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DEVELOPING AN INTEGRATIVE APPROACH FOR ACCESSING COMPARATIVE LEGAL KNOWLEDGE FOR TRANSLATION

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Abstract

In this paper, a multi-perspectivist approach to translation-relevant comparative law is presented. The approach is conceptually oriented and joins three lenses with relevance for the study of meaning construction and development in the field of law: National cultural influences, influences from systemic-functional epistemic aspects, and influence from interpersonal knowledge communication. Focus in the article is upon the argumentative grounding of the three perspectives and upon possible methods with special relevance for the different lenses. In order to present the backdrop against which the approach is developed, the paper starts out with an overview of recent developments and suggestions in the field of comparative law, especially for the purposes of legal translation.

Keywords: Legal translation; legal culture; epistemic culture; interpersonal communication; corpus analysis.

EL DESENVOLUPAMENT D'UN ENFOCAMENT INTEGRADOR PER A L'ACCÉS A CONEIXEMENTS SOBRE DRET COMPARAT APLICABLES A LA TRADUCCIÓ

Resum

En aquest article, abordem des de diversos punts de vista el dret comparat rellevant per al camp de la traducció. L'enfocament que presentem està basat en aspectes conceptuals i combina tres perspectives significatives per a l'estudi de la construcció i el desenvolupament del significat en el camp del dret: les influències de la cultura jurídica, les influències dels aspectes epistèmics sistemicofuncionals, i les influències de la comunicació interpersonal del coneixement. L'article centra l'atenció a aportar una base argumental que justifiqui aquestes tres perspectives i proposar mètodes d'una importància especial per als diferents punts de vista. A fi de presentar els antecedents a partir dels quals es construeix aquest enfocament, l'article comença amb una descripció general de les últimes contribucions al camp del dret comparat i que han estat rellevants per a la traducció jurídica.

Paraules clau: Traducció jurídica; cultura jurídica; cultura epistèmica; comunicació interpersonal; anàlisi de corpus.

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1 Introduction

One longstanding trend in the development of the study and the teaching of legal translation is to see relations between legal translation and comparative legal studies, some even going so far that they see legal translation as a kind of applied comparative law (de Groot, 1988). However, studies have shown that although it is true that there are overlaps between the two disciplines, the basic interests of legal translation and comparative law, respectively, are too far from each other for them to be just two sides of the same approach (Doczekalska, 2013; Engberg, 2013a, 2013b; Simonnæs, 2013). This makes it apt for members of the disciplines to seek inspiration from each other, but without seeing one discipline as merely a part of the other. More concretely, lawyers use the methods and approaches of comparative law to solve legal problems like setting up new statutory rules or evaluating the efficiency or consistency of existing rules. Translators, on the other hand, are mainly interested in conceptual elements and their overlaps and differences across languages, but not in systematic efficiency or consistency. Furthermore, translators need insights into collocational aspects and they need to know what parts of a concept are more prominent in expert discourse in source and target culture. The main intention of this paper is to sketch out the contours of an integrative approach with special relevance for the needs of translators. As an aside, such an approach may also help build a bridge over the gap between lawyers and translators in order to enhance the comparative legal work of both groups for their respective purposes and improve the conceptual discussions between the two groups. I will revert to this supplementary aim in the concluding remarks.

Hence, I depart from the position that important characteristics distinguish the practice of lawyers and translators and that these characteristics have an impact upon the specific requirements for a useful approach to comparative law for the two groups of experts. Let us try to specify the characteristics of the translation side of this duality. The practice of the legal translator may be described as follows: “Professional legal translation is a search for the legal-linguistic equivalence towards the background of translation strategies that steer the choices within the translation process “ (Galdia, 2013, 92). In other words, legal translation is based upon conscious choices by translators in order to achieve a legally relevant relation in meaning between source and target text. Focusing upon the characteristic that legal translators are interested in conceptual aspects when comparing legal systems, we can take the idea one step further and define the component of legal translation where comparative law is most relevant (the translation of specialized terms) as follows:

“Translating terms in legal documents consists in strategically choosing relevant parts of the complex conceptual knowledge represented in the source text in order to present the aspects exactly relevant for this text in the target text situation in order to enable a receiver to construct the intended cognitive structure.” (Engberg, 2015)

The task of the legal translator is thus to get to know the concept behind a word in a source text well enough to be able to interpret which parts of the full concept play a central role in the contextual understanding of the source text. Furthermore, the translator has to establish what parts of this contextual understanding are most relevant in the concrete target text situation. Finally, the translator needs to elicit possible target concepts and get to know these well enough to find a formulation that enables the target text receiver to construct a relevant cognitive structure and thus understand the target text relevantly.

In order to carry out all of these decision tasks, translators need to assess and acquire relevant knowledge from source and target contexts so that they can enable the target text reader to construct the relevant concepts after reading the target text (hence I talk about *legal translation as a knowledge communication process*, cf. section 3 of this paper). This process of assessing or acquiring knowledge requires systematicity and a relevant degree of completeness in order for it to be successful. In this paper, I want to sketch out the contours of a multi-perspectivist approach that may function as a tool for legal translators and that fulfils the requirements concerning systematic generation of relevantly complete knowledge. The approach is intended to function as a basis for a broad comparative description of legal concepts with relevance for the solution of the problem of translational practice described above. Due to the present stage of development of the ideas behind the approach, focus in this paper will be on describing and arguing for the relevance of and the internal relations between three different dimensions or *lenses* applicable for comparative work. Furthermore, in connection with the description of the lenses I will present methods that are relevant for assessing the content

of the dimensions and thus for actually acquiring and structuring the knowledge relevant for performing the knowledge communicative task of legal translation. Focus is thus on sketching the approach and its application. Showing how the methods and lenses may be played out by way of empirical analyses of my own, on the other hand, is not part of the intention behind this paper (cf. instead Engberg, 2016).

