УНИВЕРЗИТЕТ „ГОЦЕ ДЕЛЧЕВ“ - ШТИП
ФИЛОЛОШКИ ФАКУЛТЕТ

UDC 81
UDC 82
UDC 008

ISSN 2545-3998
DOI: 10.46763/palim

ПАЛИМПСЕСТ

МЕЃУНАРОДНО СПИСАНИЕ ЗА ЛИНГВИСТИЧКИ, КНИЖЕВНИ И КУЛТУРОЛОШКИ ИСТРАЖУВАЊА

PALIMPSEST

INTERNATIONAL JOURNAL FOR LINGUISTIC, LITERARY AND CULTURAL RESEARCH

PALMK, VOL 6, NO 12, STIP, 2021

ГОД. VI, БР. 12
ШТИП, 2021

VOL. VI, NO 12
STIP, 2021

П А Л И М П С Е С Т

Меѓународно списание за лингвистички, книжевни и културолошки истражувања

P A L I M P S E S T

International Journal for Linguistic, Literary and Cultural Research

Год. 6, Бр. 12
Штип, 2021

Vol. 6, No 12
Stip, 2021

PALMK, VOL 6, NO 12, STIP, 2021
DOI: https://doi.org/10.46763/PALIM21612

ПАЛИМПСЕСТ
Меѓународно списание за лингвистички, книжевни
и културолошки истражувања

ИЗДАВА
Универзитет „Гоце Делчев“, Филолошки факултет, Штип

PALIMPSEST
International Journal for Linguistic, Literary
and Cultural Research

PUBLISHED BY
Goce Delchev University, Faculty of Philology, Stip

АДРЕСА
ПАЛИМПСЕСТ
РЕДАКЦИСКИ СОВЕТ
Филолошки факултет
ул. „Крсте Мисирков“ бр. 10-А
п. фах 201
МК-2000 Штип

http://js.ugd.edu.mk/index/PAL

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The International Scientific Journal "Palimpsest" is issued twice a year in printed form and online at the following website of the web portal of Goce Delcev University in Stip: http://js.ugd.edu.mk/index.php/PAL

Papers can be submitted and published in the following languages: Macedonian, English, German, French, Russian, Turkish and Italian language.

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DOI: https://doi.org/10.46763/PALIM21612047c

Review paper

HOW “MODERN” IS THE MODERN PLAIN ENGLISH MOVEMENT? – AN OVERVIEW OF RELEVANT LEGISLATIVE AND EXECUTIVE POLICY INITIATIVES IN THE UNITED STATES FROM THE 19TH CENTURY

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Abstract: The official beginnings of the modern history of the Plain English movement are usually associated with the 1960s and the 1970s, when federal employees, legal experts and consumer rights advocates started to promote language use more transparent and understandable for the general public. Among the presidents of the United States, it was Richard Nixon and Jimmy Carter who issued the first Executive Orders to simplify federal regulations. Although Republican presidents were generally unsupportive of the idea, by 2010 the Plain Writing Act mandated the use of “clear Government communication that the public can understand and use” (P.L. 111-274, Sec. 2). Regardless of the fact that the roots of Plain English may be traced back to Geoffrey Chaucer himself (Cutts, 2013, p. xxvii), pre-20th century official initiatives are barely discussed in the relevant literature. In order to contribute to the filling of this hiatus, the present paper examines the relevant legislative and executive proposals in the U.S. before 1875, arguing that the 1850s and 1860s have been a particularly neglected period in scholarship from the Plain English perspective, although the harbingers of future policies had actually been conceived well before the Civil War.

Keywords: *language policy; United States; Plain English; 19th century*.

