

Cross-Examining English-Medium Legal Education

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ABSTRACT

Increasingly, English is being used as a medium of instruction in law schools around the world, even in countries that do not use English in their legal systems. This paper examines three related research questions about this phenomenon. First, it explores why these law schools are choosing to deliver law degrees in English, notwithstanding the discrepancy between the language of instruction and the languages in which local laws are written. Next, it assesses how English is actually being used in law school classrooms and what other institutional changes appear to be occurring at the same time. Finally, it examines what, if anything, can be said about the effect that English-medium instruction may be having on student content achievement. Many elements of these research questions appear to be unanswered by research in either applied linguistics or legal education, and directions for future empirical research are therefore suggested.

Keywords: English-medium instruction, law schools, legal education, language policy

INTRODUCTION

This paper will examine the role of English in international legal education and, more specifically, the phenomenon of English-medium instruction (EMI) at law schools in countries where English is not an official language or otherwise a language of the legal system. Referring to relevant scholarship from both applied linguistics and the legal field, this paper will investigate three related research questions: *why* EMI is being adopted at these law schools; *how* EMI is actually being used at both institutional and classroom levels; and *what* effects on learning outcomes are apparent as a result.

Though the fields of law and applied linguistics rarely interact, they each have much to offer to the resolution of certain questions faced by the other. In an attempt to create an interdisciplinary bridge between these two very different domains, this paper will explain what applied linguistics can contribute to questions about English-medium legal education for which the legal field does not have the appropriate tools. The general framework for this inquiry will therefore be provided by applied linguistics, with the facts which form the basis of discussion provided by legal scholarship.

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These research questions are important for several reasons. Viewing English-medium legal education as a subset of the broader trend of EMI in higher education, there has been inadequate exploration of the effect of these English-medium classes on students' content achievement. This is the case for EMI in higher education generally, and it is especially the case for law schools. Within legal education, there are also unanswered questions about the actual forms that EMI classes take and whether they should truly be characterized as "EMI." Identifying specific research gaps is an important first step for guiding future studies about these and related issues, the results of which could inform future language planning.

Approaching this topic from the other direction, English-medium legal education should be situated within the legal systems and attorney licensing regimes of the countries in which it takes place. In light of the political and symbolic status of the legal system vis-à-vis the nation-state, the choice to conduct legal education in a language that is not an official language of the government or its legal system carries with it profound policy implications. For this reason, EMI as it is used in *legal* education, as opposed to education generally, deserves special attention.

RELEVANT ELEMENTS OF LEGAL EDUCATION

Because this paper is primarily targeted at audiences in the applied linguistics field, it will begin with a brief introduction to certain background information about legal education that readers may find helpful. Of primary importance is the fact that in many countries, and in all countries discussed in this paper in relevant part, qualification to practice law requires candidates to first complete a law degree and thereafter pass a professional exam (or series of exams) referred to colloquially as a "bar exam." A related feature is the variability in the length of the law degree itself and its status as either undergraduate or graduate education, attributes that differ around the world. In the United States, a law degree is delivered as a three-year juris doctor (J.D.) degree, which is a graduate program that requires applicants to have acquired at least a bachelor's degree first. A J.D. is in turn required to sit for the bar exam in all U.S. states. Many U.S. law schools also offer a master of laws (LL.M.) degree, which is an optional one-year program that can be taken following the J.D. degree. International students who already have a law degree from their home country may enroll in an LL.M. program and thereby become eligible to sit for the bar exam in some U.S. states (Silver, 2012, pp. 2387-2388).

In many countries outside of the U.S., law degrees have historically been a form of *undergraduate* education, and they are often obtained by students who have no intention of ever taking the bar exam or practicing law (Merryman, 1975, p. 866). In other countries, in addition to an optional undergraduate degree in law, there is also a graduate degree of anywhere between one and four years in length that is required to sit for the bar exam. As will be discussed below, there has been a trend in recent years of law degrees being restructured into a three-year graduate program, often in an explicit attempt to model the J.D. regime of the United States, and often accompanied by the concurrent implementation of EMI. Nevertheless, law degrees have been highly resistant to convergence to the "bachelor-master model" of the Bologna process of international standardization, unlike degrees in nearly every other field (Arzoz, 2012, p. 34). Given the unique significance of a law degree in any given country as a prerequisite to the practice of law and qualification for certain positions in the government, countries may be understandably unwilling to relinquish control over the format of their legal education systems.

Another important concept in legal education is the difference between “common law” and “civil law” legal systems. Entire volumes have been written about this distinction and its implications for practicing attorneys, but it also has relevance to considerations of pedagogy. Civil law systems rely almost entirely upon statutes as sources of law, whereas common law systems supplement these statutes with binding interpretations made by judges in actual legal cases; these interpretations of statutes form a secondary body of law known as “case law” (Garner, 2004, pp. 293-294). Speaking very generally, countries that use English as the language of their legal systems (primarily former British colonies such as the United States, Hong Kong, Singapore, Nigeria, India, etc.), tend to have some form of a common law legal system, and most others use a form of civil law.

Finding the answers to legal questions is often much more complicated in common law systems, due to the analytical complexity of reviewing and synthesizing case law. For example, in a civil law system, the answer to a legal question, such as the elements of the crime of fraud, might be expected to have a single, uniform definition in a single statute. In a common law system, there would also be a statutory definition of the crime of fraud, but this definition would be expected to have undergone significant modification over time as the relevant statute is iteratively interpreted according to the facts of actual cases (Whalen-Bridge, 2008, pp. 367-368). In order to discover the law of fraud as it applies to a new case, a lawyer in a common law system must find the statute and then also analogize to prior cases that have similar facts and isomorphic legal issues.

