

The Anglicisation of English Law

GILLIAN GILLIES*

Then from the bar, harangues the bench,
In English vile, and viler French.¹
—Jonathan Swift

I INTRODUCTION

Paradoxically, “[t]he very Englishness of English law . . . may be attributed to the strange fact that medieval . . . lawyers spoke French in court” (footnotes omitted).² So observes Maitland in his “Introduction” to the *Year Books*.³ The use of French as the language of English law actually increased as its use as a vernacular language in England diminished. In fact, French remained a legal language long after it had disappeared completely from everyday life in England. Isolated within the closed profession of the law, the French of English law was thereby able to develop specialised meanings and become its own technical dialect, known as Law French. Even as late as the 17th century, the English lawyer and Law French continued to be thought by some to be coincident: “one will not stand without the other”.⁴

As early as 1359, there was an ordinance given in London changing the language of the sheriffs’ courts to English,⁵ and as early as 1362, there was a national attempt to put an end to the ever strengthening position of French in the courts of England.⁶ However, despite the early dates of these first two attempts, it took nearly 400 years to remove French from the legal record. There were, in fact, two subsequent “plain English” statutes, in 1650 and 1731 respectively, that purported to change the language of the legal class to the language of the people; yet only the last of these statutes had any significant permanent effect.

This article seeks to examine the process of official Anglicisation of the English law, with particular focus on the statutes for the eradication of

* BA/LLB(Hons). The author would like to thank Professor David V Williams of the University of Auckland Faculty of Law for his guidance, suggestions and support.

1 Jonathan Swift “The Answer” in Samuel Johnson *The Works of the English Poets, From Chaucer to Cowper* (J Johnson, London, 1810) vol 11 474 at 474.

2 JH Baker *The Common Law Tradition: Lawyers, Books, and the Law* (Hambledon Press, London, 2000) at 225 [*The Common Law Tradition*].

3 See FW Maitland (ed) *Year Books of Edward II* (Bernard Quaritch, London, 1903–1920) vol 1 at xxxvi.

4 Roger North *A Discourse on the Study of the Laws* (Charles Baldwyn, London, 1824) at 12.

5 WM Ormrod “The Use of English: Language, Law, and Political Culture in Fourteenth-Century England” (2003) 78 *Speculum* 750 at 752.

6 Statute of Pleading 1362 (Eng) 36 Edw III c 15.

Law French. After briefly outlining the origins of the influx of the French language into England and the meaning of the term “Law French”, each of the three statutes mentioned above will be discussed in turn. The political, social and legal motives behind each statute will be analysed, and their subsequent success or lack thereof will be evaluated. Special attention will be paid to the effect of two pressures toward a monolingual legal system: the prevailing nationalistic sentiment and the common perception of lawyers’ lack of ethics.

II LAW FRENCH

What is Law French?

Law French was a dialect that was to some extent derived from the Norman French language imported into England, and early on probably resembled it quite closely. However, at the time of the Norman Conquest, the laws of Normandy were written in Latin, not in French,⁷ thus Law French was not imported as a legal dialect. Much of the technical French legal vocabulary emerged in England. Law French therefore developed into a specialised language peculiar to the law courts of England and incomprehensible to the ordinary French speaker.

Over the centuries of its use, Law French became a confused mix of French and English. Baker quotes Serjeant Davies in 1615, saying that it could be easily mastered within ten days.⁸ The classic example of Law French comes from *Rolles Reports* and was cited in Frederick Pollock’s *First Book of Jurisprudence*:⁹

Richardson, ch. Just. de C. Banc al Assises at Salisbury in Summer 1631. fuit assault per prisoner la condemne pur felony que puis son condemnation ject un Brickbat a le dit Justice que narrowly mist, & pur ceo immediately fuit Indictment drawn per Noy envers le prisoner, & son dexter manus ampute & fix al Gibbet sur que luy mesme immediatement hange in presence de Court.

This example is, of course, taken from quite a late period, but it nevertheless serves to illustrate the problem that Law French became.

Historical Context

Early historians, such as William Blackstone, attribute the origin of Law

7 George E Woodbine “The Language of English Law” (1943) 18 *Speculum* 395 at 404–405.

8 JH Baker *Manual of law French* (Avebury, England, 1979) at 14.

9 Frederick Pollock *A First Book of Jurisprudence for Students of the Common Law* (2nd ed, Macmillan and Co., London, 1904) at 296.

French to the invasion of William I.¹⁰ In fact, the French language had been trickling into England for some years before the Norman Conquest. King Athelred had married Emma of Normandy around the year 1002. Their son, Edward the Confessor, considered to be the last of the Anglo-Saxon kings, had himself been raised in exile in Normandy from the age of 12 to the age of 36. When he acceded to the English throne, Edward was indeed more Norman than English, reflected by the fact that French was his preferred language.¹¹

In 1066, William the Conqueror stormed across the Channel. At that point, the doors of the English language should have been thrown wide open to French influence. The victory at Hastings, however, did not cause an immediate victory for the French language in England, nor did it secure its position as the dialect of English law. In fact, the transition in legal language was more gradual than one might think: because William I considered himself not to be a foreign usurper but rather the rightful heir to the English throne, he encouraged the continuation of the use of the English language in order to legitimise his claim.¹² French did not displace English in official written records at this time, as there are not known to be any English legal documents to have been passed down in French from William's reign.¹³ Thus, the English language was far from annihilated by the Norman Conquest and, for some years after, had the chance to maintain its position as a primary language of the administration of the law.¹⁴ The early effect of the Norman Conquest was not so much to Frenchify the English law, but to enhance the use of Latin (a language already in use in English law), such that by the 12th century, the written laws of England were exclusively in Latin.¹⁵ When England began to move away from the Latin language, however, it was not to be replaced by the English language, as might have been expected, but rather by French.¹⁶

There was a second, and significant, French influx in 1152 with the marriage of Henry II of England to Eleanor of Aquitaine,¹⁷ and the decisive moment for legal language came 14 years later, in 1166, with the establishment of the assizes of novel disseisin "which gave to every man dispossessed of his freehold land a remedy to be sought in a royal court, a French-speaking court".¹⁸ Nevertheless, it was not until the 13th century that French began to appear in official documents and legal literature in

10 William Blackstone *Commentaries on the Laws of England* (Harper & Brothers, New York, 1850) vol 3 at 317.

11 C Warren Hollister, Robert C Stacey and Robin Chapman Stacey *The Making of England to 1399* (8th ed, Houghton Mifflin Company, Boston, 2001) at 115.

12 Peter M Tiersma *Legal Language* (University of Chicago Press, Chicago, 1999) at 19.

13 Woodbine, above n 7, at 405.

14 Frederic William Maitland and Frederick Pollock *The History of English Law Before the Time of Edward I* (2nd ed, Cambridge University Press, London, 1968) vol 1 at 82.

15 *Ibid.*, at 90.

16 Douglas A Kibbee *For to Speke Frenche Trewely: The French Language in England, 1000–1600: Its Status, Description and Instruction* (John Benjamins Publishing Company, Amsterdam, 1991) at 27.

17 *Ibid.*, at 14.

