
The Three Languages of the Common Law

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The development of a body of legal ideas is inseparable from the creation of special legal language. As a source of technical vocabulary, however, the vernacular has obvious shortcomings; and in any case medieval English was not sufficiently standardised to render it suitable for official use. Latin was used for formal records, and made a permanent mark on the formalism of the common law, but it had the drawback that the Romans had used it before; its legal terminology was therefore already invested with technical meaning unsuited to the English context. The solution was found in a version of medieval Anglo-French known — at any rate once it degenerated — as “law French”. French, of a kind, was the principal language of the common law from the thirteenth century until the seventeenth. Indeed, the majority of English legal terms are of French origin, though the legal meanings are purely English and result from the conversion of ordinary words into terms of art by bilingual lawyers who used French only as a professional dialect. This curious circumstance goes some way to explaining how England managed to produce a distinct system of law which over the centuries remained more or less impervious to Roman law influence.

Le développement d'un ensemble d'idées légales est inséparable de la création d'un langage légal spécialisé. Le vernaculaire contient des lacunes évidentes comme source de vocabulaire technique et, de toute façon, l'anglais médiéval n'était pas suffisamment uniformisé pour être utilisé à des fins officielles en Angleterre. Le latin était utilisé à ces fins officielles et a marqué de façon permanente le formalisme de la common law, avec l'inconvénient d'avoir déjà été utilisé par les Romains et d'être ainsi chargé d'un sens technique inadapté au contexte anglais.

La solution a donc été l'élaboration d'un anglo-français médiéval connu — à tout le moins dans sa forme dégénérée — sous le nom de *law French*. Le français était la langue principale de la common law du XIII^e au XVII^e siècle. Ainsi, la plupart des termes légaux anglais sont d'origine française, mais leur sens légal est purement anglais puisqu'il résulte de la conversion de mots ordinaires en termes techniques utilisés par des avocats bilingues se servant du français uniquement à des fins professionnelles. Cette curieuse circonstance sert en partie à expliquer comment l'Angleterre a réussi à élaborer un système légal distinct plus ou moins imperméable à l'influence du droit romain au fil des siècles.

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Introduction

The history of legal language has sometimes been treated as a field of antiquarian curiosity peopled by collectors of strange obsolete words or connoisseurs of subtle shifts of meaning. I have myself dabbled in legal lexicography, and know the delights of finding and recording words and meanings not to be found in any previous dictionary.¹ Such basic philology is a necessary handmaid to serious legal history. But the genius of Maitland showed us that legal language is more important than that.² The development of terms of art is of the essence of legal development, and the common law could never have become a distinct body of law without its own distinct language — a terminology different from that of ancient Rome — in which to express its concepts. And it was Maitland who pointed out the irony that that language was not English. The very Englishness of English law, he quipped, may be attributed to the strange fact that medieval English lawyers spoke French in court.³

Before we look more closely at that strange fact, I must say something of the other two languages used by English lawyers: namely Latin, the language of forms and records, and English, the vernacular tongue of all English lawyers from the beginning.

I. English

We can begin with English, of which, surprisingly, there is the least to be said. That is not, of course, because English lawyers did not speak their own language. English was the mother tongue of all Englishmen after the twelfth century,⁴ and the *Dialogus de Scaccario* informs us that by 1179, as a result of intermarriage, “the nations are so mixed that it can scarcely be decided . . . who is of English birth and who of Norman.”⁵ French, as we shall see, was a learned second language for the educated classes, allied to Latin but easier to use in everyday speech; it was not the language which lawyers had learned at their mother’s knee. It is fairly certain that there was no English legal profession before the thirteenth century, and so from the very beginning common lawyers were a class bred to speak English. Moreover, even the earliest common lawyers cannot have insulated their professional work completely from their mother tongue. Lawyers must have used English to communicate with their clients, and therefore they must have been able to explain elementary legal matters in English.

¹ See J.H. Baker, *Manual of law French*, 2d ed. (England: Scholar Press, 1990). See also: J.H. Baker, “The Origin of Jeofail” (1971) 87 L.Q. Rev. 166; J.H. Baker, “The Pecunes” (1982) 98 L.Q. Rev. 204.

² See F.W. Maitland, “Introduction” in *Year Books 1 & 2 Edward II* (17 Selden Soc., 1903) at xxxiii-lxxxii.

³ See *ibid.* at xxxvi.

⁴ See W. Rothwell, “The Role of French in Thirteenth-Century England” (1975-76) 58 Bull. John Rylands Library 445.

⁵ R. FitzNeale, *Dialogus de Scaccario*, trans. C. Johnson (London: Thomas Nelson and Sons, 1950) at 53.

I suspect they also used the language when speaking to each other out of court. Trials must have been conducted in English, even if some of the formalities were in French or Latin. There is good reason to think that formal documents (such as the articles of the eyre, and indictments) were transposed from Latin or French into English when the clerk read them out in court; had they not been, the proceedings would have been reduced to farce. I shall return later to the prevalence of French for professional purposes. But what was the influence of English on legal vocabulary?

Because the law cannot be hermetically sealed from laymen, a number of English words have survived which describe legal and political institutions (for example, KING, LORD, SHERIFF), concepts (for example, LOAN, SALE, THEFT) and even common procedures (for example, WRIT,⁶ [plea of] NOT GUILTY). Words such as BUY and SELL, GIVE and TAKE, LEND and BORROW, HAVE and HOLD, WILL and BEQUEATH, or STEAL, are as necessary to a layman's vocabulary as to a lawyer's and have always been common to both classes. Here the use of a French alternative — for instance, PURCHASE, DONATE, DEVISE, or commit LARCENY — adds formality but does not change the substance.

A few, and only a very few, English legal and administrative terms were so untranslatable that they were adopted into French and Latin: for example, OUTLAW (L. *utlagare*, *utlagatus*), ALDERMAN (L. *aldermannus*), GAVELKIND (L. *gavelikenda*), HUNDRED (L. *hundredum*), WITHERNAM (L. *withernamium*). Most English words had an exact French equivalent, and in a few cases, surprisingly few, the words have remained genuinely interchangeable to this day. I doubt whether even a fanatical purist would seek to draw a distinction between SHIRE and COUNTY, OWNERSHIP and PROPERTY, SELLER and VENDOR, BEQUEST and LEGACY. There are even a few somewhat odd partnerships where we regularly use an Anglo-Saxon noun but a French adjective (for example, KING—ROYAL, SHERIFF—VISCONTIEL); or an Anglo-Saxon verb but a French noun (for example, TO OWE—a—DEBT).

