

***Comparative Legal Linguistics: Language of Law, Latin
and Modern Lingua Francas, 2nd edn***

Heikki E. S. Mattila (2013) Trans. Christopher Goddard

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Reviewed by Edward Finegan

Comparative Legal Linguistics (CLL) – the title of the book under review – isn't a familiar term in the English-speaking world, but the book's subtitle offers a helpful window on the subject matter: *Language of Law, Latin and Modern Lingua Francas*. Besides its principal focus on 'legal language' in Spanish, German, French, Latin and English, each with its own chapter, *CLL* serves to some degree as an introduction to comparative law, not in a way that a specialist in that field might seek, but in a way impressively useful to scholars and others interested specifically in legal language and the language of the law but not well acquainted with different systems of law. In order to talk about legal language in various countries, Mattila must provide background about their legal systems and their history, and he does so in an admirably accessible style.

While he does not characterise legal linguistics definitively, he does say, in the section 'Overview: Defining Legal Linguistics', that it 'examines the development, characteristics, and usage of legal language' and that its studies 'may equally concern vocabulary (notably terminology), syntax (relationships between words), or semantics (the meaning of words) of the language' (p. 11). Further, it is not a branch of linguistics but would be better characterised as the

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field in which ‘the language of the law is examined, in the frame of legal linguistics, in the light of observations made by linguistics’ (p. 11). If that is not altogether clear or satisfyingly narrow, it is nevertheless an adequate characterisation in a domain as broad as legal language. After all, what is called ‘legal language’ may include the language not only of courtrooms and judges’ opinions, but the language as well of briefs, motions, contracts, lawyer–client communications, police interviews, and even ‘illegal’ language, to mention but a few. The focus of *CLL* is narrower, chiefly with an eye to professional legal language and with special attention to the various histories of legal languages and to terminology and vocabulary.

Mattila divides *CLL* into four parts. With introductory and concluding parts as bookends, in between are two substantial sections. Part 2 contains three chapters – on the functions of legal language, on its characteristics, and on legal terminology. Part 3 treats legal German, French, Spanish, English and the heritage of legal Latin (including canon law). He often draws parallels or contrasts with a good many other legal languages. He notes in general that legal terminology differs from scientific terminology in that the physical world is the same the world over, allowing reference to physical phenomena to be relatively uniform across languages. Legal concepts, by contrast, are culture bound and cannot rely on a worldwide terminological uniformity. Of course, as he recognises, in terms of linguistic adaptation across cultures the distinction between physical and legal worlds may not be radically different, but the general point is nonetheless valid: legal terms must differ across cultures and, even when the same term appears in different cultures, it frequently carries different denotations.

In Chapter 5 ‘The Heritage of Legal Latin’, Mattila identifies Latin’s three principal functions in modern legal contexts: rhetorical effect, display and expressing concepts. He cites as examples of rhetorical function more than a score of expressions occurring in Finnish legal theses of the 1990s, some more familiar (e.g., *ratio*, *de facto*, *prima facie*, *ad hoc*, *status quo*, *a priori*) but others less so (e.g., *ex analogia*, *ultima ratio*, *numerus clausus*, *pro et contra*, *in casu*). Similar examples, familiar and less familiar, could be cited from many venues. Interestingly, as he points out, lawyers in EU courts sometimes dress up their own national laws in Latin garb so as to lend them a universal face – ‘to elevate a legal principle from national to Union level’ (p. 181). The display function is represented in expressions found in public places such as courthouse walls, as with the Polish Supreme Court’s 86 Latin maxims, one of which is *Qui munus publice mandatum accepta pecunia ruperunt, crimine repetundarum postulantur* ‘Those who violate their public responsibility of office by taking money are liable to criminal charges of corruption’, or the emblem of German notaries,

which reads *Lex est quodcumque notamus* 'What we write down is binding'. As a way to express legal concepts, Mattila cites a study of Polish higher courts that found among the most frequent Latin invocations *ratio legis*, *lege non distinguente*, *jus* and *res judicata*, and among the most frequent maxims *lex retro non agit* 'the law does not act retroactively', *pacta sunt servanda* 'agreements/contracts should be respected' and *ne bis in idem* 'not twice for the same' (pp. 181–183).