1. Plain English: What and why?

According to probably the simplest official definition, Plain English is “a way of expressing… ideas clearly in writing and speaking” (Bailey, 1996, p. 3). As described by the Plain Language Action and Information Network (PLAIN), which is a semi-formal organization of U.S. federal employees, plain language “makes it easier for the public to read, understand, and use government communications” (Plainlanguage.gov). This approach echoes how Martin Cutts, co-founder of the Plain English Campaign in the UK, views the criteria of plain language use on the other side of the Atlantic:

A written communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand it, and use it. (Cutts, 2013, p. xii)

In short, these requirements are the very antitheses of the form of communication known informally as "officialese," "bureaucratese," "legalese," "lawyerese," or, in the field of medicine: "Medicus incomprehensibilis" (Linares, *et al.*, 2017, p. xi). The conventional written discourses of these professions are frequently characterized by their "arcane phrases," verbosity, pomposity, redundancy, twisting and rambling sentences consisting of multiple clauses (sometimes within clauses), and overall dullness (Wydick and Sloan, 2019, p. 13). Williams summarizes the main features of written legal texts as follows (2004, pp. 112-115):

a) The inclusion of archaic or rarely used words or expressions;
b) the inclusion of foreign words and expressions, especially from Latin;
c) the frequent repetition of particular words, expressions and syntactic structures;
d) long, complex sentences, with intricate patterns of coordination and subordination;
e) the frequent use of passive constructions;
f) a highly impersonal style of writing;
g) the tendency towards nominalization (i.e. the frequent transformation of verbs into nouns or noun phrases).

While legal texts rarely contain all of these features simultaneously, the difficulty of comprehending them has regularly been giving rise to various grievances for centuries, and sometimes even triggered spectacular protests. As far as the historical beginnings of these complaints are concerned, Rabeea Assy boldly concludes in a 2011 paper that they are practically "as old as the law itself" (Assy, 2011, p. 376).

2. The Plain English Movement: Official birth and recent developments

The phrase "plain English" has been present in printed books since the very beginning of the 17th century according to the Google Books database (denoting the basic, simple, direct, sometimes even impolite meaning of the words that it referred to), yet the form "Plain English Movement" started to gain currency only from the mid-1970s onwards:

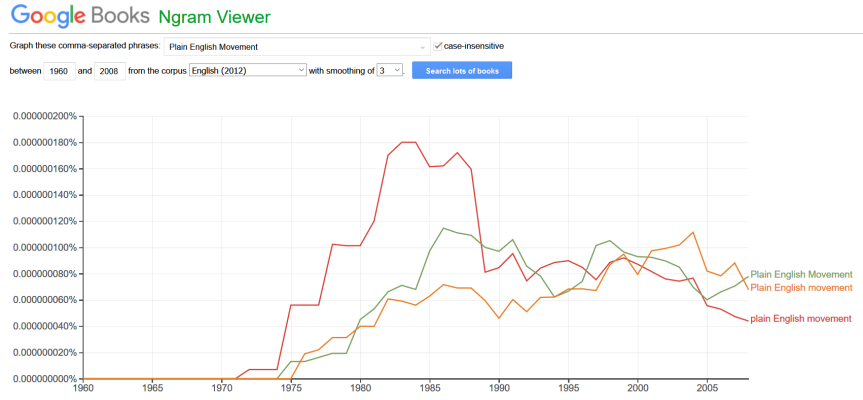

Table 1.: The relative frequencies of the phrase "Plain English Movement" in English-language books since 1960. (Source: Google Ngram Viewer.)

The first time the term appeared in print dates back to 1975, when it was published in *The Scrivener*, the journal of the American Society of Writers on Legal Subjects (*The Scrivener*, 1975). As the actual text is inaccessible (and no preview is provided), this claim is largely unsubstantiated—although both the professional context (legal writing) and the time frame suggest that it could well be true.

By 1978, the term had entered legal discourse, as evidenced by the growing number of professional journal articles dealing with the subject. One typical example is the *ABA Journal* from December 1978, in which Fred J. Emery reviewed Carl Felsenfeld and Alan Siegel's work from the same year titled "Simplified Consumer Credit Forms" (published by Warren, Gorham and Lamont in Cambridge, MA). The reviewer began with Jeremy Bentham's advice from 200 years before, according to which if the law was to achieve its intended purpose, it had to be "in a style intelligible to the commonest understanding" (*ABA Journal*, 1978, p. 1903).

