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Comparative legal linguistics

Jaakko Husa

Today, comparative legal linguistics is an academic field represented in one form or another in many academic institutions throughout the world. Be that as it may, it is still not a distinct discipline in its own right as it is still in the making. Comparative legal linguistics is a dynamic but unsettled academic field even though there is a growing literature on the subject. Legal linguists and comparative lawyers are both interested in this emerging field. Several consequences are caused by the fact that it is an unfinished discipline, starting from its name. According to a Nordic saying, a loved child has many names. Undoubtedly, this applies to comparative legal linguistics too. It is not quite evident what notion one should use about comparative legal linguistics as English terms seem to be derived, more or less, from other languages.

Nevertheless, comparative jurilinguistics, comparative legal linguistics, and comparative legilinguistics are all possible ways to label and identify this emerging field.[1] That said, the notion of comparative legal linguistics will be used in this chapter as it has gained a firm foothold due to Heikki Mattila's trailblazing magisterial volume on the subject.[2] Mattila is, however, not alone in using the notion of comparative legal linguistics.[3] It should also be pointed out that the label issue concerns not only comparative legal linguistics as the notion of legal linguistics also differs from language to language.[4] What is more, different

[1] Comparative legilinguistics is known especially from the Journal of Comparative Legilinguistics published by the Poznan Institute of Linguistics, Adam Mickiewicz University (Poland). The German variant '*vergleichende Rechtslinguistik*' translates as comparative legal linguistics though, see Igor Trost, "Die vergleichende Rechtslinguistik als Forschungsgegenstand der Germanistischen Sprachwissenschaft," *Zeitschrift für Mitteleuropäische Germanistik* 6 (2016): 45–59.
[2] Heikki ES Mattila, *Comparative Legal Linguistics*, 2nd edn (Abingdon: Routledge, 2013). French edition *Jurilinguistique Comparée* (Québec: Éditions Yvon Blais, 2012). The Finnish edition uses the notion of comparative legal linguistics, *Vertaileva oikeuslingvistiikka*, 2nd edn (Helsinki: Alma Talent, 2017).
[3] See eg Thomas Lundmark, *Charting the Divide Between Common Law and Civil Law* (Oxford: OUP 2011), ch 2 and Marcus Galdia, "The Comparative Element in Comparative Legal Linguistics," *Comparative Legilinguistics* 43 (2020): 57–76.
[4] See Mattila (2013) 6–9. See also Marcus Galdia, *Legal Linguistics* (Frankfurt am Main: Peter Lang, 2009) 66–73.

conceptions of legal linguistics are also caused by different scholarly traditions underlining different approaches and theoretical bases.[5] Scholarship on the matter is rich but somewhat dispersed, which presents a challenge in offering an overview.

It follows from the above that one of the key issues concerning comparative legal linguistics is about where to place it as an academic field. Branches of knowledge that study and teach legal linguistics are situated in different disciplines in academia. But what do we mean by academic discipline? Discipline typically refers to a particular area of study, especially a subject of study in a university. Where to place legal linguistics is not necessarily an easy task to achieve as it may form part of linguistics, translation studies, semiotics, or legal studies. What seems evident is that comparative legal linguistics is a specialised or applied form of linguistics. And like applied linguistics in general, comparative legal linguistics is not easy to define in terms that would be accepted by all. Broadly speaking, it is possible on these grounds to argue that the main function of comparative legal linguistics is to mediate between linguistics and comparative legal studies.[6] In this sense, comparative legal linguistics stands on the academic middle ground between legal disciplines and study of the structure, grammar, and syntax of language.

Adding the comparative dimension further complicates the puzzle of placing comparative legal linguistics as one is forced to cross the borders of different legal systems, languages, and academic traditions. In essence, comparative legal linguistics can be conceived as an interdisciplinary field situated in between comparative law and legal linguistics. In this chapter, comparative legal linguistics is conceived essentially as an interdisciplinary field with its own characteristics deriving theoretical and methodological insights from neighbouring disciplines.

As several other chapters in this handbook deal with legal linguistics, the notion of legal linguistics as such is not discussed further in the following.[7] However, it should be clarified and stressed that legal linguistics is here understood as a form of applied linguistics and could

[5] Galdia (2009) 73–89.
[6] See Alan Davies, *An Introduction to Applied Linguistics*, 2nd edn (Edinburgh: Edinburgh University Press, 2007) 1–2.
[7] For a concise definition, see Mattila (2013) 11 (study of development, characteristics, and use of legal language).

alternatively be termed 'linguistics and law'.[8] The reasons for choosing to use legal linguistics instead of 'linguistics and law' will become clear later in this chapter. Moreover, linguistics in the context of comparative legal linguistics is understood broadly so that it concerns the history and functions of language without focusing on any particular linguistic aspect of legal language such as structure, syntax, and grammar. Another key point to remember is that comparative legal linguistics is not an offspring of comparative linguistics as comparative legal linguistics is not interested in finding a common ancestor of legal languages.[9] On the contrary, comparative legal linguistics is based on the plurality of legal traditions and their respective languages. Indeed, diversity of law and legal languages is the bread and butter of studying legal languages comparatively. With that in mind, then, comparative legal linguistics shares similarities with general linguistics even though it is a form of applied linguistics both in its substantive area and in its particular approach to legal language. It would also be possible to use the notion of comparative legal philology but as the relation between comparative philology and comparative linguistics is not quite clear, the more recent notion of linguistics is used here.[10]

Here it is intended to present a picture of the main scholarly ingredients and contemporary state of comparative legal linguistics as an evolving field of study. This chapter, however, will not examine all possible facets of comparative legal linguistics as the focus is on the key aspects that help in making sense of the field. The first part of this chapter discusses comparative law, explaining what comparative law is about and what kind of research design it typically builds on. The second part deals with the connection between language of law and comparative study of law, underlining their innate and inescapable connection. The chapter ends with a third part that explains the interdisciplinary amalgam between comparative law and legal linguistics.