I will start the chapter by discussing recent developments in comparative law with potential relevance for translation in section 2. The following main part of the paper will first present the overall principles for the multi-perspectivist approach (section 3) and subsequently go into more detail with the three dimensions and the respective methods for investigating them (section 4-6), before the paper ends with concluding remarks (section 7).

2 Aspects of modern Comparative Law with relevance for translation

As already stated above, there are differences between the purposes of contrastive analysis performed by lawyers and by translators. These differences lead to differences in relevance of the methods to be applied. Specifically, I claim that where functional approaches are often central in comparative law performed by lawyers, translators need a more conceptually oriented approach (Engberg, 2013b). The reason why functionality plays a central role in lawyers' comparative legal work has to do with the fact that lawyers prototypically perform this type of study in order to assess how different legal systems solve similar societal problems. Hence, the function of specific legal rules and the functional aspects of the concepts presented in the rules acquire a centre-stage position here. But legal translators are less interested in comparing rules and their functional role in solving societal problems in a specific way. They are much more interested in comparing concepts and in comparing them along more dimensions, as these may be relevant in connection with the relation between source and target context of the text to be translated.

On this basis, I challenge the position held by for instance Sandrini and underlying the work by Soriano-Barabino (2016), i.e., that a functional approach is most central also for translation-relevant comparative law, due to its closeness to the general comparative method of terminology. I would opt for a more conceptual approach, combining different elements and stripping function of its necessary primary value - function is only one of more potentially relevant conceptual elements. This position is neither totally new nor only mine. In recent years, a number of conceptually oriented approaches to comparative law have been presented in the context of translation studies:

- Monjean-Decaudin (2013) presents an approach where she sees the process of legal translation as a three-step procedure: 1) interpreting the source text; 2) putting meaning from source text in relevant relation to the target text context like the lock in a canal; and 3) choosing the conceptually adequate formulations in the target context. Especially the second part (*l'inflexion de signifié*) comprises concept-oriented comparative law investigations.
- Jopek-Bosiacka (2013) suggests the so-called 'micro-comparison' as a valuable approach to translation-relevant comparative law. Here, singular concepts are described in their functional, but also institutional and other contexts, seeing function as an important, but not the only relevant criterion to use as tertium comparationis. She demonstrates its value on comparative work relevant for translation in the European Court of Justice.
- Meyer (2016) suggests a constructivist and performance-oriented model for understanding foreign legal concepts in their actual context and their recent state of development, emphasizing the dynamic nature of legal concepts and the need to understand foreign legal concepts in their native context instead of on the basis of the conceptual framework of the interpreter with a different legal background. Conceptual aspects are central here, too.

Not only in comparative law approaches stemming from translation and domain-specific studies of language consciousness of the value of conceptual approaches is growing. Even in the field of comparative law for legal purposes, similar ideas emerge as a consequence of the fact that legal scholars also begin to see functionalism as perspective of observation and comparison as too scarce, if we want to catch all central aspects of legal concepts. Hence, we see proposals to include also other perspectives and thus to go for a more global perception

as the basis for comparisons (Brand, 2007; Husa, 2013). A recent important empirical example including a methodological perspective is the article by Zarco-Tejada and Lazari (2017). They present a comparative-legal analysis of the concept of State responsibility in four national legal systems based upon the FrameNet approach and discuss this approach in contrast with other approaches from concept-oriented linguistics.

For our purposes, the above developments may be taken as support for the pertinence of developing ideas of how to perform such concept-oriented comparative work. The developments also show the pertinence of seeing the development of such ideas as a bridge-building effort not restricted to the field of legal translators. A special consequence of giving up function as the very central aspect for comparisons is that it opens our eyes for the influence and interplay of different factors and dimensions. I take this consequence as inspiration to suggest in the following an approach that explicitly intends to combine different and to some extent incompatible aspects in order to gain sufficiently wide and varied insights, still in a systematic way.

3 A multi-perspectivist approach to the (comparative) description of legal concepts

Central against the backdrop of the developments described above is the idea to intend not to reduce comparisons to one primary dimension or facet (traditionally that of function) when describing legal concepts, but instead to try to assess the concepts in their actual multi-facetedness. Following this argumentation and in accordance with the approaches presented above, *I suggest a multi-perspectivist and conceptual approach to comparative law* with special relevance for translators, but also of interest for conceptually interested comparative lawyers. It combines approaches to the study of legal concepts that focus different aspects. In this way, we get a good insight into the complex nature of legal concepts.

