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Legal Writing and International Students: Reconsidering “Complete Immersion”¹



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Before I began my current position, I worked as a writing specialist with multilingual² international students in the LL.M. legal writing program at Penn State Law for four years. At the time I started working with law students, I was taking coursework for my Ph.D. in applied linguistics, focusing on second language acquisition and writing. Since I was new to the field of legal education, I tried to get a better sense of what legal writing faculty saw as best practices in working with international students by speaking with faculty, reading articles in law reviews and journals, and attending conferences. What I found, however, did not always align well with what I was learning in my degree program.

In both conversations with law faculty and published articles in legal education, I found an insistence on the need for “complete immersion.”³ This article will begin by looking at how immersion has been operationalized in legal writing scholarship and practice and compare this with a similar model from applied linguistics. It will then consider how the contexts in which this form of immersion is most effective differ in important ways from a law school context. Finally, it will examine various ways that students’ use of their first language can serve as a resource for second language learning, as well as offer concrete suggestions and considerations for teaching.

Approaches to Immersion

In published articles on legal writing as well as in conversations with law faculty, “complete immersion” seemed to focus on restricting students’ access to their first languages in an attempt to foster their acquisition of English.⁴ In some cases, this manifested itself in recommendations about preventing students from using bilingual translation dictionaries.⁵ Other times, I overheard faculty reproaching students for using their first languages in informal social conversations with peers from their home country or in small-group discussion activities in the classroom. In other cases, faculty mentioned discouraging students from using their first languages for any note-taking in their classes. This emphasis on immersion also seemed to focus more on the quantity of English that students needed to be exposed to rather than the nature of the materials provided, with movies,⁶ music,⁷ and children’s literature⁸ being presented as equally valid sources for language study as casebooks or videos of academic lectures on legal topics. At least part of this emphasis on the quantity of English language input appeared to stem from a belief that such exposure would do most of the work of triggering language acquisition on its own and that allowing students access to their first languages could impede this process.⁹ These ideas are widely viewed with skepticism in applied linguistics today, however.¹⁰

There is no question that providing learners with rich opportunities to use English across a variety of contexts is an important way to support their language development. In fact, the kind of immersion advocated in the approach above can produce impressive results in some cases. Middlebury College's intensive summer language programs are one widely recognized example. Students in these programs sign a "Language Pledge," committing to communicating exclusively in their chosen target language for the duration of the approximately two-month program.¹¹ The program's morning sessions focus on intensive, classroom-based language instruction, while the afternoon sessions provide opportunities for using the target language in more informal contexts, such as arts and crafts or cooking.¹² Students in the program are known for making considerable progress in a very short time.

The Middlebury model is well suited to the context for which it was designed: a short-term experience focused exclusively on general language development for domestic students. However, the situation faced by international students in a U.S. law school setting is significantly different. International LL.M. or J.D. students will spend one or more years outside of their home country. Unlike students in the summer-camp-like atmosphere of the Middlebury program, many of these international law students will have to take care of basic logistical issues relating to managing their visas, finding housing, navigating a foreign academic system, and figuring out how to take care of their other day to day needs. As they do so, they are likely to receive little sympathy or patience when there are gaps in their linguistic knowledge, and some will also experience discrimination based on their accent or race. At the same time, they will be expected to develop not just their general language proficiency, but also their substantive knowledge of U.S. law. This will further involve becoming proficient in highly specialized genres that many monolingual English speakers find challenging.

Code-switching, Translation, and Vocabulary Development

Multilingual law students' use of their first language can play an important role in helping them manage these additional challenges. In the classroom, students' ability to take notes in their first language can be one way to offset some of the cognitive load¹³ imposed by having to process difficult legal concepts, complex linguistic structures, specialized vocabulary, and unfamiliar cultural references at the same time. While some faculty express concern that students' translation of ideas from the course into their first language may result in a distortion of key legal concepts, this does not take into account the fact that even when students do take notes in their first language, they often "code-switch," or move between languages, while doing so. In my experience working with students as a writing specialist, it was common for me to see key English terms or phrases like "owe a duty of reasonable care" interspersed mid-sentence among a series of Chinese characters. This suggests a fairly sophisticated ability on the part of the student to recognize particular expressions and terms of art as having meanings that likely do not have an easy, one-to-one correspondence with their first language. Most students know the potential dangers of direct translation, but those who use it ineffectively may not be aware of strategies for avoiding it. Simply telling these students not to translate is unlikely to help.

