of areas of public life over the last few decades. Within the legal sphere it has raised general awareness concerning the need to make legal matters and legal documents more comprehensible and accessible to non-experts, particularly in today's digitalized world where information is freely available to the general public. In this paper my aim is to provide an overview of the way the Plain language movement has evolved in the legal sphere since the 1970s. In particular, I will highlight the following points: (1) the reasons why the Plain language movement came into being; (2) the major successes of plain language in the legal sphere over the last 40 years; (3) the areas where legalese still predominates, and the reasons for the resistance to change; and (4) the way the Plain language movement has adapted to the digitalized world and the implications for future development. My observations will be mainly restricted to the English-speaking world, including international organizations where English is one of the official languages, but I will occasionally make reference to other plain language organizations outside the English-speaking world where this seems relevant. I also provide a list of the major organizations involved in promoting plain language in English in the legal sphere today as a reference guide.

Keywords: Plain language movement, legal English, legalese, legislative drafting, contract drafting

1. Introduction: the beginnings and evolution of the Plain language movement

Definitions of plain language abound. I will stick to one of the shortest and clearest: "Plain language has to do with clear and effective communication – nothing more or less" (Kimble, 1994-1995: 51).

There are many different narratives about how, where and when the Plain language movement began to make itself felt in the legal sphere. First of all, it should be pointed out that we are referring to a phenomenon involving above all the countries where English is either the only official language, or is one of the official languages, with legal systems that are either predominantly or wholly based on common law, such as England and Wales, Australia, New Zealand, or the United States, or are hybrid systems where common law plays a major role but alongside other legal cultures – notably the civil law system – as in Canada, South Africa or Scotland. Plain language movements can also be found in a number of civil law countries such as Sweden, but generally speaking most civil law countries have been less concerned than their common law counterparts with trying to make their legal language clearer or easier to understand or sound less antiquated. For example, in Italy there is no easy way of translating 'plain language' or 'legalese' into Italian: some sort of paraphrase is necessary. This is not to say that civil law countries are immune from the problems of obscure legal language and 'bureaucratese' – far from it – but as a whole the language of the law has a less anachronistic ring to it and hence is not generally perceived as necessitating urgent reform. There is no direct equivalent in civil law contracts to the kind of antiquated legalese the following extract exemplifies:

> NOW THEREFORE THIS AGREEMENT WITNESSETH That in consideration of the mutual promises and covenants set forth herein and within the Agreement, and in order to secure and maintain the services described herein and within the Agreement, the parties hereto, each binding itself, its respective representatives, successors, and assigns, do mutually agree as follows.[1]

Without wishing to go over well-trodden ground (see, for example, Tiersma 1999 or Bivins 2008 for an overview), it should be borne in mind that the common law system, with its emphasis on precedent, has traditionally tended to be backward-looking rather than forward-looking, and this has "resulted in a style that uses long, involved sentences, archaic legal expressions, latinisms, and pompous language considered suitable for use in Parliamentary procedures. Not surprisingly, it is often very difficult to read and understand" (Turnbull, 1995: 26). Hence the need to break with this encrusted type of language and move towards something more modern and comprehensible, particularly to laypersons.

Although complaints about legal English go back several centuries, it is generally agreed that it was not until after World War II that we can speak of the beginnings of a 'movement' which would coalesce in the United States in the 1960s, thanks to the influence of seminal works such as those of Mellinkoff (1963) in the sphere of legal language or O'Hare (1965) in the field of government communication. The focus of

each of these two writers highlights two of the strands that have been the principal concern of plain language exponents in the legal sphere ever since: on the one hand, modernizing the language of the law, on the other, making official communication clearer and more effective. The two areas, although clearly interrelated, require different sets of skills and priorities. The former has to do, above all, with the way legally binding texts are drafted by removing those elements of 'legalese', whereas the latter has to do with how organizations – generally state-run – communicate with the public by removing those elements of obscure 'officialese'. Clearly, certain types of government-based communication have little or nothing to do with the legal sphere, such as consumer information from the US Food and Drug Administration on chronic health problems such as obesity or diabetes. But in other areas the dividing line is much hazier, and sometimes the information provided may be of a quasi-legal nature. For example, in 1977, "the Federal Communications Commission issued rules for Citizens Band Radios that were written as a series of short questions and answers, with personal pronouns, sentences in the active voice, and clear instructions. These regulations were probably the first to appear entirely in plain English. The current Citizens Band Radio Rules, issued in 1983, continued the plain language style of the 1977 rules" (Locke, 2004)

Here is an example of the Citizens Band Radio Rules of 1983:

> PART 95--PERSONAL RADIO SERVICES
> Sec. 95.402 (CB Rule 2) How do I use these rules?
> (a) You must comply with these rules (See CB Rule 21 Sec. 95.421, for the penalties for violations) when you operate a station in the CB Service from:
> (1) Within or over the territorial limits of places where radio services are regulated by the FCC (see CB Rule 5, Sec. 95.405);
> (2) Aboard any vessel or aircraft registered in the United States; or
> (3) Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company.[2]

I will therefore be focusing in particular on the impact of plain language on legal drafting, but I will also take into account the ways in which plain language has affected official communication insofar as such communication is related to the legal sphere.