The discipline of studies in domain-specific communication (*Fachkommunikation*) especially in its German branches has a tradition of such so-called integrative models. The models are integrative, because they integrate different dimensions with each other in order to achieve a holistic description of the studied object. Prominent examples are Hoffmann's model of analysis and Baumann's different versions of integrative models (e.g., Baumann, 1992; Hoffmann, 1988). My approach follows the same basic idea as these models: As law seen in relation to the knowledge to be assessed and acquired by translators is a multi-faceted object of study, the models describing this object should also allow for a number of facets to be taken into consideration. Naturally, it will always be part of any kind of venture of developing a scientific model of relevant aspects of a concept to reduce the actual complexity of the real-world concept, as some abstraction and idealisation is necessary. However, it is in my view sensible to intend to keep enough complexity in a model for it to actually reflect also the interplay (positive or negative) between factors from different dimensions. Hence, as a pluralist by conviction, I am a fan of integrative models enabling us to describe complex interplays and influences.

This is what is meant when I state above that the suggested approach is multi-perspectivist and conceptual. These two characteristics are important for the methodological design which is the central focus of this paper. Let us have a look at the characteristics. The *multi-perspectivist character* is spelt out by the fact that three different lenses have been suggested as especially relevant when studying legal concepts comparatively for translational purposes (cf. Engberg, 2016).

- (National) legal culture (e.g., Glanert, 2006; Legrand, 2014)
- Law as an epistemic functional social system (e.g., Knorr-Cetina, 1999; Luhmann, 1993)
- Interpersonal communication among lawyers and in society (e.g., Engberg, 2008; Felder, 2003; Felder, Luth, Vogel, 2016)

The list of lenses includes different studies, all performed under the hypothesis that the chosen dimension has an important influence upon creation and development of meaning of legal concepts. It is my claim to be substantiated in sections 4-6 that the lenses constitute important perspectives to apply when looking for information in order to investigate a legal concept. In their combination they give us a broad picture of the studied concept. Basically, the dimensions are intended as a guiding structure for comparative legal studies with relevance for legal translators looking for support for their formulation choices.

The three lenses to some extent follow different logics and thus may in fact be seen as incompatible. Hence the integrative nature of the suggested approach leading to a holistic picture of the studied object. The different logics may be exemplified as follows: The lens of national legal culture tends to see culture as a factor external to members of the culture acting within it (culture as restricting meanings), whereas the lens of interpersonal communication focuses upon the powers of individuals to influence and change collective meaning through their communicative textualizations of concepts. Thus, one approach sees culture as restricting meaning, the other sees meaning as collectively constructed and dependent upon communicative interaction. In between, the epistemic and systemic approach focuses upon conceptual systems as independent of people and external contexts, but dominated by internal restrictions inside the social system of law dependent upon interaction within the system.

The idea and claim behind the suggested design is that each of the lenses reflect different important factors and aspects of legal concepts and their emergence and development and that we therefore get a more complete picture of the concept by shifting between the lenses: Legal concepts are influenced by the fact that they are seen as belonging to a specific national culture, that they emerge from a specific legal epistemic system, and that they are part of a specific set of interpersonal communicative interactions. Before we proceed in the justifications for the design, one caveat is important: It is not necessary in my view that a translator or a lawyer studying legal concepts comparatively has to adopt all three different logics in their work and thinking for the integrative model to work. For instance, I am personally sceptical towards the idea of a stable national culture governing our thinking without members having influence upon it and power to change it, which is the position I interpret as underlying the cited work by Glanert and Legrand above. But I think that their approach mirrors an important intuition about legal concepts widespread in the legal community and thus also certainly with influence upon actual interpretive practice. Hence, including this factor and work focusing upon it in a multi-perspectivist approach may supply us with input of the relevance of the factor for our general insights into a legal concept. By way of conclusion: Different logics, paradoxic as they may be, reflect best the multifaceted nature of legal concepts (cf. Husa, 2011).

That the suggested approach is *conceptual* basically means that it intends to describe concepts, i.e., global units constituting the knowledge of law. Object of study is the knowledge relevant for understanding legal texts the way these texts are normally understood by lawyers belonging to a specific national legal culture (Engberg, 2009c). In the words of Busse (2015), we can here talk about *verstehensrelevantes Wissen* (knowledge relevant for understanding). With the approach I want to gain access to the knowledge held by individual lawyers in each of the relevant countries, of which they 'know' that it is knowledge they share with the rest of the group of lawyers and which thus forms the basis of understanding the legal texts of others. A descriptive instrument applied when investigating knowledge from the perspective of its simultaneous individuality and collectivity is the concept of frame. It is not relevant in the light of the aim of this paper to discuss the frame concept in detail.[1] It will suffice to say that it is based on the general idea that concepts in the mind and especially in long-term memory are stored in the form of structures, where components of concepts and concepts themselves are related to other concepts and components along a number of dimensions related to their co-occurrence or relatedness in different situations. It is a way to explain the many associative relations that underlie actual understanding.

The central aspect of frames making them apt for our purpose is that concepts from this perspective are seen as having a number of dimension ('slots') that together constitute the concept, but which not all have to comply with the same logic. In this way, frames are empirically based and inductively generated rather than given from theory or similar deductive sources: If studies of texts and interviews with relevant language users demonstrate that these users hold knowledge of a concept with the same slots, then the frame may be said to have these slots, no matter whether the slots constitute a consistent and compatible whole.

