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ABSTRACT

Challenges for bilingual legal education: evidence from a Malaysian Law Faculty.

Several common law jurisdictions (e.g. Bangladesh, Hong Kong) and some civil law systems (Macao, Timor Leste) function in two or more languages as a result of retaining laws and legal networks that evolved in a colonial medium while attempting to enhance legal transparency or conform to national language policies by recognizing local languages of wider communication. Unlike systems that mediate language difference through interpreting and translation, bilingual systems place a particular linguistic onus on lawyers, many of whom have to switch languages when switching communication sites (superior court, subordinate court, office etc.), communicative tasks (drafting litigation, commercial documents or submissions), or interlocutors (judges, witnesses, clients). It might be expected that bilingual teaching and the provision of bilingual resources at law school would be indispensable to raising proficiently bilingual lawyers. Yet comprehensive bilingual legal education appears unusual.

The study reported on here focused on language policies and practices in the law faculty of the University of Malaya, the oldest of six public law-teaching institutions in Malaysia, where the medium of law is Malay but English is also admitted officially and used widely. Investigations were conducted over a year using a multifunctional approach influenced by the paradigm of language planning that targeted language status (e.g. curricula), corpus (teaching and research materials), acquisition (teaching and learning strategies) and discourse (mission statements, students’ and teachers’ views). Research methods included documentary analysis, surveys, interviews, focus groups and class observations.

Despite the likelihood that most lawyers will need both Malay and English upon admission, law teaching emerged not so much as a purposeful inculcation of bilingual competence across a range of legal tasks as a series of compromises between policies favouring Malay and practices regarding English as more important — whether because of the kind of lawyers the faculty hopes to produce or because of recognition that English is the weaker language for most students when they enter the university. Some lecturers habitually switch between the two languages, and in theory students may choose which one to write reports and exams in. In practice, however, most lecturers favour English, as do students themselves despite generally feeling more confident in Malay. English legal resources in the library and on websites greatly outnumber those in Malay. Preference for English seems to be influenced by a view that the tasks lawyers perform in it generally impose more of a linguistic burden than those carried out in Malay.

Professor Richard Powell
Dr Chew Li Hua
### 1. BILINGUAL LAW: WHERE & WHY?

#### Bilingual common law proceedings & legislation in Asia

<table>
<thead>
<tr>
<th>Non-English proceedings</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routinely in spec. ct. &amp; below</td>
<td>Myanmar Hong Kong</td>
</tr>
<tr>
<td>Occasionally in spec. ct., routinely in those below</td>
<td>Bangladesh Bangladesh Malaysia Malaysia Myanmar Sri Lanka</td>
</tr>
<tr>
<td>Extensively in High C. &amp; below</td>
<td>Sri Lanka India India Pakistan</td>
</tr>
<tr>
<td>Some oral &amp; documentary use in High C., extensive use below</td>
<td>Hong Kong Pakistan Philippines</td>
</tr>
</tbody>
</table>

#### Bilingual common law proceedings & legislation elsewhere

<table>
<thead>
<tr>
<th>Non-English proceedings</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kikuyu trials in lower courts</td>
<td>Tanzania Tonga</td>
</tr>
<tr>
<td>Tonga exclusively in lower courts</td>
<td>Tonga Ireland</td>
</tr>
<tr>
<td>Irish occasionally at all levels</td>
<td>Ireland Tanzania</td>
</tr>
<tr>
<td>Kawahito in lower courts</td>
<td>Kenya Kenya</td>
</tr>
</tbody>
</table>

### 1. BILINGUAL LAW: WHERE & WHY?

#### Examples of bilingual civil law proceedings & legislation

<table>
<thead>
<tr>
<th>Courtroom</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portuguese &amp; Tamil (trans-off English &amp; Indonesian)</td>
<td>Tamil Laos Tamil Laos Portuguese, some Tamil</td>
</tr>
<tr>
<td>Portuguese &amp; Chinese (trans-off English)</td>
<td>Macao Macao Portuguese &amp; Chinese</td>
</tr>
<tr>
<td>Parallel French &amp; Flemish streams</td>
<td>Belgium Belgium French, Flemish</td>
</tr>
<tr>
<td>Parallel French, German &amp; Italian streams</td>
<td>Switzerland Switzerland French, German, Italian</td>
</tr>
</tbody>
</table>

### 2. CHALLENGES FOR LEGAL EDUCATION

#### Common law education in Asia

- **Qualifying courses and exams offered in state languages.**
  - Bangladesh, India, Pakistan

- **Courses in Sinhala, Tamil or English but requirement for exams in English recently reinstated.**
  - Sri Lanka

- **Exams may be taken in Malay but all qualifying courses have heavy English component.**
  - Malaysia

- **All qualifying courses and exams in English.**
  - Hong Kong, Myanmar, Philippines

- **Law studied in English overseas.**
  - Brunei
2. CHALLENGES FOR LEGAL EDUCATION