One thing that we have come to understand in second language acquisition research is that language learning is not a zero-sum game: you don't have to push one language out to make room for another one.

Instead, students can be taught how to use additional tools to verify their translations, such as using Google Scholar's case law search function to see how a particular word or phrase is used in a U.S. legal context or cross-referencing their initial translations with definitions from monolingual legal dictionaries.¹⁴ In guiding students through this process, faculty will likely need to emphasize that terms that may initially seem to be equivalent (like the civil law term *causa* and "consideration" in U.S. contract law)¹⁵ need to be examined closely to understand how their meanings both overlap and diverge. Faculty will also need to think about what it means to really know a word. For example, knowing the definition of the word "liable" is a good start, but students also need to recognize both how this word differs from related words like "guilty," as well as the word's grammatical constraints. For example, "liable" is preceded by a limited range of verbs, including the copula and "hold." When used with "liable," "hold," in turn, tends to be found in complex transitive constructions ("hold (someone) liable") or in the passive voice ("be held liable"). "Liable" also tends to be followed by a limited range of prepositions: "for" and "to" work well, while "of" and "at" generally do not. The student would further have to recognize which kinds of nouns typically follow each of these prepositions. To build greater textual cohesion between sentences, students also need to develop an awareness of other words derived from the same base, such as the noun form "liability." Knowing these derived forms gives students an additional tool for drawing clear connections between ideas in their texts.

Facilitating Listening Comprehension

Multilingual students may also ask each other questions in their first language when they have not understood something in class. While there can be a potential risk of one student's misunderstanding being transmitted to another classmate, students often know who among their peers is the most likely to have an accurate understanding of the material, and the use of a quick, unobtrusive clarification in their first language can prevent them from becoming even more confused as the class session continues. Particularly for students who have been socialized into academic cultures in which interrupting a professor with a question during a lecture could be seen as disrespectful, being able to receive discreet support from a peer can play a critical role in allowing these students to participate more fully throughout the course as a whole. This support also allows the professor to focus on the main goals of the class session rather than spending time answering minor vocabulary or logistical questions that may not be relevant to the rest of the group.

One way of encouraging such dialogue in the classroom is to build in short pair exercises or small group discussions as a comprehension check during class discussions. Briefly shifting away from a teacher-fronted discussion to small

group work gives students permission to check their understanding and time to formulate a response in English. On its own, this technique can encourage students to participate more actively in full-class discussions, but faculty can also use these small group discussions to check students' understanding by circulating around the classroom to verify that students are on track.

Using the First Language as a Brainstorming and Drafting Tool

Another effective way that many multilingual students use their first language is as a tool for pre-writing and drafting. One of my Korean LL.M. students used to come into our individual meetings with rough drafts of his memo assignments that were annotated with notes to himself in Korean. These notes were his way of both reflecting on his own writing and taking his argument beyond what he could do independently in English. When he had a more nuanced argument that he wanted to express but for which he couldn't quite find the right English phrasing, he would talk me through what he wanted to say step by step, explaining the meaning he wanted to convey by using conversational English, concrete examples, or hypotheticals to illustrate. We then worked together to find a phrasing for his idea that would both express it more concisely and reflect the professional writing style that would be expected in a legal memorandum. The student was able to use these individual sessions as an effective way of expanding his communicative repertoire,¹⁶ a fact demonstrated in part by his eventual admission to the D.C. bar.

Being able to take the first step of drafting his ideas in Korean gave this student a means for shaping his argument in a way that would not have been feasible for him if he had been restricted to using only English. In fact, some of our international J.D. students, who did not have access to such language support, often found themselves struggling with choosing between an English expression that they knew was not particularly effective or changing the content of their argument itself. One Korean J.D. student, for example, confided in me that he often simplified his arguments in his legal writing assignments so that he was sure that he could state them correctly in English. There were other more interesting arguments that he wanted to make, but since he was not confident in his ability to express them accurately in English and was not allowed to seek additional support, he simply omitted them.