The suggested approach sees comparative legal studies as investigations of the slots of the studied legal concepts as held by lawyers from different legal systems in order to assess relevant overlaps and differences. Depending on the interests of the person doing the comparative legal study, other slots may be relevant, as indicated in the comparison between the interests of the lawyers and translators in section 1 of this paper. The

1 For more general information on different frame approaches, cf. Barsalou, 2007; Bartlett, 1932; Busse, 2015; Engberg, 2007, 2009b; Fillmore, 1982; Ziem, 2014.

connection between the two mentioned characteristics of the approach (*multi-perspectivist* and *conceptual*) is thus the multi-perspectivist nature of concept frames. The role of the three lenses to be presented in more detail below, on their side, is to function as guides when the investigator (for instance, a translator) looks for input in order to build frames and thus to get a structured picture of concepts from different legal systems. Hence, the lenses do not structure the frames and their slot structure. But they help the translator to work systematically when collecting the relevant input for creating a basis for their formulation decisions.

In section 1 above I described the work of legal translators as that of getting to know legal concepts from source and target culture well enough to be able to find relevant overlaps and differences important for them to make their textual choices. With these formulation choices, translators construct a target text that aims at enabling the receiver to construct cognitive structures of the kind the translator intends. It is clear from this description that the key aspect in this component of legal translation (and thus the central field that comparative legal studies have to contribute to) is specialized conceptual legal knowledge held or acquired by the translator. On this basis, I talk about translation studied from this perspective as *an instance of knowledge communication* and hence of legal translators as knowledge communicators aiming at mediating knowledge between members of different legal cultures. This focus upon knowledge (as individually held cognitive structures conceptualized by the holder as shared with others) makes it pertinent for legal translators to perform relevant comparative legal analyses, mainly due to the degree in which legal concepts are bound to legal systems and the ensuing need for information to target text receivers.

In the remainder of the paper, I will briefly present the basic characteristics of the three lenses that may be applied when assessing or acquiring the relevant knowledge and discuss possible methods relevant for the investigation of legal concepts under the respective lens (sections 4-6). The structure of each section is that I present the central characteristics and the focus of the treated lens and hence give some examples of methods of analysis with potential relevance for the investigation of the lens.

4 Perspective of national legal culture

The perspective of (national) legal culture has its focus upon the super-individual structures governing thinking at the level of national culture. Methods and ideas in this perspective are linked to the assumption that overarching traditions and ideas exist in a society and govern thinking and experiencing over long stretches of time and that these are hardly influenced by members of the culture. The basic idea is to see culture as dominant, not dominated in connection with members of the culture. It restricts thinking and perception of members of a culture:

> But language identifies what there *can* be for a linguistic community (or, which is another way of putting it, what a community can say that there is): language concerns the possibility of access to an understanding of an entity (and has nothing to say as regards the existence of an entity. (Legrand, 2008, 205)

Basically, tradition (as a reflection of culture) is seen as something that people grow into and which shape them: Growing up in a specific (national) culture determines specific ways of seeing the world, without individuals having any influence upon the way they see the world:

> The meanings that the interpreter brings to the act of interpretation were internalized by him as he was thrown into a tradition (linguistic, legal, and otherwise) that constituted him as the individual he is (and as a member of the tradition). The basic point is that the individual's sphere of understanding is, in important ways, inherited and that it arises irrespective of any subjective preferences. (Legrand, 2008, 220)

For comparative ventures, the point of departure is that even what looks identical or overlapping, is in reality different, because the background of the concept is different. And there is in this view no way to introduce oneself into a new culture, as the comparatist is in the outset grounded in a different culture:

> The law under scrutiny by the comparatist will continue to have been produced by a tradition and a culture that differ from the tradition and the culture having constituted the comparatist and within which he continues, perhaps unwittingly, to dwell. Both traditions and cultures do not share an object. (Legrand, 2008, 223)

The basic assumptions of this lens imply that focus is especially upon non-equivalent concepts across cultures. Differences are more important than similarities, as similarities are not important and even by the more radical propagators of the approach like Legrand above are rejected in the outset.

Thus, from a methodological point of view, the lens will concentrate upon describing national legal cultures independently and contrastively, and relevant approaches will have to depart from this vantage point. A good candidate for this approach is the general cultural-standard approach as developed by Thomas (e.g., Thomas, 1999). In this approach, cultures are seen as systems of perception and orientation, with a focus upon values and norms: Cultural values and norms are acquired when growing into a culture (Thomas, 1999, 103-105). As long as members of the culture do not cross the boundaries of their culture, they will hardly be aware of the cultural character of their values and norms. Only when confronted with the (differing) values and norms of members of other cultures this awareness arises, often in the form of misunderstandings, misinterpretations and conflicts. The problems occur because the signals and behaviour of members of other cultures are interpreted on the basis of the culture-bound norms and values of the own culture (Thomas, 1999, 91-92).

Hence, focus of the approach of Thomas is to describe the value and norm system of members of one culture in its differences to the value and norm system of members of other cultures with which they are confronted. This focus fits the legal field well, where norms and values are inherent parts of the concepts. Empirically, the preferred method in this approach is to work with narratives about intercultural encounters narrated by people who have experienced such encounters themselves. Examples are narratives by researchers or business people with international experience about concrete problematic encounters. From such narratives about negative confrontations, the investigator isolates points of difference between cultures in order to feed information about possible general points of potential conflict back to people with a need for intercultural interaction in order to raise awareness about intercultural differences. Hence, the own norms and the norms of the other culture are central, with a focus upon differences.

