



RIGA  
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LAW

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A VOICE IN THE WILDERNESS?  
LEGAL LINGUISTICS IN SEARCH  
OF A PLACE IN THE CURRICULUM

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With a background in law, language and education, in addition to experience in Europe on British government and EU projects, for over fifteen years **Christopher Goddard** has worked closely with Riga Graduate School of Law, where he was responsible for establishing the master's programme in legal linguistics. He runs courses in Continuing Professional Development for lawyers, judges, senior civil servants, translators and interpreters, and others. He is also responsible for the legal skills development and thesis preparation elements of the RGSL master's programme in EU and International Law. This paper forms part of his PhD research in legal linguistics at the University of Lapland, Rovaniemi, Finland.

### **Abstract**

Arguably, the emerging discipline of legal linguistics forms a vital aspect of legal education. If so, then how to ensure integration of legal linguistics in the academic curriculum? Here, two preliminary questions arise. *Firstly*, what ground, what skills, does the discipline of legal linguistics embrace? This covers the initial question of the designation of legal linguistics internationally and in relation to other fields, as well as its scope, methodology, applications and development. *Secondly*, what might be the appropriate format, and at what levels, for incorporating legal linguistics into the academic curriculum? This paper draws on the literature and on a focus group survey in order to suggest answers to these questions. While analysis of the answers affirms the need, ultimately whether legal linguistics can survive and thrive in the curriculum may depend on obtaining wider recognition, patronage and support. In turn, this might involve amalgamating legal linguistics with comparative law, under the designation of comparative legal linguistics.

Key words: legal linguistics, emerging discipline, legal education, curriculum



## Introduction

This paper asserts the need to incorporate the emerging discipline of legal linguistics<sup>1</sup> into the academic curriculum for law professionals as a vital aspect of legal education. The main issue is how to strengthen the position of legal linguistics in the academic curriculum – or indeed, how to introduce legal linguistics into the curriculum at all. The paper begins by setting the context within the broader field of legal education, then goes on to explore the literature to find out what clues this can give as to what skills or functions required by law professionals fall within the remit of legal linguistics as an academic discipline. It also touches on challenges in designating the discipline of legal linguistics internationally and in relation to other fields, as well as briefly considering its scope, approaches to methodology, applications and development. The paper goes on to examine didactic approaches to incorporating legal linguistics into the academic curriculum, based on a focus group survey of academics in the field. Analysis suggests that, although the need for legal linguistics in legal education may be clear, this alone is not enough to ensure its integration in the law curriculum: other factors are likely to operate as key.

## Trends in legal education

In recent years, pressure has been growing to reform legal education to bring it into line with current realities and current needs. While considerable literature is available on this theme, a concise sampling will have to suffice as a background, since the focus of this paper is on legal linguistics within the wider field of legal education. However, the main thrust of the pressure for change appears to fall into two categories.

The first category maintains that law (amongst other) studies should take a more practical turn. For example, according to Klabbers “much of the teaching is geared towards helping students to pass exams rather than helping them to become good lawyers, doctors, or engineers”<sup>2</sup>. In much the same way, Salmi-Tolonen asserts that the focus of legal studies and curricula should be more on skills enabling future success rather than mere analysis of how past conflicts were resolved.<sup>3</sup>

This paper not only asserts that legal linguistics is indeed a vital skill for law but also examines the literature to suggest what some of those skills are.

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<sup>1</sup> Mattila, Heikki E.S. *Comparative Legal Linguistics*, Aldershot: Ashgate, 2013, at p. 5. Mattila notes that legal linguistics as a discipline “has only recently become established”.

<sup>2</sup> Klabbers, Jan, “Reflections on Globalization and University Life”, in Jan Klabbers and Mortimer Sellers (eds) *The Internationalization of Law and Legal Education*. New York: Springer, 2009, at p. 15. Klabbers adds that “Duncan Kennedy, writing a quarter of a century ago, emphasized much the same point: if law schools were to re-channel some time and money ‘into systematic skills training and committed themselves to giving constant detailed feedback on student progress in learning those skills, they could graduate the vast majority of all the law students in the country at the level of technical proficiency now achieved by a small minority in each institution.” (Duncan Kennedy 1982: 600)

<sup>3</sup> Salmi-Tolonen, Tarja, “Legal Linguistics as a Line of Study and an Academic Discipline”, in Christopher Williams and Girolamo Tessuto (eds) *Language in the Negotiation of Justice: Contexts, Issues and Applications*. Aldershot (UK): Ashgate Publishers, 2013, at p. 264.

The second category of pressure for change in legal education maintains that law studies should take account of globalisation and the internationalisation and transnationalisation of law. For example:

- “globalization has effectively decoupled the idea of law from the idea of the state”;<sup>4</sup>
- [g]lobalisation is a prominent feature of legal education and scholarship;<sup>5</sup>
- “contemporary normative questions are frequently global rather than local.”;<sup>6</sup>
- “legal education should respond to the globalisation, Europeanisation and transnationalisation of law”;<sup>7</sup>
- “[t]he internationalization of law and of legal education are the inevitable result of changes in technology and communication that make global contacts and cooperation more possible, and therefore more likely to occur”;<sup>8</sup>
- law professionals “need to be comfortable in multiple jurisdictions, often simultaneously”;<sup>9</sup>
- law professionals of tomorrow require “cross-jurisdictional ability”;<sup>10</sup>
- “[i]n a globalizing world, lawyers will need to be educated in such a way as to make it easy to move across jurisdictions, across specializations, and to move across employment opportunities.”<sup>11</sup>;
- “[l]aw is no longer understood only within the confines of the positivist tradition which has dominated legal thinking in the western world for the

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<sup>4</sup> Tuori, Kaarlo, *Ratio and Voluntas: The Tension Between Reason and Will in Law*. Farnham: Ashgate, 2011, at p. 304 *et passim*.

