4 Language planning and legal systems

1 Introduction

In contrast to interpreting, which strives case by case to give individuals deficient in the legal medium the same access to justice as the proficient, language planning seeks to adapt the language of a legal system itself to the needs of communities who use a different language. Adaptation may involve giving legal standing to more than one language within the same jurisdiction and sometimes within the same set of proceedings. There may also be an aim of phasing one language into the legal domain and another out. To accord legal equivalence to different languages rules must be devised about which medium is to be used when. If one of the languages has not previously been used in formal legal communication there will be a need for linguistic modification and the generation of lexical and textual resources. Hence complex, sustained activity on a large scale is implied. Many factors outside the immediate communicative needs of specific legal events come into play, and the motivation behind language planning itself is often primarily political or cultural rather than technical.

The following three controversies serve as illustrations of the range of ways in which language planning for the administration of justice may invoke macro-level sociocultural and political agendas that go beyond the resolution of legal or linguistic ambiguity.

(1) A year before the 1997 transfer of Hong Kong's sovereignty to China a local fishmonger was successfully prosecuted for infringing a by-law compelling shopkeepers to obtain planning permission for any “alteration or addition” extending out in front of their premises (R v Tam Yuk-ha, 1996). After the implementation of the Basic Law agreed with Beijing, Tam exercised her prerogative to have her appeal heard in Chinese. Justice Yeung concluded that no one would consider the metal trays Tam displayed fish on to constitute the ‘building of constructions’ (増建工程) as specified in the Chinese text of the by-law. He consequently ruled in her favour. Subsequently reversed, but with recurrences warded off by rewording of the English and Chinese texts of the relevant ordinance, the case was touted as an example of someone being convicted in English but acquitted in Chinese and it fueled an ongoing debate about Hong Kong’s cultural identity and the future of its English-based legal system.

(2) In October 2009 Malaysia’s de facto Opposition leader Anwar Ibrahim filed a memorandum of appeal in a defamation suit against former premier Mahathir Mohamad. The appeal was dismissed on the grounds that the memorandum was written in English. The National Language Act and the Rules of Court require documents to be filed in Malay except in urgent cases. In his ruling judge Abdul Malek condemned the failure to use the national language as an “injustice to the respondent”
Anwar’s lawyer, the late political leader Karpal Singh, subsequently commented that it was curious the judges had chosen to deliver this ruling in English. On appeal their right to do so was upheld, but few doubted that the key issue at stake was symbolic and ideological rather than legal or communicative.

(3) While conducting interviews about language issues in commercial law in 2012, I was given an account by a Colombo lawyer (Powell, 2012) of how he had been approached for an opinion on possible discrepancies between the English and Sinhalese texts of Sri Lanka’s Companies Act. Confirming his client’s suspicions, he had concluded that the English wording left greater scope for the range of distributions payable from company proceeds. Moreover the narrower Sinhalese wording appeared to result from mistranslation of the Canadian and New Zealand texts on which the Sri Lankan law was modelled. He had nevertheless advised his client against relying on any leeway in the English version. Sri Lankan law gives authority to Sinhalese texts in the event of conflicts regarding new legislation and it would be politically as well as legally unwise to label them ‘mistranslations’. The position of Sinhala as the national language, then, outweighed any suggestion that the intention of the lawmakers might have been misinterpreted.

While the above examples, and many of those cited below, concern English in relation to postcolonial official languages, wherever the admissibility or authority of languages in legal disputes is in question it is likely that macro-level factors beyond individual courtrooms or law offices will come into play. Thus the choice between Portuguese and Tetum in Timor Leste courtrooms is bound up not only with the linguistic competences of relevant parties and the legal lexicon and discourses available to each language, but also with the internal and external sociopolitical agendas of the Fretelin authorities who framed language policy. Similarly, the decision to relegate Indonesian (the language most Timorese citizens, including lawyers, were educated in) to the status of ‘working language’ was based primarily on politics, not language or law. But this does not mean that language-in-law policies ignore access to justice. The latter is often a key motivation for them. Rather, they invoke conceptions of justice that are not confined to the needs of the litigants and defendants in particular cases but touch on justice for the nation, justice for linguistic majorities and minorities, and even justice for languages themselves.

In addition to the complex motivations behind language planning, the complexity of linguistic ecology makes it difficult to target specific changes at particular areas of language use in isolation from other sociolinguistic and sociological behaviour. In the case of law, for example, introducing a new medium may affect legal education, recruitment to the legal and judicial professions, and public perceptions of the justice system.

When we consider what language planning entails, it is hardly surprising that so many minority and colonial languages survive as legal media, that monolingual law predominates in highly multilingual societies, and that polities like Belgium and
Cameroon that sustain the principle of multilingual law at a national level tend to manage it through parallel monolingual streams. Language planning may nevertheless be a plausible and appropriate means of reducing language disadvantage, particularly where a linguistic majority or a small number of large minorities, is targeted. In many jurisdictions where law had once been conducted exclusively in a colonial medium planning has enhanced legal access and transparency for citizens speaking a language of wider communication.

In the following section (2) I will review language planning as both an administrative practice and an object of academic analysis. I will then (3) consider the conceptual implications for administrators and researchers of applying language planning to the law before discussing (4) the motivations that typically underlie it. There follows an account of language planning implementation through three analytical lenses typically associated with the field: (5) status reform, or the manipulation of language use through rules; (6) corpus reform, or the preparation of languages for legal use through the development of lexis and corpora; (7) and acquisition planning, or the training of lawyers, law-related professionals and lay participants with regard to lexicogrammatical innovations and texts in languages hitherto little used for law.

The chapter will then go on to discuss (8) some of the outcomes of language planning in legal practice and identify common patterns according to the way multilingualism is managed and the degree to which language shift has occurred in legal domains. The chapter concludes (9) with an appraisal of the potential of language planning to improve access to justice.