As has been pointed out elsewhere (see, for example, Williams, 2005, 2011), the Plain language movement was already influential in the United States in the 1970s, particularly in the fields of banking and insurance, whereas in the sphere of government communication there was intermittent interest in plain language starting from the time of the presidency of Jimmy Carter, and later taken up by Bill Clinton and, more recently, by Barack Obama.

During the 1980s plain language spread to other English-speaking countries, especially Canada, the United Kingdom, Australia and New Zealand, and went on to become a worldwide phenomenon. It was further consolidated in the 1990s, by which time post-apartheid South Africa had begun experimenting with plain language, notably in its Constitution of 1996. In the European Union we witness, on the one hand, the

development of the 'Fight the Fog' campaign among EU translators and drafters while, on a more official level, the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation laid down the rules for clearer drafting in this multilingual organization.

In recent years there has been a marked shift towards plain language in legislative drafting in the UK, both in Scotland and in Westminster (Williams, 2007, 2011). However, this and other accomplishments of plain language in the legal sphere over the last 40 years will now be examined in greater detail in the next section.

2. Some success stories in plain language in the legal sphere

The history of plain language in the legal sphere has been a chequered one. For a long time its future was uncertain: as late as the mid-1990s, Friman (1995: 108) surmised that "[i]t is difficult to say whether the Plain English Movement will grow or fade away." With the possible exceptions of Australia and New Zealand which had already espoused the cause of plain language in legislative drafting well before the 1990s, it is only fairly recently that plain language has emerged from its relatively marginal status to become mainstream in many parts of the English-speaking world.

Clearly, each country or international organization has developed its own specific legal culture, and plain language has impinged in different ways and to varying extents in the legal sphere. However, it is also true that individual countries and organizations have been influenced by what has happened elsewhere: tax law rewrite projects and consumer contract legislation are two examples of this phenomenon, as we will see shortly.

In this Section I will outline what I consider to be some of the more significant projects that have been successful – or at least influential or significant – in terms of implementing plain language in the legal field. The list is necessarily a subjective one and is not meant to be exhaustive. However, these summaries of ten milestones in the history of plain language in the English-speaking world may arguably provide a more vivid picture of the phenomenon than a more general account may offer.

1973. US New York Citibank promissory note

The occasion marking "the coming-of-age of the plain language movement in the United States" (Asprey, 2010: 65) was when New York's Citibank decided to write its promissory note using plain language. The fascinating details behind this "icon of the plain language movement" (Asprey, 2010: 34) are narrated by one of the protagonists, Duncan A. MacDonald (2015a, 2015b), who recounts how former Miss America, Bess Myerson, was hired by Citibank in 1973 because of her "business-like ability to work on big picture ideas and make them happen" (MacDonald, 2015a), and within months Citibank "introduced the first plain-language agreement in the financial services industry" (*ibid.*). MacDonald and Myerson overhauled the original note which "ran

almost 3000 words and was completely undecipherable" (*ibid.*) after discovering "sentence by sentence, paragraph after paragraph, all in tiny print — a nest of sneaky provisions in dense legalese that unfairly tipped the scale in Citi's favor in every possible way" (*ibid*.). The media latched onto this novel approach, and the newly-styled promissory note, reduced to 20 per cent of its original length, was seen as a victory for consumers and hailed as a new way of doing business, even if subsequent events in the 1980s, where 'deregulation' and 'neoliberalism' became the buzzwords, would dampen this initial enthusiasm about the alleged change of heart of the business world. But plain language had nonetheless been put on the map and was destined to flourish, though not necessarily in ways that could have been predicted at the time. For further reading on the Citibank promissory note and plain language see also Lederer & Dowis, 1995: 30-31.

1976. Canadian Legislative Drafting Conventions

In 1969 members of Canada's Legislative Drafting Workshop began working on what culminated in the drafting conventions laid down in 1976 (Uniform Law Conference of Canada, 2003). While being less 'iconic' in status than the Citibank promissory note of 1973, these conventions have proved to be crucial in Canada's legislative drafting history and are still in force, albeit following amendments in 1981 and 1986: today they also apply to French texts (Office of the Scottish Parliamentary Counsel, 2006: 24). The plain language ethos is foregrounded in rules such as "An Act should be written simply, clearly, and concisely, with the required degree of precision, and as much as possible in ordinary language" (Uniform Law Conference of Canada, 2003). Since Canada is a federation of states, most but not all drafting offices across the country adopt these conventions, some offices being more attuned to drafting in plain language than others (Office of the Scottish Parliamentary Counsel, 2006: 24). For further reading on Canadian legislative drafting and plain language see also Lortie & Bergeron, 2007; Sullivan, 2001.

