The Problem of Language Proficiency: To Test or to Train?

The recent report on Legal Education and Training in Hong Kong devotes considerable coverage to the issue of language proficiency. Robin Corcos briefly discusses some of the Report's recommendations and provides additional observations

'The law is language'. 'Language skills are the lawyer's tools of trade'. 'The law is a profession of words'. These and other similar pronouncements about the integral relationship between law and language are heard frequently in any debate about legal education and training. They are often found alongside plaintive cries from established legal professionals, and sometimes from educators, that standards of linguistic proficiency have fallen and that the professional citadel must be protected from the semi-literate barbarians at the gates. More often than not the best protection that can be mustered is some form of language test or series of tests.

Recommendations from the Legal Education and Training Report

It comes as no surprise, therefore, to find that language issues are addressed head-on in one of the 16 chapters of the recently published report, 'Legal Education and Training in Hong Kong: Preliminary Review', produced by two consultants from Australia, a country whose legal profession is unencumbered with the linguistic complications of Hong Kong. Such issues (in the Hong Kong context it might be more appropriate to term them 'issues of languages') are well known to be extraordinarily difficult here. In this jurisdiction they come heavily laden with the weighty baggage of cultural, political and historical traditions as well as with questions of equity in deciding who shall have access to the profession. Most of these concerns are addressed in the Report in what initially appears to be a fair and balanced manner after wide-ranging consultations with legal professionals and educators.

However, one is left with the impression that the consultants have obtained only a partial view. It is an odd quirk of human nature that every man and woman on the Clapham omnibus seems to lay claim to being an expert on language issues simply by virtue of the fact that their humanity has endowed them with the ability to use it. Therefore, those whose views were sought by the consultants sometimes come across as having put forward opinions the strength of which is inversely proportional to the amount of evidence they can muster in support of them.

One of the recommendations by the consultants is that student language proficiency be tested at the end of the first year of the proposed four-year LLB degree. Those who 'fail' would have an opportunity to retake the test in subsequent years after appropriate remedial language instruction. All students would be tested again at the end of the degree programme, ie prior to the proposed four-month Legal Practice Course. The short, sharp shock of tests such as these, in which a whole range of complex communication skills are somehow reduced to raw numbers, appears attractive. The sheep are separated from the goats and each go their separate way. Moreover, failing a few students would serve to 'encourager les autres'.

The Best Approach?

The actual consequences of setting up language tests as bars to progress, however, are not so straightforward. As far as the first year test is concerned, it would be necessary to address the problem of those who failed it, the numbers of which might be quite substantial if the (relatively low) grade of a C5 (as proposed by the consultants) on the Use of English (UE) were adopted as the LLB entry benchmark. Furthermore, experience elsewhere has shown that such language remediation programmes as could be provided for these students would be costly and would be unlikely to be of sufficient duration and intensity to make a difference.

Additional Food for Thought

Prevention is Better than Cure

What makes more sense, in my view, is to have some kind of enhanced language entry requirement to the LLB degrees at University of Hong Kong and City University. At present the requirement stands, as a minimum, at a D7 on the UE. At HKU, however, we have found that there is little correlation between a student's UE grade at entry and the grade we give at the end of the first year on the basis of our own assessments of each student's ability to read and write academic legal texts. This is probably because the language skills that we assess are qualitatively different from those assessed by the UE. The essential point here is that the UE is a poor predictor of whether a student is likely to be able to acquire the highly specialised set of language skills he/she needs for academic legal study.

What we need, therefore, is a language assessment measure derived from a careful analysis of the kinds of skills (primarily reading and writing) that students will need to deploy on their degree courses. The development and administration of such a test would substantially tax the resources of the two law schools. However, the benefits would far outweigh the costs in that the test would bar the entry of unqualified candidates, thereby preventing disillusion and the wastage of resources further down the line. In other words, prevention is a cheaper and more humane option than cure.

