

Compte rendu

Ouvrage recensé :

MATTILA, HEIKKI (2006): *Comparative Legal Linguistics*. Aldershot: Ashgate, 347 p.

par Máirtín Mac Aodha

Meta : journal des traducteurs / Meta: Translators' Journal, vol. 55, n° 3, 2010, p. 606-609.

Pour citer ce compte rendu, utiliser l'adresse suivante :

URI: <http://id.erudit.org/iderudit/045082ar>

DOI: 10.7202/045082ar

Note : les règles d'écriture des références bibliographiques peuvent varier selon les différents domaines du savoir.

Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter à l'URI <https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche. Érudit offre des services d'édition numérique de documents scientifiques depuis 1998.

Pour communiquer avec les responsables d'Érudit : info@erudit.org

WILFERT-PORTAL, Blaise (2002): *Cosmopolis et l'homme invisible, Actes de la recherche en sciences sociales* 2(144):33-46.

MATTILA, HEIKKI (2006): *Comparative Legal Linguistics*. Aldershot: Ashgate, 347 p.

Legal linguistics in its various national guises: *linguistique juridique*, *jurilinguistique*, *Rechtslinguistik*,¹ etc. has been the subject of very few monographs. This deficiency was redressed in 1990 with the publication of Gérard Cornu's *Linguistique Juridique* in which the author admitted that *la linguistique juridique* had yet to find its place in the list of established branches of knowledge: "ne figure pas à la nomenclature des branches du savoir" (Cornu 1990: 13). Heikki Mattila's *Comparative Legal Linguistics*² is a very welcome addition to this tradition in what is a discipline *in statu nascendi*. It examines the "development, characteristics and usage of" the major legal languages (p. 11) while also drawing on examples from minor languages including Finnish, Swedish, and Danish. The synthesis found in Cornu's work is also evident here. Not only the legal lexicon but also legal phraseology and style are examined. The author has outlined elsewhere the desiderata of studies in legal linguistics:

[t]he vocabularies of modern legal languages must be juxtaposed in their entirety. Simultaneously, it is important to compare the other characteristics of legal languages (their styles, etc.). All these comparisons must have legal depth: often differences which exist today can only be understood on the basis of earlier developments (Mattila 2006: 31).

These requirements are, for the most part, successfully met in the current work.

In the general introduction, the discipline is situated within legal science and defined in terms of its relationship with cognate areas such as comparative law, legal semiotics and legal informatics. The rest of the book is divided into three main parts: legal language as a Language for specific purposes (LSP), the major legal languages and a concluding section on lexical comprehension and research needs. In the first part, the author examines the characteristics of legal language as an LSP and illustrates how these are in part determined by the functions law has to perform. These characteristics include formalism, precision, archaism, abstraction, remoteness, noun-sickness (the density of nouns), etc. The originality of legal syntax is also illustrated by means of an example. The operative part of some Danish judgments still includes the following sentence: *sagsøgte bør for sagsøgers påstand fri at være* (*the defendant*

is acquitted of the plaintiff's claim). According to normal word order, the end of this sentence would be *bør være fri* (p. 84). One is reminded that all legal languages share specific characteristics. This acknowledgment of the particularity of legal syntax is at variance with the stance of Cornu (1990: 35) who argues that the language of the law has no specific syntax. In his discussion of legislative discourse, he does, however, point to some syntactical peculiarities such as ellipsis, ellipsis, etc.³ The dependence of legal French on the syntactic rules of ordinary French is also stressed by Sourieux and Lerat (1995: 328). However, one need only peruse any legal judgment of a French court to be convinced of the originality of legal syntax: the use of the preposition *en* where one expects *dans* or *à* in phrases like *en la Cour*, *en la forme*, *en ses réquisitions* or the use of *près* (without *de*) instead of *auprès de* in phrases such as *près le Tribunal*, *près la Cour d'appel* make for a readily identifiable legal syntax (Raymondis and Le Guern 1976: 17-27). Peculiarities of syntax also abound in English legal discourse (Charrow and Charrow 1979: 1306). Klinck (1992: 254) points out that syntactic choices are relevant to the way legal discourse characteristically creates meaning. The distinctiveness of legal syntax, then, while perhaps not complete is surely more than a question of variety in the "frequency and distribution of the use of specific aspects of grammar" or "some minor differences in grammatical construction" (Gibbons 2003: 55).