There are relevant overlaps with the task of legal translators as knowledge communicators from the perspective of national legal culture making the approach relevant for methodological inspiration. Especially, the main idea is to assess differences visible through a comparison. However, it is hardly relevant for legal translators to gather personal narratives. Instead, comparing translators will have to look for authors and sources with actual experiences contrasting the relevant legal cultures and concepts. Hence, the most central sources from this point of view are actual studies by comparative lawyers (academics as well as practicing lawyers and law firms) as the practice experts in this field.

5 Perspective of law as a functional and epistemic system

The second lens is that of seeing law as a functional and especially epistemic system. A possible central theoretical framework is that of epistemic cultures (Knorr-Cetina, 1999). She describes the idea of epistemic cultures as follows:

> This book is about epistemic cultures: those amalgams of arrangements and mechanisms – bonded through affinity, necessity, and historical coincidence – which in a given field, make up *how we know what we know*. Epistemic cultures are cultures that create and warrant knowledge… (Knorr-Cetina, 1999, 1)

So, again, in this view, focus is upon the influence of norms and conceptual systems acquired in the process of entering a culture upon the way the world is experienced. Focus is upon the influence of super-individual factors in the form of shared meanings and symbolic systems. An important and defining difference to the previous lens is that in the epistemic cultures approach there is no idea of a national basis behind the culture. The basis is the discipline (in our case the law) as a closed group with educational prerequisites. Furthermore, the view to the concepts and the description of the epistemic culture is that the studied object is not only what members of a culture say, but also and maybe even more importantly how they actually perform the knowledge production processes:

> The traditional definition of a knowledge society puts the emphasis on knowledge seen as statements of scientific belief, as technological application, or perhaps as intellectual property. The definition I advocate

> switches the emphasis to knowledge as practiced - within structures, processes, and environments that make up *specific* epistemic settings. (Knorr-Cetina, 1999, 8)

Thus, the approach also encompasses contexts and structures. This idea may well be combined with the approach of functional, meaning creating systems (Luhmann, 1993). In this approach, focus is upon the symbolic systems that bind social groups together, its systematic structures and the meanings they share and on the basis of which they work. Focus is upon social groups as closed systems to which influences can only enter if they are relevantly in accordance with existing meanings and thus are attachable to the symbolic system in a self-generating process (autopoiesis). The overlap between the two theoretical approaches is the function, the action and the contexts of these.

Hence, if we relate these theoretical considerations to the comparative study of legal concepts, which is the interest of the legal translator, focal points are function-based conceptual systems, contextual conditions and the actual behaviour of members of the epistemic cultures, when they create and recreate the legal knowledge and conceptual systems. When Knorr-Cetina compares the knowledge generation processes in different disciplines as epistemic cultures, she uses anthropological methods of observation, interviews, etc. Along these lines, relevant sources for comparative legal studies are systematic descriptions of the way a legal concept is fleshed out in a legal system. The important methodological difference due to the basic differences between the two lenses is that the range of relevant sources is broader. Relevant sources must not necessarily be comparative themselves. The comparing translators can collect and structure the culture knowledge on their own, as there is less focus upon the impossibility of understanding cultures to which the interpreters do not belong themselves.

Finally, the idea of functional and epistemic systems more than the idea behind the lens of national legal cultures opens up for looking for similarities across the national borders. This is due to the fact that the investigated systems are seen as dependent upon contextual and functional aspects, but without a necessary primary position of the national identity in the context. Hence, in this lens it would also be relevant to look for overlaps that are helpful for legal translators in their task as knowledge communicators. If we want to make foreign concepts accessible for target text receivers, one important aspect is to know where conceptual overlaps exist. For the process of understanding foreign concepts must run via the recognition of similarities with known concepts that must be adjusted and changed in the process of understanding.

Along the methodological guidelines from Knorr-Cetina, it would be relevant to focus upon the (communicative and institutional) behaviour of members of the epistemic culture, including not only descriptions in textbooks etc., but also other meaning generating processes like court decisions, contracts, etc. Hence, with the focus upon functions, probably comparative legal work in the field of functional approaches are relevant. However, classical functional works like Zweigert and Kötz (1996) are probably less relevant, as their general objective is to describe macro-categories. Legal translators, on the other hand, may need such macro-insights as a background, but are actually more in need of insights at a more detailed level, comparing individual legal systems from a conceptual point of view. This also is correct concerning the acquisition of insights into overlaps that enable the translator to guide the target text receiver towards constructing the intended concept in the process of understanding the foreign legal system.

6 Perspective of Interpersonal Knowledge Communication

The last lens studies the influence from interpersonal knowledge communication, i.e., the influence from the way experts at different level talk about a concept. These communicative-textual interactions create and stabilize meaning in the epistemic culture and probably also in the national culture. Focus in this perspective is upon the meanings that are *created in communicative interactions* due to the way texts are composed and words are chosen and combined. We are interested in content aspects of the concepts involved in order to generate input to the content of the knowledge unit, the concept, beyond functional aspects; and we are interested in dynamical aspects of the conceptual systems.

