LEGAL ENGLISH AND PLAIN LANGUAGE: AN UPDATE

Christopher Williams

Abstract

Seven years have passed since 'Legal English and Plain Language: an introduction' (Williams 2004) was published. Since then several changes have occurred in the field of legal drafting in English-speaking countries and institutions which move in the direction of the proposals endorsed by the Plain language movement. In this paper I attempt to outline and contextualize some of the major changes that have taken place since 2004.

Probably the most striking transformation over the last few years in the English-speaking world has come about in the United Kingdom, particularly in Edinburgh and Westminster. In 2004 the newly-established Scottish Parliament had not yet broached the question of modernizing the drafting style of its laws. But that was shortly to come. Likewise in Westminster in 2004, with the exception of the Tax Law Rewrite Project (Williams 2007), there was little to indicate that the drafting of legislation was to undergo the major changes that have taken place recently. A number of areas of legal language have also been modernized in the United States in the past few years, though the impact of Plain language on legislative drafting has been less incisive when compared to the UK.

My main conclusion is that, if we observe the question of legal drafting and Plain language in the English-speaking world as a whole, there has been a shift of focus since 2004. Not long ago I spoke of a "North-South divide" (Williams 2006: 239), with innovation coming largely from the southern hemisphere (especially Australia and New Zealand) whilst the northern hemisphere – particularly the US and the UK – appeared to be more resistant to change. Today my perception is rather different: I would be more inclined to distinguish between national drafting bodies as 'innovators' and international drafting bodies as 'conservatives'. The changes in drafting style that have occurred recently in the UK and, to some extent, in the US would not appear to have been matched in those international bodies where English is one of the official languages, notably the United Nations and the European Union. I briefly analyse why international bodies may be less inclined than national bodies to change their drafting styles.

1. Introduction: the situation in 2004

In order to highlight the shift of focus described above, it is necessary to outline briefly the situation of legal drafting and the Plain language movement up to 2004. Put at its simplest, the main objective of the Plain language movement in the legal sphere has been to modernize legal language, especially prescriptive texts such as laws or contracts. This entails doing away with those elements of 'legalese' that make legal English appear old-fashioned, convoluted, and hard for non-experts to understand. Plain language proposals for legal documents include:

- eliminating archaic and Latin expressions
- removing all unnecessary words
- ensuring the text can be understood by someone 'of average intelligence'
- including a 'purposive' clause at the start of the text
- reducing the use of the passive
- reducing nominalization[1]
- replacing *shall* with *must* or the semi-modal *is/are to* construction (as in *There is to be a body corporate*) or the present simple
- ensuring the text is gender-neutral.

Over the centuries, the Common law rationale has favoured a particularly conservative style of drafting (Crystal & Davy 1969; Mattila 2006; Mellinkoff 1963; Tiersma 1999; Williams 2005). The impact of Plain language on legal language in the English-speaking world has been widely documented elsewhere (e.g. Tiersma 1999; Kimble 2000; Williams 2005; Asprey 2010). Beginning in the US in the 1970s, the movement soon spread to Canada and the UK, but it was in Australia and New Zealand that the proposals for restyling legislative texts were first accepted by the Offices of Parliamentary Counsel as early as the late 1980s. Canada and post-apartheid South Africa also implemented changes in the way some (though not all) of the English versions of their laws were drafted. But in the US, despite early successes, progress was generally slow, and in the UK there were few signs of a willingness to change. One exception was the setting up in the mid-1990s of the Tax Law Rewrite Project whose assignment was to rewrite the 6000 pages of British tax laws in a more modern style. Furthermore, the UK Civil Procedure Rules 1998, which came into force in 1999, were written in Plain language and constituted an attempt to streamline civil litigation (Asprey 2010: 79), while the 1999 Unfair Terms in Consumer Contracts regulations require "plain and intelligible" language to be used in drafting such contracts.