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[8] See Roger W Shuy, "Language and Law," in *The Handbook of Linguistics*, eds Mark Aronoff and Janice Rees-Miller, 2nd edn (Oxford: Wiley-Blackwell, 2017), 627–43.

[9] For a more detailed discussion on various approaches to linguistics, see Lyle Campbell, 'The History of Linguistics' in *The Handbook of Linguistics*, eds Mark Aronoff and Janice Rees-Miller, 2nd edn (Oxford: Wiley-Blackwell, 2017), 81–104, 95 ff.

[10] Sometimes these notions are used simultaneously, see eg Robert Philomen, "Comparative Philology and Linguistics," in *The Oxford Handbook of Hellenic Studies*, eds Barbara Graziosi, Phiroze Vasunia, and George Boys-Stones (Oxford: OUP 2009), 697–708 (focusing on comparative and historical grammar, synchronic grammar, and social and stylistic diversity of ancient Greek).

COMPARATIVE LAW

Comparative law, as the notion is generally understood, refers to a broad academic branch of legal knowledge that studies law comparatively as a normative phenomenon of organised human communities.[11] In and of itself, comparative law is a member of the family of legal disciplines such as doctrinal study of law, legal history, legal theory, and sociology of law.[12] Generally speaking, comparative law scholars study the laws of different countries or regions. In essence, comparative law is shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems. Comparative law also analyses and classifies legal systems and legal cultures into bigger groups but this, so-called macro-comparative law, is not in focus here since macro-comparative law's interest in language of law is more distant.[13] Notwithstanding, it is difficult to tell micro- and macro-comparative law apart as comparative study of law may regard these epistemic points of view as intimately related.[14] That said, macro-comparative law tends to pay very little attention to language because its scholarly – sometimes taxonomic – ambitions lie elsewhere.[15] Moreover, the relationship between language and law is particularly intertwined in so-called mixed legal systems, although it is not possible to discuss the matter further here.[16]

Nevertheless, it would not be quite right to argue that as an academic field of legal research and education, it is a straightforward matter to precisely define comparative law. One of the most important reasons for this is that different countries employ slightly different ways to grasp the notion of comparative law as an academic branch. What is more, different schools of thought also exist in comparative study of law. Comparative law literature is voluminous, but it is not a monolith. Written works in comparative law offer almost too much of a good thing. What is more, debates among comparative law scholars can be described as sharp and

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[11] See Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Oxford: Hart, 2014), Jaakko Husa, *A New Introduction to Comparative Law* (Oxford: Hart, 2015), Mathias Siems, *Comparative Law*, 2nd edn (Cambridge: CUP 2018), and Uwe Kischel, *Comparative Law* (Oxford: OUP 2019).
[12] Husa (2015) 30–48.
[13] Of macro-comparative law, see Jaakko Husa, "Macro-Comparative Law – Reloaded," *Tidsskrift for Rettsvitenskap* 131 (2017): 410–47.
[14] See Peter de Cruz, *Comparative Law in Changing World*, 3rd edn (Abingdon: Routledge, 2008) 3–7.
[15] See Gilles Cuniberti, *Grands systèmes de droit contemporains*, 4th edn (Paris: LGDJ, 2019) 21–22.
[16] Language of law is a crucial issue for the viability of mixed legal systems when the language of a bigger legal culture 'colonises' a smaller legal culture's legal system, see Jaakko Husa, "Language of Law and Invasive Legal Species," *Global Journal of Comparative Law* 9 (2020): 149–82.

perhaps even combative.[17] This is, nonetheless, to be expected as the notion of law – the study object of comparative law – differs from country to country and from legal culture to legal culture. Different countries have different ideas about what law's functions are and what is expected from it.[18] No surprise, then, that the literature on comparative law is rich and versatile as there is no unified generally accepted understanding of what comparative law is, what its methods are, and how comparative law research should be conducted.

Several issues are involved. To begin with, various languages have slightly differing notions of comparative law even though the notion itself seems superficially similar. For instance, the French (*droit comparé*), German (*Rechtsvergleichung*), Italian (*diritto comparato*), and Greek (*συγκριτικό δίκαιο*) variants could all be translated as comparison of laws, that is, comparative law. Generally speaking, all these notions refer to an academic field that studies and seeks to explain the differences and similarities between laws of different countries, regions, or traditions. In addition, some legal scholars also sometimes distinguish between comparative law and comparative legal studies. Notwithstanding, when the notion of comparative law is understood broadly the notion of legal studies fits well under the flexible umbrella notion of comparative law.[19] This flexible notion of comparative law stems not only from the different national academic traditions but also from the fact that the notion of law itself is not the same in different systems and, hence, various concepts of law exist among legal scholars coming from different academic and national backgrounds.[20]

So, in this chapter the notion of comparative law is understood broadly in that it also includes comparative legal studies. Comparative law thus conceived has a toolbox of methods as the field has assumed pluralism in both methodology and substance.[21] Against the backdrop of legal language, it makes sense to rely on a broad conception of comparative law as this is

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[17] See Robert Leckey, "Review of Comparative Law," *Social & Legal Studies* 26 (2017): 3–24.
[18] David Nelken, "Defining and Using the Concept of Legal Culture," in *Comparative Law: A Handbook*, eds. Esin Örücü and David Nelken (Oxford: Hart, 2007), 109–32, 124–25.
[19] Eg *Comparative Legal Studies*, eds Pierre Legrand and Roderick Munday (Cambridge: CUP 2003) discusses comparative law despite the title of the book. In turn, Werner Menski, *Comparative Law in a Global Context,* 2nd edn (Cambridge: CUP 2006) uses the notion of comparative law in its title but the content of the book is, in fact, closer to what one would typically label as 'legal studies'. Importantly, these notions are fluid and the mere terms themselves do not make it possible to deduce what kind of comparative study of law they deal with.
[20] See Seán Patrick Donlan and Lukas Heckendorn Urscheler, "Introduction," in *Concepts of Law*, eds Seán Patrick Donlan and Lukas Heckendorn Urscheler (*S*urrey: Ashgate, 2014), 1–17.
[21] See Mark Van Hoecke, "Is There Now a Comparative Legal Scholarship?," *Journal of Comparative Law* 12 (2017): 271–80. See also Husa (2015) 206.