Because of the complexity of legal research involving case law, countries that use a common law system must provide appropriate training for the study of cases in law school (Merryman, 1975, p. 871). There are many consequences of the study of cases, the most significant of which is the use of the “Socratic method” in classes, especially in the United States. As used in law schools, the Socratic method involves subjecting individual students to a rigorous, inquisitorial line of questioning about cases, their holdings, and their analysis (Abrams, 2015, pp. 563-565). The line of questioning often culminates with students being asked to apply the holding of the case to scenarios with slightly different facts, which is similar to the task of an actual attorney in a common law system. Students hearing all of this in class are thereafter expected to infer the professor’s opinion about the case’s legal framework based on the direction of the questioning, rather than from an indicatively-framed lecture. A widely-held view in U.S. legal pedagogy is that “a steady stream of questions designed to challenge unquestioned assumptions and reveal underlying legal principles” is a more effective teaching method than a straightforward lecture (Mertz, 2007, p. 26). As discussed below, use of the Socratic method is another feature of legal education that tends to travel together with EMI.

DEFINING EMI AND PLACING IT WITHIN INTERNATIONALIZATION

With this information about legal education having been introduced, this paper will now set the parameters of the primary topic at hand—EMI in legal education. There are numerous, competing definitions of “EMI” in applied linguistics literature which vary across several metrics (Pecorari & Malmström, 2018). As used herein, EMI will be defined as the use of English as an instructional language in a location where neither the students nor the general population in the environment in which the school is located use English as a first language (L1). Under this definition, the use of English in a country such as Japan would qualify as EMI, since English is

not spoken locally, but the use of English in the continental United States, even for students who do not speak English as an L1, would not qualify as EMI, since English *is* used locally (Macaro, Curle, Pun, An, & Dearden, 2018, p. 41).

A further narrowing of the definition of EMI is needed for a discussion of legal education. Largely as a legacy of colonialism, there are a number of countries, especially in Sub-Saharan Africa and South Asia, in which English is used in the legal system (i.e., for laws and in court proceedings) despite not being a language spoken by the population generally. In almost all of these countries, English has been used as the exclusive language of legal education for decades, if not centuries, and these countries also tend to use a common law legal system based on that of the United Kingdom. An analysis of the use of EMI in these countries would touch on very different considerations than for countries that do not use English in their legal systems, and they will therefore be excluded from the discussion that follows.

Another important aspect of the definition of EMI that will be used herein is that it involves the delivery of content in English without any explicit focus on language. This definition borrows from Pecorari and Malmström (2018) insofar as EMI is deemed to take place *only* where “language development is not a primary intended outcome” (p. 499). Defined in this way, EMI is to be distinguished from content and language integrated learning and content based instruction, which are foreign language teaching methods that involve elements of language instruction or support. Though it is not completely clear how English is being used in law school classrooms, there is reason to believe that it is usually in the form of EMI, as explored below. The distinction between EMI and other forms of instruction is most relevant to this paper’s final section, about the effects of EMI on learning outcomes.

EMI having been defined, its use in legal education should be understood as but a single manifestation of a much larger trend that has been affecting universities globally. For a variety of reasons that are largely unrelated to language pedagogy, institutions of higher education around the world have been adopting EMI at an accelerating pace. The decision to adopt EMI is typically made at the administrative or even supervisory governmental level, without necessarily any consultation with faculty or students (Macaro et al., 2018, p. 50). The reasons vary, but EMI is often adopted to increase institutional prestige, to increase enrollment by attracting an “international” student-body (the members of which often share only English as a common language), or to encourage faculty to publish research in English (Macaro et al., 2018, p. 37). As noted above, EMI is not implemented for language-learning goals—improvements in language proficiency may be a hoped-for side effect of EMI, but explicit attention on language is not officially a part of the curriculum (Pecorari & Malmström, 2018, p. 501).

This EMI adoption in universities can itself be situated within an even larger trend of internationalization in higher education. The term “internationalization,” like the term “EMI,” is one that is subject to numerous, competing definitions. Using the broadest possible framework, it can be defined as “[t]he process of integrating international, intercultural and global dimensions into the purpose, functions—teaching/learning, research and service—or delivery of higher education” (Knight, 2004, p. 9). There are many facets to this process, which vary according to the specific institutional context, and which may also vary over time at a single institution.

Globally, the trend of internationalization seems to have begun in furtherance of collaboration among universities located in different countries, with a focus on sharing and exchanging educational resources. But increasingly, universities today implement changes in the name of internationalization primarily to increase the competitiveness and rankings of academic programs (Knight, 2010, p. 209). Because it often appears as a metric in academic ranking

systems, the use, and occasional “overuse,” of EMI are key features of internationalization at many universities (Knight, 2008, p. 95). The justifications for EMI adoption described in the beginning of this section, from Macaro et al. (2018), fit this paradigm of English being used as a tool at the university level to further institutional goals, rather than at the classroom level to assist actual learning.