18 Maitland and Pollock, above n 14, at 84.

England.¹⁹ The use of French in regular oral pleadings is more difficult to date, but it was most likely a practice that did not develop until around the same time, significantly after the Norman Conquest, perhaps not until as late as the reign of Edward I (1272–1307).²⁰ Baker notes that the use of French in English law in the 13th century is now thought not to be the direct result of the Norman Conquest, but occurred later as a result of French becoming the international language of literacy and diplomacy.²¹

The English language in this early period was by no means the global language of modern times. It would have been utterly unknown to those outside the realm of England. Even within its own country, there were such strong dialectal differences as to make it difficult for people from different regions to understand one another. The use of French allowed the law to avoid such dialectal discrepancies by providing a somewhat uniform operative language, but French also had the added advantage of being very similar to Latin, which was the language of writs.²²

Whatever the precise linguistic history, by around the reign of Edward I (1272–1307) English was the mother tongue of the realm of England, and French was a language of prestige only learnt by special instruction;²³ and yet, this period in history marks only the beginning of the predominance of French in the realm of the law.

III STATUTE OF PLEADING 1362

In 1362, Edward III passed what could be considered the first of the “plain English” laws, the Statute of Pleading 1362 (the Statute of Pleading). It is a statute that has been heralded as both the most important and least important official document for the English tongue. However, the Statute of Pleading could never have signalled complete triumph of the English language as it did not require the translation of the law to English generally, but only purported to change the language of oral pleadings. The Statute of Pleading declared:²⁴

Because it is often shewed to the King by the Prelates, Dukes, Earls, Barons, and all the Commonalty, of the great Mischiefs which have happened to divers of the Realm, because the Laws, Customs, and Statutes of this Realm be not commonly [holden and kept] in the same Realm, for that they be pleaded, shewed and judged in the

19 Woodbine, above n 7, at 423.

20 Tiersma, above n 12, at 21.

21 Baker *The Common Law Tradition*, above n 2, at 236.

22 *Ibid.*, at 236–237.

23 Woodbine, above n 7, at 399. Kibbee, above n 16, at 39, notes that by the 14th century, it is estimated that around half of those with the rank of knight would have been English monoglots.

24 Statute of Pleading, above n 6.

French Tongue, which is much unknown in the said Realm; so that the People which do implead, or be impleaded, in the King's Court, and in the Courts of other, have no Knowledge nor Understanding of that which is said for them or against them by their Serjeants and other Pleaders; and that reasonably the said Laws and Customs [the rather shall be perceived] and known, and better understood in the Tongue used in the said Realm, and by so much every Man of the said Realm may the better govern himself without offending of the Law, and the better keep, save, and defend his Heritage and Possessions; and in divers Regions and Countries, where the King, the Nobles, and other of the said Realm have been, good Governance and full Right is done to every Person, because that their Laws and Customs be learned and used in the Tongue of the Country: The King, desiring the good Governance and Tranquility of his People, and to put out and eschew the Harms and Mischiefs which do or may happen in this Behalf by the Occasions aforesaid, hath ordained and stablished by the Assent aforesaid, that all Pleas which shall be pleaded in [any] Courts whatsoever, before any of his Justices whatsoever, or in his other Places, or before any of His other Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English Tongue, and that they be entered and inrolled in Latin; and that the Laws and Customs of the same Realm, Terms, and Processes, be holden and kept as they be and have been before this Time; and that by the ancient Terms and Forms of [the Declarations] no Man be prejudiced, so that the Matter of the Action be fully shewed in the Declaration and in the Writ . . . (footnotes omitted)

The preamble calls attention to the fact that the French language in England had, by the 14th century, already lost its status as an everyday language and that knowledge of French was rapidly declining. The great irony is that the statute itself was written in French in the Rolls of Parliament. In fact, French usage was at this time increasing in only one area — its official employment as a language of the law.²⁵

Motives Behind the Statute

The causes leading to the Statute of Pleading are ambiguous. There are three socio-political factors that most likely would have induced the Parliament of 1362 to attempt to remove French from the legal sphere: English nationalism, the Black Plague and ethical concerns about the dealings of lawyers.

²⁵ Kibbee, above n 16, at 39.

1 English Nationalism

Politically, Law French was a problem not due to its being “much unknown”,²⁶ but rather to its foreignness — its “Frenchness”. In England, the later Middle Ages were marked by a growing sense of linguistic and political nationalism.²⁷ The 14th century saw the development of an appreciation for the English language,²⁸ together with a corresponding discontent with the prominent and increasing position of the French language in English official society.²⁹ In 1308, Edward II was forced by the barons of England to take a coronation oath, which was, remarkably, made in English.³⁰ As Douglas Kibbee notes:³¹

[T]he economic and social transformation that established the middle class as a force in English life also led to an awakening of national consciousness, and a dislike of all things foreign, including foreign languages.

During this period, for example, English was beginning to gain ground in the realm of literature in the works of Geoffrey Chaucer.

Political relations between England and France had long been strained; “the Anglo-French controversy had begun ... with the Norman Conquest, when the English monarchy first became involved in the preservation and extension of French territories”.³² By 1362, political tensions (and more particularly linguistic tensions) between England and France were hardly a novelty. Although the English monarchy had significant landholdings on the continent, these remained duchies of France, owing allegiances to the French King. As familial ties between England and France began to break down, frequent and considerable amounts of money and manpower were required to maintain these holdings. This continued “cross-channel” conflict had led to a heightened awareness of the fact that French was a foreign tongue.

In 1295, Edward I, already at war with France, summoned the higher clergy of the country to Parliament in an effort to garner further support from England.³³ The summons declared that Philip of France was threatening to eradicate the English language, so battle was necessary for the preservation of English.³⁴ The persuasiveness of this argument indicates the rising importance of English: had French been the favoured language

26 Statute of Pleading, above n 6.

27 Kibbee, above n 16, at 60.

28 OF Emerson “English or French in the Time of Edward III” (1916) 7 *Romanic Review* 127 at 137.

29 Kathleen Lambley *The Teaching and Cultivation of the French Language in England During Tudor and Stuart Times* (The University Press, Manchester, 1920) at 18.

30 Hollister, Stacey and Stacey, above n 11, at 310.

31 Kibbee, above n 16, at 60.

32 Hollister, Stacey and Stacey, above n 11, at 297.

33 Woodbine, above n 7, at 424.

34 *Ibid.*

at the time, such an argument would have had no effect. Evidently, at this point, English was more than just the vulgar tongue of the lower classes. Under Edward III, this same fear was revived in 1346 when the discovery of the Ordinance of Normandy supposedly revealed a French plot for a second Norman conquest.³⁵ The English Rolls of Parliament made a record (in French) of the ordinance as a plan to “destruire & anientier tote la Nation & la Lange Engleis”.³⁶ Edward III issued a document to the heads of the Dominican Friars and Augustines titled “De Causae Guerrae, contra Philippum de Valesio, Clero & Populo exponenda”, which also highlights (in Latin) the intended destruction of the English language as a cause of the war.³⁷

In the mid-14th century, English–French relations were particularly difficult. France, under the direct control of the king, was a small territory around Paris. The rest of the country was divided into various duchies, which were technically vassals of the King of France under the feudal system. However, the Dukes and Counts who held them were for the most part so powerful that they made no pretence of performing their feudal obligations.³⁸ The Treaty of Paris in 1259, which ended the war between Edward I and the King of France, had forged an agreement between the Kings of England and France that defined the relationship between the Duchy and the French Crown.³⁹ It was agreed that the King of England, as a duke and peer of France, was the vassal of the King of France. Thus, when Philippe de Valois ascended to the French throne in 1328, he summoned Edward III, as his vassal, to pay homage.⁴⁰ The territory of Gascony had been disputed for some years, so Philip thought to win that territory on British soil by aiding the Scots against Edward III.⁴¹ Feeling both humiliated and provoked, Edward III in 1337 launched what would become the Hundred Years’ War against France, claiming to be the legitimate king of France himself.⁴² The Hundred Years’ War was comprised of periods of fighting interspersed with times of peace; the Statute of Pleading was passed during an interval of peace as a result of the Treaty of Brétigny. That Treaty was ratified in 1360 and required that Edward III renounce his claim to the French throne.⁴³ Thus, while momentarily peaceful, there was a certain need to assert the very “Englishness” of England.