CLL offers chapters on legal French and legal Spanish, both Romance languages deriving from a combination of Vulgar Latin and the scholarly Latin characteristic of the Middle Ages. Their histories and vocabulary are thoroughly and informatively described. Likewise for legal German, in its own chapter. Turning to English, Mattila is sensitive to its many registers: 'Sometimes legal English is stiff and conservative, while at others it is innovative and creative. One especially major difference is evident between the spoken language of court sessions and written legal English' (p. 313), a result of a jury system, he points out, acknowledging Tiersma for that observation. In fact, a great deal of Mattila's analysis of legal English relies on the work of Tiersma (1999) and, to a lesser degree, Mellinkoff (1963) and others.

Mattila calls earlier stages of legal English a form of 'legal trilingualism' in which Latin was used 'for written pleadings and legal records', English 'for hearing witnesses' and French 'for oral pleadings' (pp. 312–313), and all three languages could appear in a single document and, as a consequence, influence one another. The 'law Latin of medieval England contains many anglicisms. Terms are often expressed in both languages for greater certainty: *sorcery vocati wytyches* ['sorcerers called wytyches']' (p. 313). It is that and the fact that French, too, found its way into documents, often at length, that shaped legal English to its form today. Using *amicus curiae* 'friend of the court' as an example, he demonstrates that, like many expressions from Latin and law French, it does not mean what it literally suggests. Legal Latin, like other languages, evolves with usage and carries meanings that are, in principle, arbitrary. Mattila also attributes to the influence of Latin certain textual structures such as double negation, as in the California jury instruction 'Innocent misrecollection is not uncommon' (p. 318), an example he takes from Tiersma. Despite this and similar examples, the case for legal Latin's influence on sentence structure remains tentative and nowhere near as striking as its influence on vocabulary.

The influence of law French shows itself in many ways, a particularly noticeable one being the Old French past participle, formed with *-e* or *-ee* and designating someone 'obtaining something or forming the object of an action' as with *acquittee*, *arrestee*, *condemnee*. On the other hand, the person performing the action was designated with the *-or* affix: *trustor*, *vendor*,

mortgagor. Likewise, nouns were created from verbs via the affix *-al*, as in *acquittal*, *denial*, *rebuttal* and *estoppel*. And Mattila cites perhaps the best-known example of syntactic influence from French, namely, placement of adjectives after their modified noun, as in *attorney general*, *accounts payable*, *court martial*, *fee simple* and *letters patent* (p. 319).

In discussing ‘clumsy phrases including old-fashioned words’, Mattila cites the jury instruction ‘failure of recollection is a common experience’ in contrast with the much simpler version ‘people often forget things’ (p. 336). But the claim that the first expression is ‘clumsy’ and contains ‘old-fashioned words’ is impressionistic. It might better be characterised as abstract, in the sense of including the nominalisations *failure* and *recollection* and the four-syllable words *recollection* and *experience*. None of these words is very rare in English and none so unfamiliar as to provide a serious challenge in itself (*recollection* is less frequent than the others but occurs in the London-Oslo-Bergen corpus with about the same frequency as the nouns *recommendation*, *privilege*, *prevention* and *humanity*). The difficulty lies in the fact that, unlike the suggested revision (with its disyllabic words), the ‘clumsy’ version identifies no agent or action (*people* and *forget*, respectively): agents and actions (in the broad sense) constitute the bedrock of robust, comprehensible sentence structure, a fact often ignored in opaque examples. Here, instead of agent and action, we confront the nominalisations *failure* and *recollection* – from which agent and action have been extracted – and a weak copula. Mattila takes this example from Tiersma, but Tiersma (1999: 193–194) attributes the fault to words that are ‘literary, educated and unusual’ and to ‘nominalizations’. This is an important point in analysing legal English because characterisations like ‘clumsy phrases’ and ‘old-fashioned words’ are highly subjective and thus viewed as matters of style, whereas ‘educated’ and ‘unusual’ are at least less so, and ‘nominalization’ is not.