Meanwhile, in international bodies where English was one of the official languages, there appeared to be little interest in moving towards a more modern drafting style, despite the activism in the European Union of the 'Fight the Fog' campaign from the late 1990s. As one of the champions of that campaign, Emma Wagner (2010: 4), points out:

> The major EU enlargement was a fantastic achievement for democracy and for Europe, but it brought two problems for drafting in the Commission: the continued rise of bad English as the Commission's lingua franca, and the massive influx of new staff who naturally adopted the prevailing in-house style, rather than trying to reform it.

For example, the English version of the European Constitution of 2004 bore many of the hallmarks of a traditional style of drafting such as the inclusion of the

[1] Reducing nominalization means, for example, favouring verb phrases rather than noun phrases, such as *in exercising the right* instead of *in the exercise of the right* so as to reduce the number of words and make the sentence less abstract.

adverbials *hereinafter* or *therein* and the massive use of the modal auxiliary *shall* (Williams & Milizia 2008: 2220-2222). As I have pointed out elsewhere (Williams 2010), such legalese adverbials and *shall* still feature regularly in certain types of contracts even today: I will return to this point later.

This, then, was the situation as I saw it in 2004: Australia and New Zealand had already modernized their drafting style several years earlier, and in their websites the Australia Government Office of Parliamentary Counsel (2011) and the New Zealand Parliamentary Counsel Office (2009) were already openly endorsing the principles of Plain language, or "clear drafting" as the latter defined it. Moreover, South Africa had even chosen to write its Constitution in 1996 (it came into force a year later) according to the precepts of Plain language (Williams 2009a). On the contrary, with the partial exception of Canada, in the northern hemisphere most legislation was still drafted along traditional lines. Not only the US and the UK but also the United Nations and the European Union seemed to be equally impervious towards any call to change their drafting style. Hence my perception of a "North-South divide".

Not all legal professionals or academics are entirely persuaded that adopting Plain language in drafting legislative texts has always been beneficial. For example, in relation to Australian legislation, Barnes (2010: 706) concludes that "the goals of a great number of members of the plain English movement, including those of the Law Reform Commission of Victoria[2], are misleading" when it comes to interpreting legislative meaning. However, taken as a whole, the changes implemented to date in the English-speaking world have generally been perceived – both by the general public and by legal professionals – as an improvement with respect to the old style of drafting.

2. Changes since 2004

Over the last few years a number of discernible changes have occurred in terms of the modernization of legislative drafting, particularly in the United Kingdom, firstly in Edinburgh and then in Westminster. I shall examine the two cases in question before going on to consider the United States.

2.1. *Changes in legislative drafting techniques in Edinburgh*

Part of the 'devolution package' introduced by Tony Blair's Labour government in 1998 was that Scotland should be granted its own Parliament, and the Scottish Parliament began making its own laws from 1999. It was not long before the Office of the Scottish Parliamentary Counsel started debating the need to modernize its drafting style. Following lengthy discussions in 2005 an online booklet *Plain Language and Legislation* was published (Office of the Scottish Parliamentary Counsel

[2] The Victorian Law Reform Commission report called *Plain English and the Law* was published in 1987 and was one of the major catalysts for Plain language and the law in Australia (Asprey 2010: 68).

2006), and this shortly led to a noticeable (at least to legal professionals) transformation in the way many of Scotland's laws were now drafted (Williams 2007, 2009b). For example, there was a sharp drop in the frequency of legalese terms such as *said* or *forthwith*, and also in the frequency of *shall* (Williams 2007: 112-115).

The fact that the Office of the Scottish Parliamentary Counsel and the Scottish Subordinate Legislation Committee had decided only a few years after the Scottish Parliament had been set up to reform the language of legal drafting, whereas the rest of the UK appeared to be less committed to such reform, seemed to me an element of "distinctiveness of Scottish legal culture at work with respect to that of England, Wales or Northern Ireland" (Williams 2009b: 308). However, I warned (*ibid.*: 309) against "oversimplifying the distinction between a 'conservative' legal establishment in Westminster as opposed to a more 'innovative' one in Edinburgh", citing the case of the Renton Committee which had been set up in 1973 with the mandate of finding ways to renew Westminster's drafting style.