35 Kibbee, above n 16, at 34.

36 To “destroy and annihilate totally the English nation and language”: John Strachey (ed) *Rotuli Parliamentorum; Ut Et Petitiones, Et Placita in Parlamento Tempore Edward R III* (London, 1767–1777) vol 2 at 158.

37 Emerson, above n 28, at 139–140.

38 Edward McNall Burns and Philip Lee Ralph *World Civilizations from Ancient to Contemporary* (3rd ed, WW Norton & Company Inc, New York, 1964) vol 1 at 422.

39 GP Cuttino “Historical Revision: The Causes of the Hundred Years War” (1956) 31 *Speculum* 463 at 463.

40 G Templeman “Edward III and the Beginnings of the Hundred Years War” (1952) 2 *Transactions of the Royal Historical Society* 69 at 75.

41 *Ibid*, at 73.

42 *Ibid*, at 75.

43 John Le Patourel “The Treaty of Brétigny 1360” (1960) 10 *Transactions of the Royal Historical Society* 19 at 20.

2 *The Black Plague*

In addition to the tense political situation of the time, the Parliament that passed the Statute of Pleading may have had more practical and pressing motivations for the statute. The year 1348 saw the Black Death reach England with catastrophic results. Within a year, the disease had killed between a third and three quarters of the English population.⁴⁴ This death toll included an estimated 40 per cent of the English clergy.⁴⁵ In 1361, only one year before the Statute of Pleading was passed, the country was ravaged by a second wave of the Plague. One source suggests that this second occurrence had particular impact on the educated upper classes.⁴⁶ As French was by this time a learned language, this devastation of the learned population would have had equally shattering results for the French language in England. Whether the Plague was truly worse for the upper classes or whether it was the overall catastrophic effect of the plague that contributed to the breakdown of the feudal order, the rising middle class, which comprised primarily of English monoglots, had a sudden opportunity to rise in power as people were needed to replenish lost positions.⁴⁷

3 *The Professional Class of Lawyers*

Pleading was a technical skill because it required both knowledge and understanding of the law as well as knowledge and understanding of French.⁴⁸ The Statute of Pleading states that French is “much unknown” in the realm of England.⁴⁹ This acknowledgement of the linguistic situation of England indicates that the French language of the courts was already an artificial legal language, meaning that the lawyer would be speaking a different language at home than in the courtroom.⁵⁰ However, the statute was not an attack on all learned languages nor an attempt to Anglicise the law generally, but rather, it was an attack on the misuse of one learned language in particular, French.⁵¹ Latin at this point was not much better known than French in England; however, the Statute of Pleading did not legislate against its use. Rather, it specifically and explicitly states that Latin should continue as the written language of the law. Kibbee notes that “the Statute of 1362 is an attempt to curb the abuses of the legal monopoly, a mere century after it was created”.⁵²

44 Maurice Hugh Keen *England in the Later Middle Ages: A Political History* (2nd ed, Routledge, London, 2003) at 138.

45 Kibbee, above n 16, at 58.

46 Eileen Power *Medieval English Nunneries c.1275 to 1535* (Cambridge University Press, Cambridge, 1922) at 178.

47 Kibbee, above n 16, at 59.

48 Ormrod, above n 5, at 766.

49 Statute of Pleading, above n 6.

50 George W Keeton *The Norman Conquest and the Common Law* (Ernest Benn Ltd, London, 1966) at 165.

51 Kibbee, above n 16, at 64.

52 *Ibid.*, at 63.

In 1217, there was a church decree that stated that “[n]either *clerici* nor priests are to appear as *advocati* in a secular tribunal (*foro*) unless in their own cases or in those of poor persons” (footnotes omitted).⁵³ There is certainly evidence from the time of Edward I of an emerging professional class of technically trained pleaders in the common courts.⁵⁴ The legal monopoly was established in 1292 when Edward I directed that his justices provide attorneys and apprentices for every county to serve the King and the people, thereby limiting the practice of law and putting the control of the legal profession in the hands of the justices.⁵⁵

Thus, the mid-13th century saw a significant shift from the retention of ecclesiastical legal counsel to the retention of lay counsel.⁵⁶ This laicisation of the profession was accompanied by a notable change in the peoples’ perceptions. These professional pleaders quickly developed a technical language of their own, most of the terminology of which was not used in Normandy.⁵⁷ There were clear advantages with developing a vocabulary free of the corruptions that come from everyday usage of vernacular dialects.⁵⁸ However, the dialect of the courts, being unknown to the English people, allowed for deceit by the legal profession. By the end of the 13th century, complaints about the legal class had become common.⁵⁹

The preamble of the Statute of Pleading says that the language of pleading should be changed to English because of this language barrier:⁶⁰

[L]es g’ntz meschiefs q̄ sont advenuz as plusours du realme de ce q̄ les leyes custumes & estatutz du dit realme ne sont pas conuz cōement en mesme le realme, p cause qils sont pledez monstrez & juggez en la lange Franceis, qest troḡ desconue en dit realme; issint q̄ les gentz q̄ pledent ou sont empledez en les Courtz le Roi & les Courtz dautres, nont entendement ne conissance de ce qest dit p’ eulx ne contre eulx p lour Sergeantz & auts pledours[.]

53 As quoted in Herman Cohen *A History of the English Bar and Attornatus to 1450* (Sweet & Maxwell, London, 1929) at 159 (emphasis in the original).

54 Woodbine, above n 7, at 400.

55 Maitland and Pollock, above n 14, at 216. See *De Attornatis et Apprenticiis*, translated in Cohen, above n 53, at 281: “His Majesty commanded John of Metingham and his brethren (*sociis*) that they should in their discretion look out for and appoint a certain number from every county out of those of the best standing and the most willing learners ... according as they think it would be good for their courts and the King’s subjects; further, that those so chosen shall follow the court and deal with the business there and no one else shall. And it appears to the King and his Council that one hundred and forty such persons may be enough. Nevertheless, the said judges may, if they think fit, create more or less. And of the remainder [of the candidates] it shall be determined according to the discretion of the said judges” (footnotes omitted).

56 Anthony Musson *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants’ Revolt* (Manchester University Press, Manchester, 2001) at 48.

57 Baker *The Common Law Tradition*, above n 2, at 239.

58 Baker *Manual of Law French*, above n 8, at 11.

59 Kibbee, above n 16, at 64.

60 Statute of Pleading, above n 6: “the great Mischiefs which have happened to divers of the Realm, because the Laws, Customs, and Statutes of this Realm be not commonly [holden and kept] in the same Realm, for that they be pleaded, shewed and judged in the French Tongue, which is much unknown in the said Realm; so that the People which do implead, or be impleaded, in the King’s court, and in the Courts of other, have no Knowledge nor Understanding of that which is said for them or against them by their Serjeants and other Pleadors” (footnotes omitted).