1987. Australia Victorian Law Reform Commission Report

Asprey (2010: 68) asserts that the 1987 Report of the Victoria Law Reform Commission constituted "[o]ne of the major catalysts for the plain language movement in the law in Australia". The Report made 15 recommendations and included a drafting manual both of which have proved to be influential "and have led to many reforms in the language of the law" (ibid.). Moreover, unlike Canada where the adoption of plain language drafting has been more piecemeal, Australia stands out as the first English-speaking country to have taken on board plain language drafting both on a national and on a federal level. For many years the Australian Government Office of Parliamentary Counsel has provided a wealth of information and links on plain language (http://www.opc.gov.au/plain/index.htm). For further reading on Australian legislative drafting and plain language see also Simon & Wallschutzky, 1997.

1993. US Pennsylvania Plain Language Consumer Contract Act

There are two forerunners to this piece of legislation: the first is the so-called 'Sullivan law' of 1978 passed by New York State requiring residential leases and consumer contracts to be "written in a clear and coherent manner using words with common and everyday meanings" (cited in Klass, 2010: 132). The second is the Connecticut Plain Language Law of 30 June 1980 stating that every consumer contract "shall be written in plain language" (Connecticut Plain Language Law 1980). The Pennsylvania Plain Language Consumer Contract Act (PLCCA), signed into law on 23 June 1993, requires lenders, retailers and landlords to redraft their loan, sale, lease and other agreements in order to "protect consumers from making contracts that they do not understand" (Pennsylvania Plain Language Consumer Contract Act 1993: § 2202 (a)). Over 20 years after its coming into force, the legacy of the PLCCA has not been unconditionally positive. According to a local attorney (Hoffmeyer, 2014) it "seems to be relatively unknown", and van Naerssen (2005) found it wanting in terms of ensuring that contracts drafted after the PLCCA had come into force would be easy to understand. Despite its shortcomings, however, it seems to have provided the blueprint for other similar types of laws, not only in the United States but also elsewhere, and is generally the reference point in studies about consumer contracts and plain language in the English-speaking world. Nevertheless, there have also been less successful cases, such as South Africa's Consumer Protection Act of 2008 where the section specifying what is meant by plain language is, paradoxically, written in such a long-winded and confusing way that the potential benefits to the consumer may be jeopardized (South Africa Consumer Protection Act 2008, Section 22) (3). For further reading on consumer contract legislation and plain language see also Harrison & McLaren, 1999; Stoop & Chürr, 2013; Termini, 1995.

1994. New Zealand Government 'Rewriting the Income Tax Act'

Sawyer (2013a: 2) asserts that "the early 1990s were a time when increased complexity in tax legislation received heightened attention by policymakers in numerous jurisdictions." The document known as 'Rewriting the Income Tax Act' was published by the New Zealand Government's Inland Revenue Department in December 1994. A similar report had been produced in Australia in November 1993 (Simon & Wallschutzky, 1997: 446), but Australia was much slower than New Zealand in completing the tax law rewrite (Sawyer, 2013a: 3). The aim of the New Zealand project was to reorganize and rewrite the 1976 Income Tax Act "in such a way as to make it easier for tax professionals to use and understand. This included the recommendation that the Act be rewritten using 'plain language'" (McAra, 1997: 54), which meant "applying all the standard principles of removing archaic words, shortening sentences, eliminating double negatives, eliminating ambiguities, using the active voice where possible etc." (McAra, 1997: 58). The full implementation of its income tax legislation (nearly 3000 pages) took place in 2008 (Sawyer, 2013a: 3). Similar projects were also

undertaken in Australia and the United Kingdom, and in 2009 South Africa announced it would be rewriting its lax laws (Dawyer, 2013a: 2). However, New Zealand was the first to complete its tax law rewrite (*ibid.*) and could therefore be seen as setting the example for other countries. For further reading on the New Zealand income tax rewrite and plain language see also Asprey, 2010: 73-74; Richardson, 2012: 525-530.