Requirements for admission to Malaysian bar

- Degree from qualifying institution:
  - UIA, UTM, UKM, UM, MMU
  - National University of Singapore
  - England and Wales solicitor
  - London or Dublin barrister
- Degree from approved Malaysian or Australian, NZ, UK institution plus Certificate of Legal Practice (CLP)
- Certified proficiency in Malay language
  - typically fulfilled by credit in SPM school exam, sometimes by GCE
  - public universities also require Malay SPM or equivalent
  - otherwise Bar Malay Exam must be passed
- Oral questions on general topics and a piece of legislation, with focus on translating from English into Malay

2. Multilingualism

Education system:
- National (Malay+)
- Vernacular (Chinese/Tamil+)
- International/private (English+)

2. Multilingual+ multicultural +multijuridical

Education system:
- National (Malay+)
- Vernacular (Chinese/Tamil+)
- International/private (English+)

Legal Practice:
- Private/commercial
- Criminal, government
- Arbitration, mediation

Jurisdictions:
- Federal (East & West): common law & statute
- State:
  - Syariah
  - Customary

Professional stakeholders:
- Judiciary, bar, police, AGC

Lay participants:
- Civil clients, criminal clients, corporations, NGOs
2. CHALLENGES FOR LEGAL EDUCATION

Language practices in Malaysian legal education

- UM & UKM law faculties officially bilingual
  - UM: some courses in Malay, students have choice for exam
  - UKM: one question in each paper must be answered in other language
  - all other public and private law schools teach in English only and most require it for exams, but many have a compulsory legal Malay course: focus on lexis

  ◆ Only 20 candidates take CLP in Malay p.a.

View from the bar

- Reports at least since 1992 (Ahmad et al) of students' inability to use legal resources, overwhelmingly in English
- Bar Council Employability Survey (2012):
  - without doubt the main concern voiced by employers was new entrants not sufficiently capable in spoken or written English (BC President)
  - CLP examiners instructed to overlook language errors
3. SCOPE, AIMS & METHODS OF CURRENT STUDY

Scope:
- Language preferences of UM law teachers & students
  - limited comparisons with other law teaching institutions

Aims:
- Is students' language proficiency adequate for legal studies and legal practice?
- In what language(s) is law being taught and learnt?
- Does language preference influence career choice?

Methods:
- Survey of 400 students about language preference & practice
- Focus group interviews with 200 students
- Interviews with law lecturers, language lecturers, pupil masters
- Observations of law lecturers (12 hours)
- Documentary review: curricula, professional attachment reports

3. Baseline study on communication skills of students at Faculty of Law

3. Motivations for study

Growing pressure to internationalize

Claims of declining English standards

Lack of empirical studies & gap in research of language needs of Multilingual context

3. Components of study

Researchers:
4 law teachers, 4 linguists

Research targets:
1. English/Malay academic proficiency
2. Study skills
3. Professional communication skills

Evaluation criteria:
1. Standardised proficiency tests
2. Expectations of stakeholders: lawyers, law lecturers
3. Activities carried out

- Proficiency test, ELLS based
- Speaking, Listening, Reading, Writing
- Questionnaires for law students
- Analysis of students' professional attachment reports
- Interviews with stakeholders
- Language lectures
- Pupil masters

(a) 194 students:
- Focus group discussions
- 0A Attachment programme 2013 & 2014
- Language choice and practice in workplace

4. INITIAL FINDINGS

- English proficiency
- Malay proficiency
- Perceived language standards
- Language classes at faculty
- Other language skills
- Language preference for study

Findings

4. Findings: language background of students

<table>
<thead>
<tr>
<th>Number of Languages Used</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>39.6%</td>
<td>27.9%</td>
<td>34.4%</td>
<td>17.2%</td>
</tr>
<tr>
<td>2</td>
<td>54.7%</td>
<td>57%</td>
<td>46.9%</td>
<td>43.1%</td>
</tr>
<tr>
<td>3</td>
<td>2.8%</td>
<td>11.6%</td>
<td>18.4%</td>
<td>20.7%</td>
</tr>
<tr>
<td>4 and above</td>
<td>2.8%</td>
<td>3.5%</td>
<td>2.3%</td>
<td>19.0%</td>
</tr>
<tr>
<td>Mean no.</td>
<td>1.69</td>
<td>1.91</td>
<td>1.87</td>
<td>2.50</td>
</tr>
<tr>
<td>N (1791)</td>
<td>106</td>
<td>86</td>
<td>128</td>
<td>58</td>
</tr>
</tbody>
</table>

4. Findings: provisional evaluation of English proficiency

- 85% year 1 = 'good or competent users'
- *New tone interview process implemented campus-wide
- Speaking and listening = strongest skills
- Writing = weakest
- [overseas graduates were rated highest in terms of speaking and writing]
- Pupil masters generally rated UM graduates as average or above
4. Findings: provisional evaluation of Malay proficiency