This indicates that the true intention behind the Statute of Pleading was not so much to put an end to the official use of French in England — after all, there was nothing to indicate the abolition of the use of French in Parliament — but more to put an end to the malpractice of lawyers that was enabled by the mystery of their tongue.

Effect of the Statute

It has been said that the Statute of Pleadings had little or no effect:⁶¹

[There is a] widespread assumption among medieval chroniclers and modern scholars that the Statute of Pleading was a redundant piece of legislation blithely ignored by a legal profession determined to maintain arcane practice and resist the demystification of its processes.

It is true that the Statute of Pleading was largely ineffective, at least directly. In the century after the Statute of Pleading was passed, far from spelling the end for Law French, its usage increased. Not only did oral French continue to be used in the courts, but it also became the regular language of the statutes of England,⁶² with Latin being reserved only for statutes with particular ecclesiastical relevance. However, the Statute of Pleading did serve to encourage the use of English elsewhere: for example, Parliament was opened in English for the following two years.⁶³

Whether or not the continued use of Law French was a conscious decision by the legal profession to maintain its mysterious monopoly, it would have been an impressive achievement to overturn communication patterns a century in the making. By 1362, the legal profession was well set in its use of French. The legal teaching of the time was for the most part in French, and in the absence of any English legal instruction, it would have been risking too much for the profession suddenly to suddenly change languages.⁶⁴ The essential manuscripts of the law were all written in French; no text of practical significance was written in or transcribed into English. Legal French was in essence a language independent of the Norman court or life across the Channel. It was a specialised vocabulary that had evolved in England for English legal needs; therefore, there was no English language equivalent. Thus, the Statute of Pleading had little, if any, immediate effect on the legal profession, and did not represent the end of Law French.

61 Ormrod, above n 5, at 772.

62 David Mellinkoff *The Language of the Law* (Little, Brown and Company, Boston, 1963) at 112–114.

63 Kibbee, above n 16, at 65.

64 Mellinkoff, above n 62, at 113–114.

IV THE STATUTE OF 1650

In 1649, John Warr questioned “[w]hy ... the law [was] still kept in an unknown tongue, and the nicety of it rather countenanced than corrected” (footnotes omitted).⁶⁵ The law of England, because of its specialised language, had remained incomprehensible and therefore inaccessible to even well educated and literate Englishmen for a further 300 years after the Parliament of Edward III passed the Statute of Pleading. In 1650, Cromwell’s government responded and unanimously passed “An Act for Turning the Books of the Law and all Proces and Proceedings in Courts of Justice into English”. This Act marked the first time that lawyers were actually required to give up Law French, if only for a brief period. It required:⁶⁶

That all the Report-Books of the Resolutions of Judges, and other Books of the Law of England, shall be Translated into the English Tongue: And that from and after the First day of January, 1650, all ReportBooks of the Resolutions of Judges, and all other Books of the Law of England, which shall be Printed, shall be in the English Tongue onely. And be it further Enacted by the Authority aforesaid, That from and after the First Return of Easter Term, which shall be in the year One thousand six hundred fifty and one, all Writs, Proces and Returns thereof, and all Pleadings, Rules Orders, Indictments, Inquisitions, Certificates; and all Patents, Commissions, Records, Judgements, Statutes, Recognizances, Rolls, Entries, and Proceedings of Courts Leet, Courts Baron, and Customary Courts, and all Proceedings whatsoever in any Courts of Justice within this Commonwealth, and which concerns the Law, and Administration of Justice, shall be in the English Tongue onely, and not in Latine or French, or any other Language then English, Any Law, Custom or Usage heretofore to the contrary notwithstanding. And that the same, and every of them, shall be written in an ordinary, usual and legible Hand and Character, and not in any Hand commonly called Court-hand. And be it lastly Enacted and Ordained. That all and every person and persons offending against this Law, shall for every such Offence lose and forfeit the full Sum of Twenty pounds of lawful English Money

Although this “plain English” law of 1650 (Statute of 1650) applied to both Law French and Law Latin, the documentary evidence would suggest that the primary target of the statute was the dialect of the lawyer, that is, Law French.

⁶⁵ John Warr *The Corruption and Deficiency of the Laws of England, Soberly Discovered: Or, Liberty Working up to Its Just Height* as quoted in *ibid*, at 126.

⁶⁶ An Act for Turning the Books of the law, and all Proces and Proceedings in Courts of Justice, into English 1650 (Eng).

In contrast to the oral focus of the previous Statute of Pleading, the focus of the Statute of 1650 was the written language of the law. The various legal documents and proceedings that were to be subject to the language change were carefully enumerated. Not only were official administrative papers and judicial decisions to be Anglicised, but all books of the law, including profession-specific treatises, were to be printed in English. It is also worth noting that the Statute of 1650 provided not only for the Anglicisation of future books, processes and proceedings of the law, but also dictated the translation of all previous legal publications. What was required was a thorough rooting out of French.

The other major difference between the Statute of Pleading and the Statute of 1650 was that the later statute actually proclaimed it to be a punishable offence to proceed in a manner contrary to the Act, imposing liability for the then very sizable fine of £20.

Motives for the Statute of 1650

The combination of factors that united to produce England's volatile state in the 17th century, and led to the outbreak of Civil War, were much the same as that which contributed to the climate of discontent with regard to the language of the law. Similar to the period in the 14th century that had produced the first legal Anglicisation statute, the Commonwealth period in England was a period of English nationalism. The Renaissance saw the birth of the philosophy of humanism, which spread anti-jargon ideals; humanism in turn produced constitutional myths idealising the Anglo-Saxon kings and stirring anti-Norman sentiments. Further, there was the ever-present dissatisfaction with the ethics of the legal profession, perceived as devious and self-serving. One significant difference in the 17th century was the added pressure of the religious zeal of the Puritans.

1 Humanism in the 16th Century

The Italian Renaissance marked the development of the *humanista* pedagogical philosophy. This philosophy reached England as humanism around the 16th century. Humanism heavily criticised scholasticism, the Aristotelian educational philosophy that had governed medieval universities. Humanism took a more holistic view to education, as opposed to the highly rationalised and intellectualised scholasticism.⁶⁷ More particularly, the humanists took issue with the scholastics' verbal technicality.⁶⁸ The humanists felt that language use should be more than academic; they believed that language should be practical and not

67 Stephen Gersh and Bert Roest *Medieval and Renaissance Humanism: Rhetoric, Representation, and Reform* (Brill, Leiden, 2003) at 130.

68 *Ibid.*, at 123.

abstracted from its real and living context.⁶⁹ Hence, from the middle of the 16th century, the Common Law of England was criticised by humanists for its use of technical French and Latin. In 1533, Elyot, a humanist and a lawyer himself, wrote of the law in *The Book Named The Governour*, saying:⁷⁰

[R]everend study is involved in so *barbarous* a language, that it is not only *void of all eloquence*, but also being separate from the exercise of our law only, it serveth to no commodity or necessary purpose, no man understanding it but they who have studied the laws.