Additionally, Fred J. Emery expressed his uncertainty as to whether the latest wave of the "plain English movement" (sic.) was going to succeed—nevertheless, as the reviewer noted, Felsenfeld and Siegel had collaborated several years before, revising Citibank's consumer loan note—which was "one of the first 'plain English' legal documents to receive national attention" (ibid.). Soon afterwards, Felsenfeld himself associated the birth of the Plain English Movement with the publication of Citibank's reader-friendly consumer promissory note, which came out on January 1, 1975 (Felsenfeld, 1981, p. 409).

In fact, the theoretical antecedents of modern Plain English practices go back at least to the 1960s. David Mellinkoff, a lifelong "enemy of legalese" (Martin, 2000, p. 37) published his influential *Language and the Law* in 1963 (Boston & Toronto: Little, Brown and Company), which functioned as "an important catalyst" for the movement (Williams, 2004, p. 116). Three years later, John O'Hayre's *Gobbledygook Has Gotta Go* (Washington, D.C.: U.S. Bureau of Land Management) tried to end the "tradition of fascination with officialese" and urged government employees to "adapt to the philosophy of simple, direct, personal communications" (1966, p. 2).

Despite all these efforts, *The English Journal* (published by the National Council of Teachers of English) described the Plain English Movement in 1978 merely "as a popular idea that has affected only a small proportion of the innumerable documents and forms in our daily business transactions" (*The English Journal*, 1978, p. 17). Still, the example set by Citibank—which itself also signaled the growing strength of the consumer movement, largely triggered in 1965 by Ralph Nader's book, *Unsafe at Any Speed* (Ralph Nader and the Consumer Movement)—paved the way for further Plain English regulations at state- and federal level. The former included laws affecting leases and consumer contracts—with New York State setting the stage in 1978, to be followed by several others (Cutts, 2013, pp. xiv-xv). The Federal Congress had reacted even earlier: the 1975 Magnuson-Moss

Warranty Act, the federal law governing consumer product warranties prescribed that warrantors state specific information "in a single, clear, and easily readable document" (Warranty Laws and the Magnuson-Moss Warranty Act).

Presidential support for the Plain English idea started with Richard Nixon as early as 1969, when the President decided to expand consumer education programs in schools and ordered the publication of a new Consumer Bulletin written in a "language which is readily understandable by the layman" (Nixon, 1969). Following up on that policy, Nixon issued Executive Order 11583 on February 24, 1971, in which he established the Office of Consumer Affairs. One of the tasks of the newly created Office was to publish and distribute relevant materials in Plain English (Nixon, 1971, Sec. 3(7)).

In 1978, President Carter issued Executive Orders intended to make government regulations "cost-effective and easy-to-understand by those who were required to comply with them" (History and Timeline). Additionally, the federally-funded Document Design Project produced a 100-page handbook for government writers titled *Guidelines for Document Designers* a few years later (Felker, 1981).

Ronald Reagan, however, was not an enthusiastic supporter of Plain English: he rescinded Carter's Executive Orders, and no coordinated government efforts to promote the idea happened in the 1980s.

The Clinton Administration, on the other hand, assumed a more activist stance: Executive Order 12866 was issued to make federal regulations "effective, consistent, sensible, and understandable" (Clinton, 1993); requiring federal agencies to provide all information to the public "in plain, understandable language" (Sec. 3(F)). Soon, the Plain Language Action and Information Network (PLAIN) launched its website in 1994, and has been a central force behind the U.S. Plain English Movement ever since (History and Timeline).

Bill Clinton issued another relevant Executive Order (EO 12988) to reform civil justice procedures, which included "clear language" requirements as well (Clinton, 1996); then, in a Presidential Memorandum for the heads of executive departments and agencies, he prescribed the use of "plain language in all new documents, other than regulations" (Clinton, 1998).

While the G.W. Bush Administration did not formally endorse Plain Language policies, several agencies continued the previous practices (History and Timeline). On the contrary, during the Obama Presidency, the Plain Writing Act was signed into law, mandating the use of "clear Government communication that the public can understand and use" (P.L. 111-274, Sec. 2). Later, Executive Order 13563 ("Improving Regulation and Regulatory Review") set out to ensure "that regulations are accessible, consistent, written in plain language, and easy to understand" (Obama, 2011, Sec. 1). Obama referred to and urged the adoption of Plain English policies in several other contexts as well, e.g. in the federal hiring process and as part of consumer financial rights protection. President Donald J. Trump, however—similarly to most of his Republican predecessors—did not announce new Plain English policies during his tenure.