EXPLAINING THE USE OF EMI IN LEGAL EDUCATION

Though it is helpful to understand the context of EMI adoption at institutions of higher education generally, EMI has unique attractions for law schools that go beyond this. But before exploring these attractions, we should first consider why it is in fact counterintuitive for a law school located in a country where English is not an official language to choose to use English in legal education. A priori, it seems that national law would need to be taught in the language of the national legal system. A lawyer in any particular country will presumably be trained to practice the law of that specific country, and no other. Unlike in disciplines such as economics, physics, or medicine, there is no single underlying phenomenon that is the same across national boundaries (Arzoz, 2012, p. 6). Instead, the academic study of law is “embedded in a national legal system, a national legal culture and a national (legal) language” (Kornet, 2012, p. 319).

The importance of these considerations cannot be overstated. For better or for worse, in the educational field, “[t]he main instrument of nation-building is the imposition of a common state language” (Arzoz, 2012, p. 11). This is especially the case for multilingual countries, where the designation and use of one particular language may be used to construct a national identity where one might not otherwise exist (Blommaert, 2006, pp. 243-245). Changes to the medium of instruction in legal education affect both the language of government and the language of the educational system, both of which are core pillars of a language-based national identity. In light of these concerns, we may indeed ask how the use of English in legal education could ever be justified in a country where English is not otherwise used in the local legal system.

One part of the answer to this apparent contradiction is that there is much more going on at law schools besides merely preparing students to practice law locally. Increasingly, attorneys in locations around the world are required to represent clients who conduct business and engage in litigation *transnationally*. The areas of law that have grown the fastest in recent years are those that have an international nexus and, of these, nearly all take place primarily in English (Hall, 2013, p. 393). This is particularly true for commercial areas of law, the clients of which pay the highest rates and require the services of the largest law firms (Kornet, 2012, p. 315). Because English is the lingua franca of international business, it is by default also the lingua franca of international commercial law (Kornet, 2012, p. 324; Maleshin, 2017, p. 295). English is also the language that is most frequently used in the negotiation and drafting of legal instruments in multinational organizations and rulemaking bodies such as the European Union, World Bank, and International Monetary Fund (Kornet, 2012, pp. 324, 333-334). Adding to this trend is the complete dominance of U.S. and U.K. law firms in international rankings of headcount, revenue, and the number of overseas offices (Chesterman, 2009, p. 886; Hall, 2013, pp. 391-396).

It is therefore unsurprising that this need for attorneys who are able to practice law in English is among the most commonly-cited justifications for the adoption of EMI. Whereas the impetus for university-level changes may be somewhat top-down (i.e., imposed by administrators or national educational regulators), in law schools, “the engine of change is not

top-down politics but bottom-up practice” (Chesterman, 2009, p. 879). Stated differently, law schools see themselves as responding to non-negotiable market forces: (a) employers with whom law school graduates seek to work prefer candidates that are able to practice law in English; (b) law students therefore prefer to study at schools where they will be taught in English and can establish their proficiency on that basis; and (c) the schools themselves must meet this demand if they are to succeed in the competition with other schools for students, faculty, and resources (Arzoz, 2012, p. 23; Backer & Stancil, 2013, pp. 322-323, 355-356; Nesiah, 2013, p. 376).

Specific examples of this bottom-up impetus for EMI that have been cited in legal scholarship include the following: catering to the needs of the domestic legal market, in China (Wang, Liu, & Li, 2017, p. 243); preparing law graduates to represent clients in international transactions and litigation, also in China (Zhao & Hu, 2012 p. 359); familiarizing students with principles of European-wide contract drafting and preparing them to work within European Union legal frameworks, in the Netherlands (Kornet, 2012, p. 324); making domestic lawyers more competitive internationally, in South Korea (Kim, 2012, p. 56); and facilitating the participation of domestic lawyers in multinational organizations such as the World Bank, in China (Burr, 2010, p. 48; Zhao & Hu, 2012, p. 347).

At the same time, law schools are not immune to the trend of internationalization, described in the preceding section, that has affected universities around the world. Just as in universities generally, internationalization in law schools has resulted in cooperation, manifested in student and faculty exchange programs and institutional partnerships, as well as in competition, manifested in efforts to increase enrollment, fundraising, and institutional prestige (Arzoz, 2012, pp. 29-30). The adoption of EMI in law schools should also be understood as part of this wider trend.

Scholars in the legal field have identified institutional motivations for the use of English that fit into this framework. A group of law professors writing about the use of EMI in Chinese law schools noted the desire by schools to raise their profile in domestic academic rankings that weighted English use heavily, to increase faculty rankings in the Social Science Citations Index by encouraging them to publish in English, and to raise law schools’ international research recognition generally (Wang et al., 2017, pp. 247, 259-260). Others have noted the desire to attract the most prominent faculty, who may be able to lecture in English but not in local languages (Arzoz, 2012, p. 23), the need to accommodate a student body that originates in many different countries (Kornet, 2012, p. 324), the need to boost revenue by expanding the pool of potential students to include those from outside of the country (Arzoz, 2012, p. 23; Wang et al., 2017, p. 259), and a perception that the best students are enrolling in law programs in English, even if this means leaving their home country (Maleshin, 2017, pp. 295-296).