The major legal languages, Latin, French, German, and English, form the basis of the second part of the book. Examples from legal Italian, legal Spanish and legal Russian also enrich other parts of the analysis. The most original part of this section is the treatment of legal Latin. After tracing the history of legal Latin (p. 126), the author looks at the status of Latin in modern legal languages and examines the value of Latin in international communication between lawyers (p. 136). This shared terminology would appear, at first glance, to facilitate the international lawyer and the translator's task. Indeed, the case for the adoption of Latin as a *lingua franca* in law has been made by some commentators who note that translation between systems that are based on Roman law is less problematic than those which do not go back to a common origin. Grossfeld has pointed out that the use of Latin as a universal language in the Middle Ages and right up until the modern era resulted in a situation where "law frees itself from the local environment and the abstract idea (universality) of law appears as the universal reality severed from environment and language" (Grossfeld 2005: 40). The author, however, urges caution and points out that the translator grappling with Latin terminology soon

realizes that this dissociation from environment is not possible even with what appears to be a universal. The same Latin terms have different meanings in different legal systems. *Subpoena* has a different meaning in German law than it does in American law. A civil lawyer will never fully understand what a common law lawyer means by *in rem* and *in personam*. *Bona fides* means one thing in English Law and another in the law of the Continent. Even within the same legal family divergence occurs. In fact, it was stated at the Geneva Conference on the Law of Bills of Exchange in 1930 that French and German lawyers do not take the same view as to the precise meaning of *bona fides* (Gutteridge 1938: 408). As Berteloot (1988: 31) put it, Latin phrases take on “national coloring.” Equally troublesome is the fact that the common law and civil law very often have their own Latin terms. Indeed, Matilla’s research has indicated that there is no more than a 5-10% common nucleus between the Latin terminology of the Romano-Germanic countries and that of the common law countries (p. 152-158).⁴

Another difficulty associated with Latin legal terminology is the way it is used and often misused (p. 155-157). Legal terms are often abbreviated or truncated by legal practitioners and used as a kind of legal shorthand. Thus when a lawyer speaks of a *nisi prius* (literally *unless before*), he is simply referring to a civil trial in which, unlike in an appellate court, issues are tried before a jury. The uninitiated will not grasp this nor will know that the Statute of Westminster II provided that, for holding inquisitions into minor trespass and the trial of pleas commenced before either King’s Bench or common pleas, a day and a place should be set aside in the circuits in the justices of assize, and that such cases should not be determined in the benches at Westminster unless the judges of assize had not previously (hence *nisi prius*) come into the county to try them.

Latin is also very often misused. Mattila gives the example of *exitus* which in the German linguistic zone has as its main meaning *decease* but in common law countries the same term has several meanings: *children; the rents, issues, and profits of lands and tenements; an export duty; etc.* *Decease* is not listed as a meaning. Other instances could be given. One author gives the following example: *la victime éprouve [...] un préjudice esthétique et un pretium doloris important* (Mimin 1978: 60-61). In this example the *pretium doloris* (literally *the price of the injury / pain*) is confused with the injury itself. Another well-known, albeit firmly established example is the duo *actus reus* and *mens rea* – the classic ingredients of a crime in common law jurisdictions (Varo and Hughes 2002: 26-27). Lord Diplock pointed out in *R v. Miller* [1983] 1 All ER 978 that *reus*, although used as an

adjective in the above combinations is, in fact, a noun and concluded:

It would, I think, be conducive to clarity of analysis of the ingredients of a crime that is created by a statute, as are the great majority of criminal offences today, if we were to avoid bad Latin and instead to think and speak [...] about the conduct of the accused and his state of mind at the time of conduct at the time of that conduct, instead of speaking of ‘actus reus’ and ‘mens rea.’

The final part of the book deals with lexical comprehension and research needs in the area of legal linguistics. The author emphasizes the nexus between legal language and legal system. Any discussion of legal English, for example, must contain a description of the characteristics of the common-law system. The author builds on the earlier portrait of the major legal languages by exposing their rivalry. The author adroitly shows how the major powers have sought to impose their legal systems and their legal languages over the ages. In Antiquity, the *lex Romana* was a vehicle for the subjugation of peoples and the spread of the Roman Empire. Later, after the discovery of the *Corpus Iuris Civilis*, *ius commune* held sway in continental Europe and even influenced common law. Albeit that the Roman Law that influenced English law was at a different stage of development than the one that moulded French law. As Poirier (1997: 215-246) put it:

Les historiens affirment même que le droit anglais, à l’instar des droits continentaux tire sa source du droit romain, sauf que ces derniers suivent le droit romain rendu à son plein épanouissement, alors que le droit anglais suit le droit romain du début de son développement.

Historians even go as far as to say that English law, like other continental laws, is derived from Roman law, the difference being that the latter follow a fully matured Roman law, while English law follows a Roman law that is in its infancy.