<sup>5</sup> Arthurs, Harry William, “Law and Learning in an Era of Globalization”, (2009) 10 *German Law Journal* at p. 631 available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1111>

<sup>6</sup> Chesterman, Simon (2009): *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 *German Law Journal*, at p. 883 (footnote omitted) available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1127>

<sup>7</sup> Husa, Jaakko (2009): *Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing Pluralistic Legal Mind*. *The German Law Journal* 10.7/2009, at p. 913; Husa, Jaakko (2011a) *Comparative Law, Legal Linguistics and Methodology of Legal Doctrine*. In: Mark van Hoecke ed. *Methodologies of Legal Research*. Oxford: Hart Publishing, at p. 227.

<sup>8</sup> Sellers, Mortimer (2009): *The Internationalization of Law and Legal Education*, in Jan Klabbers and Mortimer Sellers eds *The Internationalization of Law and Legal Education*. New York: Springer, at p. 4 available at [http://law.ubalt.edu/downloads/law\\_downloads/IusGentium\\_14\\_2008.pdf](http://law.ubalt.edu/downloads/law_downloads/IusGentium_14_2008.pdf)

<sup>9</sup> Tan, Cheng Han (2007): *Law School Has to Keep Up with the Times*, *Straits Times*, 26 April 2007 also in *Thailand Law Journal* 2010 Spring, Issue 1, Volume 13 available at <http://www.thailawforum.com/articles/global-of-legal-education-2.html>

<sup>10</sup> Fine, Toni M. (2009): *Reflections on U.S. Law Curricular Reform - Part I/II*, 10 *German Law Journal*, at p. 734 available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1116>

<sup>11</sup> Klabbers, *supra* note 2, at p. 17 (footnote omitted).

better part of a century and which saw law as a body of rules made by the national legislator".<sup>12</sup>

Moreover, as Husa argues, the methodology of law studies should reflect legal pluralism<sup>13</sup>, which he describes thus: "[b]asically (...) a situation in which there are simultaneously multiple legal systems (or normative orders) in one geographical area.",<sup>14</sup> having already concluded that "legal centralism and its theoretical ally mechanical understanding of methodology are losing ground rapidly".<sup>15</sup> Husa goes on to note that "[t]he emergence of so-called transnational law is also one dimension of this new pluralism, which is a radical challenge to old legal theories for it contains a pluralistic view to law"<sup>16</sup> and concludes that "rethinking of what 'law' is leads to rethinking about what is the proper methodology for studying law".<sup>17</sup> This paper will assert that the "proper methodology" includes legal linguistics.

So far, though, the implications for the emerging discipline of legal linguistics in terms of a reply to the needs of modern legal education are unclear. However, again the literature reveals the link:

- "With law turning global, transnational or European, legal translation and interpretation and systematisation of supranational law in national systems means that *comparison* and *legal linguistics* become factors that also have an impact on national methodology".<sup>18</sup>
- "New approaches [to legal thinking] are accompanied by what are known as the *law and ... fields*, such as law and economics, which studies legal systems using methods provided by economics, law and sociology, law and informatics, and law and language".<sup>19</sup>
- "Law schools should incorporate *law and language* courses into their curricula so that students learn how to work with law and legal languages, rather than being expected in effect to memorise a legal dictionary".<sup>20</sup>
- "The study of law cannot be anything but interdisciplinary. Law does not exist in a vacuum, so it naturally relates to many other fields"<sup>21</sup>.

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<sup>12</sup> Salmi-Tolonen 2013, *supra* note 3, at p. 264 (footnote omitted).

<sup>13</sup> Husa, Jaakko (2011b): The method is dead, long live the methods! European polynomia and pluralist methodology. *Legisprudence*, Vol. 5, No. 3, at pp. 253-254: "within many European States we have side by side national law, EU-law, international human rights law, and varying local – even indigenous – customary traditions claiming normative legal power."

<sup>14</sup> *Ibid*, at p. 255.

<sup>15</sup> *Ibid*, at p. 251.

<sup>16</sup> *Ibid*, at p. 254.

<sup>17</sup> *Ibid*, at p. 269.

<sup>18</sup> Husa 2011a, *supra* note 7, at p. 211 (my italics).

<sup>19</sup> Salmi-Tolonen, *supra* note 3, at p. 264 (her italics, my underlining).

<sup>20</sup> Heutger, Viola (2005): Towards a Common European Legal Understanding. *London Law Review*. Vol 1, October 2005, Issue 2, at p. 213 (my italics).