1996. South Africa Constitution

The demise of apartheid and the transition to democracy in South Africa in the early 1990s proved to be an opportune moment for introducing not only a radically new constitution in terms of content but one written (at least in its English version) in plain language, thanks largely to the efforts of a Canadian lawyer and plain language proponent, Phil Knight, who sat on the Constituent Assembly. The final draft of 1996, which became law the following year, has been hailed by many as the high point in the history of plain language in the legal sphere. But the country was soon overtaken by more pressing problems, and the impetus for plain language drafting waned. Moreover, one or two later attempts at extending plain language to other laws were criticized, such as the Companies Act 2010 (Rawoot, 2010). However, the 1996 South African Constitution – the "soul of the nation" (Vijoen, 2001: 15) – is still in force and remains a major achievement insofar as it is "accessible for all" (*ibid.*), the result of a language policy which included removing all cases of *shall*, Latin expressions and legalese and ensuring the text was gender-neutral (Vijoen, 2001; Williams, 2009). For further reading on the South Africa Constitution and plain language see also Bekink & Botha, 2007; Deegan, 1999: 15-36; James, 1997; O'Malley, 2009; Williams, 2006: 250-251; 2009a.

1996-2010. UK Tax Law Rewrite Project

aThe New Zealand and Australian tax law rewrite projects were the models on which The New Zealand and Australian tax law rewrite projects were the models on which the UK Tax Law Rewrite Project was based. All three were concerned merely with rewriting tax legislation to make it more comprehensible but without interfering with the content. Sawyer (2013a: 4) sees this as a weakness: "legislators should instead address complex concepts and substantial policy issues in conjunction with any rewriting of the legislation." However, the UK project, which took some 14 years to complete, was to prove to be a milestone, not so much because of its effect on legal practitioners and laypersons directly interested in the rewritten tax laws, but above all because of the 'domino' effect it would have on drafting legislation in Westminster. What began as a one-off project turned out to be "a brilliant test-bed for innovative drafting techniques" (Heaton, 2013) for the Office of the Parliamentary Counsel which rapidly transformed its legislative drafting ethos to become one of the most forward-looking proponents of plain language, some four decades after the Renton Committee had laid out its proposals for reforming legislative drafting which, at the time (1975),

were largely ignored. For further reading on the UK Tax Law Rewrite Project and plain language see also Rogers, 2008; Sawyer, 2013b; Williams, 2007: 104-109.

2006. Scottish Online Booklet on Plain Language and Legislation

Only a few years after the setting up of a Scottish Parliament in 1998, its Parliamentary Counsel Office began debating the need to restyle its legislative drafting. The outcome was the online booklet published in 2006 'Plain Language and Legislation' which outlined the proposals for modernizing the way laws were drafted in Scotland. The changes were discernible almost immediately (Williams 2007: 109-114) and were implemented for most of the new laws passed by the Scottish Parliament. This was at a time when in Westminster the major focus of attention for plain language drafting was restricted principally to the Tax Law Rewrite Project, so at that moment Scotland's Parliamentary Counsel Office was arguably more attuned to plain language than its counterpart in Westminster. Plain language principles were also evident in the wording of Scotland's referendum on independence of 18 September 2014 ('Should Scotland be an independent country? Yes/No') which differed markedly from the verbosity of certain recent referenda drafted by American states (Badger 2014). The simple wording was the result of consultation by Scotland's Electoral Commission with the Plain Language Commission as well as other stakeholders (4), a clear indication of how far plain language has penetrated institutional discourse in Scotland. For further reading on Scotland's 'Plain Language and Legislation' see also Borisnova, 2013; Williams, 2009b, 2014.

2007. US Federal Rules of Civil Procedure

Although the drafting style of legislative texts in the United States is more traditional than it is in most English-speaking countries, a "major achievement in the US is the effort to 'restyle' all the rules of procedure in the federal courts" (Asprey, 2010: 78). The original rules of procedure had been written in 1937 and were completely overhauled stylistically with the revisions taking effect from December 2006, but, as with the UK Tax Law Rewrite Project, no substantive changes were made. The committee responsible for introducing the changes, made up of lawyers, judges and plain language expert Joseph Kimble, took four years to complete its task (Cutts, 2009: 225), though the original project for restyling the court rules goes back to 1992 when legal writing expert Bryan A. Garner was recruited to assist in the Style Subcommittee (Eichhorn, 2008: 3-4). Eichhorn observes (2008: 17) that "a side-by-side comparison of the old and restyled rule language reveals that more logical organization of the rule's content, along with helpful subheadings, allows the reader to understand the restyled rule much more quickly and easily, even though the substantive meaning remains the same." However, as with the UK Tax Law Rewrite Project, some critics felt this was a missed opportunity to make substantive changes along with the restyling (e.g. Hartnett,

2006). For further reading on the US Federal Rules of Civil Procedure see also Kimble, 2005a, 2005b.