The eminence and gravitas associated with particular languages is clearly of great relevance to the legal domain, where choosing the appropriate register is paramount for practitioners, and this led Haarmann (1990) to view ‘prestige planning’ as an independent variable. Here, however, prestige concerns are taken as a strategic dimension of status-, corpus-, and acquisition-planning. Discourse planning, or the promotion of ideologies and arguments in support of certain languages, is a relatively new addition to the field (Lo Bianco, 2009) and of considerable relevance to research on legal language because of the law’s symbolic power. For reasons of space it has not been given separate treatment here but in the concluding remarks the performative and legitimising functions of legal texts are discussed.

2 Language planning as an activity and object of analysis

While concerted, systematic and self-conscious language planning may have a relatively short history, large-scale manipulation of code- and style-choice is not a recent phenomenon. From thirteenth century Vietnam we have the development of the Chinese-based Nom script, followed by its gradual replacement four centuries later with
romanised Quốc Ngữ, reforms reflecting respectively the contemporary influence of Chinese scholarship and Christian missionary activity while nonetheless nurturing indigenous literature (Lo Bianco 2001: 168–170). In Europe we find lexical standardisation with a view to reconstituting national identity undertaken in sixteenth-century Italy by the Accademia della Crusca (Nencioni 1986: 111), with Richelieu’s Académie Française (Cooper 1989: 3–11) and Leibnitz’s Sprachpflege (Leibnitz 1683/1916: 19) driven by similar nationalising agendas the following century.

However, it was perhaps not until the era of postcolonial nationalisation that language planning emerged as a self-conscious academic, as well as an administrative, activity. The Bangla Academy was established in 1955 as part of resistance in East Pakistan to the pro-Urdu policies and political dominance of Karachi (Bangla Academy 2014). A year later, just ahead of independence from Britain, Malaya set up Balai Pustaka (later Dewan Bahasa dan Pustaka, or DBP) to identify the boundaries of Malay, equip it for national education, and recruit teachers (Kamarul et al 2003: 1–9). The optimism of developing nations was matched by that of linguists from the developed world who saw opportunities to put their training to work in the interest of social development (Wright 2003: 9; Rubdy 2008: 212; Hill 2010: 45). Funding for large-scale projects by bodies such as the Ford Foundation (Hornberger 2006: 26) and engagement with real-world issues encouraged conceptualisation while honing technical and managerial skills (Lo Bianco 2010: 150). It is fair to say that the seminal years of language planning were focused primarily on problems of socioeconomic development in postcolonial multilingual polities, and this agenda is also present in most of the planning that has been applied to law. With decolonisation a large number of countries found themselves with both educational and legal systems shaped by colonial powers and functioning in colonial languages. Often, the colonial language was poorly understood by a majority of citizens.

What, then, do language planners do, and what do language planning researchers study? A number of terms, including ‘language engineering’ (Springer 1956), predate the use of ‘language planning’ by Haugen (1966, adopting Ulrich Weinrich’s coinage), and equivalents in many different languages have emerged, including planification linguistique and intervention sur la langue in French (Calvet 2002: 16), Sprachplanung in German (Ammon et al. 2006) and perancangan bahasa in Malay (Abdullah Hassan 1987). All refer to deliberate and extended efforts to influence language use and most cover two main activities: revising the form of a language through orthography, spelling or lexicogrammatical standardisation and innovation; and establishing rules about which language, or language variety, is to be used in any particular domain. There are inconsistencies in descriptions of linkage between language planning and language policy, partly because of the recursive quality of the relationship, but the latter tends to be treated as the goal (Cooper 1989: 30) or result (Tollefson 2008: 3) of the former. Language planning is also sometimes taken to include unplanned (Kaplan and Baldauf 1997: 297–299) and circumstantial (Corson 1989: 141) outcomes. We should note that even in the absence of explicit policies, no educational or legal
system gives official recognition to all the languages spoken by participants. Choices made systematically often reveal underlying language ideologies, and these result in what Ali Rahman and Mohammad Faravardin (2009: 53) have dubbed “language policy with the manager left out”.

While most of the planning targeted by researchers is large-scale and often conducted at government level or authorised by government departments, a local turn can be seen in Kaplan and Baldauf’s (1997: 52) attention to meso- and micro-level planning and Nekvapil’s (2006: 3) treatment of institutions independent of governments such as commercial enterprises (Nekvapil, 2006: 12). We are therefore entitled to see not only rules about language for entire jurisdictions, but also the management of language within a single courtroom or legal practice, as within the purvey of language planning.

### 3 Implications of applying language planning to legal domains

A majority of language planning studies target educational policy and practice. In Malaysia, for example, where some 146 languages are spoken (Ethnologue, 2014), one level of research focuses on the politics and economics of government policies that incorporate Malay, Mandarin, Tamil and English into state education (Asmah 2007; Gill 2005; Kua 2005). Another considers the challenges such policies pose for particular language communities (Ting 2010; Kärchner-Ober, Mukherjee & David 2011). A third analyses engagement with national policy at the scale of specific educational cohorts (Abdullah Hassan 1994: 113) or individual schools (Lim and Presweg 2010).

Again prioritising examples from education, another research genre evaluates planning through the prism of language rights, with Tollefson (2002: 3) arguing that language-in-education policies merely reproduce inequalities and serve dominant groups, a stance Lo Bianco (2009: 114) largely agrees with while pointing out that policies have nonetheless helped postcolonial polities to assert and extend cultural autonomy. Language-in-education policy provides indispensable context for examinations of language-in-law policy on two levels: it sheds light on political agendas, something that cannot be ignored when dealing with national institutions such as the law; and it helps explain the language repertoires and preferences of the professional and lay participants in legal systems.