On the other hand, most of the technical legal words used by the Anglo-Saxons disappeared in early medieval times and rapidly became very obscure. Ironically, our first law dictionaries are not of Latin or French but lists of obsolete English words used for different kinds of franchise (such as GRITHBRECHE, HAMSOEN, INFANGENETHEOF and FLEMENEFREMTH) — lists first made in the thirteenth century, with the explanations in French.⁷ These were words still found in Anglo-Saxon charters which might be of contemporary importance, but evidently no one any longer knew the meaning save by professional study.

Even at a less esoteric level, the survival of English legal words has been the exception rather than the rule, and is largely confined to words which were familiar in everyday speech. It is hardly surprising that BUY and SELL should have replaced

⁶ Here the French word *brief* has acquired an entirely different sense: in England, the *breviate* of a case for the instruction of counsel, in America the *breviate* of an argument for the instruction of a court. It has, however, survived in Scotland as *brieve*.

⁷ See J.H. Baker, *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge: Boydell Press, 1996) at xxxvi, 62 [hereinafter *Catalogue*].

ACHATER, EMER and VENDRE, even for legal purposes, since lawyers had continued to use the ordinary English words and did not develop a special sense. It is worth noting, however, that some apparent survivals of English represent deliberate reversion to a different language in order to escape a special sense which had developed in legal French.

A good example is MANSLAUGHTER, which in purely linguistic terms must be the exact equivalent of HOMICIDE. However, it is not a word that we find in the law books as a term of art until about 1500. It was introduced to distinguish a class of homicides that were not murder.⁸ Previously the French term CHAUD MÊLÉE or CHANCE MEDLEY had been used, since most non-murderous killings arose from hot blood and sudden quarrels. But the verbal confusion between heated (*chaud*) and sudden (*chance*) fights shows the impreciseness of the notion, which did not in any case include reckless killing. Manslaughter performed the trick very well, albeit at the cost of losing its natural equivalence with homicide. Thus the French word HOMICIDE became the genus, while the Anglo-Saxon words MANSLAUGHTER and MURDER represented two of its species. Here, then, we have an English word bearing a narrower, more technical meaning than the law French.

The opposite happened in more recent times with the word THEFT. Lawyers had long used the word LARCENY for felonious stealing, and it had become a very technical concept involving asportation with force and arms. When the old law was replaced by the *Theft Act 1968*,⁹ the draughtsman decided to abandon the French word completely and resort instead to the Anglo-Saxon THEFT. It was not linguistic chauvinism. The French word was here deliberately killed off in the hope that the technical concepts of asportation with force would die with it. The draughtsman also introduced the non-technical French word DISHONESTY to avoid confusion with older words such as *deceit* and *fraud*, which had also become overlain with technicality.¹⁰ Incidentally, the same legislation did away with the old meaning of BURGLARY, as a nocturnal offence, since it was thought that in an age of electricity the nocturnal element no longer served a meaningful purpose.¹¹ But here I stray into philological mists: whether BURGLARY is French or English might be a good moot-case.

Another interesting example of an English technical term is TRUST. It is found in the year-book period, though usually translated into French as *confiance* or *confiance*, in the context of uses of land. Its philological value was probably in providing the counterpart concept to the use: the feoffor PUT HIS TRUST in the feoffee, who then HELD TO THE USE of the beneficiary. It is the act of trusting which generates the use. (Compare sale and purchase, or debt and credit, as words for the same transaction viewed from each side.) In the seventeenth century, *trust* prevailed over *use* as the

⁸ The word "murder" itself has a complex earlier history: see B.R. O'Brien, "From *Morðor* to *Murdrum*: The Preconquest Origin and Norman Revival of the Murder Fine" (1996) 71 *Speculum* 321.

⁹ *Theft Act 1968* (U.K.), 1968, c. 60.

¹⁰ The statute uses the adverb "dishonestly", *ibid.*, ss. 1-2.

¹¹ *Ibid.*, s. 9. There is no affront to language here, since there is nothing nocturnal inherent in the word "burglary".

word for the equitable estate because of the *Statute of Uses 1535* which had executed uses and turned them into legal estates; it was convenient to have a word to describe equitable estates which were not executed by the statute, and the Anglo-Saxon came readily to hand.¹² Why *trust* was preferred to the French word *confidence* is less obvious, though in modern law *confidence* has come to mean something quite different. A possible explanation is that the English word lent itself more readily to Frenchifying: we find *cestuy que trust* and then (in the seventeenth century) *trustee*. I suppose *fi-ancé* would have done, but that is another word which came to have a special meaning in English (I believe not until the nineteenth century).

Thus, although the English language has contributed some terms of art to the law of England, in most instances it has done so in a subsidiary or secondary way where an older French term has outlived its original purpose. There were once English counterparts for many other legal terms which we now know only in their French forms (for example, BOTE for estover, now found only in composite words such as HOUSEBOTE and FIREBOTE; DOOM for judgment; GRITH for sanctuary; TALE for count; BEHOOF for use, found in conveyances down to 1925). In the Bodleian Library there is even an English translation, made around 1300, of our earliest treatises on common-law procedure.¹³ Why anyone should have made such a translation is unclear, and the manuscript has not yet received the attention it deserves. It will provide many new finds for the lexicographers. But in terms of legal history it can only be viewed as a curiosity, an aberration which had no effect on the development of legal language. English was not the primary or even the secondary language of English law.

II. Latin

Latin is a different story. It was from the outset the language of record of the common-law courts. Until 1731 — apart from an interval in the 1650s — this was a requirement not merely of taste and tradition but of strict law, because judgments could be reversed if English had intruded improperly into the record.¹⁴ I say improperly, because English could be (and indeed had to be) recorded when it was part of the *res gestae*: for instance, if a document was proffered and set down verbatim, or if de-famatory words were quoted verbatim. But the formal minutes of the court's own proceedings, including the pleading and verdict, had to be in Latin. And by 1530, at

¹² *Statute of Uses, 1535* (U.K.), 27 Hen. VIII, c. 10.

¹³ Oxford, Bodl. Lib. MS. Rawlinson B. 520.