The two previous lenses are mainly oriented towards assessing general aspects of the legal systems which everyone agrees upon, due to their focus upon general values, norms and conceptual systems. Investigating

such general aspects from texts of different kinds (comparative legal studies, central knowledge presenting and knowledge performing texts) gives us relevant insights. Under this lense, the frame concept is central because it models the generally held knowledge relevant for understanding texts in a specific domain or area of communication, as indicated above. However, the frame concept also has a second characteristic which is especially relevant when understanding the central traits of the third lens: Frames are in good accordance with the general idea of the knowledge communication approach to see knowledge as simultaneously individual and collective (Engberg, 2016, 37). Knowledge is individual in the way that it can only empirically be assessed in the minds of individual persons. At the same time, it is collective in the way that every individual perceives the bulk of their own knowledge as shared and has a clear idea about, where the personal knowledge deviates from the collective knowledge. This state of affairs generates the possibility of assessing the knowledge of others (when understanding others in communicative interactions) on the basis of the personal knowledge (cf. also Engberg, 2009a). Frames are relevant here, because they exactly model the elements of knowledge constituting conceptual meaning as a social fact interpreted on the basis of individual communicative contributions.

In order to investigate such frames as result and background of interpersonal knowledge communication, a qualitative approach can be used, in which frames are built on the basis of systematic interpretations of individual texts. However, the quantitative aspect also plays a central role in many studies of frames (Ziem, 2014). The reason is that frame studies are also interested in the internal structure and the salience of the different slots and their fillers in order to be able to also say something about default interpretations, i.e., about how most participants in interactions interpret a text, an utterance, or a word. Hence, from the point of view of methodology it is relevant to apply corpus analysis as a method in the context of this lens.

The purpose of the type of corpus analysis relevant for the comparative study of legal concepts under this lens is a little different from what is regularly seen in the growing number of corpus analytical studies on legal translation or with direct relevance for legal translation:

- Corpus analysis is often employed in order to describe the behaviour of legal translators in order to assess, e.g., the tendencies concerning textual fit of translators in the context of the EU to national textual traditions (Biel, 2014), in the description of translational behaviour in a specific translation (Saridakis, 2013) or in order to investigate more sociological questions like whether translators tend to reproduce rather than challenge existing social and textual norms (Monzó, 2015).
- Corpus analysis is also often used in order to investigate, e.g., phraseological units as elements of a system in order to describe the system as such. Examples of this very frequent approach are works by Dobrić Basaneže (2015), Scarpa (2013), and Goźdź-Roszkowski and Pontrandolfo (2013).

However, none of these types of corpus analysis are fully in accordance with the purpose relevant here. Instead, corpus studies intending to establish insights into relations between different content elements constituting the dimensions of a frame, i.e., the knowledge structure, are more relevant. The following works are examples of relevant approaches:

- Via an investigation of the collocational patterns of four legal terms ‘breach’, ‘contravention’, ‘infringement’ and ‘violation’, first in the genre of contracts and then in the multi-genre context of the entire corpus, insights are reached into overlaps and differences between the contexts of use of the words. In this way, it is possible to establish semantic and functional characteristics of the words in order to discriminate between the near-synonyms when choosing words for formulations or when understanding the source text (Gozdz-Roszkowski, 2013)
- Corpus analytic methods can be used to support conceptual interpretations in legal contexts like court settings, where quantitative aspects are frequently not considered. An example here is a corpus linguistic study of the concept of ‘Arbeitnehmer’ looking at compounds with the word as one element, predication phrases and patterns of co-occurrence, giving insights into aspects of the target concept (Pötters & Vogel, 2015).

Relevant methods are thus investigations of keywords, collocations and other types of co-occurrence patterns with keywords, N-grams, and similar approaches that investigate what words frequently occur together and thus what concepts can be interpreted to be influencing each other or contributing to each other's meaning. In this way, it is possible to also say something about the structure of a concept. Performed across legal systems, as it is intended under this lens, such investigations may generate relevant comparative knowledge that can help translators make necessary formulation decisions in order for them to fill their role as communicators of knowledge between source and target culture.

7 Concluding remarks

The aim of this paper has been to present some methodological concerning how an approach to comparing legal concepts could be designed in order for it to be specifically relevant for translation. The founding idea is to have a multi-perspectivist, integrative approach intending to model the studied concepts as (simultaneously individual and collective) knowledge. In this connection, I have joined approaches together that focus on different aspects of legal knowledge and that focus different factors with influence upon the emergence and development of legal concepts: The national culture they belong to, the symbolic and epistemic system of meaning holding together the social system of law and the expertly communicative interaction driving the stabilisation and development of the meanings in this context. As shown above, such a model allows us to receive information about stable functional and other types of structures as well as to assess points of polarization and crystallization in the ongoing discussion about and development of legal concepts. This knowledge is important for the translator in order to be able to perform the active and responsible task which legal translation is. The presented approach is an attempt to supply translators with a systematic way of assessing and acquiring such knowledge.

A supplementary effect of the development of the approach from its present rather skeletal form could be to improve the conceptual discussions between translators and lawyers. Some comparative lawyers hold the position that legal translation is virtually impossible. In previous works, I have cited the following statement as an example:

One of the first, and maybe most astonishing insights a comparative lawyer will get, is that *the translation of legal texts remains a myth, a sublime aim never to be truly achieved*. This is closely connected to some of the typical problems in comparative law: linguistically equivalent legal notions will frequently have different contents in different jurisdictions. (Kischel, 2009)

Beyond the fact that it is interesting to hear a comparative lawyer, who is probably dependent upon translations in order to perform his research tasks, say that translation is not possible, I think that this position is based upon an incomplete notion of meaning in language, namely one of a 1:1 relation between words and meaning. The frame approach as it has been used already by Zarco-Tejada and Lazari (2017) for a comparative legal analysis could very well offer a platform for a better mutual understanding of language and meaning between translators and lawyers. Its component-oriented basic structure makes it easier not only to see how related concepts from different cultures overlap and differ, as exemplified in the above-mentioned work. It also lends itself as an instrument for translators to demonstrate to commissioners of translation, how alternative translations render different parts of a source text's meaning (Engberg, 2018). Hence, a multi-perspectivist and conceptual approach like the one suggested and presented here in skeletal form has the potential of contributing to what I set up as a supplementary goal in the introduction, viz. to contribute to building a bridge between the comparative legal work of lawyers and of translators, respectively. Future work will demonstrate, how we can put flesh upon the bones of this skeleton to develop it into a bridge.