Finally, there is one additional driver of EMI uptake that ties into certain attributes of legal pedagogy and that is very unique to legal education. As one scholar has explained, in the legal field, “internationalization” is often synonymous with “Americanization” (Chesterman, 2009, p. 886), and law schools are undertaking a very specific kind of Americanization that emulates the structure, subject matter, pedagogy, and language of instruction of U.S. law schools (Chesterman, 2009, pp. 886-887; Miyazawa, Chan, & Lee, 2008, pp. 334). This is due to a perception, common to educators at some non-U.S. law schools, that U.S. methods of delivering legal education are in fact more effective than methods that have been used domestically. This is particularly the case in countries such as South Korea, Japan, and China that have recently undergone far-reaching changes to their legal education systems (Backer & Stancil, 2013, pp. 320-321; Keyuan, 2003, pp. 159-60; Wilson, 2010, p. 302). Certain attributes of U.S. legal

education have also been adopted as a result of this same perception in other locations such as Australia, Hong Kong, the Philippines, and Taiwan (Chesterman, 2009, pp. 886-887). In contrast to the bottom-up argument for English as necessary for legal employment, these justifications for EMI are admittedly somewhat top-down.

The process of Americanization can involve the study of case law and the use of the Socratic method, even in jurisdictions which use a civil law system and for which the study of cases is inapposite. There are also some countries which have restructured their nationwide law licensing regulations in a deliberate attempt to copy elements of the “J.D. plus bar exam” format used in the United States. What is interesting about these developments is that they also tend to be accompanied by the adoption of English as the instructional medium. Sometimes the use of EMI occurs at the level of individual classes or content areas, and sometimes it is adopted for entire degree programs or even entire schools. A discussion of specific examples will be explored in more detail in the following section, which will explain how EMI is implemented in law schools around the world and what other regulatory, administrative, and pedagogical changes are taking place concurrently.

FEATURES OF EMI IN LEGAL EDUCATION AND ASSOCIATED EDUCATIONAL REFORMS

Because this paper describes a phenomenon that is occurring in dozens, if not hundreds, of individual law schools around the world, each with its own institutional, regulatory, and sociolinguistic milieu, a word of caution is in order. This paper does not purport to address the implementation of EMI everywhere that it occurs, nor does it purport to summarize such implementation in any particular subset of law schools. Given the amount of data that is currently available and the forms in which it can be found, the best that can be undertaken at present is an illustrative summary of those English-medium programs in law that have been described in recent literature. Indeed, a premise of the value of this paper is that no such global survey currently exists and that one is very much needed. Because many of the notable developments in this space have occurred in Europe and East Asia, the discussion that follows will focus on these two locations, especially the latter. This is not to say that there are not similar or even countervailing changes occurring elsewhere, but merely that there is much less that has been written about these other contexts in legal scholarship in English.

Some countries have used English-medium legal education for several decades, especially member states of the European Union (EU). In Europe, English is frequently used as a medium of instruction for programs with a specific focus on areas of law that extend beyond the national legal system of the country in which the school is located. An illustrative example is the Anglo-American Law Program (AALP) at the University of Navarra in Spain, which is an English-medium degree program in which students may enroll at the same time that they obtain a Spanish law degree. Classes in this program focus on concepts in common law and U.S. law, and they are in fact taught primarily by visiting professors from the United States (Backer & Stancil, 2013, pp. 346-347).

Another example from Europe is the European Law School at Maastricht University in the Netherlands, which offers an English-language track (ELS-ELT) for studies in the law of the EU. Unlike the University of Navarra’s AALP, the ELS-ELT does not focus on the legal system of the United States but instead teaches each major area of law, such as criminal law, commercial

law, administrative law, etc., through the comparison of the legal systems of individual countries throughout the European Union (Kornet, 2012, pp. 330-331). Most scholarship and textbooks about EU-wide law are already written in English, which simplifies the search for faculty who can also lecture in English (Kornet, 2012, pp. 332-333). Interestingly, students who are studying Dutch law at the European Law School's Dutch-medium track also take classes in English on subjects such as common law and comparative law, as well as in professional training modules such as "moot" (simulated) court (Kornet, 2012, p. 330).

On the other side of the globe, some of the most interesting developments in EMI have occurred recently in the Chinese-speaking world, where the use of English takes several forms. In some schools, English is used as a medium of instruction for specific subjects such as the law of international finance or for modules in moot court or moot arbitration, with classes on Chinese law remaining in a Chinese medium of instruction (Zhao & Hu, 2012, p. 359). At least one law school in Taiwan, at the National Chiao Tung University, offers classes on U.S. law in both Chinese and in English (Chen, 2012, p. 57, n. 163). Both of these paradigms are similar to the position of English in the Dutch-medium track at Maastricht University's European Law School, where it is only subjects with an international nexus that are taught in English.

However, in other cases, law schools in mainland China are offering degrees *in Chinese law* that are taught in English (in addition to Chinese-medium tracks). Law faculties at Peking University, Renmin University of China, Tsinghua University, Shanghai Jiao Tong University, and Fudan University all offer one-year or two-year LL.M. degrees in Chinese law that are taught through EMI, and Peking University even offers an S.J.D. degree (a doctorate in law) in English (Wang et al., 2017, p. 259). Such offerings have been criticized by some Chinese legal scholars on the basis of the dubious utility of teaching domestic law through a language that differs from the language in which the laws themselves are written (Wang et al., 2017, p. 259; Zhao & Hu, 2012, p. 359). Nevertheless, the willingness of these universities to embrace a misalignment between the language of instruction and the language of the legal system demonstrates the compelling attraction of EMI for such institutions.