As it turned out, major changes were just about to take place in Westminster.

2.2. Changes in legislative drafting techniques in Westminster

The Renton Committee of 1973 was to make a number of suggestions in its Report about how to modernize legal drafting, but they were ignored, despite the praise the Committee received in Parliament at the time. The topic was largely dropped for a further 20 years or more until the Conservative government instituted Her Majesty's Revenue and Customs Tax Law Rewrite Project which became operative from 1997 (Williams 2007: 104-109; HM Revenue & Customs 2010), in line with similar tax law rewriting projects that had been set up in Australia and New Zealand a few years earlier. The British project – initially scheduled to complete its task within five years – lasted for 13 years, with the last of the eight pieces of redrafted tax legislation coming into force in 2010. The Office of the Scottish Parliamentary Counsel (2006) made explicit reference to the Tax Law Rewrite Project as one of the models on which it intended to base its restyled drafting techniques, but the modern drafting principles that the Project applied to tax laws were not initially expected to be extended to other laws in the UK. However, in 2007-2008 two things happened.

Firstly, on 8 March 2007 Jack Straw, leader of the House of Commons, together with Meg Munn, Minister for Women and Equality, announced in Parliament that in future all legislation passed by Westminster would be gender-neutral, thus reversing a trend that had existed for the best part of 200 years of using only male pronouns where a reference to men and women was intended. This would bring the UK in line not only with most other English-speaking countries but also with international bodies such as the UN and the EU where gender-neutral texts were already the norm (Williams 2008).

Secondly, the Drafting Techniques Group at the Office of the Parliamentary Counsel in Westminster produced two highly significant papers, one on the subject of *shall* (March 2008), the other on gender-neutral drafting techniques (December 2008). The former devoted a full 24 pages to this controversial modal auxiliary that

has characterized legal English for centuries, acknowledging (UK Drafting Techniques Group 2008a: 1) that:

> 1. *Shall* can be controversial. Few other words have the potential to evoke such strong feelings among writers on legal drafting. It has been said that "*shall* is the hallmark of traditional legal writing. Whenever lawyers want to express themselves in formal style, *shall* intrudes." But its supporters can be forthright in its defence. Thus Craies on Legislation argues that *shall* "is simply too precious a commodity to discard in the absence of an obvious modern equivalent, however archaic it appears."
> 2. This difference of opinion is reflected in the practice of the Office. Some recent Acts use *shall* freely whilst others avoid it altogether, or perhaps reserve it for textual amendments to Acts in which it already appears.

The Group went on to examine in considerable detail the various alternatives to *shall* – such as *must*, the *is/are to* construction, the present simple, and expressions such as *it is the duty of* – in a wide range of contexts. In the end it recommended a more restrictive use of *shall* than was proposed by the Office of the Scottish Parliamentary Counsel (2006) in Chapter 4 of its booklet on 'Plain language techniques', endorsing the almost total elimination of *shall* from legislative texts, even in most cases of textual amendments. Several references are made to the Tax Law Rewrite Project, as well as to drafting practices in Australia, New Zealand, Scotland and Canada.

In the six-page Paper on gender-neutral drafting, the Group analyses the various techniques available in order to implement the policy outlined in Parliament the year before. But whereas the position of the Drafting Techniques Group on *shall* is fairly clear-cut, even if argued in great detail, its position on gender-neutral drafting is more speculative: "The approaches discussed are not exhaustive and should not be taken as recommended approaches" (UK Drafting Techniques Group 2008b: 1), and further suggestions are explicitly welcomed.