¹⁴ 36 Edw. III, stat. 1, c. 15, as interpreted by the courts, see text accompanying note 70. The inter-regnum change was made by a statute of 22 November 1650: *Acts and Ordinances of the Interregnum*, vol. 2, ed. by C.H. Firth & R.S. Rait (London: H.M. Stationery Off., 1911) at 455. That was treated as void at the Restoration of Charles II (1660). The final change to English in 1731 is noted below, at note 26.

the latest, the King's Bench would reverse the judgment even of a borough court if the record slipped into the vernacular.¹⁵

Latin just outlived French for legal purposes, since by 1731 few if any lawyers still used law French for their notes. Latin had also preceded French as the language of legal literature, the language of *Glanvill*,¹⁶ *Bracton*,¹⁷ and *Hengham*,¹⁸ and in fact there are no English law books written in French until about 1260. Nevertheless, the extent to which the vocabulary of English law benefited from Latin was surprisingly limited; surprising not merely because Latin was the language of all records, but also because there was a pre-existing legal vocabulary of considerable sophistication created by the jurists of ancient Rome. As we all know, there are many Latin phrases which have continued in use. The most specific of them are the names of writs and procedures which are signalled by particular words and phrases: for instance, the writs of *habeas corpus*, *mandamus*, *certiorari*, *feri facias*; the plea of *non est factum* or the *nolle prosequi*; and procedures such as *nisi prius* or *tales*. The shorthand effect of such phrases is considerable, and their authenticity as legal terms is proved by the pronunciation which lawyers have preserved. In so far as they represent substantive ideas, they are ideas attached to technical procedures. Thus, *habeas corpus* may now be the heading for a body of law about the protection of personal liberty; but it began, as the words suggest, in a procedure for moving prisoners around. These terms have no English or French equivalents, because they indicate procedures which were thought of primarily in terms of the written document or record in which the words occurred (in Latin) rather than in abstract concepts.

Latin might have been adaptable to conceptual use as well, if it had remained the language of common-law literature for another century or two, or if it had been the language of legal argument. But if that had happened there would have been a constant danger of confusion with Roman law, perhaps of unconscious reception of Roman law. If English lawyers used a Latin term which already had a thousand years of legal history behind it, how much of that history were they obliged to adopt and how far could they escape from it without causing confusion?

The authors of *Glanvill* and *Bracton* encountered this difficulty, and in some places explicitly grappled with it. Thus, in discussing *dos*, *Glanvill* carefully distinguishes two different meanings: that given to the word in common parlance (*vulgariter*) and that given to it by Roman law (*secundum leges romanas*).¹⁹ In English it is the distinction between dower and dowry; but preserving the distinction in Latin,

¹⁵ *Heth v. Stokeporth* (1530) Public Record Office, KB 27/1077, m. 28; printed in J.H. Baker, ed., *The Reports of Sir John Spelman*, vol. 2 (94 Selden Soc., 1978) 302 at 303-04 [hereinafter *Spelman*, vol. 2] (error from Totnes, Devon; judgment reversed by King's Bench).

¹⁶ G.D.G. Hall, ed., *The treatise on the laws and customs of the realm of England commonly called Glanvill* (Great Britain: Nelson, 1965).

¹⁷ G.E. Woodbine, ed., *Bracton on the Laws and Customs of England*, trans. S.E. Thorne (Cambridge: Harvard University Press, 1968-77) [hereinafter *Bracton*].

¹⁸ W.H. Dunham Jr., ed., *Radulphi de Hengham Summae* (Cambridge: Cambridge University Press, 1932).

¹⁹ *Supra* note 16 at 58ff., 69ff.

which had but one word, required circumlocution and risked confusion. *Bracton* indeed falls into the trap.²⁰ The writer seems to assume that his readers will only use *dos* according to the English usage, as indicating dower; and yet his love of learning leads him to interpolate some canonical learning on *dos profectitia* and *dos adventitia* which requires a mental leap to the other kind of *dos*, dowry. Having declared in one place that *dos* is of two kinds (apparently quoting from Raymund de Peñafort), he has to add in the English meaning as a third, by way of afterthought.²¹ Legal Latin was therefore a drawback, perhaps even more so to readers at a distance of seven hundred years.²² In other places, the author of *Bracton* compares Latin and English concepts in a potentially confusing way, when adding glosses derived from Roman law to practical accounts of current practice in the English courts. His *servus* is probably a Roman slave rather than a villein, though Roman law knew no such distinction; likewise his *possessio* was not seisin, his *tutela* not wardship, his *stipulatio* something remote from a covenant or bond. When he uses these classical words he seems to be making a comparison with older law rather than borrowing doctrine still directly applicable, or mistaking English law. He and his readers knew well enough that Englishmen did not make contracts with the words *spondes? spondeo*²³ (though perhaps, if they did, the result would be binding). Therefore when he writes of English bonds he uses the word *obligatio*, though the word also has to serve for informal contracts.²⁴ He knew that villeins were not slaves in the Roman sense, and he uses elsewhere the modern Latin *nativus* and *villanagium*. He realised that *possessio* would not stand for seisin, and so *seisina* occurs throughout. Thus the solution in *Bracton*, which reflected the Latin of the writs and plea rolls used in daily practice at that time, was to abandon classical Latin legal vocabulary and make new Latin words from the English or French of the courts.

In the first fourteen folios of *Bracton*,²⁵ I noted the following non-classical terms of art: WAYNAGIUM, VILLENAGIUM, CHEVAGIUM, SOCAGIUM, HOMAGIUM, MARI-TAGIUM, WAYVIUM; TENEMENTUM, FEOFFAMENTUM, FEODI FIRMA, and the corresponding FEOFFATOR, FEOFFATUS, FIRMARIUS and DIMITTERE AD FIRMAM. Alongside the classical *vindicatio* and *interdictum*, we find the Anglo-Norman ASSISA and WARRANTIZARE. These are all Latin neologisms, taken from vernacular speech. However, the creation of new Latin words stopped short at an early stage, after which the courts would reject Latin words which they could not find in dictionaries. Linguistic

²⁰ See *supra* note 17 at 265-81 (vol. 2) and 357-412 (vol. 3). It is now widely accepted that Henry de Bracton was not the author of this treatise.

²¹ See *ibid.* (vol. 2) at 266 ("Et dotis species sunt duæ, alia profectitia, alia adventitia . . . Item fit donatio propter nuptias, quod sponsus dat sponsæ ad ostium ecclesiæ . . . Et hoc proprie dicitur dos mulieris secundum consuetudinem Anglicanam . . .").

²² It is as well to remember that *Bracton* is now half way between ourselves and Justinian.

²³ See *Bracton*, *supra* note 17 at 285 (vol. 2). In Roman law, a contract could be made by the formal question ("Do you promise?") and answer ("I promise").

²⁴ *Ibid.* at 287.

²⁵ *Ibid.* at 1-60 (ff. 1-14b of the vulgate edition).

purity killed the usefulness of Latin because it could not keep up with the vital vocabulary of legal and social discourse in a changing feudal world.

Latin would remain the language of record until 1731,²⁶ but it ceased five hundred years before that to be the language of legal writing or discussion, and therefore its frozen vocabulary played little part in the development of common-law concepts. That is not to say that it had no effect on English law. Vocabulary is not everything. The use of an archaic, formal language to express all allegations and findings of fact had a profound effect on the way common lawyers thought. Before I say what I think it was, I will interpolate a few remarks about the practicalities of using Latin for record purposes.