A final paradigm for the use of English at Chinese law schools is the Peking University School of Transnational Law (STL), located in Shenzhen, China. This school is extraordinary for several reasons, not the least of which is that every class in the entire school is taught in English (Burr, 2010, p. 52). Unlike other law schools in China where English is used, STL is modeled from top to bottom on a U.S. law school, with a curriculum that emphasizes comparative law and that includes a strong component of common law and its attendant analysis of cases (Backer & Stancil, 2013, pp. 343-344; Burr, 2010, p. 51).

STL is emblematic of an additional trend related to the implementation of EMI, which is the restructuring of legal education in an attempt to emulate the J.D. format used in the United States. Going further than merely offering a curriculum in English that is explicitly modeled on subjects taught in the United States, STL actually offers a J.D. degree in addition to a Chinese J.M. (juris master) degree, a first for any school in China (Wang et al., 2017, p. 255). Even more remarkably, STL applied for the accreditation of its J.D. program with the American Bar Association (ABA), which would have made its graduates eligible to sit for the bar exam in U.S. states, just like a graduate of a U.S. law school (Backer & Stancil, 2013, p. 318). Though the ABA ultimately declined STL's application, deciding instead to adopt a blanket prohibition on the accreditation of non-U.S. law school programs, the fact that STL was able to make a credible application speaks to the degree of its Americanization.

Indeed, STL is not alone in creating a new J.D. degree that is modeled on the American system. There have been widespread reforms at the governmental level in both Japan and South Korea in recent years intended to emulate the legal education and licensing regime of the United States (Chen, 2012, pp. 32-33; Zhao & Hu, 2012, p. 342). In South Korea, the Graduate Law School Act (GLSA), passed in 2007, completely restructured the domestic legal landscape. It did this through the creation of a new three-year J.D. program, based on that of the United States, that would thereafter be required for eligibility for the Korean bar exam (Kim, 2012, pp. 49-50). At the same time that the GLSA was being conceived, and in anticipation of its changes, English was made a mandatory subject on the Korean bar exam and certain subjects on international law were made part of law school curricula (Kim, 2012, p. 65). As might be expected, law schools in Korea are also increasingly offering classes that are taught in English, primarily for classes about international law and non-Korean legal systems (Wilson, 2010, p. 341). Reforms to the Japanese system of legal education began in 2004 and took a similar form, including the creation of a new three-year J.D. program required for Japanese bar exam eligibility, with proficiency in English added as a requirement for law school admission (Miyazawa et al., 2008, pp. 346-347; Wilson, 2010, pp. 299, 340). Reforms similar to those in Japan and South Korea, explicitly acknowledged to be a copy of “U.S.-style education,” have also been proposed in Taiwan (Chen, 2012, p. 48).

In China, South Korea, and Japan, EMI has also been a vehicle for the implementation of the Socratic method of teaching. As noted above, use of the Socratic method in U.S. law school classrooms originated out of the need to train law students in the analysis of case law, a feature that is unique to common law legal systems. The Socratic method is widely considered to give rise to “significant transformation during the first year of law school” (Wilson, 2010, p. 305), as it prepares students for the extreme analytical rigor of case synthesis and for the critical thinking needed for success as an attorney (Abrams, 2015, p. 566). Elements of the Socratic method have been copied even outside of the context of EMI (as defined herein), such as at law schools in Germany, Australia, India, Taiwan, and Mexico, sometimes occurring in English and sometimes in locally-used legal languages (Backer & Stancil, 2013, pp. 319, 344; C. Chen, 2012, p. 58; Y. Chen, 2018, p. 20; Nesiiah, 2013, p. 384).

The few legal scholars who study the use of the Socratic method with non-U.S. students generally consider it to be beneficial for legal training. Indeed, any classroom methods that involve forms of discussion or critical thinking contrast favorably with traditional teaching methods that require students to merely memorize long lists of statutes, particularly in East Asia (Burr, 2010, p. 40; Kim, 2012, p. 62; Zhao & Hu, 2012, p. 355). In Japan, the Socratic method has been linked to more active participation by students in classes, which had previously been lecture-only, as well as to improvements in critical thinking (Wilson, 2010, pp. 320-321). In South Korea, professors have considered improvements in legal reasoning skills to be worth any countervailing reduction in knowledge about individual laws (Wilson, 2010, p. 340-341). Cases are used as the subject matter for classroom sequences that are taught through the Socratic method, even though Japan and South Korea both use civil law legal systems in which such cases do not have the same legal significance that they do in a common law system.

Given its other similarities to U.S. legal education, it is perhaps unsurprising that pedagogy at Peking University’s STL involves significant elements of the Socratic method (Backer & Stancil, 2013, p. 344; Burr, 2010, p. 57). This use of the Socratic method at STL has been linked to other kind of reforms, such as a general shift from teacher-centric lectures to student-centered discussions, which is another feature of U.S. legal education (Burr, 2010, p. 40).

Outside of STL, the Socratic method does not appear to be widely used at law schools in China, even in EMI classes. As explained by one group of professors, reluctance to use the Socratic method originates in the perception that it is too difficult to implement as a cultural matter, with Chinese law students allegedly being accustomed to silently taking notes and not being comfortable contributing in class (Zhao & Hu, 2012, p. 337). Similar concerns have been raised with the use of the Socratic method in South Korea and Japan, in terms of both the students' and the professors' supposed discomfort in switching from a hierarchical student-teacher relationship to one that is more equal (Foote, 2013, p. 371, n. 4; Wilson, 2010, pp. 321-323, 342). So far however, this does not seem to have been a complete barrier to its use.