References

Barsalou, Lawrence W. «Representation and Knowledge in Long-Term Memory». In: Smith, Edward E.; Kosslyn, Stephen Michael (eds.). *Cognitive psychology : mind and brain*. Upper Saddle River, N.J.: Pearson/ Prentice Hall, 2007, p. 147-191.

Bartlett, Frederic C. *Remembering. A Study in Experimental and Social Psychology*. London: Cambridge University Press, 1932.

Baumann, Klaus-Dieter. *Integrative Fachtextlinguistik*. Tübingen: Narr, 1992.

Biel, Łucja. «The textual fit of translated EU law: a corpus-based study of deontic modality.» *The Translator.* Vol. 20, no. 3 (2014) 332-355. doi:10.1080/13556509.2014.909675

Brand, Oliver. «Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies.» *Brooklyn Journal of International Law.* Vol. 32, no. 2 (2007) 405-466.

Busse, Dietrich. «Juristische Semantik als Frame-Semantik». In: Vogel, Friedemann (ed.). *Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung*. Berlin / Boston: de Gruyter, 2015, p. 39-68.

de Groot, Gerard-René. «Problems of legal translation from the point of view of a comparative lawyer». In: Nekeman, Paul (ed.). *XIth World Congress of FIT: proceedings*. Maastricht: Euroterm, 1988, p. 407-421.

Dobrić Basaneže, Katja. «Investigating "concgrams" in the language of contracts and legal agreements.» *Fachsprache.* Vol. 32, no. 3-4 (2015) 176-192.

Doczekalska, Agnieszka. «Comparative Law and Legal Translation in the search for functional equivalents - intertwined or separate domains?» *Comparative Legilinguistics. International Journal for Legal Communication.* Vol. 16, no. (2013) 63-75.

Engberg, Jan. «Wie und warum sollte die Fachkommunikationsforschung in Richtung Wissensstrukturen erweitert werden?» *Fachsprache.* Vol. 29, no. 1-2 (2007) 2-25.

Engberg, Jan. «Begriffsdynamik im Recht - Monitoring eines möglichen Verständlichkeitsproblems». In: Diekmannshenke, Hajo; Niemeier, Susanne (eds.). *Profession & Kommunikation*. Frankfurt a.M.: Lang, 2008, p. 75-95.

Engberg, Jan. «Individual Conceptual Structure and Legal Experts' Efficient Communication.» *International Journal for the Semiotics of Law.* Vol. 22, no. 2 (2009a) 223-243. doi:10.1007/s11196-009-9104-x

Engberg, Jan. «Methodological aspects of the dynamic character of legal terms.» *Fachsprache.* Vol. 31, no. 3-4 (2009b) 126-138.

Engberg, Jan. «Von der Rolle des institutionellen Verstehens für das professionelle Kommunizieren im Recht.» *Jahrbuch Deutsch als Fremdsprache 2008: Professionelle Kommunikation.* Vol. 34, no. (2009c) 97-111.

Engberg, Jan. «Comparative law for translation: The key to successful mediation between legal systems». In: Borja Albi, Anabel; Prieto Ramos, Fernando (eds.). *Legal Translation in Context: Professional Issues and Prospects*. Bern et al.: Lang, 2013a, p. 9-25.

Engberg, Jan. «Why Translators are not Lawyers. On Differences and Similarities of Interest and Knowledge». In: Alonso Araguás, Icíar; Baigorri Jalón, Jesús; Campbell, Helen J.L. (eds.). *Translating the Law. Theoretical and Methodological Issues*. Granada: Comares, 2013b, p. 23-32.

Engberg, Jan. «What does it mean to see Legal translation as knowledge communication? – conceptualisation and quality standards.» *Terminology Science and Research.* Vol. 25, no. (2015) 1-10.

Engberg, Jan. «Conceptualising Corporate Criminal Liability: Legal Linguistics and the Combination of Descriptive Lenses». In: Tessuto, Girolamo; Bhatia, Vijay K.; Garzone, Giuliana; Salvi, Rita; Williams,

Christopher (eds.). *Constructing Legal Discourses and Social Practices: Issues and Perspectives*. Newcastle upon Tyne: Cambridge Scholars, 2016, p. 28-56.

Engberg, Jan. «Comparative Law and Legal Translation as Partners in Knowledge Communication: Frames as a Descriptive Instrument». In: Prieto Ramos, Fernando (ed.). *Institutional Translation for International Governance: Enhancing Quality in Multilingual Legal Communication*. London: Bloomsbury, 2018, p. 37-48.

Felder, Ekkehard. *Juristische Textarbeit im Spiegel der Öffentlichkeit*. Berlin / New York: Walter de Gruyter, 2003.