Some discussions of language rights make reference to constitutional provisions (Asmah 1979: 11) or international human rights conventions (Phillipson 1992: 93), but language use within the legal domain is seldom the subject of language planning as an administrative activity or object of linguistic analysis. We can, however, draw on at least three bodies of research to help clarify issues within the ambit of language planning for law: descriptions of legalese and the sociology of legal language; studies of legal translation and interpreting; and analyses of bilingual communication.
3.1 Legalese and the sociology of legal language

While there is general agreement among linguists, lawyers and lay observers about the peculiar nature of legal language, as Gibbons (1999:1) remarks, it is easier to recognize than define. A series of attempts to do so have revealed some of its complexity. With regard to English legalese, Mellinkoff (1963) described its retention of Law French, Latin and English archaisms. Tiersma (1999: 100) elaborated on these multilingual influences and the tendency of legalese to retain features abandoned in other domains, but also saw capacity for innovation.

As far as the characteristics of legal writing are concerned, Bhatia (1993), Tiersma (1999) and Gibbons (2003) highlight long sentences, lexical density and complexity, repetition in preference to anaphoric devices, passive constructions and impersonal nouns, features which according to Bhatia (1993) are marshalled in the service of producing autonomous, authoritative texts. Similar features have also been highlighted in Swedish (Lundquist 1995), Spanish (Orts Llopis 2007) and Turkish (Altay 2002). As for oral legalese, often considered to be “at the written end of the continuum” (Gibbons 2003:33), many studies show how it ranges from extreme formality to calculated informality (Fuller 1993) and involves a number of overlapping discourse types (Maley 1994). Genre analysis as pioneered by Bhatia (1993) has been productive in showing how oral features are linked to writing processes, each stage of each event shaped by its main communicative purpose but all of them interconnected within the wider purposes of professional culture.

Analysis of the complexity of legalese, of interest to anyone working in the general field of language and law, is crucial to language planning because shifting the law into languages hitherto absent from the legal domain entails the generation not only of lexical equivalents but also of entire texts and rhetorical practices that seek to replicate the discursive features of those they are augmenting or replacing. Indeed if legal professions are to maintain their sense of integrity in the wake of language reform, the sociological dimensions of legal language must also be considered.

Far from a “neutral instrument of purposes peculiar to the internal development of legal regulation”, Goodrich (1984: 173) saw law as a “specific, sociolinguistically defined speech community”. However, Maley et al (1994) have highlighted the variety of tasks and roles lawyers perform as bridges between the law and lay participation. More recently, Bhatia (2011) argues that the generic hybridity many legal texts exhibit reveals considerable interdiscursivity and heterogeneity within legal practice as a whole, with practitioners routinely pulled between different jurisdictional, professional and cultural loyalties.

I would argue that one of the reasons language shift in legal systems tends to be limited is that language planners perennially underestimate the complexity of legal language, concentrating on lexical innovation without giving due consideration to the implications of introducing new lexis into legal texts and professional practices. Lawyers, on the other hand, instinctively know that changing the language of law,
regardless of whether it changes decision-making itself, has an important impact on the practice of law, even when formal institutions and procedures are retained. This helps explain the resistance of some of them to language planning. Legalese may represent a specific professional speech community but it is not sealed off from the culture of the wider community. As Ng (2009: 6) has argued in the case of Hong Kong, English and Cantonese trials are “trials that take place in two different worlds”.

3.2 Legal translation and interpreting

Legal translation and interpreting are the converse of legal language planning inasmuch as they aim to enable the language-disadvantaged to participate in monolingual legal systems, or at least for these systems to accommodate input from the language-disadvantaged. Language planning, on the other hand, attempts to accommodate the legal system itself to the language needs of communities – especially majority communities – by amending the medium of the law. Hence it allows trials to take place in Sri Lanka without the use of interpreters or written translations by authorising them in Sinhala or Tamil. Having said that, in the absence of comprehensive legal transplant it is impossible to envisage any change in the language of the law that does not rely heavily on translation from an existing legal medium to a new one. Hong Kong’s widespread use of Cantonese in its lower courts is founded upon the comprehensive translation of laws and ordinances from English into Chinese that was undertaken between 1989 and 1994; interpreters remain important there as many participants speak English or other languages and will continue to do so for the foreseeable future.

Studies of legal translation are also instructive for language planning since, as Šarćevič (1997: 70–71) explains, in order to understand the legal effect of texts translators need effectively to translate entire legal systems. Working with Turkish and English, Altay (2002) goes further in expecting translators to understand the historical dimensions of texts in order to achieve pragmatic equivalence. If this is the scope and depth required of those who translate utterances and texts, how much greater is the challenge for those planning language shift for entire legal systems.

Language planning and legal translation are overlapping subjects for a number of studies. Zaiton and Ramlah (1994: 116) examined innovations in the Malay legal lexicon from a translator’s point of view and concluded that it would take considerable time for Malay to emulate the registers, style and authority of English legalese. Zubaidah’s (2002) comprehensive survey of Malaysia’s court-based interpreters is framed by a review of the socio-historical relationship between English and Malay and an account of language planning measures that have enabled the latter to be used extensively in court, though not to the exclusion of interpreting.
3.3 Bilingual legal communication

While concerted or circumstantial language planning has resulted in routine use of more than one language in a number of legal systems, many of them restrict any particular proceeding to a particular language. Hong Kong still frowns upon ‘mixed language’ trials (Ng 2009: 121). Sri Lanka requires Sinhala or Tamil for the subordinate courts and forbids English except in the higher courts (Government of Sri Lanka, 2011). Switzerland assigns the official language of the canton in which a case begins to subsequent proceedings right up to Federal Tribunal Level (Castillo [personal communication] 2015). In practice, however, code-mixing, code-switching and code-shifting are common in legal discourse, especially when law is surrounded by a society in which language alternation is endemic. It has been reported in Hong Kong (Leung 2012), Kenya (Powell and David 2011), Malaysia (David 1993, 2003), Sri Lanka (Powell 2008b), Tanzania (Rwezaura 1994) and Botswana (Thekiso 2001).

Analyses of bilingual discourse shed light on planned language shift by revealing some of the motivations that underlie language choice. Sometimes motivation may be obscure, and where bilingual proficiency is common, it may be subconscious and perhaps even random, but when it can be linked to a change in topic or legal task or courtroom interlocutor it adds to our knowledge about the sociocultural associations, as well as lexicogrammatical limitations, of specific languages and may thus help explain why some languages are favoured over others for particular kinds of legal communication.