Returning for a moment to the use of EMI in Europe, the use or non-use of the Socratic method is not a feature of European legal education that has been discussed in recent literature. Given the unusual attributes of the Socratic method, at least as it is typically used in law school classrooms, this may suggest that the Socratic method is not widely used. However, at a program such as the AALP at the University of Navarra, in which most classes are taught by visiting U.S. law professors, the opposite assumption may be more appropriate. Either way, this is an issue that deserves more attention from researchers in both law and applied linguistics.

A very interesting question, and one that would have implications beyond law school pedagogy, is whether students who are non-native speakers of English, and who may have been acculturated to hierarchical student-teacher relationships in their L1, may feel more comfortable participating in classroom discussions and in Socratic method sequences when the class is conducted in English. Such a result, if supported by the evidence, would be consistent with theories of language socialization which posit the connection among interactional practices, culture, and language, and which further suggest that language learners "appropriate language practices" from the target language as they learn to negotiate new situations (Poole, 2005, p. 205). If it could be shown that the Socratic method is more effective than traditional lecturing methods, at least for teaching the analytical skills needed for legal practice, the utility of EMI in facilitating student participation might counsel in favor of its continued use and further adoption at law schools. This is unfortunately not a topic that has been investigated to date.

Stepping back and returning to our definition of EMI, one important element of the definition is that true "EMI" does not include any elements of language instruction or support. At this point in the paper, it is appropriate to ask whether this is the case for the law schools that have been described. If we consider the key metric to be whether the stated purpose of the class is to teach content only, as opposed to primarily language or content-plus-language, it seems clear from the available information that these law school programs really should be characterized as EMI. Whether EMI is offered in individual classes or for entire programs, these English-medium law school classes do not appear to be presented as a way to learn English, and nowhere in the extensive literature describing the justifications for these programs is there any discussion of language learning per se. Tests of English proficiency, where they are discussed at all, are characterized as an admissions criterion and not as placement for any language-based component of the curriculum (*e.g.*, Burr, 2010, p. 52; Kim, 2012, p. 59; Wilson, 2010, p. 340).

However, notwithstanding the designation of a particular program as officially using EMI, there are several forms that language instruction or support could still take. Classes that are ostensibly EMI-only may have language topics built into the curriculum, whether or not this is advertised by the school. Another possibility is that professors in EMI classes, acknowledging that students really do need some form of language support, might incorporate elements of language instruction into their lesson plans outside of officially endorsed curricula. A final

alternative is that language instruction, or explanations of content in languages other than English, might occur spontaneously. Researchers have argued that it is in fact inappropriate to conceptualize “a binary EMI/non-EMI distinction” (Pecorari & Malmström, 2018, p. 500), and that instead there may be varying degrees of EMI use within different courses at a particular institution and within different classes of a particular course (Fenton-Smith, Humphreys, & Walkinshaw, 2017, p. 6). We should therefore be aware that the actual implementation of EMI in law schools may involve some elements of language-focused instruction.

Unfortunately, there does not appear to be any research that can speak to the existence or non-existence of such forms of language support in English-medium law school classes. This should be unsurprising—few researchers in applied linguistics focus on legal education, and the nuances of EMI are simply not a topic that legal researchers are concerned with or would necessarily be qualified to investigate. The answers to these questions therefore fall into the gap between the disciplines of law and applied linguistics. They would be a worthy subject matter for qualitative, classroom ethnographies of language use or for a large-scale quantitative survey of professors and students about the absence or presence of language instruction in class. An analysis of the effects of EMI, the subject of the section that follows, depends on an accurate characterization of the kinds of instruction actually taking place.

EFFECTS OF EMI ON LEARNING OUTCOMES IN LEGAL EDUCATION

An investigation into the effects of EMI on legal education could include any number of useful inquiries, such as its impact on students’ language acquisition and content comprehension, on academic culture and classroom methodology in law schools, and on the local legal systems and law practice in the countries where it is used. Also important are whether stated goals such as bolstering institutional prestige and increasing enrollment have really been achieved, or the separate matter of whether the exclusive use of English might be enabling elite closure in the societies in which it occurs. Some of these questions are outside of the scope of this paper, and others are characterized by a dearth or even complete absence of empirical research. This section of the paper will focus on the question that is of primary relevance to the utility of EMI and that is theoretically answerable by the applied linguistics field: the effects, if any, of EMI on students’ ability to learn the content of their classes.

This aspect of EMI use is uniquely important. An unstated premise of EMI is that students’ comprehension of content will not suffer as a result of the language of instruction or, alternatively, that any diminution of such comprehension will be outweighed by gains in English proficiency (Macaro et al., 2018, p. 66). The entire enterprise of an English-medium law school program should be called into question if this premise is invalid. This is the case for content learning much more than it is for issues like student enrollment or institutional prestige, where there are other factors that may contribute to the desired outcome. For students learning in an English-medium environment without language support, the classroom experience is all there is.

To answer this final question, studies in applied linguistics about EMI in higher education have been consulted, and it is apparent that research in applied linguistics has not kept pace with the wide-spread adoption of EMI. A recent state-of-the-art survey by Macaro et al. found very little research in applied linguistics about EMI in any context, with most empirical studies having been conducted only within the last decade (2018, p. 45). This is a conclusion confirmed by

additional research conducted for purposes of this paper, which has not uncovered any additional primary studies.