<sup>21</sup> Alison R. Gifford and Patricia S. Radkowski (eds) (2012): *Northwestern Interdisciplinary Law Review* Vol. V, No. I, 2012, at p. v. This might also include fields such as law and economics, or economic analysis of law (e.g. Swedberg, Richard (2003): The Case for an

To take an example in the specific context of Europeanisation of law, Paunio notes that “[l]egal languages are expressions of different legal systems so that they do not necessarily share identical systems of reference”.<sup>22</sup> She asserts that the “emergence of the EU legal system” has altered the context for legal discourse, now no longer confined to nation states and their respective legal systems.<sup>23</sup>

In this connection Salmi-Tolonen comments that linguistic methods for legal professionals are largely unrealised<sup>24</sup> and includes law and language in a list of interdisciplinary “law and...” areas of study,<sup>25</sup> while Mattila asserts that legal linguistics requires purposive, critical study e.g. legal language and texts, whereas lawyers learn legal language instrumentally, as a professional tool.<sup>26</sup> Moreover, de Groot and van Laer, commenting on the increased need for translation of legal information in the context of ever-increasing transnational commercial and scholarly cooperation and exchange<sup>27</sup>, pointedly observe that “[i]t seems to us that many authors or compilers of bilingual legal dictionaries do not understand how legal translations should be made.”<sup>28</sup> Surely, compiling dictionaries is a prime example of an exercise requiring both legal and linguistic skills<sup>29</sup>.

To sum up so far, according to the cited authorities, modern legal education is an interdisciplinary exercise. Additionally, in terms of programme planning, law-related curricula should reflect internationalisation, transnationalisation and Europeanisation of legal practice, which in turn involve the need for cross-jurisdictional ability. All the above appears to require legal linguistic studies. But does it not also suggest the need for a comparative law element? This paper addresses that very aspect at the end of the following section, which first aims to clarify what legal linguistics is.

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Economic Sociology of Law. Theory and Society 32 as well as e.g legal sociology, legal culture and history of law).

<sup>22</sup> Paunio, Elina (2011): *Beyond Words: The European Court of Justice and Legal certainty in Multilingual EU Law*. Doctoral Dissertation. Helsinki: University of Helsinki, Faculty of Law available at <http://urn.fi/URN:ISBN:978-952-10-6795-2>, at p. 136.

<sup>23</sup> Paunio, *supra* note 22, at p. 170. See also Kjaer, Anne Liese (2004): “A Common Legal Language in Europe?” in: Mark van Hoecke ed. *Epistemology and Methodology of Comparative Law*. Oxford: Hart Publishing, 377-398, at p. 395.

<sup>24</sup> Salmi-Tolonen, Tarja (2004): “Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments”. *Brooklyn Journal of International Law* [vol. 29:3], at p. 1168.

<sup>25</sup> Salmi-Tolonen, *supra* note 3, at pp. 260, 261, 264.

<sup>26</sup> Mattila, *supra* note 1, at pp. 21-22.

<sup>27</sup> *Ibid*, pp. 21-23.

<sup>28</sup> Groot, Gerard-René de and Laer, Conrad J.P. van (2008): “The Quality of Legal Dictionaries: An Assessment”. *Maastricht Faculty of Law Working Paper 2008/6*, at p.1.

<sup>29</sup> Mattila, *supra* note 1, at pp. 5-6, 23. See also below under the section on applications, in particular Tarja Salmi-Tolonen’s inclusion of terminological work and lexicography under this head (*infra* note 46, at p. 270).

## Legal linguistics: Designation

As has been pointed out,<sup>30</sup> the referential field of legal linguistics is not well-defined and internationally accepted, although “agreement exists about the core characteristics of the discipline”. Moreover, as a term in itself, “legal linguistics” appears not to enjoy full equivalence between different languages, that is to say, internationally, an issue which Mattila discusses in some detail.<sup>31</sup> Salmi-Tolonen, though acknowledging this discussion, applies lateral thinking in order to propose a neat solution by suggesting that legal linguistics can be used as an umbrella term for all approaches and disciplines that involve legal language as object, process and instrument.<sup>32</sup> At least for the purposes of this paper, Salmi-Tolonen’s solution provides a workable basis, as becomes clear from the following section.

## Legal linguistics: Field of reference

### General scope

Salmi-Tolonen describes legal linguistics as “a new field of study” which “integrates linguistic and legal theories and approaches”, “examines language in all domains concerning law”, “goes far beyond teaching foreign languages to law students or studying multilingual legal terminology, comparing legal terms, or translating legal texts” and “focuses on language being used for legal purposes or in the legal domain”, concluding that, for the last of these reasons, “the development and characteristics of the discipline can only be studied from the language-in-use aspect.”<sup>33</sup>

A coinciding or complementary view appears from Galdia, who sees legal linguistics as follows:

- “an introduction to the law especially in legal education”;<sup>34</sup>
- “[it] deals with the most essential linguistic phenomena and linguistic operations in law<sup>35</sup> ... discourse, text type, speech acts, narrative, style, prototype-stereotype, form of life, equivalence in legal translation”;<sup>36</sup>
- “[it] includes legal logic, such as analysis of legal reasoning and argumentation, interpretation and justification”;<sup>37</sup>
- “close to a theory of law”;<sup>38</sup>
- from a legal-theoretical perspective “a linguistic view on law and legal theory”.<sup>39</sup>

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<sup>30</sup> Engberg, Jan and Burr, Isolde, “Designing Curricula on Legal Language for Legal Linguists and for Translators”, in: Lelija Sočanac, Christopher Goddard and Ludger Kremer (eds) *Curriculum, Multilingualism and the Law*. Zagreb: Nakladni zavod Globus, 2009.

<sup>31</sup> Mattila, *supra* note 1, at pp. 5-13.

<sup>32</sup> Salmi-Tolonen, *supra* note 3, at p. 261 (footnote omitted).

<sup>33</sup> *Ibid*, at p. 268.