The very characteristic of Latin which made it unsuitable for oral use — the precision of its grammar — made it ideal for exact statement. By our standards it made it too ideal, because human slips unrelated to the merits of the case might be fatal.²⁷ In the year books for 1400 we read on the same page of two writs being quashed, one because *mundare* (to clear) was carelessly written *mumdare* (with eight minims instead of seven), a word which had no meaning, and the other because the writ said *pone per vadium Johanni* (in the dative) rather than *Johannem*.²⁸ A few years later a writ of forgery was quashed because the clerk forgot about deponent verbs and wrote *imaginavit* instead of *imaginatus est*.²⁹ Even Sir Anthony Fitzherbert, learned author of the *Novel Natura Brevium*,³⁰ was caught out in 1532 when he brought a writ containing a grammatical error;³¹ and in 1571 Dyer reported (perhaps with wry amusement) that Sir Anthony Cooke, former classical tutor to King Edward VI, was furious when his writ of entry sur disseisin was quashed for a grammatical error.³² Usually a bad writ could be amended, though even when it could not — as in Cooke's case — the plaintiff could buy a new one. On the other hand, errors in stating facts could not be amended. Therefore if the Latin had a meaning other than the one intended, the fault was incurable. A rather ludicrous example occurred in 1667, when an upholsterer brought an action for the price of four painted hangings, which his lawyer rendered as *quatuor pictas pellices* (apparently a slip for *pellicule*). A *pellex*, however, was not a piece of upholstery but a prostitute. The court exploded with indignation,

²⁶ English was introduced by the statute 4 Geo. II, c. 26. The 1731 statute was repealed by the *Civil Procedure Acts (Repeal) Act, 1879* (U.K.), 42 & 43 Vict., c. 59, but without reviving the use of Latin.

²⁷ For more on false Latin, and neologism, see *James Osborn's Case* (1613), 10 Co. Rep. 130a at 133a, 77 E.R. 1123 at 1129.

²⁸ Y.B. Mich. 2 Hen. IV, pl. 36 and 39, fol. 8.

²⁹ Y.B. Mich. 11 Hen. VI, pl. 5, fol. 2.

³⁰ [A. Fitzherbert], *La novel natura brevium* (London: Thomas Berthelet, 1534). For the authorship of this treatise, see *Spelman*, vol. 2, *supra* note 15 at 86, n. 2.

³¹ *Fitzherbert v. Welles* (1532) in J.H. Baker, ed., *The Reports of Sir John Spelman*, vol. 1 (93 Selden Soc., 1977) at 15 [hereinafter *Spelman*, vol. 1].

³² *Cooke v. Wotton* (1571) in J.H. Baker, ed., *Reports from the lost Notebooks of Sir James Dyer*, (109 Selden Soc., 1993) at 202.

and ruled that, since a contract for painted whores was illegal, the plaintiff could not recover.³³

A more extreme example occurred in 1533, when the mistake of a single letter in a Latin word saved a man's neck.³⁴ One Rogers was indicted for murder by a coroner's inquest on the view of the body of one Thomas Pheyse, beginning *quod quidam Thomas Pheyse in pace domini regis existens*³⁵ instead of *quod quidem Thomas*. Since *quidam Thomas* ("a certain Thomas . . .") might have been anyone called Thomas Pheyse, and not the Thomas Pheyse on whose death the inquest was sitting, the indictment was quashed; a coroner's jury could not indict someone for a death other than the one they were investigating. Of course the draughtsman meant *quidem*, but that is not what he wrote. There is no reason to suppose that Rogers had not murdered Pheyse, and so that small slip alone may have saved him from the gallows. We can only guess at whether the court had some other reason for helping him. There is other evidence that courts would sometimes seize on trivial errors in order to discharge prisoners whose convictions were felt to be unsafe for reasons not appearing on the record.³⁶ Even if that were the explanation, the coherence of the law did not benefit from such fine attention to precision.

The dangers of false Latin were all the greater when lawyers were not themselves fluent in the language. They did not all have the scholarly Latinity of Sir Thomas More. As early as 1381, Cavendish C.J. admitted that he and his brethren were more at home in French than in Latin.³⁷ And in 1536 Richard Morison complained of lawyers who could not even draw deeds in Latin, but were forced to draw them in French and cause their clerks to turn them into Latin.³⁸ The plea rolls were controlled not by the Bar but by the various clerks of the courts, men brought up as attorneys and under-clerks rather than in the universities, men skilled in the forms of the law but not in Latin literature. Over the centuries they had produced their own Latin dialect, and it worked very well as a means of attaining the purpose for which it was developed. As we have seen, it was not grammatically corrupt in the way that later law French became corrupt, although difficulties could sometimes be concealed by abbreviations at the end of words. But it had its own constructions and a relatively narrow vocabulary. Perhaps a classicist without legal training could make some verbal sense of the plea rolls, but not much real sense of what was going on. On the other hand, a lawyer who

³³ *Gardner v. Fulforde* (1667) 1 Lev. 204, 83 E.R. 369.

³⁴ *R. v. Rogers* (1531-33) KB 27/1081, Rex m. 1d, *Spelman*, vol. 1, *supra* note 31 at 52.

³⁵ "that a certain Thomas Pheyse, being in the peace of the lord king . . .".

³⁶ J.H. Baker, "The Refinement of English Criminal Jurisprudence, 1500-1848" in L.A. Knafla, ed., *Crime and Criminal Justice in Europe and Canada* (Waterloo: Wilfrid Laurier University Press, 1981), reprinted in J.H. Baker, *The Legal Profession and the Common Law* (London: Hambledon Press, 1986) at 307.

³⁷ *Archaeologia*, vol. xi at 55.

³⁸ "A Persuasion to the King that the Law of this Realm should be in Latin" (c. 1536), Brit. Lib. Royal MS. 18 A. 50, at ff. 9v-10r, quoted in *Spelman*, vol. 2, *supra* note 15 at 29.

has learned Latin chiefly from the plea rolls would make little headway with More's *Utopia*,³⁹ let alone classical poetry.

We might note in passing that the main philological difficulty confronting these clerks arose from the obvious fact that their world was not that of ancient Rome. What was the Latin for a petticoat, or a tennis court? Professional linguists were not much help.⁴⁰ Had the courts been strict about vocabulary it might have placed serious limitations on the scope of the common law. But in practice they allowed untranslatable words to be rendered by using the nearest generic Latin word followed by an *Anglice vocatus* and the English word. In 1685 a book was published for the guidance of clerks containing what purported to be the correct Latin terms for all kinds of new fangled objects such as a football, a corkscrew (*cochlea suberea*, which seems rather to mean a screw made of cork), or spatterdashes (*lutosæ caligæ amphibularos ex panno vulgari factæ*).⁴¹ If this book was a safe guide, it shows that classical Latin vocabulary was not exercising too restricting an influence on the work of the courts.