In the section of this paper that explored the reasons for adopting EMI, it was useful to first discuss the context of higher education generally before moving onto the specific case of legal education. Here, by contrast, exhaustive research has not discovered *any* empirical studies about the effect of EMI on content learning in law schools. Literature about EMI in higher education generally, though still sparse, is the only guide that we have for what appears to be a tremendous gap in applied linguistics research. There has admittedly been some, albeit limited, empirical research into topics such as the rate of EMI adoption in higher education and the perceptions of faculty and students about EMI implementation. But as for the effect of EMI on students' comprehension of the course content, Macaro et al. found only four studies which attempted to measure this effect with a quantitative metric (2018, p. 60). Of these four studies, the two using the more robust research designs will be described here. Leaving the results aside for now (which are in any event inconclusive), this exercise is instead intended to demonstrate the difficulties in designing studies in this area with adequate internal validity.²

In a dissertation write-up, Vinke (1995) described a study which investigated student comprehension of EMI lectures at a university in the Netherlands. Two groups of undergraduate engineering students were assembled. Each group was given a lecture on the same topic, by the same professor, with one group receiving instruction in English and the other receiving instruction in Dutch. A deliberately arcane topic in the engineering field was chosen to ensure that the subject matter of the lecture was new to all participants. Following the lectures, both groups of students were given the same posttest (in Dutch) about the content of the lecture. Pre-university test scores in Dutch, English, physics, and math were collected to ensure that the two groups were equal as to language proficiency and academic ability. The posttest results showed that students receiving the lecture in Dutch moderately outperformed their peers who had heard the EMI lecture. According to the researcher, this study provided evidence that using EMI has a slightly negative effect on student content achievement (Vinke, 1995, pp. 127-129).

Joe and Lee (2013), by contrast, investigated students' comprehension of English-medium lectures at a medical school in South Korea. The study participants were medical students enrolled in an English-medium class as part of their school curriculum. A specially-constructed class session was held, with the first half of the class taught in English, and the second half in Korean. The two components of the class pertained to different content about the same general subject matter, and the same lecturer delivered both components of the class. Prior to the class, students were administered a pretest about the chosen content area, in Korean. Immediately after the class, students were administered a posttest, with questions that related to content from the English lecture phrased in English and questions that related to content from the Korean lecture phrased in Korean. The students' prior scores on standardized English proficiency tests were also collected.

Students scored much higher on the posttest than on the pretest, meaning that the lectures were effective, and the posttest scores on the English-medium and Korean-medium questions

² The other two studies noted by Macaro et al. (2018), not discussed here, both had design features that made them less probative for this particular research question. The first, Hellekjær (2010), used self-reports from students in a questionnaire, rather than any kind of testing instrument, to measure student comprehension of English-medium and L1-medium lectures. The second, Dafouz, Camacho, and Urquia (2014), compared the grades of students in an English-medium program and in a Spanish-medium program to measure student comprehension, without any control for what were potentially vast differences in class content and the methods of assessment.

were nearly equivalent, meaning that the two lectures resulted in similar learning outcomes. Scores on standardized English tests did not correlate with scores on the English-medium component of the posttest, though it should be noted that all students had relatively advanced English proficiency, with average scores equivalent to a 96 or 97 out of 120 on the iBT TOEFL. According to the researchers, these results suggested that EMI does not necessarily have a negative impact on learning, assuming that students have a sufficiently high level of English proficiency (Joe & Lee, 2013, p. 205).

Both of these studies used the language of instruction as the main independent variable, with student learning, operationalized as achievement on a posttest about lecture content, as the dependent variable. Vinke (1995) used the same lecture, delivered separately in English and Dutch, with all participants taking the same posttest in Dutch. Joe and Lee (2013) used two different lectures, one delivered in English and the other in Korean, with each group of participants taking a posttest corresponding to the language of instruction. Were either of these alternatives attempted in the context of an English-medium law school program, each could be characterized as somehow unsatisfactory, for different reasons.

Using something resembling Vinke's (1995) research design, it is unclear how it could be ensured that the two lectures really cover the same content. The use of the same instructor surely would mitigate this risk, but interruptions, lecturer errors, and questions from students may make some degree of difference inevitable. An additional source of variation that may be specific to a law school context would be the differences in the conventions of legal language and discourse in both English and Dutch. "Legal English," as a particular form of the English language, is in many ways quite different from ordinary English: It is highly technical, a tremendous amount of background knowledge is usually assumed on the part of the listener or reader, it uses a great deal of specialized vocabulary and phrases from Latin and French, and it has its own grammatical idiosyncrasies, among other difficulties (Gibbons, 1999, pp. 160-161; Haigh, 2012, pp. 8-10). For this reason, legal language in English is often impenetrable to the lay public, and it is also something that must be learned in law school even by a native English speaker. It may be appropriate to suspect that similar considerations affect legal language in Dutch, or in any other language for that matter. In light of these considerations, using two languages to deliver a lecture on the same legal topic might render the two versions prohibitively divergent. In other words, there would be far too many intervening variables to allow for a meaningful comparison of the students' comprehension of the two lectures.

In the research design used by Joe and Lee (2013), the problems with differing interruptions, errors, and questions as between the two lectures would be shared. These differences would then be compounded by the fact that the two lectures actually pertain to different content, even if within the same general subject area. To this we would then add the further variation caused by differences in the law-specific versions of each language. The challenges inherent in designing two lectures and corresponding posttests of equivalent difficulty, given that they relate to different content and would be taught in different languages, may be impossible to surmount.