- Focus groups: less concern about Malay
- Recently qualified lawyers: UM's bilingual teaching policy leans too much toward English
- Linkage between ethnicity and competence in formal Malay appears weak

4. Findings: role of language classes at Faculty

| Interviews | No provision for Malay classes
| No concern about what kind of English classes appropriate - EGP or EAP or ESP
| English language instructors - range of beliefs about what should be addressed in class: enhance English general proficiency? include varying degrees of legal English? address academic writing skills? correct grammar? comprehend local or 'international' speech?

| Questionnaires & focus groups | Small minority of students and larger minority of young lawyers felt Malay classes should also be instituted, with focus on legal terminology
| Students welcomed opportunity to be pushed to be more active

4. Findings: Medium of law lectures

- Large majority of tutorials and lectures in English
- A few subjects, e.g. Islamic law, taught in Malay
- Some lecturers adopt official 'lectures in Malay, tutorials in English' policy
- Many lecturers insist on English for assignments
- Many lecturers code-switch, typically from English to Malay, with materials in former, explanations in latter

4. Findings: language preference for law study

| Questionnaires & focus groups | Strong preference for English. Medium of materials the main factor, followed by perceived preference of lecturer
| Most lectures & tutorials in English
| Code-switching reported for reinforcement of content acquisition or testing bilingual lexical competence
4. Findings: perceived language proficiency of law students

- Senior lawyers: filling English standard.
- General satisfaction with Malay language proficiency of new lawyers.
- Many concerned about increase in grammatical errors in written English.
- Less concern about spoken English.
- General confidence in appropriate level of polite English thought to be more important than language itself.
- Poor English pronunciation—thought to be easy to correct.
- Spelt of certain anglicism frowned upon—whether enough to know legal context or whether one should be able to speak efficiently, especially in writing.

4. Findings: languages used during professional attachment

4. Findings: languages used in office meetings

- Malay: 36%
- English & Others: 14%
- Others: 4%

4. Findings: meetings with clients

- Malay: 29%
- English: 37%
- Others: 34%
4. Findings: translation, interpreting & other languages

- 50% asked to translate legal documents during attachment [Eng.-Malay, Malay-Eng.]
- 25% asked to interpret for clients – Malay, English and also Chinese [Mandarin, Hokkien, Cantonese]
- For employers, proficiency in Malay & English a given, so Chinese considered an advantage

4. Findings: legal research

- English
- Malay
- Both
- None

4. Findings: written language in practice

1. Clients – Emails/Letters

- English
- Malay
- Both
- Others

2. Govt Depts – Emails/Letters

- Malay
- English
- Both
- Others
4. Findings: language of documents for court

- Malay
- English
- Both

4. Findings: contracts, other private documents

- English
- Malay
- Both

4. Findings: use of multiple languages at work

- Communication: 13.7%
- Clients: 11.8%
- Giving instructions: 5.9%
- Formal work: 3.0%
- Daily routine: 2%

4. Findings: language preference & career choice

<table>
<thead>
<tr>
<th>Language</th>
<th>Expected</th>
<th>Malay</th>
<th>Equal</th>
<th>Eng</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N=253</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malay</td>
<td>4%</td>
<td>53%</td>
<td>43%</td>
<td></td>
</tr>
<tr>
<td>English</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malay</td>
<td>Society has more understanding in it.</td>
<td></td>
<td>Rules of court.</td>
<td></td>
</tr>
<tr>
<td>English</td>
<td>We studied law in it.</td>
<td></td>
<td>Used in private sector. I don't want to look inferior.</td>
<td></td>
</tr>
<tr>
<td>Malay</td>
<td>Different kinds of clients.</td>
<td></td>
<td>English for big city, Malay for small city.</td>
<td></td>
</tr>
<tr>
<td>English</td>
<td>Range of economic status.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. ISSUES UNDER EXPLORATION

- Is current emphasis upon English appropriate?
  - bias as much as in other law-teaching institutions
  - appears to be response to expectations of professional
    stakeholders/market
  - legal Malay essentially to be learned on the job: reflects relative
    status of language?
  - evidence employers swayed by English education
  - legal Malay at law schools often confined to learning of lexical lists
- Is there a danger of language-based polarisation?
  - sense of English being more prestigious, more difficult
  - class-division already apparent in South Asian jurisdictions
- Given the continued importance of English, are standards falling? Is this affecting legal practice?
  - role of language classes, choice between general or vocational English

6. ISSUES UNDER EXPLORATION: Changes at UM Law Faculty

- No more English classes
- > integrative learning?

Proposed Strategy

- Social & communicative skills
- Advocacy & Moot + Law courses
- Assessment: Presentation, Group work
- Weightage for communication skills - oral, listening, writing
- Presentation, discussion, drama, negotiation, questioning, learning
- Integrative learning - retraining of lecturers