Law French in particular was the subject of harsh criticism and ridicule as it had degenerated rapidly in the 16th century, to the point where it had the appearance of utter nonsense.⁷¹ An oft-quoted example, given earlier in this article,⁷² of the gibberish that Law French had at times become can be found in Sir Frederick Pollock's *First Book of Jurisprudence*.⁷³ In March 1614, George Ruggle's play *Ignoramus* was first staged at Cambridge University.⁷⁴ *Ignoramus* was extremely popular and became one of the most successful academic plays.⁷⁵ The play, which satirised the common lawyer and the languages of the English law, exemplifies the humanist criticisms of Law French, mimicking the extremes of that legal dialect and making it sound utterly nonsensical.⁷⁶

2 *English Nationalism: Historiography, Anti-Normanism and the Norman Yoke Theory*

Sir Bulstrode Whitelocke was a prominent political figure of the English Puritan Revolution and a leading member of the Council of State under the Rump Parliament. In his *Memorials of the English Affairs*, Whitelocke gives a record of the speech he made to Parliament in November of 1650 on the topic of the English laws. He opens his speech claiming that it is a response to those that spoke in derogation and dishonour of the laws of England:⁷⁷

69 Lodi Nauta "Lorenzo Valla and the Rise of the Humanist Dialectic" in James Hankins (ed) *The Cambridge Companion to Renaissance Philosophy* (Cambridge University Press, Cambridge, 2007) 193 at 195.

70 Thomas Elyot *The Book Named the Governour* (John Hernaman and Ridgeway & Sons, London, 1834) at 33 (emphasis added).

71 EFJ Tucker "Ruggle's Ignoramus and Humanistic Criticism of the Language of the Common Law" (1977) 30 *Renaissance Quarterly* 341 at 342.

72 See Part II above.

73 Pollock, above n 9, at 296.

74 Tucker, above n 71, at 341.

75 *Ibid.*

76 *Ibid.*, at 342.

77 Bulstrode Whitelocke *Memorials of the English Affairs* (Nathaniel Ponder, London, 1682) at 475–476 (emphasis added).

A worthy Gentleman was pleased to affirm with much confidence (as he brought it in upon this Debate) That the Laws of England were introduced by William the Conqueror, *as ... might appear by their being written in the French Tongue.*

... That our Laws were introduced by William the Conqueror, out of France, I shall acknowledge, That he hath several both Foreign and Domestick Authors whom he may follow therein

...
All of them affirm, That the Laws of England were introduced by William the Conqueror I shall endeavour to shew you, That the Original of our Laws is not from the French; that they were not introduced by William the Conqueror out of Normandy: And I shall humbly offer to you my Answer to some of their Arguments who are of a contrary Opinion.

It is significant to note Whitelocke's reference to the many domestic authors who wrote in support of the theory that the laws of England were indeed French in origin. The English Civil War became, in many ways, a war of historical views. Whitelocke himself in this speech attempted to defend the "Englishness" of English law, claiming that though it was practised in the French tongue, the laws were themselves the products of England. To an extent, the battle of historiography continued into the republican Parliament.

One of the founding fathers of Renaissance humanism was Francesco Petrarch.⁷⁸ The crucial element of the theory he proposed "was an extraordinary sensitivity to history as well as a sense of self in relation to the record of the past".⁷⁹ In Europe, a by-product of this humanist culture of the Renaissance was the constitutional myth; in England this took form as the myths of the ancient constitution and the "Norman Yoke" theory. These were "sharply opposed theories", "[o]ne stress[ing] the unbroken continuity of common law, which had carried Anglo-Saxon liberties into post-conquest England: the other, ... attack[ing] the whole existing law as an alien imposition".⁸⁰ Both theories brought before Parliament were fuelled by anti-royalist sentiment and an effort to refute the traditional arguments for absolutism. Moreover, the theories had in common an appreciation for the free Anglo-Saxon past and dissatisfaction with the current monarchical institution. However, they differed in what they viewed as required for an effective revolution.

The theory of the ancient constitution in England referred to the idea that the Common Law stretched back, unbroken, through time immemorial to some idealised Anglo-Saxon past. This was the theory revived by Coke

78 Donald R Kelley (ed) *Versions of History from Antiquity to the Enlightenment* (Yale University Press, New Haven, 1991) at 220.

79 *Ibid.*

80 Christopher Hill *Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century* (Secker & Warburg, London, 1965) at 60.

and supported by the *Mirror of Justices*⁸¹ (ironically, a work originally written in French). This interpretation rejected as fact the cataclysmic effect of the Norman Conquest. As for the Common Law, this meant that the ancient English laws were still intact and had not been replaced by Norman law.⁸² Thus, there would be no need to uproot the Common Law. This seems to be the theory defended by Whitelocke in his parliamentary speech where he strongly advocated that “the conquering of the Land is one thing, the introducing of new Laws is another thing”.⁸³

The more radical “Norman Yoke” theory appealed to those from the underprivileged classes of England. This theory argued as follows:⁸⁴

[B]y virtue of their conquest of England, the Normans destroyed the Saxon form of government, seized the land and distributed it among the followers of William the Conqueror, and imposed an alien legal system that locked these injustices permanently into place.

According to it, the aristocracy (deemed to be descendants of the Norman invaders) and its laws were revealed to be the true oppressors of the English.⁸⁵ Thus, the only way to free the people of England would be to destroy the entirety of the Common Law and to put in its place a Civil Law system.⁸⁶

[Y]ea, let us either confess and profess ourselves for ever mere Vassals and Slaves, or else attempt to uncaptive ourselves, ... that is, ... to endeavour these following Particulars:

...

4. That all Laws and Usages introduced from *Normandy* be, *eo nomine*, abolished, and a Supply made from *St. Edward's* Laws, or the Civil, and that our Laws be divested of their *French* Rags ... and restored into the *English* or *Latin* Tongue, unless, perhaps, it may seem honourable for *Englishmen* to be still in the Mouth of their own Laws no further free than *Frenchified*, and that they only, of all mortal Men, should imprison their Laws in the Language of their Enemies.

That statement, taken from a contemporaneous treatise, reveals the very strength of anti-Norman sentiment prevalent in England in the middle of

81 Andrew Horne *The Mirror of Justices* (B Quaritch, London, 1895).

82 Hans S Pawlisch “John Davies, The Ancient Constitution, and Civil Law” (1980) 23 *The Historical Journal* 689 at 693.

83 Whitelocke, above n 77, at 477.

84 Martin Dzelzainis “History and Ideology: Milton, the Levellers, and the Council of State in 1649” (2005) 68 *Huntington Library Quarterly* 269 at 270.

85 Alan Harding *A Social History of English Law* (Cox & Wyman Ltd, London, 1966) at 247.

86 John Hare “St Edward’s Ghost, or, Anti-Normanism: Being a pathetic complaint and motion, in the Behalf of our English nation, against her grand, yet neglected grievance, Normanism” in William Oldys (ed) *The Harleian Miscellany; Or, a Collection of Scarce, Curious, and Entertaining Pamphlets and Tracts, as well in Manuscript as in Print, Found in the late Earl of Oxford’s Library* (Gray’s Inn, London, 1744–1746) vol 8 at 98–99 (emphasis in the original) [*The Harleian Miscellany*].

the 17th century. Notice that again it is the French language in particular that is vilified, as it is requested that the law be “restored into English or Latin”. In addition, it demonstrates the reverence with which Saint Edward the Confessor was regarded (who was ironically almost more Norman than English himself). The effect of this myth with regard to the English legal language was to brand Law French as an “evident and shameful badge ... of tyranny and foreign servitude”.⁸⁷ Elements of this vilification can be found in the contemporary works of Milton, who also refers to “gibberish laws, though the badge of their ancient slavery”.⁸⁸

Law French was thus caught in the middle of this historiographical battle. The only apparent common ground was a mutual patriotism and hence a mutual dislike for the barbaric tongue of the law. Thus, even Whitelocke, at the end of his defensive parliamentary address, declared:⁸⁹

It is not unreasonable that the Law should be in that Language which may best be understood by those, whose Lives and Fortunes are subject to it, and are to be governed by it.