Language shift will always involve a transitional period, and evidence from Malaysia and Sri Lanka, where legal language planning began more than 40 years ago, suggests that this period may be indefinite, so just as language planning depends on translation, it also requires bilingual practitioners. The way lawyers and judges switch languages in court has been examined in many of the studies mentioned above, but the literature on bilingual legal discourse is conspicuously lacking in accounts of how legal practitioners, many of whom bring personal bilingualism to their profession, study and practise law in more than one language. A recent study conducted in a Malaysian faculty of law (UM Baseline Study 2014) suggests that language choice is institutionally constrained rather than individually exercised and involves a large variety of factors, including national language policies for education and for law; medium of study and research materials; geographical location of worksite; legal specialisation; and the demands of the employment market and associated financial incentives.

4 Motivations behind language planning in legal domains

While researchers (e.g. Jernudd & Das Gupta 1971: 211) have long acknowledged the highly politicised nature of language planning, some (Cooper 1989: 34; Tollefson
2002:6) go further in arguing that it makes use of language conflicts for political ends. It would be naïve to expect legal systems, as nationally established authority-conferring institutions, to be isolated from politics. I would argue that the primary aim of language planning in them is rarely legal reform, at least in the sense of improving access to justice and the transparency of legal communication, even though both of these play their part as genuine incentives, as well as strategic pretexts.

One of the clearer illustrations of the political dimensions of language-in-law policy comes from Myanmar. At first sight its comprehensive shift to Burmese, making it one of the few jurisdictions in the common law tradition (Tun Shin 2013: 2.10) to have effectively replaced English, appears a rational response to the communicative needs of a society where no more than 5% are proficient in the colonial medium (Bolton 2008). However, there is a close correlation between the phasing out of legal English and a policy of isolating the country from Commonwealth influence while reducing the independence of a legal profession with a record of opposing the military regime (Aung Thoo [personal communication] 2005/2012). The ebb and flow of language policy is more ideological than pragmatic. Hence a Translation Committee for Technical Terms was established in the 1960s without an attempt to translate the All Burma Codes or legal authorities – indeed the citation of precedents was subsequently discouraged (Myint Zan [personal communication] 2013). While Cheesman (2011: 824) sees some pragmatism behind the reinstatement of Anglo-Indian statutes in the 1970s, which may well help to explain the unexpected return to English legal education in the 1980s, the anomalous insistence on English in law schools seems anything but pragmatic: lawyers are unlikely to need the language in practice and many law students are reported to be incapable of passing exams in it without memorising answers to leaked questions (Myint Zan 2008: 17–20).

Sri Lankan language planning also evinces the dominance of political considerations beyond the legal system. The 1961 Language of the Courts Act may have helped address the linguistic needs of Sinhalese-speaking litigants and witnesses by substituting Sinhala for English, but it came on a wave of Sinhalese nationalism and rode roughshod over the needs of the minority Tamil community, which felt more threatened by official Sinhalese than it had by official English. The 1966 Tamil Language (Special Provisions) Regulation, which authorised Tamil for courts in the north and east, was not enough to forestall decades of communal conflict (Coperahewa 2011: 2009–10).

Malaysia’s first prime minister announced the 1967 National Language Act with rhetoric that combined pragmatism with nationalism. Partial retention of English for the courts was to allow the wheels of justice to go round under a legal profession weak in Malay, yet those who did not speak the national language were warned to learn it in order to avoid questions about their patriotism (The Straits Times 1967). The legislation left considerable leeway to choose between English and Malay, but subsequent interpretations in favour of more Malay, supported by legislation and court rules, show the key imperatives to have been political rather than linguistic. After an
initial focus on the technical details and difficulties of extending legal Malay (*Utusan Malaysia* 1983; 1990), editorials in government-controlled newspapers focused more on nationalist ideology than communicative problems (Rashid Darham 1990; *Utusan Online* 1998). Mead (1988: 11–16) contends that a push for more Malay in the 1980s was motivated largely by the ruling party’s need to curb political disaffection among key Malay constituents.

Another example of underlying political imperatives comes from Tonga. All legislation is gazetted in Tongan (*Crown Law Tonga* 2013) as well as English, the former having authority in the event of a dispute over criminal, though not civil, law (*Police vs Sikuea* 1996), and all proceedings in the police courts are conducted in it (personal observation 2014). Rather than the communicative needs of litigants, however, the main reason for bilingual legislation appears to be the preference of parliament, where debates are conducted in Tongan. In practice the lower courts hardly refer to legislation and produce no legal records, while higher court proceedings are officially and exclusively in English.

Wherever there is language planning we find the hand of politics. Official Irish is undoubtedly pragmatic in the thinly populated *Gaeltacht* (Ó Flatharta [personal communication] 2012/2013), but its occasional use at the very highest judicial level (e.g. *The State (Mac Fhearraigh) v. Mac Gamhna* 1983; *Ó Beoláin v. Fahy* 2011) tends to be triggered by constitutional and rights issues more often than by concern for communicative need, and its status as first official language gives it more currency in proceedings than Welsh, which has more habitual speakers yet is rarely considered a practical medium of jury trials in Wales (Davies 2011). Without the 1997 change in sovereignty it is doubtful Chinese would have expanded as it has in Hong Kong courts, given that the L1 of 95% of the population was hitherto largely ignored, except by interpreters. The political importance of Portuguese in Timor Leste, outstripping its communicative importance, has already been mentioned. Even in Canada—where the small number of francophones in some provinces is used to excuse monolingualism in the judiciary (Levesque 2012), evade obligations to assemble francophone juries (Bastarache 2012) and overlook the equal authority of French and English legislative texts (Cleroux 2011.9.19)—politics has tended to override pragmatism in favour of official bilingualism whenever governments feel worried about the stability of the federation. It is hardly a coincidence that the Official Languages Act, enshrining the right to be heard in court and to read legislation in French as well as English, was passed at a time when calls for Quebec sovereignty were soaring.