But I am afraid I have erred and strayed from my point. These translation difficulties are not the "profound effect" which I mentioned, though there is a connection. The dangers of experimentation, and the discipline of the clerks in keeping to their set forms, besides sheer common sense, encouraged an adherence to precedent. This was true not only of general writs and pleas, where the lawyer or clerk was virtually filling up a form, but also of most special actions and pleas, which made heavy use of standardised components. It was safest to follow hallowed phrases and not to attempt freehand statements of fact. Lengthy pleas of title, for instance, were not without a kind of mathematical elegance, being made up from standard-form elements fitted into a well-known structure.

The formulaic nature of the plea rolls made the common law very different from the law of the Chancery and conciliar courts, where the facts gushed out in the mother tongue.⁴² The courts of law were not considering real facts, which they could not know, but allegations of fact as formulated in the Latin of the plea rolls. What was not in the Latin was not in issue and was irrelevant. What *was* in the Latin was to be taken as fact, for the purpose of the case, unless it was denied and found untrue by a jury. Hence the importance of correct Latin. If two people were indicted for felonious abduction, and the count said *cepit et abduxit* (in the singular), both had to be discharged because the court could not know which of the two defendants was being accused of the offence.⁴³ But, far more important than this, stereotyped formulae could prevent questions of law from arising at all. If all direct personal injuries were expressed as

³⁹ T. More, *Libellus vere aureus . . . de optimo reip. statu deque nova Insula Utopia* (Louvain, 1516). The Latin version was aimed at a scholarly, humanist audience. It achieved a much wider popularity after its first translation into English in 1551.

⁴⁰ For example, in 1494 the grammarians were unable to tell the court the correct Latin for fine gold: Y.B. Hil. 9 Hen. VII, pl. 8, fol. 16.

⁴¹ See J.H. Baker, *An Introduction to English Legal History*, 3d ed. (London: Butterworths, 1990) at 103.

⁴² Or, in the 14th century, in French.

⁴³ *R. v. Sturgys* (1539) KB 27/1111, Rex m. 14, *Spelman*, vol. I, *supra* note 31 at 104.

being done with swords and staves, so that the plaintiff's life was despaired of — and that was the invariable form in the count for assault and battery — there could be no development of the concept of battery, or even of negligence, unless the facts could be brought out in pleading, and that was only sparingly permitted.⁴⁴ This effect was not due to Latin as such, but to the use of standard formulae instead of detailed accounts of the facts at large; but the use of Latin has much to do with the use of formulae in the old common-law courts of record, in contrast with courts where the proceedings were in English, the evidence was deposed in writing in English, and the judge was able (like a jury) to weigh the factual minutiae of every case.⁴⁵

III. French

Now we come to French, the foremost of the three languages of English law. Even in the late seventeenth century, a King's Counsel could state that "lawyer and law French are coincident; one will not stand without the other."⁴⁶ No English lawyer could say that today; and yet the legacy of the law French dialect in what we now regard as *English* legal terminology is so widespread that most English speakers would not notice it.

To start at the beginning, we still do not know when French started to be used as the language of oral debate and pleading in the royal courts. *Glanvill* gives the forms of counts in Latin (beginning *Peto* . . .); but it may be that the author was translating French forms to avoid an inelegant mixture of languages. At any rate, we have no French texts deriving from the courts before the 1250s. This is at least a century after the disappearance of ethnic distinctions between Englishmen of Norman origin and those of pre-1066 stock, and at least a generation after the loss of mainland Normandy in 1204.

It was an old tradition — found in Fortescue in the fifteenth century,⁴⁷ and even earlier — that the use of French for legal purposes was a result of the Norman conquest. For some, including Blackstone, it was a badge of foreign tyranny.⁴⁸ But modern scholarship has shown this to be a myth. No doubt William I and his barons did not speak English themselves. But they had no wish to make Englishmen speak French, and did not attempt to do so. Even in the eleventh century we read of Normans marrying English women who brought up their children to speak English. The Normans did not use French for official documents. And it is now thought that the currency of French in courtly circles in early thirteenth-century England was not a relic of conquest but was rather due to its slightly more recent international recogni-

⁴⁴ See Baker, *supra* note 41 at 456-59.

⁴⁵ What is said here does not hold true of the ecclesiastical courts, where evidence (in the form of depositions) was taken down in Latin.

⁴⁶ R. North, *A Discourse on the Study of the Laws* (London: C. Baldwyn, 1824) at 12.

⁴⁷ J. Fortescue, *De Laudibus Legum Anglie*, ed. by S.B. Chrimes (Cambridge: Cambridge University Press, 1942) at 114 (translated below in text accompanying note 72).

⁴⁸ W. Blackstone, *Commentaries on the Laws of England*, 2d ed., vol. 3 (Oxford: Clarendon Press, 1766-69) at 317.

tion as the language of learning and diplomacy. Latin, of course, had the same international currency, but chiefly as a written language; in its high scholarly form it is too heavily inflected to make it easy to speak. English, on the other hand, would not have been understood beyond England. It was rather like Dutch or Flemish today; outsiders are not expected to speak the local language, but to use English — in Holland you can even attend some university lectures in English. What is more, in 1200 or 1300, English still had many dialects which might even place it beyond the reach of Englishmen from other regions. As late as the fifteenth century, Caxton tells a story of a mercer who went into a shop in Kent and asked in London English for some eggs, only to emerge deeply offended when the woman in the shop apologized for not being able to speak French.⁴⁹ (Apparently he should have asked for *eyeren*.) Judges and lawyers practising at Westminster had to deal with Englishmen from all over the country, and even at times with foreigners. French gave them the means, without diminishing their native tongue. But it was not only *their* language. It was spoken by the king,⁵⁰ by the king's courtiers, and by the clergy, was widely taught and learned by the middle classes and by merchants, and may not have been unknown to some of the lower classes.⁵¹ It was used for private and state correspondence, and for simple documents and conveyances. Even the universities permitted its use: Oriel College, Oxford, allowed French to be used at meal times and in private conversation, while Peterhouse, Cambridge, more grudgingly allowed it "for just and reasonable cause."⁵² English is not mentioned, and would have been completely unacceptable. The learned clergy, like lawyers, were supposed to be trilingual.

The "French" of which I speak was not Norman French, but a hybrid dialect with strong Picard and Angevin influences. It would have been comprehensible to a Parisian, at any rate if correctly pronounced, perhaps more readily than to a Norman. However, as we all know, the English have never found French pronunciation easy. There is a fourteenth-century French fable of an English traveller in France who entered an inn and tried to order roast lamb, asking for *anel*; after much bewilderment and shrugging of French shoulders, he was served with a succulent young donkey.⁵³

An added advantage of French in the king's courts was that it was much closer than English to the Latin vocabulary of the writs and records. The wording of legal formulae could be discussed more easily in a romance language derived from Latin than in a language which had no ready equivalents. Indeed, in the mid-thirteenth-

⁴⁹ For the supposedly barbarous speech used in Kent, see N.F. Blake, *Caxton and his World* (New York: London House, 1969) at 16-22.