<sup>34</sup> Galdia, Marcus (2009): *Legal Linguistics*. Frankfurt am Main: Peter Lang, at p. 75.

<sup>35</sup> *Ibid*, at p. 84.

<sup>36</sup> *Ibid*, at p. 85.

<sup>37</sup> *Ibid*, at p. 84.

<sup>38</sup> *Ibid*, at p. 86.

More broadly, Galdia sees the main field of legal linguistics as “linguistic operations in law developed around legal speech acts.” He adds that:

Legal speech acts are qualitatively different in that they reach from simple utterances like a promise to complex argumentative and interpretive structures. Legal terms that represent legal concepts function as focal points for these complex structures.<sup>40</sup>

Since law to a very large extent consists of language, then the above may suggest that legal linguistics stands at or represents the heart, if not the soul, of law itself. Additionally, the implications in terms of applications begin to take shape, as will shortly be examined, in the light of the following observations on methodology.

## Methodology

On the methodology of legal linguistics, Galdia makes three general assertions:

- “At the initial stage of theory building, Legal Linguistics has to answer two fundamental questions: first, what is law and second, how is language used in law. In the first task it is assisted by the (*sic*) general legal theory while being itself a particular theory of law”.<sup>41</sup>
- “Law’s most distinctive features (i.e. its link to power as well as to language) are best understood when the use of linguistic devices and not the use of abstract declarations is perceived as the central field of the legal-linguistic research”.<sup>42</sup>
- “One task for future Legal Linguistics is to form a conceptual characterisation of the research. This would help overcome geographic boundaries and help develop a unified Legal Linguistics”.<sup>43</sup>

Salmi-Tolonen makes two general methodological assertions; firstly, that “legal linguistics... is a field of study in its own right and the eclectic approach it espouses is one of its merits”; secondly, that “[t]he lack of conventions has its drawbacks and advantages – drawbacks in that such a lack entails uncertainty, advantages in that the researcher has more freedom as regards choice of methods and approaches”.<sup>44</sup> Unlike Galdia, Salmi-Tolonen sees legal linguistics as multidisciplinary, cross-disciplinary, and interdisciplinary.<sup>45</sup>

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<sup>39</sup> *Ibid*, at p. 86.

<sup>40</sup> *Ibid*, at p. 329.

<sup>41</sup> *Ibid*, at p. 328.

<sup>42</sup> *Ibid*, at p.328.

<sup>43</sup> *Ibid*, at p. 73.

<sup>44</sup> Salmi-Tolonen, *supra* note 3, at p. 265.

<sup>45</sup> *Ibid*, at pp. 269-70. Moreover, Salmi-Tolonen proposes a more detailed structure for legal linguistics as a discipline, that is, “general legal linguistics”, which focuses on phenomena generally common throughout western legal systems and languages, and “particular legal linguistics”, which focuses on the legal language of an individual and monolingual legal culture or order, using the term “contrastive legal linguistics” for comparison of two or more legal languages and cultures. Although Salmi-Tolonen explains her choice of ‘contrastive’, the process she describes appears to be comparative legal linguistics, at least as this author understands it. On that basis only, this author would choose “comparative legal linguistics”

Taken together, though, the approach by Galdia and Salmi-Tolonen appears to prepare the ground for further development of methodology within the field of legal linguistics. In particular, Salmi-Tolonen's proposal sets a general theoretical framework. However, that matter once again lies beyond the scope of this paper.

## Applications

Salmi-Tolonen suggests the following examples of "applications of legal linguistics": study of legal translation, interpretation or courtroom discourse, forensics, terminology and lexicography.<sup>46</sup> In this connection, Galdia's focus remains on "linguistic operations in law", in particular legal argumentation and legal interpretation, which he suggests "are particularly challenging because they represent highly complex legal speech acts in discourses".<sup>47</sup> He adds that "legal argumentation is one of the most important if not the central legal-linguistic operation",<sup>48</sup> also that "[l]egal linguistics is relevant in modernising legal terminology".<sup>49</sup>

A useful example of applications of legal linguistics<sup>50</sup> combines both judicial interpretation and terminological work, bearing in mind that terminology is the language used to express legal concepts. Since, according to Luhmann's systems theory, legal concepts evolve in communicative processes within a particular legal system, this implies that legal concepts develop through judicial reasoning, in the sense that their form evolves by repeated application. Put differently: on this view, legal concepts, rather than being fixed, are constantly redefined and moulded through judicial reasoning.<sup>51</sup> However, those same concepts relate to, and express, legal thinking in a particular legal system. If, as e.g. Salmi-Tolonen suggests, the fundamental characteristics of legal languages stem from social, political, historical and linguistic factors,<sup>52</sup> then presumably it follows that the interrelationship between a particular legal system and legal concepts would pose problems for legal communication across legal systems.<sup>53</sup>

Here, Paunio raises the question how communication and understanding occurs across legal systems and legal cultures. She notes that change in legal concepts occurs through judicial reasoning – a form of legal discourse among legal actors.<sup>54</sup> On that basis, she asserts "the meaning of national legal concepts may only

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because of its clear relation to comparative law. However, due to limitations of space and focus, this paper can go no further except to note that the matter of nomenclature appears to require resolution.

<sup>46</sup> *Ibid*, at p. 270. See also references to Gerard-René de Groot & Conrad J. P. van Laer, *supra* note 28, at p. 1 and Mattila, *supra* note 29, at pp. 5-6, 23.

<sup>47</sup> Galdia, *supra* note 34, at p. 156.