beneficial for a discussion on comparative legal linguistics.[22] Narrowly understood, comparative law has no room for linguistic sensitivity as it is so intimately connected to doctrinal study of law. Doctrinal study of law concerns what we can label as 'legal expertise' which centres around communicable knowledge of legal rules, principles, concepts, and specific ways of reasoning about these.[23] For the purposes of linguistically conscious comparative law, the doctrinal vision is simply too narrow as it excludes the context of law. By the same token, for discussion on comparative legal linguistics a doctrinal conception is plainly insufficient in its methodological scope. It is important to consider what the idea of comparison suggests in the context of legal studies.

Comparative law embraces different schools of thought but the mainstream that can be labelled as traditional comparative law is in the focus here as the purpose of this chapter is not to embark upon comparative law but comparative legal linguistics. Traditional refers here to something that is habitually done by comparatists, that is, it does mean an age-old tradition in the sense of history but something that can be characterised as the mainstream. In any case, when comparative legal linguistics is conceived as an inherently interdisciplinary field it is useful to clarify what comparative law is about. To that end, we need to outline what comparative study of law is, in order to be able to analyse the significance of language.

In traditional comparative law research, the crucial issue is what socio-legal function does the norm under study fulfil in its own societal context? The comparatist seeks to compare the functions of legal rules and institutions instead of the mere linguistic formulations of those rules and institutions. This can be better understood by explaining that this approach means taking a look at a specific problem, for example in case law or litigation, in one legal system and then asking how that problem is solved in another legal system.[24] The underlying methodological idea is to achieve comparability of rules and institutions by studying them as part of a larger socio-legal context and placing them in an external comparative framework – called *tertium comparationis* – constructed by the comparatist.[25] This, nevertheless, requires

[22] A narrow notion of comparative law simply leaves linguistic issues aside as an independent thematic area in comparative law, see eg de Cruz (2008). Yet de Cruz is aware of translation problems (45–8, 102–3, 22–2) unlike Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Oxford: OUP 1998) who make no specific mention of language-related issues.
[23] Roger Cotterrell, *Sociological Jurisprudence* (Abingdon: Routledge, 2018) 21.
[24] Samuel (2014) 67.
[25] On the term, see Lei Zhu, "On the Origin of the Term Tertium Comparationis," *Language & History* 60 (2017): 35–52. In comparative law, see eg Michael Bogdan, "Some Reflections on the Comparability of Laws Based on Different Socio-economic Systems," *Scandinavian Studies in Law* 61 (2015): 105–12.

the comparatist to be epistemically detached from their own legal preconceptions and to discover at least less biased – if not fully objective – concepts which make it possible to describe legal problems in a comparative framework.[26] The comparatist needs to interpret the systems under comparison in order to enable dialogue between systems. The aim is to offer intelligible results to people from different legal cultural environments.[27] Intelligibility is the key goal in terms of comparative law's search for cross-border knowledge.

A key observation for the present discussion is that language and linguistic issues are deeply intertwined with comparative study of law as legal and epistemic borders are crossed. This is true especially when comparative law research does not focus on black-letter law but reaches to the legal-cultural context of law, well beyond the scope of doctrinal study of law.

To understand why language is important for comparative study of law it is useful to describe the standard comparative law research design. Now, even though a comparative law approach can generally be described in the following, it needs to be kept in mind that several methodologies are available in comparative study of law.[28] The presentation here describes a kind of mainstream view of the comparative legal research process. The reason why one cannot simply describe methodology of comparative law more precisely is because, strictly speaking, comparative study employs no precise method as comparison is rather a research design than a research method in the technical sense. Importantly, this also applies to comparative legal linguistics as it too lacks a precise methodology due to very similar reasons to comparative study of law.

To begin with, the comparatist is normally interested in a certain foreign country in terms of its language and culture.[29] For whatever reason a comparative study of law is carried out, it becomes relevant only when a legal scholar seeks to look over the borders of their own law. However, actual comparative legal study starts from posing a research question. Basically, the focus is on flexibly understood socio-legal problems that are resolved by means of law, such as legislation, courts, legal doctrine, or custom. The underlying research interest is

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[26] See Richard Hyland, *Gifts* (Oxford: OUP 2009) 64–68.
[27] John Bell, "Legal Research and the Distinctiveness of Comparative Law," in *Methodologies of Legal Research*, ed Mark Van Hoecke (Oxford: Hart, 2012), 155–76, 176.
[28] See eg Maurice Adams and John Griffiths, "Against "Comparative Method"," in *Practice and Theory in Comparative Law*, eds Maurice Adams and John Griffiths (New York: CUP 2012), 279–301.
[29] Cf Kischel (2019) 3.

essentially comparative because if 'different countries meet the same need in different ways, we must ask why.'[30] The next step consists of two elements that describe the legal systems under examination and how they resolve the socio-legal problem in the focus.[31] After that, the comparatist catalogues the similarities and differences in the ways of solving what is essentially – but not identically – the same problem in all the systems under comparison. However, a mere description of similarities and differences is not deemed sufficient as the comparatist is also required to adopt a new point of view and to consider explanations for differences and similarities.[32] In this vision, the comparatist needs to construct an external comparative framework so that they are able to analytically compare the legal answers to a similar problem. Comparability is of the essence here; comparative research design aims to ensure that research objects are comparable with each other even when they are not similar.