One of the more interesting observations in the Report is to the effect that language teaching is too important to be left to the language teachers. It should, the consultants suggest, also be the remit of law teachers, who would need to be trained to assess and give feedback on language performance at the same time as they respond to displays of legal knowledge and generalised skills.

There would be two major benefits if they were to do this. Firstly, students would quickly perceive that they were being rewarded as much for *how* they spoke (or wrote) as for *what* they said and would be motivated to attend as closely to the former as to the latter. Secondly, if all law teachers adopted this approach then language awareness would be insinuated into all four years of the LLB programme, not quarantined to the first year as it is now. Whether the four year LLB flies or the PCLL is retained makes no difference to the strategy being proposed here, which is a slight shift of emphasis away from the mastery of substantive law and procedure and towards addressing the communicative needs of learners.

Help at the Vocational Training Stage

A similar approach could be adopted throughout the vocational training stage. When entrants embark on pupillage or traineeship they need help in developing and adapting previously learned academic skills to meet the very different demands of daily legal practice. Probably the most cost effective strategy for providing this support would be to adopt a 'train the trainers' approach. This might involve the personnel responsible for supervising trainees undertaking two or three workshops on, for example, how to give effective, communicatively oriented feedback on writing or on client interviewing, or how to promote the use of a broader range of vocabulary or deal with grammatical error.

A Trainer's Manual

In addition to sponsoring these workshops, and in order to ensure that training was systematic and comprehensive, the Law Society and the Bar Association might, in consultation with language teaching experts, produce a trainer's manual. This

would outline a progressively more demanding language curriculum that needed to be covered and standards that needed to be attained. Trainees would keep copies of their work in a portfolio that would be regularly assessed throughout the training period. Not all skills in each of the three major languages would have to be addressed as different firms would emphasise those skills in those languages that constituted most of their business and in which they could claim expertise. Thus, if trainees moved on to another employer at the end of the training period, they would take with them evidence of their linguistic ability to perform tasks that were considered essential by the new employer.

Operating such a scheme, it might be objected, would place too heavy a burden on the trainers, forcing them to take time away from their day-to-day work. However, if a programme were designed with the substantial involvement of potential trainers and their firms it could be pitched within the range of available resources. Ultimately, time and cost benefits would be realised by putting the training process on a more efficient footing and by enabling employers to make hiring decisions on the basis of evidence that an applicant had met clearly specified and relevant language proficiency criteria.

Conclusion

Whenever there is a debate about the language proficiency of Hong Kong's home grown entrants to the legal profession the cup is all too often seen as being half empty rather than half full. I have been teaching English to first year LLB students at the University of Hong Kong for the last six years and I am always surprised at how quickly they acquire the highly specialised English language skills needed for academic legal study, skills that would be beyond the reach of many native English users. In general, they respond well to language instruction. After the first year at university, however, these students are left to sink or swim on the premise that immersion in the language will somehow result in improved proficiency. Such a view is at odds with second language acquisition research, which has clearly demonstrated that immersion alone is less effective in bringing about improvements in language performance than immersion coupled with instruction.

If a career as a legal professional is to be something to which every Hong Kong schoolchild, regardless of educational privilege, can aspire, then the profession must put in place the means by which those who need it can receive well-planned and sustained language instruction for the entire period of their academic and vocational training.