Felder, Ekkehard; Luth, Janine; Vogel, Friedemann. (2016). ‚Patientenautonomie' und ‚Lebensschutz'. In *Zeitschrift für Germanistische Linguistik* (Vol. 44, pp. 1).

Fillmore, Charles J. «Frame Semantics». In: Linguistic Society of Korea (ed.). *Linguistics in the Morning Calm*. Seoul: Hanshin Publishing Company, 1982, p. 111-137.

Galdia, Marcus. «Strategies and tools for legal translation.» *Comparative Legilinguistics. International Journal for Legal Communication.* Vol. 16, no. (2013) 77-94.

Glanert, Simone. «Zur Sprache gebracht: Rechtsvereinheitlichung in Europa.» *European Review of Private Law.* Vol. 14, no. 2 (2006) 157-174.

Goźdź-Roszkowski, Stanislaw. «Exploring near-synonymous terms in legal language. A corpus-based, phraseological perspective.» *linguistica antverpiensia.* No. 12 (2013).

Goźdź-Roszkowski, Stanisław ; Pontrandolfo, Gianluca «Evaluative Patterns in Judicial Discourse: A Corpus-based Phraseological Perspective on American and Italian Criminal Judgments.» *International Journal for Law, Language and Discourse.* Vol. 3, no. 2 (2013) 9-69.

Hoffmann, Lothar. *Vom Fachwort zum Fachtext*. Tübingen: Narr, 1988.

Husa, Jaakko. «The Method is Dead, Long Live the Methods! European Polynomia and Pluralist Methodology.» *Legisprudence.* Vol. 5, no. 3 (2011) 249-271. doi:10.5235/175214611799248913

Husa, Jaakko. «Functional Method in Comparative Law – Much Ado About Nothing?» *European Property Law Journal.* Vol. 2, no. 1 (2013) 4. doi:10.1515/eplj-2013-0002

Jopek-Bosiacka, Anna. «Comparative law and equivalence assessment of system-bound terms in EU legal translation.» *linguistica antverpiensia.* No. 12 (2013).

Kischel, Uwe. «Legal Cultures - Legal Languages». In: Olsen, Frances; Lorz, Alexander; Stein, Dieter (eds.). *Translation Issues in Language and Law*. London: Palgrave Macmillan, 2009, p. 7-17.

Knorr-Cetina, Karin. *Epistemic cultures : how the sciences make knowledge*. Cambridge, Mass., 1999.

Legrand, Pierre. «Word/World (of Primordial Issues for Comparative Legal Studies)». In: Petersen, Hanne; Kjær, Anne Lise; Krunke, Helle; Madsen, Mikael Rask (eds.). *Paradoxes of European Legal Integration*. Aldershot: Ashgate, 2008, p. 185-233.

Legrand, Pierre. «Law's translation, imperial predilections and the endurance of the self.» *The Translator.* Vol. 20, no. 3 (2014) 290-312. doi:10.1080/13556509.2014.938575

Luhmann, Niklas. *Das Recht der Gesellschaft*. Frankfurt a.M.: Suhrkamp, 1993.

Meyer, Almut. «On the integration of culture into comparative law». In: Tessuto, Girolamo; Salvi, Rita (eds.). *Language and Law in Social Practice Research*. Mantova: Universitas Studiorum, 2016, p. 268-289.

Monjean-Decaudin, Sylvie. «Réflexion sur l'inflexion du signifié dans la traduction juridique de Claude Bocquet.» *Parallèles.* Vol. 25, no. (2013) 19-29.

Monzó, Esther. «(Re)producing habits in international negotiations: a study on the translation of collocations.» *Fachsprache.* Vol. 37, no. 1-2 (2015) 193-209.

Pötters, Stephan; Vogel, Friedemann. «Der ‚Arbeitnehmer' im Rechtsdiskurs. Möglichkeiten und Grenzen korpuslinguistischer Zugänge zu Sedimenten juristischer Dogmatik». In: Vogel, Friedemann (ed.). *Zugänge zur Rechtssemantik*. Berlin: de Gruyter, 2015, p. 124-158.

Saridakis, Ioannis E. «Cross-linguistic Semantics of International Law. A corpus-informed translation of A. Cassese's International Law into Greek.» *linguistica antverpiensia.* No. 12 (2013).

Scarpa, Federica. «Investigating legal information in commercial websites: the Terms and conditions of use in different varieties of English.» *linguistica antverpiensia.* No. 12 (2013).

Simonnæs, Ingrid. «Legal translation and "traditional" comparative law – Similarities and differences.» *linguistica antverpiensia.* No. 12 (2013).

Soriano-Barabino, Guadalupe. *Comparative law for legal translators*. Oxford: Peter Lang, 2016.

Thomas, Alexander. «Kultur als Orientierungssystem und Kulturstandards als Bauteile.» *IMIS-Beiträge.* Vol. 10 (1999) 91-130.

Zarco-Tejada, Maria Ángeles; Lazari, Antonio. «Los modelos de semántica de marcos para la representación del conocimiento jurídico en el Derecho Comparado: el caso de la responsabilidad del Estado.» *Revista de Llengua i Dret.* no. 67 (2017) 18. doi:10.2436/rld.i67.2017.2892

Ziem, Alexander. *Frames of Understanding in Text and Discourse*: John Benjamins, 2014.

Zweigert, Konrad; Kötz, Hein. *Einführung in die Rechtsvergleichung* (3. Auflage ed.). Tübingen: J.C.B. Mohr, 1996.