(Translation by the author)

Mattila points out (p. 257) that less original, often rival, legal cultures grew out of this common font. At the end of the Middle Ages, the commercial law of Italian cities was very influential abroad while from the start of the 16th century Spanish and Portuguese laws spread to the America. In later times France, Germany and even Russian law were more significant. French legal culture, and its *Code civil*, by virtue of its intrinsic merits and through the force of colonization was central. In more recent decades, the law of the European Union owes much to the French tradition. German law has held influence internationally since the Middle

Ages, notably in the territories of the Hanseatic League and German legal science through its famous law schools, **Pandektwissenschaft** and **Begriffsjurisprudenz** has also exercised considerable influence on legal scholars (p. 182-183). Today, the common law of English origin is the primary source of law. Indeed, the law of international commerce is based on this source. The author also follows the fortunes of the legal languages attached to these legal systems and traces the decline of legal Latin and the ascendancy of legal English. At the level of practical language use, the original dominance of French has been transformed into French-English bilingualism in the various organs of the Union (with the exception of the court of Justice). He concludes that English is now dominating and “the other major languages are incapable of posing a threat to the position of English as the lawyer’s lingua franca” (p. 259).

Mattila has omitted from this work the section on legal translation in the Finnish original as “there are excellent treatises on this subject in major languages” (Mattila 2006: 32, note 19). However, the translation of problematical terms such as *cour*, *bankruptcy* and *res judicata* are touched upon in the final section. This latter term is often retained as such in English but translated directly in French: *acquérir (passer en) force de chose jugée*. In Italian judgments we often find the formula *con attestazione de avventuro passaggio in giudicato / in cosa giudicata*. The difficulties posed by differences in theories of procedural law between different legal systems are shown by means of an example. In the preliminary text of the *Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*, the French expression *force de la chose jugée* was translated into English as *res judicata*. There was objection to the use of the Latin term and the final draft contained a paraphrase in place of the term: *ne peut plus faire l’objet d’un recours ordinaire (is no longer subject to the forms of review)*. The author urges that such terminological incongruence be overcome by conceptual analysis of the “different aspects of the finality and enforceability of judicial decisions in various countries” underpinned by a jurilinguistic methodology:

a jurilinguistic approach should be added to these analyses, by looking at the various ways of transmitting these concepts on the language plane (on this subject, differences can occur within one and the same country between the various judicial organs and notably between legal authors and the courts). In this way, one would have an overview of the translation problems in the matter (p. 267).

This admirable tome reveals and analyses the common synchronic and diachronic features

of legal languages. Its scope is wide, encompassing the two major legal systems and four major legal languages – the entirety suffused with examples, linguistic and legal, sourced in numerous other languages. The author displays a rare mastery of both the legal and linguistic sides of his subject. Other works in this area are very often deficient in one or other of these aspects. Christopher Goddard’s translation reads like an original, the hallmark of any good translation. The work, however, is not without its flaws. Unfortunately, the chapter on translation is omitted, particularly since the author acknowledges, for example, that research in Canada “takes the form of contrastive analysis of the two legal languages (French and English), which is why Canadian legal linguistics is closely bound up with the science of translation” (p. 9).

In those sections that treat the differences between common law and civil law the author rightly refers to classic texts such as David and Brierly’s 1978 work *Major Legal Systems in the World Today*. The analysis would have benefited also from the most authoritative contemporary work in the area – Patrick Glenn’s (2007) *Legal Traditions of the World*. The bibliography is impressive and contains literature in several languages. It is a shame, however, that the accompanying systematic bibliography does not contain a section on terminology / translation issues.

Another minor quibble would be with the occasional terminological lapse. A glaring example is the French *Cour de cassation* translated as *Court of Cassation* and described as the French Supreme Court (p. 85). This description fails to take account of the separate hierarchies of courts (*ordres*) in France: the *ordre judiciaire* and the *ordre administratif*. The *Cour de cassation* heads the ordinary (non-administrative) courts, but both hierarchies have their own supreme courts. Any description / translation should reflect this legal nuance.

The above minor imperfections do not disfigure this wonderful contribution to the field of legal linguistics. Legal language, one of the limits of comparativism, yet oft ignored by comparative lawyers, practitioners, and academics alike, has a worthy champion in Mattila. It is to be hoped that the author’s call for comparative research to be informed by a jurilinguistic approach will be heeded. Future researchers will find plenty of inspiration in this fine contribution to the discipline of legal linguistics.

MÁIRTÍN MAC AODHA

National University of Ireland, Maynooth, Ireland

NOTES

1. The first pair of these terms are synonymous and designate the *study of the language of the law* (see Cornu 2003). **Rechtslinguistik** is also

concerned with the language of the law but is sometimes, as Mattila points out, “associated with research involving philosophy of language” rather “than involving linguistics proper” (p. 8).