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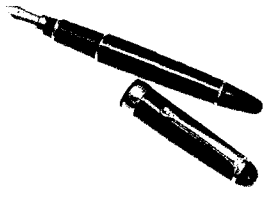

提高英語水平：從培訓做起

最近發表的香港法律教育及培訓初步檢討報告，花了不少篇幅討論語文能力問題。Robin Corcos 概述和討論報告內的有關建議

「法律在於語文。」「語文技巧是律師的謀生工具。」「法律是以文字為本的專業。」這類泛指法律與語言息息相關的宣稱，經常在關於法律教育和培訓的辯論中出現。不少資深法律界人士以至教育家作出上述宣稱的同時，均慨嘆現時學生和業界新晉成員的語文水平低落，並表示業界必須得到保護，免受這種劣勢衝擊。那麼，最佳的保護措施為何？人們最經常提出的是設立某種單一次或連串語文測試。

報告的建議

在這情況下，我們不難理解，在不久前發表的《香港的法律教育及培訓：初步檢討報告》（以下簡稱《報告》）中，用以探討語文問題的篇幅佔了十六章中的一整章。負責檢討工作及擬備《報告》的兩位顧問均來自澳洲，而與香港不同，當地的法律專業不受語言多樣性的問題困擾。在香港，不少人都知道語文問題是極難解決的，它不但牽涉沉重的文化、政治和歷史「包袱」，而且觸及如何公平地決定誰人可加入法律專業的問題。

驟眼看來，上述兩位顧問廣徵了業界人士和教育家的意見，並在《報告》中以公正不倚的方式探討語文問題。然而，《報告》給予我們的印象是兩位顧問所搜集得來的意見和觀點不夠全面。也許人性就是這麼奇怪的：任何普通人都會因為具備使用某種語文的「天賦」而自以為是該語文方面的專家。因此，被諮詢的人士所發表的意見，其說服力往往與他們提出以作支持的證據量成反比。

《報告》除了建議將法學士課程轉為四年制外，還建議法律學生在第一個學年完結時參加語文能力測驗，「不及格」的學生需要上補習班，但有機會在隨後學年再參加測驗；此外，所有學生完成學位課程時（即在報讀《報告》所建議設立的「法律實務課程」時）需要再參加語文能力測驗。這類快捷、簡便和嚴謹（以及基本上以分數來表達某人的多種語文溝通能力）的測試，看來頗為吸引，因為它似乎能輕易地將良與莠分隔開來，而且能收「殺一儆百」之效。

不過，在修讀法律的道路上設置重重語文測試，後果是否真的那麼直截了當？就第一個學年完結時的測驗而言，我們要注意，《報告》建議將入讀法學士課程所需的英語程度定為在「英語運用」考試中取得 C5 評級。這是頗低的標準，因此，假如該建議被採納，預料不少法律學生將不能通過第一個學年完結時的測驗。我們應如何處理這批學生呢？其他地方的經驗告訴了我們，為語文能力不逮的學生開設補習班不但成本高昂，而且這類課堂的為期和密集度，大概不足以令學生的語文能力得到實質改善。

值得深思的問題

預防勝於治療

筆者認為，一個較明智的做法是專門為香港大學及城市大學的法學士課程訂立入讀所需的語文程度。現時該程度定為在「英語運用」考試中取得 D7 或以上的評級。然而，就香港大學而言，我們發現，學生在「英語運用」考試中所取得的評級，與我們根據自行評審學生閱讀法律著作和書寫法律文章的能力而對完成法學士課程的第一個學年的學生所給予的評級無甚關聯。這大概是因為我們所評核的語文技巧項目在質量方面有別於「英語運用」考試所測試的項目。筆者希望帶出的重點是，單憑「英語運用」考試的成績，我們很難預計某名學生是否將能掌握攻讀法律所需的專門語文技巧。

因此，我們應細心分析修讀法律所需的各類語文技巧（特別是讀和寫兩方面），然後根據結果設計一套語文能力評估（或測試）制度。儘管這做法可能需要本地兩所法律學院動用大量資源，但其效益將遠比成本宏大，因為該制度真正能將不合資格的申請人拒

諸法律學院門外，從而避免對力有不逮的學生抱有錯誤期望及進一步浪費校方資源等問題。換句話說，預防總比治療來得廉宜和人道。

《報告》提出了頗為有趣的一點：兩位顧問認為，語文教學並不單單是語文科老師的責任，法律教授和導師亦應參與語文教學，他們在評審學生的法律知識和技巧水平的同時，亦應評審和向學生反映他們在語文方面的表現。法律教授和導師應得到適當訓練，讓他們能兼任評審語文水準的工作。