However, as late as November 2009 we can find legislative texts such as the Policing and Crime Act 2009 where *shall* still recurs frequency, even if the principle of gender neutrality has been applied (e.g. "at a place where he or she is required to be"[3]), though several other texts of the same year are *shall*-free. It is in 2010 that the changes really begin to kick in, as I have described in Williams (forthcoming), with the frequency of *shall* dwindling to 0.2 occurrences per 1000 words in 2010 as opposed to 10.6 occurrences just ten years earlier.

Other changes in line with the proposals of the Plain language movement have also been implemented such as a marked reduction in the use of the passive. If we discount intransitive verbs (e.g. *be* or *stay*) where there is no choice available between active and passive voice, and compare the situation in 1980 with that of 2010, we witness an increase in actives from 46.9% to 74.0%, and hence a corresponding decrease in passives from 53.1% to 26.0%, a reduction of 50 per cent (*ibid.*). More-

[3] Part 4 Section 35 (3)(c) of Policing and Crime Act 2009.

over, it is worth noting that of the remaining occurrences of the passive in the 2010 texts, there has been a marked shift towards the *is/are to* construction which now accounts for some 44 per cent of all cases of passive voice, whereas in 1980 this function was largely carried out by *shall*. Here is an illustration of this shift from *shall* to *is/are to* with passives:

> (1) If there is more than one personal representative, and their dates of knowledge are different, subsection (5)(b) above shall be read as referring to the earliest of those dates[4].
>
> (2) In subsection (3)(a) the reference to 12 months in England and Wales is to be read, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, as a reference to 6 months[5].

The recent changes in drafting style that have been implemented in Edinburgh and Westminster have thus brought the UK in line with the drafting policy adopted in Australia and New Zealand for well over two decades.

Finally, it should be noted that since 2006 every new law passed in Westminster and Edinburgh comes with 'Explanatory Notes' which do not form part of the Act itself but are aimed at assisting readers in understanding it better.

2.3. The situation in the United States

As was mentioned earlier, the Plain language movement began in the United States: as early as 1978 President Carter issued an order that "regulations should be as clear and simple as possible" (cited in Asprey 2010: 66). Yet the adoption of a more modern drafting style has still not been fully endorsed in the United States, despite the passing of the Plain Language Act 2010 by the Obama administration and the restyling of the Federal Rules of Appellate Procedure (1998), Criminal Procedure (2002), Civil Procedure (2007) and, most recently, the Federal Rules of Evidence (2010). All these court rules have been rewritten according to the precepts of Plain language "to make the rules clearer, more consistent, and more readable – all without changing their meaning" (Kimble 2010: 34).

Furthermore, several States have passed laws – some dating back to the 1980s – requiring that "all residential leases and consumer contracts be written in understandable language" (Asprey 2010: 67), following the introduction by the State of New York of the so-called 'Sullivan law' in 1978 (*ibid.*). It should, however, be observed that the results are not always as spectacular as one might wish, as van Naerssen (2005) has pointed out in her "forensic test" of a Pennsylvanian contract.

A number of US government departments and agencies use and promote Plain language these days, in the wake of the decision taken in 1998 by the US Securities and Exchange Commission to apply the rule that prospective investors must be informed about their securities in Plain language (*ibid.*: 70-71). In addition, there are

[4] Section 11 (7) of Civil Aviation Act 1980.
[5] Section 6 (4) of Identity Documents Act 2010.

organizations such as The Plain Language Action and Information Network (PLAIN), "a group of federal employees from many different agencies and specialties who support the use of clear communication in government writing"[6] that actively encourage institutional bodies to implement Plain language laws and initiatives.

Nevertheless, legislative texts on a national level in the US still tend to conform to a rather traditional style of drafting. Even the US Plain Writing Act of 2010 includes instances of *shall*:

> (3) Not later than 18 months after the date of enactment of this Act, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency's website a report on agency compliance with the requirements of this Act[7].

The same is also true of the Presidential Executive Order of 18 January 2011 which, after stating that the US regulatory system "must ensure that regulations are accessible, consistent, written in plain language, and easy to understand"[8], lays down that:

> (4) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole[9].