2010. US Plain Writing Act

After years of campaigning by plain language activists, in particular by the Center for Plain Language (for the build-up to the passing of the law see Cheek, 2011; Stabler, 2014: 285-288), on 13 October 2010 President Obama signed the Plain Writing Act of 2010 which requires federal agencies to write all new publications, forms and publicly distributed documents in a "clear, concise, well-organized" manner (US Plain Writing Act of 2010, Sec. 3(3)). Paradoxically, the style of writing used in this legislative text is relatively old-fashioned, but the content has far-reaching consequences because "[b]eginning not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises" (US Plain Writing Act of 2010, Sec. 4(b)). The law also provides for the training of agency employees in plain writing. The Center for Plain Language evaluates yearly how well agencies comply with the Plain Writing Act. The upshot of the Act is that US federal agencies as a whole now prioritize (at least on their websites) their commitment to plain writing. Prior to 2010 this commitment was on a more piecemeal basis. However, Stabler (2014) points out that so far many federal agencies have failed to comply with the requirements laid down in the Act. The Plain Writing Act represents the first time the US government has mandated a change in how government communicates with the public: similar attempts had been made (unsuccessfully) under the presidencies of Jimmy Carter and Bill Clinton. For further reading on the Plain Writing Act of 2010 see Cheek, 2011; Stabler, 2014.

3. Areas of resistance to plain language

It is significant that in my appraisal of ten salient moments in the evolution of plain language in the legal field, only one – the first in the list, i.e. the 1973 US New York Citibank promissory note – lies outside the public sphere: the majority are concerned with legislative drafting. As has been stated elsewhere (Williams, 2011: 146), while plain language has penetrated, to an ever greater extent, legislative drafting in the English-speaking world, contracts, wills, insurance policies and other legally binding documents pertaining to the private sphere of drafting have remained relatively immune to the calls of the Plain language movement to overhaul the outmoded, verbose style in which such documents are written, despite the positive media publicity surrounding the Citibank promissory note of 1973 and the constant campaigning of the Plain language movement. For example, Tiersma (1999: 228) remarks that "despite occasional efforts at improvement, the vast majority of wills (and perhaps to a lesser extent, trusts) are still a jumble of legalese." Lemens and Adams (2015) affirm that even today "the writing in most contracts is fundamentally flawed. Any given contract will likely be riddled with

deficient usages that collectively turn contract prose into 'legalese' — flagrant archaisms, botched verbs, redundancy, endless sentences, meaningless boilerplate, and so on." Balmford (2009) has even surmised that the origins of the current global economic and financial crisis beginning in 2008 can be put down to the impenetrable wording of contracts and documentation in the US banking and financial sectors which was to trigger the collapse of a number of major financial institutions. However, some critics (e.g. Johnson, 2015: 490) have asserted that it may be better in some cases to retain traditional terms of art in a contract rather than follow the precepts of plain language as "such terms serve as a means of lending credibility and persuading audiences within an established discourse community."

Given the numerous success stories illustrating how plain language has been positively influencing legislative drafting, the contrast with the sluggishness of most contract drafters to take plain language on board is all the more striking. As Lemens and Adams (2015) point out

> in the precedent-driven world of contracts, inertia is a force to be reckoned with. Many people don't like change or creativity. They prefer what they're used to, and they don't appreciate anyone suggesting that it's somehow lacking. And in big companies, turf battles can further impede change. Furthermore, some lawyers would likely find it challenging to be instructed to change how they draft contracts: the illusion that one writes well is hard to shake.

At the same time, it is hard to imagine that the old-fashioned legalese typifying most contracts will last indefinitely. Just as the much-publicized photo in August 2015 of a dead Syrian child washed up on a Turkish beach was to trigger a 'change of heart' among many European Union leaders about the refugee crisis after years of staunchly denying that it was a European problem that needed to be dealt with comprehensively, a widely publicized case of a contract going spectacularly wrong because of its obscure wording and having worldwide repercussions might have the same effect in persuading lawyers, and above all the companies they work for, that there is a genuine need to do away with the old-fashioned verbiage and draft contracts in plain language. But for the time being, the general mood among lawyers and companies would seem to be that there is no urgent need to reform contract drafting. This is not to deny that a number of companies and lawyers have willingly embraced the plain language ethos, or that the work of those professionals such as Kenneth Adams who have indefatigably campaigned for better contract drafting has been in vain. But plain language contract drafting has not yet become mainstream the way that plain language legislative drafting has in recent years.

A further impetus for change in contract drafting might also come as a result of advances in technology, as we will see in the following Section.

4. Further developments in plain language in the legal sphere: the potential of IT and the Internet

The revolution in information technology and the ubiquity of the Internet have profoundly affected most realms of daily life, and the legal sphere is no exception. For example, modern technology has made it feasible to update drafting style manuals on a regular basis; legislative texts are now readily available on the Net; information of a legal nature abounds through government websites, or through the postings of specific interest groups, such as law-related blogs ('blawgs'); and word processing software has made document design easy and accessible.