The modern Plain English Movement started in the mid-1970s in the UK, too, somewhat synchronously with the developments in the US. The first use of the term "plain English" in British law is associated with the 1974 Consumer Credit Act (Cutts, 2013: xix). Protests against unclear government documents erupted in 1979, which included the public shredding of unclear government forms in Parliament Square, persuading the Thatcher government to take steps towards reducing legalese (Cutts, 2013, p. xvii)—a policy which continued in the 1980s and beyond, affecting e.g. tax laws, election materials, and land registration procedures (Cutts, 2013, p. xxii). Similar movements appeared elsewhere as well, e.g. in Australia, New Zealand, in the Scandinavian countries, and in the EU.

3. Plain English before the "Movement": Pre-1960s efforts

While relatively recent events and proposals are well-documented in the relevant literature, initiatives before the mid-20th century have been given considerably less attention. Plainlanguage.gov. sums up these developments extremely briefly, simply stating that "[i]nterest in making government documents clear has a long, but checkered, history in the United States" (History and Timeline). Nevertheless, legal experts took significant and coordinated steps to promote clear and understandable writing in the US as early as the 1950s. Arthur T. Vanderbilt, Chief Justice of the New Jersey Supreme Court, founded "Scribes," an organization to promote excellence in legal writing. One of their goals is defined today as "to promote a clear, succinct, and forceful style in legal writing" (Stockmeyer, 2019).

Earlier, less successful or smaller-scale attempts at bureaucratic language reform included the publication of a series of books and guides by top British civil servant Sir Ernest Gowers from the late1940s to the 1960s; Prime Minister Winston Churchill's memorandum (titled "Brevity") requiring shorter and more to-the-point reports in 1940 (which was reissued in 1951) (Cowdrey, 2013); and George Orwell's six rules for writers in 1946 (Cutts, 2013, p. xxx).

In a broader sense, Basic English, devised by C.K Ogden and I.A. Richards at the end of the 1920s, was also intended to serve as a type of plain language to be used not only in science and commerce but also in government (Cutts, 2013, p. xxix). Despite Winston Churchill and Franklin D. Roosevelt's initial support behind the idea, its appeal had largely faded by the 1950s (ibid.). Franklin D. Roosevelt's distant cousin, President Theodore Roosevelt tried to simplify American English spelling in government documents in 1906, but was forced to retreat after facing severe criticism by the legislative and judicial branches for overstepping his authority (Daugherty, 2018).

The "deep history" of plain language efforts can be traced back to the Greeks and the Romans, to Aristotle and Cicero (Kerr, 2014, p. 27). The attention to clear and simple communication continued through the Medieval period and into the Renaissance (Kerr, 2014, p. 28). One of the earliest proponents (and practitioners) of plain language in England were Geoffrey Chaucer at the end of the 14th century

and William Tyndale, who translated the Bible into English in 1525, using the "direct and pungent voice of the common people" (Cutts, 2013, p. xxvii).

As far as the language of the law was concerned, the history of Britain has been replete with reform attempts due to invasions, language shifts and overall language change. These developments are discussed in detail e.g. by Peter M. Tiersma, who traces the linguistic ramifications of the evolution of legal practices from the generally illiterate Anglo-Saxons through the introduction of Latin by Christian missionaries; the Norman invasion and the shift from Latin to French as the language of statutes around 1300—until the partial victory of (a sort of) English at the end of the fifteenth century (2015, pp. 4-6). Nevertheless, French was used as a legal language until roughly the seventeenth century (2015, p. 6).

In 1650 Parliament, during the Commonwealth, passed a law requiring that all books of law be only in English—which was repealed after the Restoration. However, Law French was dying out by that time, so its use in legal proceedings, along with Latin, was finally abolished in 1731 (ibid.). Yet, the presence of Latin and French expressions have continued to complicate legal documents to this very day.