Finally, the comparatist is expected to critically evaluate the observations and, in some cases, to argue which of the solutions works best in providing a legal solution to essentially the same social problem. In many respects, even though problems in different legal cultures are seen as essentially the same, the equivalences are not identical and the comparatist is forced to be content with practically the same things.[33] Consequently, the task is more about achieving comparability than finding exact similarities as there always remains an abundance of subtle differences unreachable for the black-letter law approach. Culturally oriented comparative law scholarship has made this clear during the last couple of decades as there has been a movement towards appreciation of differences and diversity instead of focusing on similarities.[34]

It is easy to see that the traditional comparative law approach is, to a large extent, built to evade the issue of different legal cultures and languages. At the end of the day, the venture of meaningfully comparing laws is based on the idea that human communication about law is

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[30] Zweigert and Kötz (1998) 44.
[31] See Marieke Oderkerk, "The Need for a Methodological Framework for Comparative Legal Research," *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 79 (2015): 589–623, 596.
[32] As a classic twentieth century comparatist put it '[T]o compare means to observe and to explain similarities as well as differences', Rudolf B Schlesinger, "The Past and Future of Comparative Law," *American Journal of Comparative Law* 43 (1995): 477–81, 477.
[33] Cf François Ost, "Law as Translation," in *The Method and Culture of Comparative Law*, eds Maurice Adams and Dirke Heirbaut (Oxford: Hart, 2014), 69–86, 86.
[34] See James Gordley, "Comparison, Law, and Culture," *American Journal of Comparative Law* 65 Iss Supl 1 (2017): 133–80 and James Q Whitman, "Hunt for Truth in Comparative Law," *American Journal of Comparative Law* 65 Iss Supl 1 (2017): 181–90.

possible across cultural and linguistic borders.[35] If we were not able to understand other cultures and languages, then the whole endeavour of comparative law would be futile. However, the human experience proves that this is not the case. As noted by H Patrick Glenn, 'differences in language are obstacles to understanding communication, but not insuperable'.[36] In short, the search for functional equivalence is built on a belief that law is translatable.[37] The very same elemental assumption is shared with comparative legal linguistics.

In practice, the idea of translatability means a search for equivalence. While seeking functional equivalence the comparatist tries to avoid the problem of looking only at the linguistic surface level of the law such as legislative texts, judgments, and doctrine. It has rightly been noted that the 'polyglot legal comparatist knows that legal orders reside as much beneath and aside from words as they do in the words that purport to embody them'.[38] In the practice of comparative study of law, it has been noticed that direct translation or synonyms may not suffice, so that the comparatist needs to develop new concepts in order to communicate successfully across the barriers between languages and cultures.[39] Now, to be able to do this the comparatist must first translate legal concepts and foreign language terms as a part of the research process. To that end – and this is crucial – the comparatist has only one path to understanding foreign law and that path goes through language. An important observation is that the flow of information between legal systems – in short, communication – takes place through translation.[40] As Šarčević puts it, legal translation is 'an act of communication in the mechanism of law'.[41] Whereas translators' work has legal effects, the work of the comparatist remains in the field of knowledge acquisition.

For the comparatist, the situation is that of epistemic distrust in the sense that one cannot rely solely upon translations as one must also have direct access to the original text.[42] Against this

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[35] Kischel (2019, 47) notes that one of the core functions of comparative law is to improve communication across borders.
[36] H Patrick Glenn, *Legal Traditions of the World*, 4th edn (Oxford: OUP 2014) 49.
[37] On so-called functionalism in comparative law, see eg Kischel (2019) 7–9.
[38] Vivian Grosswald Curran, "Comparative Law and Language," in *The Oxford Handbook of Comparative Law*, eds Mathias Reimann and Reinhard Zimmerman, 2nd edn (Oxford: OUP 2019), 681–709, 684.
[39] Esin Örücü, "A Project: Comparative Law in Action," in *Comparative Law: A Handbook*, eds Esin Örücü and David Nelken (Oxford: Hart, 2007), 435–49, 441.
[40] Karen McAuliffe, "Translating Ambiguity," *Journal of Comparative Law* 9 (2014): 65–87, 70.
[41] Susan Šarčević, *New Approach to Legal Translation* (The Hague: Kluwer, 1997), 55.
[42] Jan Engberg, "Comparative Law for Legal Translation," *International Journal for Semiotics of Law* 33 (2020): 263–82, 268.

background, denunciation of the untranslatability thesis, it comes as no surprise that even mainstream comparatists have underlined the importance of linguistic skills.[43] The same understanding is a natural part of the self-understanding of modern comparative law too.[44]

But caution is in order as it is important to be careful not to oversimplify. Language of law is absolutely not only a technical issue for the comparatist as the relationship between law, legal language, and comparative study of law goes deeper than mere technical translation. Accordingly, it is important to conceive that if law is a linguistic creature, then one needs to ask what happens when law is conveyed into another language.[45] To be sure, this is not merely a mechanical dictionary-related issue about what words to use or to what dictionaries to resort to. No wonder, then, that for modern comparatists the challenge of translating is regarded as one of the essential key questions in comparative study of law.[46] Modern comparatists regard translation as a particularly relevant issue for comparative law.[47] Notwithstanding, it is not crystal clear what the relationship between comparative law and legal language is. From the standpoint of the translation theorist, legal translation is depicted as 'both fascinating and ultimately elusive'.[48] In the following section this relationship is explained.