2. The original of this work appeared in 2002 (Mattila, Heikki. *Vaartaileva oikeuslingvistiikka*. Helsinki: Kauppaakari).
3. Cornu (1990: 323-324). See also Fernbach (1991/1992: 919).
4. See also Mattila (2002).

REFERENCES

- BERTELOOT, Pascale (1988): *Babylone à Luxembourg, Jurilinguistique à la Cour de Justice. Vorträge, Reden und Berichte aus dem Europa-Institut*. 136:1-32.
- CHARROW, Robert and CHARROW, Veda (1979): *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*. *Columbia Law Review* 79(7):1306-1374.
- CORNU, Gérard (1990): *Linguistique juridique*. Paris: Montchrestien.
- CORNU, Gérard (2003): *Entry for «Linguistique Juridique»* In: Denis ALLAND and Stéphane RIALS, eds. *Dictionnaire de la culture juridique*. Paris: PUF, pages.
- FERNBACH, Nicole-Marie (1991/1992): Review of Cornu's *Linguistique Juridique*. *McGill Law Journal*. 917-927.
- GIBBONS, John (2003): *Forensic Linguistics: An Introduction to Language in the Justice System*. Oxford: Blackwell.
- GLENN, Patrick (2007): *Legal Traditions of the World: Sustainable diversity in Law*. Oxford: OUP.
- GROSSFELD, Bernhard (2005): *Core Questions of Comparative Law*. (Translated by Vivian GROSSWALD CURRAN). Durham, NC: Carolina Academic Press.
- GUTTERIDGE, Harold Cooke (1938): The comparative aspects of legal terminology. *Tulane Law Review*. 12:401-411.
- KLINCK, Dennis (1992): *The Word of the Law*. Ottawa: Carleton University Press.
- MATTILA, Heikki (2002): L'héritage latin dans les langages européens du droit. In: Merja KOSKELA, Christer LAURÉN, Marianne NORDMAN and Nina PILKE, eds. *Porta scientiae 1. Lingua specialis. Proceedings of the University of Vaasan*. 95: 50-66.
- MATTILA, Heikki (2006): Comparative Jurilinguistics: A Discipline in Statu Nascendi. In: B. Pozzo and V. JACOMETTI, eds. *Multilingualism and Harmonisation of European Law*. Amsterdam: Kluwer Law, 21-32.
- MIMIN, Pierre (1978): *Le style des jugements*. Paris: Librairies techniques.
- POIRIER, Donald (1997): La common law en français – outil d'assimilation ou de prise en charge. *Revue de la common law en français*. 1(2):215-246.
- RAYMONDIS, Louis Marie and LE GUERN, Michael (1976): *Le langage de la justice pénale*. Paris: CNRS.
- SOURIOUX, Jean-Louis and LERAT, Pierre (1995): *Le français juridique comme langue spécialisée*. In: Gérard SNOW and Jacques VANDERLINDEN, eds. *Français juridique et science du droit*. Bruxelles: Bruylant, 327-338.
- VARO, Enrique and HUGHES, Brian (2002): *Legal Translation Explained*. Manchester: St Jerome.
- CORPAS PASTOR, GLORIA (2008): *Investigar con corpus en traducción: los retos de un nuevo paradigma*. Frankfurt: Peter Lang, 297 p.

Research on translation universals has been the cornerstone of Descriptive Translation Studies throughout the last decade (Baker 1993; Toury 1995; Laviosa 1996; 1997; Moropa 2000). However, these kinds of studies are characterised by the use of introspection and a lack of empirical data and therefore their results can be considered as very preliminary and with a lack of credibility and thoroughness.

By contrast, the book reviewed here explores translation universals in a very systematic, rigorous and consistent way within a coherent theoretical framework. This study can be considered an outstanding example of a scientific corpus-based translation study.

The author, Gloria Corpas Pastor, shows how to carry out cutting-edge high-quality research that shatters the preconceptions in preceding studies. She presents an up-to-date study whose specific aim is to check the validity of the three following translation universals: simplification, convergence and transfer. To do so, she employs an empirical methodology based on corpora as the main tool of the study, combined with computational linguistics and natural language processing techniques.

Throughout the five chapters of this book, the author offers a linear and exhaustive scientific approach that ultimately yields exceptional results with respect to translation universals. Chapters I and II (*Breve recorrido histórico and Metodología de corpus para el establecimiento de la equivalencia*) deals with European policies regarding the language industries, corpus-based research in computational linguistics and applied linguistics, studies on equivalence in translation studies, among others. In short, these two chapters constitute the background of the research and serve as an introduction and an update to the use of corpus.

In the next chapter (*Aportaciones a los estudios de Traducción e Interpretación*), the author focuses on the contribution of corpus research in translation studies. As an extension of the previous