Language and Social Interaction

For international LL.M. or J.D. transfer students, who often don't fit neatly into a 1L, 2L, or 3L cohort, the use of their first language can also play an important social role. These students may find that other international students can better relate to the difficulties they face both inside and outside of school than their American classmates can. After having to use English to deal with a parking ticket they received because they misunderstood the abbreviations on a sign, sitting through four hours of classes in which it seems like everyone else can answer all of the professor's questions, being inundated with unfamiliar choices at restaurants (e.g., What kind of toast would you like? How do you want your eggs? Home fries or hash browns?), and just generally feeling like nothing comes easily, a social conversation in a student's first language offers a little respite in what can feel like an endless barrage of English. Research on language learning is increasingly recognizing the

importance of emotion¹⁷, and while these kinds of conversations may not relate directly to students' coursework, discussions of "critical incidents"¹⁸ such as these can also facilitate students' learning of social aspects of language use.¹⁹

Rethinking Immersion in the Legal Writing Classroom

One thing that we have come to understand in second language acquisition research is that language learning is not a zero-sum game: you don't have to push one language out to make room for another one. In fact, research on bilingualism suggests that many aspects of language knowledge form part of a "common underlying proficiency,"²⁰ and that the literacy skills that students have already developed in their first language provide an essential foundation for their development of academic literacy in a second language. Rather than assuming that students are starting from zero, we can capitalize on these existing skills by focusing on the aspects of U.S. legal reading and writing that are not shared across languages and genres, like the specific linguistic and structural cues that signal sections of a case that students need to focus on as well as how to decode genre-specific syntactic structures like the complex clausal and phrasal chains that are frequently used to modify nouns in statutory language.

This approach is quite different from the "complete immersion" described at the beginning of this column. What our current understandings of language learning suggest is that our focus should not be on how to limit students' access to their first language but rather on how to ensure that the English language resources we provide to them build on and expand their existing communicative repertoire. This requires more than just flooding students with English-language input in whatever form happens to be readily available, but instead ensuring that the materials we provide in instructional settings are carefully curated to respond to students' most pressing communicative needs. Given their role in meeting individually with students, writing specialists are well positioned to provide such support.

Further Reading

1. Jim Cummins, *Rethinking monolingual instructional strategies in multilingual classrooms*, 10 *Canadian J. Applied Linguistics* 221 (2007). This article, by one of the leading figures in bilingual education, offers a point by point rebuttal of some common, yet problematic, assumptions about the use of the first language in second language classrooms. Although the teaching strategies he proposes toward the end of the article are intended primarily for K-12 classrooms, the literature he reviews on bilingualism is useful for instructors at all levels.
2. Dana R. Ferris & John S. Hedgcock, *Teaching L2 Composition: Purpose, Process, and Practice*, (3d ed. 2013). This book highlights issues in second language writing and is geared primarily toward faculty who teach first-year college composition courses. For legal writing faculty, the book provides a useful foundation in current approaches to teaching second language writing, including discussions of feedback and assessment.

3. Alissa J. Hartig, *Connecting Language and Disciplinary Knowledge in English for Specific Purposes: Case Studies in Law* (working title, forthcoming). This book begins with a discussion of the discipline-specific nature of legal literacy development and then considers how the challenges this presents may be different for international LL.M. students. The four main chapters of the book provide detailed case studies of four international LL.M. students, two from Saudi Arabia and two from China, as they navigate their first semester legal writing course. While not a major focus of the book, examples of both effective and ineffective uses of translation are examined.
4. John S. Hedgcock & Dana R. Ferris, *Teaching Readers of English: Students, Texts, and Contexts* (2009). Although few legal writing faculty may have the opportunity to design an entire course that focuses on reading, the principles discussed in this textbook, particularly with respect to vocabulary learning and designing individual lessons focused on intensive reading, are a useful resource.
5. Miles Turnbull & Jennifer Dailey-O’Cain, eds., *First Language Use in Second and Foreign Language Learning* (2009). The introduction to this volume provides a concise overview of research on the use of the first language in second language teaching and learning.