COMPARATIVE LAW AND LEGAL LANGUAGE

When investigating the relationship between comparative study of law and language it is virtually impossible to avoid deep epistemic issues concerning law itself. This leads to several consequences. Now, it has been argued that law itself is essentially language. Without going that far it is, nonetheless, evident that the relation between law and language is

[43] 'Reading a foreign statute written in a language other than the comparatist's native language takes considerable linguistic skill', John C. Reitz, "How to Do Comparative Law," *American Journal of Comparative Law* 46 (1998): 617–36, 631–32.
[44] So, 'legal translation requires not only excellent skill in the languages in question, but also knowledge of comparative law', Siems (2018) 5.
[45] Berhard Grossfeld, *The Strength and Weakness of Comparative Law* (Oxford: Clarendon Press, 1990) 101.
[46] Simone Glanert, Alexandra Mercescu, Geoffrey Samuel, *Rethinking Comparative Law* (Cheltenham: Edward Elgar, 2020) 161 ff.
[47] See Kischel (2019) 10–12 ('without translation, the enterprise of comparative law is almost impossible', 10).
[48] Malcolm Harvey, "What's so Special about Legal Translation?," *Meta: Translators' Journal* 47 (2002): 177–85, 182.

intimate.[49] This is true both inside any one legal system and even more so when more than one legal system with different languages is involved. It should go without saying that law is not a part of the physical world: one cannot see or measure it like the physical phenomena. Accordingly, one can interview judges, attorneys, law-drafters, and legal scholars; but there is no way to pose questions to law or a legal system directly. Undoubtedly, legal texts give information about the law, but they are not the law itself. The law, as we understand it today, is created solely by humans even though there are different ways to create it, such as legislation, case law, doctrine, or custom. This, in turn, means that law is linked to the cultural context of a particular community where it exists as a normative phenomenon dressed in the garment of language. Importantly, a key context of law is linguistic as to its nature. Consequently, it is difficult to tell legal language, legal interpretation, and legal translation apart from one another:[50] these are different views on law but, at the same time, they are intertwined.

The interdependence of a legal culture and a legal language brings about the situation that legal concepts differ as 'they are crystallisations of legal rules'.[51] In short, a different legal system means different legal rules. In many cases, this also means different language. Moreover, even within the same language group there are differences in vocabulary and institutions of law. For instance, even though English is the shared language of all common-law systems it cannot be argued that all the common-law systems would be identical. What does this mean for discussion of comparative legal linguistics?

At least it is evident that legal translation and comparative legal research are entangled since an intelligible act of comparing is not possible without bridging the languages involved.[52] It is, nonetheless, important to note that the language aspect in comparative law concerns not only translation because language of law is also about legal argumentation, semiotics of law, and legal rhetoric.[53] Against this backdrop, legal translation is of particular importance,

[49] See Edgardo Rotman, "The Inherent Problems of Legal Translation," *Indiana International & Comparative Law Review* 6 (1995): 187–96, 187.
[50] Ingrid Simonnaes, "Legal Language – Pragmatic Approaches to Its Interconnectivity with Legal Interpretation and Legal Translation," *Meta: Translators' Journal* 61 (2016): 421–38.
[51] Mattila (2013) 137.
[52] See C.W.J. Baaij, "Translation and the 'contamination' of comparative legal research," in *Comparative Law: Engaging Translation,* ed. Simone Glanert (Abingdon: Routledge, 2014), 104–22, 105–6.
[53] Mattila (2013) 5.

which explains the focus here on legal translation. Comparative study of law cannot avoid the linguistic challenge. But what does this entail in practice?

The comparatist faces the language issue as they seek to study legal systems comparatively. Unless the comparatist is an unparalleled polyglot, legal language presents an unavoidable obstacle as legal translation has an impact on the core work of the comparatist.[54] Importantly, as a legal language 'creates reality, a different legal language produces another kind of legal reality'.[55] This is also why translators of legal documents are interested and in need of comparative law knowledge.[56] However, this does not mean that comparative law and legal translation would be the same thing.[57] Nonetheless, as fields of knowledge they are intimately entangled with each other. The fact that these fields are interlinked means difficulties for linguistically sensitive comparative law. Accordingly, '[L]egal linguistics is an essential concomitant of comparative law, one which does not make it any easier.'[58] When comparative law abandons doctrinal textuality, focuses on similarity, and extends to legal culture, then legal linguistic issues become virtually inescapable. Consequently, the branches of knowledge are – if not fused together, then at least rubbing shoulders in the spirit of interdisciplinarity. For comparative legal linguistics as a field of knowledge this fusion is elemental.

The translator's task is to 'establish a relationship of equivalence between the source and target texts'.[59] From the viewpoint of comparative law-related legal translation it is, nonetheless, crucial to grasp that equivalence does not mean that the legal translator's task is to fade out differences between the target language and the source language. One does not seek to get rid of legal-cultural differences but to accommodate them. As Hans-Georg Gadamer has pointed out, there is always some gap in between the spirit of the original words and those reproduced in translation. Importantly, '[I]t is a gap that can never be completely closed'.[60] Sensitive translation is challenging as legal texts are structured and written in a

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[54] Cf Gerard-René de Groot, "The Influence of Problems of Legal Translation," in *The Role of Legal Translation in Legal Harmonisation*, eds. C.J.W. Baaij (Alphen aan de Rijn: Wolters-Kluwer, 2012), 139–60, 140.
[55] Mark Van Hoecke and Mark Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine," *International and Comparative Law Quarterly* 47 (1998): 495–536, 535.
[56] See eg Guadalupe Soriano-Barabino, *Comparative Law for Legal Translators* (Bern: Peter Lang, 2016).
[57] Samuel (2014, 147) puts this succinctly, [F]ocusing on words and dictionaries is not comparative law'.
[58] Grossfeld (1990) 103.
[59] Galdia (2009) 226.
[60] Hans-Georg Gadamer, *Truth and Method*, 2nd rev edn (New York: Continuum, 1994) 384.

manner that suits their own legal culture. In turn, this legal-cultural particularity is reflected in the legal language of that (legal) culture.[61] This specificity is, of course, also a relevant factor for the legal comparatist. From there it follows that historical and sociological aspects are fruitful for both legal comparatists and legal linguists.[62]