Bonotti and Chríost (2018, pp. 1-10) also review how English has become the de facto (and largely: de jure) official language of the UK from the Pleading in English Act of 1362 to the present day. The critical legal reforms of the 17th century are analyzed in depth by Barbara Shapiro, who examines the simultaneous revolutions in science and the law, focusing especially on Sir Matthew Hale's contemporary legal analyses and his insistence on a "clear, uncomplicated, unadorned style" at the bar or on the bench (1969, p. 742). Shapiro also offers an in-depth analysis of the continuous law reform activities from 1600 to 1720, pointing out how the Anglicization of court proceedings after 1650 gave rise to anxieties concerning "the loss of efficient technical terminology and an influx of ignorant attorneys," which sentiment may also have contributed to the emerging backlash against such reforms after the Restoration (1975, p. 295).

4. Plain English proposals on the legislative and executive agenda in the US before 1875

The main aim of this paper is to focus on the Plain English reform attempts in the United States during the first century of US nation-building between 1774 and 1875—a period which appears to be significantly underdiscussed in the relevant literature.

Several Founders are known to have criticized certain aspects of American English: e.g. Benjamin Franklin, who devised a phonetic alphabet (Stamp, 2013); Noah Webster, who eventually created and codified a moderately distinct language variety from British English; John Adams, who proposed (unsuccessfully) the foundation of an American Language Academy in 1780 (Czeglédi, 2018, pp. 115-116); and Thomas Jefferson, who criticized the abstruseness of legal language (Williams, 2004, p. 115).

Nonetheless, a systematic analysis of the now online available American legislative and executive documents has not been done yet, focusing on the official origins of Plain English in the United States. In order to compensate for this hiatus, a comprehensive (case insensitive) keyword search was carried out in two major databases in January 2020, focusing on the occurrences of "Plain" + "English"; and/or "plain" + "language"; and/or "simplif*" + "language" in the legislative and executive documents of the United States before 1875 (which is the last online available year in the legislative database).

The legislative database ("A Century of Lawmaking for a New Nation," at https://memory.loc.gov/ammem/amlaw/lawhome.html) contains practically all the existing legislative records of the Continental Congress, the Constitutional Convention, and the United States Congress until 1875. The American Presidency Project database (maintained by John Woolley and Gerhard Peters, hosted at the University of California, Santa Barbara, at https://www.presidency.ucsb.edu/) includes the Messages and Papers of the Presidents (1789-1929) and he Public Papers of the Presidents (since 1929), among other sources. The present search focused on the messages and papers before December 31, 1875.

The findings were considerably overlapping, and all pointed towards one specific area in which early Plain English policy attempts were concentrated: legal reform, specifically the complete revision and consolidation of the statutes of the United States—ideally—into one, easily accessible and readable volume. The three politicians instrumental behind these proposals were all legal professionals and/or practitioners for some time during their lives: Charles Sumner, (Radical) Republican Senator from Massachusetts and a Harvard Law School graduate; Millard Fillmore, Whig President of the United States from 1850 to 1853 (previously a largely self-taught attorney of humble beginnings); and Abraham Lincoln, Republican President of the United States between 1861 and 1865 (previously a self-educated lawyer).

By the mid-19th century, the problem with the statutes of the U.S. appeared to be acute. Despite the fact that the country was emerging as the dominant power in the Western Hemisphere, with its territory extending as far as the Pacific Ocean, there did not exist an up-to-date, relatively easily understandable, subject-organized codification of federal statutes (Winston, 2015). It was impossible to know for sure whether certain statutory provisions were still in effect—or rather: amended or even repealed a long time ago (ibid.). Senator Sumner likened the situation to that of the Roman Empire, whose "laws, when first codified, were so cumbersome that they made a load for several camels" (Sumner and Hoar, 1900, p. 3). Around 1850, the statutes of the U.S. filled 11-12 "heavy volumes," furthermore, they were way too expensive even for several public libraries to purchase (ibid.).