A primary study investigating the effect of EMI on content achievement in a law school would need to find an answer to these dilemmas. Adding to the difficulty is the fact that lectures in an English medium may have other differences besides those noted above, such as the use of the Socratic method or other discussion-centered elements. The presence of these classroom methods would presumably need to be controlled for, either by eliminating them from the English-medium lectures or by adding them to the L1-medium lectures. If, as alluded to in the

preceding section, classes that ostensibly use EMI are in fact being taught using other teaching methods that incorporate elements of language instruction, an entire set of additional variables related to the amount and type of support would need to be taken into account as well.

Despite the difficulties, there are compelling reasons why empirical studies, grounded in applied linguistics research methodologies, should be undertaken in the context of English-medium law schools. It is axiomatic that students cannot learn anything from a lecture given in a language that they do not understand. But the degree of proficiency needed for a lecture to be reasonably effective at delivering content is an open question,³ particularly in the context of higher education, and even more particularly in the law school setting. One possible way to reconcile the results of the studies by Vinke (1995) and Joe and Lee (2013) described above is to posit that proficiency above a certain, as-yet-undefined threshold is sufficient for students to learn content from an English-medium lecture without detriment to comprehension and that students below this threshold will suffer from varying degrees of non-comprehension. Assuming for the moment that EMI therefore does have a potentially negative effect on content learning, the appropriate remedy will depend on the nature and extent of this effect.

Reverting to instruction in students' respective L1s may be impractical, given all of the drivers of EMI described elsewhere herein. However, other less drastic solutions exist. A school such as Peking University's STL appears to require students to have very high English proficiency for admission (Burr, 2010, p. 52), but it is far from clear that other schools using EMI have English-proficiency requirements that are stringent enough to ensure that English-medium learning can be effective. This concern was explicitly raised by Joe and Lee in the context of EMI in higher education generally (2013, p. 202), and also by Macaro et al. in their state of the art survey (2018, p. 38). Another issue raised in the literature is the English proficiency of university lecturers themselves, who may have been commandeered into lecturing in English without adequate training or preparation (Hellekjær, 2010, pp. 248-250; Joe & Lee, 2013, p. 201; Macaro et al., 2018, p. 38). This concern is also relevant for law school professors.

Other solutions would be to offer various forms of language support outside of class or to build language topics into curricula. It should be acknowledged however that there are two difficulties here. The first is that most law schools are not in the business of providing language instruction, and even law schools in the United States tend to outsource the language needs of non-native English speakers to general, university-wide "English for academic purposes" (EAP) programs, rather than provide language instruction in-house (Feak & Reinhard, 2002, p. 7). The second complication is that any such language support would ideally need to be in the form of a class on "legal English," rather than one of these general EAP courses. As discussed above, the differences between English for general communicative use and English for legal use can be quite stark. A program that is focused specifically on issues in legal English for non-native speakers is difficult to find even in a country where English is widely-spoken, and it may be a tall order indeed in a location where law students are taught using EMI.

There are, as stated above, a large number of interesting questions about the use of EMI in law schools that warrant investigation. Of the questions that are answerable by applied linguistics, perhaps the most pressing is whether EMI may negatively impact the ability of

³ To be clear, this is a question that has also been the subject of numerous studies in adjacent areas of applied linguistics, such as the use of EMI in *secondary* education or the use of *content and language integrated learning* in higher education. A complete investigation of the level of language proficiency needed for an acceptable degree of content comprehension would involve the review of literature from these other areas as well. This is however an undertaking that is beyond the scope of this paper.

students to absorb the information that they are being taught. Whether EMI is adopted in response to market forces in the legal employment field, as a strategy for success in the internationalized competition between law schools, or as a way to emulate certain attributes of U.S.-style legal education, evidence-based research into the effect of EMI on content comprehension has not been undertaken, to the potential detriment of students.

CONCLUSION AND DIRECTIONS FOR FURTHER RESEARCH

This discussion has touched upon the various market-driven, policy-driven, and pedagogical justifications for the use of EMI in law schools around the world. It has also explained how EMI is often adopted concurrently with other changes at the national regulatory, institutional, and classroom levels. These changes include the restructuring of law degrees and attorney licensing regimes, instruction in new content areas such as international, comparative and U.S. law, and the use of radical new forms of teaching such as the Socratic method. Finally, this paper has described the very limited empirical studies that have been conducted about the possible effects of EMI on content learning in higher education.

Hopefully, this paper has convinced the reader that, despite the tremendous amount that has been written about English-medium legal education in legal scholarship, there are a number of critical questions that have not been sufficiently investigated and that applied linguistics can help answer. Primary among these is the degree to which law school classes that ostensibly use EMI may in fact involve elements of language instruction or support. An answer to this inquiry can then itself help answer a second question: whether or not law students being taught through EMI (or perhaps modified EMI) are learning the course content to an adequate degree. An additional question that applied linguistics can help investigate, the answer to which may itself inform broader inquiries about the connections between language and interactional practices, is whether the use of EMI might empower students to contribute more readily to discussion-centered classroom sequences, particularly those involving the Socratic method.

Whether it is undertaken by researchers in applied linguistics who have an interest in legal education or by coordinated research efforts among scholars in law and applied linguistics, it is hoped that future research studies can investigate these very important questions. Because of the central importance of law and the legal educational system to a nation's governance, political ideologies, and conception of itself, this area of inquiry surely deserves attention that it has not received to date.

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