實行上述建議的好處主要有兩方面。首先，學生很快便會知道他們所說（或所寫）的方式與他們所說（或所寫）的內容同樣重要，從而會同樣重視兩者。第二，假如所有法律教師採納上述做法，則師生在法學士課程的四年期間都會時刻注意語文問題，而不是在首個學年後便掉以輕心。上述建議實際上是致力將著眼點同時放在學生的實質法律知識及語文（或溝通）技巧之上，而不是像目前般只照顧前者。因此，不管將法學士課程改為四年制及取締法律專業證書課程的建議是否予以落實執行，上述建議的可行性都不會受影響。

在專業培訓階段提供協助

學生完成學習課程，投身法律界工作後，我們亦可實行類似的做法。不論是實習律師還是實習大律師（以下統稱「實習生」）他們都需要進一步磨練和改變早前在學院汲取的知識和技巧，以配合日常法律執業中截然不同的需求，而他們在這個適應過程中，自然需要得到協助。就此而言，最合乎成本效益的做法相信是「對培訓者進行培訓」，意思是，負責監督實習生的人士，本身亦需要上兩至三個研習班，就各個課題 — 例如：如何就實習生的寫作技巧和接見當事人的表現等事項而有效地向實習生反映意見、如何增強實習生運用詞彙的能力、如何改善語法等等 — 接受訓練。

培訓者手冊

除了贊助或舉辦上述研習班外，律師會及大律師公會可考慮與語文教學專家攜手製備「培訓者手冊」，以確保培訓有系統和全面地進行。該手冊應說明實習生所要達到的語文和其他標準，而這些標準應隨實習期逐步提高。實習期間，實習生的作業將定期按照該等標準予以評核，而實習生須妥為備存其作業的副本。實習律師所屬的律師行可因應本身情況和需要，選擇評核實習律師在某指定語文方面的能力，因此不一定要評核他/ 她在所有主要語文（即中英文及粵語、英語和普通話）方面的能力。假如實習生在實習期完結後另覓工作，他/ 她將要向新僱主出示證據，以證明他/ 她具備新工作所需的語文能力。

有人可能認為這種做法會花上培訓者不少時間，影響他們的日常工作，對他們造成負擔。然而，假如律師行和律師願意積極參與這種培訓計劃，他們可因應本身的資源，自行制訂合適的計劃。最終來說，這種計劃有助更有效地培訓實習生，並讓僱主能夠根據確實準則（即實習生是否達到已訂明的語文和其他標準）決定是否僱用求職者，這樣，律師行將能領會培訓計劃的效益。

結語

筆者發覺，每當本地法律界新晉成員的語文能力受到爭議時，人們總只會從消極和負面的角度去看事情。筆者在香港大學向法學士課程一年級學生教授英文，不經不覺已有六年，而我可以告訴大家，學生們掌握修讀法律所需的專門英文技巧的速度快得驚人，而部分學生所具備的英文水平，即使是以英語為母語的人亦望塵莫及。一般來說，學生們吸收英文技巧的能力相當好。問題是，經過了第一個學年後，他們便要「自力更生」，背後的假設是，只要他們不斷接觸英文，他們的英文能力總會得到改進。然而，這種看法與多項關於掌握外語的研究結果不相一致，該些研究清楚顯示，與純粹的「沉浸式訓練」相比，「沉浸加上指導」能夠更有效地提昇受訓者的語文表現。

昔日絕大部分香港學童的志願之一都是當律師。要令投身法律界繼續成為下一代兒童夢寐以求的目標，法律界便先要扶持那些在語文能力上需要協助的學生，讓他們在整段求學和專業培訓期得到周詳和持續的輔導。

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