Sumner, a formidable orator, was also interested in linguistic matters to a certain degree. He was a supporter of efforts intended "to defend the purity of the English language, and sternly scorned neologisms and technical terms" (Donald,

2009, p. 182). Perhaps this also explains why he turned out to be a most tenacious legislator behind a resolution, which, according to the Senate Journal (hereinafter cited as SJ), he introduced for the first time on April 8, 1852:

Resolved, That the Committee on the Judiciary be directed to consider the expediency of providing by law for the appointment of a commissioner to revise the public statutes of the United States, to simplify their language, to correct their incongruities, to supply their deficiency, to arrange them in order, to reduce them to one connected text, and to report them thus improved to Congress for its final action, to the end that the public statutes, which all are presumed to know, may be in such form as to be more within the apprehension of all. (SJ, 1852: April 8, p. 339)

Unfortunately, however, the Committee on the Judiciary, to which it was referred, did nothing—despite the fact that the resolution "attracted attention at the time" (Sumner and Hoar, 1900, p. 2). Sumner's resolution itself was a response to an earlier presidential proposal by Millard Fillmore, which was announced in his Second Annual Message on December 2, 1851. It was recorded both in the Senate Journal (SJ) and the House Journal (HJ), in addition to the Papers of the Presidents:

The public statutes of the United States have now been accumulating for more than sixty years, and, interspersed with private acts, are scattered through numerous volumes; and, from the cost of the whole, have become almost inaccessible to the great mass of the community. They also exhibit much of the incongruity and imperfection of hasty legislation. … The Government of the United States is emphatically a government of written laws. **The statutes should**, therefore, as far as practicable, not only be made accessible to all, but **be expressed in language so plain and simple as to be understood by all**, and arranged in such method as to give perspicuity to every subject. (Fillmore, 1851, emphasis added)

It was the very first instance that the words "plain" and "language" had appeared in either a Congressional or a Presidential document in the context of planned and conscious simplification efforts.

The President also added that many U.S. states had by that time revised "their public acts with great and manifest benefit" (SJ, 1851: December 2, p. 28). We know from Charles Sumner's memoirs that Massachusetts was one of these pioneers—as a result of which more than ten thousand new copies of the laws were sold in a short time after publication (Sumner and Hoar, 1900. pp. 3-4). In order to give impetus to similar, federal efforts, Fillmore recommended the appointment of a commission to revise the public statutes, simplify their language, and report the progress to Congress (SJ, 1851: December 2, p. 28).

Evidently, Congress and the relevant committee were less than enthusiastic, as Fillmore repeated the proposal in his Third Annual Message a year later (which, again, was recorded in the House and Senate Journals, as well as in the Presidential Papers):

In former messages I have, among other things, respectfully recommended to the consideration of Congress the propriety and necessity of further legislation … for the appointment of a commission to revise the public statutes of the United States, … by arranging them in order, supplying deficiencies, correcting incongruities, simplifying their language, and reporting them to Congress for its final action … I am not aware, however, that any of these subjects have been finally acted upon by Congress, without repeating the reasons for legislation on these subjects which have been assigned in former messages, I respectfully recommend them again to your favorable consideration. (HJ, 1852: December 6, pp. 23-24)

Successive presidents, however, failed to treat the issue as a priority during the forthcoming years—despite the fact that Sumner continued to reintroduce his resolution for more than a decade—with the exception of the sessions that he missed after having been physically attacked by a pro-slavery legislator in the Senate chamber in 1856 (known as the "Brooks-Sumner affair").

According to the Senate Journal, Sumner introduced his resolution six times: first in 1852 (see above); then in 1853 (SJ, 1853: December 14, p. 43), in 1856 (SJ, 1856: February 11, p. 100), in 1860 (SJ, 1860: March 7, p. 226), in 1861 (SJ, 1861: December 12, p. 41), and in 1863 (SJ, 1863: December 15, p. 28). Pierce lists two other occasions as well: in 1862 and in 1866, when Sumner finally succeeded (1893, p. 275).