The Internet has undoubtedly been a major factor in persuading government agencies to find ways of improving their communication with the general public: most users today (with the exception of the elderly, many of whom are not computer-literate) will initially tend to look for the information and services they need – such as the right to unemployment benefits, maternity leave or a pension – by going on the Net and will only subsequently resort to writing or phoning or going to the office in question if the specific information they require cannot be found or dealt with online. However, when readers access the website of the government agency they are searching for, the real situation may sometimes be less rosy than is stated in some of the claims made concerning that agency's adherence to plain language. Stabler (2014: 316) observes, as regards the US Plain Writing Act of 2010, that "even though the Act has made some progress, it has not done enough." She also points out (2014: 317) that "[e]ven among lawyers, personal experience has revealed that many colleagues, including those in the legal academy, are not aware of the Act or that plain language is now required in many government communications." To overcome this problem she suggests (2014: 318) that, besides introducing enforcement procedures which are currently lacking, "agencies could solicit feedback on their writers. By adopting this technique, agencies will not only inform the public about the Act's existence, but also encourage feedback from their intended audience-readers who need to understand their documents." In such cases, the easiest way of soliciting feedback would seem to be via the Internet.

In the case of official communication with the public, then, we are witnessing – to a greater or lesser extent, depending on how attuned the government agency in question is to adopting plain language – forms of popularization of official discourse.

The question of legally binding texts, on the contrary, poses a different set of problems, also in terms of how Internet users attempt to understand and contextualize such texts. In the United Kingdom, for example, the government-sponsored 'Good law initiative' was set up in 2013 so that users can "experience good law", i.e. law that is necessary, clear, coherent, effective and accessible, to quote the five adjectives used in the website. The 'Good law initiative' is a telling example of how the Internet can be exploited to attract a growing number of readers towards an area that has traditionally been considered the opposite of user-friendly, i.e. the legal sphere. Through a combination of TED and other videos, short texts, and a 'good law blog', the 'Good law initiative' website constitutes an appealing way of conveying complex ideas and of

making matters concerning the legislative sphere, including the consultation of legislation, more accessible to the layperson (see Williams, 2015).

As regards the way legislative texts are drafted, as we have observed, in most English-speaking countries efforts have been made to adopt plain language criteria to make the texts more comprehensible by removing those traditional elements of legalese. However, given the inherently complex nature of most legislative texts, plain language can only go so far in ensuring that they can be understood by a layperson. For several years the UK has also provided Explanatory Notes which can be accessed together with the law itself in order to explain some of the more technical features of the law. These Explanatory Notes, however, were essentially written for legal professionals rather than for laypersons. In 2013 an online survey was carried out in order to find out how satisfied people were with the current format of Explanatory Notes, and since 2015 discussions have been under way to change the format into something that corresponds more closely to what the general public, and not just legal professionals, want. It is revealing that one of the major points highlighted in the survey (UK Explanatory Notes Survey 2013: 1) is that "[t]he audience for Explanatory Notes is overwhelmingly online. Very few people use the printed copies of Explanatory Notes." Equally revealing is the fact that "[t]he main reason why people don't use Explanatory Notes is that they don't know they exist" (UK Explanatory Notes Survey, 2013: 1).

This echoes the point made by Hoffmeyer (2014) and Stabler (2014) about the lack of awareness about the existence of laws or law-related tools that might be of benefit to both legal professionals and the general public, a chastening lesson for those actively involved in making law-related information more accessible to a wider public. On the other hand, we should bear in mind that before the era of the Internet, very few laypersons would have gone out of their way to track down a piece of legislation by going, for example, to their local library or writing to the appropriate authority for a printed copy of the law, probably for a fee. And in any case, even among today's Internet-savvy general public, legal topics are unlikely to be a 'must-read' (or even a 'might-read') for most surfers of the web. The big difference with respect to 20 years ago is that law-related information is now immediately available, generally free of charge, should anyone need it.

A further point that the 'Good law initiative' has underlined is that although plain language legislative drafting may have become mainstream in most English-speaking countries, the complexity of legislation continues to increase for a number of reasons, including the fact that, for example, European Union countries need to adapt their national laws to comply with the obligations laid down by the EU, and this may often lead to the drafting of longer texts (UK Office of the Parliamentary Counsel, 2013: 8). The quest for simplicity, clarity and conciseness in an increasingly complex world requires considerable effort and determination, and may not always be feasible despite one's best intentions.