Following this peroration, the Act to Anglicise the law was passed unanimously by Parliament.

3 *Ethics of the Legal Profession*

The anti-Normanism that had stemmed from the myth of the “Norman Yoke” had also fostered corresponding arguments against the corrupt lawyers that the “Norman” legal system had produced. In 1649, John Warr wrote that the interests of lawyers in England rested on corruption and not weakness, blaming the potency of lawyers on Law French:⁹⁰

The Unknownness of the Law, being in a strange Tongue; whereas, when the Law was in a known Language, as before the Conquest, a Man might be his own Advocate. But the Hiddenness of the Law, together with the Fallacies and Doubts thereof, render us in a Posture unable to extricate ourselves; but we must have Recourse to the Shrine of the Lawyer, whose Oracle is in such Request, because it pretends to resolve Doubts.

As persuasive as Warr’s argument might seem, his history is flawed, in that, even before the Norman Conquest of 1066, the laws of England were not purely English. In fact, the greater part of the law had been written in Latin for some time before the invasion of William I.

87 Blackstone, above n 10, at 317.

88 John Milton “The Tenure of Kings and Magistrates” in S Manning (ed) *Selections from the Prose Writings of John Milton* (J Heaton & Son, London, 1862) at 122.

89 Whitelocke, above n 77, at 480.

90 John Warr “The Corruption and Deficiency of the Laws of England, soberly discovered” in *The Harleian Miscellany*, above n 86, vol 3 239 at 247.

In 1650, John Jones in *The New Returna Brevium* questioned:⁹¹

Would not therefore the common practice of the Lawes and their pleadings in English as at first they were bee more commodious and usefull to instruct all understanding Englishmen for their owne good to become experimentall sufficient Lawyers in their owne causes, than the moderne custome of hotch-potch French and Latine imposed by Lawyers for their owne gaine to instruct few others of their owne generation, to cheat the universalitie of the Nation of their rights and understandings, and make themselves and their Counsels most learned in others affairs?

There is much similarity between the feelings prominent in the 13th century and those of the 17th century. The play *Ignoramus*, mentioned above as demonstrating anti-jargon sentiment, also illustrated the general dislike of the legal profession. Ruggle uses the lawyer as the vice figure of the play, but the lawyer as devil motif was not a new one.⁹² The play contains an exorcism scene where the lawyer cannot stop the flow of jargon as “a parody on the old tradition that the devil speaks an unknown tongue”.⁹³

4 Puritanism

William Style’s dissatisfaction with the plain English law, expressed in the “Introduction” to his *Narrationes Modernae*, highlights another of the social pressures that led to the Statute of 1650:⁹⁴

I have made these Reports speak English, not that I believe they will be thereby generally more usefull, ... but I have done it in obedience to authority, and to stop the mouths of such of this English age, *who ... think it vain, if not impious to speak or understand more than their own mother-tongue.*

The Puritans, at the time the main power in Parliament and led by Oliver Cromwell, were ardent Protestants with a passion not only for plain living but also for plain language.⁹⁵ Their religious zeal was responsible for such actions as the stripping of church decoration, as well as the stripping of personal ornamentation. It also manifested itself in a purist nationalism, as discussed above.⁹⁶ Style’s comments, although not explicitly mentioning the Puritans, suggest that this mantra of “stripping down” extended even to the language of the law itself.

91 John Jones *The New Returna Brevium* (The Matthewes, London, 1653) at 7–8.

92 EFJ Tucker *A Critical Edition of Fernando Parkhurst’s Ignoramus, The Academical Lawyer* (Garland Publishing Inc, New York, 1987) at xxxii–xxxiii.

93 *Ibid.* at xxxvi.

94 William Style *Narrationes Modernae* (FL, London, 1658) at “Introduction” (emphasis added).

95 Tiersma, above n 12, at 35.

96 See Part IV(2) above.

Success?

The later part of the Act, requiring that future report books, resolutions of judges and all other books of law be printed solely in English, was obeyed until 1 August 1660, but there is nothing to indicate that any official effort was instigated to translate all the old reports and books.⁹⁷ It was recognised, however, that translation raised issues of mistranslation and associated problems, so in 1651 an additional Act was passed, which stated explicitly that mistranslation would not be considered a voidable error for any court proceeding.⁹⁸

Be it Enacted by this present Parliament, and by the Authority thereof, That the Translation into English of all Writs, Proces and Returns thereof, and of all Patents, Commissions, and all Proceedings whatsoever in any Courts of Justice within this Commonwealth of England, and which concerns the Law and Administration of Justice, to be made and framed into the English Tongue, according to an Act, Entituled, An Act for turning the Books of Law, and all Proces and Proceedings in Courts of Justice, into English, be, and are hereby referred to the Speaker of the Parliament, the Lords Commissioners of the Great Seal of England, the Lord Chief Justice of the Upper-Bench, the Lord Chief Justice of the Common-Pleas, and the Lord Chief Baron of the Exchequer for the time being, or any two or more of them; and what shall be agreed by them, or any two or more of them in translating the same, the Lords Commissioners shall and may affix the Great Seal thereunto, in Cases where the same is to be fixed: And also that Mis-translation, or Variation in Form by reason of translation, or part of Proceedings or Pleadings already begun, being in Latin and part in English, shall be no Error, nor void any Proceedings by reason thereof.

The legal profession was not itself overly enthusiastic about this forced abandonment of what they considered to be the necessary language of the law. Mellinkoff notes that Sir John Birkenhead “parodied the title of the new law as: ‘An Act for turning all Lawes into *English*, with a short Abridgment for such new Lawyers as cannot write and read’” (footnotes omitted).⁹⁹ Many of the legal profession felt that the law could not be properly expressed in English. Sir John Davies, Attorney-General for Ireland, although willing to admit that Law French was an artificial tongue peculiar to the English Courts, argued as follows:¹⁰⁰

⁹⁷ Baker *Manual of law French*, above n 8, at 13.

⁹⁸ An Additional Act concerning the proceedings of the Law in English 1651 (Eng), cited in CH Firth and RS Rait (eds) *Acts and Ordinances of the Interregnum, 1642–1660* (Wm W Gaunt, Holmes Beach, 1969) vol 2 at 510–511.

⁹⁹ Mellinkoff, above n 62, at 128 (emphasis in the original).

¹⁰⁰ JGA Pocock *The Ancient Constitution and Feudal Law* (Cambridge University Press, Cambridge, 1987) at 34.

[C]enturies of use had invested its words with meanings so exactly appropriate to the legal terms and ideas they were expected to convey that it could not possibly be replaced by any other language without serious loss to the law's intelligibility.