<sup>48</sup> *Ibid*, at pp. 186-187.

<sup>49</sup> *Ibid*, at p.126.

<sup>50</sup> Paunio, *supra* note 22, at pp. 139-140.

<sup>51</sup> Niklas Luhmann (1995): 338–406 explains how legal concepts store legal experience.

<sup>52</sup> Salmi-Tolonen, *supra* note 3, at p. 271.

<sup>53</sup> Kjaer, Anne Liese (2004): "A Common Legal Language in Europe?", in Mark van Hoecke (ed.) *Epistemology and Methodology of Comparative Law*. Oxford: Hart Publishing, at p. 389.

<sup>54</sup> *Ibid*.

change when legal communication is no longer isolated to national settings; when legal actors take part in EU legal discourse”<sup>55</sup>. She adds that “although Europeanisation brings with it problems related to conflicting legal practices and differing legal languages, it seems plausible to say that EU legal discourse may gradually contribute to changing national legal concepts and more generally, legal languages so as to reflect this EU discourse on law”.<sup>56</sup>

Other examples of linguistic operations in law come readily to mind. These might include, for example, intra-lingual “translation” of a piece of legislation into a public information leaflet, an analytical presentation of the same piece of legislation or a court decision for e.g. display on the website of a law firm or for inclusion in its newsletter to clients and potential clients. This is also the type of exercise that can be introduced to law students as an easier option than analysis of judicial discourse as an exercise in practical application of legal linguistic skills: precisely the type of exercise that would appeal to the modernisers cited earlier.

Further illustrations of suitable exercises for training law professionals might include (parallel) drafting or translation (including revising, proofreading and editing) of legal texts such as contractual and legislative clauses. Some tasks might even include a theoretical or practical comparative law component. For example, a scenario involving a cross-border transaction might require checking whether a particular clause is equally valid or enforceable in both or all legal systems concerned, or explaining a type of ownership of (or rights over) immovable or movable property available in one legal system but not in another.<sup>57</sup> The link between legal linguistics and comparative law is further examined in the following section.

## Legal linguistics and comparative law

Recent literature seems to affirm a clear and close link between legal linguistics and comparative law. For example, Husa maintains that legal linguistics lies so close to comparative law from the theoretical standpoint that it can be difficult to distinguish between them, especially bearing in mind that legal texts in different legal systems are in different languages,<sup>58</sup> adding:

In an era when law is turning global, transnational or at least European, it is important to realise that legal translation, as well as interpretation and systematisation of supranational law in national systems means that comparison and legal linguistics become factors that also have an impact on national methodology.<sup>59</sup>

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<sup>55</sup> Paunio, *supra* note 22, at p. 140. Cf. Kjaer, *supra* note 53, at pp. 393–394.

<sup>56</sup> Paunio, *supra* note 22, at p. 170.

<sup>57</sup> In the last example, the first task might fall foul of Salmi-Tolonen’s criticism of comparatists by which she justifies her nomenclature of contrastive legal linguistics, in that adding “linguistics” seems not to make sense since comparatists tend to stay within the confines of comparative law rather than resorting to linguistic explanations. However, the second task is clearly a legal-linguistic task since it involves both a legal and a linguistic element. Salmi-Tolonen, *supra* note 3, at p. 270 (including footnote 19).

<sup>58</sup> Husa 2011a, *supra* note 7, at pp. 210–211.

<sup>59</sup> Husa 2011a, *supra* note 7, at p. 211.

Salmi-Tolonen concurs<sup>60</sup> where a study of two or more legal systems goes beyond the confines of comparing substantive laws and (through legal linguistics) moves into the language plane.<sup>61</sup>

Here, some help may be available from Galdia, who notes that “legal-linguistic studies which highlight the comparative law method seem to point in the right direction”,<sup>62</sup> adding that “[i]n its core, seen from the perspective of ... Legal Linguistics, comparative law is about comparing legal languages.”,<sup>63</sup> concluding that “[t]herefore, a gradual transformation of comparative studies into comparative legal-linguistic and later on to legal-linguistic studies is recommendable because the [sic] legal language will resist... all changes in the globalizing subject matter”.<sup>64</sup> Interestingly, in much the same way, Husa succinctly asserts that “[s]ome kind of amalgamation of comparative law and legal linguistics, we may call it as Mattila does ‘comparative legal linguistics’, seems to be a more realistic possibility”.<sup>65</sup>

The idea of a kind of fusion between legal linguistics and comparative law is appealing and persuasive, in particular since each would give ‘added value’ to the other and lend weight to arguments for their inclusion in the curriculum. At the same time, the fact should not be overlooked that legal linguistic operations, and thus legal linguistic research, are not only inter-lingual but also intra-lingual, as we have seen. Perhaps a distinction can be drawn between the needs of translators and others whose need is for inter-lingual (and inter-legal systemic) skills, and the needs of those whose only or main need is for intra-lingual skills.<sup>66</sup>

## Developing legal linguistics as a discipline I: theoretical approaches

According to Salmi-Tolonen, legal linguistics as a field which studies law with linguistic methods is of vital importance for the legal profession in that research outcomes can improve awareness of the workings of language, especially in the legal domain, thus better equipping law professionals in their approach to their work. Interestingly, her comment that “[t]he history of legal linguistics in this sense has hardly begun”<sup>67</sup> is echoed by Galdia, who notes that “[l]egal linguistics in the modern

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<sup>60</sup> Though using her own nomenclature: ‘contrastive legal linguistics’.