Further on in the Executive Order there is even a case of *shall* being used in a definition provision, a trait which tends to indicate a particularly conservative approach to legal drafting and which, for example, had largely disappeared by 1980 in the UK in favour of the present simple (even if *shall* was widely used at that time in other contexts), as we can see by comparing the two texts below:

> (5) For purposes of this order, 'agency' shall have the meaning set forth in section 3(b) of Executive Order 12866[10].

> (6) 'insane person' has the meaning given to it by section 1 of the Criminal Justice Act (Northern Ireland) 1966, and 'insanity' shall be construed accordingly[11].

In brief, then, while there are many tangible signs that Plain language has made substantial inroads in the US, particularly as regards its use in court procedures and in federal government, the ethos of modernizing the legislative drafting style has still not penetrated the US Establishment to the extent that it has in Australia,

[6] http://www.plainlanguage.gov/site/about.cfm (last accessed 30 November 2011).

[7] Section 5b of the US Plain Writing Act 2010. At http://thomas.loc.gov/cgi-bin/query/D?c111:6:./temp/~c111 hwtsrb:: (last accessed 11 May 2011).

[8] Section 1(a) of Executive Order 13563 of January 18, 2011. At http://edocket.access.gpo.gov/2011/pdf/2011-1385.pdf (last accessed 30 November 2011).

[9] Section 2(a) of Executive Order 13563 of January 18, 2011.

[10] Section 7(a) of Executive Order 13563 of January 18, 2011.

[11] Section 30 of Criminal Appeal (Northern Ireland) Act 1980.

New Zealand or – much more recently – the United Kingdom, despite the passing of the US Plain Writing Act 2010 and the Executive Order of 18 January 2011.

For reasons of space it is impossible to cover the recent evolution in legal drafting style in all of the English-speaking countries. I have chosen to focus above all on the United Kingdom because it would seem to be the English-speaking area where the greatest change in drafting style has occurred in recent years. For a more exhaustive view of Plain language and the law around the world, including non-English-speaking countries, see Asprey (2010: 64-89)[12].

Before going on to analyse the situation of legal English and Plain language drafting in international organizations, a few words need to be said about the language of contracts in the English-speaking world.

3. The language of contracts in English

Although the principles of Plain language have been adopted, at least in part, by the majority of English-speaking countries with regard to legislative texts, this is by no means the case as regards contracts. Of course, there are many notable exceptions to this statement. As we have seen in Section 2.3 on the United States, for example, consumer contracts and lease agreements must be drafted by law in Plain language in a number of states. Moreover, some companies take pride in the fact that their contracts are drafted according to the principles of Plain language. But the general situation is that contracts still tend to be plagued with old-fashioned forms of legalese, particularly adverbs such as *hereby*, *therein* or *whereof*. The phenomenon has been widely studied (e.g. Adams 2008; Darmstadter 2008; Williams 2010) and manuals – notably those by Adams (2008) and Darmstadter (2008) – have been devoted to how to draft contracts in a more modern style. Yet the problem persists, even in this increasingly globalized world where English is becoming ever more the *lingua franca* of international business, and where one would imagine the need for clarity of expression using easily understood, everyday terms would be paramount. Many corporate lawyers evidently prefer to play safe and use a phraseology that has been accepted by the Common law courts for centuries rather than run the risk of introducing a more modern way of drafting.

4. The situation in international bodies: the United Nations and the European Union

If the United Kingdom and, to some extent, the United States have shown a greater readiness to embrace the principles of Plain language in recent years, the major international institutions where English is one of the official languages would

[12] Another country where there is the promise of change (at least in the English version) in drafting style is Hong Kong after the publication in December 2009 of the paper by the Law Drafting Division of the Department of Justice on 'Drafting-related initiatives for improving the quality of legislation'. See http://www.legco.gov.hk/yr09-10/english/panels/ajls/papers/aj1215cb2-512-4-e.pdf (last accessed 30 November 2011).