With the restoration of the monarchy came the repeal, in 1660, of the "pretended Act" of 1650 by "An Act for the Continuance of Processe and Judiciall Proceedings".¹⁰¹ Law French returned to the law and many of the case reports were again in Law French.¹⁰²

V THE STATUTE OF 1731

Despite the brief success of the Commonwealth Statute of 1650, after it was declared void in 1660 the legal profession very much reverted to its old practices. Thus, for almost a century, the language of the law remained veiled in mystery. In 1731, the final "plain English" statute was passed (the Statute of 1731), "notwithstanding the Opposition of the whole Body of the Lawyers".¹⁰³ With it the Parliament of the United Kingdom finally put an official end to the use of Law French and Law Latin. No law books appear to have been published in Law French after this date, which would indicate success where the other statutes had failed. The Statute of 1731 reads as follows:¹⁰⁴

Whereas many and great Mischiefs do frequently happen to the Subjects of this Kingdom, from the Proceedings in Courts of Justice being in an unknown Language, those who are summoned and impleaded having no Knowledge or Understanding of what is alledged for or against them in the Pleadings of their Lawyers and Attornies, who use a Character not legible to any but Persons practising the Law: To remedy these great Mischiefs, and to protect the Lives and Fortunes of the Subjects of that Part of *Great Britain* called *England*, more effectually than heretofore, from the Peril of being ensnared or brought in danger by Forms and Proceedings in Courts of Justice, in an unknown Language, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, of *Great Britain* in Parliament assembled, and by the

101 An Act for the Continuance of Processe and Judiciall Proceedings 1660 (Eng) 11 & 12 Cha II c 3.

102 Tiersma, above n 12, at 35.

103 *The History and Proceedings of the House of Commons 1660-1743* (House of Commons Parliamentary Papers, London, 1743) vol 7 (23 January 1727–14 June 1733) at 83 [House of Commons Papers].

104 An Act that all Proceedings in Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language 1731 (GB) 4 Geo II c 26, reproduced in Owen Ruffhead *The Statutes at Large, From the Third Year of the Reign of King George the Second To the Twentieth Year of the Reign of King George the Second* (London, 1769) vol 6 at 65 (emphasis in the original) [Statute of 1731].

Authority of the same, That from and after the twenty-fifth Day of *March* one thousand seven hundred and thirty-three, all Writs, Process and Returns thereof, and Proceedings thereon, and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, and all Patents, Charters, Pardons, Commissions, Records, Judgements, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever in any Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, and which concern the Law and Administration of Justice, shall be in the *English* Tongue and Language only, and not in *Latin* or *French*, or any other Tongue or Language whatsoever, and shall be written in such a common legible Hand and Character, as the Acts of Parliament are usually ingrossed in, and the Lines and Words of the same to be written at least as close as the said Acts usually are, and not in any Hand commonly called *Court Hand*, and in Words at Length and not abbreviated; any Law, Custom or Usage heretofore to the contrary thereof notwithstanding: And all and every Person or Persons offending against this Act, shall for every such Offence forfeit and pay the Sum of fifty Pounds to any Person who shall sue for the same by Action of Debt, Bill, Plaint or Information in any of his Majesty's Courts of Record in *Westminster-Hall*, or Court of Exchequer in *Scotland* respectively, wherein no Essoin, Protection or Wager of Law, or more than one Imparlanche shall be allowed.

Similarly to the Cromwellian statute, the Statute of 1731 applied to both Law French and Law Latin. However, although the Statute of 1650 was not successful in rooting out Law French completely, it did succeed in causing Law French to fall into decline. Thus, by the 18th century the focus had shifted to the removal of Latin. Law French was affected more because of its “guilt by association” with the general vices of legal language.¹⁰⁵

The phrasing of the Statute of 1731 undeniably replicates the wording of the two earlier statutes. Its preamble is almost identical to that of the Statute of Pleading. However, whereas each of the previous Acts focused on either oral or written legal practice, this third Act carefully combines the two and dictates explicitly that the language of the entire process of legal administration and its record should be changed to English. Interestingly, the fine for disobedience was increased to £50, perhaps indicating that there had been some fines laid under the Act of 1650 and further dissuasion was necessary.

There is one notable difference between the Statute of 1650 and the Statute of 1731. The Statute of 1650 first and foremost declared that the report books of the resolutions of judges and other books of the law already printed be translated into English and in future be printed in the English

¹⁰⁵ Mellinkoff, above n 62, at 132.

language only. The Statute of 1731 did not address the language of the reports or books of the law, but only expressly required the translation of administrative legal writing: writs, process, returns, pleadings, rules, orders, indictments, information, inquisitions, presentments, verdicts, prohibitions, certificates, patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries.¹⁰⁶ Such an extensive express list, so close to that given in the Statute of 1650, indicates that the omission as to the language of professional publications was a deliberate one.

Perhaps this was a concession to the legal profession, which was so vehemently opposed to being stripped of its dialect. This statute allowed lawyers to publish their treatises in whichever language they felt appropriate, so long as their public procedure was carried out in the language commonly understood. In other words, communication between members of the profession might remain locked in their technical language, but communication outside of the profession (where it would impact common persons) needed to be made in the common tongue.

Another reason for this specific omission may have been the preservation of legal wisdom. One of the primary oppositional arguments listed in the papers of the House of Commons was that the alteration of the language of the law would result in the loss of the study of the ancient languages, meaning that the use of old records would also be lost.¹⁰⁷ Allowing legal publications to not all be translated into English could have been seen as a way to allow the maintenance of the old languages, so to avoid that knowledge being lost.

Motives

The similarities in language between the Statute of 1731 and its two predecessors suggest similarities in the socio-political factors that led to the passing of each Act. Interestingly, on 11 February 1731, the parliamentary records note that two petitions were presented to the House of Commons from the Quarter Sessions of the Peace held for the East and North Ridings of Yorkshire. The petitions complained that:¹⁰⁸

[O]bliging Grand-Jury-Men, at the Sessions of the Peace, to make their Presentments in a Language, which few of them understood; and the suffering in any of the Proceedings of the Courts of Justice, or in any of the Transactions of the Law, whereby the Person or Property of the Subject may be affected, *the Use of a Language not intelligible and of a Character not legible, but by the Learned in the Law, were great Occasions of the Delay of Justice, and gave Room to most dangerous Frauds: That Special Pleadings, by their*

¹⁰⁶ Statute of 1731, above n 104.

¹⁰⁷ House of Commons Papers, above n 103, at 82–83.

¹⁰⁸ *Ibid.*, at 80–81 (emphasis added).

Intricacy and Dilatoriness, render'd the Prosecution of the Rights of the Subject difficult and expensive: That the Recovery of small Debts, as the Law then stood, was impracticable, and *the Number of Attornies excessive*; and praying the House to take these Grievances into Consideration, and to give such Remedy as to the House shall seem meet.

This would appear to be the first public petition on the subject of legal language recorded in the parliamentary records. Both the Statute of Pleading and the Statute of 1650 were independent political decisions of the Parliament at the time. Hence, the final statute seems to have stemmed from the bottom up rather than the top down and seemed to suffer from none of the political distractions of its predecessors. The main motive in the 18th century seems to have been the ethical problems and expenses of lawyers.

1 *Ethical Problem of the Legal Profession*

The wording of the preamble of the Statute of 1731 is remarkably similar to that of 1362. In particular, the reference to the “great mischiefs” that occur as a result of the law being in an unknown tongue parallels exactly “les grantz meschiefs” referred to by the Parliament of Edward III.¹⁰⁹ But the later Act contains more than just this general reference to the potential abuses of legal language: there is also a direct attempt to curb a particular kind of “lawyer” fraud. The statute, after listing the various documents to be in future written in English, also decreed as follows:

[T]he Lines and Words of the same to be written at least as close as the said Acts usually are, and not in any Hand called *Court Hand*, and in Words at Length and not abbreviated.