<sup>61</sup> Salmi-Tolonen, *supra* note 3, at p. 270. However, comparing this view with the one expressed at the end of the last section explaining Salmi-Tolonen’s nomenclature of contrastive legal linguistics, can we infer that it is comparative legal linguistics that “takes the study a step further to the language level”?

<sup>62</sup> Galdia, *supra* note 34, at p. 232.

<sup>63</sup> *Ibid*, at p. 272.

<sup>64</sup> *Ibid* at p. 274.

<sup>65</sup> Husa, Jaakko (2012a): Understanding Legal Languages – Linguistic Concerns of the Comparative Lawyer. In: C.J.W. (Jaap) Baaij (ed.) The Role of Legal Translation in Legal Harmonization. Alphen aan den Rijn: Wolters Kluwer, at p. 180.

<sup>66</sup> This is another issue that goes beyond the scope of this paper but which would presumably need to be resolved as comparative (or contrastive?) legal linguistics develops as a discipline.

<sup>67</sup> Salmi-Tolonen, *supra* note 3, at p. 275.

sense of the term is only in its beginnings. We have at least sketched its possible development".<sup>68</sup>

On a more practical note, Salmi-Tolonen avers that legal linguistic competences broadly encompass certain attitudes, knowledge and skills, which leads to the need to identify the practical competences that law professionals require and how to develop those competences by reference to legal linguistics. Put differently, the task of legal linguists is to conduct research to help understand the "complex relationship between law and language," stressing the need to develop curricula accordingly.<sup>69</sup>

This is a convenient point at which to consider broad approaches to legal linguistics in the curriculum before looking further at the development of legal linguistics as a discipline.

## Legal linguistics in the academic curriculum I: didactic approaches

To obtain perceptions of how to foster introduction of legal linguistics in the curriculum, the author had earlier, and independently, framed a survey questionnaire sent by email to a focus group of academics in the field of legal linguistics. The reasoning behind this approach as a research method was that questions directed at a small group of experts in this relatively new research area were more likely to produce qualitative data than from a wider group or the general public.

The questions, arranged to test the consistency of replies, were aimed at clarifying the focus that legal linguistics courses or programmes require so as to be seen by potential applicants, employers, and stakeholders as having clear practical professional relevance. For this paper, only two of the questions were relevant. Replies to other questions are dealt with elsewhere.<sup>70</sup> The full questionnaire is reproduced in the Annex. The author justifies inclusion of the survey in this paper on the basis that it may offer some answers to Salmi-Tolonen's assertion of the need to develop curricula in line with the practical competences that lawyers require.<sup>71</sup>

Replies were received from six academics. Replies to selected questions relevant for this paper appear below in this section. Replies are discussed in the light, and with the help, of the earlier theoretical section of this paper, where possible. Questions were based on statements as to the optimum means of delivering legal linguistic knowledge and skills, with numbered replies on a band of 0 to 10, where 10 = "strongly agree" and 0 = "strongly disagree". Thus the maximum possible score is 6 x 10 = 60. To obtain a result, scores for each question are added

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<sup>68</sup> Galdia, *supra* note 34, at p. 329.

<sup>69</sup> Salmi-Tolonen, *supra* note 3, at pp. 274-275.

<sup>70</sup> In Goddard, Christopher, "Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond", in Christopher Williams and Girolamo Tessuto (eds) *Language in the Negotiation of Justice: Contexts, Issues and Applications*. Farnham (UK): Ashgate Publishers, 2013, pp. 279-299.

<sup>71</sup> *Supra* note 70.

together then divided by the number of replies, giving an average score on the scale, shown both as a figure out of 10 and as a percentage. This is taken as the view of the focus group as a whole, while at the same time individual divergence from the average that would affect the overall average is clear from individual scores.

## Analysis of replies to question 2

Question 2 elicited the following replies:

The optimum means of delivering legal linguistic knowledge and skills is:

Question 2.1 Courses integrated with programmes at bachelor level

Total replies: 6/6

Individual scores: 5-6-5-10-8-10

Total scores: 44/60

Average score: 7.40 (74%)

Question 2.2 Courses integrated with programmes at master level

Total replies: 6/6

Individual scores: 10-8-8-8-7-10

Total scores: 51/60

Average score: 8.51 (85.1%)

Question 2.3 Dedicated programmes at bachelor level

Total replies: 6/6

Individual scores: 2-10-7-10-8-5

Total scores: 42/60

Average score: 7.00 (70%)

Question 2.4 Dedicated programmes at master level

Total replies: 6/6

Individual scores: 10-10-9-8-7-10

Total scores: 54/60

Average score: 9.00 (90%)

Question 2.5 Other

Total replies: 1/6

I think that legal linguistics should be integrated in regular curricula for all law students. The reason for this claim is that legal linguistics deals with the most fundamental issues in law, i.e. the legal linguistic operations such as legal argumentation, legal interpretation, legal translation and others, for instance defining. Introducing legal linguistic courses at a later stage of legal education supports a view that is hostile to legal linguistic interests as it posits that legal linguistics is a random discipline in law that deals with quixotic and academic questions that may interest some enthusiasts.