One of the problems in comparative study of law has been the fact that scholars with doctrinal legal training do not pay sufficient attention to the significance of language when they study foreign law. Regardless, it is abundantly clear that translation is one of the most significant questions in comparative law research. There is no going around this matter. In legal translation the aim is that the legal content of a document in legal language (the source-language) is correctly conveyed to the reader whose native language (the target language) is not the language of the source language. In practice, this requires that the terms which represent legal concepts are understood first in the source language.[63] Linguistically the situation in translation is the same as in traditional comparative law: to establish sufficient – not full – equivalence between the objects compared. In practice this means that the translator seeks to identify from the foreign system the legal rule or institution which – to the greatest extent possible – plays a functionally sufficiently similar role in a similar type of situation. This is, however, a tall order – especially if there is no similar systemic and structural embedding as between the source and target languages.[64]

Consequently, translating within same legal cultural sphere is easier than translating between very different legal cultures. For instance, translating between religious law and civil law is bound to be more demanding than translating between two civil-law legal systems. In a similar vein, it is less problematic to translate between common-law systems than between indigenous legal tradition and a common-law system.[65]

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[61] Simone Glanert, "Law-in-Translation," *Translator* 20 (2014): 255–72.
[62] Mattila (2013) 12.
[63] 'Converting a legal source text into a target text is a complex process', Guadalupe Soriano Barabino, "Cultural, textual and linguistic aspects of legal translation," *International Journal of Legal Discourse* (2020): 285–300, 298.
[64] Cf Gerard-René de Groot, "Legal Translation," in *Elgar Encyclopedia of Comparative Law*, ed Jan Smits, 2nd edn (Cheltenham: Edward Elgar, 2012), 538–49, 540–41.
[65] de Groot (2012, 140–141) speaks of the system-specificity of language that causes problems for translation of legal terminology. Simply, legal language is a product of the evolution and legal structure of which it forms part.

From the comparative study of law standpoint, functional comparative law and legal translation overlap to a significant degree. This is easy to understand as legal cultures are created and upheld by communication. Language of law, in turn, is the medium for legally meaningful communication.[66] Scholarly differences between comparative law and legal linguistics do not arise from the fact that legal studies and translation studies/language studies are different but from the fact that these branches of knowledge have different aims and they are attached to different professions.

For comparative study of law language is important but the final object of interest is not the foreign legal language as such (for example, its structure, syntax, or grammar) but the substantive content of foreign law. Accordingly, the comparatist compares the legal functions adopted in different systems for a similar type of socio-legal problem. In essence, as explained above, the comparatist tries to explain why there are similarities and differences between legal systems. Explanatory factors can be drawn from history, economics, politics, culture and, for example, geography. In turn, the translator seeks to translate foreign law legally correctly between different legal languages without focusing on the functions of law.[67] The translator needs to avoid linguistic risk whereas the comparatist enjoys greater epistemic flexibility.[68]

The close relation between law and language is evident as, essentially, the key issue is ultimately the same thing; a serious attempt to understand foreign law by looking under the linguistic surface of legal language.[69] There are other similarities. Importantly, for the comparatist foreign legal language is also a language for special purposes.[70] For the comparatist legal language is normally a language that is a formalised and codified variety of everyday language. Legal language refers here to a linguistic system of communication used by a legal professional community in a particular country for professional purposes. Legal language typically contains ordinary words and special words. It has rightly been noted that

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[66] Jørn Øyrehagen Sunde, "Managing the Unmanageable," in *Comparing Legal Cultures*, Sören Koch and Jørn Øyrehagen Sunde (Bergen: Fagbokforlaget, 2020), 23–40, 30.
[67] Cf Mattila (2013) 15.
[68] About linguistic risk, see Mattila (2013) 20–21.
[69] From the translator's point of view, it can be underlined that legal translation requires knowledge of law; legal knowledge and literacy of the translator. See Marta Chromá, "A Dictionary for Legal Translation," in *The Role of Legal Translation in Legal Harmonization*, ed C.J.W. Baaij (Alphen aan den Rijn: Kluwer, 2012), 109–38, 112–14.
[70] 'Legal language is a special language developed specifically for professional legal purposes', see Mark Van Hoecke, *Law as Communication* (Oxford: Hart, 2002) 128–31.

'[A]ll legal systems develop certain linguistic features that differ from those of ordinary language'.[71] Consequently, even an excellent knowledge of ordinary foreign language is insufficient when it confronts a language for special purposes.[72] To that end, some scholars coming from a linguistic background have made serious efforts to bridge the gap between translation studies and legal studies.[73] These attempts are an important part of what is understood to be legal linguistics today. Yet it should be borne in mind that legal language is rather a sublanguage of ordinary language than a language completely distinct from ordinary language.[74]

While for the translator a foreign legal system and culture are the necessary context for translating, knowledge of a foreign language is a prerequisite for serious comparative study of foreign law. In sum, the linguistic dimensions possess a very special significance for a comparatist who tries to cross not only the borders between States and cultures but also the barriers between languages. When law and language mix and cross borders, then both the comparatist and the translator become cultural mediators as they communicate information between legal cultures and languages.[75] It should be mentioned that it is this epistemic hinge between law and language that makes the linguistic view of legal language necessary. Consequently, it seems fully justified to argue that comparative study of law is inherently multilingual and interdisciplinary as to its nature.[76] Comparative legal linguistics means adding linguistic analyses – such as history, theory, terminology, or vocabulary – to what would otherwise be merely a language-savvy comparative study of law.