Finally, we return to the question of how to make contracts, wills and other legally binding documents from the private sphere in English more readable via the Internet and modern technology. Adams – who has written prolifically on contract drafting from

a plain language perspective (see, e.g., Adams, 2013) – is aware (2014) that "currently, the materials available for those teaching contract drafting aren't comprehensive enough." There are innumerable online courses available on contract drafting itself, some free of charge, but they are mainly concerned with how to write contracts in the current verbose style, not with how to draft them in plain language. There are of course a number of webpages written by plain language exponents or by academics who advocate drafting contracts in plain language, for example Stephens (2014) or Chesler (2009). But because the majority of contracts, wills, insurance policies and other legally binding documents pertaining to the private sphere in the English-speaking world are still written in legalese, most law firms are reluctant to offer a service, such as how to draft a contract, in a style that does not correspond to the way things actually are. Naturally, there are notable exceptions, and some law firms pride themselves in their commitment to drafting plain language contracts (5). However, it would appear that even today, if one searches on the Internet (e.g. by googling "plain language contracts"), the question of introducing plain language into contracts is an endeavour largely pursued by plain language groups, government agencies and academia rather than most practising lawyers.

Stigmatizing and publicizing bad drafting habits as well as praising cases where companies or agencies have visibly improved their drafting style has long been a ploy used by a number of plain language associations, beginning with the Plain English Campaign, and awards are still given in various English-speaking countries for pieces of exceptionally good and bad writing (see Giordano 2014).

Since one of the major reasons for lawyers' conservatism in this regard is constituted by their fear that the courts may reject any wording that differs from the customary language used in contracts, one avenue worth exploring might be that of persuading judges themselves of the merits of adopting plain language. Recently media attention focused on a case highlighting a judge's decision at the Ontario Court of Justice to write a judgment in plain language (Benman, 2015; Boyd, 2015). Such cases may still be exceptional today, but then so was the Citibank's decision to write its 'iconic' promissory note in plain language back in 1973. According to Flammer (2010: 199), whose questionnaire was answered by almost 300 judges in the United States, 66 per cent prefer plain English with respect to 34 per cent who prefer traditional legalese. Painter (2009) is one of the better-known cases of a judge advocating the adoption of plain language (though he has now retired as a judge and is a member of a Cincinnati law firm). As he suggests (2007: 18): "Let's stop writing as if we were using quill pens, slumped over a Dickensian desk. […] The more clutter and cobwebs you can get out of your document, the more room you have to make your argument."

Whether or not plain language will finally become mainstream in the drafting of contracts, wills and other legally binding documents – not to mention court judgments – may well depend on the power of the Internet to 'get the message across' to growing numbers of legal professionals, particularly lawyers, many of whom may still be unaware – or indifferent to the fact – that there has been a vociferous lobby for the past 40 years or more fighting to change communication in the legal sphere so that it can be

understood by laypersons. Much has been achieved over the past 40 years, but the job is still far from complete.

Notes

1. Agreement of 17 February 2011 between the Charles River Pollution Control District and the Town of Millis, Massachusetts: http://www.millis.org/Pages/MillisMA_Admin /CRPCD%20agreement%20amendment.pdf.

2. http://www.plainlanguage.gov/examples/government/radio.cfm.

3. "Few of the provisions of the Consumer Protection Act 68 of 2008 have been more perplexing to attorneys than s 22 which deals with the plain language standard. Perhaps this is because ironically the section which explains what plain language is not written in plain language. Perhaps it is just because attorneys are not used to drafting in this way." https://jutalaw.co.za/print/events/Event/14.

4. See www.clearest.co.uk/news/2013/2/10/scots_referendum_question_is_clearer_now; UK Electoral Commission 2014: 32-33).

5. Examples can be found at the following web pages: http://www.wolfbaldwin.com/ Commercial-Litigation-Articles/Plain-Language-Consumer-Contract-Act.shtml; http://www. smartcampaign.org/tools-a-resources/276-loan-contract-summary-handout-mibanco; https:// www.invigorlaw.com/practice-areas/contracts/.

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Scottish Government 'Principles of Inclusive Communication' 2011. http://www.gov.scot/Resource/Doc/357865/0120931.pdf.

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Plain language organizations and associations

An "Inventory of organizations and proponents of plain language, clear communication and literacy" containing many of the links listed below and updated to March 2014 is available in pdf format at the icclear.net website. It is concerned with plain language in general and hence is not restricted to the legal sphere.

The following is a list of some of the major plain language organizations and associations that are concerned with legal drafting or with official communication that is related to legal or law-related matters.