For all of Mattila’s attention to other languages – those named above (each of which has its own chapter) plus Finnish (his native tongue), Italian, Dutch, Polish, Arabic, Indonesian and others (in more or less incidental ways) – he claims, not without justification, that ‘legal English is on course to conquer the world’ (p. 342), and with that eventuality he rightly sees problems. ‘Thousands of lawyers in non English-speaking countries are daily drawing up contracts in English. These documents often contain language similar to traditional common-law lawyers’ contracts’. ‘Sometimes’, as a consequence, ‘the usual conditions of a common-law contract can provoke a cultural collision’ (p. 344), and he cites the report of a Spanish businessman who attempted to sell property to a buyer in England. The latter’s attorney sent the businessman a contract containing boilerplate: ‘XYZ hereby represents and warrants to ABC as follows

[...].’ To that boilerplate, the businessman’s attorney replied that ‘his client formally refused to sign “such an insulting contract.” It is out of the question that a Spaniard, a man of honour, might intend to sell property not belonging to him’ (p. 344). Even with professionals, Mattila points out, ‘continental lawyers and the translators of legal texts are not necessarily aware of the traps in the [common-law] language’ or of the ‘complicated character of legal English’ (p. 345). He cites the example of *equitable remedies*, which ‘does not signify “fair and reasonable remedies” but “legal redress under the system developed by the Court of Chancery”’; *equitable rights* has a parallel meaning, not the more patent but inapplicable sense of ““fair and reasonable rights”” (p. 345). In reverse, as reported by Barbara Beveridge and acknowledged by Mattila, a continental lawyer drew up a contract containing the sentence ““Like other contracts, the agency contract is subject to the principles of equity”” (p. 345) (intending ‘reasonable commercial practice’ for *equity*), but common-law lawyers would understand it to mean ‘according to Court of Chancery rules’. As a more significant development, the energetic borrowing of English common-law terms into Continental law could lead to two forms of legal English, in which a given term carries two meanings, thus requiring increased attention to terminology, as well as to dictionaries of terminology (p. 349). Indeed, such challenges did lead to a 2008 Draft Common Frame of Reference for the law of contracts; the DCFR ‘proposes a number of English neologisms that would be neutral from the legal-cultural standpoint, totally detached from English law’ (p. 350), aiming for a pan-European legal language, as Šarčević (2010) has called it.

Provocatively, Mattila speculates about the emergence of a separate legal English:

In the long term, the likelihood is that this new variant of continental-style legal English will also differ from the language of common-law lawyers otherwise than at the purely legal terminological level. Given that English is increasingly widely used by lawyers who speak it well but for whom it is not a mother tongue, the standards for drafting legal texts in English will in future have to be more flexible than previously. Language correction by a native speaker is generally expensive and time-consuming, which is why in the 21st century a very significant, if not enormous, number of legal texts in English will be in a style not corrected by a genuine native speaker. (p. 350)

He suggests that a kind of ‘Globalish’ (a term ascribed to Ulrich Ammon) would be more democratic than an English whose control rests solely in the hands of native speakers.

Besides the great detail about legal systems and the languages through which they operate, Mattila from time to time makes personal observations that, absent citation to a source, may strike some readers as true but for which they might well appreciate more than Mattila's – or their own – impression. In discussing judges in the courts of England, for example, he says 'they are generally not appointed until they are fully mature. For that reason, an English judge is a high-class professional, although at the same time has a somewhat conservative approach to life' (pp. 308–309). Would that some English judges, at least, could take justified umbrage at the generalisation!

Forensic linguistics as such is not addressed in *CLL*. The book addresses legal language, the language of the law, terms preferred over 'legal linguistics' by Anglo-Saxon authors (to use Mattila's term); it is not a book about forensic linguistics as that term is commonly understood by IAFPA or IAFL members. Indeed, this journal, formerly named *Forensic Linguistics*, now carries a more inclusive title, not least to embrace many readers' interest in the language of the law, as represented in books by Mellinkoff (1963), Solan (1993), Tiersma (1999), Cotterill (2002), Tiersma and Solan (2012) and several others, most of which are cited in Mattila's bibliography. The term 'forensic linguistics' is mentioned twice in the introductory chapter, but neither of the sponsoring associations of this journal is mentioned by name, although the journal itself is named.

Beyond a final chapter discussing 'lexical comprehension and research needs', Mattila offers alphabetic (pp. 367–413) and systematic (pp. 415–429) bibliographies, the latter grouped chiefly by focus on particular legal languages. There is also an index of foreign terms and expressions (pp. 431–446) and a thorough index (pp. 447–485).

Mattila has written an immensely informative book, a magnum opus, a tour de force. It will prove valuable to many readers of this journal.

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