Meanwhile, President Lincoln also offered his support to the planned simplification of the statutes in his First Annual Message on December 3, 1861:

I respectfully recommend to the consideration of Congress the present condition of the statute laws, with the hope that Congress will be able to find an easy remedy for many of the inconveniences and evils which constantly embarrass those engaged in the practical administration of them … . **It seems to me very important that the statute laws should be made as plain and intelligible as possible**, and be reduced to as small a compass as may consist with the fullness and precision of the will of the Legislature and the perspicuity of its language … . (Lincoln, 1861, emphasis added)

Following the presidential endorsement, Sumner introduced a bill for the revision and consolidation of the statutes of the United States in January, 1862, but it was postponed and expired before enactment (Sumner and Hoar, 1900, p. 4). Another, similar bill by Sumner was adversely reported on by the Judiciary Committee in 1864 (ibid.). Sumner's third attempt was crowned with success when, eventually, President Andrew Johnson signed into law the "Act to Provide for the Revision and Consolidation of the Statute Laws of the United States" on June 27, 1866, to appoint three commissioners "to revise, simplify, arrange, and consolidate all statutes of the United States" (*An Act to Provide*..., 1866, p. 74).

The appointed commissioners, however, could not finish the work within the set period of three years, so Congress passed a Supplementary Act (to revive the 1866 measure), under which President Grant appointed a new commission for the task (Sumner and Hoar, 1900, p. 5). Although the new commissioners completed

the job, they had also altered some of the statutes, which prompted Congress to hire a Washington, D.C. lawyer to finalize the revision (and undo the substantive changes that the commissioners had made) (Winston, 2015). This version of the revision was authorized for publication by Congress on June 20, 1874 (ibid.)—three months after Charles Sumner's death.

5. Summary and Conclusions

Although the beginnings of the "modern" Plain English Movement are generally associated with the 1970s on both sides of the Atlantic (despite some earlier initiatives having originated in the 1950s), this paper has argued that the not-so-distant roots of the movement can be traced back to the 1850s in the United States.

The unsung and largely unacknowledged hero of these efforts was Massachusetts Senator Charles Sumner, whose persistence proved instrumental in target-oriented language policy formulation and making, which eventually resulted in the revision and consolidation of the Federal Statutes into two, affordable and relatively user-friendly volumes by the mid-1870s. (The immense work, however, could not be done perfectly: further complaints and improvement attempts led to efforts that culminated in the publication of the U.S. Code in 1926.)

According to the database search of congressional and presidential documents, the first federal official to use the words "plain and simple language" in a decidedly Plain English context was President Millard Fillmore in 1851, who proposed to Congress (for the first time) the revision and simplification of federal statutes. Other presidents who supported the idea were Abraham Lincoln (in his 1861 Annual Message), and—less directly—Andrew Johnson and Ulysses Grant, who signed into law specific bills to facilitate the process (in 1866 and 1870, respectively).

The argument that the Plain English policies of the mid-19th century U.S. federal government were "modern" in essence hinges on several similarities with the late 20th century developments.

First and foremost, the concepts used and the goals set were practically identical: "plain" and "intelligible" texts were to be produced to facilitate comprehension ("apprehension"), which requirements are identical with today's expectations of "clarity" and the "easy-to-find/read/understand/use" criteria. In both periods, the immediate context of the Plain English policies were laws in particular and government communication in general. Also, the early champions of the cause were legal professionals and/or politicians who believed in the idea of a strong and activist federal government. They generally belonged to the Whig and then to the Republican Party in the 1850s and 1860s; more recently, they have mostly been affiliated with the Democrats—due to the shifting priorities of the major parties in the U.S. Both the executive and legislative branches became involved in the struggle from a relatively early stage—yet presidential support turned out to be rather intermittent. Additionally, related reforms were happening

more or less simultaneously at state and federal levels, and in both periods, tangible results were produced only after a protracted fight.

A major difference is the missing consumer rights subcontext in the 1850s—as these safeguards were yet to be officially invented in the 19th century.

Due to the current, 120-year hiatus in the online, digitized legislative records of the U.S. Federal Congress (the Library of Congress database ends at 1875, and the congress.gov homepage allows full-text, keyword-based searches only from 1993 onwards), a more complete legislative analysis in these interim years is not possible at the moment. However, as the key federal-level, Plain English-related developments had happened before 1875 in the 19th-century, this shortcoming does not affect the conclusions of the present analysis.

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