Question 2.6 Single institution

Total replies: 6/6

Individual scores: 5-10-5-10-7-0

Total scores: 37/60  
Average score: 6.11 (61.11%)

Question 2.7 Two or more institutions

Total replies: 6/6  
Individual scores: 10-7-8-5-7-10  
Total scores: 48/60  
Average score: 8.00 (80%)

Question 2.8 Involving a distance learning component

Total replies: 6/6  
Individual scores: 10-5-6-5-7-7  
Total scores: 40/60  
Average score 6.60 (66%)  
Note: One respondent added: "can be necessary in order to make a course viable, but I do not see it as an asset in itself".

Question 2.9 Space for additional comment

- Total replies: 4/6
- The optimum means: having a law degree + a linguistic / translation / etc. one.
  - I perceive legal linguistics as a specific theory of law. Therefore, in my view, all law students should be exposed to legal linguistic education from the very beginning of their studies. All of them use legal language daily. They must therefore understand how language is used in most relevant legal linguistic operations such as legal argumentation, legal interpretation, or legal translation.
  - Is very important to offer courses on legal linguistic [sic] for lawyers and civil servants to improve its way of using language in texts and oral contexts.
  - The reason I graded 5 to dedicated programmes at bachelor level is because I think the discipline is not yet enough developed. In a further stage it could and should get there but I think it previously needs time to mature. For the choice of single or 2 or more institutions I think that the richness of legal linguistics will always be its capacity to travel between law and language; therefore, isolating it in a single institution might make it loose [sic] one of its most attractive qualities.

## Discussion of replies to question 2

Replies to questions 2.1 to 2.4 show a positive attitude to each of the options, with "dedicated programmes at master level" top with 90%, followed by "courses integrated with programmes at master level" with 85.1%, "courses integrated with programmes at bachelor level" with 74% and finally "dedicated programmes at bachelor level" with 70%.

The percentage scores suggest that respondents appear not to rule out any of the four options. However, only one respondent explained their reply in question 2.5, justifying the assertion that legal linguistics should be integrated in the law curriculum at all levels of study and stressing the importance of doing so by citing examples. This theme is taken up again in the second reply to question 2.9, which insists that "all law students should be exposed to legal linguistic education from the very beginning of their studies". Interestingly, in the last reply to question 2.9, the respondent explains the low grading assigned to "dedicated programmes at bachelor level" by the current lack of development of legal linguistics as a discipline. Overall, however, the replies cannot be said to be conclusive, so that further investigation would be required to clarify this important aspect.

Replies to questions 2.6 and 2.7 showed a preference for delivery of legal linguistic knowledge and skills by "two or more institutions" (80%) over delivery by a "single institution" (61.11%). However, only one respondent explained their reply, in question 2.9, on the basis that by its nature legal linguistics should not be confined to a single institution. Moreover, it could be that few, if any, individual institutions possess the resources required to assemble the lecturers needed to fulfil the needs of a legal linguistics programme, although other plausible reasons might exist, such as the requirement for a distance learning element (see next item). In any case, this could be a matter for further research.

The percentage scores to question 2.8, averaging 66%, suggest that respondents appear not to rule out a distance learning component, although the only comment is somewhat lukewarm as to the benefits of distance learning as such and might relate more to external cooperation. Again, this feature would bear further investigation.

## Analysis and discussion of replies to question 5

Question 5 elicited only one reply:

5. Please briefly describe your own language and law programme or link to home page

Total replies: 1/6

- I can offer only a description of my own course on legal linguistics:

My course on legal linguistics starts with the most fundamental legal linguistic question, i.e. how law is created and applied with linguistic means. In breaking down this vast question the course subsequently identifies the linguistically relevant aspects of language use, especially its terminology and scrutinizes the most significant legal linguistic operations such as the legal argumentation, the legal interpretation, the legal translation, and others. Based on case analyses, it canvasses the language use strategies that are most instrumental in the developing of professionally convincing legal argumentation. Towards this background, the course reflects upon some practical problems related to the regulation of language use (linguistic legislation) and the emergence of the global law. In this way, it combines theoretical knowledge of law seen in the linguistic perspective and practically relevant questions that

are useful for students who wish to exercise the legal profession or a profession close to law.

This reply fits comfortably with the theoretical part of this paper. In particular, the course covers “the most significant legal linguistic operations such as the (*sic*) legal argumentation, the(*sic*) legal interpretation, the(*sic*) legal translation, and others” and “the emergence of global law”, as well as a combination of theory with application. Valuable as it is, this reply cannot be said to be enough alone in order to hypothesise the content of legal linguistic input in academia. However, it is a useful start.

## Legal linguistics in the academic curriculum II: practical approaches

The preceding section strongly suggests the need for further research into didactic approaches to legal linguistics in the academic curriculum. However, a search of the internet will quickly reveal that courses (let alone programmes) in legal linguistics hardly feature at all. Thus the question is not so much how to strengthen legal linguistics in the academic curriculum, but rather how to introduce it at all.

If the need for legal linguistics is so obvious and compelling, why does legal linguistics appear to be so notable by its absence? Could it be, for example, that European and other universities are under pressure to focus only on main areas (i.e. substantive law) of the law curriculum? And is the message about the need for legal linguistics in the law curriculum simply not reaching these institutions? If not, why not? Again, if so, what is being done? And if nothing is being done, why not? These questions require systematic research going far beyond a trawl through the internet to see what it throws up.