NOTES

1. This article is adapted from my presentation with the Association of Legal Writing Specialists at the 2016 Legal Writing Institute Biennial Conference.
2. The term “multilingual” is increasingly replacing “ESL” (English as a Second Language) or “non-native speaker” in scholarship in applied linguistics and teaching English to speakers of other languages (TESOL).
3. For example, this term appeared on a poster describing “best practices for teaching international students” at the 2016 Legal Writing Institute Biennial Conference, and it also appears in a 2008 article by two members of the Legal Writing Institute: Julie M. Spanbauer & Katerina P. Lewinbuk, *Embracing Diversity Through a Multicultural Approach*, 1 Charlotte L. Rev. 223, 250 (2008-2009). Current research and theory in second language acquisition do not support this view. See, e.g., Miles Turnbull and Jennifer Dailey-O’Cain, eds., *FIRST LANGUAGE USE IN SECOND AND FOREIGN LANGUAGE LEARNING* (2009). See also Merrill Swain & Sharon Lapkin, *Task-based Second Language Learning: The Uses of the First Language*, 4 Language Teaching Res. 251, 268-9 (2000).
4. Katerina P. Lewinbuk, *Can Successful Lawyers Think in Different Languages?: Incorporating Critical Strategies that Support Learning Lawyering Skills for the Practice of Law in a Global Environment*, Rich. J. Global L. & Bus. 1, 10-11 (2008).
5. Lewinbuk, *supra* note 4, at 11.
6. *Id.* at 8.
7. *Id.*
8. Spanbauer & Lewinbuk, *supra* note 3, at 241.
9. Lewinbuk, *supra* note 4, at 11-12.
10. See, e.g., Jim Cummins, *Rethinking monolingual instructional strategies in multilingual classrooms*, 10 Canadian J Applied Linguistics 221, 221 (2007). The author describes three problematic assumptions in second language education, specifically that “(a) the target language (TL) should be used exclusively for instructional purposes without recourse to students’ first language (L1); (b) translation between L1 and TL has no place in the language classroom; and (c) within immersion and bilingual programs, the two languages should be kept rigidly separate.” Cummins goes on to explain that “[r]esearch evidence provides minimal support for these assumptions and they are also inconsistent with the instructional implications of current theory in the areas of cognitive psychology and applied linguistics.”
11. See *Language Pledge*, Middlebury Language Schs., <http://www.middlebury.edu/lis/academics/language-pledge> (last visited Oct. 16, 2016).
12. See *The Language Schools Experience*, Middlebury Language Schs., <http://www.middlebury.edu/lis/academics/the-language-schools-experience>, (last visited Oct. 16, 2016).
13. For a comprehensive overview of cognitive load theory, see John Sweller et al., *COGNITIVE LOAD THEORY* (2011). For a more accessible, practitioner-oriented treatment of this topic, see Ruth C. Clark et al., *EFFICIENCY IN LEARNING: EVIDENCE-BASED GUIDELINES TO MANAGE COGNITIVE LOAD* (2006).

14. This is not an argument in favor of using translation dictionaries only, but rather for using them as an additional tool. As applied linguist Suresh Canagarajah puts it, this involves a shift from an “either-or” orientation to a “both and more” perspective. Suresh Canagarajah, *Changing Communicative Needs, Revised Assessment Objectives: Testing English as an International Language*, 3 *Language Assessment Q.* 233 (2006).
15. See Kevin J. Fandl, *Cross-Border Commercial Contracts and Consideration*, 34 *Berkeley J. Int’l L.* 1 (2016).
16. For further discussion of communicative repertoires, see Betsy Rymes, *Communicative Repertoires*, in *THE ROUTLEDGE COMPANION TO ENGLISH STUDIES 287* (Brian Street & Constant Leung eds., 2014).
17. See, e.g., Sarah Benesch, *CONSIDERING EMOTIONS IN CRITICAL ENGLISH LANGUAGE TEACHING: THEORIES AND PRAXIS* (2012).
18. This is a term used to describe interactions that generate intercultural misunderstandings. Formal narratives of such incidents are frequently used as an intercultural training tool. For an example of how critical incidents may be used in instructional contexts, see Claudia Harsch & Matthew E. Poehner, *Enhancing Student Experiences Abroad: The Potential of Dynamic Assessment to Develop Student Interculturality*, 16 *Language & Intercultural Comm.* 470 (2016).
19. See Tim Hassall, *Influence of Fellow L2 Learners on Pragmatic Development during Study Abroad*, 12 *Intercultural Pragmatics* 415 (2015). This study identifies ways in which Australian students learning Indonesian in a study abroad context used conversations in English with their Australian peers to make sense of social language conventions in Indonesian. The author argues that learners’ use of the first language, specifically their metapragmatic discussions, facilitated their learning of Indonesian as a second language.
20. Jim Cummins, *Teaching for Transfer: Challenging the Two Solitudes Assumption in Bilingual Education* *Encyclopedia of Language and Education* 65, 68 (Jim Cummins & Nancy H. Hornberger eds., 2008).