The complex calculations entailed in language planning for authoritative national institutions such as law inevitably go beyond immediate communicative needs and involve political interests, but this by no means disqualifies planning as a means of reducing language-based disadvantage. By reviewing the components of planning in the next three sections we will see that where planning retains sight of the communicative needs of participants it may compliment and improve on interpreting and translation as a support for linguistically disadvantaged legal participants.
5 Status planning

Since language planning invariably touches on the relationship between two or more languages, some means of regulating that relationship is generally involved. The most authoritative regulations are statutory, but other legal and professional mechanisms also play their part.

In many polities where there is little dispute over language authority the constitution fails to specify an official language (e.g. Germany’s Grundgesätze, Mexico’s Constitución Política). Burmese was declared authoritative in Myanmar’s 1974 constitution and again, as ‘Myanmar language’ in the general provisions of its 2008 replacement, but the language for the legal system is not specifically mentioned. But in some highly multilingual societies and especially in postcolonial polities that have moved away from a colonial medium we find constitutional provisions extending to legal language.

The Indian Constitution (Art. 348) authorises English for the Supreme Court and High Court until parliament provides otherwise, but in the latter proceedings may be in Hindi or official state languages with presidential approval. Sri Lanka’s 1978 Constitution (Art.24) installs Sinhala for subordinate courts, or Tamil in areas where it is the language of administration, but the minister of justice may authorise English for proceedings and records. Under the 1982 Constitution Act (Art.9.1) Canadian citizens may use either English or French in any court and in Charlebois v City of St John (2005) the Supreme Court ruled that provincial authorities do not have discretion to modify this right. The Malaysian Constitution (Art. 152) instated Malay as the national language while originally making provision for the continued use of English in court but was later amended to incorporate the National Language Act, which restricts the use of English.

The second tier of status planning is standard legislation. Sri Lanka’s 1956 Official Language Act and 1961 Language of the Courts Act, for example, instated Sinhala for law, with the 1966 Tamil Language (Special Provisions) Regulation authorising Tamil in some regions. In neighbouring India the Civil Procedure Code (s.137) and Criminal Procedure Code (s.558) allow states to determine the language(s) of the court (Jayaram and Rajyashree, 2000:138–139). Kenya’s 1967 Civil Procedure Act authorises English for the superior courts and English and Kiswahili for the subordinate courts. In Hong Kong the 1974 Official Languages Ordinance made Chinese official alongside English (Cheung, 1997:318) and was amended in 1995 (Government of Hong Kong Department of Justice, 2007) to allow both languages for court proceedings. Language legislation may also address legal drafting. Bangladesh’s 1987 Bengali Language Implementation Act requires bilingual drafting of legislation. Malaysia’s 1967 National Language Act makes English authoritative for prior statutes, Malay for subsequent ones.

A third influence on status planning is case law, which is particularly influential in common law jurisdictions. Interpreting or filling in lacunae in constitutional and statutory, there have been rulings on a wide range of language disputes, including the admissibility of Hindi at high court level in India provided English translations are supplied (High Court of Uttarakhand 2010); the obligation in Malaysia to use the
national language when filing motions (Zainun Dahan 1997) and show proficiency in it for bar admission (Utusan Malaysia 1984.6.02); and the constitutionality of excluding jurors on the grounds that they understand the language of witnesses and may pay more attention to it than English translations (Hernandez v. New York 1991).

While constitutions, statutes and judgments may come to mind first when considering legal language rules, the sharpest tools of status planning are professional regulations and orders. These depend on enabling legislation for their authority, but whereas constitutional and statutory provisions are often drafted widely, court rules and legal directions are narrowly drafted in order to regulate systematic and consistent procedure on the ground. Pakistan’s Supreme Court Rules allow for documentary submissions (Ord. V, 26) and accompanying translations (Ord VII, 2) in Urdu. A 1985 amendment of Tanzania’s Court of Appeal Rules allows Kiswahili to be used in court and specifically authorises it for the hearing of testimony in the High Court (Rwezaura 1994: 115). Philippines Supreme Court Rules are somewhat vague in requiring a “language known to the accused” to be used for arraignments and “an official language” for judgments (Martin 2012: 16), but a 2010 Supreme Court administrative circular was rather more specific in yielding to resistance from judges and stenographers in Bulacan to the use of Filipino there, declaring its use merely optional (Martin 2012: 8). Most of Malaysia’s legislation on legal language allows considerable discretion for judges, but when the government has seen a need for greater use of Malay, specific implementation has generally come in the form of practice directions (New Straits Times 1981) or judicial (Utusan Malaysia 1981) and registrar (Utusan Malaysia 1983) circulars. Orders from the police may also influence language practice: in 2005 India’s Director General of Police ordered first information reports to be written in English or vernacular Hindi in order to clamp down on use of an Urduised legalese that few understand (Siwach and Rohatki 2012).

Planning may take more subtle forms but still be influential. The fact that Tanzania has a Kiswahili version of its constitution, whereas Kenya does not, gives some indication of the higher expectations attached to the language there, where it is also used for the Government Gazette. Judicial and bar websites may also give cues, with the secondary use of Urdu in Pakistan’s Supreme Court portal perhaps guiding, as much as reflecting, the secondary use of the language in the legal system there. Where justices have discretion, courtroom practice itself is persuasive. Under the law Malaysian advocates must seek permission to use English in court, but in practice most of them simply take their lead from the presiding judge’s practices and preferences (Powell 2008a: 39).

6 Corpus planning

Corpus planning, described as the modification and innovation of language forms by Cooper (1989: 31) and actions sur la langue by Calvet (1987: 282), may intertwine closely with status planning (the allocation of language functions, or actions sur les
Corpus planning is likely to involve linguists and often follows on from status planning, which is done primarily by policy-makers, but their relationship is typically recursive. As far as the legal domain is concerned, there are two main kinds of activity: lexical and sometimes lexicogrammatical innovation to equip languages for legal communication; and the production of legal corpora in the language in question that draw on these innovations and establish their currency in legal discourses. As with status planning, corpus planning has important sociopolitical dimensions. As Bourdieu put it succinctly (1982: 18): “En fait il n’y a pas de mots neutres”.