Center for Plain Language (USA) is a non-profit organization helping government agencies and businesses write clearly.
Website: http://centerforplainlanguage.org/

Clarity – an international association promoting plain legal language (UK) – is "a worldwide group of lawyers and others who advocate using plain language in place of legalese" which also publishes the journal *Clarity*.
Website: http://www.clarity-international.net/otherorganizations.html

Communication Research Institute (Australia) aims "to help organisations communicate with people effectively."
Website: http://communication.org.au

Everydaylaw (Australia) is run by the Victoria Law Foundation and provides "reliable, easy-to-understand legal information" for citizens in Victoria.
Website: http://www.everyday-law.org.au/

Law and Justice Foundation of New South Wales (Australia) offers useful resources and guidelines about plain language including a bi-monthly newsletter about plain language developments.
Website: http://www.lawfoundation.net.au/information/pll/

Plain English Power "is a network of New Zealand residents promoting the use of plain English in official documents and web sites." One of its current goals is to convert the New Zealand Plain Language Bill of 2015 into law.
Website: http://www.plainenglish.org.nz/index.php

Plain English Campaign (UK) has been "campaigning against gobbledygook, jargon and misleading information" since 1979 and provides commercial services in plain language. Its Crystal Mark "now appears on more than 21,000 documents worldwide." It also produces the newsletter *Plain English* magazine.
Website: http://www.plainenglish.co.uk/

Plain Language Association International (PLAIN) (Canada) is "the international association for plain-language supporters and practitioners that promotes clear communication in any language. Our growing network includes plain-language advocates, professionals, and organizations."

Website: http://www.plainlanguagenetwork.org/

Plain Language Commission (UK) offers a series of plain language services in particular for companies including accreditation of documents with the Clear English Standard and writing skills courses for staff. It also produces the newsletter *Pikestaff*.
Website: http://www.clearest.co.uk/pages/home

Scribes: The American Society for Legal Writers (USA) "seeks to create an interest in writing about the law and to promote a clear, succinct, and forceful style in legal writing", including the publication of *The Scribes Journal of Legal Writing*.
Website: http://www.scribes.org

Writemark: Plain English Standard (New Zealand) "is an internationally recognised quality mark originally developed in New Zealand" with the aim of helping bring plain English into common use in New Zealand.
Website: http://www.writemark.co.nz/

Governmental organizations which support plain language

Australian Office of Parliamentary Counsel has long been committed to plain language drafting and it devotes an entire section of its website to plain language.
Website: http://www.opc.gov.au/plain/index.htm

Good law initiative (UK) is "an appeal to everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users of today and tomorrow" and works in collaboration with the UK Office of the Parliamentary Counsel which has become increasingly committed to plain language in recent years.
Website: https://www.gov.uk/good-law

Government of Canada "calls for plain language to be used in its communications with the public" and promotes the use of plain language in its official documents.
Website: http://www.btb.termiumplus.gc.ca/tcdnstyl-chap?lang=eng&lettr=chapsect13&info0=13

New Zealand Office of Parliamentary Counsel is "committed to improving access to legislation by ensuring that legislation is drafted as clearly and simply as possible" and has published 'Principles of clear drafting'.
Website: http://www.pco.parliament.govt.nz/clear-drafting/

Office of the Scottish Parliamentary Counsel is "committed to drafting legislation in plain language", producing the online publication in 2006 on 'Plain Language and Legislation'.
Website: http://www.gov.scot/Publications/2006/02/17093804/0

US Federal Government is responsible for the Plainlanguage.gov website which aims at "Improving Communication from the Federal Government to the Public."
Website: http://www.plainlanguage.gov/

Law-related plain language journals and newsletters

Clarity (http://clarity-international.net/clarityjournal/index.html) is the journal of the law-related plain language organization of the same name and produces two issues a year.

Pikestaff (http://www.clearest.co.uk/pages/publications/pikestaff) is the free newsletter of the Plain Language Commission which includes short articles on plain language matters, not all law-related.

Plain English magazine (http://www.plainenglish.co.uk/about-us/plain-english-magazine.html) is the newsletter of the Plain English Campaign and is published on average three times a year. It includes short articles on plain language matters, not all law-related.

Plain Language Law Newsletter (http://www.lawfoundation.net.au/publications/newsletters/pll) is a "bimonthly e-newsletter for anyone interested in new and forthcoming plain language legal information and education resources and initiatives" published by the Law and Justice Foundation of New South Wales.

The Scribes Journal of Legal Writing (http://www.scribes.org/scribes-journal-legal-writing) is the official journal of Scribes: The American Society for Legal Writers, whose chief editor for many years has been Professor Joseph Kimble of the Thomas Cooley Law School, Michigan.

The Scrivener (http://www.scribes.org/scrivener) is also published by Scribes: The American Society for Legal Writers. It appears between two and four times a year and is a newsletter that may also include information about law-related plain language matters.

TED talks on law-related plain language

Sandra Fisher-Martens: The right to understand. March 2011.
https://www.ted.com/talks/sandra_fisher_martins_the_right_to_understand (in Portuguese with English subtitles)

Alan Siegel: Let's simplify legal jargon. February 2010.
http://www.ted.com/talks/alan_siegel_let_s_simplify_legal_jargon