One is, perhaps, tempted to draw the conclusion that comparative law and comparative legal linguistics are one and the same thing. There is, however, more to it. Undoubtedly, differences exist between legal linguistics and comparative law. In general, the translator need not explain in detail at the general (legal) level the reason for their choice of certain functional equivalents in a translation: The focus is on translation of the source text,

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[71] Peter M Tiersma, "History of the Languages of Law," in *Oxford Handbook of Language and Law*, eds Peter M Tiersma and Lawrence M Solan (Oxford: OUP 2012), 13–26.
[72] See also Rotman (1995) 193.
[73] See Šarčević (1997).
[74] Peter M Tiersma, *Legal Language* (Chicago: Uni Chicago Press, 1999) 142–3.
[75] See Jaakko Husa, "Translating Legal Language and Comparative Law," *International Journal for Semiotics of Law* 39 (2017): 261–72, 271.
[76] McAuliffe (2014) 71.

conveying legal information from one language to another, whereas for the comparatist this forms only a part – albeit an important one – of the research process.

As noted throughout this chapter, the intimate connection between law and language places the translator and the comparatist in a position where their special branches of knowledge overlap. In other words, to be a good comparatist one needs to know law and language while to be a good legal translator one needs to know the source language and the legal environment. Accordingly, the translator fails unless they know the legal and legal-cultural contexts of legal language. Equally important is that legal linguistics and comparative law are unavoidably allies when a serious attempt is made to understand the legal messages contained in a foreign legal language. In a nutshell, legal languages and legal-cultural contexts are intermingled, and it is this interrelatedness that creates the need for interdisciplinarity. All things considered, comparative legal linguistics seeks to fulfil that need.

AMALGAM: COMPARATIVE LEGAL LINGUISTICS

An attempt to make sense of comparative legal linguistics as a field faces difficulties caused by overlapping academic disciplines. In general, we can say that even though linguistics and legal studies are different branches of knowledge their difference is not decisive but concerns their respective focus. To simplify a great deal, linguists are interested in language for its own sake. Lawyers, on the other hand, regard legislative texts, judgments, and other legal documents as a kind of linguistic vessels for legal information.[77] Indeed, these texts are first and foremost sources of law.[78] Remarkably, the disciplinary overlap between these fields brings forth the issue of interdisciplinarity. And this is where comparative legal linguistics steps in.

In order to discuss the need for interdisciplinarity, it is useful to begin by defining what it means. Interdisciplinarity, in short, is a research model where researchers inform each other's perspectives and compare their research results through a transfer of knowledge, crossing disciplinary boundaries between branches of knowledge. In essence, interdisciplinarity comes

[77] Cf Friedemann Vogel, Hanjo Hamann, and Isabelle Gauer, "Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies," *Law & Social Inquiry* 43 (2018): 1340–63, 1341.
[78] See John Bell, "Sources of Law," *Cambridge Law Journal* 77 (2021): 40–71.

close to multi-method research, which means that the researcher analyses the chosen topic with more than one method.[79] To put it concisely, interdisciplinarity is about the transfer of methods from one specialised branch of knowledge to another.

The defining feature of interdisciplinary research is that it involves research methods from more than one academic discipline. In the case of comparative legal linguistics the mixture is, by and large, that of legal linguistics and comparative law. The ultimate justification for comparative legal linguistics is easy to grasp; use of a neighbouring discipline can considerably enrich and deepen legal research. In turn, of course, the use of comparative law can do the same to legal linguistics as it provides necessary information about law and its legal-cultural context.

To simplify a great deal, comparative legal linguistics has taken shape as a twofold reaction. First, it has been a reaction against narrowly understood comparative law based on traditional black-letter legal research known as legal doctrine. Second, it has been a reaction against legal linguistics as narrowly understood that tends to have an overly limited view of the legal and contextual environment of legal documents. As an interdisciplinary research field, comparative legal linguistics utilises ideas and methods from other disciplines in order to enhance understanding and application of legal language in its social contexts.[80] Its specific value comes from the comparative approach, which means conceiving law and legal language against a wider backround that transcends all manner of borders. Comparative research design brings specific values and challenges, of course, to all comparative humanities and social sciences even though the focus here is on legal language and comparative study.[81] In any case, we can here quote Goethe, who famously noted that '[H]e who knows no foreign languages knows nothing of his own' to explain why it is important to look across borders in seeking to gain a broader understanding of language.[82]

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[79] Cf Laura Beth Nielsen, "Need for Multi-Method Approaches in Empirical Legal Research," in *Oxford Handbook of Empirical Legal Research*, eds Peter Cane and Herbert M Kritzer (Oxford: OUP 2010), 951–75, 955.
[80] Cf Lydia A Nkansah and Victor Chimbwanda, "Interdisciplinary Approach to Legal Scholarship," *Asian Journal of Legal Education* 3 (2016): 55–71, 71.
[81] See *Comparative Methods in Law, Humanities and Social Sciences*, eds Maurice Adams and Mark Van Hoecke (Cheltenham: Edward Elgar, 2021).
[82] 'Wer fremde Sprachen nicht kennt, weiß nichts von seiner eigenen', Johann Wolfgang von Goethe, *Maximen und Reflexionen*, ed Helmut Koopmann, first published 1833 (Munich: CH Beck, 2006) 188.

The bottom line is that comparative legal linguistics is an interdisciplinary field that, unlike other forms of legal linguistics, chooses to abandon the monolingual perspective. It combines modern comparative law and legal linguistics while tackling the challenge of a multilingual research arena. This relation, however, is not without its difficulties. Undoubtedly, interdisciplinary study in general and combining comparative law and linguistics in particular is far from easy. Both theoretical and practical issues arise. Legal linguistics seems to involve a different focus than comparative law as it targets the development, use, and characteristics of legal language – mainly its terminology, syntax, and semantics. The amalgam of comparative law and legal linguistics is not limited to these fields only, if Mattila's approach is to be followed. His notion of comparative legal linguistics builds on comparative law and legal linguistics, but it also reaches out to other branches of knowledge including legal history, legal semiotics, and legal informatics. This means that the key facet of comparative legal linguistics is that it seeks to juxtapose legal and linguistic information in an interdisciplinary manner by observing legal languages against their legal-cultural backdrops.