Lack of terminology is the most frequently heard excuse for failing to use in legal contexts languages that support large speech communities in other domains. In the early days of independence Malaysia’s justice minister was pessimistic about translating sufficient terms into Malay from English given that the latter itself relied heavily on Latin and French (The Singapore Free Press 1960). A quarter of a century later a shortage of Malay terms was thought to be disadvantaging non-English-speakers in labour disputes (Utusan Malaysia 1984). Only recently a former Chief Justice (Koshy 2013) acknowledged the continuing limitations of the Malay legal lexicon. Perry (2000) reported confusion among Sri Lankan lawyers over the meaning of Sinhala terms. Harms (2012) claims no indigenous African language has sufficient terms for legal practice and Moeketsi (1999) cites lexical deficiencies at the most basic level of legal discourse there. Thekiso’s (2001: 207) examples of Setswana in Botswanan courts are heavily laced with English. On a visit to Dhaka International University’s law department in 2014 I was told that code-mixing was inevitable given the lack of Bangla terms, while in discussions at Tonga’s Attorney General’s Office the same year I learnt that lack of lexis was the biggest hurdle facing legal translators.

In fact comprehensively framed government-funded legal lexicology goes back at least six decades. In the early 1950s Sri Lanka’s Legal Drafting Department started work on a Sinhala, and later a Tamil, legal lexicon (Coperahewa 2011: 214). In 1963 Malaysia’s DBP set up a committee for legal terms and brought out the first Malay legal terminology seven years later (Dewan Bahasa 1986: xi). Each Indian state administration has a Language Cell dealing with lexicography; in many states these are also responsible for legislative drafting (Jayaram and Rajyashree 2000: 67). Funding appears to be inadequate for the enormity of the task (Jayaram and Rajyashree 2000: 27), although it should also be noted that even in Malaysia, where there seem to be adequate resources to build new court complexes, establish e-filing systems and sponsor law students to study overseas, the 3000 legal terms produced by DBP in 1980 have scarcely been added to. DBP is the authorised but not the only lexical source, and alternatives include judicial portals. But many practitioners confess (Powell 2012) to turning to Google Translate when drafting in Malay. Tanzania issued a slim Kiswahili legal dictionary in the 1960s (Rwezaura 1994: 112), but few lawyers seem to be aware of it (Maosa [personal communication] 2013).
Given that it took English law six centuries to move from Latin and Law French into English (Mellinkoff 1963), perhaps six decades is too short for legal lexicography to come to fruition, but we must also bear in mind that even if there are terms in abundance this does not guarantee their adoption by practitioners. One Malaysian judge (Faiza 1993: 105) has argued that provisions for the continued use of English in the interests of justice may have been necessary to compensate for gaps in the Malay legal lexicon but were not designed to excuse gaps in the vocabulary of individual lawyers. A Bangladeshi assistant judge (Ferdousi [personal communication] 2013) notes a preference among advocates for English terms even when Bangla equivalents are widely known. Quite apart from producing enough terminology, one of the toughest barriers for corpus planners to penetrate is the preference of professionals who live by their capacity to persuade for using words that have sufficient gravitas or precision (or, in some cases, ambiguity) to resonate in the minds of peers raised on the same discourses.

This leads us to the second strand of corpus planning: the generation of texts. While the thin quantity (Zubaidah 2002: 159) and poor distribution (Jayaram and Rajyashree 2000: 135) of translations are commonly cited as impediments to language reform, it should be noted that the first priority of corpus planners is to make available in the target language the legislation and rules most frequently cited in court. Hence a Malay version of the Penal Code was produced back in 1967 (Straits Times 1967) and the Road Traffic Act was among the 60 Malay translations completed in Malaysia by 1982 (Powell 2009: 163). Kiswahili texts are available for Tanzania’s Primary Courts Civil and Criminal Procedure Rules and also for the Objects and Reasons sections appended to statutes (Rwezaura 1994: 112–113). The government of the Philippines has not commissioned any legislation in its national language, but one judge took it upon himself to translate the Civil, Penal and Family Codes and the Criminal Rules and Procedures (Gonzalez 1996: 230). As already mentioned, a number of jurisdictions, including Bangladesh, Hong Kong, Malaysia and Sri Lanka, publish new legislation in two or more languages. However, my discussions with legal practitioners in all of these lead me to believe there is still an overwhelming tendency to translate from English rather than draft directly in Bangla, Chinese, Malay or Sinhala (Powell 2012).

Translation, and drafting from scratch in new languages, present opportunities to reduce ambiguity and enhance transparency. While this chapter focuses on planning across languages, simplification and easification of legalese can certainly be thought of as falling within the parameters of legal language planning, and indeed some lawyers argue that putting laws into the vernacular is insufficient for greater transparency unless the register is made more accessible too (Patwary [personal communication] 2014). Plain language movements are not new. Tiersma (1999: 214) notes that 300 years ago a Charles XII called for documents to be in plain Swedish, and Sweden’s justice ministry currently employs linguists to ensure compliance with a 1982 ordinance requiring clear and simple language. He also (Tiersma 1999: 217) feels
emphasis upon plain English in United States law schools has led to more readable judgments. In Japan the recent introduction of lay judges has spurred efforts to make courtroom language more accessible (Okawara 2008).