This is a direct reference to a specific problem. The legal profession was at that time being paid by the number of sheets used for a document and clerks were wont to cheat clients by expanding documents unnecessarily through excessive use of margin or line spaces or the inclusion of unnecessary words as “padding”.¹¹⁰

2 *Nationalism*

One of the primary motives for each of the previous legal language statutes was a nationalistic fervour that demanded the weeding out of French completely as a political statement of the country’s “Englishness”. England had undergone the Glorious Revolution at the end of the 17th century

109 Statute of Pleading, above n 6.

110 Mellinkoff, above n 62, at 188–190.

and was now enjoying a period of relative political stability.¹¹¹ Thus, it is unlikely that nationalistic sentiment was a particular motive behind the passing of the Statute of 1731. As mentioned above, it would seem that, politically, the language of the law was no pressing problem, except that the public demanded change. The Statute's omission of the translation of the reports and law books emphasises that there was seen to be no need to weed out French completely. It was simply about comprehension and not a political press for "Englishness".

Success?

Whether the Statute of 1731 was truly successful in its objective seems to be a matter of some debate. Archer Polson and James Grant comment that:¹¹²

In the reign of George II, an act was passed requiring that all the records should be enrolled in English. Whether or not the change has produced the desired effect, and parties are now better than heretofore acquainted with whatever is said for or against them, may be doubted. But an appearance, at least, of mystery has been removed.

Although it was enacted that mistranslation, misspelling, or mistake in the clerkship, pleadings or proceedings would not void any proceedings (similarly to the Statute of 1650), translating the old Law French to English proved quite difficult. The technical terms were such that there were often no English equivalents. Therefore, in 1733, the Statute of 1731 was amended:¹¹³

[All those proceedings and records mentioned in the original statute may] be written or printed in a common legible Hand and Character, and with the like Way of Writing or Printing, and with the like Manner of expressing Numbers by Figures, as have been heretofore or are now commonly used in the said Courts respectively, and with such Abbreviations as are now commonly used in the English Language, and that no Penalty or Punishment shall be incurred, by Virtue of the said recited Act, for any other Offence than for Writing

111 Geoffrey Holmes *Politics, Religion and Society in England, 1679–1742* (Hambledon Press, London, 1986) at 274.

112 Archer Polson and James Grant *Law and Lawyers; or Sketches and Illustrations of Legal History and Biography* (Carey & Hart, Philadelphia, 1841) vol 2 at 49.

113 An Act for the more effectual preventing of frivolous and vexatious Arrests, and for the more easy Recovery of Debts and Damages, in the Courts of Great Sessions in the Principality of *Wales*, and in the Court of Assize in the County Palatine of *Chester*, and for the obviating a Doubt which has arisen upon an Act made in the fourth Year of his present Majesty's Reign, intituled, *An Act that all Proceedings in Courts of Justice, within that Part of Great Britain called England, and in the Courts of Exchequer in Scotland, shall be in the English Language*, so far as the same Act doth or may relate to the Courts of Justice holden within the said Principality, and for explaining and amending the said Act 1733 (GB) 6 Geo II c 14, reproduced in Ruffhead, above n 104, at 120 (emphasis added).

or Printing any of the Proceedings, or other the Matters and Things above mentioned, in any Hand commonly called Court Hand, or in any Language except the English Language, *nor shall any such Penalty or Punishment be extended to the expressing the proper or known Names of Writs or other Process or Technical Words in the same Language as hath been commonly used*, so as the same be written or printed in a common legible Hand and Character, and not in any Hand commonly called Court Hand;

As strongly worded as the the Statute of 1731 was, therefore, already two years later the lawyers had won back a little of their dialect. Nevertheless, despite this slight amendment, the Act was for the most part successful, perhaps because it was much more practically driven, being not a response to nationalistic fervour or philosophical passions, but instead a response to a direct need and a direct petition.

VI CONCLUSION

“What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue?”¹¹⁴ From the mid-13th century to the mid-18th century, the practice of the law in England was dominated by a “barbaric” version of French affected by Anglo-Norman influences but peculiar to the English legal profession. Despite two prior statutory attempts to put an end to the language, it was not until 1731 that Parliament at last succeeded in removing it from the publications, processes and proceedings of the law, even if it did linger briefly in the moots of the Inner Temple.

It is unlikely that the decision to continue the use of Law French was a conscious and deliberate effort by the profession to maintain its mystery and monopoly. However, each of the three Anglicising statutes was prompted, at least partially, by public concern as to the professional ethics of lawyers when nobody but they themselves could comprehend their proceedings. There was a desire to demystify the law and thereby protect the common people from the perceived deviousness of the profession. However, the profession was equally obstinate in maintaining its technical tongue, originally as a result of the lack of “English” legal instruction and later because the majority were convinced that the specialised legal vocabulary was so carefully crafted as to make the law inexpressible in English.

The second significant pressure pushing towards Anglicisation was waves of English nationalistic and anti-French or anti-Norman sentiment. The Statute of Pleading of 1362 came near the beginning of the Hundred

114 Mellinkoff, above n 62, at 101.

Years' War, a time when there was no love lost between the two countries. The Statute of 1650 emerged during a period of constitutional crisis, when historical myths were rampant and "Englishness" and the Anglo-Saxon past were idealised. Yet neither of these politically driven attempts made any lasting impact on removing Law French from the English legal profession.

Whether even the Statute of 1731 was truly successful in its mission is debatable. William Blackstone in his *Commentaries on the Laws of England*, written around 35 years after the passing of this third and final Act, stated that the Act was passed so that the common people of England might be able to understand their law and what was said for and against them in the courts.¹¹⁵ Blackstone then comments:¹¹⁶

Which purpose has, I fear, not been answered: being apt to suspect that the people are now, after many years' experience, altogether as ignorant in matters of law as before.

Even now, hundreds of years after the "full" Anglicisation of the law, "plain" and "common" English to a great extent still eludes the practice of law.

VII POSTSCRIPT: THE CURRENT PLAIN ENGLISH MOVEMENT IN NEW ZEALAND

While a strong nationalistic response to the use of a completely foreign language in one's own country is no longer an issue, as it was for the Statutes of 1362 and 1650, the use of legal language which is not easily accessible to the lay population continues to be a modern concern. In New Zealand, the vision statement of the Parliamentary Counsel Office indicates that it is committed to improving "access to legislation by ensuring that legislation is drafted as clearly and simply as possible".¹¹⁷ This objective is being achieved through its guidelines for clear drafting, which include such advice as: avoid nominalisations, avoid passive constructions, use the simplest word that conveys the meaning, eliminate unnecessary words, do not use archaic language, keep sentences short and simple and do not use word couplets and triplets often associated with older legal writing.¹¹⁸

It is interesting to note also the existence of the Writemark Plain English Awards Trust. The Trust's objective is to acknowledge publically the efforts of New Zealand organisations to use plain English and thereby help in bringing plain English into common use in New Zealand. The Plain

¹¹⁵ Blackstone, above n 10, at 322.

¹¹⁶ *Ibid.*

¹¹⁷ "PCO's mission and vision statements" Parliamentary Counsel Office <www.pco.parliament.govt.nz>.

¹¹⁸ "Drafting Manual" Parliamentary Counsel Office at ch 3 <www.pco.parliament.govt.nz>.

English Awards aim particularly to “improve government and business documents so all New Zealanders can understand them” and “raise public awareness of the need for, and benefits of, plain English”.¹¹⁹

119 Plain English Awards <www.plainenglishawards.org.nz>.