appear to be more resistant to change, except as regards gender neutrality. To the best of my knowledge the only clear indication that the United Nations favours Plain language – at least in English – can be found in the 'Plain Language Version' of some of its most important Treaties and Conventions. These adaptations of original texts into Plain language have long been part of the educational ethos promoted by the UN which provides résumés – seen from a young person's perspective – of the main points contained in UN Treaties and Conventions. The example below contains the Plain language versions of articles 1, 3 and 4 of the Universal Declaration of Human Rights of 1948, followed by the original texts of the three articles:

> (7) 1. When children are born, they are free and each should be treated in the same way. They have reason and conscience and should act towards one another in a friendly manner.
> 3. You have the right to live, and to live in freedom and safety.
> 4. Nobody has the right to treat you as his or her slave and you should not make anyone your slave[13].
>
> Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
> Article 3. Everyone has the right to life, liberty and security of person.
> Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms[14].

On the other hand, as regards drawing up legally binding texts, the situation would seem to have remained static ever since the UN was set up in 1944. For example, occurrences of *shall*, of syntactic discontinuities, and of long sentences with complex subordination and coordination – indicators of a more conservative drafting policy – can still be found today:

> Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction[15].
>
> The States Parties shall require that civilians without authorization for the possession of light weapons valid in the State in question who wish to import or ship in transit, through their respective territories light weapons and their ammunition in their possession must obtain a visitor's certificate authorizing temporary import for the length of their stay or temporary transit[16].

[13] http://www.un.org/cyberschoolbus/humanrights/resources/plain.asp.

[14] http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf (last accessed 10 December 2011).

[15] Article 3(1) of UN Convention on Cluster Munitions 2008. At http://treaties.un.org/doc/Publication/CTC/26-6.pdf (last accessed 10 December 2011).

[16] Article 10(1) UN Central African Convention for the control of small arms and light weapons, their ammunition and all parts and components that can be used for their manu-

However, two points should be made. Firstly, even drafters in countries which promote a Plain language policy sometimes resort to syntactic discontinuities and long sentences: there may be circumstances where no suitable alternative is available. Secondly, because of the need in the United Nations to ensure the approval of legally binding documents by the widest possible number of participating countries, the language employed in texts drafted in the UN tends to be relatively straightforward when compared with the more technical style often used by drafters writing national laws. Most UN texts are therefore relatively easy to understand, even if the style (at least in the English versions) may sometimes sound a little antiquated.

In the European Union there would appear to be a much greater awareness and debate than there is in the UN about language problems and the need for 'Clear Writing'. On 22 December 1998 the Interinstitutional Agreement was passed providing common guidelines for the quality of drafting on Community legislation. On 15 March 2010 the Clear Writing Campaign was launched, aimed at all the staff on the European Commission in an attempt to stamp out what has been termed as 'Commisionese' (Strickland 2011: 15). Moreover, the *English Style Guide* published by the European Commission Directorate-General for Translation (2011) is constantly being updated. Yet the problems of "bad English" remain, as Wagner (2010: 4) has outlined, and "much still remains to be done" (*ibid*.). English has rapidly assumed a position of *lingua franca* among the 23 official languages adopted by the EU with 95 per cent of Commission drafters writing mainly in English, although only 13 per cent are of English mother tongue (*ibid*.). But the drafting style has changed relatively little since the UK and Ireland entered the European Community in 1973; for example, the frequency of *shall* has remained virtually the same between 1973 and 2010 (Williams forthcoming), even if it is recognized today as being a problem word since it is "rarely encountered in everyday speech" (European Commission Directorate-General for Translation 2011: 34).