While the desire to make documents and speech more comprehensible is laudable, plain language faces complex challenges. For one thing, corpus planners need to look beyond lexical to syntactical complexity, and when they do they may find conflicts between the needs of lay and legal readers. The tendency in English legislation to place qualifications as close as possible to what they qualify, for example, can make it cumbersome to read but prioritises legal certainty, and as Bhatia (2001:72) observes, avoidance of ambiguity overrides desire for accessibility. There is also the question of whether pursuing simplification is concordant with seeking legal equivalence in another language. As Mikkelson (2002: 2) points out in the context of legal interpreting, the goal is equality, not clarification. Fear of inaccuracy and inadvertent semantic shift is another issue facing plain language. Impatience with legalese can lead to errors when redrafting within the same language (Davies 2004: 96), and the risks are even greater across languages. In some cases deliberate semantic shift, rather than error, is suspected. There has long been debate in Malaysia over whether constitutional provisions for minor children’s “parent or guardian” to decide their religion allows for unilateral conversion by one of them. It increased in intensity when the public became aware that “parent”, initially translated in relevant Malay texts as *ibu* or *bapa* (widely read as ‘parents’, and assumed to uphold the interpretative principle that singular embraces plural), was later amended to *ibu atau bapa*, or ‘either parent’ (Lee & Blakkarly 2013).

In addition to codes and statutes, judgments and academic texts are important legal corpora that not only test out the meaning of new lexis but associate it with legal arguments and jurisprudence. From Bangladesh to the Philippines, however, judges and jurists continue to write overwhelmingly in English (Ferdousi [personal communication] 2013; Pasamba, in Powell 2012).

7 Acquisition planning

It is not enough to establish rules about and adapt languages for legal use unless measures are taken to ensure individual legal practitioners are proficient in the target legal medium. Yet far less effort has gone into acquisition planning than status or corpus reform. There is a wide assumption that the general proficiency achieved through general education can be drawn on when legal professionals attempt to practise law in a fledgling legal medium. Hong Kong has no requirement for Chinese in legal education (Hong Kong University PCLL 2012) despite the increasing importance of Cantonese in the lower courts and the bar’s growing emphasis upon Mandarin skills (Yih 2009). Tonga may draft legislation bilingually but law is studied in English – and
overseas (Lutui, p.c.2014). The Philippines has experimented with proceedings in Filipino yet there are no legal courses in it (Reyes 2009).

A number of jurisdictions do support bilingualism in legal education. In officially promoting Portuguese and Tetum as legal media while recognising the continued value of Indonesian in practice, Timor Leste runs law courses in Portuguese at its National University but allows candidate to take exams in Tetum or Indonesian at three other local institutions (Fernandes & Maceda [personal communication] 2010). Law graduates seeking to qualify as public prosecutors must complete a training course conducted in both Portuguese and Tetum (Figueiredo [personal communication] 2010). In Mauritius, which combines civil and common law through its French-British colonial legacy, the local LLB has obligatory courses in both French and English (Gunputh 2013: 62). South Africa, another mixed-law system, continues to support legal education in Afrikaans, even though it is unlikely law students could avoid English (Harms [personal communication] 2013). Canada has put considerable resources into bilingual legal education. The University of Ottawa has run parallel civil law and common law courses since 1957 and bilingual instruction began in 1977 (University of Ottawa 2012). Institut Joseph-Dubuc offers common law in French and civil law in English and McGill University holds summer schools in bilingual legal drafting (Blais 2009).

In Malaysia, candidates unable to certify Malay proficiency through school-leaving or other exam results are required to take a language test before they can be admitted to the bar (LPQB 2013). However, only two qualifying law departments (Universiti Malaya and Universiti Kebangsaan Malaysia) teach to any extent in the national language. In the former, students may opt to take exams in either language (Chew [personal communication] 2013), whereas in the latter at least one paper on any exam must be written in a different language from the others (Pey [personal communication] 2013). At all other domestic law schools instruction is in English. Lawyers may also be admitted upon passing the bar or solicitor’s exams in England and Wales or Ireland or upon passing the Certificate of Legal Practice after studying in other Commonwealth law departments (LPQB 2013). The CLP may be sat in Malay or English but the great majority of candidates choose the latter (LPQB 2013).

Through much of South Asia it is possible to qualify as a lawyer in an indigenous language. The All Indian Bar Exam may be taken in eleven languages (Bar Council of India 2014). Language restrictions on exams in Pakistan have been dropped (Pakistan Bar Council 2014) and admission through Urdu is possible (Anis [personal communication] 2014). In Bangladesh, exams for subordinate court advocates and magistrates may be sat in either language, although those for the High Court are in English (Patwary [personal communication] 2015). From interviews at Dhaka International University (2014) I found a strong consensus among lawyers and law lecturers that a language-based class system had emerged in Bangladesh, with those qualifying in Bangla confined to less lucrative work. According to Ferdousi ([personal communication] 2013), the division is reinforced by higher bar fees for the higher courts,
whose English-educated lawyers hardly bother with the lower courts. In Sri Lanka lawyers have been able to qualify in Sinhala, and in theory also in Tamil, although discussions at Sri Lanka Law College suggested they may be handicapped by a lack of courses and materials in these languages (Powell 2012), and there is evidence of linguistic social division there too. Since 2008 the College has been attempting to restore compulsory English (The Island 2008).

8 Degrees, patterns and effects of language planning

Status planning, corpus planning and acquisition planning have led to a number of different patterns of language contact, enabling language shift and influencing professional practice in legal domains. These range from the enforcement of monolingualism to support for multilingualism.

8.1 Regulation of relations among languages

Most legal systems function in a single language. Monolingualism may simply be assumed, especially where there are few doubts about which language has socioeconomic and political dominance, but sometimes it is established explicitly, as in the requirement for Danish under Denmark’s Code of Civil Procedure or English under Botswana’s Magistrates Courts Act – even though Setswana is often used in practice (Thekiso 2001). Imposing monolingualism is an instance of status planning just as much as accommodating multilingualism.