Following Mattila's definition comparative legal linguistics is about:

> 'comparing the use of languages in legal contexts, from a certain point of view, or multiple points of view (evolution, structure, vocabulary etc.). Hence, comparative legal linguistic can, for instance, clarify the forms and extent of the interaction between legal languages, including the transmission of legal words from one language to another other'.[83]

The main value of what Mattila proposes is that comparative legal linguistics is far more than merely drawing upon insights from other disciplines. A genuine amalgam is suggested in this vision of the discipline. This makes perfect sense because, as argued above, comparative legal linguistics and comparative legal research are intimately connected. Studying the differences and similarities between legal systems does not fall far from comparing the development, structure, vocabulary, and grammar of more than one legal language.[84] In essence, this form of linguistically focused study of law can be called comparative legal linguistics.[85]

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[83] Heikki E.S. Mattila, "Jurilinguistique comparée," *International Journal of Semiotics of Law* 34 (2021): 1141–71, 1146.
[84] As Galdia (2009, 76) points out, 'Mattila's approach is not only developed along the lines of comparative law, it can be made operative in comparative law as well.'
[85] Cf Mattila (2013) 17.

Why comparative legal linguistics is necessarily an intermixture between comparative law and linguistics is based on the fact that legal language is not a descriptive form of language: legal norms and institutions work only through language as normative creatures. Foreign law and, hence, its language is not merely an abstract system of written norms but also a particular form of communication that concerns the fundamental organisation of society and its legal system.[86] As noted by a comparative socio-legal scholar, law 'swims in the social sea with everything else'.[87] Language of law is a part of that social sea, mixed with everything else.

Another way to conceptualise legal language as a form of communication is to conceive it as a form of discourse in which legally meaningful linguistic operations take place. This approach to legal language also highlights that legal translation does not exist in a vacuum.[88] It is argued here that the scholarly distance between legal translation and comparative law is filled by comparative legal linguistics. It is, in short, a scholarly gap-filler. The greatest advantage of comparative legal linguistics is, arguably, its genuinely comparative and interdisciplinary constitution. Whereas legal linguistics typically focuses on a single legal language, comparative legal linguistics highlights the development, structure, and vocabulary of two or more legal languages juxtaposing – in other words, comparing – them. By its very nature, comparative legal linguistics keeps an innate distance from legal doctrine and linguistics as the comparative configuration moves it to a disciplinary no-man's-land where scholarly freedom of movement exists alongside a risk of languishing between more established fields of knowledge. Whatever the difficulties faced by comparative legal linguistics in national and disciplinary contexts, this emerging field is a lively area of activity that also has great potential to impact its neighbouring areas of study.

In this chapter, for the reasons discussed above, comparative legal linguistics is pictured as an interdisciplinary field. This is not, however, the only possible way to depict comparative legal linguistics. Quite possibly there are legal linguists who see the strong position of comparative law in comparative legal linguistics as too significant. Accordingly, if one chooses different starting parameters then the way in which comparative legal linguistics is conceived may

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[86] Friedemann Vogel, "Introduction," in *Legal Linguistics Beyond Borders*, ed Friedemann Vogel (Berlin: Duncker & Humblot, 2019), 11–16, 12.
[87] Brian Z. Tamanaha, "The Primacy of Society and the Failures of Law and Development," *Cornell International Law Journal* 44 (2011): 209–47, 247.
[88] Cf Galdia (2009) 240.

look different from the picture outlined here. Indeed, the field of comparative legal linguistics is in a state of flux. This condition raises the possibility that a subtle disciplinary struggle is going on between comparative law and linguistics over who has the power to define the objects and methods of comparative legal linguistics. This struggle is not, however, so very different from the struggle between general and applied linguistics. For this reason, there is no reason to exaggerate the encounter. What is here referred to as comparative legal linguistics, therefore, must necessarily be understood in its widest sense and not as just another field of applied linguistics.

Those with a linguistic background, then, may choose to place comparative legal linguistics closer to legal linguistics than comparative law. Then again, those with a legal background may choose to place comparative legal linguistics closer to comparative law in the interdisciplinarity scale. It is noted that this struggle is probably not capable of resolution.[89] But on the other hand, the tension between different disciplinary visions might produce fruitful interaction stirred by differing scholarly views. At the end of the day, the fact that comparative legal linguistics is a flexible branch of knowledge may be useful as it underlines the interdisciplinary nature of the field and in that way makes it clear that legal and linguistic approaches need to cooperate. In any case, comparative legal linguistics creates and upholds a fruitful discussion and interaction on problems related to describing, understanding, and analysing multiple legal systems and their respective legal languages.

Finally, it is useful to address the potential future of comparative legal linguistics. It seems clear that the world has grown interconnected in the process of globalisation (or transnationalisation) especially in the last half century. Scholars belonging to different legal and linguistic traditions have begun to engage with one another more actively than ever before. Transnational legal communication provides both possibilities and challenges to our way of conceiving legal translation and, hence, legal linguistics.[90] Even though globalisation itself does not bring about uniform development everywhere, it is believable that legal and linguistic traditions will experience growing interaction in the future. Along similar lines, comparative legal linguistics can expect a bright future ahead as a special branch of knowledge combining comparative study of law and legal linguistics. To conclude, the

[89] Jan Engberg, "Legal linguistics as a mutual arena for cooperation," *AILA Review* 26 (2013): 24–41, 37.
[90] Anne Lise Kjær, "New Challenges to the Theory of Legal Translation," *The Translator* 20 (2014): 430–36.

advantages of such an interdisciplinary field are clear – but so are the obstacles, too, as all interdisciplinary fields are at risk of being overshadowed by older established fields.

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