On the other hand, we have witnessed a drop in the frequency of the word that has been defined by TransLegal as "the archetypal legalism"[17]: *whereas*. For example, *whereas* – which means 'given the fact that' in its legal sense – used to occur at the start of each recital, as was once the habit in the English-speaking world (it is still commonly found in contracts but has disappeared from most legislative texts). Here is an example taken from 1973:

> (8) Whereas, to allow free movement of the aforesaid products, the rules relating to these trade arrangements applicable in the United Kingdom should, as a general rule, be applicable, the United Kingdom and the islands being treated as a single Member State for the purpose of applying these rules;
> Whereas, however, sums charged in these islands for customs duties, charges, levies or other amounts are not part of the Community budget; whereas Commu-

facture, repair and assembly 2010. At http://treaties.un.org/doc/Treaties/2010/04/20100430%2001-12%20PM/xxvi-7.pdf (last accessed 10 December 2011).

[17] http://www.translegal.com/drafter/whereas (last accessed 10 December 2011). TransLegal is a Swedish-based company that has been active in promoting legal English for non-native speakers.

> nity financing of the common agricultural policy is therefore not applicable; whereas rules to promote exports should not be applied, the amounts granted by the Community serving only as a ceiling for the aid which can be granted by the islands […][18].

But there was a change of policy during the late 1990s so now, where texts contain a preamble, there is just one occurrence of *whereas* at the start of the first recital in the list. According to a survey I made recently comparing EU texts over the period 1973-2010, the frequency of *whereas* dropped by over 85% from 5.0 occurrences per 1000 words in texts in 1973 to 0.7 occurrences per 1000 words in texts drafted in 2010. However, critics of legalese (e.g. Adams 2008: 388; Asprey 2010: 182-183; Mellinkoff 1963) have long suggested abolishing *whereas* completely from legal texts on the grounds that it is archaic and generally serves no functional purpose.

5. Conclusion

I have attempted to show that in recent years there has been greater progress made in the UK and the US in the direction of Plain language drafting than there has been in the EU or the UN. However, even in these two international organizations the issue of Plain language has been raised: in the UN we have seen that it is sometimes used for didactic purposes, while in the EU there has been widespread debate about reforming its drafting style, even if results so far have been disappointing.

But we should not be surprised if progress is slower in international bodies where a number of languages are of equal rank and have legal force. It is much easier to introduce changes in drafting style in a monolingual situation, as in Australia or Westminster, or where at most there are only two official languages, as is the case in Canada, New Zealand, Wales or the Republic of Ireland. In a multilingual environment it is a far more complex task to modernize the style of just one language without this having unforeseeable consequences on some or all of the other languages.

Finally, a word about contracts. While most legislative drafters in the English-speaking world today are sensitized to Plain language issues, the same cannot be said of many corporate lawyers. Given the prevalence of English as the *lingua franca* of international trade, it would seem to make sense to find a drafting style that can be easily understood by all. But a change in that direction appears unlikely to happen in the near future.

[18] Regulation (EEC) No. 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products. At http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973R0706:EN:HTML (last accessed 11 December 2011).

References

Adams K. A. 2008. *A Manual of Style for Contract Drafting*. Chicago: American Bar Association.

Asprey M. 2010 [1991]. *Plain Language for Lawyers* 4th Edition. Sydney: The Federation Press.

Australian Government Office of Parliamentary Counsel 2011. Plain Language. At http://www.opc.gov.au/plain/index.htm (last accessed 20 November 2011).

Barnes J. 2010. When 'Plain language' legislation is ambiguous – sources of doubt and lessons for the Plain language movement. *Melbourne University Law Review* 34/3: 671-707.

Crystal D. & D. Davy 1969. *Investigating English Style*. London: Longman.

Darmstadter H. 2008. *Hereof, Thereof and Everywhereof: A Contrarian Guide to Legal Drafting*. Chicago: ABA Publishing.

European Commission Directorate-General for Translation 2011. *English Style Guide: A handbook for authors and translators in the European Commission*. At http://ec.europa.eu/translation/english/guidelines/documents/styleguide_english_dgt_en.pdf (last accessed 11 December 2011).

HM Revenue & Customs 2010. Tax Law Rewrite Project. At http://www.hmrc.gov.uk/rewrite/ (last accessed 13 April 2010).