⁵⁰ Edward I may have been the first king to speak English: R.M. Wilson, "English and French in England 1100-1300" (1943) 28 *History* 37 at 45.

⁵¹ See K. Lambley, *The Teaching and Cultivation of the French Language in England* (Manchester: University Press, 1920) 1-25; Wilson, *ibid.* (for the lower classes see especially 58-60). *The Mirror of Justices* (c. 1290) [W.J. Whittaker, ed., *The Mirror of Justices* (7 Selden Soc., 1893) at 3], contains the remarkable observation that it was written in French because that was "le plus entendable de la comun people."

⁵² Lambley, *ibid.* at 6.

⁵³ *Ibid.* at 21.

century educational tract known as *Brevia Placitata* the writs themselves are set out in French — a form they never had in real life — to bring them closer to the ensuing commentary and disputation (which probably began as lectures in French).⁵⁴ *Ces sunt les brevs e les contes enromancées* is the title in one manuscript.⁵⁵ The late thirteenth-century tract *Modus componendi brevia* confirms that, “by the custom of England,” counts were pronounced “in romanis verbis, et non in latinis,”⁵⁶ significantly not treating English as a possibility.

In the Selden Society edition of *Casus placitorum*, and in this year’s edition of *Earliest English Law Reports*, we now have in print a corpus of law reports and notes of cases in French stretching back to the 1250s and 1260s.⁵⁷ This is within fifty years of the first appearance of a legal profession at Westminster, and the texts therefore reveal quite a remarkable linguistic achievement. In no more than half a century, a small band of pleaders practising in a corner of the king’s palace had created a flexible new language of their own, a technical language which owed nothing to the ancient Romans let alone to Anglo-Saxons. Already by 1270 much of the basic vocabulary of the common law had been settled. It was all derived from French roots, and yet the meanings were not to be found in the French spoken in France. Moreover, although some of the most basic terms (such as *seisin*) were also used in Normandy, most of the new vocabulary owed nothing to the Normans either.⁵⁸

Our inventive pleaders spoke in metaphors, using ordinary language to express emerging concepts.⁵⁹ Verbs are easier to adapt in this way than nouns, and — as Maitland pointed out — most of the innovation occurred by investing *verbs* with new meanings: for instance, *ATTAINDER*, *CESSER*, *DEMURRER*, *DISCLAIMER*, *ESTOVER*, *INTERPLEADER*, *JOINDER*, *MERGER*, *OUSTER*, *OYER*, *REJOINER*, *REMAINDER*, *REMITTER*, *RENDER*, *REVERTER*, *TENDER*. The infinitives still exist as verbal substantives, and in all but two instances (*estover* and *oyer*) there is also a verbal form still used in English. None of these terms have any exact surviving English equivalent, though there were more English equivalents at one time: even as late as the sixteenth century we hear of dwelling or abiding in law as synonyms for demurring. But, as Maitland reminded us, those English words represented *remainder* as well as *demurrer*.⁶⁰ The differentiation between *DEMUR* and *REMAIN* was “good technical work” which could not have been achieved by using the vernacular.

⁵⁴ See Baker, *Catalogue*, *supra* note 7 at xxxvi, 156.

⁵⁵ Oxford, St John’s College MS. 176, fo. 201r; printed in G.J. Turner, ed., *Brevia Placitata* (66 Selden Soc., 1951) at 153.

⁵⁶ G.E. Woodbine, ed., *Four Thirteenth Century Law Tracts* (New Haven: Yale University Press, 1910) at 162.

⁵⁷ W.H. Dunham, ed., *Casus placitorum* (69 Selden Soc., 1950); P.A. Brand, ed., *Earliest English Law Reports*, vols. 1 & 2 (111-12 Selden Soc., 1995-96).

⁵⁸ A Selden Society editor soon learns that there is little practical assistance to be found in Norman dictionaries such as Godefroy.

⁵⁹ What follows is heavily reliant on Maitland, *supra* note 2 at xxxiii-lxxxii, which is still the best introduction to early law French.

⁶⁰ *Ibid.* at xxxviii.

The most fruitful words in law are the broadest and vaguest; for example, TORT, TRESPASS, NUISANCE, DECEIT, DEBT (and in modern times we might add NEGLIGENCE and REASONABLENESS). It takes many decades, or even centuries, to refine their meaning for legal purposes; and this is another reason why a language other than the vernacular helps. The “forgive us our trespasses” of the 1525 translation of the Lord’s Prayer was certainly not confined to wrongs committed with force and arms against the king’s peace, or even to wrongs remediable by action on the case.

The process of refinement is so slow that in several cases two quite different technical meanings might attach to the same word. Here are six examples:

ABATIR: to quash (or be quashed); (*se abatir*) to intrude.

AVOIDER: to make void (or become void); to avert the effect of a previous pleading by introducing new matter.

DEPARTIR: to share between coparceners, to partition; to make a departure in pleading by going back on something alleged earlier.

ISSUE: issue of the body (descendants); issue in pleading (*litiscontestatio*); (pl.) issues from property (rents, profits).

TAILER: to pronounce a judgment or enact a remedy; to limit an estate; to entail (*i.e.* limit an estate in fee tail).

All these words continued to be used also in their original senses: ABATIR is to knock down; AVOIDER, to remove or evade; DEPARTIR, to go away, to separate; ISSUE, outcome, offal; TAILER, to cut or fashion, to cut down or dock.

In a few other cases, technical meanings continued to be added down to the Tudor period. Four examples will suffice:

CONVEYANCE: introductory matter in a plea of written instrument; tracing of title from one to another; (perhaps not until the 16th century) an instrument for transferring title.

ENDOWMENT: assurance of dower; setting out a portion for a vicar; (perhaps not until the 16th century) provision of capital for a corporation or charity.

REBUTTER: to repel an action or plea; (not noticed until the 1490s) to reply to a surrejoinder.

TORT: it is a good question at what stage would it be correct to translate this as “tort”, in a technical sense, rather than “wrong”, but the answer is probably not before 1660.

In all these cases, it was of course the latest sense to develop which eventually prevailed over earlier senses.

Another of Maitland’s observations was that lawyers “mediated between the abstract Latin logic of the schoolmen and the concrete needs and homely talk of gross, unschooled mankind”⁶¹ by devising a whole range of new words to describe logical and argumentative processes: for example, ALLEGE, AVER, ASSERT, AFFIRM, AVOW,

⁶¹ *Ibid.* at xxxvii. This prompted his famous remark, “Law was the point where life and logic met.”