Where more than one language has official recognition there may be geographical separation, as in Switzerland’s canton-based policy previously mentioned or Cameroon’s Anglophone common law regions and Francophone civil law regions (Baaboh 2009). Separation according to court level is common and typically assigns indigenous languages to lower courts, sometimes alongside continued use of an elite exonormative language, while requiring the latter for higher courts. Hierarchical separation is particularly clear in Tonga, where English is absent from lower court proceedings (except for loanwords), but judges in the higher courts remind advocates that they will ignore any evidence not in English (personal observation 2013). In Sri Lanka, geographical and hierarchical separation are combined by installing Sinhala or Tamil for the subordinate courts according to region and English for the superior courts. The linguistic and legal rationales behind this kind of division are clear enough. Lower courts hear the majority of cases, many of them relatively straightforward and revolving around oral testimony that may be given in non-technical language. They are typically not courts of record and produce no jurisprudence. On the other hand the higher courts administer lengthier and more complex matters and make more use of written authorities.
and submissions, so conducting proceedings in languages new to the legal domain presents more of a challenge there. This tiered arrangement thus lowers corpus planning burdens. It may also serve political rationales by demonstrating to the public the legitimacy of postcolonial languages, since the majority of citizens who attend court, whether as defendants, witnesses, litigants or spectators, appear only at lower levels.

8.2 Effects of language planning on legal practice

The influence of language planning on legal practice becomes more complex and interesting when two or more languages are admitted in the same communicative events. This may happen where language policy is flexible enough to allow for bilingual proceedings (e.g. Malaysia), where bilingualism occurs despite official policy (e.g. in Botswana, or the U.S. small claims courts investigated by Angermeyer 2015), and where the language policy is silent (e.g. law offices and much private law). Legal bilingualism may be a burden for practitioners, but it also gives them opportunities for choosing the language they find most effective for the wide range of legal tasks they perform, from interviewing clients to writing and delivering submissions to researching precedents. Where planners have been disappointed by the progress of language shift they would do well to analyse bilingual legal practices to better understand task-, site- and interlocutor-based differences in legal communication and the reasons some languages are considered more suited than other to certain kinds of communication.

One aspect of language planning worthy of more extensive investigation is the effect it may have on recruitment into the legal profession. While conceding that Filipino was still ill-equipped for sophisticated legal argument, Gonzalez (1996: 231) saw the hold of English over law in the Philippines as effectively barring entry to those from rural areas and poorer backgrounds. The size and ethnic composition of Malaysia’s bar has been transformed in the last twenty years (Majlis Peguam 2013), and although language policy in favour of Malay may only be part of the reason for this, it is not coincidental.

It is plausible that civil law adapts more readily than common law to new languages. French has almost disappeared from the legal systems of Indochina and Dutch from Indonesia. The lesser role of stare decisis in civil law may be significant. Codes are easier to translate than case law and may show considerable similarity across jurisdictions, as I observed in Dili when watching lawyers who had never studied Portuguese managing to work from authorised texts in it by making constant reference to unauthorised Indonesian equivalents (personal observation, 2010). On the other hand many civil law systems continue to operate in French or Portuguese, even in African polities where only a minority are fluent in them. It should also be remembered that civil law jurisdictions like Indonesia and Vietnam that successfully introduced national languages also experienced radical political and sociolegal transformation.
9 Conclusion: Language planning and access to justice

In his inaugural presidential address to the International Association of Forensic Linguists, Tim Grant (2015) attempted to unite diverse research on language and law under the overall aim of using language to improve the delivery of justice. I would argue that language planning serves and has considerable potential to further this aim. A great deal of work on language and law, from translation to authorship identification, is technical and apolitical, perhaps necessarily so. But improving the delivery of justice may also require a critical perspective that looks beyond the legal system to the political, social and economic relations in which it is situated. There may be good reasons for privileging certain languages and registers in legal communication, but these reasons should not be taken for granted, and the possibility of reforming language status, corpus or acquisition inevitably leads to deconstruction of the law’s symbolic power. Moreover, constitutions, statutes, judgments and professional rules contribute crucially to public perceptions about linguistic authority, not only by laying down rules but by putting these rules into practice in the production of texts. Thinking about changing the medium of the law therefore entails examination of wider discourses, as well as individual texts.

Targeted at speech communities rather than individual legal participants, language planning doesn’t remove the need for interpreting and translation, but it can reduce the incongruous practice of interpreters translating proceedings from elite legal languages that few understand and can improve transparency in the many jurisdictions where law is administered in a minority language. Whether justice has improved in Hong Kong or Malaysia with vernacular proceedings is difficult to answer since so many factors are involved. But vernacularisation can provide the groundwork for such improvement.

To avoid adding to language-borne injustice, planning should proceed cautiously, with periods of bilingualism bridging the older and newer legal media and registers. This places a heavy linguistic burden on legal practitioners but also affords them opportunities to choose the best linguistic tools for their trade. The role of bilingual lawyers is crucial, just as the role of lawyers as mediators between the law and their clients is crucial in monolingual jurisdictions, and so educational support should be prioritised. This has not been the case hitherto. While most Malaysian law schools do have some kind of course on legal Malay, they rarely go beyond teaching lists of lexis (UM Baseline Study 2014). This is pragmatically motivated inasmuch as it reflects the assumption that Malay will be used for less complex tasks, but it also reveals the weak intention of planners to make the national language a comprehensive medium of law. The dangers of creating language-based class division in legal professions must also be faced. Malaysia has not gone down this road as far as some South Asian jurisdictions, but evidence of linkage between language preference and career preference (UM Baseline Study 2014) shows that the danger is there.
By looking at bilingual law in practice we can gain insights into what legal communication entails. Suddenly replacing long-standing terms of art won’t best serve the interests of justice, but neologisms can be improvements. (Legal Malay has at least five terms to cover the multiple legal meanings of ‘charge’). Some legal communication has to be technical and elitist, but a lot of it need not be. There are understandable fears that bilingualism may increase the risk of ambiguity, but needing to explain law in two languages can also expose hidden or potential ambiguity, as in the translation of ‘parent’ as ibubapa mentioned above. Legal interpreting requires awareness of the various possible semantic and pragmatic meanings of legalese, but language planning adds to this awareness as it seeks lexicogrammatical equivalence on a long-term basis in multiple contexts.

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