## Developing legal linguistics as a discipline II: Need for patronage

The author has elsewhere<sup>72</sup> drawn the analogy between emerging fields of law and emerging disciplines such as legal linguistics, with focus on the means used by emerging fields of law to bring about their establishment. However, a brief summary will be useful for the purposes of this paper. If elaboration of new and emerging branches of law is attributable to legal science and legal scholarship,<sup>73</sup> then surely the same applies by analogy to emerging disciplines within the field of law, as indeed this paper has already demonstrated. In the same way, if new and emerging branches of law jostle for position and recognition,<sup>74</sup> then the same would presumably apply to emerging disciplines within the field of law. Again, if new fields of law obtain clients and supporters in the shape of external patronage from other social fields (e.g. labour law from trade unions and employers’ organisations),<sup>75</sup> then

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<sup>72</sup> Goddard, *supra* note 71.

<sup>73</sup> Tuori, *supra* note 4, at pp. 67, 150.

<sup>74</sup> *Ibid*, at pp. 159-160, 162-163.

<sup>75</sup> *Ibid*.

it should follow that a similar need applies in the case of emerging disciplines. Tuori suggests the outcome “depends ... on ... ability to exploit ... legal capital and competence”.<sup>76</sup> Legal linguistics as a discipline appears to have no concerted campaign to promote itself, nor has it any apparent promoters and supporters.<sup>77</sup> Perhaps this is what is required if legal linguistics is to be introduced and established in the law curriculum.

## Conclusion

In the context of modern legal education, legal linguistics plays an important, perhaps vital, role in the curriculum. Moreover, to the extent that this may previously have been in doubt at all, work by Salmi-Tolonen, Galdia and Husa, amongst others cited in this paper, has removed any such doubt by significantly developing conceptions of what legal linguistics as a discipline is: in particular, its designation, scope, approaches to methodology, applications and development. For example, if we accept Salmi-Tolonen’s view that legal linguistics is broad enough to cover all aspects of language use in the legal domain, then designation of legal linguistics is no longer an issue. However, further work is needed on developing the methodology of legal linguistics, in particular, as Galdia suggests, conceptual characterisation of the research, perhaps within the framework suggested by Salmi-Tolonen. Legal linguistics might, as we have seen, join forces with comparative law to form “comparative legal linguistics”, though taking into account the distinction between inter- and intra-lingual needs.<sup>78</sup>

As to legal linguistics in the curriculum, the need exists to clarify whether legal linguistic input should be integrated or dedicated and why cooperation between two or more institutions could be needed to deliver legal linguistic skills, also to examine distance learning options and the content of legal linguistic input in the curriculum.

In order to develop, legal linguistics needs concerted action from those involved. To begin with, this might involve establishing who is (and is not) offering programmes or courses in legal linguistics (or law and language, or under some other banner) and forming some association to garner recognition, sponsors, patronage and support.

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<sup>76</sup> *Ibid.*

<sup>77</sup> As this paper was going to press, the author was notified by email (24 February 2016) about the planned relaunch of the International Language and Law Association (ILLA) whose reconfigured aims include “(2) Defining the most important tasks for the young discipline of legal linguistics in different cultural, linguistic, and (inter)national contexts. It will not only be beneficial in the legal domain itself, but it will also generate extensive applicational insights at large, by searching for answers to the following questions: How can research results be transferred into the education of future lawyers both in existing programmes and in new international Master’s degree programmes? How can models of legal linguistics be useful for rethinking methodological problems in the context of transnational and multilingual law in a globalized and digitalized world?” Available at: <http://www.conference2017.illa.online> (last visited 28 February 2016).

<sup>78</sup> And the need, noted *supra* at notes 45 and 57 to clarify the distinction, if any, between contrastive and comparative legal linguistics.

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## Appendix

### *Invitation to participate in a Research Paper focus group survey*

I am currently writing a research paper addressing practical issues related to **legal linguistics** in academic programmes and in practical application in professional life. The questions below supplement the main part of the paper delivered on 19 June 2010 at the conference "The Language of Law: pulling together different strands and disciplines" at Seconda Università degli Studi di Napoli. The title of the paper is "Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond"

The aim of the paper is to clarify the focus that legal linguistics courses or programmes require so as to be seen by potential applicants, employers, and stakeholders as having clear practical professional relevance. This survey questionnaire is addressed to a focus group consisting of academics in the legal linguistics field. The survey is performed as partial fulfilment of the requirements for a doctoral degree in legal linguistics at the University of Lapland, where my supervisor is Professor Heikki Mattila.

Your participation in this survey will provide useful information on the topic. You have been selected to participate because of your involvement in legal linguistics. The total time required to fill out the survey should be no more than 60 minutes. All data from this survey are confidential and will be used for research purposes only. Data are anonymous. Names of participants will not be connected to information.

If you have any questions about the survey, I shall be happy to deal with them.

If you would like to receive a summary of the results of this research, please let me know.

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1. How would you define:
1.1 Core legal linguistic skills
1.2 Peripheral legal linguistic skills
1.3 [Space for additional comment]

2. The optimum means of delivering legal linguistic knowledge and skills is:
[On a band from strongly agree 10 to strongly disagree 0]
2.1 Courses integrated with programmes at bachelor level
2.2 Courses integrated with programmes at master level
2.3 Dedicated programmes at bachelor level
2.4 Dedicated programmes at master level
2.5 Other (please specify)
2.6 Single institution
2.7 Two or more institutions
2.8 Involving a distance learning component
2.9 [Space for additional comment]

3. What real-world tasks can the practical application of legal linguistics help to resolve?

4. Please state the practical benefit of legal linguistic knowledge and skills to the following:
4.1 Lawyers
4.2 Legal translators
4.3 Others

5. Please briefly describe your own language and law programme or link to home page