DEMUR, DENY, EXCEPT, PROVE, SUGGEST, SUPPOSE, SURMISE, TRAVERSE. Many of these have passed into ordinary speech, though in some cases with loss of the more subtle meanings attributed by lawyers. Yet there are a number of terms in this category which were peculiar to legal idiom and did not pass from law French into English, such as:

CHANTER: to find a verdict or office.

CHARGER: to stress, to lay weight upon a point.

CHASER: to drive counsel to say or do something.

DIRE TALENT: to talk nonsense.

GISER EN BOUCHE: to lie in someone's mouth (*i.e.* to be a fitting thing for him to say).

The most esoteric phrases of all were the shorthand expressions used by year-book reporters to indicate particular moves in the game of pleading, such as:

AL PLEA PLEDE etc.: demurrer.

ET ENTANT etc.: joinder in demurrer.

JUGEMENT DE BREF etc.: conclusion to a plea in abatement.

JUGEMENT SI ACTION: conclusion to a plea in bar.

PER QUE etc.: prayer of judgment.

PREST etc.: averment.

SANS CEO etc.: traverse.

This seems an appropriate point at which to quit the particular and return to the general, with a question: when did this curious form of French cease to be spoken by English lawyers? In answering this question, the law reports do not help; indeed, they conspire to suppress the truth by continuing to use French when reporting English speech. Certainly there is an increase in English words and phrases found in the year books in the middle of the fourteenth century; but that is not proof of a change in the spoken language, since it might indicate merely a decline in French vocabulary. Moreover, we know that oral French continued to be used for formal pleading in court until 1731,⁶² though latterly it was only "done for form, and unintelligibly,"⁶³ and for moots in the Inner Temple — the last bastion of legal French — until 1778.⁶⁴ There were also certain French forms used at the assizes, such as OYEZ, COUNTEZ, VOUS

⁶² See North, *supra* note 46 at 13. He states "when Assizes or Appeals are arraigned, the Array, that is, Pannels of Juries challenged or excepted to, it must be done in French; so Counts, Bars, and such transactions as reach no farther than the Bench and Counsel, with the Officers, and not to the Country . . . are to be done in Law French" (J.H. Baker, *The Order of Serjeants at Law* (London: Selden Society, 1984) at 92). An example of 1695 is printed in *Order of Serjeants* at 420.

⁶³ R. North, *The Life of the Right Honourable Francis North, Baron of Guilford, Lord Keeper of the Great Seal*, 3d ed. (London: W. Clarke & Sons, 1819) at 29.

⁶⁴ Probably until 1778: see J.H. Baker, "Introduction" in J.H. Baker & S.E. Thorne, *Readings and Moots at the Inns of Court in the Fifteenth Century*, vol. 2 (105 Selden Soc., 1989) at lxiv.

AVEZ, SOIT TREIT.⁶⁵ But these were mere standard forms, not free discourse. For the end of oral argument in French our principal clue is a statute of 1362.⁶⁶

The statute recited that one of the reasons why people were always breaking the law was ignorance; the laws, customs and statutes were not commonly known, because they were pleaded and adjudged in French: "*qu'est trop desconue en le dit realme.*" With delightful but apparently unconscious irony, the statute itself was in French. The remedy ordained was that all pleas pleaded in all courts whatsoever should (from Hilary term 1363) be pleaded, shewn, defended, answered, debated and adjudged in the English tongue, but entered and enrolled in Latin.

The statement in the preamble about the decline of French is borne out by contemporary sources, and may be attributed to hostilities with France in the time of Edward III. Ranulph Higden, writing at the beginning of the fourteenth century, said that gentlemen's children were taught French from an early age, and that schools taught French next after English; yet his translator (in 1387) reports that French had since been given up by the grammar schools.⁶⁷ It is no coincidence that English literature began to flower in this period. The first known deed written in English dates from 1376, and the first letter in English from 1393.⁶⁸

However, it is difficult to ascertain what effect the statute had in practice, since there is no change on the face of the law reports, which continue in French until the seventeenth century. Later writers have suggested that the courts took no notice of so radical a reform.⁶⁹ It did, after all, take Parliament itself another century to heed its own point and promulgate statutes in English. The only references to the statute in decided cases in the law reports are to the proviso concerning the continued use of Latin. This was meant as a saving — to stop it being mandatory to make records in English — but was perversely taken as a statutory *requirement* that all records should be in Latin.⁷⁰

Some passages in the statute could be taken as referring to formal pleadings rather than argument. Yet it is known that oral pleading, in so far as it was preserved for court use, for instance counts in real actions, continued to be in French until the

⁶⁵ Roger North's draft *Life of Lord Keeper Guilford*, Brit. Lib. MS. Add. 32508, fo. 30r.

⁶⁶ *Supra* note 14.

⁶⁷ See Lambley, *supra* note 51 at 24. For the fourteenth century, see also: R. Berndt, "The Period of the Final Decline of French in Medieval England" (1972) 20 *Zeitschrift für Anglistik und Amerikanistik* 341; W. Rothwell, "The Trilingual England of Geoffrey Chaucer" (1994) 16 *Studies in the Age of Chaucer* 45.

⁶⁸ See H. Suggett, "The Use of French in England in the later Middle Ages" (1946) 28 *Trans. Royal Historical Soc.* (4th ser.) 61.

⁶⁹ See *De Laudibus Legum Anglie*, *supra* note 47 at 114; R. Fabyan, *The New Chronicles of England and France*, ed. by M. Ellis (London: F.C. & J. Rivington, 1811) at 476; W.S. Holdsworth, *A History of English Law*, 4th ed., vol. 2 (London: Methuen, 1927) at 478 ("it did not effect the purpose for which it was passed").

⁷⁰ See *Heith v. Stokephorte* (1530), *supra* note 15; *Grisling v. Wood* (1588) Cro. Eliz. 85, 78 E.R. 344; *Lucas v. Donne* (1590) Cro. Eliz. 185, 78 E.R. 441.

statute of 1731.⁷¹ The probable answer is that the statute was not interpreted at the time as referring to pleading, in that technical sense, but was taken as applying only to oral argument. 1363 may therefore be the date when French ceased to be used for all but formal purposes in the courts. What lives on in the *Oyez* of the crier had ceased to be a language of oral discourse in the reign of Edward III.