Kimble J. 2000. A modest wish list for legal writing. *Michigan Bar Journal*. Also available at http://www.plainlanguagenetwork.org/kimble/modest.htm (last accessed 13 April 2010).

Kimble J. 2010. Two drafting examples from the proposed new Federal Rules of Evidence. *Clarity* 63: 34-39.

Mattila H. 2006. *Comparative Legal Linguistics*. Aldershot: Ashgate Publishers.

Mellinkoff D. 1963. *The Language of the Law*. Boston/Toronto: Little, Brown and Company.

New Zealand Parliamentary Counsel Office 2009. *Principles of clear drafting*. At http://www.pco.parliament.govt.nz/assets/Uploads/pdf/clear-drafting.pdf (last accessed 20 November 2011).

Office of the Scottish Parliamentary Counsel 2006. *Plain Language and Legislation*. At http://www.scotland.gov.uk/Publications/2006/02/17093804/0 (last accessed 20 November 2011).

Strickland P. 2011. The European Commission's clear writing campaign. *Clarity* 65: 14-16.

Tiersma P. M.1999. *Legal Language*. Chicago: Chicago University Press.

UK Drafting Techniques Group 2008a. Paper 19 on *Shall* (March 2008). At http://www.writerguy.co.uk/wp-content/docs/shall.pdf (last accessed 20 November 2011).

UK Drafting Techniques Group 2008b. Paper 23 on Gender-neutral drafting techniques (December 2008). At http://umbr4.cabinetoffice.gov.uk/media/190043/gnd.pdf (last accessed 20 November 2011).

van Naerssen M. 2005. A forensic test of a Pennsylvanian contract. *Clarity* 53: 57-62.

Wagner E. 2010. Why does the Commission need a Clear Writing campaign. In A. Pereira (coordinator) *Languages and Translation: Clear Writing*, European Commis-

sion Directorate-General for Translation: 4-5. At <http://ec.europa.eu/dgs/translation/publications/magazines/languagestranslation/documents/issue_01_en.pdf> (last accessed 9 December 2011).

Williams C. 2004. Legal English and Plain Language: an introduction. *ESP Across Cultures* 1: 111-124.

Williams C. 2005. *Tradition and Change in Legal English: Verbal Constructions in Prescriptive Texts*. Bern: Peter Lang.

Williams C. 2006. Fuzziness in legal English: what shall we do with 'shall'? In A. Wagner & S. Cacciaguidi (eds.), *Legal Language and the Search for Clarity*. Bern: Peter Lang: 237-263.

Williams C. 2007. Crossovers in legal cultures in Westminster and Edinburgh: some recent changes in the language of the law. *ESP Across Cultures* 4: 101-118.

Williams C. 2008. The end of the 'masculine rule'? Gender-neutral legislative drafting in the United Kingdom and Ireland. *Statute Law Review* 29/3: 139-153.

Williams C. 2009a. Legal English and the 'modal revolution'. In P. Busuttil, R. Salkie & J. van der Auwera (eds.), *Proceedings of the Second International Conference on Modality in English*. Berlin: Mouton de Gruyter: 199-210.

Williams C. 2009b. Scottish Parliament and Plain language legal drafting. In S. Šarčević (ed.), *Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues*. Zagreb: Nakladni zavod Globus: 301-312.

Williams C. 2010. Functional or dysfunctional? The language of business contracts in English. *Rassegna Italiana di Linguistica Applicata*: 217-227.

Williams C. forthcoming. Changes in the verb phrase in legislative language in English. In B. Aarts, J. Close, G. Leech & S. Wallis (eds.), *The Verb Phrase in English: Investigating Recent Language Change with Corpora*. Cambridge: Cambridge University Press.

Williams C. & D. Milizia 2008. How (un)readable is the European Constitution? A comparison of the English version and the Italian version. In A. Cannone *et al*. (eds.), *Studi in Onore di Vincenzo Storace*. Naples: Editoriale Scientifica: 2209-2227.