This conclusion is confirmed by a passage — the most revealing discussion of legal language — in chapter 48 of Fortescue's *De Laudibus Legum Angliæ*.⁷² Sir John Fortescue, exiled in France in the 1460s, was explaining to Prince Edward why English law was not taught in the universities. The exact meaning of the passage is so important that I offer my own translation:

In the universities of England, sciences are taught only in the Latin tongue. But the laws of the land are learned in three languages — English, French and Latin. French because, after the conquest by Duke William, the French would not allow advocates to plead causes except in the language they knew . . . Likewise the French would not receive accounts unless they were in their own language, in case they were deceived. They enjoyed recreations such as hunting, dicing and ball games, only in their own tongue. And the English, by mixing in their company, contracted the same habit, so that to this day they speak French in such games and in accounting. And they were accustomed to *plead* in the same language until the usage was restricted by force of a certain statute: despite which, it has proved impossible to abolish the custom completely, partly because there are certain terms which pleaders can express more appropriately in French than in English, and partly because declarations upon original writs cannot be framed as closely to the nature of the writs as in French, the language in which the formulae of such declarations are learned. Also, what is pleaded, disputed and adjudged in the royal courts is reported and put into books for future learning always in French. Moreover, many statutes of the realm are written in French.

In consequence of all this, the language of the ordinary French people is not the same as that used by English lawyers, but is rougher (*vulgariter quadam ruditate corrupta*). That cannot happen with the French used in England, because it is more often written than spoken.

In the third language, Latin, are written all original and judicial writs, and likewise all records of pleas in the king's courts, and also certain statutes.

This digression by Fortescue makes three incidental points about law French which are worthy of notice. First, French was the language in which pleadings were learned: that is, at moots in the inns of court.⁷³ Second, the statute of 1362 had not been fully implemented with respect to pleading, in the technical sense of that term, because declarations — and presumably other parts of pleading — were still recited in French. The third and most significant lesson is that argument in court is now in English; for it is implicit in the statement that the lawyers' French was "more often

⁷¹ *Supra* note 14.

⁷² *De Laudibus Legum Angliæ*, *supra* note 47 at 114, 116.

⁷³ For the forms used at moots in Fortescue's time, see Baker, *supra* note 64 at xlv-lxxiii.

written than spoken" (*sæpius scriptus quam locutus*) that the year books of Fortescue's day were using French to record English speech.

From the linguistic point of view, legal French was in steady decline after 1362, even if in Fortescue's opinion (based on a first-hand comparison) the rough French of France was less pure than the artificial French of Westminster Hall and Lincoln's Inn. For nearly three more centuries it was learned by all common lawyers, and was the language of formal pleading (as opposed to argument) in court and in the inns of court. Yet to a Frenchman, coming to London from Normandy in 1592, our lawyers' dialect was wholly foreign:

[law French] may be worthily compared to some old ruins of some fair building, where so many brambles and thorns are grown that scarcely it appeareth that ever there had been any house . . . almost there is no language more far from the true French than the French of our [*sic*] laws, there being almost no word which either by intermingling, or adding, or diminishing, or changing of a letter into another, they have not altered or corrupted . . . [and] their pronunciation differeth so much from ours as it is impossible for a Frenchman to understand them.⁷⁴

But Delamothe was making the same kind of judgment as those who have criticised the author of *Bracton* for not being a better Romanist.⁷⁵ The lawyer of Coke's day — indeed the lawyer of Fortescue's day, or even Bereford's — was not pretending to be a Frenchman. It was said at the time that law French could be learned in ten days,⁷⁶ or perhaps even two.⁷⁷ Certainly there was no formal instruction. Such a course of private study obviously could not lead to a highly advanced proficiency in conversational French, and since it was not professionally necessary to do so it is hardly surprising if lawyers made do with the simplest form of technical dialect. It is said that even Englishmen were sometimes shocked by the barbarity of inns of court French; and in Henry VIII's time several reformers devised schemes to force lawyers and others to study good French.⁷⁸ But that was a matter of taste and refinement rather than of legal practicality. The French which lawyers used had long been a technical shorthand of their own making, and the French of Paris would have been useless to them. Law French may well have been nothing like the French spoken in France, but it did not need to be. English lawyers were not trying to impress foreigners, or to foster a pretence of cosmopolitanism. And they were certainly not pretending to be Frenchmen.

⁷⁴ G. Delamothe, *The French Alphabet* (London: J. Smethwicke, 1639) at 104.

⁷⁵ It is sufficient to refer to F.W. Maitland, "Introduction" to *Select Passages from the Works of Bracton and Azo* (8 Selden Soc. 1895) at xiv, xviii, xx. It is now usual to take the more charitable view that the writer was not professing to be an exact Romanist, and that he either adapted Roman legal ideas and language to English purposes or used them only for comparison and contrast.

⁷⁶ See J. Davies, *Le Primer Report des Cases en Ireland* (London: Company of Stationers, 1628), sig. ¶¶ 2.

⁷⁷ See J. Clayton, "Epistle Dedicatory" to *Reports and Pleas of Assises at York* (London: Ja. Flesher for W. Lee, D. Pakeman, and G. Bedell, 1651).

⁷⁸ See *Spelman*, vol. 2, *supra* note 15 at 30-32. Good tutors and manuals were certainly available in England. In fact, the first printed book on French grammar (Palsgrave) was published not in France but in London, in 1530: see Lambey, *supra* note 51 at 3.

It did not matter whether they could remember the correct French for a willow tree, or a “brickbat which narrowly missed” an assize judge.⁷⁹ Lawyers continued to use their special language because it had practical advantages thought to outweigh its aesthetic disadvantages.

By the late seventeenth century, however, the old language was in terminal decline, and hardly any writers still used it for their notes. Roger North K.C. lamented this as a sign of indifference to true learning:

It is very strange when some that pretend to be students . . . can scarce make out the sense of a common French law book. And it is observed such shallow students never make good lawyers. Nature may make wranglers, as it makes buffoons, but it is regular study, industry, and thinking, which makes good lawyers.⁸⁰

Elsewhere, he wrote that “the law is scarcely expressible properly in English.”⁸¹ This law French had in its heyday given lawyers a useful shorthand in which to note legal arguments. Much more important, however, than this, it had given English law a body of new terms and concepts which enabled it to develop in its own way and to become the only system of jurisprudence comparable with that of ancient Rome. This all brings us back to Maitland’s paradox, which was partly prompted by North’s remarks. Of all the countries in Europe, the system of jurisprudence which showed the stoutest nationalism, the least impervious to foreign influence, was that which “was hardly expressible in the national language.”⁸²

⁷⁹ See J.H. Baker, “Le Brickbat que narrowly mist” (1984) 100 L.Q. Rev. 544.

⁸⁰ North’s draft *Life of Guilford*, *supra* note 65. For North’s printed views on law French, see L.G. Schworer, “Roger North and his Notes on Legal Education” (1959) 22 *Huntington Library Qly* 323, at 336-38.

⁸¹ *Supra* note 46 at 13.

⁸² Maitland, *supra* note 2 at xxxvi.